

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2019-00219

December 11, 2019

MAINE PUBLIC UTILITIES COMMISSION  
Adoption of Distributed Generation  
Procurement Rules – Chapter 312

ORDER ADOPTING RULE  
AND STATEMENT OF  
FACTUAL AND POLICY BASIS

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

## **I. SUMMARY**

Through this Order, the Commission adopts Chapter 312 of the Commission's Rules regarding the procurement of Distributed Generation. The adoption of this Rule is in response to recently enacted legislation.

## **II. BACKGROUND**

During its 2019 session, the Legislature enacted An Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine. P.L. 2019, Chapter 478 (Act). Part B<sup>1</sup> of the Act created a distributed generation procurement process that requires the Commission to solicit long-term contract proposals for targeted amounts of energy, capacity and renewable energy credits (RECs) from developers of renewable distributed generation facilities of less than 5 MWs. The Act directed the Commission to engage in a rulemaking process to implement the program.

## **III. RULEMAKING PROCESS**

On August 28, 2019, the Commission issued a Notice of Rulemaking (NOR), which included a proposed new rule, Chapter 312. The Notice invited interested persons to file initial comments by September 20, 2019. The following entities filed initial comments: AES; Maine Audubon; The Nature Conservancy; Emera Maine, the Coalition for Community Solar Access and the Maine Renewable Energy Association (CCSA/MREA joint comment); Eastern Maine Electric Cooperative (EMEC); Northeast Clean Energy Council (NECEC); and Central Maine Power (CMP).<sup>2</sup>

The Commission held a public hearing on October 8, 2019. The following entities filed final comments: New England Hydropower Company; Renewable Energy Development Partners; Maine Audubon; Conservation Law Foundation; Maine Farmland Trust; Maine Municipal Association; CMP; Enel X and Stem (joint comment); CCSA/MREA (joint comment); Office of the Public Advocate, Governor's Energy Office, Maine Affordable Housing Coalition, Natural Resources Council of Maine (NRCM), CCSA (joint comment); NRCM; Novo Energy Services LLC; The Nature Conservancy;

<sup>1</sup> Part A of the Act contained modification to the Net Energy Billing program.

<sup>2</sup> CMP filed its initial comments on October 1, 2019, noting that it had missed the deadline of September 20, 2019, set forth in the Notice of Rulemaking.

Sunpower; SunRaise; Solar Energy Association of Maine (SEAM); SolarSiting Working Group; NECEC; TurningPoint Energy; BlueWave Solar; EMEC and Borrego.<sup>3</sup>

#### IV. RULE PROVISIONS

##### A. Section 1: Purpose

Section 1 sets forth the purpose of the rule, which is to establish the processes for the procurement of energy from distributed generation resources in the State. There were no comments on this section of the rule and the language remains the same as was proposed.

##### B. Section 2: Definitions

The definitions contained in the rule are largely the same as the definitions provided in the Act. As explained in the NOR, the proposed rule set forth definitions of “distributed generation resource” and “subscriber,” which specified applicability only to facilities in investor-owned transmission and distribution (T&D) utility territory. The NOR specifically asked the parties to comment on whether Chapter 312 should apply to facilities located in the service territories of consumer-owned T&D utilities. The comments received, except for Emera Maine, supported a reading of the Act as applying only to investor-owned utilities. Commenters also agreed that the program should apply to subscribers and distribution resources within the service territory of the same utility, with CMP and Emera Maine commenting that it would not be feasible to apply the proposed distributed generation program across service territories for more than one utility. The Commission agrees and the adopted rule maintains these definitions as originally proposed.

The adopted rule added definitions for some terms and modified the definitions contained in the proposed rule, as follows:

- The proposed rule only had a definition for block contract rate. The adopted rule defines “block rate” and adds definitions for “block base rate” and “block incentive rates,” which will allow the Commission to establish a set rate for a procurement block to reflect either positive or negative adders to the base block rate to be applicable to distributed generation resources that possess certain attributes. As discussed below, this addresses some of the commenters’ suggestions that the rule should create incentives for certain kinds of projects.
- “Commercial or institutional distributed generation resource” is now defined in the adopted rule to be distinct from other distributed generation resources, such as shared distributed generation resources.

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<sup>3</sup> Emera Maine filed comments on October 22, 2019, outside the October 18, 2019, deadline.

- “Commercially operable” was added to the definition section. The term is used in the rule and in the statute in reference to the timeframe for completion of the construction phase of a distributed generation resource project.
- “Discrete electric generating facility” was amended in the adopted rule to conform to the definition for this term provided in Chapter 313 of the Commission’s Rules, which governs Net Energy Billing.
- “Distributed generation resource” is defined as it is defined in the statute, which identifies it as being in the service territory of a transmission and distribution utility in the state. As set forth above, there was a question as to whether this definition would include the service territory of a consumer-owned transmission and distribution utility. This does not appear to be the intention of the statute when read as a whole. Part B of the Act states that “[e]ach investor-owned transmission and distribution utility serves as the standard buyer in its service territory.”<sup>4</sup> The Commission interprets this language as requiring that a distributed generation resource must be located in the service territory of an investor-owned transmission and distribution utility. The definition for this term also clarifies that a distributed generation resource participating in programs under this Chapter may not also be participating in programs pursuant to Chapter 313.
- “Energy produced” was modified from the proposed rule to make clear that energy produced includes energy produced by any storage system paired with a distributed generation resource.
- “Energy storage system” was modified to make clear that for purposes of this rule, an energy storage system stores the energy from its associated distributed generation resource.
- “Kilowatt” and “Megawatt” are defined in the Act in a manner that specifies measurement in Alternating Current (AC).<sup>5</sup> Because a solar facility may have a nameplate capacity that is expressed in Direct Current (DC), the definitions contained in the rule are not limited to AC.
- “Nameplate capacity” was modified from the proposed rule to refer to the installed or rated capacity of the distributed generation resource, in Alternating or Direct Current, as is applicable to the resource.
- “Project sponsor” was amended to add the phrase “or is otherwise the responsible entity” to be consistent with how this term is defined in Chapter 313 of the Commission’s Rules.
- “Renewable energy credit” was added and is the same definition as contained in Chapter 313.

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<sup>4</sup> Part B of the Act, codified at 35-A M.R.S. § 3483(1).

<sup>5</sup> Part B of the Act, codified at 35-A M.R.S. § 3481(8) and (9).

- “Revenue Grade Meter” was changed to “Revenue Quality Meter” in response to a comment by CMP, which suggested the term as it is used in the ISO-NE Market Rules.

C. Section 3: Measures To Support Distributed Generation

The language in sections 3(A) and 3(B) is taken from section B of the Act, codified at section 3482, subsections (1)(2) and (3), with respect to the Commission's and the transmission and distribution utilities' obligations to take measures to support distributed generation in the State. Section 3(A) specifies that the Commission will procure the output of distributed generation as required by the Act. Section 3(B) states that the Commission and the utilities will take all commercially reasonable steps to promote the participation of distributed generation resources to serve Maine's energy needs and in the regional wholesale electricity markets. Section 3(C) requires the Commission to report to the Legislature any changes in state or federal tax treatment that are brought to its attention and that could modify the burdens upon the parties to the distributed generation agreements that will result from the procurement.

The Commission sought comments on whether the proposed rule should address issues such as grid reliability or the impact of ISO-NE interconnection requirements, among other things, in this section of the rule. A few commenters suggested that an ISO-NE interconnection agreement should be considered as satisfying the requirement for an executed interconnection agreement under the bidding process. The Commission concludes that the rule, as proposed and as adopted, allows an ISO-NE interconnection agreement to satisfy the bidding requirement of an executed interconnection agreement.

D. Section 4: Standard Buyer

This section of the rule describes the rights and obligations of the standard buyer, which in the context of this rulemaking and for purposes of interpreting the Act, is an investor-owned transmission and distribution utility unless another entity is designated to be the standard buyer. Section 4(A) states that the T&D utility serves as standard buyer “for distributed generation resources located in its service territory.” This makes clear that the facility must be located within the service territory of the utility serving as standard buyer. This is consistent with the definitions of “distributed generation resource” and “subscriber,” which specify that the facility and the subscriber must both be located within the service territory of the transmission and distribution utility that is serving as the standard buyer.

With respect to the output of the distributed generation resources, the NOR sought comments on who should manage and monetize the output for unsubscribed portion and how it should be done. Commenters were generally in agreement that the output should be managed and monetized by the standard buyer. Consistent with these comments, the adopted rule requires that the rights to the output of the procured

distributed generation resources be retained by the standard buyer and, unless otherwise ordered by the Commission, provides that the standard buyer shall maximize the value of the output for the benefit of ratepayers. The rule requires each standard buyer to file a plan, subject to Commission review, that documents how it will fulfill this obligation. Finally, the rule further requires that all value from any output associated with the unsubscribed portion of a shared resource shall inure to the benefit of the project sponsor.

The NOR requested comment on how to interpret the apparent contradictory language in the Act with respect to the allocation of costs and benefits to ratepayers. The Act states that costs and benefits of the transactions be allocated to customers in the utility's service territory where the facility is located as is done for long-term contracts pursuant to Section 3210-F.<sup>6</sup> As pointed out in the NOR, Section 3210-F provides that costs and benefits are allocated among *all* investor owned T&D utilities, not just within the service territory of a particular utility. CMP and Emera Maine, along with the Conservation Law Foundation believe the Legislature's intent was to allocate the net costs and benefits arising from the Act to all of Maine's electric utility customers, not just customers within a specific service territory. The Commission agrees and has amended the language in section 4(E)(1) of the rule to make clear that costs and benefits incurred or realized by the standard buyers shall be reviewed by the Commission on an annual basis as part of its proceedings for stranded costs to be applied to all ratepayers.

E. Section 5: Project Sponsor

The adopted rule differs only slightly from the proposed rule with respect to the description of the obligations of the project sponsor. The adopted rule clarifies that failure of the project sponsor to comply with the statute, rule or the terms of its contract with the standard buyer could subject it to a requirement to make restitution payments in addition to penalties. Emera Maine and CMP commented that the project sponsor should be responsible for compliance with wholesale market requirements, such as posting financial security with ISO-NE and other market participant requirements. The Commission declines to establish the responsibilities of the parties with respect to these types of wholesale markets requirements in this rule. Rather, such details will be established by the plan to be filed by the standard buyer pursuant to section 4(D)(1) of the rule or the standard contract between the standard buyer and the project sponsor.

F. Section 6: Bill Credit Protocols and Project Sponsor Requirements

This section on bill credit protocol and project sponsor requirements were placed in section 9 of the proposed rule. For the purpose of better organization and more flow of the rule, this section has been moved to become section 6 of the adopted rule. This section of the rule establishes the requirements for determining bill credits for commercial and institutional and shared distributed generation as directed in the Act.

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<sup>6</sup> 35-A M.R.S. § 3483(3).

The proposed rule contained a subsection that set forth general provisions regarding the treatment of bill credits for both commercial and institutional customers as well as shared distributed generation subscribers. For more clarity, the adopted rule places the provision for what happens to the bill credit if the amount is more or less than the amount shown on the bill to individual subsections that apply to each kind of distributed generation: subsection 6(A)(1) for commercial and institutional customers and subsection 6(B)(3) for shared distributed generation subscribers.

The Commission received two comments in response to the NOR's question as to whether the 24-month limit for the carryover of bill credits was appropriate. AES commented that 24 months was appropriate and further suggested that "limits to sizing a subscription to no more than 125 percent of a subscriber's annual consumption" would prevent carryover. Emera Maine commented that the period should be 12 months to be consistent with Net Energy Billing (NEB) standards as well as other states. The Commission is mindful of the fact that the subscription and bill credit processes established in Part B of the Act are new to the state and will require some flexibility in implementation. The adopted rule retains the 24-month carryover period, which provides flexibility to participating customers with respect to their use of the credits, but prevents credits from being used so far in the future that there could be a mismatch between the value of the output to ratepayers and the cost to ratepayers resulting from the credits.

Section 6(A)(2) changed the reference to "revenue-grade" meter to "revenue-quality" meter in response to CMP's comment about the use of terminology that is consistent with that used by ISO-NE in its market rules.

Section 6(B) sets forth various provisions related to shared distributed generation, including provisions related to payments to project sponsors or subscribers, minimum subscription requirements, bill credits, metering, subscription transfers, and reporting requirements. Subsection 6(B)(1) was modified to make clear that, for any portion of the project that is not subscribed, the project sponsor shall receive the value obtained by the standard buyer. Subsection 6(B)(2) was amended to clarify that the project sponsor's affidavit verifying compliance with statutory provisions is submitted in accordance with the procurement announcement as well as the contract it will enter into with the standard buyer.

With respect to section 6(B) on bill credits, CMP commented that the rule should provide guidance on how to process bills for customers who are participating in projects pursuant to this rule as well as Chapter 313 (NEB) projects. The Commission declines to address this circumstance in the rule. If such scenarios arise, they can be addressed in the standard agreements with such customers or their project sponsor.

Regarding the minimum subscription requirements, Novo Energy commented that the term "municipal government or unit of municipal government" in subsection 6(B)(2) was limiting and suggested use of the term "public welfare entity" to include schools, hospitals, or non-profit organizations. In describing the requirements for

minimum subscriptions, Part B of the Act specifically refers to municipalities as subscribers and sets forth alternative requirements for these governmental entities.<sup>7</sup> The rule cannot expand the scope of the Act, which does not include other kinds of entities being entitled to alternative subscription requirements.

Similarly, SSCA/MREA commented that the rule should allow affordable housing providers to participate on their tenants' behalf if they pay the tenants' electricity bills. The rule uses the same language as contained in the Act and therefore reflects the Legislature's intent to ensure that the appropriate portion of a project's subscription is held by subscribers from low- or moderate-income households or organizations that support them. The Commission does not believe further description of such organizations is necessary and if the rule were to include such description, it may unintentionally limit application to certain kinds of organizations.

Section 6(B)(7) provides that a project sponsor who pays the utility (standard buyer) for certain costs related to billing and collection from a subscriber, may seek to have the utility bill the subscriber for these costs. CMP commented that the rule should more generally make clear that the utility could recover its administrative costs from the project sponsor. The language in this subsection is taken from the Act, which is specifically directed to the recovery of money owed to the project sponsor by a subscriber. The Commission anticipates that the standard contract may include provisions related to rights and obligations regarding other types of costs. However, more generally, the utility would recover costs it incurs as the standard buyer from ratepayers in accordance with the rule.<sup>8</sup>

#### G. Section 7: Procurement Parameters, Standards, Methods, and Processes

This section became section 7 in the adopted rule. The adopted rule makes minor changes to the proposed version of subsection 7(C) to clarify what will be included in the Commission's procurement announcement.

Subsection 7(D) states that qualification of a bidder or project would be valid for only one round of procurement. Some commenters suggested that a bidder or a project that qualified in one round should be allowed to carry over to a subsequent procurement round. The Commission has modified this section to provide that a project or bidder that is qualified in one round may not *automatically* carry forward the qualification to a subsequent procurement round. This leaves it open for the Commission to allow a bidder or project's qualification to carry forward to a later procurement round, but with a transparent process to ensure that such qualification complies with the requirements of the statute and the rule.

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<sup>7</sup> 35-A M.R.S. § 3486(2)(A).

<sup>8</sup>Section 3483(3)(A), allows for tracking and recovery of the standard buyer's "incremental costs of serving as the standard buyer." As set forth above, subsection 4(E)(1) of the rule provides that costs and benefits incurred or realized by the standard buyers shall be reviewed by the Commission on an annual basis as part of its proceedings for stranded costs to be recovered from all ratepayers.

Section 3484(7), provides that the Commission shall prepare, in consultation with standard buyers, a “standard contract that commits the standard buyer and a project sponsor to commercially reasonable behavior and includes provisions including an interconnection fee list and interconnection schedule to ensure that the project proceeds to commercial operation on a reasonable timeline.” The Commission has attached two Standard Contracts to the adopted rule, which are referenced in subsection 7(E). One contract applies to shared distributed generation projects involving subscribers; the other is for projects owned by or relating to a commercial or institutional distributed generation project.

These draft documents, which are modeled on the provisions of Commission approved energy purchase contracts, contain the provisions required by the Act. The Commission received many comments encouraging a collaborative process to develop these standard contracts and, in fact, the Act expressly requires consultation with the standard buyers, who are the investor-owned transmission and distribution utilities.<sup>9</sup> The Commission directs the Commission staff to convene a process to allow for consultation with standard buyers as well as other interested entities to finalize the contracts that will be included in the procurement announcement to ensure they reflect the parties’ understanding of their obligations and are compliant with the Act and this Chapter. Commission staff will make final versions of these standard contracts available prior to the procurement announcement as an attachment to this Chapter.

Subsection 7(G) of the adopted rule addresses bidding fees. The adopted rule clarifies that the bidding fee shall not exceed \$12,500 per project. There were comments suggesting that the bidding fee should be much higher – as high as \$25 to \$50 per kW of a proposed project – as a means of ensuring that only serious bidders enter the procurement process. The purpose of the bidding fee is to defray the costs of administering the procurement process, not as a method of screening bidders.<sup>10</sup> The qualifications that a bidder must meet to submit a bid, which include having required permits and an executed interconnection agreement, should serve to prevent speculative bids. A bidder also must demonstrate the ability to provide a financial assurance deposit at the time of the bid, which will deter developers from submitting bids that are not well supported.

Subsection 7(J) sets forth the procurement process for block 1. The adopted rule is in the same form as in the proposed rule.

Subsection 7(K) sets forth the process for procurement blocks 2 through 5. The Act provides that the Commission may by rule establish incentives for certain kinds of distributed generation resources, such as those that pair with energy storage systems, or the development of dual-use projects.<sup>11</sup> The NOR sought comments on the question of how the rule could establish incentives for these attributes. The Commission received several comments on this point. Many of the commenters suggested the Commission

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<sup>9</sup> 35-A M.R.S. § 3484(7).

<sup>10</sup> *Id.* § 3484(4).

<sup>11</sup> 35-A M.R.S. § 3484(2)(F).



adopt the system used in Massachusetts, the “SMART” model, which provides value “adders” for projects that meet certain criteria, such as dual use to preserve farmland and the like.

The Commission recognizes the potential for a system that employs adders or other compensation mechanisms to weight such projects in the bidding process, but it is reluctant to set those parameters by rule. Section 7(I) of the adopted rule allows for the use of “block incentive rates” in rounds 2 through 5 of the procurement process to provide incentive in the form of rate differentials that could favor certain kinds of projects. This allows the Commission flexibility to assess what projects were successful in the first round and institute, if necessary, rates that will enhance the competitiveness of projects that reflect the statutory goals of encouraging energy storage systems, dual-use projects, siting of resources that provide locational benefits to the distribution system as well as other siting criteria that may be developed in conjunction with other state agencies.<sup>12</sup> The Act does not explicitly provide for such incentives in the first procurement block. However, the Commission does not interpret the Act as precluding the use of evaluation criteria in the first round based on particular attributes that could provide some advantage to bidders whose projects include the attributes preferred under the Act during the first round. The Procurement Announcement will describe any such evaluation criteria.

#### H. Section 8: Renewable Energy Credits

This section was formerly section 7 in the proposed rule. The adopted rule made no substantive changes to the proposed rule’s treatment of renewable energy credits.

#### I. Section 9: Consumer Protection

This section was formerly section 8 in the proposed rule. The adopted rule added language to clarify that the consumer protection provisions apply to shared distributed generation projects, as provided in section 3486 of the Act. There is a small addition in subsection 9(A) to ensure that a project sponsor complies with all applicable provisions of Maine law regarding consumer protection.

The Commission sought comment on whether there should be a registration process for project sponsors and whether they should be required to provide financial assurance to enforce consumer protections. Both Emera Maine and CMP commented that registration and financial security would be appropriate, with CMP suggesting the Commission institute a process similar to what is in place for competitive electricity providers. CLF also supported the institution of a registration process. The Commission agrees that these provisions are important and has added them as subsections 9(C) for registration and 9(D) for financial security. The language for these provisions is the same as provided in Chapter 313, subsection 4(C) and 4(D).

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<sup>12</sup> These incentives are described in the Act in Part B, codified at 35-A M.R.S. § 3484(1)(F).

J. Section 10: Dispute Resolution

This section was formerly section 9 in the proposed rule. The adopted rule provides that a standard buyer, project sponsor, or subscriber may bring a dispute regarding any matter governed by the rule to the Commission. The language in the adopted rule models the language in section 3(O) of Chapter 313, which requires the parties to engage in a good faith effort to resolve the dispute before filing a Notice of Dispute with the Commission and further states that the issue will be resolved by the Commission or by the Consumer Assistance and Safety Division.

K. Section 11: Waiver Provisions

This section was formerly section 10 in the proposed rule. The adopted rule makes no changes to this section.

**IV. ORDERING PARAGRAPHS**

In light of the foregoing, the Commission

**ORDERS**

1. That Chapter 312 – Distributed Generation Procurement is hereby adopted as described in the body of this Order and as set forth in the Rule attached to this Order;
2. That the Administrative Director shall file the Rule with the Secretary of State;
3. That the Administrative Director shall notify the following of this rulemaking proceeding:
  - a. All electric utilities in the State;
  - b. All persons who filed comments in this proceeding;
  - c. All persons who have filed with the Commission a written request for notifications regarding Notices of Rulemaking within the past year; and
  - d. The Office of the Public Advocate; and
4. That the Administrative Director shall send a copy of the amended Rule to the Executive Director of the Legislative Council.

Dated at Hallowell, Maine, this 11<sup>th</sup> Day of December, 2019

BY ORDER OF THE COMMISSION

*/s/ Harry Lanphear*  
Administrative Director

COMMISSIONERS VOTING FOR:     Bartlett  
   Williamson  
   Davis

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

**DISTRIBUTED GENERATION STANDARD AGREEMENT  
FOR SHARED DISTRIBUTED GENERATION PROJECTS**

This DISTRIBUTED GENERATION STANDARD AGREEMENT (“Agreement”) is dated as of the \_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, a Maine corporation and transmission and distribution utility (“Standard Buyer”) and \_\_\_\_\_, a corporation under the laws of the State of \_\_\_\_\_ (“Project Sponsor”). This Agreement sets forth the terms and conditions under which the Project Sponsor will provide Shared Distributed Generation Resources to the Standard Buyer in accordance with Chapter 34-C of Title 35-A of the Maine Revised Statutes during the Term as defined in this Agreement.

**Preamble**

WHEREAS, Section 3482(1) of Title 35-A of the Maine Revised Statutes authorizes the Maine Public Utilities Commission (“Commission”) to procure Distributed Generation Resources in the shared distributed generation and commercial or institutional generation market segments using statutorily specified targets and procurement methods; and

WHEREAS, pursuant to section 3484 of Title 35-A of the Maine Revised Statutes and Chapter 312 of the Commission’s Rules and Regulations, the Commission has conducted a solicitation for Distributed Generation Resources; and

WHEREAS, Project Sponsor submitted a Proposal as a Shared Distributed Generation Resource on behalf of subscribers; and

WHEREAS, the Commission selected the Project as described in Project Sponsor’s Proposal, which is attached to this Agreement as Exhibit A.

WHEREAS, the Commission has evaluated the proposal of Project Sponsor and has selected Project Sponsor’s Project relating to the provision of Shared Distributed Generation Resources as defined in this Agreement and pursuant to the terms and conditions set forth herein.

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

**ARTICLE I  
DEFINITIONS**

**1.1 Definitions.**

As used herein, the following terms have the following meaning:

“Bill Credit” means the amount that Standard Buyer pays to Project Sponsor or Project Sponsor’s subscribers in the form of a credit on the bill to account for the value of the distributed generation resource transferred by Project Sponsor to Standard Buyer.

“Commercial Operation Date” means the date declared by Project Sponsor as the date on which the Project is commercially operable. The Commercial Operation Date shall be declared by Project Sponsor by notice delivered to Standard Buyer and to the Commission’s Director of Electric and Natural Gas a minimum of three (3) business days in advance of the Commercial Operation Date.

“Commercially Operable” means that the Project is operational and placed into service and that the Project has been constructed, tested, and is fully capable of operating for the purpose of generating electrical energy as contemplated in this Agreement.

“Commission” means the Maine Public Utilities Commission.

“Construction period” has the meaning set forth in Section 3.1.(a) of this agreement.

“Contract Award” means the date of the Commission’s decision, by Order or otherwise, determining that the Project that is the subject of this Agreement has been selected following the procurement process set forth in Chapter 312 of the Commission’s rules.

“Credit Rate” means the rate per kilowatt-hour used to calculate the bill credits for subscribers of a shared distribution generation resource, which shall be \$ \_\_\_\_, as specified in Commission Order [docket no., date].

“Delivery period” has the meaning set forth in Section 3.1(b) of this Agreement.

“Distributed Generation Resource” means a discrete electric generating facility installed pursuant to Chapter 312 of the Commission’s Regulations, with a nameplate capacity of less than five (5) megawatts that uses a renewable fuel or technology under section 3210(2)(B-3) of Title 35-A Maine Revised Statutes and is located in the service territory of the Standard Buyer.

“Effective Date” means the date the Parties sign this Agreement.

“ISO-NE” means ISO New England, Inc. or any successor entity.

“ISO-NE Market Rules and Manuals” means Section III of the ISO-NE Tariff and its implementing Manuals adopted by ISO-NE to govern the operations of the ISO-NE markets for energy, reserves and capability, as amended from time to time.

“ISO-NE Rules” means all rules and operating procedures adopted by ISO-NE, as such rules and operating procedures may be amended from time to time, including but not limited to, the ISO-NE Market Rules and Manuals and ISO-NE Operating Procedures.

“ISO-NE Tariff” means the ISO New England, Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, effective February 1, 2006, as may be amended from time to time.

“Nameplate Capacity” means the installed or rated capacity of the generated resource that is the subject of this Agreement.

“NMISA” means Northern Maine Independent System Administrator.

“NMISA Market Rules” means all rules and operating procedures adopted by NMISA, as such rules and operating procedures may be amended from time to time.

“NMISA Tariff” means the Northern Maine Independent System Administrator, Inc., FERC FPA Electric Tariff, Volume No. 1, as may be amended from time to time.

“Nonministerial permit” means a permit for which one or more officials consider various factors and exercise discretion in deciding whether to issue or deny the permit.

“Output” means the energy, capacity, renewable energy certificates and all other environmental attributes and market products that are available or may become available from the Distributed Generation Resources that are the subject of this Agreement.

“Project milestones” has the meaning set forth in Section 4.2(b) of this Agreement and as described in Exhibit C.

“Project Sponsor” means an entity or its successor or assignee that develops, markets, owns, manages, or operates a shared distributed generation resource on behalf of subscribers.

“Project Sponsor’s Proposal” means the proposal, including all documents and exhibits, that the Project Sponsor submitted to the Commission and attached as Exhibit A.

“Rate” means a price per kilowatt-hour for delivered energy as measured by a revenue quality meter at the distributed generation resource’s point of connection to the electric grid.

“Revenue Quality Meter” means an electric meter that meets the applicable standards and requirements of the investor-owned transmission and distribution utility and the ISO-NE or NMISA, as applicable, in the service territory where the distributed generation resource is located.

“Shared Distributed Generation Resource” means a distributed generation resource for which the value of the output is owned by, allocated to, or otherwise shared by subscribers.

“Standard disclosures” has the meaning set forth in Section 4.2(g) of this Agreement.

“Subscriber” means a retail customer of an investor-owned transmission and distribution utility that owns, has the rights to, or otherwise possesses a subscription in a shared distributed generation resource and that has identified an account to which the subscription is attributed. Subscribers of a given shared distribution resource must be located in the same utility service territory as the location of the resource.

“Subscribed Output” means (1) for a shared distributed resource the portion of the output of the resource in a given month that corresponds to the portion of the nameplate capacity of the resource for which there are subscriptions.

“Subscriber’s Percentage Interest” means the percentage interest calculated as the Subscriber’s Subscription in kilowatts divided by the nameplate capacity of the Shared Distributed Generation Resource.

“Subscription” means a proportional interest in a shared distributed generation resource in kilowatts. Each subscription must be sized to represent at least one kilowatt of the resource’s nameplate generating capacity.

“Unsubscribed Output” means, for a shared distributed resource, the portion of the output of the resource in a given month that corresponds to the portion not subscribed.

This Agreement includes certain capitalized terms that are not explicitly defined in this Section or anywhere else in this Agreement. Such capitalized terms shall have the meanings specified in the ISO-NE Tariff and the ISO-NE Market Rules and Manuals, which meanings are incorporated herein by reference and made part hereof. In the event of any inconsistency between a definition contained in this Agreement and a definition contained in either the ISO-NE Tariff or the ISO-NE Market Rules and Manuals, the definition in this Agreement will control for purposes of this Agreement.

Further, all references to Articles, Sections and Subsections are references to those parts of this Agreement, unless the context clearly indicates otherwise.

## ARTICLE II CONDITIONS PRECEDENT, REPRESENTATIONS AND WARRANTIES

### 2.1 Conditions on Obligations of Standard Buyer and Project Sponsor

The obligations of Standard Buyer and Project Sponsor under this Agreement are subject to the fulfillment and satisfaction of each of the following conditions precedent:

(a) All representations of the Parties contained in this Agreement shall be true and correct in all material respects as of the date when made and as of the Effective Date and as of the Commercial Operation Date.

(b) All regulatory approvals required of either Party shall have been received and are final and in full force and effect pursuant to a final, non-appealable order.

In the event the conditions set forth above are not satisfied then either Party may terminate this Agreement by delivering a notice of termination to the other Party. Notice of termination for failure of a condition must be in writing and must identify in reasonable detail the condition(s) that have not been satisfied.

### 2.2 Representations and Warranties of Project Sponsor

Project Sponsor hereby represents and warrants to Standard Buyer that as of the Effective Date:

(a) Project Sponsor is a [corporate form] duly organized, validly existing and in good standing under the law of the State of \_\_\_\_\_ and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.



(b) Project Sponsor has full power and authority to carry on its business as now being conducted, to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle Project Sponsor (with due notice or lapse of time or both) to terminate, accelerate, or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance of this Agreement by Project Sponsor will not result in any violation by it of any law, any order of any court or other agency of government, rule, or regulation applicable to it. Project Sponsor is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with its performance of this Agreement.

(c) This Agreement is the legal, valid and binding obligation of Project Sponsor, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereunder in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.

(d) No consent, waiver, order, approval, authorization, or order thereof, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution and delivery by Project Sponsor of this Agreement. Any consent, waiver, order, approval authorization, or order of or registration, qualification, or filing with, any court or other governmental agency or authority required for Project Sponsor's performance of this Agreement and the consummation by Project Sponsor of the transactions contemplated hereby, have been or will be obtained, and as to such, consents the same are or will be final, will be in full force and effect, and will not be subject to any appeal or further judicial or administrative proceedings. No consent or waiver of any party to any contract to which Project Sponsor is a party or by which Project Sponsor is bound is required for the execution, delivery, and performance by Project Sponsor of this Agreement.

(e) There is no action, suit, grievance, arbitration, or proceeding (other than proceedings of general applicability to the electrical generation, transmission, and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals, and permits) pending or, to the knowledge of Project Sponsor, threatened against or affecting Project Sponsor at law or in equity, before any federal, state, municipal, or other governmental court, department, commission, board, arbitrator, bureau, agency, or instrumentality that prohibits or impairs Project Sponsor's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.

(f) There are no bankruptcy or insolvency proceedings pending or being contemplated by Project Sponsor or, to its knowledge, threatened against Project Sponsor.

(g) No event of Default with respect to Project Sponsor has occurred and is continuing and no such event or circumstance would occur as a result of Project Sponsor entering into or performing its obligations under this Agreement.

### 2.3 Representations and Warranties of Standard Buyer

Standard Buyer hereby represents and warrants to Project Sponsor that as of the Effective Date:

(a) Standard Buyer is a [corporate form] duly organized, validly existing and in good standing under the law of the State of \_\_\_\_\_ and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.

(b) Standard Buyer has full power and authority to carry on its business as now being conducted, to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle Standard Buyer (with due notice or lapse of time or both) to terminate, accelerate, or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance of this Agreement by Standard Buyer will not result in any violation by it of any law, any order of any court or other agency of government, rule, or regulation applicable to it. Standard Buyer is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with its performance of this Agreement.

(c) This Agreement is the legal, valid and binding obligation of Standard Buyer, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereunder in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.

(d) No consent, waiver, order, approval, authorization, or order thereof, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution and delivery by Standard Buyer of this Agreement. Any consent, waiver, order, approval authorization, or order of or registration, qualification, or filing with, any court or other governmental agency or authority required for Standard Buyer's performance of

this Agreement and the consummation by Standard Buyer of the transactions contemplated hereby, have been or will be obtained, and as to such, consents the same are or will be final, will be in full force and effect, and will not be subject to any appeal or further judicial or administrative proceedings. No consent or waiver of any party to any contract to which Standard Buyer is a party or by which Standard Buyer is bound is required for the execution, delivery, and performance by Standard Buyer of this Agreement.

(e) There is no action, suit, grievance, arbitration, or proceeding (other than proceedings of general applicability to the electrical generation, transmission, and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals, and permits) pending or, to the knowledge of Standard Buyer threatened against or affecting Standard Buyer at law or in equity, before any federal, state, municipal, or other governmental court, department, commission, board, arbitrator, bureau, agency, or instrumentality that prohibits or impairs Standard Buyer's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.

(f) There are no bankruptcy or insolvency proceedings pending or being contemplated by Standard Buyer or, to its knowledge, threatened against Standard Buyer.

(g) No event of Default with respect to Standard Buyer has occurred and is continuing and no such event or circumstance would occur as a result of Standard Buyer entering into or performing its obligations under this Agreement.

### ARTICLE III TERM, EFFECTIVE DATE, PRICE, INTERCONNECTION

#### 3.1 Term and Effective Date

This Agreement has two periods that together comprise the Term of the Agreement.

(a) The Construction Period is the period of time during which Project Sponsor will complete construction of the Project pursuant to milestones set forth in this Agreement and in Exhibits B and C. The Construction Period commences on the Effective Date, which, as defined above, is the date this Agreement is signed by the Parties. The Construction Period is completed when the Project has become commercially operational, which is the Commercial Operation Date. The Construction Period must be completed within 18 months from the Contract Award. Either Party individually or the Parties jointly may seek an extension of the Construction Period by filing a petition with the Commission.

(b) The Delivery Period commences on the Commercial Operation Date and shall terminate at 00:00 Eastern Prevailing Time on the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

At the expiration of the Term, the Parties shall no longer be bound by the terms and conditions of this Agreement, except to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement prior to the expiration of the Term.

### 3.2 Price

(a) During the Delivery Period, Standard Buyer shall pay the Credit Rate in the form of bill credits to Project Sponsor's subscribers for the subscribed portion of the distributed generous resource, as set forth in section 4.3(b)(i).

(b) For any unsubscribed output conveyed to Standard Buyer, Standard Buyer shall pay Project Sponsor any value Standard Buyer received for such output during the prior month.

(c) Project Sponsor shall pay Standard Buyer's costs for metering the monthly energy production of the Project, which must be determined using a Revenue-Quality meter, and as specified in Standard Buyer's terms and conditions. If Standard Buyer is not a transmission and distribution utility, the terms and conditions of the utility in whose service territory the Project is located will apply.

### 3.3 Interconnection

(a) The Parties have previously entered into an Interconnection Agreement, attached to this Agreement as Exhibit B. To the extent any obligations of the Parties have not been satisfied as of the Effective Date of this Agreement, these obligations continue and are incorporated in this Agreement.

(b) The interconnection milestones contained in this section are separate from the Project Milestones relating to construction of the Project set forth in section \_\_\_.

## ARTICLE IV OBLIGATIONS OF THE PARTIES

### 4.1 Parties' Joint Obligations

(a) Each Party agrees to cooperate in good faith with the other Party and shall take all practicable actions and devote resources reasonably necessary to obtain satisfaction of the conditions set forth above as soon as reasonably possible.

(b) In accordance with section 3484(7) of Title 35-A of Maine Revised Statutes, each Party commits to engage in commercially reasonable behavior to ensure the Project proceeds to commercial operation within eighteen (18) months of the date of the Contract Award, unless the Commission has granted an extension.

(c) Pursuant to Section 9(B) of Chapter 312 of the Commission's Rules, the Parties must comply with the provisions of Maine's Unfair Trade Practices Act, Title 5, Chapter 10, Maine Revised Statutes, and related consumer protection statutes. Any finding by an entity of

competent jurisdiction that a Party has violated either the Maine or Federal Unfair Trade Practices Act is deemed a violation of the Commission's rule and is subject to potential penalty, including but not limited to cancellation of the Agreement.

(d) In the event that either of the Parties becomes aware of a change in federal tax laws, regulations or policy that materially modifies the burdens or costs to customers or utilities associated with the delivery of Distributed Generation Resources pursuant to this Agreement, either of the Parties, or the Parties together shall notify the Commission of such change in law within five (5) business days of becoming aware of the change.

#### 4.2 Obligations of Project Sponsor

(a) Project as proposed. In the event the Project deviates from the description of the Project in Project Sponsor's Proposal in any material manner, due to circumstances outside Project Sponsor's control, Project Sponsor must notify the Commission and seek approval of the Project in its modified form. Material changes to the Project include, but are not limited to, the location, size, type of generation, and output of the Project.

(b) Project Milestones. Project Sponsor must make all commercially reasonable efforts to ensure the Project is commercially operable within 18 months of the Contract Award. The Project Sponsor must adhere to the Project Milestones set forth in Exhibit C and incorporated herein.

(c) Failure to Meet Project Milestones. In the event that Project Sponsor fails to meet any milestones set forth above, then Project Sponsor shall notify the Commission and Standard Buyer, setting forth the reasons for such delay. Upon receipt of such notification, the Commission staff may convene a meeting of representatives of Project Sponsor and Standard Buyer to discuss the reasons for the delay and formulate a plan for completing the outstanding milestone. Upon written notice to Standard Buyer that the delay was caused by an event of force majeure, breach of covenant of this Agreement by Standard Buyer, or a delay in the issuance of a permit or other consent that is beyond Project Sponsor's control, the deadline to complete the outstanding milestone shall be extended for a period of 90 days. A failure to complete the outstanding milestone within 90 days shall be considered a default and shall lead to termination of this Agreement unless otherwise ordered by the Commission. Project Sponsor shall notify the Commission and Standard Buyer upon the expiration of the 90-day period of failure to cure or the completion of the outstanding milestone.

(d) Financial Assurance. Not more than five (5) days after the Effective Date of this Agreement, Project Sponsor shall provide to Standard Buyer the financial assurance deposit of \$\_\_\_\_, as established by Order of the Commission at the time of the Contract Award. Project Sponsor may satisfy the financial assurance requirement through an irrevocable letter of credit or cash perfected as security in a form that is acceptable to the Commission and in accordance with the following:

(i) Letter of credit: An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of Project Sponsor pursuant to the governing statute, rules of the Commission and the terms of this Agreement and must specify that the issuing institution will notify the Commission 30 days in advance of the expiration or cancellation of a letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of “BBB+” by Standard & Poor’s or Fitch or “Baa1” by Moody’s Investors Service, or an equivalent short-term credit rating by one of these agencies. If at any time the corporate debt rating of an issuing financial institution drops below the above specified levels, Project Sponsor shall notify the Commission’s Director of Electric and Gas in writing and provide replacement financial assurance that satisfies the requirements of the Commission and this Agreement.

(ii) Cash: To satisfy the financial assurance requirement of this Agreement, cash must be perfected as a security interest. Project Sponsor must pledge to Standard Buyer a present and continuing first priority security interest in and lien upon all cash deposited as financial assurance. Project Sponsor further pledges to take such actions necessary to perfect Standard Buyer’s security interest in all cash deposited as financial assurance.

Project Sponsor shall assume all responsibility for any costs associated with obtaining financial assurance to secure this Agreement.

(e) Verification of Subscription Requirements. Within five (5) business days of the Effective Date, Project Sponsor shall submit a sworn affidavit to Standard Buyer, with a copy to the Commission, verifying that it has met the minimum subscription requirements set forth in Section 3486(2) of Title 35-A and subsection 6(B)(2) of Chapter 312 of the Commission’s Rules. Project Sponsor will comply with Commission orders to provide periodic verification that it has met the subscription requirements set forth in statute and rule.

(f) Calculation of Subscriber’s Percentage Interest. Project Sponsor shall calculate each Subscriber’s Percentage Interest as defined in this Agreement. Project Sponsor shall recalculate the Percentage Interest for each Subscriber whenever a change to Subscription membership requires recalculation. For each billing month, Project Sponsor shall provide to Standard Buyer in a standardized and electronic format the list of subscribers and subscriber information required to calculate the bill credit to be provided to each subscriber.

Project Sponsor must provide the Standard Buyer in a standardized and electronic format no later than three (3) business days following each calendar month a list of Subscribers, account numbers, and all Subscriber information required to calculate the Bill Credits.

(g) Consumer Protection; Disclosures. With respect to Shared Distributed Generation Resources that have been sold to Subscribers, the Project Sponsor must certify that it has made all Standard Disclosures to such Subscribers using the Commission's disclosure forms, as approved from time to time, as set forth in Section 8(A) and Section 9(E)(1) of Chapter 312 of the Commission's Rules.

(h) Consumer Protection; Registration. Project Sponsor shall register with the Commission in accordance with section 9 of Chapter 312 of the Commission's Rules, using form(s) as provided by the Commission.

(i) Consumer Protection; Financial Security. Project Sponsor shall provide financial security as ordered by the Commission in accordance with section 9 of Chapter 312 of the Commission's Rules, and will comply with any Commission Order regarding payments to be made from such security to subscribers following a finding of violation of consumer protection provisions.

(j) Administrative Costs. The Project Sponsor must pay Standard Buyer's costs associated with providing Bill Credits and otherwise associated with billing and collecting from Subscribers. Project Sponsor may request Standard Buyer to bill Subscribers on its behalf for these costs.

#### 4.3 Obligations of the Standard Buyer

(a) Pursuant to section 3483 and Section 4 of Chapter 312 of the Commission's Rules, Standard Buyer shall aggregate and purchase the output of Shared Distributed Generation Resources procured in accordance with this Agreement and sell or use the output in a manner that maximizes value for ratepayers.

(b) Metering and Billing. Standard Buyer must pay for the output of the Shared Distributed Generation Resource to the Project Sponsor or the Subscribers of the Project Sponsor as follows:

(i) For the subscribed portion:

(1) For each billing month, Standard Buyer shall calculate the total energy produced by the Shared Distributed Generation Resource in the prior month in kilowatt hours multiplied by the Subscriber's Percentage Interest multiplied by the Credit Rate.

(2) A credit to a Subscriber shall be applied against the Subscriber's monthly electricity bill no later than one billing month following the

month in which the energy was generated by the Shared Distributed Generation Resource.

(3) Standard Buyer shall provide a monthly record to Project Sponsor of the credit applied to a Subscriber within one month after the credit is applied to the Subscriber's bill. Standard Buyer may place Subscribers on the same billing cycle or make other adjustments to facilitate the processing of credits for Subscribers.

(4) If the value of a credit to be applied to a Subscriber's bill is less than the amount owed by the Subscriber at the end of the applicable billing period, Standard Buyer shall bill the Subscriber for the difference between the amount shown on the Subscriber's bill and the value of the available credit. If the value of the credit to be applied to the Subscriber's bill is greater than the amount owed by the Subscriber at the end of the billing period, the remaining value of the credit shall be carried to the next month. Any credits carried forward that remain unused after 24 months shall have expired.

(ii) For any unsubscribed output conveyed to Standard Buyer, Standard Buyer shall pay Project Sponsor any value Standard Buyer received for such output during the prior month.

(c) Financial Assurance Deposit. Standard Buyer shall accept Project Sponsor's deposit of financial assurance in the form of a letter of credit or cash as described in section \_\_\_\_\_. Standard Buyer must hold any cash provided by Project Sponsor in an interest-bearing deposit account. Interest shall accrue on the cash at the daily Federal Funds Rate and shall be retained in that account.

(d) Consumer Protection; Financial Security. Standard Buyer shall accept and hold Project Sponsor's deposit of financial security in support of Project Sponsor's consumer protection obligations set forth in section 9 of Chapter 312 of the Commission's rules. Standard Buyer will comply with Commission Orders regarding payment to Subscribers from this financial security following a finding of a violation of a consumer protection provision.

## ARTICLE V EVENTS OF DEFAULT

### 5.1 Events of Default by Project Sponsor

Any one or more of the following shall constitute an event of default of this Agreement with respect to Project Sponsor:



(a) Default shall occur in the payment of any amounts due from Project Sponsor to Standard Buyer hereunder and such failure continues for more than thirty (30) days after written notice of such failure;

(b) Project Sponsor ceases to hold any required federal, state or local approvals and nonministerial permits, the failure or cessation of which results in a lack of legal right on the part of Project Sponsor to continue to operate the Project and such failure continues for more than thirty (30) days;

(c) Project Sponsor shall fail to deliver and maintain any financial assurance as described and required in this Agreement, and such failure continues for more than ten (10) business days after written notice of such failure;

(d) Project Sponsor shall fail to meet project milestones as described in this Agreement or to notify the Commission and Standard Buyer of such failure and to seek relief in the form of an extension;

(e) A custodian, receiver, liquidator or trustee of Project Sponsor is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Project Sponsor makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they mature; or Project Sponsor is adjudicated bankrupt or insolvent; or an order for relief is entered pursuant to the Federal Bankruptcy Code against Project Sponsor; or any of the material property of Project Sponsor is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Project Sponsor pursuant to any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction and is not stayed or dismissed within sixty (60) days of filing;

(f) Project Sponsor files a voluntary petition in bankruptcy or seeking relief pursuant to any provision of any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Project Sponsor;

(g) Project Sponsor fails to provide required verification that it has met the minimum subscription requirements set forth in Section 3486(2) of Title 35-A and subsection 6(B)(2) of Chapter 312 of the Commission's Rules following a 30-day period in which Project Sponsor may provide the required verification;

(h) Project Sponsor fails to provide verification that it has made all Standard Disclosures to such Subscribers using the Commission's disclosure forms as set forth in Section 8(C)(1) of the Commission's Rules;

(i) Project Sponsor is in violation of a consumer protection requirement of this Agreement, or of any state or federal law or rule regarding consumer protection in such manner as the Commission has found the Agreement must be terminated; and

(j) Default shall occur in the performance of any representations, warranties or other covenant or condition to be performed by Project Sponsor hereunder and such default is not cured within thirty (30) days after written notice from Standard Buyer specifying the nature of the default.

## 5.2 Events of Default by Standard Buyer

Any one or more of the following shall constitute an event of default of this Agreement with respect to Standard Buyer:

(a) Default shall occur in the payment of any amounts due from Standard Buyer to Project Sponsor, including payment in the form of Bill Credits, hereunder and such failure continues for more than thirty (30) days after written notice of such failure;

(b) A custodian, receiver, liquidator or trustee of Standard Buyer is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Standard Buyer makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they mature; or Standard Buyer is adjudicated bankrupt or insolvent; or an order for relief is entered pursuant to the Federal Bankruptcy Code against Standard Buyer; or any of the material property of Standard Buyer is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Standard Buyer pursuant to any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction and is not stayed or dismissed within sixty (60) days of filing;

(c) Standard Buyer files a voluntary petition in bankruptcy or seeking relief pursuant to any provision of any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Standard Buyer;

(d) Default shall occur in the performance of any other covenant or condition to be performed by Standard Buyer hereunder and such default is not cured within thirty (30) days after written notice from Project Sponsor specifying the nature of the default.

## ARTICLE VI REMEDIES IN AN EVENT OF DEFAULT; TERMINATE PAYMENT

### 6.1 Exercise of Remedies in an Event of Default

During the continuance of an event of default by either Party hereunder, the non-defaulting Party shall have the right to (i) accelerate all amounts owing between Parties; (ii) cease making payments that are or may become due hereunder; and (iii) terminate this Agreement any time during the continuation of such event of default.

## 6.2 Calculation of Termination Payment

The non-defaulting Party shall calculate, in a commercially reasonable manner, the losses, costs and gains incurred or not realized as a result of the termination of the Agreement. To the extent the non-defaulting Party's losses and costs, net of gains, are greater than zero, there shall be a termination payment due to the non-defaulting Party from the defaulting Party in an amount equal to the non-defaulting Party's losses and costs, net of gains, which shall be the termination payment.

## 6.3 Notice of Termination Payment

As soon as practicable after termination, notice shall be given by the non-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 effective.

In the event a termination payment is due to Standard Buyer, Standard Buyer may draw upon the financial assurance deposit provided by Project Sponsor for this amount. If the financial assurance deposit exceeds the termination payment, Standard Buyer shall return or release this excess, with interest if applicable, to Project Sponsor. If the termination payment exceeds the financial assurance deposit, Project Sponsor shall pay to Standard Buyer the amount of this excess termination payment.

## 6.4 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 the non-defaulting Party's calculation of the termination payment provide to the non-defaulting Party a detail written explanation of the basis for such dispute; provided, however, that if the termination payment is due from the defaulting Party, the defaulting Party first shall pay the undisputed portion of the termination payment to the non-defaulting Party, and then deposit in an interest-bearing escrow account for the benefit of the prevailing Party and amount equal to the disputed portion of the termination payment.

## 6.5 Liquidated Damages

If the Project fails to become commercially operable on or before the completion date set forth herein, including failure to meet the Project milestones described in this Agreement, or as may be extended by Order of the Commission, and the Agreement is terminated, the Parties agree that Standard Buyer may suffer damages which, as a result of Standard Buyer's reliance

upon the delivery of Project Sponsor's energy in the quantities originally approved by the Commission as set forth in the Project Sponsor's Proposal, Standard Buyer would be unable to mitigate fully. The Parties agree that the amount of actual damages suffered by Standard Buyer would be difficult or impossible to measure under the circumstances. Therefore, the Parties agree that if this Agreement is terminated because of the failure of the Project to become commercially operable within the anticipated timeframe, as agreed to or as approved and ordered by the Commission, Standard Buyer shall be entitled to retain the financial assurance deposit provided under this Agreement as liquidated damages.

#### 6.6 Indirect, Special or Consequential Damages

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 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 HEREIN PROVIDED, 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. EXCEPT IN THE EVENT OF AN ACTION COVERED BY THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE VII DISPUTE RESOLUTION

### 7.1 Notice of Dispute

Pursuant to section 10 of Chapter 312 of the Commission's rule, either Party or both Parties may dispute any matter governed by this Chapter by filing a Notice of Dispute with the Commission.

## ARTICLE VIII CONFIDENTIALITY

### 8.1 Obligations of the Parties

The Parties agree not to disclose to any third person and to keep confidential and to cause and instruct their affiliates, officers, directors, members, employees and representatives not to disclose to any third party and to keep confidential all information designated in writing by a Party as confidential, proprietary or trade secret and obtained by either Party from the other relating to this Agreement or the underlying transactions without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that any information may be disclosed by a receiving Party (i) to the extent required by applicable laws and regulations or by a subpoena or similar legal process so long as the Party whose information is being disclosed is given written notice, if such notice is practicable, at least five (5) business days prior to such disclosure; (ii) to the extent the information is in the public domain or the disclosing Party shall have otherwise made the information public or shall have consented in writing prior to any such disclosure; (iii) in connection with the required submission or disclosure of this Agreement or any of its terms to the Commission; or (iv) to the extent the information was known to the receiving Party independent of receipt from the disclosing Party and without violation of this Agreement by the receiving Party.

### 8.2 Public Record

Notwithstanding the provisions of the paragraph above, the Parties agree that, upon execution, this Agreement shall be a public record of the Commission. In addition, the Parties agree that either Party may file reports with the Commission relating to the transactions pursuant to this Agreement and the content of such reports shall not be confidential unless the Commission orders that such reports are confidential.

## ARTICLE IX MISCELLANEOUS PROVISIONS

### 9.1 Assignment

(a) No assignment by either Party (or any successor or assignee thereof) of its rights and obligations hereunder may be made or become effective without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. Any assignments by either Party shall be in such form as to assure that such Party's obligations under

this Agreement will be honored fully and timely by any succeeding party. Any attempted assignment in violation of this Section shall be null and void.

(b) Notwithstanding Section 9.1(a), either Party may assign this Agreement without the prior written consent of the other Party as collateral security to any lenders, investors, or financial institutions in connection with any financing (including, without limitation, in any sale leaseback or leveraged leasing structure or tax equity investment) by assigning Party and the non-assigning Party shall execute and deliver a consent to collateral assignment, estoppel certificates and opinions as may be reasonably required by the lenders, investors, or financial institutions. Any reassignment of this Agreement by such lenders, investors, or financial institutions shall be subject to the assignee assuming all of the obligations of the assigning party under the Agreement. Standard Buyer shall execute and deliver estoppel certificates and opinions as may be reasonably requested by investors or financial institutions in connection with tax equity transactions in respect of the Project, providing that Project Sponsor shall be responsible for all reasonable, documented costs of such requests. Standard Buyer acknowledges and agrees that any consent requested by Seller's lenders, investors, or financial institutions shall include customary provisions reasonably requested by such lenders, investors, or financial institutions, including but not limited to: (i) providing notice to such lender, investor, or financial institution of a breach or default that could lead to an event of default by Project Sponsor; and (ii) Standard Buyer will allow such lender, investor or financial institution to cure a Project Sponsor breach or default under this Agreement.

(c) Notwithstanding Section 9.1(a), Standard Buyer may assign this Agreement without prior written consent of Project Sponsor in connecting with (i) any restructuring, disaggregation, or divestiture involving the separation of any of the generation, transmission, or distribution functions of Standard Buyer into separate entities or the divestiture of all or a major portion of the assets of Standard Buyer that serve any one of such functions, provided that the assignee of this Agreement must be capable of performing Standard Buyer's obligations under this Agreement; (ii) any acquisition, consolidation, merger, or other form of combination of Standard Buyer by or with any person or entity; (iii) the purchase, lease or other acquisition (in one or a series of transactions) of all or substantially all of the assets of any other person or entity; (iv) the conveyance, sale, lease, transfer or other disposition (in one or a series of transactions) of all or substantially all of the assets of Standard Buyer; or (v) as collateral security to any lenders or financing party in connection with any financing by Standard Buyer; provided, however, that the assignee shall fully assume Standard Buyer's obligations under this Agreement.

## 9.2 Notice to Each Party

All notices, requests and other communications hereunder, other than invoices, shall be deemed to have been delivered to any Party if in writing and delivered by hand or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next

Business Day delivery to such Party at its address set forth below or to such other address as such Party may provide through Notice pursuant to this provision.

If to Standard Buyer:

Name, address

If to Project Sponsor:

Name, address

### 9.3 Compliance with Laws

At all times during the Term of this Agreement, the Parties shall comply with all laws, rules and codes of governmental authorities having jurisdiction over each of their respective businesses, now applicable or may be applicable hereafter. The Parties shall maintain all licenses, permits and other consents from all governmental authorities having jurisdiction for the necessary use and operation of their respective businesses, which the failure to maintain will result in material adverse effect on the other Party.

### 9.4 Changes in Law

If and to the extent that during the Term, any laws or regulations shall change that govern any transaction contemplated herein or business operations so as to make either unlawful or impossible to perform, the Parties agree to effect such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes and to preserve, as closely as possible, the basis intent and substance of this Agreement and the economic benefits and burdens allocated to each Party under this Agreement. In the event the Parties are unable to agree to such amendments, the matter shall be submitted the Commission for dispute resolution.

### 9.5 Applicable Law and Forum

When not in conflict with federal laws, interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of Maine. Any legal action or proceeding arising under or relating to this Agreement must, if is not subject to arbitration hereunder, be brought in a court of the State of Maine or a federal court of the United States of America located in the State of Maine.

### 9.6 Force Majeure

Neither Party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description for any event or circumstance that causes any interruption or failure of service or deficiency in the quality or quantity of service, or any other failure to perform if such failure is not caused by the affected Party's fault or negligence, is caused by circumstances beyond the Party's reasonable control and that the Party is unable to prevent or overcome (a "Force Majeure"), which may include but is not limited to storm, flood, lightning, earthquake, explosion, sabotage, terrorism, war, insurrection, or act of God of the public enemy.

#### 9.7 Indemnification

Each Party shall indemnify, defend and hold the other Party and its partners, shareholders, members, directors, officers, employees and agents (including, but not limited to, affiliates and contractors and their employees), harmless from and against all claims arising from any act or incident occurring when title to the Distributed Generation Resource is vested in the indemnifying party, unless such claims are caused by the sole negligence, gross negligence, or willful misconduct of any Party. In the event injury or damage results from the joint or concurrent negligent and willful misconduct of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault. Such duty to indemnify shall not apply to any claims that arise or are first asserted more than two (2) years after the termination of this Agreement.



**DISTRIBUTED GENERATION STANDARD AGREEMENT  
FOR COMMERCIAL OR INSTITUTIONAL CUSTOMER**

This DISTRIBUTED GENERATION STANDARD AGREEMENT (“Agreement”) is dated as of the \_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, a Maine corporation and transmission and distribution utility (“Standard Buyer”) and \_\_\_\_\_, a corporation under the laws of the State of \_\_\_\_\_ (“Project Sponsor”). This Agreement sets forth the terms and conditions under which the Project Sponsor will provide Distributed Generation Resources to the Standard Buyer in accordance with Chapter 34-C of Title 35-A of the Maine Revised Statutes during the Term as defined in this Agreement.

**Preamble**

WHEREAS, Section 3482(1) of Title 35-A of the Maine Revised Statutes authorizes the Maine Public Utilities Commission (“Commission”) to procure Distributed Generation Resources in the shared distributed generation and commercial or institutional generation market segments using statutorily specified targets and procurement methods; and

WHEREAS, pursuant to section 3484 of Title 35-A of the Maine Revised Statutes and Chapter 312 of the Commission’s Rules and Regulations, the Commission has conducted a solicitation for Distributed Generation Resources; and

WHEREAS, Project Sponsor submitted a Bid as a Commercial or Institutional Distributed Generation Resource; and

WHEREAS, the Commission selected the Project as described in Project Sponsor’s Proposal, which is attached to this Agreement as Exhibit A; and

WHEREAS, the Commission has evaluated the proposal of Project Sponsor and has selected Project Sponsor’s Project relating to the provision of Distributed Generation Resources as defined in this Agreement and pursuant to the terms and conditions set forth herein.

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

**ARTICLE I  
DEFINITIONS**

**1.1 Definitions.**

As used herein, the following terms have the following meaning:

“Bill Credit” means the amount that Standard Buyer pays to Project Sponsor in the form of a credit on the bill to account for the value of the distributed generation resource transferred by Project Sponsor to Standard Buyer.

“Commercial or Institutional Customer” means a nonresidential customer of an investor-owned transmission and distribution utility in the State.

“Commercial or Institutional Customer Distributed Generation Resource” means a distributed generation resource that is associated with a commercial or institutional customer.

“Commercial Operation Date” means the date declared by Project Sponsor as the date on which the Project is commercially operable. The Commercial Operation Date shall be declared by Project Sponsor by notice delivered to Standard Buyer and to the Commission’s Director of Electric and Natural Gas a minimum of three (3) business days in advance of the Commercial Operation Date.

“Commercially Operable” means that the Project is operational and placed into service and that the Project has been constructed, tested, and is fully capable of operating for the purpose of generating electrical energy as contemplated in this Agreement.

“Commission” means the Maine Public Utilities Commission.

“Construction Period” has the meaning set forth in Section 3.1(a) of this Agreement.

“Contract Award” means the date of the Commission’s decision, by Order or otherwise, determining that the Project that is the subject of this Agreement has been selected following the procurement process set forth in Chapter 312 of the Commission’s rules.

“Credit Rate” means the rate per kilowatt-hour used to calculate the bill credits for Project Sponsor, which shall be \_\_\_, as specified in Commission Order (docket no., date].

“Delivery period” has the meaning set forth in Section 3.1(b) of this Agreement.

“Distributed Generation Resource” means a discrete electric generating facility installed pursuant to Chapter 312 of the Commission’s Regulations, with a nameplate capacity of less than five (5) megawatts that uses a renewable fuel or technology under section 3210(2)(B-3) of Title 35-A Maine Revised Statutes and is located in the service territory of the Standard Buyer.

“Effective Date” means the date the Parties sign this Agreement.

“ISO-NE” means ISO New England, Inc. or any successor entity.

“ISO-NE Market Rules and Manuals” means Section III of the ISO-NE Tariff and its implementing Manuals adopted by ISO-NE to govern the operations of the ISO-NE markets for energy, reserves and capability, as amended from time to time.

“ISO-NE Rules” means all rules and operating procedures adopted by ISO-NE, as such rules and operating procedures may be amended from time to time, including but not limited to, the ISO-NE Market Rules and Manuals and ISO-NE Operating Procedures.

“ISO-NE Tariff” means the ISO New England, Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, effective February 1, 2006, as may be amended from time to time.

“Nameplate Capacity” means the installed or rated capacity of the generated resource that is the subject of this Agreement.

“NMISA” means Northern Maine Independent System Administrator.

“NMISA Market Rules” means all rules and operating procedures adopted by NMISA, as such rules and operating procedures may be amended from time to time.

“NMISA Tariff” means the Northern Maine Independent System Administrator, Inc., FERC FPA Electric Tariff, Volume No. 1, as may be amended from time to time.

“Nonministerial permit” means a permit for which one or more officials consider various factors and exercise discretion in deciding whether to issue or deny the permit.

“Output” means the energy, capacity, renewable energy certificates and all other environmental attributes and market products that are available or may become available from the Distributed Generation Resources that are the subject of this Agreement.

“Project milestones” has the meaning set forth in Section 4.2(b) of this Agreement and as described in Exhibit C.

“Project Sponsor” means an entity or its successor or assignee that develops, markets, owns, manages, or operates a shared distributed generation resource on behalf of a commercial or institutional distributed generation resource.

“Project Sponsor’s Proposal” means the bid, including all documents and exhibits, that the Project Sponsor submitted to the Commission and attached as Exhibit A.

“Rate” means a price per kilowatt-hour for delivered energy as measured by a revenue quality meter at the distributed generation resource’s point of connection to the electric grid.

“Revenue Quality Meter” means an electric meter that meets the applicable standards and requirements of the investor-owned transmission and distribution utility and the ISO-NE or NMISA, as applicable, in the service territory where the distributed generation resource is located.

This Agreement includes certain capitalized terms that are not explicitly defined in this Section or anywhere else in this Agreement. Such capitalized terms shall have the meanings specified in the ISO-NE Tariff and the ISO-NE Market Rules and Manuals, which meanings are incorporated herein by reference and made part hereof. In the event of any inconsistency between a definition contained in this Agreement and a definition contained in either the ISO-NE Tariff or the ISO-NE Market Rules and Manuals, the definition in this Agreement will control for purposes of this Agreement.

Further, all references to Articles, Sections and Subsections are references to those parts of this Agreement, unless the context clearly indicates otherwise.

ARTICLE II  
CONDITIONS PRECEDENT, REPRESENTATIONS AND WARRANTIES

2.1 Conditions on Obligations of Standard Buyer and Project Sponsor

The obligations of Standard Buyer and Project Sponsor under this Agreement are subject to the fulfillment and satisfaction of each of the following conditions precedent:

(a) All representations of the Parties contained in this Agreement shall be true and correct in all material respects as of the date when made and as of the Effective Date.

(b) All regulatory approvals required of either Party shall have been received and are final and in full force and effect pursuant to a final, non-appealable order.

In the event the conditions set forth above are not satisfied then either Party may terminate this Agreement by delivering a notice of termination to the other Party. Notice of termination for failure of a condition must be in writing and must identify in reasonable detail the condition(s) that have not been satisfied.

2.2 Representations and Warranties of Project Sponsor

Project Sponsor hereby represents and warrants to Standard Buyer that as of the Effective Date:

(a) Project Sponsor is a [corporate form] duly organized, validly existing and in good standing under the law of the State of \_\_\_\_\_ and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.

(b) Project Sponsor has full power and authority to carry on its business as now being conducted, to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle Project Sponsor (with due notice or lapse of time or both) to terminate, accelerate, or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance of this Agreement by Project Sponsor will not result in any violation by it of any law, any order of any court or other agency of government, rule, or regulation applicable to it. Project Sponsor is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with its performance of this Agreement.

(c) This Agreement is the legal, valid and binding obligation of Project Sponsor, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer,

moratorium or other similar laws now or hereunder in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.

(d) No consent, waiver, order, approval, authorization, or order thereof, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution and delivery by Project Sponsor of this Agreement. Any consent, waiver, order, approval authorization, or order of or registration, qualification, or filing with, any court or other governmental agency or authority required for Project Sponsor's performance of this Agreement and the consummation by Project Sponsor of the transactions contemplated hereby, have been or will be obtained, and as to such, consents the same are or will be final, will be in full force and effect, and will not be subject to any appeal or further judicial or administrative proceedings. No consent or waiver of any party to any contract to which Project Sponsor is a party or by which Project Sponsor is bound is required for the execution, delivery, and performance by Project Sponsor of this Agreement.

(e) There is no action, suit, grievance, arbitration, or proceeding (other than proceedings of general applicability to the electrical generation, transmission, and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals, and permits) pending or, to the knowledge of Project Sponsor, threatened against or affecting Project Sponsor at law or in equity, before any federal, state, municipal, or other governmental court, department, commission, board, arbitrator, bureau, agency, or instrumentality that prohibits or impairs Project Sponsor's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.

(f) There are no bankruptcy or insolvency proceedings pending or being contemplated by Project Sponsor or, to its knowledge, threatened against Project Sponsor.

(g) No event of Default with respect to Project Sponsor has occurred and is continuing and no such event or circumstance would occur as a result of Project Sponsor entering into or performing its obligations under this Agreement.

### 2.3 Representations and Warranties of Standard Buyer

Standard Buyer hereby represents and warrants to Project Sponsor that as of the Effective Date:

(a) Standard Buyer is a [corporate form] duly organized, validly existing and in good standing under the law of the State of \_\_\_\_\_ and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.

(b) Standard Buyer has full power and authority to carry on its business as now being conducted, to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle Standard Buyer (with due notice or lapse of time or both) to terminate, accelerate, or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance of this Agreement by Standard Buyer will not result in any violation by it of any law, any order of any court or other agency of government, rule, or regulation applicable to it. Standard Buyer is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with its performance of this Agreement.

(c) This Agreement is the legal, valid and binding obligation of Standard Buyer, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereunder in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.

(d) No consent, waiver, order, approval, authorization, or order thereof, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution and delivery by Standard Buyer of this Agreement. Any consent, waiver, order, approval authorization, or order of or registration, qualification, or filing with, any court or other governmental agency or authority required for Standard Buyer's performance of this Agreement and the consummation by Standard Buyer of the transactions contemplated hereby, have been or will be obtained, and as to such, consents the same are or will be final, will be in full force and effect, and will not be subject to any appeal or further judicial or administrative proceedings. No consent or waiver of any party to any contract to which Standard Buyer is a party or by which Standard Buyer is bound is required for the execution, delivery, and performance by Standard Buyer of this Agreement.

(e) There is no action, suit, grievance, arbitration, or proceeding (other than proceedings of general applicability to the electrical generation, transmission, and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals, and permits) pending or, to the knowledge of Standard Buyer threatened against or affecting Standard Buyer at law or in equity, before any federal, state, municipal, or other governmental court, department, commission, board, arbitrator, bureau, agency, or instrumentality that prohibits or impairs Standard Buyer's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.

(f) There are no bankruptcy or insolvency proceedings pending or being contemplated by Standard Buyer or, to its knowledge, threatened against Standard Buyer.

(g) No event of Default with respect to Standard Buyer has occurred and is continuing and no such event or circumstance would occur as a result of Standard Buyer entering into or performing its obligations under this Agreement.

### ARTICLE III TERM, EFFECTIVE DATE, PRICE, INTERCONNECTION

#### 3.1 Term and Effective Date

This Agreement has two periods that together comprise the Term of the Agreement.

(a) The Construction Period is the period of time during which Project Sponsor will complete construction of the Project pursuant to milestones set forth in this Agreement and in Exhibits B and C. The Construction Period commences on the Effective Date, which, as defined above, is the date this Agreement is signed by the Parties. The Construction Period is completed when the Project has become commercially operational, which is the Commercial Operation Date. The Construction Period must be completed within 18 months from the Contract Award. Either Party individually or the Parties jointly may seek an extension of the Construction Period by filing a petition with the Commission.

(b) The Delivery Period commences on the Commercial Operation Date and shall terminate at 00:00 Eastern Prevailing Time on the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

At the expiration of the Term, the Parties shall no longer be bound by the terms and conditions of this Agreement, except to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement prior to the expiration of the Term.

#### 3.2 Price

(a) During the Delivery Period, Standard Buyer shall pay the Credit Rate in the form of bill credits to Project Sponsor, which shall reflect the total energy production of Project Sponsor's distributed generation resource in the prior month. Standard Buyer may adjust a commercial or institutional customer's billing cycle to administer the bill credits.

(b) Project Sponsor shall pay Standard Buyer's costs for metering the monthly energy production of the Project, which must be determined using a Revenue-Quality meter.

#### 3.3 Interconnection

(a) The Parties have previously entered into an Interconnection Agreement, attached to this Agreement as Exhibit B. To the extent any obligations of the Parties have not been

satisfied as of the Effective Date of this Agreement, these obligations continue and are incorporated in this Agreement.

(b) The interconnection milestones contained in this section are separate from the Project Milestones relating to construction of the Project set forth in section \_\_\_.

ARTICLE IV  
OBLIGATIONS OF THE PARTIES

4.1 Parties' Joint Obligations

(a) Each Party agrees to cooperate in good faith with the other Party and shall take all practicable actions and devote resources reasonably necessary to obtain satisfaction of the conditions set forth above as soon as reasonably possible.

(b) In accordance with section 3484(7) of Title 35-A of Maine Revised Statutes, each Party commits to engage in commercially reasonable behavior to ensure the Project proceeds to commercial operation within eighteen (18) months of the date of the Contract Award, unless the Commission has granted an extension.

(c) Pursuant to Section 9(B) of Chapter 312 of the Commission's Rules, the Parties must comply with the provisions of Maine's Unfair Trade Practices Act, Title 5, Chapter 10, Maine Revised Statutes, and related consumer protection statutes. Any finding by an entity of competent jurisdiction that a Party has violated either the Maine or Federal Unfair Trade Practices Act is deemed a violation of the Commission's rule and is subject to potential penalty, including but not limited to cancellation of the Agreement.

(d) In the event that either of the Parties becomes aware of a change in federal tax laws, regulations or policy that materially modifies the burdens or costs to customers or utilities associated with the delivery of Distributed Generation Resources pursuant to this Agreement, either of the Parties, or the Parties together shall notify the Commission of such change in law within five (5) business days of becoming aware of the change.

4.2 Obligations of Project Sponsor

(a) Project as proposed. In the event the Project deviates from the description of the Project in Project Sponsor's Proposal in any material manner, due to circumstances outside Project Sponsor's control, Project Sponsor must notify the Commission and seek approval of the Project in its modified form. Material changes to the Project include, but are not limited to, the location, size, type of generation, and output of the Project.

(b) Project Milestones. Project Sponsor must make all commercially reasonable efforts to ensure the Project is commercially operable within 18 months of the Effective Date. The Project Sponsor must adhere to the Project Milestones set forth in Exhibit C and incorporated herein.



(c) Failure to Meet Project Milestones. In the event that Project Sponsor fails to meet any milestones set forth above, then Project Sponsor shall notify the Commission and Standard Buyer, setting forth the reasons for such delay. Upon receipt of such notification, the Commission staff may convene a meeting of representatives of Project Sponsor and Standard Buyer to discuss the reasons for the delay and formulate a plan for completing the outstanding milestone. Upon written notice to Standard Buyer that the delay was caused by an event of force majeure, breach of covenant of this Agreement by Standard Buyer, or a delay in the issuance of a permit or other consent that is beyond Project Sponsor's control, the deadline to complete the outstanding milestone shall be extended for a period of 90 days. A failure to complete the outstanding milestone within 90 days shall be considered a default and may lead to termination of this Agreement unless otherwise ordered by the Commission. Project Sponsor shall notify the Commission and Standard Buyer upon the expiration of the 90-day period of failure to cure or the completion of the outstanding milestone.

(d) Financial Assurance. Not more than five (5) days after the Effective Date of this Agreement, Project Sponsor shall provide to Standard Buyer the financial assurance deposit of \$\_\_\_\_, as established by the Commission in the procurement process that resulted in the selection of the Project. Project Sponsor may satisfy the financial assurance requirement through an irrevocable letter of credit or cash perfected as security in a form that is acceptable to the Commission and in accordance with the following:

(i) Letter of credit: An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of Project Sponsor pursuant to the governing statute, rules of the Commission and the terms of this Agreement and must specify that the issuing institution will notify the Commission 30 days in advance of the expiration or cancellation of a letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of "BBB+" by Standard & Poor's or Fitch or "Baa1" by Moody's Investors Service, or an equivalent short-term credit rating by one of these agencies. If at any time the corporate debt rating of an issuing financial institution drops below the above specified levels, Project Sponsor shall notify the Commission's Director of Electric and Gas in writing and provide replacement financial assurance that satisfies the requirements of the Commission and this Agreement.

(ii) Cash: To satisfy the financial assurance requirement of this Agreement, cash must be perfected as a security interest. Project Sponsor must pledge to Standard Buyer a present and continuing first priority security interest in and lien upon all cash deposited as financial assurance. Project Sponsor further pledges to take such actions

necessary to perfect Standard Buyer's security interest in all cash deposited as financial assurance.

Project Sponsor shall assume all responsibility for any costs associated with obtaining financial assurance to secure this Agreement.

(e) Administrative Costs. The Project Sponsor must pay Standard Buyer's costs associated with billing and collecting from Subscribers. Project Sponsor may request Standard Buyer to bill Subscribers on its behalf for these costs.

#### 4.3 Obligations of the Standard Buyer

(a) Pursuant to section 3483 and Section 4 of Chapter 312 of the Commission's Rules, Standard Buyer shall aggregate and purchase the output of Distributed Generation Resources procured in accordance with this Agreement and sell or use the output in a manner that maximizes value for ratepayers.

(b) Metering and Billing. Standard Buyer shall pay a bill credit on a monthly basis. If the value of the credit to be applied to Project Sponsor's bill is less than the amount owed by Project Sponsor, Standard Buyer shall bill Project Sponsor for the difference between the amount shown on the bill and the value of the available credit. If the value of the credit to be applied to Project Sponsor's bill is greater than the amount owed by Project Sponsor at the end of the billing period, the remaining value of the credit shall be carried forward to the next month. Any credits carried forward that remain unused after 24 months shall be retired.

(c) Financial Assurance Deposit. Standard Buyer shall accept Project Sponsor's deposit of financial assurance in the form of a letter of credit or cash as described in section \_\_\_\_\_. Standard Buyer must hold any cash provided by Project Sponsor in an interest-bearing deposit account. Interest shall accrue on the cash at the daily Federal Funds Rate and shall be retained in that account.

## ARTICLE V EVENTS OF DEFAULT

### 5.1 Events of Default by Project Sponsor

Any one or more of the following shall constitute an event of default of this Agreement with respect to Project Sponsor:

(a) Default shall occur in the payment of any amounts due from Project Sponsor to Standard Buyer hereunder and such failure continues for more than thirty (30) days after written notice of such failure;

(b) Project Sponsor ceases to hold any regulatory approval, the failure or cessation of which results in a lack of legal right on the part of Project Sponsor to continue to operate the Project and such failure continues for more than thirty (30) days;

(c) Project Sponsor shall fail to deliver and maintain any financial assurance as described and required in this Agreement, and such failure continues for more than ten (10) business days after written notice of such failure;

(d) Project Sponsor shall fail to meet project milestones as described in this Agreement or to notify the Commission and Standard Buyer of such failure and to seek relief in the form of an extension;

(e) A custodian, receiver, liquidator or trustee of Project Sponsor is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Project Sponsor makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they mature; or Project Sponsor is adjudicated bankrupt or insolvent; or an order for relief is entered pursuant to the Federal Bankruptcy Code against Project Sponsor; or any of the material property of Project Sponsor is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Project Sponsor pursuant to any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction and is not stayed or dismissed within sixty (60) days of filing;

(f) Project Sponsor files a voluntary petition in bankruptcy or seeking relief pursuant to any provision of any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Project Sponsor;

(g) Default shall occur in the performance of any other covenant or condition to be performed by Project Sponsor hereunder and such default is not cured within thirty (30) days after written notice from Standard Buyer specifying the nature of the default.

## 5.2 Events of Default by Standard Buyer

Any one or more of the following shall constitute an event of default of this Agreement with respect to Standard Buyer:

(a) Default shall occur in the payment of any amounts due from Standard Buyer to Project Sponsor, including payment in the form of Bill Credits, hereunder and such failure continues for more than thirty (30) days after written notice of such failure;

(b) A custodian, receiver, liquidator or trustee of Standard Buyer is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Standard Buyer makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they mature; or Standard Buyer is adjudicated bankrupt or

insolvent; or an order for relief is entered pursuant to the Federal Bankruptcy Code against Standard Buyer; or any of the material property of Standard Buyer is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Standard Buyer pursuant to any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction and is not stayed or dismissed within sixty (60) days of filing;

(c) Standard Buyer files a voluntary petition in bankruptcy or seeking relief pursuant to any provision of any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Standard Buyer;

(d) Default shall occur in the performance of any other covenant or condition to be performed by Standard Buyer hereunder and such default is not cured within thirty (30) days after written notice from Project Sponsor specifying the nature of the default.

## ARTICLE VI REMEDIES IN AN EVENT OF DEFAULT; TERMINATE PAYMENT

### 6.1 Exercise of Remedies in an Event of Default

During the continuance of an event of default by either Party hereunder, the non-defaulting Party shall have the right to (i) accelerate all amounts owing between Parties; (ii) cease making payments that are or may become due hereunder; and (iii) terminate this Agreement any time during the continuation of such event of default.

### 6.2 Calculation of Termination Payment

The non-defaulting Party shall calculate, in a commercially reasonable manner, the losses, costs and gains incurred or not realized as a result of the termination of the Agreement. To the extent the non-defaulting Party's losses and costs, net of gains, are greater than zero, there shall be a termination payment due to the non-defaulting Party from the defaulting Party in an amount equal to the non-defaulting Party's losses and costs, net of gains, which shall be the termination payment.

### 6.3 Notice of Termination Payment

As soon as practicable after termination, notice shall be given by the non-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 effective.

In the event a termination payment is due to Standard Buyer, Standard Buyer may draw upon the financial assurance deposit provided by Project Sponsor for this amount. If the financial assurance deposit exceeds the termination payment, Standard Buyer shall return or release this excess, with interest if applicable, to Project Sponsor. If the termination payment exceeds the financial assurance deposit, Project Sponsor shall pay to Standard Buyer the amount of this excess termination payment.

#### 6.4 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 the non-defaulting Party's calculation of the termination payment provide to the non-defaulting Party a detail written explanation of the basis for such dispute; provided, however, that if the termination payment is due from the defaulting Party, the defaulting Party first shall pay the undisputed portion of the termination payment to the non-defaulting Party, and then deposit in an interest-bearing escrow account for the benefit of the prevailing Party and amount equal to the disputed portion of the termination payment.

#### 6.5 Liquidated Damages

If the Project fails to become commercially operable on or before the completion date set forth herein, including failure to meet the Project milestones described in this Agreement, or as may be extended by Order of the Commission, and the Agreement is terminated, the Parties agree that Standard Buyer may suffer damages which, as a result of Standard Buyer's reliance upon the delivery of Project Sponsor's energy in the quantities originally approved by the Commission as set forth in the Project Sponsor's bid, Standard Buyer would be unable to mitigate fully. The Parties agree that the amount of actual damages suffered by Standard Buyer would be difficult or impossible to measure under the circumstances. Therefore, the Parties agree that if this Agreement is terminated because of the failure of the Project to become commercially operable within the anticipated timeframe, as agreed to or as approved and ordered by the Commission, Standard Buyer shall be entitled to retain the financial assurance deposit provided under this Agreement as liquidated damages.

#### 6.6 Indirect, Special or Consequential Damages

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 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 HEREIN PROVIDED, 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. EXCEPT IN THE EVENT OF AN ACTION COVERED BY THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE VII DISPUTE RESOLUTION

### 7.1 Notice of Dispute

Pursuant to section 10 of Chapter 312 of the Commission's rule, either Party or both Parties may dispute any matter governed by this Chapter by filing a Notice of Dispute with the Commission.

## ARTICLE VIII CONFIDENTIALITY

### 8.1 Obligations of the Parties

The Parties agree not to disclose to any third person and to keep confidential and to cause and instruct their affiliates, officers, directors, members, employees and representatives not to disclose to any third party and to keep confidential all information designated in writing by a Party as confidential, proprietary or trade secret and obtained by either Party from the other relating to this Agreement or the underlying transactions without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that any information may be disclosed by a receiving Party (i) to the extent required by

applicable laws and regulations or by a subpoena or similar legal process so long as the Party whose information is being disclosed is given written notice, if such notice is practicable, at least five (5) business days prior to such disclosure; (ii) to the extent the information is in the public domain or the disclosing Party shall have otherwise made the information public or shall have consented in writing prior to any such disclosure; (iii) in connection with the required submission or disclosure of this Agreement or any of its terms to the Commission; or (iv) to the extent the information was known to the receiving Party independent of receipt from the disclosing Party and without violation of this Agreement by the receiving Party.

## 8.2 Public Record

Notwithstanding the provisions of the paragraph above, the Parties agree that, upon execution, this Agreement shall be a public record of the Commission. In addition, the Parties agree that either Party may file reports with the Commission relating to the transactions pursuant to this Agreement and the content of such reports shall not be confidential unless the Commission orders that such reports are confidential.

## ARTICLE IX MISCELLANEOUS PROVISIONS

### 9.1 Assignment

(a) No assignment by either Party (or any successor or assignee thereof) of its rights and obligations hereunder may be made or become effective without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. Any assignments by either Party shall be in such form as to assure that such Party's obligations under this Agreement will be honored fully and timely by any succeeding party. Any attempted assignment in violation of this Section shall be null and void.

(b) Notwithstanding Section 9.1(a), either Party may assign this Agreement without the prior written consent of the other Party as collateral security to any lenders, investors, or financial institutions in connection with any financing (including, without limitation, in any sale leaseback or leveraged leasing structure or tax equity investment) by assigning Party and the non-assigning Party shall execute and deliver a consent to collateral assignment, estoppel certificates and opinions as may be reasonably required by the lenders, investors, or financial institutions. Any reassignment of this Agreement by such lenders, investors, or financial institutions shall be subject to the assignee assuming all of the obligations of the assigning party under the Agreement. Standard Buyer shall execute and deliver estoppel certificates and opinions as may be reasonably requested by investors or financial institutions in connection with tax equity transactions in respect of the Project, providing that Project Sponsor shall be responsible for all reasonable, documented costs of such requests. Standard Buyer acknowledges and agrees that any consent requested by Seller's lenders, investors, or financial institutions shall include customary provisions reasonably requested by such lenders, investors, or financial institutions, including but not limited to: (i) providing notice to such lender, investor, or financial institution

of a breach or default that could lead to an event of default by Project Sponsor; and (ii) Standard Buyer will allow such lender, investor or financial institution to cure a Project Sponsor breach or default under this Agreement.

(c) Notwithstanding Section 9.1(a), Standard Buyer may assign this Agreement without prior written consent of Project Sponsor in connection with (i) any restructuring, disaggregation, or divestiture involving the separation of any of the generation, transmission, or distribution functions of Standard Buyer into separate entities or the divestiture of all or a major portion of the assets of Standard Buyer that serve any one of such functions, provided that the assignee of this Agreement must be capable of performing Standard Buyer's obligations under this Agreement; (ii) any acquisition, consolidation, merger, or other form of combination of Standard Buyer by or with any person or entity; (iii) the purchase, lease or other acquisition (in one or a series of transactions) of all or substantially all of the assets of any other person or entity; (iv) the conveyance, sale, lease, transfer or other disposition (in one or a series of transactions) of all or substantially all of the assets of Standard Buyer; or (v) as collateral security to any lenders or financing party in connection with any financing by Standard Buyer; provided, however, that the assignee shall fully assume Standard Buyer's obligations under this Agreement.

## 9.2 Notice to Each Party

All notices, requests and other communications hereunder, other than invoices, shall be deemed to have been delivered to any Party if in writing and delivered by hand or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next Business Day delivery to such Party at its address set forth below or to such other address as such Party may provide through Notice pursuant to this provision.

If to Standard Buyer:

Name, address

If to Project Sponsor:

Name, address

## 9.3 Compliance with Laws

At all times during the Term of this Agreement, the Parties shall comply with all laws, rules and codes of governmental authorities having jurisdiction over each of their respective businesses, now applicable or may be applicable hereafter. The Parties shall maintain all licenses, permits and other consents from all governmental authorities having jurisdiction for the necessary use and operation of their respective businesses, which the failure to maintain will result in material adverse effect on the other Party.



#### 9.4 Changes in Law

If and to the extent that during the Term, any laws or regulations shall change that govern any transaction contemplated herein or business operations so as to make either unlawful or impossible to perform, the Parties agree to effect such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes and to preserve, as closely as possible, the basis intent and substance of this Agreement and the economic benefits and burdens allocated to each Party under this Agreement. In the event the Parties are unable to agree to such amendments, the matter shall be submitted the Commission for dispute resolution.

#### 9.5 Applicable Law and Forum

When not in conflict with federal laws, interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of Maine. Any legal action or proceeding arising under or relating to this Agreement must, if is not subject to arbitration hereunder, be brought in a court of the State of Maine or a federal court of the United States of America located in the State of Maine.

#### 9.6 Force Majeure

Neither Party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description for any event or circumstance that causes any interruption or failure of service or deficiency in the quality or quantity of service, or any other failure to perform if such failure is not caused by the affected Party's fault or negligence, is caused by circumstances beyond the Party's reasonable control and that the Party is unable to prevent or overcome (a "Force Majeure"), which may include but is not limited to storm, flood, lightning, earthquake, explosion, sabotage, terrorism, war, insurrection, or act of God of the public enemy.

#### 9.7 Indemnification

Each Party shall indemnify, defend and hold the other Party and its partners, shareholders, members, directors, officers, employees and agents (including, but not limited to, affiliates and contractors and their employees), harmless from and against all claims arising from any act or incident occurring when title to the Distributed Generation Resource is vested in the indemnifying party, unless such claims are caused by the sole negligence, gross negligence, or willful misconduct of any Party. In the event injury or damage results from the joint or concurrent negligent and willful misconduct of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault. Such duty to indemnify shall not

apply to any claims that arise or are first asserted more than two (2) years after the termination of this Agreement.