

October 15, 2009

## VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**RE: Review of Proposed Town of New Shoreham Project  
Pursuant to RI General Laws § 39-26.1-7**

Dear Ms. Massaro:

Enclosed for filing with the Commission is an unsigned copy of a power purchase agreement (“PPA”) for the potential purchase of renewable power from a wind power developer who is proposing to construct a project off the coast of Block Island, including the construction of an undersea cable that would interconnect Block Island to the mainland. The project would consist of six wind turbine generators having a name plate capacity of approximately 21.6 MW. Under the statutory definition of capacity, this equates to approximately 8.64 MW, based on the 40% capacity factor assumed in the developer’s proposal. The PPA is being filed to comply with Section 39-26.1-7(a) of the Rhode Island General Laws and is included in this filing as Exhibit 1.

Attached as Exhibit 2 to this filing is a copy of the Request for Proposals (“RFP”) issued on July 31, 2009, which was fifteen days in advance of the statutory deadline. The issuance of the RFP and the negotiations of the terms of the PPA arose out of legislation that was passed into law in June 2009 and incorporated into Title 39 in a new Chapter 26.1. Section 7 of this Chapter required National Grid<sup>1</sup> to solicit proposals for one newly developed renewable energy resources project of 10 MW or less which included a proposal to enhance the reliability and environmental quality of the Town of New Shoreham through an undersea transmission cable interconnecting Block Island to the mainland. The Company received only one proposal from one developer, Deepwater Wind Block Island, LLC (“Deepwater”), on August 31, 2009, the deadline in the RFP.

Consistent with the Company’s obligation under the statute, National Grid negotiated with the developer in an attempt to achieve a commercially reasonable contract.<sup>2</sup> Unfortunately, as will be explained below, National Grid believes that the

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid, hereinafter referred to as “National Grid” or “Company”.

<sup>2</sup> The unsigned PPA (other than Exhibit E) reflects National Grid’s understanding of the current state of negotiations between National Grid and Deepwater, after a month and a half of negotiation. In some cases,

terms reflected in the unsigned PPA that is included in this filing are not commercially reasonable. The PPA, in pure financial terms, is uneconomic by a significant margin for Rhode Island customers for the entire term.

In the first instance, the price that National Grid would be expected to pay for the power is far higher than all parties expected as represented to the State Legislature and is significantly above market. The estimated cost for the first full year of operation is estimated to be approximately 30.7¢ per kilowatt-hour, escalating at a fixed rate of 3.5% per year (this price does not include the cost of the cable between the mainland and Block Island). If the prices were actually fixed at that rate with such escalation, that would be problematic enough. But the other significant concern that National Grid has with the pricing is that the pricing is not fixed.

Typically, when a utility enters into a long term contract for power, pricing is fixed in advance, with some escalation embedded in the pricing. This has historically been true even with (and perhaps especially with) unit contingent contracts with renewable power projects that rely on project financing for their construction. While pricing may include escalation clauses or formulas tied to market indices, the project developer typically bears the risk that the generation units may produce less power than originally estimated. In such case, the developer is paid less, because less generation service has been provided. That is not the case in this proposed contract. While Deepwater would take the risk of construction, once the project becomes commercially operational, the customers of National Grid would bear virtually all the production and post-construction cost risk. As such, while National Grid can estimate the annual unit pricing based on certain sets of assumptions, other unknown events in the future can materially alter the pricing, whether those events relate to unexpected operational problems, less than expected wind energy, or substantial increases in operation and maintenance expenses. Rather than the developer taking the risk that the technology will not perform as anticipated, the developer's proposal shifts that risk to customers of National Grid. The PPA not only includes a high starting price that escalates, but also contains provisions that effectively insulate the developer from the financial risks of production and maintenance. Although Deepwater has indicated that some of the terms of the proposal are necessary in order to achieve financing in an economy where obtaining project financing may be challenging, National Grid nevertheless believes that the contract terms create too much risk and unreasonable cost for customers and, for that reason, should be disapproved by the Commission.

#### Background: Pre-Bidding History

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the language in the unsigned PPA is language preferred by National Grid (some of which was not reviewed by Deepwater in light of the need to finalize the PPA for filing), with alternative language suggested by Deepwater in a footnote (some of which was not reviewed by National Grid in light of the need to finalize the PPA for filing). In some instances these differences reflect significant differences as to commercial terms, and, in other instances, these differences are drafting issues that the parties may have been able to resolve with more time to continue their discussions.

For the Commission's information, it is important to note that the sole bidder, Deepwater, is the developer who signed a "Joint Development Agreement" with the State of Rhode Island, through the Office of Energy Resources ("OER") on January 2, 2009, to develop off shore wind projects, a copy of which is included as Exhibit 3 to this filing. That agreement was the result of a separate solicitation process conducted by the OER in which National Grid had no involvement. The Joint Development Agreement executed with the State contemplated two phases of off-shore wind development. Phase I contemplated a 20 MW project near Block Island that would include a cable that interconnected Block Island to the mainland. Phase II contemplated a large 385 MW project in deeper waters off the coast of Rhode Island.<sup>3</sup>

It is apparent that Section 39-26.1-7 was enacted to facilitate the potential development of Phase I, as contemplated in the Joint Development Agreement. It is equally apparent that Section 39-26.1-8 was intended to allow Deepwater an opportunity to make a filing with the Commission to prove the benefits of the Phase II proposal and seek a contract for that project if the conditions in that section of the new law were met and the Commission made the necessary stipulated findings. The filing in this case, however, pertains only to Phase I. Any filing for Phase II would be a separate matter initiated by the developer at a later date.

### Summary of PPA

#### (1) Project Size

Section 39-26.1-7 expressly limits the size of this special Block Island generation project to 10 MW, as determined under that statutory definition using capacity factor. The original proposal submitted by Deepwater in response to the RFP was for a project consisting of eight 3.6 MW wind turbine generators for a total nameplate capacity of 28.8 MW, and assumed a 40% capacity factor. Under the statutory definition of capacity, this equates to 11.5 MW, which clearly exceeded the statutory limit of 10 MW. In negotiations, the Company requested Deepwater to submit pricing for a project that conformed to the statutory limit of 10 MW. Deepwater provided information for both a 6 and 7 turbine project (although the Company understands that Deepwater is not proposing a 6 turbine project). The project with seven turbines, however, had a nameplate rating of 25.2 MW and, with the assumed 40% capacity factor, equated to 10.08 MW under the statutory definition. Thus, it was not in compliance with the statute and, for that reason, could not be accepted, even if the economics improved. In any event, while the "unit price" of bundled renewable energy (\$/MWh) would be lower with a seven turbine project (the increased total cost of the project is spread over more generated megawatt-hours), a comparison with market price projections still indicated that the Company's customers would be paying a higher total of above market costs over the term of the PPA. Thus, the economic analysis still favored the 6 turbine proposal. It

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<sup>3</sup> The two projects in the Joint Development Agreement are defined in terms of nameplate capacity.

is also important to note that the six turbine project with a nameplate rating of 21.6 MW is closer to the project size originally contemplated in the Joint Development Agreement.

(2) Term of the PPA

The filed PPA contemplates a term of 20 years in length. The Company also considered a PPA of 15 years in length, but that shorter term option would have resulted in even higher prices for the fifteen year period because the total cost of the project would have been spread over that shorter term. For that reason, the Company agreed to negotiate a PPA based on a 20 year term. The statute generally contemplates PPAs with term lengths ranging from 10 to 15 years, but allows the Commission to approve term lengths longer than 15 years.

(3) Pricing Terms Relating to Power Purchase

In negotiations, there were multiple iterations of pricing. While National Grid repeatedly requested a true fixed pricing schedule, which was a requirement of the RFP, Deepwater never submitted one in conformance with the RFP, maintaining that it was not practical or possible given the fact that there were too many unknowns regarding cost. Instead, Deepwater provided two other alternatives, each of which assumes that National Grid would own the cable between Block Island and the mainland.

One alternative provided a schedule containing a stream of annual payments to the project, which were converted to unit pricing based on expected output, as shown in Exhibit 4A (“Unit Pricing Proposal”).<sup>4</sup> The payment stream escalates at a rate of 3.5% per year. The pricing arrangement, however, requires a true-up to occur at the end of each year that is triggered if production of electricity does not fall within a certain capacity factor range. This target is initially set at commercial operation, but is thereafter based on actual performance. The effect of this provision is to assure that Deepwater receives a relatively steady annual revenue stream, regardless of the actual performance of the units and wind variability. This alternative also contains a true up of actual operation and maintenance expenses that assures the project covers all of its operation and maintenance expenses, regardless of the cause or prudence of the additional cost incurrence.

The second alternative was a complex proposal (“Structured Pricing Proposal”) that involves fixed monthly payments in accordance with a schedule that would not be finalized until after all construction costs are known. The project would receive the scheduled payments as long as certain minimum generation requirements are met, such requirements set at a fairly low threshold. The payment schedule is first set based on a target construction cost. This payment schedule is shown in Exhibit 4B and matches the annual payment schedule shown in the Unit Pricing Proposal. The actual schedule of

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<sup>4</sup> The versions of Exhibit 4A and Exhibit E to the PPA included in this filing reflect the most recent version provided by Deepwater, with the appendices adjusted to reflect a six-turbine project. These versions reflect discussions between National Grid and Deepwater on certain features, but National Grid does not support these versions for the reasons explained in this letter.

payments, however, would depend upon the final project costs. This proposal allows for a reduction in the annual payment stream if the final construction cost ends up below a target construction cost. A schedule is provided that shares savings between the Company and the project. If the construction cost exceeds the target cost, however, Deepwater would still be able to recover the additional amount, less a return, up to a specified construction cost “not-to-exceed” cap. The cap in annual payments is higher than the annual payments specified in the Unit Pricing Proposal schedule. Thus, while customers would receive the benefit of savings below the target construction cost, customers also would pay a significant portion of the costs if there were cost over-runs. This proposal also requires the Company to perform an audit of the final construction costs, but does not include any standard of prudence. The Structured Pricing Proposal also includes the same true up mechanism for operation and maintenance expenses contained in the Unit Pricing Proposal.

It is important to note that National Grid found both pricing alternatives unacceptable. But, realizing the obligation to negotiate, National Grid selected the Unit Pricing Proposal for continued discussion. The Company was not confident that, under the Structured Pricing Proposal, significant enough construction savings could be achieved to materially lower the cost of the project to customers. Most important, the Structured Pricing Proposal puts the customers at risk of having to pay a substantial portion of construction cost over-runs. Thus, while the Structured Proposal could result in lower cost than the Unit Pricing Proposal, it also could result in higher cost. Further, the minimum delivery requirement also was not significant enough to provide adequate incentive for Deepwater to maximize production. As long as the minimum is met, Deepwater would earn its revenue stream, regardless of the amount of power produced.

Finally, the Structured Pricing Proposal would place the Company in the position of having to examine the construction cost data, including invoices, construction contracts, accounting, and other supporting documentation to determine whether the actual construction costs were properly supported. Because Deepwater is not a regulated utility and there is no forum to truly examine the costs of the project in a manner that assures transparency and accuracy, the Company viewed this proposal as one fraught with complexity and the potential for litigation. In a project of this magnitude, the risk of not being able to tie down the true final construction cost is substantial, especially where the entity being scrutinized is not subject to a regulatory review in a fully transparent proceeding.

#### (4) Two Options for Cable Ownership

Regarding the cable that would interconnect Block Island to the mainland, there are two options contemplated. The first option contemplates an affiliate of Deepwater constructing the cable and then turning over ownership and operation to the Company when the cable goes into service. The Company would then recover the revenue requirement for its investment in the cable over twenty years. The second option contemplates Deepwater being completely responsible for the construction, ownership,

and operation of the cable. In this second option, the costs associated with the cable would be added to the PPA pricing. The Company has the option to choose to own the cable, but may elect not to do so under the law. The Company's proposal to own the cable is contingent upon approval by the Commission of ratemaking treatment acceptable to the Company when filed with the Commission after cable costs are finally estimated. The Company would then need to reflect the rates in a transmission agreement that is filed with and accepted by the Federal Energy Regulatory Commission ("FERC") before implementation because the ratemaking for the transmission cable would be FERC jurisdictional.

### Standard of Review

This filing arises out of Section 39-26.1-7 ("Section 7"), which is narrowly tailored to apply to the special Block Island project. National Grid believes that Section 7 gives the Commission wide latitude in determining whether to approve or disapprove the project. Section 7 is silent as to the standard that would apply, indicating only that the project is subject to Commission approval. Specifically, the pertinent language states:

The electric distribution company shall select a project for negotiating a contract that shall be conditioned upon approval by the commission. Negotiations shall proceed in good faith to achieve a commercially reasonable contract. Should the distribution company and the selected party agree to a contract, the contract shall be filed with the commission no later than October 15, 2009 for commission approval. The commission shall review the contract and issue an order approving or disapproving the contract on or before December 31, 2009.

While the section requires that negotiations be conducted to achieve a commercially reasonable contract, the discretion given to the Commission to approve or disapprove the contract is unbounded. Because Section 7 does not specify a standard, National Grid believes the Commission has the discretion to exercise the powers it traditionally exercises over utility ratemaking matters, which considers (among other factors) the interest of Rhode Island customers, as well as the cost and benefits of a given proposal.

A comparison of Section 7 with two other sections of Chapter 26.1, under which the Commission will be reviewing proposals for long term contracts, supports National Grid's interpretation. Specifically, Section 39-26.1-3 ("Section 3") relates to a four-phase solicitation for the acquisition of renewable generation that would equate to approximately 10% of National Grid's distribution load. Unlike Section 7, Section 3 sets forth a specific standard, stating in pertinent part:

The commission shall approve the contract if it determines that: (1) the contract is commercially reasonable; (2) the requirements for the annual solicitation have been met; and (3) the contract is consistent with the purposes of this chapter.

As written, Section 3 conditions approval on whether the long term contract is commercially reasonable, as defined in the law. Chapter 26.1, in turn, provides a definition of “commercially reasonable” in Section 39-26.1-2(1). With respect to pricing, the definition of “commercially reasonable” states that the pricing needs to be “reasonably consistent with what an experienced power market analyst would expect to see in transactions involving newly developed renewable energy resources.” While Section 3 expressly provides for the commercial reasonableness standard to apply, this requirement is not present in Section 7, although the section does state that “Negotiations shall proceed in good faith to achieve a commercially reasonable contract.”

Section 39-26.1-8 (“Section 8”), which relates to a filing that will be made by Deepwater in connection with its Phase II proposal for a 385 MW wind farm, also sets forth a specific standard. In fact, it has more elements than Section 3, stating:

In reviewing the application, the commission shall determine whether the proposal is in the best interests of electric distribution customers in Rhode Island. In making this determination, the commission shall consider the following factors: (i) The economic impact and potential risks, if any, of the proposal on rates to be charged by the electric distribution company; (ii) The potential benefits of stabilizing long-term energy prices; (iii) Any other factor the commission determines necessary to be in the best interest of the rate payers.

As written, Section 8 directs the Commission to consider specified factors. It also gives authority to consider other factors as well. This language, however, does not appear in Section 7.

Sections 3 and 8 plainly indicate that the legislature could have provided for or cross-referenced more specific standards of review for the Commission under Section 7, had the legislature desired or intended to do so as it did in Sections 3 and 8. Section 7’s silence supports National Grid’s view that Section 7 does not alter the Commission’s traditional standard of review which ought to apply to this proceeding, even though it directs negotiations toward achieving a commercially reasonable contract.

### Cost Impact of the Proposal

There are essentially two cost components that drive the impact on National Grid’s customers who would bear the net costs of the project, if approved. The most significant component is the above market price. That is, the pricing under the PPA compared to forecasted market prices for energy, capacity, and renewable energy certificates shows that the power would be more expensive than market prices for every year of the twenty year agreement. Thus, the PPA, in pure financial terms, is uneconomic by a significant margin for Rhode Island customers for the entire term. The Company estimates that it would pay Deepwater a total of \$657.5 million over the life of

the twenty year agreement, assuming there were no adjustments for variations from the assumed capacity factors and operation and maintenance expenses. Of that amount, the Company estimates that the total amount of above-market costs will be over \$500 million. In the first full year of operation, which is expected in 2013, the above market cost to customers will exceed \$16 million and continue to escalate every year thereafter.

The second cost component to customers is the cost of the cable between Block Island and the mainland. The Company estimates the revenue requirement in the first full year of operation could be between \$5.3 million and \$7.6 million, decreasing each year thereafter. The rate will depend upon the final cost of the cable, including necessary upgrades to the system on the mainland. Deepwater did not provide well-supported cost estimates for the cable portion of the project. In addition, Deepwater did not take into account the necessary upgrades to the existing system that would be necessary to accommodate a cable of this type. For that reason, the Company does not yet have a firm estimate of the capital cost. Based on preliminary analysis, however, National Grid expects the cost to be between \$35 million and \$50 million, depending upon the cost of system upgrades.

When the revenue requirement associated with the cable is added to the above market cost, the result is in an annual cost between \$21 million and \$24 million in the first full year alone. To put this in context, the total budget for the Company's electric energy efficiency programs in 2009 was \$28.7 million. Thus, the first full year cost to customers for this one renewable generation project could equate to an amount over 80% of the entire 2009 electric energy efficiency budget for Rhode Island.

### Benefits of the Project

National Grid recognizes that this project, if approved and constructed on schedule, would result in benefits to Rhode Island. Specifically, the generation component of the project may have the potential to make Rhode Island the first state in the nation to establish an operating off-shore wind project. In addition, renewable generation will bring environmental benefits to the extent it displaces fossil fuel generation.

The cable component of the project also would bring significant benefits. Specifically, the construction of the cable between Block Island and the mainland would bring electric reliability benefits to the residents of the island. It also would give Block Island access to the electric markets in New England. These combined benefits of the cable also may assist economic development on the island. Finally, Block Island also would be able to reduce or effectively eliminate the use of diesel generation on the island, an environmental benefit. It is worth noting, however, that these benefits would be achievable without the renewable generation component.

### General Comment of National Grid on the Proposed PPA

Integrated into our role in the state to assist in the development and implementation of energy policy is our sensitivity, shared by the Commission, that the costs of policy implementation make sense for our customers over the short and long terms. Taking this into account, the Company is recommending that the Commission disapprove the proposed PPA.

Most important, the pricing of the project is substantially higher than all parties expected as represented to the State Legislature and is significantly above market. It is understood that most renewable projects will be above market, but the differential between the contract price and market price projections for this PPA is quite substantial. When Deepwater made its original proposal in 2008 and was ultimately selected by the State to be the preferred developer of off-shore wind for Rhode Island, Deepwater's indicative pricing was substantially lower. For example, while the 2013 year estimated price shown in Exhibit 4A equates to 30.7¢ per kWh, escalating at 3.5% per year, the pricing originally proposed for the development of off-shore wind by Deepwater in 2008 was closer to 15.5¢ per kWh, escalating at only 2.5% per year. It is worth noting that the 2008 proposal also indicated that the final pricing would be within a range of plus or minus 10%.

While the difference between the current proposal and the 2008 proposal may be explained, in part, by the fact that the 2008 proposal was for the large wind farm where economies of scale might reduce the price per kWh, the difference is nevertheless striking. Moreover, the need for the increase in the escalation rate is not readily apparent. While National Grid strongly supports the development of renewable generation and recognizes the importance of long term contracting to achieve that objective, the Commission should appropriately consider within its broad discretion the high cost of this potential arrangement and its impact on customers in Rhode Island.

It also is important to note that, while the statutory provisions directed the Company to "proceed in good faith to achieve a commercially reasonable contract," the Company does not believe that the final pricing negotiated is "commercially reasonable," as defined in Section 39-26.1-2(1). In addition, as described earlier in this filing letter, after the project is commercially operational, virtually all of the risks of production, as well as the cost of operation and maintenance, fall upon customers.

Further, the provisions that allow Deepwater to charge customers for all of its operation and maintenance expenses each year, without regard to the reason or the prudence of expenditures, is unreasonable. It also places National Grid, and even the Commission, in the role of having to audit those expenses every year to assure that this unregulated power project is not over-charging or misstating its billings. This type of arrangement turns the PPA into a mini-regulatory rate case each and every year. Neither the Company nor the Commission is equipped to provide reliable audit scrutiny for twenty years of the contract. It also requires a considerable degree of "trust" that is not warranted when Deepwater can sell the entity that holds the contract to any third party without regard to reputation or competency.

Another point relates to the undersea cable. Many of the benefits are associated with the cable that interconnects Block Island to the mainland. It is important to point out that the cable project, standing alone, is a small component of the cost of the project. As such, the benefits of the cable connection could be achieved by simply having National Grid construct and own the cable, without any renewable generation project associated with it. The Company understands, however, that the law linked the two projects for purposes of the solicitation. If, however, the Commission disapproved the PPA, it would not necessarily foreclose pursuit of the cable project as a separate project, if the Commission found it in the public interest to do so.

Finally, one of the main benefits identified in connection with the project is the “promise” that this project would make Rhode Island the first state in the nation to host an operating off shore wind project. Without question, this would be a worthy achievement, but National Grid believes that the aspiration to reach this goal needs to be tempered by the reality of cost. Thus, the Commission needs to consider whether a commitment to pay this cost is worth the aspiration to the State.

In sum, National Grid does not believe that the expected benefits of the PPA outweigh the significant above-market costs and other risks to be borne by all of National Grid’s electric customers in Rhode Island. For all of these reasons, National Grid recommends that the Commission disapprove the PPA.

Proposed Procedural Schedule

Given the tight negotiation schedule, the Company did not have enough time to prepare testimony with this filing. The Company, however, proposes to file such testimony by the close of business on October 29.

Very truly yours,



Ronald T. Gerwatowski

cc: Leo Wold, Esq.  
Steve Scialabba, Division

**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID**  
**AND**  
**DEEPWATER WIND BLOCK ISLAND, LLC**

As of [\_\_\_\_\_], 2009

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### Exhibits

Exhibit A	Description of Facility
Exhibit B	Seller’s Permits
Exhibit C	Form of Progress Report
Exhibit D	Insurance
Exhibit E	Products and Pricing

## POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** (this “**Agreement**”) is entered into as of [\_\_\_\_], 2009 (the “**Agreement Date**”), by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation (“**Buyer**”), and Deepwater Wind Block Island, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

**WHEREAS**, Seller is developing the Block Island Wind Farm, a wind farm located off the coast of Block Island, Rhode Island, which is more fully described in Exhibit A hereto (the “**Facility**”), which shall qualify as a Newly Developed Renewable Energy Resource (hereafter defined);

**WHEREAS**, Buyer is required under R.I.G.L. §39-26.1-7 to solicit proposals for a long-term contract for the purchase of energy, capacity and renewable energy certificates from a renewable generator meeting the requirements of that statute; and

**WHEREAS**, Buyer and Seller desire to enter into this Agreement whereby Buyer shall purchase from Seller all Products (as defined herein) generated at or associated with the Facility;

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

### 1. **DEFINITIONS**

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

Unless the context requires otherwise, any reference in this Agreement to any document shall mean such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Captions, titles and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, such first Person.

“**Amendment Regulatory Approval**” shall have the meaning set forth in Section 8.5(c) hereof.

“**Business Day**” shall mean any day that is not a Saturday, Sunday, or NERC Holiday.

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

**“Capacity”** shall mean on or as of any date of determination, the Facility’s capability to generate a specific amount of electrical energy at any point in time, including without limitation, all capacity from the Facility as determined by ISO-NE’s Seasonal Claimed Capability rating (or successor or replacement rating used to measure capability) as defined in the ISO-NE Rules that is obligated to deliver and receive payments in the Forward Capacity Market (or its successor market) as set forth in the ISO-NE Rules, including without limitation as both a “New” and an “Existing” Capacity Resource as those terms are used in the ISO-NE Rules.

**“Capacity Clearing Price”** shall mean the market clearing price in the Forward Capacity Auction, or any successor auction or equivalent market if an auction is no longer utilized.

**“Capacity Commitment Period”** shall have the meaning set forth in the ISO-NE Rules.

**“Capacity Resource”** shall have the meaning set forth in the ISO-NE Rules.

**“Capacity Supply Obligations”** shall have the meaning set forth in the ISO-NE Rules.

**“Certificates”** shall mean an electronic certificate created pursuant to the Operating Rules of the GIS to represent the generation attributes of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

**“Claims”** shall have the meaning set forth in Section 13.1 hereof.

**“Commercial Operation”** shall mean the satisfaction of the conditions set forth in Section 3.3(b), as set out in a written notice from Seller to Buyer.

**“Commercial Operation Date”** shall mean the deadline for the Facility to achieve Commercial Operation, which shall be December 31, 2012, as that date may be extended pursuant to Section 3.1(b).

**“Contract Year”** shall mean: (i) for the first Contract Year, the period beginning with Commercial Operation and including and ending on the last day of the month that is twelve (12) full calendar months following Commercial Operation, (ii) for the second Contract Year, the one-year period beginning on the first day following the end of the first Contract Year, and (iii) for each subsequent Contract Year, the one-year period beginning on each subsequent anniversary of the beginning of the second Contract Year.

**“Credit Support”** shall mean collateral in the form of (a) cash or (b) a letter of credit issued by a Qualified Bank in a form reasonably acceptable to the recipient Party, as further described in Section 6.

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

**“Deepwater Transmission”** shall mean Deepwater Wind Block Island Transmission, LLC, a Delaware limited liability company, and its successors and permitted assigns.

**“Defaulting Party”** shall mean the Party with respect to which an Event of Default has occurred.

**“Deliver”** or **“Delivery”** shall mean with respect to Energy, to supply Energy in accordance with the terms of this Agreement at the Delivery Point.

**“Delivery Point”** shall mean the low voltage side an electric substation on Block Island that is mutually acceptable to Buyer and Seller.

**“Development Period Security”** shall have the meaning set forth in Section 6.1(a) hereof.

**“Effective Date”** shall have the meaning set forth in Section 2.1 hereof.

**“Energy”** shall mean all electric energy produced by the Facility.

**“Environmental Attributes”** shall mean any and all generation attributes under the PUC’s regulations and or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental characteristics of the Facility or Energy produced by the Facility, during the Services Term including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy Delivered to Buyer; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy Delivered to Buyer; provided, however, that Environmental Attributes shall not include: (i) any state or federal production tax credits; (ii) any state or federal investment tax credits or other tax credits associated with the construction or ownership of the Facility; (iii) any state or federal tax credit introduced after the date of this Agreement intended to supplement, replace or enhance the tax credits described in the foregoing clauses (i) or (ii); (iv) any depreciation deductions permitted under the Internal Revenue Code with respect to the Facility (including any bonus or accelerated depreciation); or (v) any state, federal or private Financing, grants, guarantees or other credit support relating to the development, construction, ownership, operation or maintenance of the Facility.

**“Event of Default”** shall have the meaning set forth in Section 9.1 hereof.

**“Extended Group”** shall have the meaning set forth in Section 15 hereof.

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

**“Financing”** shall mean indebtedness, whether secured or unsecured, loans, notes, equity, convertible debt, sale-leaseback transactions, bond issuances, recapitalizations and all similar financing or refinancing.

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

**“Forward Capacity Auction”** shall have the meaning set forth in the ISO-NE Rules.

**“Forward Capacity Market”** shall have the meaning set forth in the ISO-NE Rules.

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

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

**“Governmental Entity”** shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility, but does not include a RTO.

**“Indemnifying Party”** shall have the meaning set forth in Section 13.1 hereof.

**“Indemnified Party”** shall have the meaning set forth in Section 13.1 hereof.

**“Interconnecting Transmission Provider”** shall mean New England Power Company its successors and assigns.<sup>1</sup>

**“Interconnection Agreement”** shall mean an agreement among some or all of Seller, Buyer, the Interconnecting Transmission Provider and the ISO regarding interconnection of the Facility to the transmission system of the Interconnecting Transmission Provider or its affiliate, which Agreement shall be acceptable in form, scope and substance to each of the parties thereto in their sole discretion.

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

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

**“ISO-NE Rules”** shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such rules may be amended

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<sup>1</sup> Deepwater proposes changing this definition to read as follows: **“Interconnecting Transmission Provider”** shall mean the entity that owns, leases or otherwise possesses an interest in the portion of the transmission system at the Delivery Point.

from time to time, including but not limited to, the ISO-NE Tariff, the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

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

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

**“kW”** shall mean a kilowatt.

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

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

**“Lender”** shall mean any Person, whether acting for its own account or as agent for another Person, providing Financing in connection with the development, construction, and ownership of the Facility (or any refinancing of that Financing), and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a Person.

**“Market Participant”** shall have the meaning set forth in the ISO-NE Rules.

**“Meters”** shall have the meaning set forth in Section 4.7(a) hereof.

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

**“MW”** shall mean a megawatt.

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

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

**“NEPOOL Agreement”** shall mean the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005, as amended and/or restated from time to time.

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

**“NERC Holiday”** shall mean New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and any other day declared a holiday by NERC.

**“Network Upgrades”** shall mean upgrades to the Pool Transmission Facilities and the Interconnecting Transmission Provider’s and Buyer’s transmission and distribution systems necessary for Delivery of the Energy at the Delivery Point, including those that are necessary for the Facility’s Capacity to be

recognized as a “Capacity Resource” pursuant to the ISO-NE Rules, as determined and identified in the Interconnection Agreement.

“**Newly Developed Renewable Energy Resource**” shall mean, pursuant to R.I.G.L. § 39-26.1-2(6), an electrical generation unit that uses exclusively an eligible renewable energy resource (as defined under R.I.G.L. § 39-26-5), and either (x) has neither begun operation, nor have the developers of the unit implemented investment or lending agreements necessary to finance the construction of the unit prior to the Agreement Date or (y) is located within the state of Rhode Island and obtained project financing on or after January 1, 2009.

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

“**Operational Limitations**” of the Facility are the parameters reasonably required to operate the Facility in accordance with manufacturers’ warranties, insurance requirements, the requirements of any Financing, and Good Utility Practice, including the time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limit(s) for the Facility, including those in Exhibit A and those additional parameters to be provided by Seller prior to Commercial Operation and to be attached hereto as a supplement to Exhibit A.

“**Operating Period Security**” shall have the meaning set forth in Section 6.1(b) hereof.

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

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

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

“**Permitted Liens**” shall mean any claim, lien, charge, encumbrance, or demand on any REC by any Person into whose GIS account Buyer has designated delivery of each REC or Certificate.

“**Pool Transmission Facilities**” has the meaning given that term in the ISO-NE Rules.

“**PPA Regulatory Approval**” shall mean the PUC’s approval of this Agreement without material modification or conditions pursuant to R.I.G.L. § 39-26.1-7, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to 2.75 percent (2.75%) of Buyer’s actual annual payments under this Agreement, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

“**Price**” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set out in Exhibit E.

**“Products”** shall mean Energy, Capacity and RECs.

**“PUC”** shall mean the Rhode Island Public Utilities Commission or any successor state regulatory agency.

**“Qualified Bank”** shall mean a major U.S. commercial bank or the U.S. branch office of a major foreign bank, in either case, having (x) assets on its most recent audited balance sheet of at least \$10,000,000 and (y) a rating for its senior long-term unsecured debt obligations of at least (A) “A” by S&P and “A2” by Moody’s, if such entity is rated by both S&P and Moody’s or (B) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s but not both.

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

**“Rejected Purchase”** shall have the meaning set forth in Section 4.5 hereof.

**“Renewable Energy Certificates”** or **“RECs”** shall mean all of the Certificates and other Environmental Attributes associated with the Energy Delivered under this Agreement, including those that conform with the eligibility criteria set forth in the applicable Rhode Island regulations and are eligible to satisfy the Renewable Energy Standard, and shall include title to and claim over all Environmental Attributes associated with the Energy Delivered to Buyer under this Agreement.

**“Renewable Energy Standard”** shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. that requires all retail electricity Sellers in Rhode Island (except Block Island Power Company and Pascoag Utility District) to provide a minimum percentage of electricity from eligible renewable energy resources, and such successor laws and regulations as may be in effect from time to time.

**“Resale Damages”** shall mean, with respect to any Rejected Purchase, an amount equal to the sum of (a) the positive amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof and Exhibit E hereto for such Rejected Purchase of any Products, had such Products been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase of Energy and RECs, plus (b) any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer’s failure to accept such Products. In the event that Seller is unable to resell a Rejected Purchase using commercially reasonable efforts, the ISO-NE market value of the Products at the time of the Rejected Purchase (as reasonably determined by Seller) will replace the Resale Price in the calculation of the Resale Damages. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

**“Resale Price”** shall mean the sum of (a) the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase of Energy and RECs, plus (b) the Capacity Clearing Price for a Rejected Purchase of Capacity, plus (c) transaction and other administrative costs reasonably incurred by Seller in re-selling such Rejected Purchase; provided, however, that in no event shall Seller be required to utilize or change its utilization of the Facility or its other assets, contracts or market positions in order to minimize Buyer’s liability for such Rejected Purchase.

**“RTO”** shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to the FERC’s Order No. 2000 and FERC’s corresponding

regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“**S&P**” shall mean Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor thereto.

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

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

“**Services Term**” shall have the meaning set forth in Section 2.2 hereof.

“**Supply Forecast**” shall have the meaning set forth in Section 9.3(b).

“**Term**” shall have the meaning set forth in Section 2.2 hereof.

“**Termination Payment**” shall have the meaning set forth in Section 9.3(b) hereof.

“**Test REC Price**” shall mean, during the period prior to Commercial Operation, the average of two (2) broker quotes for the average sale price of renewable energy certificates in ISO-NE obtained by Seller from brokers that normally trade in such renewable energy certificates, having at least one (1) year of experience in trading renewable energy certificates and that are not Affiliates of either Party, in each case for the month in which the RECs at issue were delivered to Buyer.

“**Transmission Cable**” shall mean the bidirectional transmission cable to be constructed by Deepwater Transmission and running between the Delivery Point and a point on the mainland of Rhode Island that is mutually acceptable to Buyer and Deepwater Transmission.

“**Transmission Cable Condition Date**” shall have the meaning set forth in Section 8.5(a) hereof.

“**Transmission Cable Conditions**” shall mean collectively (a) the negotiation, execution and delivery by Buyer and Deepwater Transmission of the Transmission Cable Purchase Agreement, (b) the negotiation, execution and delivery of the Interconnection Agreement by the parties thereto, (c) the finalization and, to the extent appropriate, execution and delivery, of the Transmission Cable Cost Arrangement, and (d) the receipt of the Transmission Cable Regulatory Approvals.

“**Transmission Cable Cost Arrangement**” shall mean the documentation selected by Buyer and/or the Interconnecting Transmission Provider to determine the means of collecting the cost of purchasing the Transmission Cable pursuant to the Transmission Cable Purchase Agreement (including any return on investment on that cost) and the allocation of those costs among the relevant parties, which documentation shall be acceptable to Buyer in its sole discretion.

“**Transmission Cable Purchase Agreement**” shall mean the agreement between Deepwater Transmission and Buyer pursuant to which Deepwater Transmission will construct the Transmission Cable and, subject to the satisfaction of the terms and conditions set forth therein, Buyer will purchase

the Transmission Cable, which agreement will be acceptable in form, scope and substance to each of Buyer and Deepwater Transmission in their sole discretion.

**“Transmission Cable Regulatory Approvals”** shall mean collectively (a) the approval of the Transmission Cable Purchase Agreement by the PUC pursuant to R.I.G.L. § 39-26.1-7, including to the extent applicable the recovery by Buyer of its costs incurred under the Transmission Cable Purchase Agreement, (b) the approval of the Transmission Cable Cost Arrangement by the FERC pursuant to Section 205 of the Federal Power Act, (c) to the extent applicable, the approval of the Transmission Cable Purchase Agreement by the FERC pursuant to Section 203 of the Federal Power Act, (d) to the extent applicable, the approval by the FERC of the Interconnection Agreement by the FERC pursuant to Section 205 of the Federal Power Act, and (e) any other filing or registration with or approval or consent of any Governmental Entity that may be required or determined by Buyer to be desirable in connection with the Interconnection Agreement, the Transmission Cable, the Transmission Cable Purchase Agreement and the Transmission Cable Cost Arrangement, each of which filings, registrations, consents and approvals shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion; provided that Buyer may waive the need for any specific item of the Transmission Cable Regulatory Approvals in its sole discretion.

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

## 2. **EFFECTIVE DATE; CONDITIONS; TERM**

2.1 Effective Date. The **“Effective Date”** shall be the date that the condition described in Section 8.1 hereof has been satisfied or waived by Buyer (unless this Agreement is terminated prior to that date in accordance with its terms).

### 2.2 Term.

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

(b) The **“Services Term”** is the period during which Buyer is obligated to purchase Products provided to Buyer by Seller commencing on Commercial Operation and continuing for a period of twenty (20) years from Commercial Operation, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Services Term, the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products delivered prior to such expiration or termination, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

2.3 No Precedential Value. The Parties acknowledge that the Facility and their obligations with respect thereto are unique and that the form, terms and conditions of this Agreement are specific to this transaction and shall not be used as a precedent in any in future power purchase negotiations by Buyer with Seller, any Affiliate of Seller or any other Person.

### 3. **FACILITY DEVELOPMENT AND OPERATION**

#### 3.1 Anticipated Commercial Operation; Extension.

(a) Seller anticipates that a notice to proceed for the construction of the Facility will be issued by Seller with respect to the Facility on or about April 30, 2012 and that Commercial Operation of the Facility will commence on or before the Commercial Operation Date.

(b) Seller has a one-time right to extend the Commercial Operation Date for a period of up to five (5) years by providing at least sixty (60) days' written notice to Buyer of Seller's exercise of its right to extend. Seller's right to extend the Commercial Operation Date under this Section 3.1(b) is in addition to all permitted extensions of the Commercial Operation Date due to Force Majeure.

(c) If the Facility does not achieve Commercial Operation by the Commercial Operation Date, either Party may terminate this Agreement within sixty (60) days after the Commercial Operation Date by written notice to the other Party (which termination shall be effective upon delivery of such notice), and upon such termination neither Party will have any further liability to the other hereunder except for obligations arising under Section 6.3, Section 12 and Section 13.

3.2 Progress Reports. At the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report addressing the status of the issuance of the notice to proceed and achieving Commercial Operation, in accordance with the form attached hereto as Exhibit C. Seller shall permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

#### 3.3 Commercial Operation.

(a) Seller's obligation to deliver the Products and, subject to Section 4.1(b), Buyer's obligation to accept and pay Seller for such Products commences on Commercial Operation.

(b) Commercial Operation shall occur on the date that Seller has satisfied, or Buyer has waived, the following conditions:

(i) Seller has notified Buyer in writing that (x) the Facility is substantially completed, as reasonably determined by Seller, (y) the Facility is capable of regular commercial operation in accordance with the Operational Limitations and Good Utility Practice, and (z) all conditions to Commercial Operation set forth in clauses (ii) through (ix) of this Section 3.3(b) have been satisfied or waived;

(ii) Seller has obtained all material Permits required for the lawful construction, ownership and operation of the Facility and for Seller to perform its obligations under this

Agreement, including but not limited to Permits related to environmental matters, which, to Seller's knowledge as of the Agreement Date, based on applicable Law in effect as of the Agreement Date, are fully described on Exhibit B;

(iii) Seller has (i) qualified the Facility as an "eligible renewable energy resource" pursuant to Section 5.0 of the Code of Rhode Island Rules 90-060-015 and (ii) otherwise satisfied the requirements for the Facility to be a Newly Developed Renewable Energy Resource;

(iv) Seller has acquired all real property rights and other site control rights needed to construct, own and operate the Facility and to perform Seller's obligations under this Agreement;

(v) Seller has: (i) become a Market Participant in ISO-NE; or (ii) entered into an agreement with a Market Participant that will perform all of Seller's ISO-NE-related obligations in connection with the Facility and this Agreement, and has established all accounts and entered into all agreements with ISO-NE required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;

(vi) Seller has provided to Buyer I.3.9 confirmation from ISO-NE regarding approval of generation entry, if applicable, and Seller or its designated agent has submitted the Asset Registration Form (as defined in ISO-NE Practices) for the Facility to ISO-NE and has taken such other actions as are necessary to effect the transfer of the Energy to Buyer in the ISO Settlement Market System;

(vii) Seller has successfully completed all pre-operational testing and commissioning of the Facility in accordance with manufacturer guidelines;

(viii) All interconnection facilities and Network Upgrades required under the Interconnection Agreement have been completed (including the issuance of any applicable permits and the making of any regulatory filings required in connection therewith, and any real property rights and other site control rights required to construct such Network Upgrades), including final acceptance and authorization to interconnect the Facility from ISO-NE and the Interconnecting Transmission Provider;

(ix) The Transmission Cable has been completed and placed in service and is operable, with all Permits and real property rights and other site control rights needed to own and operate the Transmission Cable being held by the owner of the Transmission Cable;

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

(xi) Seller has obtained all necessary authorizations from FERC to sell Capacity and Energy at market-based rates and shall be in compliance with such authorization or shall be exempt from rate regulation under Sections 205 and 206 of the Federal Power Act, as amended.

### 3.4 Operation of the Facility.

(a) Compliance With Law and Utility Requirements. Seller shall construct, maintain and operate the Facility, in all material respects, in accordance with: (i) Good Utility Practice; (ii) all requirements of Law; (iii) the Operational Limitations; and (iv) all rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, FERC and any other Governmental Entity, Transmission Provider (but, to the extent not expressly contemplated by this Agreement, only to the extent such Transmission Provider is expressly authorized by Law to do so), NERC and any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards, whether such requirements were imposed prior to or after the Effective Date, in each case that are applicable to the construction, operation and maintenance of the Facility and the performance by Seller of its obligations under this Agreement. If required, Seller shall be solely responsible for registering as the “Generator Operator” of the Facility with NERC and any applicable regional reliability entities.

(b) Permits. During the Services Term, Seller shall maintain in full force and effect all material Permits necessary for it to perform its obligations under this Agreement, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall provide Buyer with a copy of the Operational Limitations prior to Commercial Operation, and the Operational Limitations will be incorporated into this Agreement as a supplement to Exhibit A. Seller is not required to operate the Facility in any manner inconsistent with the Operational Limitations, equipment specifications and operating guidelines and Seller’s safety practices.

(d) [Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.]<sup>2</sup>

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

(f) Market-Based Rate Authority. During the Services Term, Seller shall maintain all necessary authorization from FERC to sell Capacity and Energy at market-based rates or shall be exempt from rate regulation under Sections 205 and 206 of the Federal Power Act, as amended.

(g) Eligible Renewable Energy Resource. Seller shall be solely responsible for certifying the Facility with the PUC as a renewable energy resource pursuant to Section 6.0 of the Code of Rhode Island Rules 90-060-015 (as amended from time to time) and maintaining such certification throughout the Services Term.

(h) Compliance Reporting. If Buyer is subject to any certification or compliance reporting requirement with respect to the RECs delivered to Buyer hereunder, then Seller shall provide

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<sup>2</sup> Deepwater proposes to delete the square bracketed language and to replace it with the following language: “This Agreement shall automatically terminate upon termination of the Interconnection Agreement resulting from a default of Seller in its capacity as a party thereto.”

any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(i) Insurance. Prior to the commencement of construction of the Facility and throughout the remainder of the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit D. Prior to the start of each Contract Year, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage required in Exhibit D. Such certificates shall (i) include Buyer as an additional insured on each policy, (ii) provide that Buyer receive thirty (30) days prior written notice of coverage modifications, and (iii) be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall state that the policy is "claims made."

#### 4. **DELIVERY OF ENERGY, CAPACITY AND RECS**

##### 4.1 Obligation to Sell and Purchase Products.

(a) Beginning on Commercial Operation, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of this Agreement.

(b) Prior to Commercial Operation and so long as the Transmission Cable is in service, Seller may, but shall not be obligated to, sell and deliver, and Buyer shall purchase and receive, all but not less than all of the Products generated by the Facility. If Seller delivers Products to Buyer prior to Commercial Operation, then Buyer shall pay to Seller the Real Time Locational Marginal Price at the Delivery Point (as determined by ISO-NE) at the time of delivery for Energy and Capacity and the Test REC Price for RECs at the time of delivery.

(c) Except for Rejected Purchases and Products generated by the Facility prior to Commercial Operation, Seller shall dedicate the Energy, Capacity and RECs exclusively to Buyer, and Seller shall not (i) sell, divert, grant, transfer or assign such Energy, Capacity and RECs to any Person other than Buyer or (ii) enter into any agreement or arrangement under which any Energy, Capacity and RECs dedicated to Buyer under this Agreement can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to use, resell or convey the Energy, Capacity and RECs purchased by Buyer under this Agreement in its sole discretion.

##### 4.2 Scheduling and Delivery.

(a) During the Services Term, Seller or its designated representative shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as applicable, in such a manner that Buyer may resell such Energy in the Day Ahead Energy Market or Real Time Energy Market, as applicable.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by

Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Seller shall be solely responsible for any obligations and liabilities, including all charges, penalties and financial assurance obligations, imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, except to the extent imposed as a result of Buyer actions or failure to act.

4.3 Sales for Resale. All Energy, Capacity and RECs delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy, Capacity and RECs. Buyer shall provide Seller with any certificates reasonably requested by Seller to evidence that the deliveries of Energy, Capacity and RECs hereunder are sales for resale. Nothing in this Agreement shall be construed to prohibit or restrict such resale of such Energy, Capacity and RECs by Buyer.

4.4 [Transmission Cable Outage. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall have no obligation to accept or pay for any Products generated at any time that the Transmission Cable is not in service for any reason.]<sup>3</sup>

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

4.6 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering Energy to the Delivery Point consistent with all applicable standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff. Subject to Section 4.4, Buyer shall be responsible for the costs of delivering Energy from the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and any other applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy Delivered under this Agreement to the Delivery Point. Subject to Section 4.4, Buyer shall be responsible for all losses,

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<sup>3</sup> Deepwater proposes to delete this provision and to insert the following provision: Unless caused by a Force Majeure event, Buyer shall be obligated to accept and pay for any Products generated at any time that the Transmission Cable is not in service.

transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy Delivered under this Agreement from and after the Delivery Point.

(c) Title to and risk of loss related to the Energy shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to the RECs shall transfer to Buyer when the same are credited to Buyer's GIS account(s) or the GIS account(s) designated by Buyer to Seller in writing.

#### 4.7 Metering.

(a) Metering. All electric metering required in connection with the sale of the Products, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the "**Meters**"), shall be installed, operated, maintained and tested at Seller's expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmission Provider in whose territory the Delivery Point is located and ISO-NE; provided, however, Seller's obligation to replace the Meters or install additional or new Meters to comply with any future changes in metering requirements or standards shall be limited to ISO-NE requirements and standards generally applicable to all generators. The Meters shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Delivery Point by the Seller (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy Delivered to Buyer; provided however, that Seller, at the direction of Buyer and at Buyer's expense, shall cause the Meters to be tested by the Transmission Provider in whose territory the Delivery Point is located no more than once each Contract Year, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), the measurement of Energy produced by the Facility shall be adjusted in accordance with the filed tariff of such Transmission Provider and Seller shall reimburse Buyer for the cost of such test of the Meters.

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

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

(e) Notice of Malfunction. Seller shall provide Buyer with timely notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than two percent (2.0%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months for the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The Meters shall be capable of sending meter telemetry data, and Seller shall provide Buyer with access to such data.

4.8 Provision of Data. To the extent reasonably requested by Buyer in writing, Seller shall promptly provide to Buyer, in writing, information regarding the performance of the Facility, including any scheduled outages and any forecasts of Energy; provided, that such information shall be deemed, unless indicated otherwise, to be Confidential Information.

4.9 RECs.

(a) Seller shall transfer to Buyer all of the right, title and interest in and to the RECs (including the Environmental Attributes) during the Services Term in accordance with the terms of this Section 4.9.

(b) Seller shall maintain in effect throughout the Services Term a statement of qualification from the PUC that all Energy meets the requirements for eligibility pursuant to the Renewable Energy Standard.

(c) At Buyer's request, Seller shall seek qualification of the Energy under the renewable energy standard or similar law of New York or one or more New England states (in addition to Rhode Island) or any federal renewable energy standard and shall maintain such qualification at all times during the Services Term, or until Buyer indicates such qualification is no longer necessary. Seller shall be responsible for the cost of seeking and maintaining such qualification in Rhode Island, Massachusetts and New Hampshire, and Buyer shall be responsible for the cost of seeking and maintaining such qualification in any other jurisdiction. As reasonably requested by Buyer, Seller shall also submit to Buyer any information required by Rhode Island, Massachusetts and New Hampshire (including without limitation the PUC and the analogous Governmental Entities in Massachusetts and New Hampshire) with regard to the administration of that state's rules regarding its Renewable Energy Standard or any renewable energy standard in Massachusetts and New Hampshire. As reasonably requested by Buyer and at Buyer's expense, Seller shall also submit to Buyer any information required by any other state or federal agency with regard to administration of its rules regarding its renewable energy standard.

(d) Seller shall comply in all material respects with all GIS Operating Rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Agreement. In addition, at Buyer's request, Seller shall register with and comply with the rules and requirements of any other tracking system or program that tracks, monetizes or otherwise creates or enhances value for Environmental Attributes, which registration and compliance will be at Seller's sole cost if such registration and compliance is requested with respect to Rhode Island's, New Hampshire's or Massachusetts' rules and requirements regarding Environmental Attributes and will be at Buyer's sole cost in all other jurisdictions.

(e) Prior to the Delivery of any Energy hereunder: (i) Seller shall cause Buyer to be registered as the initial owner of all Certificates associated with the RECs; or (ii) Seller and Buyer shall effect an irrevocable forward transfer of the Certificates associated with the RECs to be delivered hereunder to Buyer; provided, however, that no payment shall be due to Seller for any RECs until the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing.

#### 4.10 Capacity.

(a) Buyer's purchase of Capacity under the Agreement shall be solely through financial settlement involving the payment of the Price and adjustment for the Capacity Clearing Price as set forth in Exhibit E. Buyer shall neither take title to any Capacity nor be responsible for any actions or conditions in the Forward Capacity Market with respect to such Capacity. Seller may qualify and sell any Capacity in the Forward Capacity Market.

(b) Following Commercial Operation, Seller or its designated agent shall take all actions necessary to qualify the Facility for participation in future Forward Capacity Auctions (or reconfiguration auctions) as a Capacity Resource (provided, however, that the failure of ISO-NE to accept the qualification shall not be an Event of Default hereunder).

4.11 Title to Products. Seller will have good and marketable title to all Products sold and delivered to Buyer under this Agreement, free and clear of all liens, charges and encumbrances other than Permitted Liens.

### 5. **PRICE AND PAYMENTS FOR PRODUCTS**

5.1 Price for Products. Buyer shall pay to Seller, in immediately available funds, the Price set forth in Exhibit E for all Products delivered to Buyer in accordance with this Agreement. Other than (i) the payments set forth in Exhibit E, (ii) payments for Products sold to Buyer prior to Commercial Operation under Section 4.1(b), (iii) expenses associated with the inspection and testing of the Meters under Section 4.7, (iv) expenses associated with qualification of the Energy under the renewable energy standard of any jurisdiction other than Rhode Island, Massachusetts and New Hampshire under Section 4.9, (v) late payment charges described in Section 5.2, (vi) Buyer's obligations under Section 5.4, (vii) release or reimbursement of any Security described in Article 6, (viii) Termination Payments due under Section 9.3, and (ix) any payment required with respect to Buyer's indemnification obligations under Section 13.1, Buyer shall not be required to make any other payments to Seller under this Agreement.

#### 5.2 Payment.

(a) Billing Period. The calendar month shall be the standard period for all payments under this Agreement. On or before the fifteenth (15th) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may request. If requested by Seller, Buyer shall make all payments due under this Agreement by electronic funds transfers to the account specified by Seller, and Seller shall provide to Buyer the necessary funds transfer instructions.

(b) Timeliness of Payment. All undisputed invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before fifteen (15) days from receipt of the applicable invoice. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and shall accrue interest at the Late

Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under this Agreement shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from any recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements.

(ii) A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other solely under this Agreement on the same date through netting, in which case all undisputed amounts owed by each Party to the other Party hereunder during the monthly billing period under this Agreement, including any interest, payments and credits, shall be netted so that only the excess amount remaining due shall be paid by the Party owing such excess. If no mutual debts or payment obligations exist under this Agreement, a Party shall pay any debt or obligation it owes in full when due. The Parties agree to provide each other with reasonable detail of any net payment or net payment request. The Parties shall not net any debts and payment obligations due under this Agreement against any debts and payment obligations not arising under this Agreement.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified in this Agreement at the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties) plus one percent (1%) (the “**Late Payment Rate**”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such

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

(b) Seller shall bear all risks, financial and otherwise, throughout the Services Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits or qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes. Except as set forth in Section 8.4, the obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits during the Services Term.

## 6. SECURITY FOR PERFORMANCE

### 6.1 Seller’s Support.

(a) Seller shall be required to post Credit Support of \$10 per kW of nameplate capacity to secure Seller’s obligations in the period between the Agreement Date and Commercial Operation (“**Development Period Security**”). The Development Period Security shall be provided to Buyer within fifteen (15) Business Days after the Effective Date and satisfaction of the Transmission Cable Conditions.<sup>4</sup> Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after (i) the later to occur of (x) Buyer’s receipt of an undisputed notice from Seller that Commercial Operation has occurred; (y) Buyer’s receipt of the initial Operating Period Security; or (ii) upon termination of the Agreement prior to Commercial Operation.

(b) Beginning ten (10) days after Commercial Operation, Seller shall provide Buyer with Credit Support to secure Seller’s obligations under this Agreement (“Operating Period Security”). The Operating Period Security shall initially be \$30 per installed kW of Capacity. Within 10 days after the sixth month of each Contract Year, Seller shall calculate, based on costs incurred with respect to the operations and maintenance, and the power generated by the Facility, in each case, during such six month period, and using a reasonable projection of the operations and maintenance cost and power to be generated over the remaining six months of the Contract Year, whether it is reasonably likely that Seller will be required to make payments to Buyer at the end of the Contract Year pursuant to Sections 3 and 5 of Exhibit E. If, based on Seller’s calculation, which shall be performed in good faith but which shall otherwise be conclusive and binding on the Parties, Seller is reasonably likely to be required to make such payments to Buyer at the end of the Contract Year in excess of \$30 per installed kW of Capacity, Buyer shall withhold, from the payment made at the end of each billing period for the remainder of the

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<sup>4</sup> Deepwater proposes to insert “and receipt of the Transmission Cable Regulatory Approvals”, but this is unnecessary if Deepwater’s language is accepted for Section 8.1.

Contract Year, an amount equal to one sixth of such excess amount, and such amounts shall, upon such withholding, be added to the Operating Period Security. At the end of each Contract Year, Buyer shall, if applicable, apply the outstanding balance of the Operating Period Security in satisfaction of Seller's obligations under Sections 3 and 5 of Exhibit E (it being understood that if the Operating Period Security is drawn to an amount less than \$30 per kW of Capacity, Seller shall have the obligation to promptly replenish such amount in the amount of \$30 per installed kW of Capacity). Any outstanding balance of the Operating Period Security in excess of \$30 per installed kW of Capacity after Buyer has applied the amounts pursuant to the foregoing sentence (if any) shall be promptly returned to Seller and the Operating Period Security as of the commencement of the next Contract Year shall be reset accordingly to \$30 per installed kW of Capacity. Buyer shall return any undrawn amount of the Operating Period Security to Seller within thirty (30) days after the expiration of the Services Term, or termination of the Agreement, but only after such Operating Period Security has been used to satisfy any outstanding obligations of Seller in existence at the time of that expiration or termination.

6.2 Cash Deposits. Any cash provided by Seller as Credit Support under this Agreement shall be held an interest bearing deposit account held at a Qualified Bank selected by Buyer in its reasonable discretion. All interest accrued on that cash deposit will be retained in that account; provided, however, that to the extent the amount held in that account exceeds the required level of Development Period Security (before and on Commercial Operation) or the Operating Period Security (after Commercial Operation), such excess will be paid to Seller promptly after Seller requests such a payment in writing delivered to Buyer.

## 7. **REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS**

7.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows as of the Agreement Date:<sup>5</sup>

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of Rhode Island. Subject to the receipt of the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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<sup>5</sup> Several of the representations and warranties in Section 7.1 are subject to receipt by National Grid of the necessary approvals of its governing board, a committee of that board, or an officer of National Grid as set forth in National Grid's internal delegation of authority.

the creation of any material lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

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

(d) No Proceedings. Except to the extent relating to the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Buyer's ability to perform its obligations under this Agreement.

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

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer.

(g) Bankruptcy. There are no bankruptcy, insolvency, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer's knowledge, threatened against it.

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

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

(a) Organization and Good Standing; Power and Authority. Seller is a limited liability company, validly existing and in good standing under the laws of the State of Delaware. Subject to the receipt of the Permits listed in Exhibit B, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently

engaged; and (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

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

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

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

(f) Consents and Approvals. Subject to the receipt of the Permits listed on Exhibit B, the execution, delivery and performance by Seller of its obligations under this Agreement does not and, under existing facts and law, shall not, require any material Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(g) Permitting. Seller has not received any formal notice from any Governmental Entity informing Seller that such Governmental Entity will not issue to Seller the Permit listed on Exhibit B for which it has jurisdiction.

(h) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller.

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

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

7.3 Update of Representations and Warranties. Buyer represents and warrants to Seller as of the Effective Date and Commercial Operation that the representations and warranties set forth in Sections 7.1(a), 7.1(b), 7.1(c), 7.1(e), 7.1(g) and 7.1(h) are true and accurate. Seller represents and warrants to Buyer as of Commercial Operation that the representations and warranties set forth in Sections 7.2(a), 7.2(b), 7.2(c), 7.2(d), 7.2(f), 7.2(i) and 7.1(j) are true and accurate.

7.4 Permits. Buyer acknowledges that the Permits listed on Exhibit B are all the Permits Seller is aware of, as of the Agreement Date, that are required to develop, construct and operate the Facility based on current development and financing plans and timelines, to the best of Seller's knowledge after due inquiry. Accordingly, all references to Exhibit B in this Agreement shall be read to include references to such other Permits as may be required from time to time with respect to the development, construction and operation of the Facility without further modification or amendment of this Agreement or Exhibit B.

## 8. **EFFECTIVENESS OF AGREEMENT**

8.1 Receipt of PPA and Transmission Cable Regulatory Approvals. [The effectiveness of this Agreement, other than the Parties' obligations under Section 8.2, Section 8.3, Section 12 and Section 13, is conditioned upon and shall not become effective or binding until the receipt of the PPA Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of each of the PPA Regulatory Approval.]<sup>6</sup>

8.2 Filing for PPA Regulatory Approval. [Buyer shall file an application for the PPA Regulatory Approval with the PUC by not later than October 15, 2009. Seller may intervene and participate in the PPA Regulatory Approval proceeding.]<sup>7</sup>

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<sup>6</sup> Deepwater proposes to delete the square-bracketed language and replacing it with the following provision: "The effectiveness of this Agreement, other than the Parties' obligations under Section 8.2, Section 8.3, Section 12 and Section 13, is conditioned upon and shall not become effective or binding until (a) the PPA Regulatory Approval has been granted by the PUC, (b) the satisfaction of the Transmission Cable Conditions; and (c) delivery by Seller to Buyer of notice that the Transmission Regulatory Approvals have been obtained or, in Buyer's sole discretion, irrevocably waived. Buyer shall notify Seller within five (5) Business Days after receipt of each of the PPA Regulatory Approval."

<sup>7</sup> Deepwater proposes deleting the square-bracketed language and replacing it with the following provision: "Buyer shall file an application for the PPA Regulatory Approval with the PUC by not later than October 15, 2009. Seller may intervene and participate in the PPA Regulatory Approval proceeding. Once the PPA Regulatory Approval has been granted by the PUC, Buyer shall not take any action or make any PUC filing inconsistent with, or seek to modify, rescind, amend or have withdrawn, the terms of such PPA Regulatory Approval, without Seller's prior written consent."

8.3 Failure to Satisfy Conditions. If Buyer has not received the PPA Regulatory Approval on or before the date falling one year after Buyer has filed for the PPA Regulatory Approval, this Agreement shall terminate as of that date, with no further liability hereunder for either Party except for any obligations arising under Sections 6.3, 12 and 13.

8.4 Additional Buyer Termination Conditions. Seller shall have the right, by written notice to Buyer, to terminate this Agreement without penalty if, (1) prior to December 31, 2010, the investment tax credit described in Section 48 of the Internal Revenue Code is not extended with respect to facilities such as the Facility through December 31, 2015 or later; (2) prior to December 31, 2010, the renewable energy production tax credit described in Section 45 of the Internal Revenue Code is not extended with respect to facilities such as the Facility through December 31, 2015 or later; (3) prior to December 31, 2010, the program for payments for specified renewable energy property in lieu of tax credits set forth in Section 1603 of the American Recovery and Reinvestment of 2009 is not extended with respect to facilities such as the Facility through December 31, 2015 or later; (4) Seller is unable to, or has determined, in its sole discretion, that it will not be able to, secure tax equity financing to monetize the value of federal tax credits and depreciation deductions on or prior to achieving Commercial Operation; or (5) Seller has not received, or has determined, in its sole discretion that it will not receive, all the Permits listed on Exhibit B on a sufficiently timely basis to develop and construct the Facility in order to qualify for the federal tax incentives described in the foregoing clauses (1), (2) or (3) (as such may be extended from time to time).

8.5 Transmission Cable Conditions.

(a) In the event that either (x) the Transmission Cable Conditions are not satisfied on or before December 31, 2010 or (y) a Governmental Entity issues an order or decision affirmatively denying one of the Transmission Cable Regulatory Approvals and such order or decision is final and non-appealable (the earlier of the date such order or decision becomes final and non-appealable or December 31, 2010 is referred to as the “**Transmission Cable Condition Date**”), then either Party may terminate this Agreement by giving written notice of such termination to the other Party not later than 30 days after the Transmission Cable Condition Date (which termination will be effective upon delivery of such notice), and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.3, Section 12 and Section 13.<sup>8</sup>

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<sup>8</sup> Deepwater proposes to replace Section 8.5(a) with the following: In the event that either (x) the Transmission Cable Conditions are not satisfied on or before December 31, 2010 or (y) a Governmental Entity issues a Transmission Cable Regulatory Approval that is binding on Buyer but inconsistent, as determined in the sole discretion of either Party, with the terms and conditions agreed by the parties to the Transmission Cable Purchase Agreement, the Interconnection Agreement or the Transmission Cable Cost Arrangement, (the earlier of the date such Transmission Cable Regulatory Approval, the date such order or decision becomes final and non-appealable or December 31, 2010 is referred to as the “**Transmission Cable Condition Date**”), then either Party may terminate this Agreement by giving written notice of such termination to the other Party not later than 30 days after the Transmission Cable Condition Date (which termination will be effective upon delivery of such notice), and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.3, Section 12 and Section 13.

(b) [If the Transmission Cable Conditions are not satisfied by the Transmission Cable Condition Date and neither Party terminates this Agreement pursuant to Section 8.5(a) above, then Seller shall deliver to Buyer by not later than 60 days after the Transmission Cable Condition Date (i) a proposed amendment to Exhibit E reflecting Seller's proposed change in the Price needed to permit Seller to recover the amounts due to Deepwater Transmission for use of the Transmission Cable for the Term and (ii) its assessment as to whether the Interconnection Agreement must be amended or restated in order to address any change in conditions as a result of the failure to satisfy the Transmission Cable Conditions by the Transmission Cable Condition Date. Buyer and Seller shall negotiate in good faith for the sixty (60) day period following the delivery of such notice in an attempt to come to an agreement regarding revisions to Exhibit E and, if applicable, the Interconnection Agreement, it being understood that neither Seller nor Buyer shall have the obligation to come to any agreement.<sup>9</sup>

(c) Following the end of the sixty (60) day good faith negotiating period described in Section 8.5(b), Buyer will use commercially reasonable efforts to file with the PUC any agreed amendment to Exhibit E or this Agreement, or, if no such agreement has been reached, the versions of Exhibit E and this Agreement that each Party would be willing to execute, with a request that it issue its approval thereof pursuant to R.I.G.L. § 39-26.1-7, including the recovery by Buyer of its costs incurred under this Agreement as amended and remuneration equal to 2.75 percent (2.75%) of Buyer's actual annual payments under this Agreement, as amended by that proposed amendment, which approval shall be acceptable to Buyer in its sole discretion (the "**Amendment Regulatory Approval**"). If the Amendment Regulatory Approval is not issued and final and non-appealable by the date that is twelve months after the date on which the application for the Amendment Regulatory Approval is filed with the PUC, then this Agreement shall terminate on such date, and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.3, Section 12 and Section 13.

(d) Following the end of the sixty (60) day good faith negotiating period described in Section 8.5(b), if the Parties agree that an amendment to or restatement of the Interconnection Agreement is required under this Section 8.5, the parties shall, if agreement has not been reached with respect to such amendment or restatement, continue to negotiate in good faith for an additional sixty (60) day period.

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<sup>9</sup> Deepwater proposes to replace Section 8.5(b) with the following: If the (x) neither Party terminates this Agreement pursuant to Section 8.5(a) above or (y) the Transmission Cable Conditions are satisfied and a Governmental Entity issues an order or decision affirmatively denying one of the Transmission Cable Regulatory Approvals and such order or decision is final and non-appealable, then Seller shall deliver to Buyer by not later than 60 days after the Transmission Cable Condition Date (i) a proposed amendment to Exhibit E and this Agreement reflecting Seller's proposed change in the Price needed to permit Seller to recover the amounts due to Deepwater Transmission for use of the Transmission Cable for the Term, and any corresponding changes to this Agreement and (ii) its assessment as to whether the Interconnection Agreement must be amended or restated in order to address any change in conditions as a result of the failure to satisfy the Transmission Cable Conditions by the Transmission Cable Condition Date. Buyer and Seller shall negotiate in good faith for the sixty (60) day period following the delivery of such notice and in an attempt to come to an agreement regarding revisions to Exhibit E, this Agreement, and, if applicable, the Interconnection Agreement, it being understood that neither Seller nor Buyer shall have the obligation to come to any agreement.

Upon reaching agreement, if any, if any party thereto determines in its sole discretion that FERC approval of that amendment to or restatement of the Interconnection Agreement is needed, then such party shall promptly apply for such FERC approval. If [(x) an agreement on such amendment or restatement is not reach after the additional 60-day negotiating period or (y)]<sup>10</sup> FERC approval of such amendment or restatement is not received by the date that is twelve (12) months after the date the party seeking such FERC approval has filed for such approval with FERC, then, notwithstanding any other provision of this Section 8.5, this Agreement will terminate and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.3, Section 12 and Section 13.

(e) Nothing set forth in this Agreement, including this Section 8.5, shall obligate Buyer or any Affiliate of Buyer to own, operate or otherwise participate in the Transmission Cable, even if any or all of the Transmission Cable Conditions are satisfied..<sup>11</sup>

## 9. BREACHES; REMEDIES

9.1 Events of Default by Either Party. The occurrence of any of the following shall each constitute an event of default (“**Event of Default**”), with respect to a Party if not cured within the corresponding cure periods set forth below:

(a) Representation or Warranty. Any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement, is false or misleading in any material respect as of the date made, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice of such breach to the Defaulting Party; provided, however, that such period shall be extended(x) for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period, provided that corrective action has been commenced by the Defaulting Party within such thirty (30) day period, and (y) for so long as such cure is diligently pursued by the Defaulting Party, until such Default had been corrected; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than five (5) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Other Covenants. Other than a Rejected Purchase (the sole remedy for which shall be the payment provided for under Section 4.5) or an Event of Default described in Section 9.1(a), 9.1(b),

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<sup>10</sup> Deepwater proposes to delete the square bracketed language.

<sup>11</sup> Deepwater proposes to replace Section 8.5(e) with the following: Nothing set forth in this Agreement, including this Section 8.5, shall modify R.I.G.L. §39-26.1-7.(b). Specifically, Seller “has the option to decline to own, operate or otherwise participate in the transmission cable project, even if the commission approves such arrangements,” as specifically provided therein, it being understood, however, that if Seller executes the Transmission Cable Purchase Agreement and Transmission Cable Cost Arrangement, that it shall have and comply with the contractual obligations set forth therein (as such obligations may be conditioned on the terms set forth therein, including, if applicable, the Transmission Cable Regulatory Approvals).

9.1(e), or 9.2, such Party fails to perform, observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended (x) for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period, provided that corrective action has been commenced by the Defaulting Party within such thirty (30) day period, and (y) for so long as such cure is diligently pursued by the Defaulting Party, until such Default had been corrected; or

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

(e) Permit Compliance. Such Party fails to maintain in full force and effect any material Permit (other than the PPA Regulatory Approval or the Transmission Regulatory Approvals) necessary for such Party to perform its obligations under this Agreement and such failure is not cured within ninety (90) days after the Non-Defaulting Party has provided written notice of such breach to the Defaulting Party; provided, however, that such period shall be extended (x) an additional reasonable period if the Defaulting Party is unable to cure within that ninety (90) day period, provided that corrective action has been commenced by the Defaulting Party within such ninety (90) day period and (y) for so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected.

9.2 Events of Default by Seller. The following events shall each constitute an Event of Default of Seller if not cured within the corresponding cure periods set forth below:

(a) Delivery of Products to Third Party. Seller delivers any portion of any Product (other than Rejected Purchases), or any certificate or other entitlement to a Product, required to be delivered to Buyer under this Agreement to any Person other than Buyer and those deliveries continue for more than fifteen (15) days after Buyer has provided written notice of such breach to the Seller; or

(b) Taking of Facility Assets. Except pursuant to security arrangements between Seller and any Lender, any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller and Seller has not retaken possession of the asset within ninety (90) days after the Buyer has provided written notice of such breach to Seller and such taking adversely affects Seller's ability to Deliver Products to Buyer; or

(c) Failure to Maintain Credit Support. The failure of Seller to provide or maintain the Development Period Security or the Operating Period Security required pursuant to Article 6 of this

Agreement, and such failure continues for more than thirty (30) days after Buyer has provided written notice thereof to Seller.

### 9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement until such Event of Default has been cured, (ii) suspend its performance hereunder (it being understood that any Products for which Seller is permitted to suspend Delivery under this Section 9.3 may be resold by Seller to any third party, and such resale shall, notwithstanding anything to the contrary in this Agreement, shall not constitute a breach of Seller's obligations hereunder and further, that such resale shall not limit Seller's right to Resale Damages under Section 4.5), and (iii) exercise such other remedies as provided for in this Agreement or at law, including, without limitation, the termination right set forth in Section 9.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, Buyer may not suspend or withhold payments due under this Agreement for Products delivered during the continuance of any Event of Default and prior to termination.

(b) Termination and Termination Payment. Upon the occurrence of an Event of Default, the Non-Defaulting Party may terminate this Agreement at its sole discretion by providing written notice of such termination to the Defaulting Party. If either Buyer or Seller terminates this Agreement under this Section 9.3(b), it shall be entitled to calculate and receive as its sole remedy for such Event of Default a "**Termination Payment**" as follows:

(i) *Termination by Seller Prior to Close of Construction Financing.* If Seller terminates this Agreement at any time prior to the close of construction Financing for the Facility due to an Event of Default of Buyer, Buyer shall reimburse Seller for all its out-of-pocket expenses in connection with the development and construction of the Facility.

(ii) *Termination by Seller On or After Construction Financing.* If Seller terminates this Agreement because of an Event of Default by Buyer occurring on or after the close of construction Financing for the Facility, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula:

$$\frac{\sum[(CV - MV) + P]}{N}$$

where:

" $\sum$ " is the summation over the Services Term.  
N

"CV" is the contract value of the Products for the remainder of the Services Term calculated with reference to the applicable Price and the Supply Forecast

“MV” is the market value of the Products for the remaining Services Term as determined with reference to the applicable Resale Price and the Supply Forecast.

“P” is the amount of any applicable penalties and administrative costs incurred by Seller in selling the Products not accepted and paid for by Buyer as a result of the termination of this Agreement.

All such amounts shall be determined by Seller in good faith and in a commercially reasonable manner, and Seller shall provide Buyer with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(ii), which calculation shall be binding upon Buyer, absent manifest error.

(iii) *Supply Forecast.* For purposes of determining the Termination Payment on or after the fourth Contract Year, pursuant to this Section 9.3, the quantity of Products projected to be delivered for the remainder of the Services Term shall be based upon actual quantities delivered under this Agreement during the immediately preceding Contract Year, to the extent the Facility was fully operable during that preceding Contract Year. For the purposes of determining the Termination Payment during the first three Contract Years, or in the event the Facility was not fully operable during any preceding Contract Year, the calculation shall be based on a good faith estimate of the quantity of such Products as if the Facility was fully operable (the “**Supply Forecast**”) for the remainder of the Services Term.

(iv) *Termination by Buyer Prior to Commercial Operation.* If Buyer terminates this Agreement prior to Commercial Operation (whether as a result of an Event of Default or otherwise), the Termination Payment due to Buyer shall be \$0.

(v) *Termination by Buyer After Commercial Operation.* If Buyer terminates this Agreement because of an Event of Default by Seller occurring on or after Commercial Operation, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula:

$$\frac{\sum[(PV - CV) + P]}{N}$$

Where:

“PV” is the market value of the Products for the remaining Services Term as determined with reference to the forward curve for power prices in ISO-NE and the Supply Forecast.

(vi) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages that Seller, or Buyer, would incur due to an Event of Default by Buyer, or Seller, respectively would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Payment as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

(vii) *Payment of Termination Payment.* Buyer, or Seller, as applicable shall make any Termination Payment due hereunder within ten (10) Business Days after such notice is effective. If either Party disputes the other Party's calculation of the Termination Payment, in whole or in part, the disputing Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute; provided, however, the Party owing the Termination Payment shall first transfer Credit Support to the other Party in an amount equal to the Termination Payment as calculated by the Party owed the Termination Payment. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

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

## 10. **FORCE MAJEURE**

### 10.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that limits, prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer's ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a

Party's failure to timely obtain and maintain all necessary Permits (excepting the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

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

(c) [If any event of Force Majeure prevents Buyer's performance during the Services Term, then Buyer may suspend its obligation to accept Products Delivered during the periods of such Force Majeure, provided, however, that the Services Term will be extended day for day by such periods of Force Majeure for an aggregate period of up to six (6) months. Notwithstanding the foregoing, if the Force Majeure prevents full or partial performance under this Agreement for a period of eighteen (18) months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.]<sup>12</sup>

(d) Neither Party may raise a claim of Force Majeure based on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts

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<sup>12</sup> Deepwater proposes to delete the square-bracketed language and to replace it with the following language: If (i) any event of Force Majeure prevents Seller's performance during the Services Term, then Buyer may suspend its payment obligations for Products not delivered during the periods of such Force Majeure and (ii) any event of Force Majeure prevents Buyer's performance during the Services Term, then Buyer may suspend its obligation to accept Products Delivered during the periods of such Force Majeure, provided, however, that the Services Term will be extended day for day by such periods of Force Majeure for an aggregate period of up to thirty-six (36) months. Notwithstanding the foregoing, if the Force Majeure prevents full or partial performance under this Agreement for a period of thirty-six (36) months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

## 11. DISPUTE RESOLUTION

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “**Dispute**”), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then the Parties may seek to resolve such Dispute in the courts of the State of Rhode Island. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the State of Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement.

## 12. CONFIDENTIALITY

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

(a) to the extent Buyer determines it is appropriate in connection with efforts to obtain or maintain the PPA Regulatory Approval or the Transmission Cable Regulatory Approvals or to seek rate recovery for amounts expended by Buyer under this Agreement or to the extent Seller determines it is appropriate in connection with Seller’s exercise of its rights under Section 8.2 or Section 8.5, Seller’s efforts to obtain or maintain the Permits, or in connection with any Financing or re-Financing of the Facility;

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

(c) to the Affiliates of either Party or a Party’s Restricted Persons (defined below) and to either Party’s Lenders or potential Lenders and their Representatives, but solely to the extent they perform a function reasonably related to that information;

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

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

(f) to the extent that the information was previously made publicly available other than as a result of a breach of this Section 12.1;

provided, however, in each case, that the Party seeking such disclosure shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. In the case of disclosure to a Governmental Entity, the disclosing Party shall seek or request confidential treatment by the Governmental Entity, to the extent permitted by applicable law, of any information that is marked “confidential” on every page or section that is deemed confidential by the Party to whom such information belongs. The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this Section 12.1.

12.2 Public Statements. No public statement, press release or other voluntary publication regarding this Agreement or the transactions to be made hereunder shall be made or issued without the prior consent of the other Party. The restriction in the immediately preceding sentence shall not apply to publicity and similar disclosures by Seller of information about the Facility of a general nature that does not directly or indirectly refer to or reference Buyer.

12.3 Restricted Persons. Notwithstanding any other provision herein, the Parties acknowledge that no person or entity shall be deemed to be a Restricted Person solely because he or she possesses knowledge of the Agreement. For the avoidance of doubt, persons or entities who are not Restricted Persons shall not be bound by this Agreement in any respect, and neither Party’s Investors or their Affiliates shall be restricted in any manner by this Article 12 with respect to any activities including without limitation (x) the trading of any securities, conducted by Employees or Representatives thereof who are not Restricted Persons and (y) any activities of such Employees or Representatives in their capacity acting for a Party. The definitions set forth in this Section 12.3 shall apply to this Article 12. For purposes of this Section 12.3, “Restricted Persons” means (i) the managers, directors, officers, members of the board of managers or directors, and employees of a Party (“Employees”), (ii) the attorneys, financial advisors, bankers, consultants and accountants or other representatives of a Party (“Representatives”), (iii) the members, Affiliates, shareholders, predecessors, subsidiaries or investors of a Party (“Investors”) and (iv) the Employees, Representatives and Investors of each person and entity described in clauses (i) through (iii) above, in each case, where such Restricted Person has actually received Confidential Information of a disclosing Party and, for the avoidance of doubt, only in respect of such Confidential Information actually received.

### 13. **INDEMNIFICATION AND INDEMNIFICATION PROCEDURES**

13.1 Indemnification. Each Party (the “**Indemnifying Party**”) shall indemnify, defend and hold the other Party, its Affiliates and each of their direct or indirect members, shareholders, investors or unitholders, and their respective managers, members of the Board of Directors or Managers, officers, employees and agents (including, but not limited to, contractors and their employees)(each an “**Indemnified Party**”), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever (collectively, “Claims”) brought by third parties against the Indemnified Party related to this Agreement and arising from the Indemnifying Party’s gross negligence or willful misconduct, except that the Indemnifying Party shall not have any obligations under this Section 13.1 to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party.

13.2 Additional Seller Indemnification. In addition to the indemnification set forth in Section 13.1, Seller shall indemnify Buyer and each of its direct or indirect members, shareholders, investors or unitholders, and their respective managers, members of the Board of Directors or Managers, officers, employees and agents (including, but not limited to, contractors and their employees)(each also being considered an “Indemnified Party” under this Agreement), harmless from and against all Claims arising out of or related to any environmental matters relating to the Facility or the Facility site, except to the extent arising out of the [gross negligence]<sup>13</sup> or willful misconduct of Buyer or any Indemnified Party of Buyer.

13.3 Indemnification Procedures. Each Indemnified Party shall promptly notify the Indemnifying Party of any claim in respect of which the Indemnified Party is entitled to be indemnified under this Article 13. Such notice shall be given as soon as is reasonably practicable after the Indemnified Party becomes aware of each claim; provided, however, that failure to give prompt notice shall not adversely affect any claim for indemnification hereunder except to the extent the Indemnifying Party’s ability to contest any claim by any third party is materially adversely affected. The Indemnifying Party shall have the right, but not the obligation, at its expense, to contest, defend, litigate and settle, and to control the contest, defense, litigation and/or settlement of, any claim by any third party alleged or asserted against any Indemnified Party arising out of any matter in respect of which such Indemnified Party is entitled to be indemnified hereunder. The Indemnifying Party shall promptly notify such Indemnified Party of its intention to exercise such right set forth in the immediately preceding sentence and shall reimburse the Indemnified Party for the reasonable costs and expenses paid or incurred by it prior to the assumption of such contest, defense or litigation by the Indemnifying Party. The Indemnifying Party shall have the right to select legal counsel to defend a claim for which the Indemnified Party is seeking indemnification pursuant to this Section 13.3, subject to the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed. If the Indemnifying Party exercises such right in accordance with the provisions of this Article 13 and any Indemnified Party notifies the Indemnifying Party that it desires to retain separate counsel in order to participate in or proceed independently with such contest, defense or litigation, such Indemnified Party may do so at its own expense. If the Indemnifying Party fails to exercise its rights set forth in the third sentence of this Section 13.3, then the Indemnifying Party will reimburse the Indemnified Party for its reasonable costs and expenses incurred in connection with the contest, defense or litigation of such claim. No Indemnified Party shall settle or compromise any claim in respect of which the Indemnified Party is entitled to be indemnified under this Article 13 without the prior written consent of the Indemnifying Party; provided, however, that such consent shall not be unreasonably withheld by the Indemnifying Party.

13.4 Survival. The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

## 14. **ASSIGNMENT**

14.1 Prohibition on Assignments. Except as permitted by this Article 14, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. When assignable, this Agreement shall be

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<sup>13</sup> Deepwater proposes to delete the square bracketed phrase and insert the word “negligence.”

binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder. Any purported assignment not in compliance with these provisions shall be null and void.

14.2 Permitted Assignment by Seller. Seller shall have the right to assign this Agreement without consent of Buyer (i) to an Affiliate of Seller, and (ii) in connection with any Financing in connection with the development, construction, and ownership of the Facility (or any refinancing of that Financing), including, in each case, any assignment by operation of law resulting from any of the foregoing transactions.

14.3 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with (i) any merger or consolidation of Buyer with or into another Person; (ii) any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property; (iii) any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer, provided that the proposed assignee's credit rating as established by S&P or Moody's either (1) is equal to or better than BBB from S&P or Baa2 from Moody's or (2) is equal to or better than that of Buyer at the time of the proposed assignment, or (b) to any substitute purchaser of the Products so long as the proposed assignee's credit rating as established by S&P or Moody's is equal or better than that of Buyer at the time of the proposed assignment.

## 15. NON-RECOURSE

The Parties agree that their obligations arising under (or relating to) this Agreement shall be without recourse to any member, unitholder, shareholder or partner of either Party, any controlling Person thereof, or any successor of any such member, unitholder, shareholder, partner or controlling Person (each a member of the "Extended Group"); and no member of the Extended Group shall have any liability in such capacity for the obligations of either Party. For the avoidance of doubt, each member of the Extended Group is a third-party beneficiary of this Section 15. The Parties reserve the right to modify or terminate this Agreement without the consent of any member of the Extended Group.

## 16. AUDIT

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

16.2 Consolidation of Financial Information. The Parties agree that generally accepted accounting principles and SEC rules require Buyer to evaluate whether Buyer must consolidate Seller's financial information on Buyer's financial statements. Buyer shall require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines at any time that such consolidation is required, Buyer shall require the following from Seller within fifteen (15) days after the end of every calendar quarter for the Term of this Agreement:

(a) complete financial statements and notes to financial statements for such quarter;

(b) financial schedules underlying such financial statements; and

(c) access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer under this Section 17.2 shall be Confidential Information except that such information may be disclosed for financial statement purposes.

## 17. NOTICES

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

If to Buyer: Madison N. Milhous  
Director  
National Grid  
100 E. Old Country Road  
Hicksville, NY 11801-4218  
Fax: (516) 545-3130  
Email: madison.milhous@us.ngrid.com

With a copy to: Ronald T. Gerwatowski, Esq.  
Deputy General Counsel  
National Grid  
40 Sylvan Road  
Waltham, MA 02451-1120  
Fax: (781) 907-5701  
Email: ronald.gerwatowski@us.ngrid.com

If to Seller: William M. Moore  
Chief Executive Officer  
Deepwater Wind Block Island, LLC  
c/o Deepwater Wind Holdings, LLC

36-42 Newark St., Suite 402  
Hoboken, NJ 07030

With a copy to: Jeffrey M. Grybowski  
Hinkley, Allen & Snyder, LLP  
50 Kennedy Plaza, Suite 1500  
Providence, RI 02903-2319

(b) Prior to Commercial Operation, each Party shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Agreement.

## 18. WAIVER AND MODIFICATION

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

## 19. INTERPRETATION

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

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

19.3 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder is a “forward contract” with the meaning of the United States Bankruptcy Code and that the Parties are “forward merchants” within the meaning of the United States Bankruptcy Code.

19.4 Change in ISO-NE Rules or ISO-NE Practices. This Agreement is subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of this Agreement, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material

alteration of a material right or obligation of a Party hereunder, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Agreement to embody the Parties' original intent regarding their respective rights and obligations under this Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Agreement. The intent of the Parties is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price.

#### 19.5 Standard of Review.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. \_\_\_ (2008) ( the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

## 20. **COUNTERPARTS; FACSIMILE SIGNATURES**

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

**21. NO DUTY TO THIRD PARTIES**

Except as provided in any consent to assignment of this Agreement, and as provided in Section 13 and Section 15, nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Agreement.

**22. SEVERABILITY**

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law. For the avoidance of doubt, this Agreement shall survive any repeal, modification or amendment of R.I.G.L. §39-26.1.

**23. INDEPENDENT CONTRACTOR**

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

**24. ENTIRE AGREEMENT**

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

**25. LENDER'S RIGHTS**

(a) Notice to Lenders. Buyer shall provide a copy of any notice given to Seller under Section 9 to any Lender of which Buyer shall have written notice, and Buyer shall afford each such Lender the same opportunities to cure defaults under this Agreement as are provided to Buyer hereunder; provided, however, that Buyer shall have no liability to any Lender unless that Lender agrees to assume all of the obligations of Seller under this Agreement.

(b) Assignment to Lenders. Seller may pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lender as security for the project financing of the Facility, subject to Buyer's execution of a consent to assignment that is in form and substance reasonably satisfactory to Seller and such Lender that incorporates terms and conditions customary for a transaction of this type; provided, however, that Buyer shall not be obligated to enter into any consent which will adversely affect Buyer's rights under this Agreement. Buyer shall not unreasonably withhold, condition or delay providing its consent to an assignment to a Lender.

**[Signature page follows]**

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

**THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID**

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

**DEEPWATER WIND BLOCK ISLAND, LLC**

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

## **EXHIBIT A**

### DESCRIPTION OF FACILITY

**Facility:** The Facility will be a wind generating facility to be located in the waters off the coast of Block Island, Rhode Island. [The Facility will include not more than six (6) wind turbine generators and will have a nameplate capacity of not greater than 25 MW.]<sup>14</sup>

This Exhibit A will be supplemented with the Operational Limitations prior to Commercial Operation.

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<sup>14</sup> Deepwater proposes to delete the square-bracketed language and to insert the following language: The Facility will include not less than six (6) and not more than eight (8) wind turbine generators.

**EXHIBIT B**

**SELLER'S  
 PERMITS**

Part 1 – Permits

a. Construction Permits

<b>Federal Permits</b>	<b>Regulatory Authority(ies)</b>
Right-of-Way Grant (Federal Waters)	Mineral Management Service
Section 10	United States Army Corps of Engineers (USACE)
NEPA Review	Federal Lead Agency – USACE
Essential Fish Habitat Consultation and T&E (Section 7 of the ESA, Magnuson-Stevens Act and Marine Mammals protection Act) Consultation	National Marine Fisheries Service (NMFS)
T&E (Section 7 of the ESA) Consultation	United States Fish and Wildlife Service (USFWS)/ NMFS
Cultural Resources (Section 106 NHPA)	Tribes/Rhode Island Natural History Survey
Determination of no hazard to vessel traffic and Approval for private aid to navigation	United States Coast Guard (USCG)
Conformity Determination/Air Emissions Permit	United States Environmental Protection Agency (USEPA)
Notice of Proposed Construction or Alteration	Federal Aviation Administration (FAA)
<b>State Permits</b>	<b>Regulatory Authority(ies)</b>
State Assent	Rhode Island Coastal Resources Management Council (CRMC)
Marine Dredging Permit	CRMC
Coastal Consistency Determination	CRMC
Lease/License of Offshore Land	CRMC
Coastal and Freshwater Wetlands Permit	CRMC/RIDEM
Determination of Consistency with WQM Plan	CRMC
Section 106 Consultation	Rhode Island Natural History Survey
Road Use permits (cable installation)	RIDOT

<b>Local/County Permits</b>	<b>Regulatory Authority(ies)</b>
Storm water Pollution Prevention Plan Approval	County and/or municipal departments and agencies in New Shoreham, Wakefield, Narragansett Beach, and Washington County
Temporary Dewatering Permit	
County Engineering Approval	
Tree Removal Approval	
Temporary Fencing Approval	
Local Site Plan Approval	
Zoning Certificates or Variances	
Engineering Release	
Construction Permits	

b. Operating Permits

<b>Federal Permits</b>	<b>Regulatory Authority(ies)</b>
Market-Based Rate Authority (unless exempt)	Federal Energy Regulatory Commission (FERC)
Exempt Wholesale Generator Certification or Qualifying Facility Certification or Self-Certification	FERC
Federal Power Act Section 204 Blanket Authorization	FERC
Order accepting the Interconnection Agreement (if applicable)	FERC

## **EXHIBIT C**

### FORM OF PROGRESS REPORT

For the Quarter Ending: \_\_\_\_\_

Status of construction and significant construction milestones achieved during the quarter:

Status of permitting and significant Permits obtained during the quarter:

Status of Financing for Facility:

Events during quarter expected to result in delays in Commercial Operation:

Current projection for Commercial Operation:

## Exhibit D

### Insurance Requirements

- 1 Prior to the commencement of construction of the Facility, through final expiration or longer where specified below, Seller shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA its direct and indirect parents, subsidiaries and affiliates (the “Insured Entities”)), covering all Operations, Work and Services to be performed by Seller under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which meet or exceed the requirements listed herein:
- (a) **Workers’ Compensation and Employers Liability insurance** as required by the State in which the Work activities under this Agreement will be performed. If applicable, Coverage shall include the U.S. Longshoreman’s and Harbor Workers Compensation Act, and the Jones Act. The employer’s liability limit shall be \$500,000 each per accident, per person disease, and disease by policy limit.
- (b) **Commercial General Liability (CGL) Insurance**, covering all operations to be performed by or on behalf of Seller under or in connection with this Agreement, with combined single limits for bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- Coverage shall include: contractual liability (with this Agreement, and any associated verbal agreements, being included under the definition of “Insured Contract” thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).
  - If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.
  - Additional Insured as required in Article 3 below,
  - The policy shall contain a separation of insureds condition.
  - In the event Seller is a governmental entity such as a town, county, municipality etc., and such entity’s liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the “Law”), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an Insured Entity.
- (c) **Automobile Liability**, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Seller under or in connection with this Agreement with a combined single limit of liability for bodily injury and property damage of \$1,000,000 per accident.
- Additional Insured as required in Article 3 below.
- (d) **Umbrella Liability or Excess Liability** coverage, with a **minimum** per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in Article 1(b) above, shall apply excess of the required automobile, CGL and employer’s liability coverage required in this Insurance Exhibit, and shall provide additional insured status as outlined in Article 3 below.

- (e) **Watercraft Liability**, if used in connection with this Agreement, with the same limits of liability as outlined in requirement 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as outlined in article 3.
- (f) **Aircraft Liability**, if used in connection with this Agreement, with a limit of liability of \$10,000,000 combined single limit per occurrence, and naming the Insured Entities, including their officers and employees, as additional insured's as required in Article 3 below. Such coverage shall not include a per-passenger or per seat coverage limit.
- (g) **Contractors Pollution Liability (CPL)**: covering sudden and accidental pollution liability which may arise out of, under, or in connection with the performance of this Agreement, by or on behalf of Seller, or that arise out of the Seller's use of any owned, non-owned or hired vehicles, with a combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence and in the aggregate.

This requirement may be satisfied by providing either this CPL policy, which would include naming the Insured Entities, including their officers and employees, as additional insured's as outlined in Article 3 below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above - limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event Seller is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, Seller agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

- (h) **Risk of Loss**: Seller shall be responsible for all risk of loss to its equipment and materials, and any other equipment and materials owned by its employees or by other third parties that may be in their care, custody and control. If this coverage is excluded from the Commercial General Liability policy, then coverage will be acceptable under Seller's property policy.

In the event that any equipment or materials (Goods) are supplied by the Insured Entities, an Insured Entities' representative will provide the insurable value of the Goods to Seller in writing, both cumulatively and on a maximum per item basis. [Seller will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of Seller.]<sup>15</sup> Such insurance shall cover all Goods outlined in the Agreement or as noted on subsequent contract amendments. The coverage limit shall apply on either a per location basis or a maximum per item basis, and shall name the Insured Entities, as a Loss Payee with respect to their insurable interest as required in Article 3 below.

- (i) **Limits**: Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in items 1 b, c & d above.

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<sup>15</sup> Deepwater proposes to replace the language in square brackets with the following: To the extent that the Goods are not covered by the Insured Entities' insurance policies, as reasonably determined by the insurance agent for the Facility, Seller will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of Seller.

If the term of this agreement is longer than five (5) years, in the fifth year, and every five (5) years thereafter, the Commercial General Liability and Umbrella/Excess Liability insurance limits required above shall be increased by the percentage increase in the Consumer Price Index from the month the Agreement was executed to the month immediately preceding the first month of the year in which the increase is required.

2. **Self-Insurance:** Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Insurance Section. Such acceptance shall become a part of this insurance provision by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

In order for self insurance to be accepted, Seller's unsecured debt must have a financial rating of at least investment grade. For purposes of this section, "Investment Grade" means (i) if Seller has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to or better than "BBB-" and a Credit Rating from Moody's equal to or better than "Baa3"; (ii) if Seller has a Credit Rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a Credit Rating from Moody's equal to or better than "Baa3; or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then the equivalent credit rating assigned to an entity by such additional or alternative rating agency that is equal to or better than "BBB-" from S&P and/or "Baa3" from Moody's.

3. **Additional Insured and Loss Payee:** The intent of the Additional Insured requirement under the CGL, Auto, CPL, Umbrella/Excess, Aircraft and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insured's for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of Seller, including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its subsidiaries and affiliates shall be named as additional insured.**

The Loss Payee language, as required in article 1.h above, shall read as follows: **National Grid USA, its subsidiaries and affiliates shall be included as a Loss Payee as their interest may appear.**

To the extent Seller's insurance coverage does not provide the full Additional insured coverage as required herein, Seller agrees to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in Seller's insurance coverage that may be out of compliance with this insurance requirement.

4. **Waiver of Recovery:** Seller and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by Seller. To the extent Seller's insurance carriers will not waive their right of subrogation against the Insured Entities, Seller agrees to indemnify the Insured Entities for any subrogation activities pursued against them by Seller's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Entities or their employees, sub-contractors or agents.
5. **Contractors:** In the event Seller uses Contractors in connection with this Agreement, it is expressly agreed that Seller shall have the sole responsibility to make certain that all Contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter

as required. Seller shall remain liable for the performance of the Contractor, and such sub-contract relationship shall not relieve Seller of its obligations under this agreement.

Unless agreed to in writing the by the Risk Management Department of National Grid USA Service Company, any deductible or self insured retentions maintained by any Contractor, which shall be for the account of the Contractor, and shall not exceed \$1,000,000. In addition, Contractor shall name both the Seller and National Grid USA, (including their subsidiaries, affiliates, officers and employees), as additional insured's under the Commercial General Liability and Umbrella/Excess Liability insurance. If requested by National Grid, Seller shall provide National Grid with an insurance certificate from its Contractor evidencing this coverage.

In the event any Contractor is unable to maintain all of the same insurance coverage as required in this insurance article, Seller shall notify National Grid and the Parties shall reasonably agree to replacement insurance given the scope and nature of the works of Contractor.

- 6 **Insurance Certification:** Upon execution of this Agreement, Seller shall promptly provide National Grid with (a) **Certificate(s) of Insurance** for all coverage's required herein at the following address:

National Grid  
Attn: Risk Management Bldg. A-4  
300 Erie Boulevard West  
Syracuse, NY 13202

Such certificates, and any renewals or extensions thereof, shall outline the amount of deductibles or self-insured retentions which shall be for the account of Seller. Such deductibles or self-insured retentions shall not exceed \$1,000,000 unless agreed to in writing by the Risk Management Department of National Grid USA Service Company, whose approval shall not be unreasonably withheld, delayed or conditioned.

Seller shall endeavor to provide National Grid with at least 30 days prior written (10 days for non-payment of premium) notice of any cancellation or diminution of the insurance coverage required in this insurance article.

- 7 **Insurance Obligation:** If any insurance coverage is not secured, maintained or is cancelled and Seller fails to timely procure other insurance as specified, National Grid has the right, but not the obligation, to procure such insurance and to invoice Seller for said coverage.
- 8 **Incident Reports:** Seller shall furnish the Risk Management Department of National Grid USA Service Company with copies of any non-privileged accident or incident report(s)(collectively, the "Documents") sent to Seller's insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services performed by or on behalf of Seller under or in connection with this Agreement, excluding any accidents or incidents occurring on Seller property. If any of the National Grid Companies are named in a lawsuit involving the operations and activities of Seller associated with this Agreement, Seller shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by National Grid. However, in the event such Documents are deemed privileged and confidential (Attorney Client Privilege), Seller shall provide the relevant facts of the accident or incident in a format that does not violate such Attorney Client Privilege.
- 9 **Other Coverage:** These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, Seller shall comply with any governmental site specific insurance requirements even if not stated herein.

- 10 **Coverage Representation:** Seller represents that it has the required policy limits available, and shall notify National Grid USA Service Company's Risk Management Department in writing when the coverage's required in this article herein have been reduced as a result of claims payments, expenses, or both. However, this obligation does not apply to any claims that would be handled solely with in Seller's deductible or self-insured retention.
- 11 **Responsibility:** The complete or partial failure of the Seller's insurance carrier to fully protect and indemnify the Insured Entities per the terms of the Agreement, including without limitation, this exhibit, or the inadequacy of the insurance shall not in any way lessen or affect the obligations of the Seller to the Insured Entities.
- 12 **Coverage Limitation:** Nothing contained in this article is to be construed as limiting the extent of the Seller's responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of Seller under or in connection with this Agreement, or limiting, diminishing, or waiving Seller's obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.

## EXHIBIT E

### PRICING AND PAYMENTS

1. **Definitions.** Unless otherwise defined in this Exhibit, capitalized terms used in this Exhibit have the meaning given such terms in the Agreement. For purposes of this Exhibit the following terms have the following meanings:
  - a. **“Annual Net Capacity Factor” or “ANCF”** shall mean, for a given Contract Year, the sum of the Energy Delivered and Energy rejected by Buyer pursuant to a Rejected Purchase during such Contract Year at the Delivery Point (in MWh) divided by the product that is (i) the Facility’s rated installed capacity (expressed in MWs) multiplied by (ii) 8,760 hours.
  - b. **“Target Net Capacity Factor Range” or “TNCFR”** shall mean, for a given Contract Year, a range of net capacity factors determined as follows:
    - (i) during each of the first five Contract Years, the TNCFR will be a range of percentages equal to the average P50 CF for the three year period immediately preceding each such Contract Year, plus or minus two percent (2%);
    - (ii) during each of the next five Contract Years, the TNCFR will be a range of percentages equal to the average ANCF for the prior three Contract Years, plus or minus two percent (2%); and
    - (iii) **“P50 CF”** shall mean the net capacity factor level for the Facility determined, by an independent wind consultant selected by Seller and consented to by Buyer, to be 50% likely to occur in any given calendar year, as established annually, commencing in 2009. Buyer hereby consents to the selection of AWS Truwind as the independent wind consultant.
2. **Payment.** Buyer shall, in accordance with the terms of the Agreement and this Exhibit, with respect to any month, pay to Seller, in immediately available funds, for each MWh Delivered to Seller during such month, the Bundled Price per MWh set forth on Appendix X hereof with respect to the applicable Contract Year in which such month occurs (as adjusted pursuant to Section 6 of this Exhibit E and Section 7 of this Exhibit E, each if applicable).
3. **O&M Adjustment.** Operation and maintenance costs include the categories of costs and expenses shown on Appendix Y to this Exhibit and similar or related costs incurred in the operation and maintenance of the Facility. Appendix Y to this Exhibit also shows the estimated annual cost to operate and maintain the Facility for each year during the Services Term. Upon Commercial Operation, Appendix Y shall be adjusted, depending on the date of Commercial Operation, to reflect an estimated cost of operation and maintenance for each Contract Year during the Services Term (the **“Annual O&M Estimate”**), which shall be consistent with Appendix Y as set forth in this Exhibit E as of the Agreement Date. At the end of each Contract Year, Seller shall account for the actual operation and maintenance costs for such Contract Year (the **“Annual O&M Cost”**), which shall be conclusive absent manifest error.

On the next billing date following Seller’s calculation of the Annual O&M Cost, Seller shall issue an invoice to Buyer pursuant to Section 5.2(a) of the Agreement that includes a description, in reasonable detail, of the Annual O&M Cost incurred by Seller for the prior Contract Year and any adjustment to reflect the difference between the Annual O&M Estimate and the Annual O&M Cost as follows:

- (i) If the Annual O&M Estimate is equal to the Actual O&M Cost, there is no adjustment.

(ii) If the Annual O&M Estimate is greater than the Annual O&M Cost, then the adjustment to the applicable invoice will be a deduction calculated as follows:

$$\text{Deduction} = (\text{Annual O\&M Estimate} - \text{Annual O\&M Cost})$$

(iii) If the Annual O&M Estimate is less than the Annual O&M Cost, then the adjustment to the applicable invoice will be an incremental charge calculated as follows:

$$\text{Incremental Charge} = (\text{Annual O\&M Cost} - \text{Annual O\&M Estimate}) / (1 - T)$$

Where T is equal to the income tax rate applicable to corporations for the applicable year.

4. Allocation of MWh Price. The Bundled Price per MWh for each billing period shall be allocated between Energy and RECs as follows:

RECs = The “Alternative Compliance Payment Rate” published by the PUC for the applicable billing period.

Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Bundled Price per MWh less the RECs allocation determined under this Section 4 for the applicable billing period and the \$/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section 7 for that billing period.

5. Capacity Factor Adjustment. At the end of each Contract Year, there may be a payment made by Seller to Buyer, or by Buyer to Seller, depending on the ANCF for such Contract Year. Promptly after the end of each Contract Year, Seller shall deliver a notice to Buyer setting forth the calculation of the following payment adjustments, if applicable:

(a) In the event the ANCF for a given Contract Year is greater than the high end of the TNCFR, Seller shall reimburse Buyer an amount equal to the product that is (w) the difference between the high end of the TNCFR and the ANCF multiplied by (x) the Facility’s rated installed capacity multiplied by (y) the Bundled Price per MWh for that Contract Year as set forth in Appendix X multiplied by (z) 8760.

(b) In the event the ANCF for a given Contract Year is below the low end of the TNCFR, Buyer shall reimburse Seller an amount equal to the product that is (w) the difference between ANCF and the low end of the TNCFR multiplied by (x) the Facility’s rated installed capacity multiplied by (y) the Bundled Price per MWh for that Contract Year as set forth in Appendix X multiplied by (z) 8760.

(c) In setting forth the basis for the above calculation, the Seller shall clearly indicate the availability of the wind turbine generating units and shall describe in summary form any environmental factors that may have contributed to the overall availability of the units, such as weather conditions that may have prevented the operation thereof, delayed required maintenance or repair, caused any shutdown condition in accordance with the turbine supplier’s recommendation or guidelines, or which otherwise constitutes an exceptional weather condition that may have increased operating stress on any unit. In the event of clear evidence of systematic deterioration in the availability of the units over a period of no less than three consecutive Contract Years (a “Systematic Deterioration”), the Buyer shall have the right, commencing at the end of the third Contract Year, and in any subsequent Contract Year in which there is a continuation of such Systematic Deterioration, to dispute such adjustments in accordance with the provisions of Section 11 of the Agreement. Such payments will be adjusted to account for such deterioration. [In determining whether or not there is a Systematic Deterioration, the following shall be taken into account and shall not, individually or in combination, by

themselves comprise Systematic Deterioration: (i) normal performance deterioration associated with regular wear and tear (even taking into account operations and maintenance) over the lifetime of the turbines; (ii) any performance deterioration with respect to turbines that had missed or delayed maintenance routines in prior years resulting from environmental factors, such as weather conditions, in prior years; (iii) any potential permanent degradation in performance attributable to exceptional weather conditions in prior years; (iv) any known operating or warranty issues with respect to any individual unit (or the units as a class) that are discovered during the warranty period for the units; and (v) any similar or analogous contributing condition or circumstance. In addition, there shall be no finding of Systematic Deterioration so long as the availability of the units is consistent with the historical mechanical availability of similar wind turbine generating units, to the extent such information is available, taking into account any constraints in operating and maintaining the units related to the scale of the Facility relative to the scale of other facilities using similar units (and adjusting for the factors described in the immediately preceding sentence). There shall be no finding of Systematic Deterioration to the extent the wind turbine generating units are being maintained by the turbine supplier pursuant to a maintenance contract.]<sup>16</sup>

6. Adjustment for Actual Date of Commercial Operation and Extension of Services Term. The appendices to this Exhibit E assume a Commercial Operation date of September 30, 2012 and a Services Term from October 1, 2012 through September 30, 2032, and do not take into account any extension of the Services Term resulting from any Force Majeure event or as otherwise provided in the Agreement. Accordingly, the appendices do not contemplate a Services Term prior to, or subsequent to, those start and end dates. The Parties agree that the Monthly Target Payment, Annual O&M Estimate and other assumptions and variables in the Appendices will need to be adjusted to take into account the actual commencement and end dates of the actual Services Term, including, where applicable, by revising certain estimates and figures by the escalators assumed in the appendices.

Thus, for example, with respect to the Annual O&M Estimate determined in accordance with Appendix Y, if the Services Term commences one year later, the Annual O&M Estimate for the first calendar year will be a pro-rated portion of the 2013 payments, and the Annual O&M estimate for the last calendar year (adjusted to September 30, 2033) will be increased by the 2.5% escalator shown in Appendix Y. These estimates will be further adjusted to establish a Contract Year-by-Contract Year Annual O&M Estimate, as described in Section 3 hereof.

7. Adjustment to Bundled Price for Forward Capacity Market Payments. Beginning in the fourth Contract Year, each monthly payment due to Seller under this Exhibit E will be reduced by the amount that Seller would have been eligible to receive in the ISO-NE Forward Capacity Market or any replacement market for capacity in ISO-NE, without regard to whether the Facility has actually qualified as a Capacity Resource in the Forward Capacity Market or whether the Facility has received a Capacity Supply Obligation for the Capacity Commitment Period during which the applicable billing period occurred. If the Facility has not qualified as a Capacity Resource or received a Capacity Supply Obligation for the relevant Capacity Commitment Period, Buyer shall calculate the reduction due under this Section 7 assuming that the Facility had qualified as a Capacity Resource and received a Capacity Supply Obligation, based on information obtained from Seller and publicly available information from ISO-NE, which calculation shall be binding, absent manifest error. Seller shall use commercially reasonable efforts to cooperate with Buyer in calculating this reduction.

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<sup>16</sup> The foregoing language is subject to further input from the turbine manufacturer, which is not presently available given the stage at which this concept was introduced into the draft. Seller reserves the right to revise this language based on such input.

## APPENDICES<sup>17</sup>

Appendix X: Bundled Price per MWh  
Appendix Y: O&M Cost Estimate

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<sup>17</sup> These appendices are based on a six-turbine Facility. Deepwater has stated a preference for a seven-turbine Facility or an eight-turbine Facility.

**Appendix X**  
**Bundled Price per MWh**

**6 Turbines 20 year PPA (40% CF)**

Contract Year	Annual Contract Energy (MWh)	Annual PPA Payment	Bundled Energy Price (\$/MWh)	Energy Price (\$/MWh)	REC Price (\$/MWh)	Capacity Price (\$/kW-mo.)
2009	N/A	N/A	\$ 268.00	\$ 201.31	\$ 60.92	\$ 6.02
2012	13,245	\$ 3,935,558	\$ 297.13	\$ 223.20	\$ 67.54	\$ 6.67
2013	64,333	\$ 19,784,613	\$ 307.53	\$ 231.01	\$ 69.90	\$ 6.90
2014	71,902	\$ 22,886,142	\$ 318.30	\$ 239.10	\$ 72.35	\$ 7.15
2015	75,686	\$ 24,933,850	\$ 329.44	\$ 247.47	\$ 74.88	\$ 7.40
2016	75,686	\$ 25,806,535	\$ 340.97	\$ 256.13	\$ 77.50	\$ 7.65
2017	75,686	\$ 26,709,763	\$ 352.90	\$ 265.09	\$ 80.22	\$ 7.92
2018	75,686	\$ 27,644,605	\$ 365.25	\$ 274.37	\$ 83.02	\$ 8.20
2019	75,686	\$ 28,612,166	\$ 378.04	\$ 283.97	\$ 85.93	\$ 8.49
2020	75,686	\$ 29,613,592	\$ 391.27	\$ 293.91	\$ 88.94	\$ 8.78
2021	75,686	\$ 30,650,068	\$ 404.96	\$ 304.20	\$ 92.05	\$ 9.09
2022	75,686	\$ 31,722,820	\$ 419.14	\$ 314.85	\$ 95.27	\$ 9.41
2023	75,686	\$ 32,833,119	\$ 433.80	\$ 325.87	\$ 98.61	\$ 9.74
2024	75,686	\$ 33,982,278	\$ 448.99	\$ 337.27	\$ 102.06	\$ 10.08
2025	75,686	\$ 35,171,658	\$ 464.70	\$ 349.07	\$ 105.63	\$ 10.43
2026	75,686	\$ 36,402,666	\$ 480.97	\$ 361.29	\$ 109.33	\$ 10.80
2027	75,686	\$ 37,676,759	\$ 497.80	\$ 373.94	\$ 113.15	\$ 11.17
2028	75,686	\$ 38,995,445	\$ 515.22	\$ 387.03	\$ 117.11	\$ 11.57
2029	75,686	\$ 40,360,286	\$ 533.26	\$ 400.57	\$ 121.21	\$ 11.97
2030	75,686	\$ 41,772,896	\$ 551.92	\$ 414.59	\$ 125.45	\$ 12.39
2031	75,686	\$ 43,234,947	\$ 571.24	\$ 429.10	\$ 129.85	\$ 12.82
2032	75,686	\$ 44,748,171	\$ 591.23	\$ 444.12	\$ 134.39	\$ 13.27

**Appendix Y**

**O&M Cost Estimate**

**6 Turbines 20 year PPA**

	12/31/12	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
<b>Operational cost</b>											
SG&A	\$ (37,500)	\$ (153,750)	\$ (157,594)	\$ (161,534)	\$ (165,572)	\$ (169,711)	\$ (173,954)	\$ (178,303)	\$ (182,760)	\$ (187,329)	\$ (192,013)
Wind farm site leasing cost	\$ (30,410)	\$ (152,875)	\$ (176,840)	\$ (192,662)	\$ (199,406)	\$ (206,385)	\$ (213,608)	\$ (221,085)	\$ (228,822)	\$ (236,831)	\$ (245,120)
Property tax	\$ (12,500)	\$ (51,250)	\$ (52,531)	\$ (53,845)	\$ (55,191)	\$ (56,570)	\$ (57,985)	\$ (59,434)	\$ (60,920)	\$ (62,443)	\$ (64,004)
Substation payment	\$ (2,500)	\$ (10,250)	\$ (10,506)	\$ (10,769)	\$ (11,038)	\$ (11,314)	\$ (11,597)	\$ (11,887)	\$ (12,184)	\$ (12,489)	\$ (12,801)
Miscellaneous	\$ (6,250)	\$ (25,625)	\$ (26,266)	\$ (26,922)	\$ (27,595)	\$ (28,285)	\$ (28,992)	\$ (29,717)	\$ (30,460)	\$ (31,222)	\$ (32,002)
Contingency	\$ (8,916)	\$ (39,375)	\$ (42,374)	\$ (44,573)	\$ (45,880)	\$ (47,227)	\$ (48,614)	\$ (50,043)	\$ (51,515)	\$ (53,031)	\$ (54,594)
<b>Insurance premium</b>	<b>\$ (382,776)</b>	<b>\$ (1,569,381)</b>	<b>\$ (1,608,616)</b>	<b>\$ (1,648,831)</b>	<b>\$ (1,690,052)</b>	<b>\$ (1,732,303)</b>	<b>\$ (1,775,611)</b>	<b>\$ (1,820,001)</b>	<b>\$ (1,865,501)</b>	<b>\$ (1,912,139)</b>	<b>\$ (1,959,942)</b>
<b>Total operational cost</b>	<b>\$ (480,852)</b>	<b>\$ (2,002,506)</b>	<b>\$ (2,074,726)</b>	<b>\$ (2,139,136)</b>	<b>\$ (2,194,734)</b>	<b>\$ (2,251,796)</b>	<b>\$ (2,310,361)</b>	<b>\$ (2,370,470)</b>	<b>\$ (2,432,163)</b>	<b>\$ (2,495,484)</b>	<b>\$ (2,560,477)</b>
<b>Maintenance cost</b>											
Transmission cable and substations	\$ (50,000)	\$ (205,000)	\$ (210,125)	\$ (215,378)	\$ (220,763)	\$ (226,282)	\$ (231,939)	\$ (237,737)	\$ (243,681)	\$ (249,773)	\$ (256,017)
Foundation structure	\$ (100,000)	\$ (410,000)	\$ (420,250)	\$ (430,756)	\$ (441,525)	\$ (452,553)	\$ (463,877)	\$ (475,474)	\$ (487,361)	\$ (499,545)	\$ (512,034)
Turbine O&M contract fee	\$ (245,450)	\$ (1,006,346)	\$ (1,031,505)	\$ (1,057,292)	\$ (1,083,725)	\$ (1,110,818)	\$ (1,138,588)	\$ (1,167,053)	\$ (1,196,229)	\$ (1,226,135)	\$ (1,256,789)
Required initial spare parts	\$ (280,342)										
Strategic spare parts	\$ (1,376,517)										
Service contract prepayment	\$ (538,445)										
Maintenance vessels cost	\$ (292,725)	\$ (1,200,174)	\$ (1,230,178)	\$ (1,260,932)	\$ (1,292,456)	\$ (1,324,767)	\$ (1,357,886)	\$ (1,391,834)	\$ (1,426,629)	\$ (1,462,295)	\$ (1,498,852)
<b>Expected turbine parts replacement cost (post warranty)</b>	<b>\$ -</b>	<b>\$ (974,142)</b>	<b>\$ (998,496)</b>	<b>\$ (1,023,458)</b>	<b>\$ (1,049,045)</b>	<b>\$ (1,075,271)</b>					
<b>Total maintenance cost</b>	<b>\$ (2,883,479)</b>	<b>\$ (2,821,520)</b>	<b>\$ (2,892,058)</b>	<b>\$ (2,964,359)</b>	<b>\$ (3,038,468)</b>	<b>\$ (3,114,430)</b>	<b>\$ (3,192,433)</b>	<b>\$ (3,271,990)</b>	<b>\$ (3,353,117)</b>	<b>\$ (3,436,893)</b>	<b>\$ (3,522,863)</b>
<b>Total O&amp;M expenses</b>	<b>\$ (3,364,331)</b>	<b>\$ (4,824,026)</b>	<b>\$ (4,966,784)</b>	<b>\$ (5,103,496)</b>	<b>\$ (5,233,202)</b>	<b>\$ (5,366,226)</b>	<b>\$ (5,504,794)</b>	<b>\$ (5,644,463)</b>	<b>\$ (5,795,280)</b>	<b>\$ (5,951,377)</b>	<b>\$ (6,113,340)</b>

	12/31/23	12/31/24	12/31/25	12/31/26	12/31/27	12/31/28	12/31/29	12/31/30	12/31/31	12/31/32
<b>Operational cost</b>										
SG&A	\$ (196,813)	\$ (201,733)	\$ (206,777)	\$ (211,946)	\$ (217,245)	\$ (222,676)	\$ (228,243)	\$ (233,949)	\$ (239,798)	\$ (245,792)
Wind farm site leasing cost	\$ (253,700)	\$ (262,579)	\$ (271,769)	\$ (281,281)	\$ (291,126)	\$ (301,316)	\$ (311,862)	\$ (322,777)	\$ (334,074)	\$ (345,766)
Property tax	\$ (65,604)	\$ (67,244)	\$ (68,926)	\$ (70,649)	\$ (72,415)	\$ (74,225)	\$ (76,081)	\$ (77,983)	\$ (79,933)	\$ (81,931)
Substation payment	\$ (13,121)	\$ (13,449)	\$ (13,785)	\$ (14,130)	\$ (14,483)	\$ (14,845)	\$ (15,216)	\$ (15,597)	\$ (15,987)	\$ (16,386)
Miscellaneous	\$ (32,802)	\$ (33,622)	\$ (34,463)	\$ (35,324)	\$ (36,207)	\$ (37,113)	\$ (38,040)	\$ (38,991)	\$ (39,966)	\$ (40,965)
Contingency	\$ (56,204)	\$ (57,863)	\$ (59,572)	\$ (61,333)	\$ (63,148)	\$ (65,017)	\$ (66,944)	\$ (68,930)	\$ (70,976)	\$ (73,084)
<b>Insurance premium</b>	<b>\$ (2,008,941)</b>	<b>\$ (2,059,164)</b>	<b>\$ (2,110,644)</b>	<b>\$ (2,163,410)</b>	<b>\$ (2,217,495)</b>	<b>\$ (2,272,932)</b>	<b>\$ (2,329,756)</b>	<b>\$ (2,387,999)</b>	<b>\$ (2,447,699)</b>	<b>\$ (2,508,892)</b>
<b>Total operational cost</b>	<b>\$ (2,627,185)</b>	<b>\$ (2,695,655)</b>	<b>\$ (2,765,935)</b>	<b>\$ (2,838,073)</b>	<b>\$ (2,912,119)</b>	<b>\$ (2,988,124)</b>	<b>\$ (3,066,142)</b>	<b>\$ (3,146,226)</b>	<b>\$ (3,228,432)</b>	<b>\$ (3,312,817)</b>
<b>Maintenance cost</b>										
Transmission cable and substations	\$ (262,417)	\$ (268,978)	\$ (275,702)	\$ (282,595)	\$ (289,660)	\$ (296,901)	\$ (304,324)	\$ (311,932)	\$ (319,730)	\$ (327,723)
Foundation structure	\$ (524,835)	\$ (537,956)	\$ (551,404)	\$ (565,190)	\$ (579,319)	\$ (593,802)	\$ (608,647)	\$ (623,863)	\$ (639,460)	\$ (655,447)
Turbine O&M contract fee	\$ (1,288,208)	\$ (1,320,413)	\$ (1,353,424)	\$ (1,387,259)	\$ (1,421,941)	\$ (1,457,489)	\$ (1,493,927)	\$ (1,531,275)	\$ (1,569,557)	\$ (1,608,796)
Required initial spare parts										
Strategic spare parts										
Service contract prepayment										
Maintenance vessels cost	\$ (1,536,324)	\$ (1,574,732)	\$ (1,614,100)	\$ (1,654,453)	\$ (1,695,814)	\$ (1,738,209)	\$ (1,781,665)	\$ (1,826,206)	\$ (1,871,861)	\$ (1,918,658)
<b>Expected turbine parts replacement cost (post warranty)</b>	<b>\$ (1,469,537)</b>	<b>\$ (1,506,275)</b>	<b>\$ (1,543,932)</b>	<b>\$ (1,582,531)</b>	<b>\$ (1,622,094)</b>	<b>\$ (1,662,630)</b>	<b>\$ (1,704,166)</b>	<b>\$ (1,746,722)</b>	<b>\$ (1,790,310)</b>	<b>\$ (1,834,943)</b>
<b>Total maintenance cost</b>	<b>\$ (5,081,321)</b>	<b>\$ (5,208,354)</b>	<b>\$ (5,338,563)</b>	<b>\$ (5,472,027)</b>	<b>\$ (5,608,828)</b>	<b>\$ (5,749,110)</b>	<b>\$ (5,893,927)</b>	<b>\$ (6,042,814)</b>	<b>\$ (6,195,827)</b>	<b>\$ (6,353,064)</b>
<b>Total O&amp;M expenses</b>	<b>\$ (7,708,506)</b>	<b>\$ (7,904,009)</b>	<b>\$ (8,104,498)</b>	<b>\$ (8,310,100)</b>	<b>\$ (8,520,946)</b>	<b>\$ (8,737,234)</b>	<b>\$ (8,958,069)</b>	<b>\$ (9,183,240)</b>	<b>\$ (9,414,259)</b>	<b>\$ (9,651,881)</b>

**REQUEST FOR PROPOSALS**

**10 MW Renewable Energy Project**

**Town of New Shoreham (Block Island), Rhode Island**

**Issue Date: July 31, 2009**

**nationalgrid**

# **Request for Proposals 10 MW Renewable Energy Project Town of New Shoreham (Block Island), Rhode Island**

## **1.0 Objectives**

This Request for Proposals (RFP) is being issued by National Grid to satisfy the requirements of R.I.G.L. §39-26.1—Long Term Contracting Standard for Renewable Energy. Section 1-7 of this statute requires that on or before August 15, 2009, the electric distribution company shall solicit proposals for one newly developed renewable energy resources project of 10 MW or less to enhance the electric reliability and environmental quality of the Town of New Shoreham (Block Island). It is required that this solicitation include provisions for a transmission cable between the Town of New Shoreham and the mainland of Rhode Island. This requirement may be met with a transmission (69 kV or higher) or distribution (35 kV or 46 kV), class cable system. The electric distribution company, at its option, may propose to own, operate, or otherwise participate in the transmission cable project.

Through this RFP, Narragansett Electric Company, d/b/a National Grid, plans to select a single renewable resource project for negotiating a contract, the effectiveness of which shall be conditioned upon approval by the Rhode Island Public Utilities Commission (“the Commission”).

## **2.0 RFP Process and Schedule**

R.I.G.L. §39-26.1-7 requires that the distribution company issue an RFP by August 15, 2009, and that a contract with the selected party, should a contract be agreed upon, be filed with the Commission by October 15, 2009.

To meet these requirements, National Grid will adhere to the following schedule.

Issuance of RFP	July 31, 2009
Receipt of Notices of Intent to Bid	August 6, 2009
Pre-bid Conference	August 11, 2009
Deadline for submittal of proposals:	August 31, 2009
Determination of projects meeting eligibility and threshold criteria:	September 4, 2009
Selection of project for contract negotiations:	September 21, 2009
Filing of contract with RI PUC:	October 15, 2009

RI PUC approval/disapproval of contract:

December 31, 2009

National Grid will retain the right to seek additional information from any party proposing a project, as well as to negotiate modified pricing before a final contract is developed. The contract negotiation process will be based upon the pricing submitted with the proposal, and will use a model power purchase agreement (PPA) to be provided to the winning bidder. Any negotiated contract must be approved by the Commission before it becomes effective.

### **3.0 Project Eligibility**

#### **3.1 Eligible Facility**

An eligible facility must be an electric generation facility that satisfies the following standards.

1. The electric generation facility must qualify as an eligible renewable energy resource under Section 5 of the Rules and Regulations governing the Implementation of a Renewable Energy Standard, effective July 25, 2007, promulgated under R.I.G.L. §39-26-5.
2. The facility must qualify as a newly developed renewable energy resource as defined in R.I.G.L. §39-26.1-2(6). The generation units must not have begun operation, nor have the developers implemented investment or lending arrangements to finance construction.
3. The electrical output of the facility must be less than 10 megawatts (MW), where this limit is defined as the rating of the facility adjusted for expected capacity factor. Using this definition, the expected output of the facility must not exceed 87,600 megawatt-hours (MWh) annually.

#### **3.2 Products and Allowable Forms of Pricing**

National Grid will accept proposals for bundled renewable energy (capacity, energy, and Renewable Energy Credits (“REC’s”)) that offer one of the following pricing options;

1. a fixed price (in \$/MWh) for the term of the contract,
2. a price (in \$/MWh) that changes by a fixed rate for the term of the contract, or by different fixed rates for various periods of the contract;
3. an indexed price (in \$/MWh) based on a published, publicly available, inflation-related index that is indicative of actual costs, e.g., operating and maintenance costs.

While (all-in) pricing for bundled renewable energy is required, the proposal must also provide pricing for the individual components, including pricing for capacity in \$/kW-month under ISO New England Inc. (“ISONE”) rules, and the proposal must demonstrate the ability of the project to qualify as an ISONE capacity resource. Capacity

qualification must be maintained through reporting of capability test data and forced outage rates, and any other reporting requirements for intermittent resources.

Unless alternative arrangements are made with National Grid, the owner must take responsibility for offering the resource into the ISONE capacity and energy markets.

An alternative pricing formula may be submitted for consideration, however, conforming pricing as described above must be submitted, and the alternative pricing may not contain any fuel cost related indices, except as uniquely appropriate for biomass projects.

### **3.3 Allowable Contract Term**

The allowable contract term must be at least ten (10) years. R.I.G.L. §39-26.1-3 states that contracts may have a term of up to fifteen (15) years, and longer than fifteen (15) years subject to Commission approval.

### **3.4 Electric Interconnection and Transmission Facilities**

The generating facility must be interconnected with the facilities of the Block Island Power Company in the Town of New Shoreham, Rhode Island. The interconnection facilities must also be electrically integrated with a new cable system which will connect New Shoreham to the facilities of National Grid on the mainland of Rhode Island. The project developer must file an interconnection request with ISO New England, Inc. The interconnection request form is available at:

[http://www.iso-ne.com/genrtion\\_resrcs/nwgen\\_inter/smgen\\_20/index.html](http://www.iso-ne.com/genrtion_resrcs/nwgen_inter/smgen_20/index.html).

A proposal for an eligible project must include provisions for the cable system. This requirement must be met by submitting a separate proposal for the transmission facilities, with separate project description, project schedule, and pricing. The project developer must coordinate design of both the interconnection facilities and the cable system with Block Island Power and National Grid.

The official contact for project interconnection is

C. R. McGinnes  
Chief Operating Officer  
Block Island Power Company  
100 Ocean Avenue  
Block Island, RI 02807  
401 742 0025  
ifrtruck35@mac

The official contact for the cable system project is

Daniel Glenning  
Manager Substation Project Management

## Electricity Distribution Operations - Construction Delivery

[nationalgrid](#)

Office 781 907 3582

Cell 401 862 2476

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40 Sylvan Road

Waltham, MA 02451

### **4.0 Threshold Requirements**

#### **4.1 Reasonable Project Schedule**

The proposal must provide a detailed schedule for completion of all environmental reviews, receipt of required permits, site approvals, etc. The proposal must also contain a “project approval assessment,” which details each segment of the process, the required permit or approval, and the likelihood of success by the milestone date.

Projects must demonstrate the ability to develop, permit, finance, and construct the proposed Eligible Facility within a reasonably proximate time. A proposal that does not have a reasonable schedule that provides sufficient time for the application for, and receipt of, necessary permits and approvals may be determined not to have satisfied this threshold requirement. In addition, a proposal that is determined to have a “fatal flaw” such that it will be unable to obtain permits or property rights necessary to finance and construct the proposed project may be determined not to have satisfied this threshold requirement.

#### **4.2 Site Control**

The Bidder must demonstrate that it has control or a right to acquire control over a site for its proposed project. To meet this threshold requirement, bidders must either provide documentation showing that they own or otherwise control the site on which the proposed project will be located, have an option agreement on the site, or at a minimum have negotiated a letter of intent for the site. Site control for offshore wind projects will be evaluated based on the particular submissions of offshore wind project bidders and the extent to which they can demonstrate a high likelihood that they will be able to obtain the necessary rights to construct and operate the proposed project, including the real property rights associated with the interconnection from the proposed project to the facilities of Block Island Power. For the cable system from Block Island to the mainland of Rhode Island, the bidder must demonstrate a high likelihood of obtaining the necessary easements.

#### **4.3 Technical Viability**

The Bidder must demonstrate that the technology it proposes to use is technically viable, and an ability to purchase and install the equipment. The requirement for technical

viability is not confined strictly to generation technology, but extends to all aspects of site, interconnection, and transmission infrastructure.

#### **4.4 Ability to Finance the Proposed Project**

The Bidder must demonstrate ability to finance the proposed project. If Bidder plans to use technology that is not commercially proven, it must provide evidence of technical viability and a credible plan to finance the project in light of the state of development of the technology. All bidders must provide a reasonable plan for financing the proposed project, including the funding of development costs and the required development period security.

#### **4.5 Experience**

National Grid seeks an open and fully competitive solicitation; however, project proposals will be accepted only from those developers, owners, or companies who are fully engaged in the development of renewable energy generating facilities. The person or entity submitting the proposal must also be the developer of the project, and be able to establish that it will be primarily responsible for the overall managerial, financial, and operational control of the project.

#### **4.6 Timeliness and Completeness of Bids**

The bid submitted must be timely submitted in accordance with Section 2.0 of this RFP using the forms provided in Appendices and must be complete. If a bidder does not have the information requested in the bid forms and cannot obtain access to information prior to the bid submittal due date, the bidder should provide an appropriate explanation.

#### **4.7 Credit Requirements**

The Company reserves the right to require bidders to post security for the project development and operating periods, if the Company in its sole discretion deems it appropriate. The required levels of Development Period Security may be a per kW Development Period Security Amount multiplied by (a) the proposed project's nameplate capacity (in kW) if the entire output of the proposed project is proposed to be sold under this RFP or (b) the percentage of the proposed project's output that is proposed to be sold under this RFP multiplied by the project's nameplate capacity. For projects that have projected capacity factors of less than 50 percent, the per kW Development Period Security Amount is \$20/kW. For projects that have projected capacity factors of 50% or more, the per kW Development Period Security Amount is \$30/kW. The required security must be in the form of cash or a letter of credit. Fifty percent of the Development Period Security must be provided upon execution of a power purchase agreement or agreements pursuant to this RFP. The remaining 50 percent of the Development Period Security must be provided upon Commission approval of a power purchase agreement pursuant to this RFP. Development Period Security will be promptly returned if the Commission does not approve the Power Purchase Agreement.

Once a project achieves Commercial Operation, the amount of required security (Operating Period Security) will be based on National Grid's current requirements for power purchase contracts. In this case, National Grid may be willing to accept alternative forms of security for part or all of the required security, such as a corporate guarantee from an entity with a credit rating of BBB or better from Standard & Poor's or Baa2 or better from Moody's Financial Services. Current National Grid credit requirements for power supply contracts will be reviewed at the time of contract negotiation.

Credit requirements for the cable system project have not been developed.

## **5.0 Preparation and Submittal of Proposal**

### **5.1 Bidders Conference—Notice of Intent to Bid**

A Bidders Conference is being scheduled for August 11, 2009. All parties who have submitted a Notice of Intent to Bid will be invited to this conference, which may be held by teleconference, in view of the short timeline on the solicitation process imposed by the statute. Questions should be submitted in writing in advance of the conference to the extent possible, and should be directed to the Official Contact.

### **5.2 Preparation of Proposals**

The proposal should be organized as outlined in Section 6.0, and detailed in the response sheets in Appendix B.

Bidders must submit one original and [two] bound copies of their proposal as well as [two] CDs with the entire contents of the proposal to the Official Contact that is intended to be the recipient of a proposal. Bids must be submitted by 5:00 pm eastern prevailing time on the due date for proposals set forth in Section 2.0. In view of the short timeline, email submissions may be useful in expediting the evaluation process, but will not be accepted as official submittals. National Grid reserves the right to reject any proposals received after the deadline.

Each proposal shall contain the full name and business address of the Bidder and Bidder's contact person and shall be signed by an authorized officer of the Bidder. Bidders must sign the original proposal and include copies of the signature page with the remaining proposals.

### **5.3 Official Contact for the RFP**

The official contact for the RFP is

Madison N. Milhous  
Director, Wholesale Market Relations  
Energy Portfolio Management  
**nationalgrid**

100 East Old Country Road  
Hicksville, NY 11801  
madison.milhous@us.ngrid.com  
516 545 2309 (O)  
516 448 7129 (M)  
516 545 3130 (F)

#### **5.4 Confidentiality**

Bidders must clearly identify all confidential information in their Proposals. However, Bidders should take care to designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The practice of marking each and every page of a Proposal as “confidential” is discouraged.

National Grid agrees to use commercially reasonable efforts to treat the non-public information it receives from bidders in a confidential manner and will not, except as required by law or in a regulatory proceeding, disclose such information to any third party not involved in the solicitation process on behalf of National Grid, or use such information for any purpose other than in connection with this RFP; provided, that, in any regulatory, administrative or jurisdictional proceeding in which confidential information is sought, National Grid shall take reasonable steps to limit disclosure and use of said confidential information through the use of non-disclosure agreements or orders seeking protective treatment, and shall inform the bidders if confidential information is being sought. Notwithstanding the foregoing, in any regulatory proceeding in which such confidential information is sought and a request for confidential treatment is made to the Commission, National Grid shall not be responsible in the event that it is determined that the request for treating information in a confidential manner is not warranted. The bidders shall be required to use commercially reasonable efforts to treat all information received from National Grid in a confidential manner and will not, except as required by law or in a regulatory proceeding, disclose such information to any third party.

#### **6.0 Organization of the Proposal**

Each proposal shall adhere to the following format, as set out in more detail in Appendix B. Failure to follow the format may result in the disqualification of the proposal.

- 6.1 Proposal Certification**
- 6.2 Project Description and Contact Information**
- 6.3 Executive Summary**
- 6.4 Pricing Information**
- 6.5 Project Operational Parameters**
- 6.6 Energy Resource Plan**
- 6.7 Financing Plan**
- 6.8 Interconnection and Transmission**
- 6.9 Environmental Assessment and Permit Acquisition Plan**
- 6.10 Engineering and Technology**

- 6.11 Operations and Maintenance Plan**
- 6.12 Project Schedule**
- 6.13 Project Management and Experience**

A separate proposal for the cable system must be submitted as an appendix to the proposal for an eligible renewable resource facility. The format for this proposal is set forth in Appendix C. This proposal will be forwarded to National Grid's electric transmission organization for a separate evaluation.

## **7.0 Evaluation Criteria and Process**

There will be no predetermined scoring system or minimum score for project selection. Projects will be evaluated based on cost considerations, and on overall project viability, including financial, environmental and other site approvals, construction schedule, and operational characteristics

### **7.1 Price Evaluation**

The price evaluation will be based on a comparison of the pricing of bundled renewable energy offered in each proposal to a long term forecast of the value of capacity, energy and REC's in the ISONE Rhode Island zone. The metric used will be net (\$/MWh) levelized cost or benefit over the term of the proposed bid. The analysis will be performed by segments, as well as over the contract length as a whole, in order to determine the distribution of cost or benefit.

National Grid will use the following considerations in evaluating cost.

1. Cost relative to competing renewable projects
2. Cost relative to current and projected market prices for capacity, energy and RECs.

Both of these considerations are critical to the evaluation.

The price evaluation for the cable system will be based on the reasonableness of the construction cost and the proposed pricing structure, based on National Grid electric system planning, engineering and construction expertise.

### **7.2 Non-Price Evaluation**

The non-price evaluation will consist of two categories: (1) viability of development and (2) viability of operation. Each category will be weighted equally. The intent is to evaluate the feasibility and viability of each project, the likelihood of meeting the proposed commercial operation date, and the likelihood that the constructed facilities will perform as represented in the proposal. The evaluation will include, but will not necessarily be limited to, the factors listed in the following sections. The same approach will be used for the cable system project, using the factors that are applicable.

### **7.2.1 Project Development**

The following factors will be considered in evaluating the feasibility of development.

- The extent to which site control, including easements, has been achieved, or is reasonably achievable.
- The compatibility of the facility with existing land use and zoning, and the likelihood that any necessary variances or rezoning will be obtained.
- Effectiveness of community outreach efforts associated with project development, and evidence of community support or opposition.
- The identification of required environmental permits and approvals, the status of efforts to obtain permits and approvals, and the credibility of the plan for completion of the approval process.
- Reliability and commercial availability of the proposed technology and associated site infrastructure.
- Demonstration of the ability to finance the project, taking into consideration the financial strength of the bidder, the credibility of the proposed financial plan, and any potential for negative financial impacts on the buyer.
- Experience and capabilities of the project management team in financing, developing, and operating similar projects.
- The completeness and credibility of a detailed project schedule, and whether the bidder has provided an adequate demonstration that it can meet the proposed dates for construction start and commercial operation.
- The credibility of the energy or fuel resource plan, including resource assessments and supporting technical analysis.

### **7.2.2 Project Operational Characteristics**

- Financial strength of the Bidder or of any affiliated entity and the viability of the project to remain financially strong.
- The credibility of the operation and maintenance plan, including the reasonableness of the maintenance funding levels and arrangements, the willingness of a Bidder to execute a long-term contract with a reputable O&M provider of a duration that is commercially available and the previous experience of the Bidder in maintaining and operating similar facilities;
- The level of confidence in the generation forecast based on the quality of the energy resource studies;
- The extent to which the proposed project will contribute to employment in the State, both directly and indirectly;
- The extent to which the project will contribute to diversity of generation resources;
- The extent to which the proposal, including the pricing structure, promotes price stability;

- The extent to which the proposal will have positive or negative environmental impacts (air, water, land, aesthetics, wildlife, climate);

# **REQUEST FOR PROPOSALS**

## **10 MW Renewable Generation Project**

**Town of New Shoreham (Block Island), Rhode Island**

### **RESPONSE PACKAGE**

- Appendix A: Notice of Intent to Bid**
- Appendix B: Bidder Response Forms**
- Appendix C: Cable System Proposal**

**Issue Date: July 31, 2009**



**APPENDIX A**

**NOTICE OF INTENT TO BID  
(CONFIDENTIAL)**

1 Company Name: \_\_\_\_\_

2 Contact Person Information:

Name	
Title/Position	
Mailing Address	
Courier Address (if different)	
Telephone Number	
Fax Number	
E-mail Address	

3 Expected Resource Type or Technology: \_\_\_\_\_

4 Project Size: Nameplate Capacity (MW): \_\_\_\_\_  
Projected Output (MWh/yr) \_\_\_\_\_

5 Project Location: \_\_\_\_\_

6 Cable System Description  
Voltage and Rating

\_\_\_\_\_

Interconnection  
Points \_\_\_\_\_

7 Estimated Financial Closing Date: \_\_\_\_\_  
Estimated Commencement of Construction Date: \_\_\_\_\_  
Estimated Commercial Operation Date: \_\_\_\_\_

8 Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Bidders should send the Notice of Intent to Bid Form via email, followed by a signed original copy, to the following address:

Madison N. Milhous  
Director, Wholesale Market Relations  
Energy Portfolio Management  
**nationalgrid**  
100 East Old Country Road  
Hicksville, NY 11801  
madison.milhous@us.ngrid.com  
516 545 2309 (O)  
516 448 7129 (M)

## **Appendix B**

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### **Bidder Response Forms**

## 1. Proposal Certification Form

### Authorized Applicant's Signature and Acceptance Form

The undersigned is a duly authorized representative of the Bidder listed below. The Bidder hereby certifies that all the statements and representations made in this Proposal are true and accurate to the best of the Bidder's knowledge. The Bidder represents that it understands the requirements, terms, and conditions of the RFP.

The Bidder agrees that the prices, terms and conditions of this Proposal are valid for at least 120 days after bid submission.

Submitted by:

\_\_\_\_\_  
(Exact legal name of Company)

Bidder

\_\_\_\_\_  
(if different than above)

Signature of an Officer  
Of Bidder

\_\_\_\_\_

Print or type name of  
Officer

\_\_\_\_\_

Title:

\_\_\_\_\_

Date Signed:

\_\_\_\_\_

## **2. Project Description/Contact Information**

Bidder Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

Technology<sup>1</sup> \_\_\_\_\_

Estimated Commercial  
Operation Date \_\_\_\_\_

Products Bid (Energy and/or REC,  
Energy, RECs and Capacity) \_\_\_\_\_

Project Site/Location:  
City or Town: \_\_\_\_\_

Proposed Interconnection Point \_\_\_\_\_

Proposed Point of Delivery \_\_\_\_\_

Cable System Description  
Cable Type(s) \_\_\_\_\_  
Voltage and Rating \_\_\_\_\_  
Interconnection Points \_\_\_\_\_

Project Contact:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_

Capacity of the Facility to be Delivered to the Buyer at the Point of Delivery (MW):  
Gross: \_\_\_\_\_  
Net: \_\_\_\_\_

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<sup>1</sup>The technology must qualify as an eligible renewable energy resource under Section 5 of the Rules and Regulations governing the Implementation of a Renewable Energy Standard, effective July 25, 2007, promulgated under R.I.G.L. §39-26-5.

Expected Annual Energy Production to be Delivered to the Buyer at the Point of Delivery  
MWh) \_\_\_\_\_

Estimated Net Capacity Factor (%) \_\_\_\_\_

Study Provided to Support  
Estimated Generation \_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

If Yes, Name of Firm Who  
Prepared the Study \_\_\_\_\_

Expected Annual Availability (%) \_\_\_\_\_

Term of Contract: \_\_\_\_\_

Estimated Equipment Life \_\_\_\_\_

Equipment Manufacturer \_\_\_\_\_

Energy Source \_\_\_\_\_

Project Type (check all applicable) \_\_\_\_\_ Non-Firm Intermittent Energy  
\_\_\_\_\_ Dispatchable Energy

### **3. Executive Summary**

The Bidder is required to provide an executive summary of the project proposal in this section, including both the renewable energy resource and the cable system. This is an opportunity to portray and emphasize the key features of the proposal, and should clearly demonstrate how the proposal conforms to the eligibility and threshold criteria specified in Sections 3.0 and 4.0 of the RFP. This will also facilitate communication regarding the project within National Grid, and to those Rhode Island agencies with which National Grid will maintain communication during the solicitation process.

#### 4. Pricing Information

Bidders are required to complete a Pricing Schedule for each applicable product proposed in an Excel spreadsheet, which includes the appropriate columns below. Bidders should also fully describe their pricing formula, including any combination pricing (e.g., fixed portion plus a portion that adjusts according to a publicly available index). Pricing is to be specified on a contract year basis, i.e., the first Contract Year commences on the Commercial Operation Date and ends 12 months later. Each subsequent Contract Year commences on the anniversary of the day following the end of the first Contract Year. In the description of the pricing formula, the Bidder should specify for all products proposed the starting date for pricing, the published, publicly available index to be applied in the pricing formula, if any, the timing for applying fixed or variable escalators. Should an index apply to only portions of the bundled energy price, i.e, capacity, energy and RECs, or should a different rate apply to different products, indicate this in the description.

#### Pricing Schedule

<b>Contract Year</b>	<b>Annual Contract Energy to be Delivered to the Buyer at the Point of Delivery (MWh)</b>	<b>Bundled Energy Price (\$/MWh)</b>	<b>Fixed Escalation Rate to be Applied if Applicable or Publicly Available Index</b>	<b>Energy Price (\$/MWh)</b>	<b>REC Price (\$/MWh)</b>	<b>Capacity Price (\$/kW-mo.)</b>	<b>Estimate of Summer Qualifying Capacity to be delivered to Buyer (kW-mo.)</b>
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							

**Description of the Pricing Formula:**

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**Index Proposed/portion of price to which it is being applied:**

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**Fixed Rate:** \_\_\_\_\_ (Yes or No)

**Description of the Alternative Pricing Formula if proposed. Include an appropriate spreadsheet.**

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## 5. Operational Parameters

Bidders should provide the following information requested regarding the project operational parameters and general project information. If information requested is not applicable to the specific technology, the Bidder should specify with an N/A.

### 5.1. Operating Characteristics

5.1.1. Nameplate Capacity \_\_\_\_\_ MW

Net Capacity at Average Site conditions \_\_\_\_\_ MW

Net Capacity Offered Under this RFP \_\_\_\_\_ MW

### 5.1.2. Energy Generation

Expected Gross Annual Energy Production \_\_\_\_\_ MWh/yr

Expected Net Annual Energy Production \_\_\_\_\_ MWh/yr

### Expected Peak and Off-Peak Monthly Production<sup>2</sup>

Month	On-Peak (MWh/Mon)	Off-Peak (MWh/Mon)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Total		

5.1.3. Annual Degradation Rate (if any) and basis. \_\_\_\_\_

\_\_\_\_\_

<sup>2</sup> If the level of generation is expected to vary over the life of the contract the bidder should provide an expanded table for the term of the contract.

## 5.2. Availability

5.2.1. Availability for Intermittent Resources  
Expected Annual Availability \_\_\_\_\_%

5.2.2. Availability for Other Resources

Identify the Expected Equivalent Availability Factor (NERC Definition)  
(annual equivalent hours available/8760) \_\_\_\_\_%

Equivalent Forced Outage Rate (NERC Definition) \_\_\_\_\_%

$$\frac{(\text{forced out hours} + \text{equivalent forced derated hours})}{(\text{forced out hrs} + \text{svc hrs} + \text{equiv. forced derated hrs during reserve shutdown})}$$

## 5.3. Heat Rate (If Applicable)

If heat rate information is necessary for pricing associated with the facility, provide a column to the Pricing Schedule which includes the “Projected Heat Rate” values. These values should include all generation that will be produced at the contract rate and will be used for contract payment rate calculation (e.g. for generators with heat recovery technology, please provide the lower heat rate indicating the efficiency of this combined technology). Heat rates should be stated in MMBtu/kWh in HHV)

## 5.4. Operating Mode

Intermittent Only \_\_\_\_\_  
Define parameters of operation)

Must Run (at full load) \_\_\_\_\_

Dispatchable (specify operating constraints) \_\_\_\_\_

## 5.5. Maintenance Outage Requirements

Specify partial and complete planned outage requirements in weeks or days. Also, list the number of months required for the cycle to repeat (For example, list time interval of minor and major overhauls, and the duration of overhauls)

## **5.6. Operating Constraints**

Specify all the expected operating constraints and operational restrictions for the project (i.e. limits on the number of hours a unit may be operated per year or unit of time)

## **5.7. Reliability**

Describe how the proposal would provide enhanced environmental quality and electricity reliability within Block Island.

## **6. Energy Resource Plan**

The Bidder is required to provide an energy resource or fuel supply plan for its proposed project, including supporting documentation. The fuel supply/energy resource profile information should be consistent with the type of technology/resource option proposed and the term of the contract proposed. The information requested is organized according to the type of project or energy resource. Bidders should respond only to relevant questions.

### **Wind energy projects:**

- Provide a summary of all collected wind data for the proposed site. Identify when the data was collected and by whom.
- Indicate where the data was collected and its proximity to the proposed site. Include an identification of the location for the anemometers that were used to arrive at an assessment of the site generation capability.
- Provide (a) at least one year of hourly wind resource data, or (b) a wind resource assessment report from a qualified resource assessment firm or meteorologist, or (c) both. Include an analysis of the available wind data which addresses the relationship between wind conditions and electrical output.
- Provide a projection of gross and net annual energy production, including projections of average net hourly energy production, based on the wind resource data (a 12 x 24 energy projection).
- Provide an explanation if the average of the hourly MWh of production is different from the expected Net Annual Energy Production.
- Provide a site-adjusted power curve. Each curve should list the elevation, temperature and air density used.
- Identify the assumptions for losses in the calculation of projected annual energy production, including each element in the calculation of losses.

### **Landfill gas**

- Provide a gas production forecast for each landfill. Provide a table that shows the annual, monthly and hourly projection of gas flow and energy export to the Buyer from each landfill.
- Provide supporting data that illustrates the expected generation from each landfill based on the projected gas production.
- Describe any contingencies or constraints that could affect the availability of fuel or the energy resource for the project and any contingency plans for meeting projected generation levels.

### **Biomass**

- Provide a resource assessment of available biomass fuel for the proposed project and its proximity to the project site.
- Provide a plan for obtaining the biomass fuel, including a transportation plan.
- Provide any contracts or letters of intent to acquire and transport the biomass fuel.
- Demonstrate that projected energy output for the project over the term of the contract is consistent with the energy supply available.

- Describe any contingencies or constraints that could affect the availability of fuel or the energy resource for the project and any contingency plans for meeting projected generation levels

### **Solar**

- Provide an assessment of the available solar incidence or resource and the projected production profile for the project. Identify anticipated generation by hour and month for at least a one-year period and describe any trends in generation capability over time (i.e. annual decline rate of expected output).
- Describe the methodology used to generate the projected generation and describe the in-house or consulting expertise used to arrive at the generation estimates.

### **Hydro**

- Describe the project characteristics in terms of water flow (on a monthly basis) and head, and state the assumptions regarding seasonal variations, and a conversion of such flow into kilowatts and kilowatt-hours. Provide monthly flow duration curves based upon daily stream flow records.
- Identify if the project is run-of-river or has storage capability.
- If the project is an expansion of an existing project, (a) provide energy output estimates with and without the proposed expansion and (b) specify the quantity of energy that would qualify as new renewable generation and the actions proposed to be taken by the Bidder to accomplish such qualification.

### **Other**

- Identification of fuel supply (if applicable) and availability.
- Does the bidder have any firm commitments from fuel suppliers? If so, please provide a copy of any agreements with confidential information redacted if necessary.

## **7. Financing Plan**

To demonstrate the financial viability of their proposed project, Bidders must provide the following information:

- 7.1. Provide a description of the corporate structure of the Bidder's organization from a financial and legal perspective, including any members, general and limited partners or shareholders, involvement of any subsidiaries or affiliates supporting the project, and the providers of equity and debt financing during project development
- 7.2. Provide the credit ratings from Standard & Poor's and Moody's (the senior unsecured long term debt rating or if not available, the corporate rating) of the Bidder or any affiliated entity which Bidder proposes would provide a guarantee in support of Bidder.
- 7.3. Provide a description of the financing plan for the project, including development costs, construction costs and term financing. The financing plan should address the following:
  - Who will finance the project and how it will be financed
  - The project's projected financial structure
  - Expected sources of debt and equity financing
  - Estimated construction costs
  - The projected capital structure
  - Describe any agreements entered into with respect to equity ownership in the proposed project and any other financing arrangement.
  - Material conditions precedent to closing financing
- 7.4. Provide documentation illustrating the experience of the project sponsor in securing financing for projects of similar size and technology. For each project previously financed provide the following information
  - Project name and location
  - Project type and size
  - Date of construction and permanent financing
  - Form of debt and equity financing
  - Parties providing financing for these projects
- 7.5. Provide evidence that the Bidder has the financial resources and financial strength to complete and operate the project as planned.
- 7.6. Provide copies of the most recent audited financial statement or annual report for each Bidder, including all parents of the Bidder. Also, list the current credit rating from Standard & Poor's and Moody's for the sponsor, affiliates, partners, and credit support provider.

- 7.7. The Bidder should demonstrate its ability (and/or the ability of its credit support provider) to provide the required security, including its plan for doing so.
- 7.8. Provide a description of any current credit issues regarding the Bidder or affiliate entities raised by rating agencies, banks, or accounting firms.
- 7.9. Describe the role of the federal Production Tax Credit or Investment Tax Credit (or other incentives) on the viability of the project.
- 7.10. Bidders must disclose any pending or threatened litigation or investigation related to projects owned or managed by them or any of their affiliates in the United States
- 7.11. As part of the evaluation process, National Grid reserves the right to request Bidders whose bids are being considered in the second evaluation stage or thereafter to provide the pro forma income and cash flow statements for the term of the proposed Power Purchase Agreement (including revenue and cost data by major categories, debt service, depreciation expense and other relevant information).

## **8. Interconnection and Transmission**

The generating facility must be interconnected with the facilities of the Block Island Power Company in the Town of New Shoreham, Rhode Island. The bidder must also include provisions for a transmission or distribution class, submarine and underground cable system (Cable System) linking the facilities of Block Island Power to those of National Grid on the Rhode Island mainland. This requirement should be met by submitting a separate proposal for the Cable System, which will be attached to the proposal for the eligible renewable facility. In either case, the project developer must coordinate design of the interconnection facilities and transmission facilities with Block Island Power and National Grid.

Response to this RFP cannot be presumed to accomplish the necessary transmission planning, engineering and operations coordination with National Grid and ISO New England, Inc. Prior to establishing contact with National Grid and with Block Island Power to develop the design of the required electrical facilities, the project developer must have a valid interconnection request with ISO New England, Inc. (ISO-NE) See:

[http://www.iso-ne.com/genrtion\\_resrcs/nwgen\\_inter/smgcn\\_20/index.html](http://www.iso-ne.com/genrtion_resrcs/nwgen_inter/smgcn_20/index.html).

For more information on generator interconnection procedures, including a copy of the standard interconnection agreement, See:

[http://www.iso-ne.com/regulatory/tariff/sect\\_2/sch22/index.html](http://www.iso-ne.com/regulatory/tariff/sect_2/sch22/index.html)

In addition, Block Island Power Company must have a valid request for local (network) transmission service on file with National Grid and ISO-NE. See:

[http://www.nationalgridus.com/oasis/ni\\_transmission\\_service.asp](http://www.nationalgridus.com/oasis/ni_transmission_service.asp)

In addition to the data required by the interconnection request, the following items are needed to evaluate the transmission cable:

- 8.1. Provide a geographic diagram of the interconnection and transmission facilities which clearly identifies the location of the site, and the proposed interconnection points of the generation facility and the Cable System.
- 8.2. Identify any rights-of-way or easements required for the interconnecting facilities and the Cable System. Describe the status of rights-of-way or easement acquisition, and the plan for securing them, including the proposed timeline. Include these plans and the timeline in the overall project timeline.
- 8.3. Describe the status of any interconnection studies already underway with ISONE, National Grid, and Block Island Power. Provide a copy of any studies completed to date.

- 8.4. Provide a copy of an electrical one-line diagram showing the interconnection facilities, the proposed Cable System, and the relevant facilities of Block Island Power and National Grid.
- 8.5. Specify and describe the interconnection and Cable System facilities that are required, including system control and protection. For all cable facilities, both interconnection and the transmission, include cable physical and electrical characteristics, proposed method of installation and cover, any transitions between cable types, splicing expectations, and termination plans at each point of interconnection. Also provide a detailed basis for cable ratings. Include the schedule for construction of these facilities in the overall construction schedule for the project.
- 8.6. Provide a complete description of the Cable System facilities, a schedule for permits, easements and other approvals, a construction schedule, financing plan, environmental impact assessment, and pricing in a separate proposal as part of the response to this RFP. The proposal content requirements are listed in Appendix C.

## **9. Environmental Assessment and Permit Acquisition Plan**

This section addresses environmental and other regulatory issues associated with project development and operations.

- 9.1. Provide a list of all the permits, licenses, and environmental assessments and/or environmental impact statements required. If a bidder has secured any permit or has applied for a permit, please identify in the response.
  - Provide a list of all Federal and state permits, licenses, and environmental assessments and/or environmental impact statements required to construct and operate the project.
  - Identify the governmental agencies which will issue or approve the required permits, licenses, and environmental assessments and/or environmental impact statements
- 9.2. Provide the anticipated timeline for seeking and receiving the required permits and licenses, and approvals of environmental assessments and/or environmental impact statements, using the execution date of the power purchase agreement as a reference point. Include a project approval assessment which describes, in narrative form, each segment of the process, the required permit or approval, and the basis for projection of success by the milestone date. All requirements should be included on the project schedule in Section 12.
- 9.3. Provide a preliminary environmental assessment of the site and project, including both construction and operation. The Bidder should identify environmental impacts associated with the proposed project, any potential impediments to development, and its plan to mitigate such impacts or impediments. The analysis should address each of the major environmental areas presented below:
  - Site development
  - Transportation infrastructure
  - Air quality
  - Water resources/water quality
  - Biological Resources (aquatic and terrestrial)
  - Land use (including previous site uses)
  - Cultural resources
  - Noise level
  - Aesthetic/visual
  - Transmission infrastructure
  - Fuel supply access
- 9.4. Provide documentation identifying the level of public support for the project, including letters from public officials, newspaper articles, etc. If the project sponsor has not yet initiated community outreach for the project, please provide a plan for community outreach activities

## **10. Engineering and Technology; Commercial Access to Equipment; Contribution to Employment in Rhode Island**

This section includes questions pertinent to the engineering design and project technology. Bidders should provide information about the specific technology or equipment, including the service record of the technology and equipment.

- 10.1. Provide a reasonable but preliminary engineering plan which includes the following information:
  - Type of generation technology
  - If wind turbines, provide the turbine make and model, hub height, rotor diameter, and power curve, and describe the tower/foundation technology in detail.
  - Major equipment and manufacturer of the equipment
  - Status of acquisition of the equipment
  - Indicate whether the bidder has a contract for the equipment. If not, describe bidder's plan for securing equipment and the status of any pertinent commercial arrangements.
  - Equipment vendors selected/considered
  - History of equipment operations
  - If the equipment manufacturer has not yet been selected, identify in the equipment procurement strategy the factors under consideration for selecting the preferred equipment, and provide a list of the key equipment suppliers under consideration.
- 10.2. Identify the same or similar equipment by the same manufacturer that are presently in commercial operations including the number installed, installed capacity and estimated generation for the past three years.
- 10.3. For less mature technologies provide evidence (including identifying specific applications) that the technology to be employed for energy production is ready for transfer to the design and construction phases. Also, address how the status of the technology is being considered in the financial plan for the project.
- 10.4. Provide an estimate of the number of jobs to be created directly during project development, construction and operations and a general description of the types of jobs created, estimated annual compensation, and the employer(s) for such jobs. How many of these jobs will likely be filled by Rhode Island residents? Please treat the development, construction, and operation periods separately in your response. Provide this same information with respect to jobs that would be indirectly created as a result of the proposed project.

## **11. Operation and Maintenance**

- 11.1. Provide an operation and maintenance plan for the project that demonstrates the long term operational viability of the proposed project. The plan should include a discussion of the staffing levels proposed for the project, the expected role of the project sponsor or outside contractor, scheduling of major maintenance activity, and the plan for testing equipment.
- 11.2. Describe in detail the proposed O&M funding mechanism and funding levels to support planned and unplanned O&M requirements.
- 11.3. Describe the terms (or expected terms) of the warranties and/or guarantees on major equipment that the bidder is seeking. Clearly note where relevant whether the warranty goes into effect upon delivery of an item to the purchaser or upon the entry into service.
- 11.4. Describe the status of the project sponsor in securing any operation and maintenance agreements or contracts. Include a discussion of the sponsors plan for securing a medium-term or long-term O&M contract, including the expected provider of O&M services
- 11.5. Provide examples of the Bidder's experience with O&M services for similar projects.

## **12. Project Schedule**

Bidders are required to provide a complete critical path schedule for the project from the notice of selection of the project for contract consideration to the start of commercial operations. For each project element, list the start and end date.

Identify the elements on the critical path. The schedule should include, as a minimum, facility contracts, start of construction, construction schedule, siting, environmental permitting (anticipated submittal and approval), fuel supply, financing commitment and closing, engineering and procurement, local permits and any other requirements that could influence the project schedule, and the Commercial Operation Date.

### **13. Project Management/Experience**

Bidders are required to demonstrate project experience and management capability to successfully develop and operate the project proposed. National Grid is seeking project teams which have demonstrated success in projects of similar type, size and technology and can demonstrate an ability to effectively work together to bring the project to commercial operation in a timely fashion.

- 13.1. Provide an organizational chart for the project that lists the project participants and identifies the corporate structure, including general and limited partners.
- 13.2. For each of the project participants (including the Bidder, partners, A/E firm, EPC contractor and proposed contractors), provide statements that list the specific experience of the firm in developing, financing, owning, and operating generating facilities, other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects.
- 13.3. Provide a management chart which lists the key personnel dedicated to this project and provide biographies. Indicate term of employment contracts, and whether personnel have an equity interest in bidder.
- 13.4. Provide a listing of all projects the project sponsor has successfully developed or that are currently under construction. Provide the following information as part of the response:
  - Name of the project
  - Location of the project
  - Project type, size and technology
  - Commercial operation date
  - Estimated and actual capacity factor of the unit for the past three years
  - Availability factor of the unit for the past three years
  - References, including the names and current addresses and telephone numbers of individuals to contact for each reference.
- 13.5. With regard to the Seller's project team, identify and describe the following:
  - Construction Period Lender, if any
  - Operating Period Lender and/or Tax Equity Provider, as applicable
  - Financial Advisor
  - Environmental Consultant
  - Owner's Engineer
  - EPC Contractor (if selected)
  - Transmission Consultant
  - Legal Counsel

## Appendix C

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### Proposal for Cable System

**1.0 Project Summary and Contact Information**

Provide a brief summary of the project, and contact information, if different for this portion of the project.

**2.0 Pricing Information**

Pricing information specific to the Cable System must be provided. If the Cable System is to be treated as part of the power supply cost, revisions to the pricing in Section 4 of the Response Package must be presented here, to include the incremental cost of the Cable System, which must be clearly identified.

**3.0 Financing Plan**

The information in Section 7 of the Response package must be presented here, with a specific financing plan for the cable, or a description of how financing of the Cable System will be handled in the overall plan.

**4.0 Environmental Assessment and Permit Acquisition Plan**

The information required in Section 9 of the Response Package must be presented here, with a specific focus on the Cable System.

**5.0 Engineering and Technology**

Provide the information requested in Section 8 of the response package, specifically focusing on the Cable System project.

**6.0 Operations and Maintenance Plan**

Describe plans for operation and maintenance of the Cable System.

**7.0 Project Schedule**

Provide a complete project schedule for the Cable System.

**8.0 Project Management and Experience**

Provide the information requested in Section 13 of the Response Package, with a specific focus on the Cable System project.

**EXECUTION COPY**

**JOINT DEVELOPMENT AGREEMENT**  
**BETWEEN**  
**THE STATE OF RHODE ISLAND**  
**AND**  
**DEEPWATER WIND RHODE ISLAND, LLC**

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**Joint Development Agreement  
between the State of Rhode Island  
and Deepwater Wind Rhode Island, LLC**

This Joint Development Agreement (“**Agreement**”) between the State of Rhode Island and the Rhode Island Department of Administration, (collectively, “**State**”) and Deepwater Wind Rhode Island, LLC (“**DWW**” and together, the “**Parties**”) sets forth the rights and obligations of the Parties in connection with the Project and certain Economic Development Activities, as defined respectively in Section I.T. herein and Section I.G. herein.

**RECITALS**

WHEREAS: The State through its Office of Energy Resources, in January, 2006, established its RIWINDS program with the goal of producing approximately 1.32 million MW hours per year to meet 15% of the State’s renewable electric power requirements;

WHEREAS: The Office of Energy Resources commissioned a study, “RIWINDS Phase I Wind Energy Siting Study” (“RIWINDS Study”), to assess the feasibility of meeting RIWINDS program objectives from wind resources in Rhode Island;

WHEREAS: The RIWINDS Study concluded that 95% of Rhode Island’s wind energy potential was located in areas offshore of Rhode Island;

WHEREAS: As a result of the RIWINDS Study the Office of Energy Resources convened stakeholder groups around the State to assess the acceptability to the Rhode Island community of the development of commercial grade windfarms in offshore waters;

WHEREAS: As a result of the RIWINDS Study and the stakeholder meetings in connection therewith, the State by its Office of Energy Resources and Department of Administration issued a Request for Proposals for its Rhode Island Energy Independence I Project (“RFP #7067847” or “RFP”) on April 3, 2008;

WHEREAS: The RFP solicited proposals from the national and international wind energy development community for the development of a commercial grade wind farm in waters of the State or in waters of the United States offshore of the State or in a combination of State and national waters and proposals for Economic Development Activities in the State related to the development and operation of offshore wind farms;

WHEREAS: The State received seven proposals in response to the RFP, opened the proposals on May 30, 2008 and proceeded to evaluate the proposals utilizing personnel of the Office of Energy Resources, the Rhode Island Economic Development Corporation and the Department of Administration and consultants with expertise in offshore wind energy technologies, project economics and power markets in New England;

WHEREAS: On September 25, 2008 the State announced that DWW had been selected as the preferred developer and on October 3, 2008 the Department of Administration by letter

formally notified DWW that it had been selected as the preferred developer for the Rhode Island Energy Independence I Project and that the State would enter into negotiations with DWW for a development agreement; and

WHEREAS: As a result of the negotiations between the State and its representatives from the Office of Energy Resources and the Rhode Island Economic Development Corporation and representatives of DWW, the Parties enter into this JDA.

## I. DEFINITIONS

The following terms when used in this JDA shall have their corresponding meanings:

A. Acceptable Power and REC Offtake Arrangements – Agreements or arrangements pursuant to which the electrical output of the Project (or any Phase of the Project, as applicable), and RECs are marketed to others such that the Revenue Stream from such agreements or arrangements is sufficient to enable DWW to obtain adequate debt and equity financing for the Project or any Phase of the Project, as applicable, on reasonable terms. Any such Acceptable Power and REC Offtake Arrangements shall be structured so that the electric energy generated by Phase I and Phase II of the Project shall be attributable to and meet approximately 1.32 million megawatt hours of the electric energy requirements of retail consumers of electric energy in Rhode Island.

B. Affiliate - means any person that directly or indirectly controls, or is controlled by, or is under common control with, DWW, and “control” as used herein shall mean possession, directly or indirectly, of the powers to direct or cause the direction of the management policies of DWW, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

C. Application – a filing or other writing that seeks approval of an activity related to the development of the Project from Federal Agencies or State Agencies and which filing or writing DWW reasonably believes in good faith will be accepted for filing by the relevant Federal or State Agency.

D. Block Island Power Company (“BIPCO”) – The electric utility or its successor entity that provides electric service to retail customers on Block Island, Rhode Island.

E. Certificate of Critical Economic Concern – The certificate that, upon application by DWW, may be issued by EDC pursuant to RIGL, Title 42, Chapter 117 and rules and regulations issued pursuant thereto by EDC and that will assist DWW in expediting the permitting and approval processes of State Agencies for the Project and Economic Development Activities to be undertaken pursuant to this JDA.

F. The Coastal Resources Management Council (“CRMC”) – The Agency authorized and empowered by the State as its Coastal Zone Management Agency and that shall

undertake the development of the Ocean/Offshore Renewable Energy Special Area Management Plan (SAMP).

**G. Confidential Information** – Trade secrets, commercial information or financial information of DWW of a privileged or confidential nature as defined in the Rhode Island Access to Public Records Act, R.I.G.L. §38 et seq.

**H. Discontinued** - means, with respect to either Phase I or Phase II, as applicable, that the development of such Phase by DWW has been discontinued pursuant to Section VII.B.C, or, with respect to an Economic Development Activity, that such Economic Development Activity by DWW has been discontinued pursuant to Section IX.B.

**I. Rhode Island Department of Administration** – The State agency authorized, among its other functions, to designate the preferred developer pursuant to Section IV of this JDA.

**J. Economic Development Activities** -- The economic development initiatives, activities and investments of DWW as set forth in Section VIII of this JDA.

**K. Federal Agencies** – Agencies of the United States Government including but not limited to the Minerals Management Service of the Department of Interior (“MMS”), the Army Corps of Engineers (“ACOE”), the United States Coast Guard (“USCG”), the National Marine Fisheries Service (“NMFS”), the United States Fish and Wildlife Service (“USFWS”), National Oceanic and Atmospheric Administration (“NOAA”), the Environmental Protection Agency (“EPA”) and the Federal Energy Regulatory Commission that may have to be consulted or from whom permits or approvals may have to be obtained in connection with the development of the Project.

**L. Fully Developed Project** – The completion of all development activities in connection with Phase I or Phase II of the Project and the Project has secured debt and equity financing for the development, engineering, construction, startup and operation of the respective Phases of the Project.

**M. The Independent System Operator for New England (“ISO-NE”)** – The organization authorized by the Federal Energy Regulatory Commission to establish and administer transmission tariffs and wholesale electric power markets in the New England balancing area.

**N. Intellectual Property** – Trade secrets, confidential knowledge or information containing proprietary technologies, processes, financial arrangements, engineering or design techniques or processes owned by DWW or licensed to DWW by a third party.

**O. Job** - A full time employee, which, for the purposes of this Agreement, shall mean at least 1500 hours of employment of an individual in a year by DWW, or any Affiliate, employed in Rhode Island, which hours of employment shall include vacation time, sick time, disability time, personal time or other time for which DWW or its Affiliate must pay the

employee plus benefits typical of those services provided by the employee for DWW or its Affiliate. For purposes of this Agreement, "Job" shall include, without limitation, (a) employees of service providers for outsourcing and (b) temporary employees retained through an employment agency in Rhode Island meeting the same criteria for the benefit of DWW or its Affiliate as if that employee were employed directly by DWW. For employees who are not paid on an hourly basis, each full-time salaried employee employed for a full year shall be deemed to work at least 1500 hours per year. The hours attributed to salaried employees shall be pro-rated for any employees who are employed for less than a full year.

**P. Milestone Date** – The date by which a Milestone Event is scheduled to occur as set forth in Section VII. and Section IX of this JDA.

**Q. Milestone Event** – An event the occurrence of which is necessary for the Parties to realize the purpose and objectives of this JDA as set forth in Section VII and Section IX of this JDA.

**R. The New England Generation Information System ("NEGIS")** – The system established to track and report the generating characteristics of electric generating resources located in New England, including those generating characteristics that create renewable energy certificates due to the renewable energy generating characteristics of generating resources.

**S. Office of Energy Resources ("OER")** – The agency of the State charged with the responsibility of overseeing the development of the Project and implementing this JDA.

**T. Phase I of the Project ("Phase I")** – A wind power project to be located in state waters having approximately twenty (20) MWs of nameplate capacity and interconnected to both the electric power systems of BIPCO and mainland Rhode Island.

**U. Phase II of the Project ("Phase II")** – A wind power project to be located within the SAMP area in United States waters off of the coast of Rhode Island having approximately three hundred eighty five (385) MWs of nameplate capacity and interconnected to the electric power systems of mainland Rhode Island, and which, in the event Phase I is Discontinued, is also interconnected to the electric power system of BIPCO.

**V. Power Purchase Agreement ("PPA")** – An agreement having a term not less than 15 years pursuant to which the electrical output of the Project (or any Phase of the Project, as applicable) and RECs are sold to a creditworthy purchaser such that the Revenue Stream(s) to the Project from such an agreement or combination of PPAs enables DWW to obtain adequate debt and equity financing for the Project or any Phase of the Project, as applicable, on reasonable terms. Any such PPA shall be structured so that the electric energy generated by Phase I and Phase II of the Project shall be attributable to and meet approximately 1.32 million megawatt hours of the electric energy requirements of retail consumers of electric energy in Rhode Island.

**W. Project** – The development of offshore wind power facilities in Rhode Island state waters and adjacent waters of the United States within the area covered by the SAMP consisting of Phase I and Phase II and having the capability of generating an estimated one

million three hundred twenty thousand (1.32 million) megawatt hours of electricity per year to be delivered into the electric power systems of Rhode Island.

**X. Quonset Development Corporation (“ODC”)** – Quonset Development Corporation: a public corporation of the State, having a distinct legal existence from the State and not constituting a department of State government, which is a governmental agency, and a subsidiary of the Rhode Island Economic Development Corporation, that is charged and empowered with the authority to manage and administer the Quonset Business Park, located in North Kingstown, Rhode Island.

**Y. Renewable Energy Certificates (“RECs”)** – All certificates, electronic records or other forms of records reflecting or embodying the environmental attributes of the Project that are allocated, assigned or otherwise awarded or certified by the NEGIS or successor entity and any other allowances, awards or certifications that have monetary value due to the Project’s environmental attributes and may be available to the Project from time to time.

**Z. Revenue Stream** – The value in dollars of revenue or tax savings derived by the Project or its owners from the sales of electric power (energy, capacity and ancillary services), RECs, state or federal tax credits and incentives. The Revenue Stream shall be assessed on an annual basis over a period coterminous with the term in years of any PPA or Acceptable Power and REC Offtake Arrangements and over period sufficient to assess the acceptability of the Revenue Stream derived from the Project to potential financings.

**AA. Rhode Island Economic Development Corporation (“EDC”)** – Rhode Island Economic Development Corporation: a public corporation of the State, having a distinct legal existence from the State and not constituting a department of State government, which is a governmental agency and public instrumentality empowered with certain functions as the State’s lead agency for economic development, to promote and encourage the development of new and existing industry, business, commerce, agriculture, tourism, and recreational facilities in the State which will promote economic development in the State.

**BB. Special Area Management Plan (“SAMP”)** – The “Ocean/Offshore Renewable Energy Special Area Management Plan” to be conducted under the supervision of the CRMC, the purpose and objectives of which are to (1) streamline cumbersome federal and state permitting processes and establish a more cost-effective permitting environment for investors; (2) promote a balanced approach to considering the development and protection of area-based resources; (3) complete the necessary studies to yield the most accurate and current ocean-based scientific data to build knowledge critical for supporting the permitting process; and (4) foster a well-informed and committed public constituency.

**CC. State, Regional and Local Agencies and Instrumentalities (“State Agencies”)** – With the exception of the CRMC, agencies and instrumentalities of the State or regional or local political subdivisions thereof having regulatory or consultative authority with respect to the Project and the Economic Development Activities and including, but not limited to, the Rhode Island Department of Environmental Management, the Rhode Island Public Utilities Commission, the Rhode Island State Historic Preservation Office, the Rhode Island Energy

Facility Siting Board and towns and counties that may have to be consulted or from whom permits or approvals may have to be obtained in connection with the development of the Project or the Economic Development Activities. The CRMC, in connection with the Project, has a special function to prepare the SAMP pursuant to its unique authorization under state law and pursuant to Section V of this JDA.

**DD. Transmission Provider** – National Grid, Narragansett Electric Company, BIPCO, the successor entities thereto, or any other entity authorized to provide electric transmission service into, within and out of Rhode Island pursuant to tariffs approved by the Federal Energy Regulatory Commission and administered by ISO-NE or tariffs and regulations authorized and promulgated by the Rhode Island Public Utilities Commission.

**EE. Work Product** - all inventions, improvements, copyrightable material, plans, analyses, studies, reports, materials, surveys, assessments, financial projections, market information, wind studies, data, turbine performance and related information and any other intellectual property, trade secrets, designs and processes or any other work product developed, produced or commissioned by DWW with respect to the Project.

## **II. GENERAL OBLIGATIONS**

**A. DWW's Obligation.** DWW shall utilize good industry and engineering practice and commercially reasonable efforts to complete either Phase I or Phase II or both Phases of a Fully Developed Project, to commence construction of and to operate either Phase I or Phase II or both Phases of the Project, and to undertake the Economic Development Activities prescribed by Section VIII of this JDA.

**B. Specified Activities of DWW.** Consistent with the standards under Section II.A. of this JDA, DWW shall:

1. Obtain all necessary permits and approvals from Federal Agencies and State Agencies;
2. Execute one or more PPAs or enter into Acceptable Power and REC Offtake Arrangements for the sale, in aggregate, of all of the electricity generated by the Project and all associated RECs attributable to the Project. The Parties acknowledge and agree that any such PPA, PPAs or Acceptable Power and REC Offtake Arrangements shall reflect siting, engineering or environmental information collected during the permitting process and shall further reflect commercial conditions in the offshore wind industry.
3. Secure, by way of ownership or lease, suitable and adequate real property within Rhode Island for the receipt, staging, assembly, and construction of the components comprising the Project and the delivery of such components to the Project sites;

4. Secure suitable and adequate state and/or federal leases for the Phase I and Phase II Project sites and suitable and adequate state and/or federal leases and/or rights of way to transmit the electric power generated into the electric systems of the Transmission Provider(s);

5. To the extent services, equipment, materials and facilities can be procured from Rhode Island businesses and vendors at commercially reasonable terms, procure such services, equipment, materials and facilities from Rhode Island businesses and vendors in the development of Phase I;

6. Procure technology licenses, wind turbines and related equipment;

7. Obtain Federal Agency, State Agency, interconnection approvals and agreements for the electric power generated by the Project and arrange with ISO-NE and the Transmission Providers for transmission of the electric power produced by the Project into the Rhode Island electric power system and from Block Island to the electric power systems of the Transmission Providers on mainland Rhode Island.;

8. Execute an engineering, procurement and construction contract;

9. Secure adequate debt and equity financing for the development, engineering, construction, startup, and operation of the Project; and

10. Undertake, upon commercially reasonable terms and conditions, the performance of its obligations with respect to the Economic Development Activities prescribed by Section VIII of this JDA.

**C. State's Obligations.** The State through its OER and EDC shall make all reasonable efforts to assist DWW to complete a Fully Developed Project for Phase I and II and to achieve the Economic Development Activities as set forth in Section VIII of this JDA. The OER and EDC shall, to the extent that it is lawful and within their authority to procure or influence any outcome relevant thereto, assist among other matters relating to the development of the Project and Economic Development Activities, in (i) expediting permitting and approvals during all phases of the Project; and (ii) assisting DWW in securing one or more PPAs, or Acceptable Power and REC Offtake Arrangements, as applicable, including taking appropriate administrative, judicial, and legislative actions reasonably requested by DWW to secure such PPA or PPAs, or Acceptable Power and REC Offtake Arrangements, as applicable.

**D. Certificate of Critical Economic Concern.** DWW, at its option, may submit to the EDC a completed application for a Certificate of Critical Economic Concern for the Project pursuant to R.I.G.L. Title 42, Chapter 117, and the rules and regulations adopted pursuant thereto by the EDC. In the event DWW submits an application for a Certificate of Critical Economic Concern for the Project to the EDC, the State shall utilize its reasonable best efforts to facilitate the prompt and efficient review of DWW's application for such a Certificate. Once a Certificate of Critical Economic Concern for the Project has been issued to DWW, the State shall, for so

long as this JDA is in effect, utilize its reasonable best efforts to facilitate the renewal of such Certificate upon the expiry thereof.

**E. DWW's Obligation with Respect to Other Incentives.** DWW will not seek through the Rhode Island General Assembly any additional or new tax incentives or state-paid subsidies for DWW's obligations under this Agreement or for the Project. Notwithstanding the foregoing, however, DWW may avail itself of any tax or financial provisions currently existing under Rhode Island law and DWW may avail itself of any tax or financial provisions under Rhode Island law that become available after the date hereof that are of general applicability to entities doing business in Rhode Island or to other entities in the energy production and transmission industry. Furthermore, any restrictions with respect to DWW's rights to economic development or tax incentives shall have no application to legislation or other governmental action related to any PPA or any Acceptable Power and REC Offtake Arrangements that is otherwise expressly contemplated by this Agreement.

### **III. PROJECT MANAGEMENT**

**A. Periodic Project Updates.** DWW shall provide the State with periodic project updates on development activities related to the Project. The Parties shall exchange information concerning events and conditions affecting the development of the Project in a timely manner.

**B. Project Milestones, Relevant Programs.**  
The Parties acknowledge and agree that the accomplishment of the milestones described and set forth in Section VII. of this JDA and Section IX. of this JDA may be delayed. Pursuant to the procedures set forth in Section VII.B. and Section IX.B. of this JDA, the Parties shall meet and endeavor to agree upon new milestone schedules.

DWW, in addition to exchanging information and permitting the State's representatives to monitor development of the Project, shall provide for comment by the State's representatives DWW's proposed stakeholder and community outreach program. DWW shall also advise state representatives of its risk management, health and safety, and quality assurance and control programs when such programs are to be implemented by DWW.

**C. DWW Management Authority.** Nothing in this JDA shall restrict DWW's authority to manage and direct the Project or make any decision regarding the development, engineering, construction, startup or operation of the Project subject to its obligations under this JDA.

### **IV. PREFERRED DEVELOPER**

The State by and through its Department of Administration shall designate DWW as the State's preferred developer of offshore wind power within the SAMP. Consistent with this designation, while this JDA is in effect and, until DWW has completed a Fully Developed Project for Phase II, the State through the OER and Department of Administration shall object in any appropriate state or federal forum to any offshore wind power project or any electric power transmission facility, whether within or outside the SAMP, that would interfere with the Project.

In further support of this designation, the State shall use all reasonable efforts within its lawful authority (x) to cause CRMC to grant to DWW upon DWW acquiring all necessary permits and approvals for Phase I and at commercially reasonable terms the right to use the submerged lands of the State in support of Phase I and (y) to cause CRMC not to permit any use of those submerged lands that interfere with the Project.

**V. THE SAMP**

**A. The CRMC to Adopt the SAMP.** The CRMC shall adopt the SAMP.

**B. State Cooperation.** The CRMC shall make all reasonable efforts to expedite the SAMP and to obtain all associated necessary federal, state, and local government permits and approvals. The State shall advocate on behalf of the Project, where appropriate, with Federal Agencies and State Agencies.

**C. SAMP Studies.** DWW hereby agrees that all plans, analyses, studies, reports, materials, surveys, assessments, wind studies and related information or any work product developed, produced or commissioned by the CRMC, any State Representative or URI in connection with the SAMP, other than the Work Product (collectively "SAMP Studies") shall constitute the property of, and shall be owned by, the CRMC. The State grants to DWW a non-exclusive, perpetual license to use the SAMP Studies for any purpose in connection with the Project.

**D. State-Federal Coordination.** The State shall enter into cooperative working relationships with Federal Agencies in connection with the SAMP and the development of the Project.

**E. SAMP Costs.** DWW shall reimburse the State, through the Rhode Island Renewable Energy Fund, for costs reasonably expended by the CRMC in connection with the SAMP during the period August 1, 2008 through July 31, 2010, up to a maximum of \$3.2 million as follows:

1. The Parties shall work together in good faith to negotiate and execute an escrow agreement incorporating the principal terms set forth on Exhibit A within 30 days.

2. Contemporaneously with the execution by the Parties of the escrow agreement referenced in Section V.E.1. above, DWW shall deposit, in accordance with the escrow agreement, the principal amount of \$3.2 million for purposes of reimbursing expenditures by CRMC for the SAMP

3. The obligations of the Parties with respect to the remittance to RIEDC, or the refund to DWW, of all or any portion of the principal amount of \$3.2 million described in this Section V.E., and any interest accrued in respect of such principal amount, shall be governed by the terms of the escrow arrangement described in Section V.E.1 above.

F. **Access to Meteorological Tower.** Provided a meteorological tower is installed by DWW for the purposes of the Project, and subject to (i) the granting of any applicable permits and approvals, (ii) the construction and installation thereof (the timing and location of which shall be determined by DWW), and (iii) the delivery of mutually acceptable indemnity arrangements with respect to damage caused to the meteorological tower and a corresponding satisfactory liability insurance policy DWW agrees to provide to the University of Rhode Island ("**URI**"), for research purposes, use of the meteorological tower installed by DWW for the collection of data with respect to the Project and summary data collected by DWW at such meteorological tower (the scope of which shall be established by DWW and which shall comprise Confidential Information for the purposes of Section X). Such use of the meteorological tower by URI shall be subject to DWW's prior approval and reasonable conditions on the use of such tower and summary data. DWW shall not unreasonably withhold its consent to such use, but may for reasonable commercial reasons deny such use or place appropriate conditions on such use.

## VI. **POWER SALES**

A. **Power Purchase Agreements and Acceptable Power and REC Offtake Arrangements.** The State through its OER shall make all reasonable efforts to assist DWW to secure for each of Phase I and II of the Project one or more PPAs, or Acceptable Power and REC Offtake Arrangements, including taking all appropriate administrative actions and providing appropriate support of legislative efforts to encourage such PPA or PPAs or Acceptable Power and REC Offtake Arrangements, as applicable. DWW shall negotiate the terms of such PPA or PPAs, or Acceptable Power and REC Offtake Arrangements, as applicable, in good faith with any potential counterparty thereto mutually agreed by the Parties.

B. **BIPCO.** DWW shall interconnect Phase I or, if Phase I is Discontinued, Phase II with the electric power system of BIPCO and shall offer BIPCO electricity on commercially reasonable terms. DWW and the State through its OER shall cooperate with and assist in arranging transmission from Block Island to mainland Rhode Island and to Block Island from mainland Rhode Island. DWW and the State through its OER shall endeavor to reduce the costs of any such transmission to a minimum and arrange an equitable sharing of the costs of such transmission among BIPCO, the Project and the relevant Transmission Provider. DWW and the State through its OER shall assist BIPCO in proceedings with ISO-NE and any regulatory proceedings governing such transmission to and from mainland Rhode Island.

## VII. **MILESTONE EVENTS AND MILESTONE DATES FOR PHASES I AND II OF THE PROJECT, PROCEDURES**

A. **Milestones Events and Milestone Dates** – The following are Milestone Events with their corresponding Milestone Dates.

1. Application by DWW for all necessary federal, state and local permits and approvals, including application for a lease or permit to use a selected site within state waters for Phase I: Milestone Date: December 31, 2009.

2. The execution and approval by State or Federal agencies, if necessary, of one or more PPAs or Acceptable Power and REC Offtake Arrangements having Revenue Streams sufficient to support financing for Phase I of the Project: Milestone Date: June 30, 2009.
3. The execution of and approval by State and Federal Agencies, if necessary, of interconnection agreements with BIPCO and the Transmission Provider for Phase I: Milestone Date June 30, 2011.
4. Grant by CRMC to DWW, on commercially reasonable terms, of the right to use the submerged lands of the State in support of Phase I: October 31, 2009.
5. Grant by CRMC to DWW of all necessary permits and approvals for Phase I: July 31, 2010.
6. The completion of a Fully Developed Project for Phase I: Milestone Date: June 30, 2012.
7. Completion and adoption of the SAMP by the CRMC: Milestone Date: July 31, 2010.
8. Promulgation by MMS of rules pertaining to the lease of federal submerged lands for Phase II: June 30, 2009.
9. Application to MMS for the lease of federal submerged lands for Phase II: Milestone Date: within 6 months of the promulgation by MMS of rules pertaining to the lease of federal submerged lands for Phase II.
10. Approval by MMS of DWW's application for the lease of federal submerged lands for Phase II: within 12 months of the submission of such application by DWW.
11. Application for all necessary federal, state and local permits and approvals for Phase II (other than the application to MMS for the lease of submerged lands for Phase II): Milestone Date: within 6 months of the approval by MMS of DWW's application for the lease of federal submerged lands for Phase II.
12. The execution and approval by State and Federal Agencies, if necessary, of one or more PPAs or Acceptable Power and Offtake Arrangements for Phase II of the Project: Milestone Date: June 30, 2010.
13. The execution and approval by State and Federal Agencies, if necessary, of interconnection agreements for Phase II with the Transmission Provider: Milestone Date: December 31, 2011.

14. The completion of a Fully Developed Project for Phase II: Milestone Date: within 3 years of the approval by MMS of DWW's application for the lease of federal submerged lands for Phase II.

**B. Extensions of Milestone Dates**

1. As of the date of the execution of this JDA the Parties acknowledge and agree that the Milestone Dates set forth in Section VII.A above are reasonable estimates of the time periods during which the Milestone Events may be achieved. The Parties also acknowledge and agree that achievement of Milestone Events and their attendant Milestone Date may be delayed due to events or actions by State or Federal agencies, regulatory bodies or legislative or judicial authorities over which neither Party has control. In anticipation of any such delays due to events or actions by State or Federal agencies, regulatory bodies or legislative or judicial authorities beyond the Parties' control, Milestone Dates shall be automatically extended by the period of any such delay. By way of example, if the execution and approval of one or more PPAs or acceptable Power and REC Offtake Arrangements for Phase I (Section VII A.2) is delayed two months the Milestone Date for that Milestone Date shall be shifted by two months to August 31, 2009.
2. The Parties further acknowledge and agree that the time when a Milestone Date is delayed by events or actions by State or Federal agencies, regulatory bodies or legislative or judicial authorities beyond their control, the period of delay may not be readily ascertainable. If such is the case, unless a Party objects to a further delay or delays in the Milestone Date, the Milestone Date shall be extended to accommodate any such delay (an indefinite delay). If a Party objects to an indefinite delay, the Parties shall proceed to utilize the procedures set forth in Section VII.C. below to resolve the objection to an indefinitely extended Milestone Date. A Party that objects to an extended Milestone Date pursuant to this Section VII.B.2 shall notify the other Party of its reasons for objection pursuant to notice provisions set forth in Section XVII.A. of this JDA.

**C. Procedures For Assessing Progress Toward Meeting Milestone Dates, Discontinuation Of Development Of Phase I And/Or Phase II For Failure To Meet Milestone Dates.** Subject to the procedures set forth in Section VII.B. above for the automatic extension of Milestone Dates that are delayed due to events or actions of State or Federal agencies, regulatory bodies or legislative or judicial authorities over which the Parties have no control, the following procedures shall be utilized with respect to Milestone Events and their attendant Milestone Dates:

1. The Parties shall periodically assess progress toward meeting the Milestone Dates set forth in Section VII., 1-14, above. In the event that either Party concludes that a particular Milestone Date cannot reasonably be expected to

be met, the Parties shall use good faith efforts to agree to a delayed Milestone Date or Dates. Upon agreement by the Parties to a delayed Milestone Date or Dates, the agreed upon delayed Milestone Date or Dates shall be substituted for the applicable Milestone Date or Dates set forth in Section VII., 1-14 above.

2. If the Parties conclude that under no circumstances can a Milestone Date or delayed Milestone Date be met for Phase I of the Project, or cannot agree to delay a Milestone Date for Phase I of the Project, upon expiration of the Milestone Date, DWW may discontinue development of Phase I of the Project, provided however, that within a reasonable period of time after DWW has discontinued development of Phase I. Upon Discontinuation of Phase I by DWW, DWW shall have no further obligations, liabilities or responsibilities to the State to develop Phase I under this JDA except for any removal and demobilization obligations set forth in a permit or other contract with a State agency, the obligation to interconnect Phase II with and supply electric power to BIPCO from Phase II, and to meet its obligations for Phase II and to provide the Economic Development Activities as set forth in Section VIII of this JDA.

3. If the Parties conclude that under no circumstances can a Milestone Date or delayed Milestone Date be met for Phase II of the Project, or the Parties cannot agree to delay a Milestone Date for Phase II of the Project, upon expiration of the Milestone Date, DWW may discontinue development of Phase II of the Project, provided however, that within a reasonable period of time after DWW has discontinued development of Phase II. Upon Discontinuation of the development of Phase II, DWW shall have no further obligations, liabilities or responsibilities to the State to develop Phase II under this JDA except for any removal and demobilization obligations set forth in a permit or other contract with a State agency and to meet its obligations for Phase I and to provide Economic Development Activities as set forth in Section VIII of this JDA.

4. In the event that DWW discontinues development of Phase I pursuant to the terms and conditions of this Section VII., the State shall have no further obligations, liabilities or responsibilities to DWW in connection with the development of Phase I, except to cooperate with DWW to enable DWW to meet any removal and demobilization responsibilities it may have in connection with Phase I and to continue to cooperate with and assist DWW in any continuing activities relating to Phase II and the Economic Development Activities.

5. In the event that DWW discontinues development of Phase II pursuant to the terms and conditions of this Section IX., the State shall have no further obligations, liabilities or responsibilities to DWW in connection with the development of Phase II and DWW shall no longer be the Preferred Developer within the SAMP, except that the State shall cooperate with DWW to enable DWW to meet any removal and demobilization responsibilities it may have in connection with Phase I and to continue to cooperate with and assist DWW in any continuing activities relating to Phase I or the Economic Development Activities.

## VIII. ECONOMIC DEVELOPMENT ACTIVITIES

Consistent with the standards under Section II.A. of this JDA, DWW shall undertake the following:

A. **Corporate Manufacturing Headquarters.** DWW and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC shall locate their Corporate Manufacturing Headquarters in Rhode Island consisting of (i) foundation manufacturing, assembly and logistics operations for the Project and (ii) foundation manufacturing operations for offshore wind electricity generation projects of the wholly-owned subsidiaries of DWW and its parent, Deepwater Wind Holdings, LLC located in the northeast United States (defined generally as offshore areas from Delaware to Maine).

B. **Regional Development Headquarters.** DWW shall locate within Rhode Island, either at the Corporate Manufacturing Headquarters described in Subsection A. of this Section VIII. above or at another location within Rhode Island, its Regional Development Headquarters. The Regional Development Headquarters shall house project development managers and administrative personnel who will provide project development and other services for the Project.

C. **Quonset Business Park.** Subject to negotiating mutually agreeable terms with QDC, DWW shall enter into an option or options to lease from QDC land and facilities at the Quonset Business Park in North Kingstown, Rhode Island. Such lease or leases of land and facilities shall be sufficient to enable DWW and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC to establish the Corporate Manufacturing Headquarters and, if DWW so chooses, its Regional Development Headquarters as described respectively in Subsections A. and B. of this Section VIII. above. Upon entering into a lease option or options pursuant to this Subsection C, DWW shall pay to QDC an option price of no less than 10% of the annual cost of leasing the land and facilities of QDC.

D. **Other Rhode Island Operations.** DWW shall contract for the manufacturing or assembly of any required vessel(s) to support the Project from one or more vendors in Rhode Island; and DWW and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC shall encourage any and all component manufacturers for the Project and other offshore wind power projects sponsored by DWW or the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC and located in the northeast United States (defined generally as offshore areas from Delaware to Maine) to locate its operations to Rhode Island. Notwithstanding the foregoing, DWW shall be entitled to utilize a manufacturer, assembler or other provider of vessels to support the Project located outside Rhode Island if such supply of manufacturing, assembly or other product is not reasonably available in Rhode Island.

E. **Project Labor Agreement.** DWW shall cause its vendors to negotiate in good faith a labor agreement for local labor used by DWW in the construction and operation of the Project.

F. **Consultation on Employment Matters.** The Parties acknowledge and agree that when the Corporate Manufacturing Headquarters and Regional Development Headquarters are fully operational, these two facilities will create approximately 800 Jobs. The Parties, commencing on June 30, 2009, shall regularly consult with one another concerning levels of Jobs created at the Corporate Manufacturing Headquarters and Regional Development Headquarters, reasonably expected levels of Jobs to be created and other Jobs or employment related matters.

**IX. MILESTONE EVENTS AND MILESTONE DATES FOR ECONOMIC DEVELOPMENT ACTIVITIES, PROCEDURES**

**A. Milestone Events and Milestone Dates**

The following are the Milestone Events and corresponding Milestone Dates for the Economic Development Activities set forth in Section VIII. of this JDA.

1. Location of Regional Development Headquarters as prescribed in Section VIII, Subsection B, above: Milestone Date: within 120 days of execution by the Parties of this JDA.
2. Execution of lease option for land and facilities at the Quonset Business Park and payment of the option price for such lease option as prescribed by Section VIII.C. above. Milestone Date: within ninety (180) days of the execution of this JDA.

**B. Procedures for Assessing Progress Toward Meeting Milestone Dates, Discontinuation of Economic Development Activities for Failure to Meet Milestone Dates**

1. The Parties shall periodically assess progress toward meeting the Milestone Dates set forth in Section IX., 1-2 above. In the event that the Parties conclude that a particular Milestone Date cannot reasonably be expected to be met, the Parties shall use good faith efforts to agree to a delayed Milestone Date or Dates. The agreed upon delayed Milestone Date shall be substituted for the applicable Milestone Date or Dates set forth in Section IX., 1-2 above.
2. If the Parties conclude that under no circumstances can a Milestone Date or delayed Milestone Date be met for an Economic Development Activity, or cannot agree to delay a Milestone Date for an Economic Development Activity, upon expiration of the Milestone Date, DWW may discontinue the Economic Development Activity relating to the Milestone Date in question, provided however, that in the event DWW discontinues the particular Economic Development Activity, DWW shall not be relieved of its obligations to pursue development of Phase I or Phase II of the Project as prescribed by this JDA or other Economic Development Activities prescribed by Section VIII. of this JDA.
3. In the event that DWW discontinues an Economic Development Activity or Activities pursuant to Section IX.B.2. above, DWW shall have no further obligation,

liabilities or responsibilities to the State in connection with the Economic Development Activity that was the subject of the Milestone Event and Date(s).

4. In the event that DWW discontinues an Economic Development Activity or Activities pursuant to Section IX.B.2. above, the State shall have no further obligation, liabilities or responsibilities to DWW with respect to the Economic Development Activity that was the subject of the Milestone Event and Date(s).

5. DWW may discontinue the Economic Development Activities in Section VIII in the event both Phase I and Phase II have been Discontinued.

## **X. CONFIDENTIALITY.**

DWW may deliver to the State certain trade secrets, commercial information or financial information of a privileged or confidential nature regarding the Project. Trade secrets, commercial information or financial information of a privileged or confidential nature with respect to the Project, clearly marked as such by DWW, shall be deemed "Confidential Information." Confidential Information shall not be deemed a public record by the State pursuant to the Rhode Island Access To Public Records Act, specifically R.I.G.L. §38-2-2 (4) (B). To the extent permitted by the Rhode Island Access To Public Records Act, the State agrees that all Confidential Information shall be kept confidential by the State and that such Confidential Information shall not be disclosed by the State to any third party without the prior written consent of DWW. Notwithstanding the foregoing, (a) Confidential Information may be disclosed to the extent reasonably necessary in connection with the State's enforcement of its rights under this Agreement; and (b) Confidential Information may be disclosed by the State pursuant to any Court or judicial order or any order or request of any governmental regulatory authority or to comply with the Rhode Island Access To Public Records Act or any other applicable law, rule or regulation. In the event that the State receives a request for public records regarding the Project pursuant to the Rhode Island Access To Public Records Act, or any other applicable law, rule or regulation, prior to making the disclosure of such Confidential Information, the State shall notify DWW of such request and, if reasonably requested by DWW in a timely manner, assist DWW, at DWW's expense, in seeking a protective order to prevent the requested disclosure.

## **XI. TERM, TERMINATION FOR BREACH**

A. **Term.** This JDA shall remain in full force and effect until (i) DWW has commenced construction of both Phase I and Phase II of the Project and has met its obligations to provide the Economic Development Activities pursuant to Section VIII of this JDA (or, if not performed, such obligations of DWW have been excused as a result of the Discontinuation of Phase I, Phase II or any Economic Development Activity); (ii) this JDA is terminated by mutual agreement of the Parties, or (iii) this JDA is terminated pursuant to subsections B, C and D of this Section XI below.

### **B. Termination.**

1. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA and if by no later than three (3) years from the date of execution of this JDA, DWW has not met any of the Milestone Dates or agreed-upon delayed Milestone Dates set forth in Sections VII.B and IX.B above.

2. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA and if by no later than five (5) years from the date of execution of this JDA DWW has met only two (2) or less of the Milestone Dates or agreed-upon Milestone Dates set forth in Section VII.B and IX.B above.

3. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA if DWW does not commence construction of Phase II by December 31, 2016, provided, however, that the provisions of this JDA relating to Phase I and the State's obligations with respect to Phase I shall survive such termination if, at such time, the Milestone Dates with respect to Phase I have been delayed and such Milestone Dates have not elapsed.

4. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA and DWW has not exercised the option agreement between DWW and QDC described in Section VIII.C prior to the expiration thereof.

C. **Failure to Perform.** The non-breaching Party may terminate this JDA as follows:

1. The State may terminate this JDA if DWW has failed to deposit \$3.2 million pursuant to Section V.E.1.

2. Either Party may terminate this JDA in the event of a breach of the Representations made by the other Party as set forth in Section XIV of this JDA.

3. The State may terminate this JDA if DWW is in material breach of any provision of this JDA (except to the extent DWW's non-performance of its obligations hereunder is attributable to the non-performance by the State of its obligations hereunder).

4. DWW may terminate this JDA if the State is in material breach of any provision of this JDA (except to the extent the State's non-performance of its obligations hereunder is attributable to the non-performance by DWW of its obligations hereunder).

5. DWW may terminate this Agreement if the State (i) fails to make any objection required under Section IV; (ii) fails to advocate on behalf of the Project as required under Section V.B, or (iii) contests or objects to the license granted to DWW pursuant to Section V.C.

6. DWW may terminate this Agreement if CRMC (i) takes any action which, in the reasonable opinion of DWW, materially and adversely affects either Phase I or

Phase II of the Project; (ii) does not perform the actions described in Section V.B.; or (iii) contests or objects to the license granted to DWW pursuant to Section V.C.

7. DWW may terminate this Agreement if the Certificate of Critical Economic Concern is not issued in favor of DWW within ninety (90) days of the application therefor or, if such Certificate of Critical Economic Concern is issued to DWW, such Certificate is not renewed within thirty (30) days of the expiry thereof.

**D. Notice of Termination and Opportunity to Cure** In the event that DWW fails to deposit \$3.2 million pursuant to Section V.E.1, upon notice by the State to DWW, DWW shall have ten (10) days from receipt of notice from the State to deposit such funds in accordance with such escrow agreement. In the event DWW fails to make such a deposit within the ten (10) day period prescribed by this paragraph, the state may terminate this JDA.

In the event either Party seeks to terminate this JDA pursuant to Section XI.C.2-7 above, the terminating Party shall provide written notice to the other Party describing the basis for the termination. Unless otherwise agreed to by the Parties, the Party receiving the notice of termination shall have sixty (60) days from receipt of the notice to cure the claimed material breach. If the Party receiving the notice fails to cure the material breach within the cure period, this JDA shall terminate automatically upon the expiration of such sixty (60) day period.

**E. Separability of Obligations Under this JDA.** For the avoidance of doubt, the Parties acknowledge and agree that the development of Phase I, Phase II and the provisions for Economic Development Activities as prescribed in Section VIII are separable. In the absence of a material breach by one of the Parties to this JDA, Phase I and Phase II and the Economic Development Activities are separable to the following extent:

1. The obligations of the Parties with respect to Phase I shall remain in full force and effect even if Phase II is Discontinued pursuant to the provisions of Section VII.B.3. of this JDA;
2. The obligations of the Parties with respect to Phase II shall remain in full force and effect even if Phase I is Discontinued pursuant to the provisions of Section VII.B.2. of this JDA;
3. The obligations of the Parties with respect to the Economic Development Activities as prescribed by Section VIII of this JDA shall remain in full force and effect notwithstanding either Phase I or Phase II have been discontinued; and
4. The obligations of the Parties with respect to Phase I and Phase II shall proceed notwithstanding an Economic Development Activity is Discontinued pursuant to Section IX.B. of this JDA.

**F. Effect of Termination.** Upon termination of this JDA pursuant to this Section XI., all obligations of the Parties to each other shall cease.

## **XII. DAMAGES**

A. **Monetary Damages.** No monetary damages shall be payable by either Party to the other Party under this JDA.

B. **Limitation on Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS JDA, NEITHER THE STATE, ITS OFFICERS, OFFICIALS EMPLOYEES, REPRESENTATIVES, ATTORNEYS OR AGENTS OR DWW, ITS AFFILIATES OR THEIR RESPECTIVE DIRECT OR INDIRECT MEMBERS, SHAREHOLDERS, INVESTORS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, ATTORNEYS OR AGENTS SHALL BE LIABLE, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS JDA OR ANY FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED, WHETHER ARISING FROM SUCH PERSON'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

## **XIII. AMENDMENTS**

This JDA may be amended only in writing and by mutual consent of the Parties. No waiver of any of the rights or obligations of the Parties under this JDA shall be implied by any action or course of conduct of a Party unless such waiver is in writing and agreed to by the Parties.

## **XIV. REPRESENTATIONS OF THE PARTIES**

Each Party represents to the other Party that it has full power and authority to enter into this JDA and to undertake the obligations and responsibilities set forth herein.

## **XV. ASSIGNMENT**

DWW may, upon the consent of the State, which consent shall not unreasonably be withheld, assign this JDA to another entity (it being understood that it shall be unreasonable to withhold consent for the sole reason that the assignment is made to an Affiliate of DWW) Upon any such assignment the assignee shall assume all obligations, liabilities and responsibilities of DWW under this JDA.

## **XVI. GOVERNING LAW AND JURISDICTION**

A. **Governing Law** – The law of the State of Rhode Island, without regard to conflicts of law rules, shall govern the interpretation and performance of the Parties to this JDA.

B. **Jurisdiction** – Any claims or disputes arising under this JDA shall be brought in the Superior Court of Rhode Island, for Providence County and the Parties hereby agree and consent to litigate any such claims or disputes in this forum. The Parties hereby waive any defense of lack of in personam jurisdiction, forum non conveniens or improper venue in any such action or claim.

## **XVII. MISCELLANEOUS**

**A. Notice** – All notice required under this JDA shall be in writing and may be transmitted by electronic mail or other suitable means of delivery to the designated representatives of the Parties.

**B. Designated Representatives** – The designated representatives of the State shall be:

Andrew Dzykewicz, Commissioner  
Rhode Island Office of Energy Resources  
One Capitol Hill  
Fourth Floor Executive Suite  
Providence, RI 02908  
Office:401-574-9123  
Mobile:401-641-1124  
e-mail:Adzykewicz@energy.ri.gov

The designated representative of the DWW shall be:

Christopher Wissemann  
Chief Operating Officer  
36-42 Newark St., Suite 402  
Hoboken, NJ 07030  
Tel: (201) 850-1714

Each Party, upon written notice to the other, may substitute any or all of its designated representatives at any time during the term of this JDA.

**C. Survival of Rights and Obligations** – Sections I, X, XII, XIII, XVI and XVII shall survive the expiration of termination of this JDA.

**D. Entire Agreement**. This Agreement, together with the escrow agreement described in Section V.E.1, constitutes the entire agreement of the Parties relating to the Project and supersedes all prior contracts or agreements with respect to the Project, whether oral or written.

**E. Effect of Waiver or Consent**. A waiver or consent, express or implied, to or of any breach or default by any Party in the performance by that Party of its obligations under this JDA is not a consent or waiver to or of any other breach or default in the performance by that Party of the same or any other obligations of that Party under this JDA. Failure on the part of a Party to complain of any act of any other Party or to declare such Party in default, irrespective of how long that failure continues, does not constitute a waiver by that Party of its rights with respect to that default until the applicable statute-of-limitations period has run.

**F. Counterparts.** This Agreement may be executed in any number of counterparts (including facsimile counterparts), all of which together shall constitute a single instrument.

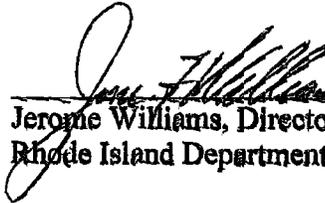
**G. DWW Work Product.** All Work Product shall constitute the property of, and shall be owned by, DWW and that no license to such Work Product is hereby granted to the State or any third party.

[Signature Pages Follow]

**IN WITNESS WHEREOF, the Parties have executed this Agreement as of this 2nd day of January, 2009 set forth above.**



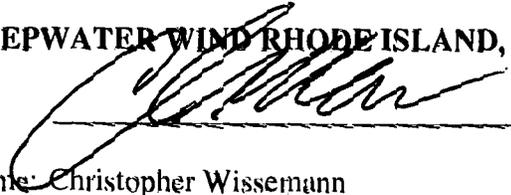
**The Honorable Donald L. Carcieri  
Governor, State of Rhode Island**



**Jerome Williams, Director  
Rhode Island Department of Administration**

**DEEPWATER WIND RHODE ISLAND, LLC**

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "C. Wissemann", is written over a horizontal line. The signature is fluid and cursive.

Name: Christopher Wissemann  
Title: Chief Operating Officer

## EXHIBIT A

### ESCROW AGREEMENT PRINCIPAL TERMS

**PARTIES:** RIEDC  
DWW

- TERMS:**
1. DWW shall deposit \$3.2 million (the "Principal") with the escrow agent upon execution of the escrow agreement.
  2. If DWW and QDC have not executed mutually agreeable lease options for land at the Quonset Business Park (the "Quonset Lease") within 180 days of the execution of the JDA, then, the escrow agent shall release the Principal to DWW within two (2) business days of the receipt of such notice.
  3. If DWW and QDC have executed the Quonset Lease within 180 days of the execution of the JDA, the escrow agent shall release the Principal to RIEDC as provided below.
  4. RIEDC may draw the following amounts from the Principal: (i) upon execution of the Quonset Lease, an amount equal to actual disbursements made from the REF to CRMC/URI for SAMP expenses from August 1, 2008 through the date of execution of the Quonset Lease and (ii) within five (5) days of the end of each calendar month thereafter, an amount equal to actual disbursements made from the REF to CRMC/URI for SAMP expenses pursuant to the SAMP funding agreement between RIEDC and CRMC and budgets associated therewith with respect to the immediately preceding calendar month, such amounts capped at the lesser of (i) \$250,000 per month and (ii) 120% of the monthly budget submitted by URI to CRMC.
  5. RIEDC will not approve any new budgets for year 2 of SAMP without first reviewing same (with notice) to DWW.
  6. The escrow amounts shall be placed into an interest-bearing account, with interest payable to DWW, and the escrow agent shall pay such interest to DWW within five (5) Business Days of such interest being deposited in the escrow account.
  7. If the JDA is terminated for any reason prior to the Principal being expended, the balance, with interest accrued thereupon, shall be returned to DWW.

**ESCROW AGENT:**

Options

- (a) Joint Hinckley, Allen and Adler, Pollack
- (b) Title Company
- (c) EDC

## EXHIBIT 4A

### UNIT PRICING PROPOSAL

1. **Definitions.** Unless otherwise defined in this Exhibit, capitalized terms used in this Exhibit have the meaning given such terms in the Agreement. For purposes of this Exhibit the following terms have the following meanings:
  - a. **“Annual Net Capacity Factor” or “ANCF”** shall mean, for a given Contract Year, the sum of the Energy Delivered and Energy rejected by Buyer pursuant to a Rejected Purchase during such Contract Year at the Delivery Point (in MWh) divided by the product that is (i) the Facility’s rated installed capacity (expressed in MWs) multiplied by (ii) 8,760 hours.
  - b. **“Target Net Capacity Factor Range” or “TNCFR”** shall mean, for a given Contract Year, a range of net capacity factors determined as follows:
    - (i) during each of the first five Contract Years, the TNCFR will be a range of percentages equal to the average P50 CF for the three year period immediately preceding each such Contract Year, plus or minus two percent (2%);
    - (ii) commencing in the sixth Contract Year, the TNCFR will be a range of percentages equal to the average ANCF for the prior three Contract Years, plus or minus two percent (2%); and
    - (iii) **“P50 CF”** shall mean the net capacity factor level for the Facility determined, by an independent wind consultant selected by Seller and consented to by Buyer, to be 50% likely to occur in any given calendar year, as established annually, commencing in 2009. Buyer hereby consents to the selection of AWS Truewind as the independent wind consultant.
2. **Payment.** Buyer shall, in accordance with the terms of the Agreement and this Exhibit, with respect to any month, pay to Seller, in immediately available funds, for each MWh Delivered to Seller during such month, the Bundled Price per MWh set forth on Appendix X hereof with respect to the applicable Contract Year in which such month occurs (as adjusted pursuant to Section 6 of this Exhibit E and Section 7 of this Exhibit E, each if applicable).
3. **O&M Adjustment.** Operation and maintenance costs include the categories of costs and expenses shown on Appendix Y to this Exhibit and similar or related costs incurred in the operation and maintenance of the Facility. Appendix Y to this Exhibit also shows the estimated annual cost to operate and maintain the Facility for each year during the Services Term. Upon Commercial Operation, Appendix Y shall be adjusted, depending on the date of Commercial Operation, to reflect an estimated cost of operation and maintenance for each Contract Year during the Services Term (the **“Annual O&M Estimate”**), which shall be consistent with Appendix Y as set forth in this Exhibit E as of the Agreement Date. At the end of each Contract Year, Seller shall account for the actual operation and maintenance costs for such Contract Year (the **“Annual O&M Cost”**), which shall be conclusive absent manifest error.

On the next billing date following Seller’s calculation of the Annual O&M Cost, Seller shall issue an invoice to Buyer pursuant to Section 5.2(a) of the Agreement that includes a description, in reasonable detail, of the Annual O&M Cost incurred by Seller for the prior Contract Year and any adjustment to reflect the difference between the Annual O&M Estimate and the Annual O&M Cost as follows:

- (i) If the Annual O&M Estimate is equal to the Actual O&M Cost, there is no adjustment.
- (ii) If the Annual O&M Estimate is greater than the Annual O&M Cost, then the adjustment to the applicable invoice will be a deduction calculated as follows:

$$\text{Deduction} = (\text{Annual O\&M Estimate} - \text{Annual O\&M Cost})$$

- (iii) If the Annual O&M Estimate is less than the Annual O&M Cost, then the adjustment to the applicable invoice will be an incremental charge calculated as follows:

$$\text{Incremental Charge} = (\text{Annual O\&M Cost} - \text{Annual O\&M Estimate}) / (1 - T)$$

Where T is equal to the income tax rate applicable to corporations for the applicable year.

- 4. Allocation of MWh Price. The Bundled Price per MWh for each billing period shall be allocated between Energy and RECs as follows:

RECs = The "Alternative Compliance Payment Rate" published by the PUC for the applicable billing period.

Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Bundled Price per MWh less the RECs allocation determined under this Section 4 for the applicable billing period and the \$/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section 7 for that billing period.

- 5. Capacity Factor Adjustment. At the end of each Contract Year, there may be a payment made by Seller to Buyer, or by Buyer to Seller, depending on the ANCF for such Contract Year. Promptly after the end of each Contract Year, Seller shall deliver a notice to Buyer setting forth the calculation of the following payment adjustments, if applicable:

(a) In the event the ANCF for a given Contract Year is greater than the high end of the TNCFR, Seller shall reimburse Buyer an amount equal to the product that is (w) the difference between the high end of the TNCFR and the ANCF multiplied by (x) the Facility's rated installed capacity multiplied by (y) the Bundled Price per MWh for that Contract Year as set forth in Appendix X multiplied by (z) 8760.

(b) In the event the ANCF for a given Contract Year is below the low end of the TNCFR, Buyer shall reimburse Seller an amount equal to the product that is (w) the difference between ANCF and the low end of the TNCFR multiplied by (x) the Facility's rated installed capacity multiplied by (y) the Bundled Price per MWh for that Contract Year as set forth in Appendix X multiplied by (z) 8760.

(c) In setting forth the basis for the above calculation, the Seller shall clearly indicate the availability of the wind turbine generating units and shall describe in summary form any environmental factors that may have contributed to the overall availability of the units, such as weather conditions that may have prevented the operation thereof, delayed required maintenance or repair, caused any shutdown condition in accordance with the turbine supplier's recommendation or guidelines, or which otherwise constitutes an exceptional weather condition that may have increased operating stress on any unit. In the event of clear evidence of systematic deterioration in the availability of the units over a period of no less than three consecutive Contract Years (a "Systematic Deterioration"), the Buyer shall have the right, commencing at the end of the third Contract Year, and in any subsequent Contract Year in which there is a continuation of such Systematic Deterioration, to dispute such adjustments in accordance with the provisions of Section 11 of the Agreement. Such payments will be adjusted to

account for such deterioration. [In determining whether or not there is a Systematic Deterioration, the following shall be taken into account and shall not, individually or in combination, by themselves comprise Systematic Deterioration: (i) normal performance deterioration associated with regular wear and tear (even taking into account operations and maintenance) over the lifetime of the turbines; (ii) any performance deterioration with respect to turbines that had missed or delayed maintenance routines in prior years resulting from environmental factors, such as weather conditions, in prior years; (iii) any potential permanent degradation in performance attributable to exceptional weather conditions in prior years; (iv) any known operating or warranty issues with respect to any individual unit (or the units as a class) that are discovered during the warranty period for the units; and (v) any similar or analogous contributing condition or circumstance. In addition, there shall be no finding of Systematic Deterioration so long as the availability of the units is consistent with the historical mechanical availability of similar wind turbine generating units, to the extent such information is available, taking into account any constraints in operating and maintaining the units related to the scale of the Facility relative to the scale of other facilities using similar units (and adjusting for the factors described in the immediately preceding sentence). There shall be no finding of Systematic Deterioration to the extent the wind turbine generating units are being maintained by the turbine supplier pursuant to a maintenance contract.]<sup>1</sup>

6. Adjustment for Actual Date of Commercial Operation and Extension of Services Term. The appendices to this Exhibit E assume a Commercial Operation date of September 30, 2012 and a Services Term from October 1, 2012 through September 30, 2032, and do not take into account any extension of the Services Term resulting from any Force Majeure event or as otherwise provided in the Agreement. Accordingly, the appendices do not contemplate a Services Term prior to, or subsequent to, those start and end dates. The Parties agree that the Monthly Target Payment, Annual O&M Estimate and other assumptions and variables in the Appendices will need to be adjusted to take into account the actual commencement and end dates of the actual Services Term, including, where applicable, by revising certain estimates and figures by the escalators assumed in the appendices.

Thus, for example, with respect to the Annual O&M Estimate determined in accordance with Appendix Y, if the Services Term commences one year later, the Annual O&M Estimate for the first calendar year will be a pro-rated portion of the 2013 payments, and the Annual O&M estimate for the last calendar year (adjusted to September 30, 2033) will be increased by the 2.5% escalator shown in Appendix Y. These estimates will be further adjusted to establish a Contract Year-by-Contract Year Annual O&M Estimate, as described in Section 3 hereof.

7. Adjustment to Bundled Price for Forward Capacity Market Payments. Beginning in the fourth Contract Year, each monthly payment due to Seller under this Exhibit E will be reduced by the amount that Seller would have been eligible to receive in the ISO-NE Forward Capacity Market or any replacement market for capacity in ISO-NE, without regard to whether the Facility has actually qualified as a Capacity Resource in the Forward Capacity Market or whether the Facility has received a Capacity Supply Obligation for the Capacity Commitment Period during which the applicable billing period occurred. If the Facility has not qualified as a Capacity Resource or received a Capacity Supply Obligation for the relevant Capacity Commitment Period, Buyer shall calculate the reduction due under this Section 7 assuming that the Facility had qualified as a Capacity Resource

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<sup>1</sup> The foregoing language is subject to further input from the turbine manufacturer, which is not presently available given the stage at which this concept was introduced into the draft. Seller reserves the right to revise this language based on such input.

and received a Capacity Supply Obligation, based on information obtained from Seller and publicly available information from ISO-NE, which calculation shall be binding, absent manifest error. Seller shall use commercially reasonable efforts to cooperate with Buyer in calculating this reduction.

## APPENDICES<sup>2</sup>

Appendix X: Bundled Price per MWh  
Appendix Y: O&M Cost Estimate

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<sup>2</sup> These appendices are based on a six-turbine Facility. Deepwater has stated a preference for a seven-turbine Facility or an eight-turbine Facility.

**Appendix X**  
**Bundled Price per MWh**

**6 Turbines 20 year PPA (40% CF)**

Contract Year	Annual Contract Energy (MWh)	Annual PPA Payment	Bundled Energy Price (\$/MWh)	Energy Price (\$/MWh)	REC Price (\$/MWh)	Capacity Price (\$/kW-mo.)
2009	N/A	N/A	\$ 268.00	\$ 201.31	\$ 60.92	\$ 6.02
2012	13,245	\$ 3,935,558	\$ 297.13	\$ 223.20	\$ 67.54	\$ 6.67
2013	64,333	\$ 19,784,613	\$ 307.53	\$ 231.01	\$ 69.90	\$ 6.90
2014	71,902	\$ 22,886,142	\$ 318.30	\$ 239.10	\$ 72.35	\$ 7.15
2015	75,686	\$ 24,933,850	\$ 329.44	\$ 247.47	\$ 74.88	\$ 7.40
2016	75,686	\$ 25,806,535	\$ 340.97	\$ 256.13	\$ 77.50	\$ 7.65
2017	75,686	\$ 26,709,763	\$ 352.90	\$ 265.09	\$ 80.22	\$ 7.92
2018	75,686	\$ 27,644,605	\$ 365.25	\$ 274.37	\$ 83.02	\$ 8.20
2019	75,686	\$ 28,612,166	\$ 378.04	\$ 283.97	\$ 85.93	\$ 8.49
2020	75,686	\$ 29,613,592	\$ 391.27	\$ 293.91	\$ 88.94	\$ 8.78
2021	75,686	\$ 30,650,068	\$ 404.96	\$ 304.20	\$ 92.05	\$ 9.09
2022	75,686	\$ 31,722,820	\$ 419.14	\$ 314.85	\$ 95.27	\$ 9.41
2023	75,686	\$ 32,833,119	\$ 433.80	\$ 325.87	\$ 98.61	\$ 9.74
2024	75,686	\$ 33,982,278	\$ 448.99	\$ 337.27	\$ 102.06	\$ 10.08
2025	75,686	\$ 35,171,658	\$ 464.70	\$ 349.07	\$ 105.63	\$ 10.43
2026	75,686	\$ 36,402,666	\$ 480.97	\$ 361.29	\$ 109.33	\$ 10.80
2027	75,686	\$ 37,676,759	\$ 497.80	\$ 373.94	\$ 113.15	\$ 11.17
2028	75,686	\$ 38,995,445	\$ 515.22	\$ 387.03	\$ 117.11	\$ 11.57
2029	75,686	\$ 40,360,286	\$ 533.26	\$ 400.57	\$ 121.21	\$ 11.97
2030	75,686	\$ 41,772,896	\$ 551.92	\$ 414.59	\$ 125.45	\$ 12.39
2031	75,686	\$ 43,234,947	\$ 571.24	\$ 429.10	\$ 129.85	\$ 12.82
2032	75,686	\$ 44,748,171	\$ 591.23	\$ 444.12	\$ 134.39	\$ 13.27

**Appendix Y**

**O&M Cost Estimate**

**6 Turbines 20 year PPA**

	12/31/12	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
<b>Operational cost</b>											
SG&A	\$ (37,500)	\$ (153,750)	\$ (157,594)	\$ (161,534)	\$ (165,572)	\$ (169,711)	\$ (173,954)	\$ (178,303)	\$ (182,760)	\$ (187,329)	\$ (192,013)
Wind farm site leasing cost	\$ (30,410)	\$ (152,875)	\$ (176,840)	\$ (192,662)	\$ (199,406)	\$ (206,385)	\$ (213,608)	\$ (221,085)	\$ (228,822)	\$ (236,831)	\$ (245,120)
Property tax	\$ (12,500)	\$ (51,250)	\$ (52,531)	\$ (53,845)	\$ (55,191)	\$ (56,570)	\$ (57,985)	\$ (59,434)	\$ (60,920)	\$ (62,443)	\$ (64,004)
Substation payment	\$ (2,500)	\$ (10,250)	\$ (10,506)	\$ (10,769)	\$ (11,038)	\$ (11,314)	\$ (11,597)	\$ (11,887)	\$ (12,184)	\$ (12,489)	\$ (12,801)
Miscellaneous	\$ (6,250)	\$ (25,625)	\$ (26,266)	\$ (26,922)	\$ (27,595)	\$ (28,285)	\$ (28,992)	\$ (29,717)	\$ (30,460)	\$ (31,222)	\$ (32,002)
Contingency	\$ (8,916)	\$ (39,375)	\$ (42,374)	\$ (44,573)	\$ (45,880)	\$ (47,227)	\$ (48,614)	\$ (50,043)	\$ (51,515)	\$ (53,031)	\$ (54,594)
Insurance premium	\$ (382,776)	\$ (1,569,381)	\$ (1,608,616)	\$ (1,648,831)	\$ (1,690,052)	\$ (1,732,303)	\$ (1,775,611)	\$ (1,820,001)	\$ (1,865,501)	\$ (1,912,139)	\$ (1,959,942)
<b>Total operational cost</b>	\$ (480,852)	\$ (2,002,506)	\$ (2,074,726)	\$ (2,139,136)	\$ (2,194,734)	\$ (2,251,796)	\$ (2,310,361)	\$ (2,370,470)	\$ (2,432,163)	\$ (2,495,484)	\$ (2,560,477)
<b>Maintenance cost</b>											
Transmission cable and substations	\$ (50,000)	\$ (205,000)	\$ (210,125)	\$ (215,378)	\$ (220,763)	\$ (226,282)	\$ (231,939)	\$ (237,737)	\$ (243,681)	\$ (249,773)	\$ (256,017)
Foundation structure	\$ (100,000)	\$ (410,000)	\$ (420,250)	\$ (430,756)	\$ (441,525)	\$ (452,553)	\$ (463,877)	\$ (475,474)	\$ (487,361)	\$ (499,545)	\$ (512,034)
Turbine O&M contract fee	\$ (245,450)	\$ (1,006,346)	\$ (1,031,505)	\$ (1,057,292)	\$ (1,083,725)	\$ (1,110,818)	\$ (1,138,588)	\$ (1,167,053)	\$ (1,196,229)	\$ (1,226,135)	\$ (1,256,789)
Required initial spare parts	\$ (280,342)										
Strategic spare parts	\$ (1,376,517)										
Service contract prepayment	\$ (538,445)										
Maintenance vessels cost	\$ (292,725)	\$ (1,200,174)	\$ (1,230,178)	\$ (1,260,932)	\$ (1,292,456)	\$ (1,324,767)	\$ (1,357,886)	\$ (1,391,834)	\$ (1,426,629)	\$ (1,462,295)	\$ (1,498,852)
Expected turbine parts replacement cost (post warranty)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (974,142)	\$ (998,496)	\$ (1,023,458)	\$ (1,049,045)	\$ (1,075,271)
<b>Total maintenance cost</b>	\$ (2,883,479)	\$ (2,821,520)	\$ (2,892,058)	\$ (2,964,359)	\$ (3,038,468)	\$ (3,114,430)	\$ (3,192,433)	\$ (3,271,594)	\$ (3,352,954)	\$ (3,436,733)	\$ (3,522,963)
<b>Total O&amp;M expenses</b>	\$ (3,364,331)	\$ (4,824,026)	\$ (4,966,784)	\$ (5,103,496)	\$ (5,233,202)	\$ (5,366,226)	\$ (5,502,794)	\$ (5,642,064)	\$ (5,789,117)	\$ (5,942,217)	\$ (6,101,440)

	12/31/23	12/31/24	12/31/25	12/31/26	12/31/27	12/31/28	12/31/29	12/31/30	12/31/31	12/31/32
<b>Operational cost</b>										
SG&A	\$ (196,813)	\$ (201,733)	\$ (206,777)	\$ (211,946)	\$ (217,245)	\$ (222,676)	\$ (228,243)	\$ (233,949)	\$ (239,798)	\$ (245,792)
Wind farm site leasing cost	\$ (253,700)	\$ (262,579)	\$ (271,769)	\$ (281,281)	\$ (291,126)	\$ (301,316)	\$ (311,862)	\$ (322,777)	\$ (334,074)	\$ (345,766)
Property tax	\$ (65,604)	\$ (67,244)	\$ (68,926)	\$ (70,649)	\$ (72,415)	\$ (74,225)	\$ (76,081)	\$ (77,983)	\$ (79,933)	\$ (81,931)
Substation payment	\$ (13,121)	\$ (13,449)	\$ (13,785)	\$ (14,130)	\$ (14,483)	\$ (14,845)	\$ (15,216)	\$ (15,597)	\$ (15,987)	\$ (16,386)
Miscellaneous	\$ (32,802)	\$ (33,622)	\$ (34,463)	\$ (35,324)	\$ (36,207)	\$ (37,113)	\$ (38,040)	\$ (38,991)	\$ (39,966)	\$ (40,965)
Contingency	\$ (56,204)	\$ (57,863)	\$ (59,572)	\$ (61,333)	\$ (63,148)	\$ (65,017)	\$ (66,944)	\$ (68,930)	\$ (70,976)	\$ (73,084)
Insurance premium	\$ (2,008,941)	\$ (2,059,164)	\$ (2,110,644)	\$ (2,163,410)	\$ (2,217,495)	\$ (2,272,932)	\$ (2,329,756)	\$ (2,387,999)	\$ (2,447,699)	\$ (2,508,892)
<b>Total operational cost</b>	\$ (2,627,185)	\$ (2,695,655)	\$ (2,765,935)	\$ (2,838,073)	\$ (2,912,119)	\$ (2,988,124)	\$ (3,066,142)	\$ (3,146,226)	\$ (3,228,432)	\$ (3,312,817)
<b>Maintenance cost</b>										
Transmission cable and substations	\$ (262,417)	\$ (268,978)	\$ (275,702)	\$ (282,595)	\$ (289,660)	\$ (296,901)	\$ (304,324)	\$ (311,932)	\$ (319,730)	\$ (327,723)
Foundation structure	\$ (524,835)	\$ (537,956)	\$ (551,404)	\$ (565,190)	\$ (579,319)	\$ (593,802)	\$ (608,647)	\$ (623,863)	\$ (639,460)	\$ (655,447)
Turbine O&M contract fee	\$ (1,288,208)	\$ (1,320,413)	\$ (1,353,424)	\$ (1,387,259)	\$ (1,421,941)	\$ (1,457,489)	\$ (1,493,927)	\$ (1,531,275)	\$ (1,569,557)	\$ (1,608,796)
Required initial spare parts										
Strategic spare parts										
Service contract prepayment										
Maintenance vessels cost	\$ (1,536,324)	\$ (1,574,732)	\$ (1,614,100)	\$ (1,654,453)	\$ (1,695,814)	\$ (1,738,209)	\$ (1,781,665)	\$ (1,826,206)	\$ (1,871,861)	\$ (1,918,658)
Expected turbine parts replacement cost (post warranty)	\$ (1,469,537)	\$ (1,506,275)	\$ (1,543,932)	\$ (1,582,531)	\$ (1,622,094)	\$ (1,662,630)	\$ (1,704,166)	\$ (1,746,722)	\$ (1,790,310)	\$ (1,834,943)
<b>Total maintenance cost</b>	\$ (5,081,321)	\$ (5,208,354)	\$ (5,338,563)	\$ (5,472,027)	\$ (5,608,828)	\$ (5,748,116)	\$ (5,890,012)	\$ (6,034,293)	\$ (6,181,183)	\$ (6,330,764)
<b>Total O&amp;M expenses</b>	\$ (7,708,506)	\$ (7,904,009)	\$ (8,104,498)	\$ (8,310,100)	\$ (8,520,946)	\$ (8,736,240)	\$ (8,956,154)	\$ (9,180,519)	\$ (9,409,615)	\$ (9,643,581)

**EXHIBIT E**  
**PRICING AND PAYMENTS**

1. Definitions. Unless otherwise defined in this Exhibit, capitalized terms used in this Exhibit have the meaning given such terms in the Agreement. For purposes of this Exhibit and the Agreement, the following terms have the following meanings:
  - a. **“Delivery Shortfall”** shall mean, with respect to any Contract Year in which (x) the quantity of Energy or RECs actually Delivered during such Contract Year is less than the (y) quantity of energy equal to the Minimum Generation and the renewable energy certificates associated with that quantity of energy, the positive difference between the quantities in (x) and (y).
  - b. **“Delivery Surplus”** shall mean, with respect to any Contract Year in which (x) the quantity of Energy or RECs actually Delivered during such Contract Year is greater than the (y) quantity of energy equal to the Minimum Generation and the renewable energy certificates associated with that quantity of energy, the positive difference between the quantities in (x) and (y).
  - c. **“Minimum Generation”** shall mean, for any Contract Year that is a full calendar year, (i) the percentage equal to the P99 CF multiplied by (ii) the Facility’s rated installed capacity (expressed in MWs) (iii) multiplied by a number of hours equal to the positive difference between (x) 8,760 hours and (y) the sum of the number of hours of all periods of full or partial non-operation of the Facility due to Force Majeure, scheduled and unscheduled outages, and any permitted non-performance of Delivery obligations under Section 9.3 of the Agreement.
  - d. **“Net Shortfall”** shall mean, as of any given date, the positive difference between (a) the aggregate Delivery Shortfalls and (b) the aggregate Delivery Surpluses, in each case, for all Contract Years that have lapsed as of such date, but only if (a) is greater than (b).
  - e. **“Net Surplus”** shall mean, as of any given date, the positive difference between (a) the aggregate Delivery Surpluses and (b) the aggregate Delivery Shortfalls, in each case, for all full Contract Years that have lapsed as of such date, but only if (a) is greater than (b).
  - f. **“Not-to-Exceed Cost”** means [US \$ \_\_\_\_\_].
  - g. **“P50 CF”** shall mean the net capacity factor level for the Facility determined by an independent wind consultant to be 50% likely to occur in any given calendar year, as established as of or around the time of Commercial Operation.
  - h. **“P99 CF”** shall mean the greater of (i) 20% and (ii) the net capacity factor level for the Facility determined by an independent wind consultant to be at least 99% likely to occur in any given calendar year, as established as of or around the time of Commercial Operation.
  - i. **“Shortfall Calculation Date”** shall mean the last day of each Shortfall Calculation Period and the last day of the Services Term.
  - j. **“Shortfall Calculation Period”** shall mean every two Contract Year period commencing at the end of the third Contract Year (on a consecutive, not rolling, basis) and, if less than two Contract Years have passed between the end of the last Shortfall Calculation Period and the end of the Services Term, such shorter period.

k. “**Shortfall Price**” shall mean, as of any Shortfall Calculation Date (or, for the purposes of Section 6 of the Agreement, as of the last day of any Contract Year), a dollar amount equal to (A) twelve times the Monthly Payment (as hereinafter defined) for the immediately preceding Contract Year, as shown in Appendix 2 (and, if necessary, adjusted pursuant to Section 7 of this Exhibit E), divided by (B) the product equal to (x) the Facility’s rated installed capacity expressed in MW, multiplied by (y) 8760 hours multiplied by (z) the P50 CF.

l. “**Target Cost**” means [US \$\_\_\_\_\_].

m. “**Total Facility Cost**” or “**TFC**” shall mean the total of all capitalized costs accumulated prior to Commercial Operation and associated with the Facility (including interest accumulated in connection with the construction of the Facility, or the acquisition of any components, materials, equipment or services used in connection therewith). Appendix 3 to this Exhibit is a schedule setting forth a non-exhaustive list of categories of costs and projected expenses included in Total Facility Cost.

2. Payment. Buyer shall, in accordance with the terms of the Agreement and this Exhibit, pay to Seller, in immediately available funds, the Monthly Payment calculated in accordance with the provisions of Section 3.

3. Monthly Payment. Seller shall, subject to Section 4, within 90 days after Commercial Operation, calculate the Total Facility Cost and provide the result of that calculation to Buyer. The Total Facility Cost determined by Seller shall be conclusive absent manifest error, and shall, for purposes of billing, in no event be greater than the Not-to-Exceed Cost. Buyer may audit the Total Facility Cost in accordance with Article 16 of the Agreement. Beginning with the month in which Commercial Operation occurs and continuing for each month of the Services Term, Buyer shall pay Seller a “**Monthly Payment**” calculated in accordance with the following provisions of this Section 3:

a. Total Facility Cost Equals the Target Cost. If the Total Facility Cost is equal to the Target Cost, then:

$$\text{Monthly Payment} = \text{MTP}$$

Where:

MTP = the Monthly Target Payment shown on Appendix 2 to this Exhibit for each month during the Services Term.

b. Total Facility Cost is Greater than the Target Cost. If the Total Facility Cost is greater than the Target Cost but less than or equal to the Not-to-Exceed Cost, then:

$$\text{Monthly Payment} = \text{MTP} + [((\text{TFC} - \text{Target Cost})/240) \div (1 - (\text{T} + \text{S}))]$$

Where:

MTP = the Monthly Target Payment shown on Appendix 2 to this Exhibit for each month during the Services Term.

T = the income tax rate applicable to corporations for the applicable year.

S = the annual site leasing cost expressed as a percentage of gross revenue.

Appendix 4 to this Exhibit is an example of the Monthly Payment adjustment calculation under this Subsection 3(b).

- c. Total Facility Cost is Greater than Not-to-Exceed Cost. If the Total Facility Cost is greater than the Not-to-Exceed Cost, then Seller is not entitled to any compensation from Buyer for the incremental amount by which the Total Facility Cost may exceed the Not-to Exceed Cost.
- d. Total Facility Cost is Less than Target Cost. If the Total Facility Cost is less than the Target Cost, then:

$$\text{Monthly Payment} = \text{MTP} - \text{AMT}_{\text{BTS}}$$

Where:

MTP = the Monthly Target Payment shown on Appendix 2 to this Exhibit for each month during the Services Term.

AMT<sub>BTS</sub> = (Annual amortization of BTS over a 20 year term at a 12% discount rate) ÷ 12.

BTS = the Buyer's aggregate share of the difference between the Target Cost and the Total Facility Cost expressed as the formula:

$$\sum \text{BCSS}_i \times \text{TS}_i$$

Where:

BCSS<sub>i</sub> = As applicable, Buyer's percentage share of each savings increment, i1 - ith, as set forth in Appendix 1

TS<sub>i</sub> = As applicable, the ith savings increment as set forth in Appendix 1.

Appendix 5 to this Exhibit is an example of the Monthly Payment adjustment calculation under this Subsection 3(d).

- e. O&M Adjustment. Operation and maintenance costs include the categories of costs and expenses shown on Appendix 6 to this Exhibit and similar or related costs. Appendix 6 to this Exhibit also shows the estimated annual cost to operate and maintain the Facility for each year during the Services Term (the "**Annual O&M Estimate**"). At the end of each calendar year during the Services Term (and, with respect to the partial calendar year at the end of the Services Term), Seller shall account for the actual operation and maintenance costs for such calendar year (or part thereof) (the "**Annual O&M Cost**"), which shall be conclusive absent manifest error.

On the next billing date following Seller's calculation of the Annual O&M Cost, Seller shall issue an invoice to Buyer pursuant to Section 5.2(a) of the Agreement that includes a description, in reasonable detail, of the Annual O&M Cost incurred by Seller for the prior calendar year (or part thereof) and any adjustment to reflect the difference between the Annual O&M Estimate and the Annual O&M Cost as follows:

(i) If the Annual O&M Estimate is equal to the Actual O&M Cost, there is no adjustment.

(ii) If the Annual O&M Estimate is greater than the Annual O&M Cost, then the adjustment to the applicable invoice will be a deduction calculated will as follows:

$$\text{Deduction} = (\text{Annual O\&M Estimate} - \text{Annual O\&M Cost})$$

(iii) If the Annual O&M Estimate is less than the Annual O&M Cost, then the adjustment to the applicable invoice will be an incremental charge calculated as follows:

$$\text{Incremental Charge} = (\text{Annual O\&M Cost} - \text{Annual O\&M Estimate}) / (1 - T)$$

4. Reconciliation. If Seller is not able to calculate the Total Facility Cost during the first 90 days of the Services Term due to lack of final cost data, then for each of those months, Buyer will pay Seller the Monthly Target Payment (MTP) shown on Appendix 2 to this Exhibit. Once Seller has completed its determination of Total Facility Cost and provide Buyer with a reconciliation of payments actually made to Seller and payments that would have been made to Seller had Seller been able to determine the Total Facility Cost for the months in question. Any amount owed Seller or Buyer as a result of the reconciliation shall be paid to the other Party in accordance with the billing and payment terms of this Agreement. No interest shall be paid or payable on such amounts.

5. Allocation of MWh Price. The Monthly Payment shall be allocated between Energy, Capacity, and RECs as follows:

RECs = An amount equal to the weighted average ISO-NE market price for RECs for the applicable month multiplied by the RECs transferred to Buyer for the applicable month.

Capacity = Following the qualification of the Facility as a New Capacity Resource, an amount equal to the weighted average ISO-NE market price for capacity (expressed in \$/kW-mo) for the applicable month multiplied times the ISO-NE rating for the Facility for the applicable month.

Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Monthly Price less the RECs allocation and the \$/MWh equivalent of the Capacity allocation determined under this Section 6 divided by the actual Energy (expressed in MWh) Delivered to Buyer for the applicable month.

6. Minimum Generation Obligation. During the Services Term:

a. Commencing at the end of the third Contract Year, Seller shall maintain a tracking account recording, for each Contract Year, as extended pursuant to the Agreement, the Delivery Shortfall or Delivery Surplus, if any, for such Contract Year, and shall calculate, as of the end of each such Contract Year, whether there is a Net Shortfall or a Net Surplus.

b. On each Shortfall Calculation Date on which (x) there is a Net Shortfall and (y) the aggregate Delivery Shortfalls exceeded the aggregate Delivery Surpluses for the immediately preceding Shortfall Calculation Period (such amount, a “**Shortfall Amount**”), Seller shall deliver a notice to Buyer setting forth the calculation of the Net Shortfall and the Shortfall Amount. Within thirty days of the date of such notice, Seller shall pay to Buyer an amount equal to the product of (x) the Shortfall Amount, expressed in MWh, and (y) the Shortfall Price. For the avoidance of doubt, no sum shall be payable by Seller to Buyer with respect to any Shortfall Calculation Period where there is a Net Shortfall but no Shortfall Amount.

c. On each Shortfall Calculation Date on which there is a Net Surplus, the Seller shall deliver a notice to Buyer setting forth the calculation of the Net Surplus and the Buyer shall, within 30 days of the receipt of such notice, pay to Seller an amount equal to the product of (x) the sum of all Shortfall Amounts as of each Shortfall Calculation Date since the last Shortfall Calculation Date on which there was a Net Surplus (if any) and (y) the Shortfall Price.

d. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to the aggregate Net Shortfalls would be difficult or impossible to predict with certainty, and (ii) it is

impractical and difficult to assess actual damages in the circumstances stated, and therefore the Shortfall Amounts agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages.

7. Adjustment for Actual Date of Commercial Operation and Extension of Services Term. The appendices to this Exhibit E assume a Commercial Operation date of September 30, 2012 and a Services Term from October 1, 2012 through September 30, 2032, and do not take into account any extension of the Services Term resulting from any force majeure event or as otherwise provided in the Agreement. Accordingly, the appendices do not contemplate a Services Term prior to, or subsequent to, those start and end dates. The Parties agree that the Monthly Target Payment, Annual O&M Estimate and other assumptions and variables in the Appendices will need to be adjusted to take into account the actual commencement and end dates of the actual Services Term, including, where applicable, by revising certain estimates and figures by the escalators assumed in the appendices.

Thus, for example, with respect to the Annual O&M Estimate determined in accordance with Appendix 6, if the Services Term commences one year later, the Annual O&M Estimate for the first calendar year will be a pro-rated portion of the 2013 payments, and the Annual O&M estimate for the last calendar year (adjusted to September 30, 2033) will be increased by the 2.5% escalator shown in Appendix 6.

8. Termination Payments. In the event of termination resulting from an Event of Default, the non-defaulting party will be entitled to a termination payment equal as follows (in each case, using a discount rate of 8% to calculate net present values):-

(a) If the non-defaulting party is Seller, Buyer shall pay Seller, within thirty (30) days of the effective date of termination an amount equal to:-

(A) the net present value as of the effective date of termination of the sum of all Monthly Payments that would have been paid from the date of termination to the end of the Services Term, assuming Seller had performed all its obligations under this Agreement

minus

(B) the net present value as of the effective date of termination of the sum of (i) the projected ISO-NE market price for energy (and, if such information is not available through the end of the Services Term, the latest dated such projection shall be escalated at 3.5% per calendar year through the end of the Services Term), plus (ii) the projected ISO-NE market price for capacity (and, if such information is not available through the end of the Services Term, the latest dated such projection shall be escalated at 3.5% per calendar year through the end of the Services Term), plus (iii) the projected ISO-NE market price for RECs (and, if such information is not available, the average of two (2) broker quotes for the average sale price of renewable energy certificates in ISO-NE obtained by Seller from brokers that normally trade in such renewable energy certificates, having at least one (1) year of experience in trading renewable energy certificates and that are not Affiliates of either Party, escalated at 3.5% per calendar year through the end of the Services Term), that would have been payable from the date of termination to the end of the Services Term, assuming the Facility generated Energy equal to the product of (x) the Facility's rated installed capacity (expressed in MWs) multiplied by (y) 8,760 hours multiplied by (z) the average P50 CF during the portion of the Services Term that has already been eclipsed, where the "P50 CF" shall mean the net capacity factor level for the Facility determined by an independent wind consultant to be 50% likely to occur in any given calendar year.

(b) If the non-defaulting party is Buyer, Seller shall pay Buyer, within thirty (30) days of the effective date of termination, an amount equal to:-

(A) the net present value as of the effective date of termination of the sum of (i) the projected ISO-NE market price for energy (and, if such information is not available through the end of the Services Term, the latest dated such projection shall be escalated at 3.5% per calendar year through the end of the Services Term), plus (ii) the projected ISO-NE market price for capacity (and, if such information is not available through the end of the Services Term, the latest dated such projection shall be escalated at 3.5% per calendar year through the end of the Services Term), plus (iii) the projected ISO-NE market price for RECs (and, if such information is not available, the average of two (2) broker quotes for the average sale price of renewable energy certificates in ISO-NE obtained by Seller from brokers that normally trade in such renewable energy certificates, having at least one (1) year of experience in trading renewable energy certificates and that are not Affiliates of either Party, escalated at 3.5% per calendar year through the end of the Services Term), that would have been payable from the date of termination to the end of the Services Term, assuming the Facility generated Energy equal to the product of (x) the Facility's rated installed capacity (expressed in MWs) multiplied by (y) 8,760 hours multiplied by (z) the average P50 CF during the portion of the Services Term that has already been eclipsed, where the "P50 CF" shall mean the net capacity factor level for the Facility determined by an independent wind consultant to be 50% likely to occur in any given calendar year

minus

(B) the net present value as of the effective date of termination of the amounts that would have been payable pursuant to Section 6 above for the remainder of the Services Term assuming that the Facility delivered no Products to Buyer for such period.

## **APPENDICES**

Appendix 1: Buyer's Savings Share Percentage

Appendix 2: Monthly Target Payment

Appendix 3: Example of Total Facility Cost

Appendix 4: Example of Section 3(b)

Appendix 5: Example of Section 3(d)

Appendix 6: O&M Cost Estimate

Deepwater Draft - 10/8/2009

**Appendix 1**

**Buyer's Savings Share Percentages**

If Total Savings are:	Buyer's Cost Savings Share
< \$5,000,000	87.18%
≥ \$5,000,000, but < \$10,000,000	74.36%
≥ \$10,000,000, but < \$15,000,000	61.54%
≥ \$15,000,000, but < \$20,000,000	48.73%
≥ \$20,000,000, but < \$25,000,000	35.91%
≥ \$25,000,000, but < \$30,000,000	23.09%
≥ \$30,000,000, but < \$35,000,000	10.27%
≥ \$35,000,000, but < \$40,000,000	0.00%
≥ \$40,000,000	50.00%

**Appendix 2**

**Monthly Target Payment**

6 Turbines 20 year PPA

<b>Contract Year</b>	<b>Annual Target Payment</b>	<b>Monthly Target Payment</b>
2012	\$ 3,935,558	\$ 327,963
2013	\$ 19,784,613	\$ 1,648,718
2014	\$ 22,886,142	\$ 1,907,179
2015	\$ 24,933,850	\$ 2,077,821
2016	\$ 25,806,535	\$ 2,150,545
2017	\$ 26,709,763	\$ 2,225,814
2018	\$ 27,644,605	\$ 2,303,717
2019	\$ 28,612,166	\$ 2,384,347
2020	\$ 29,613,592	\$ 2,467,799
2021	\$ 30,650,068	\$ 2,554,172
2022	\$ 31,722,820	\$ 2,643,568
2023	\$ 32,833,119	\$ 2,736,093
2024	\$ 33,982,278	\$ 2,831,856
2025	\$ 35,171,658	\$ 2,930,971
2026	\$ 36,402,666	\$ 3,033,555
2027	\$ 37,676,759	\$ 3,139,730
2028	\$ 38,995,445	\$ 3,249,620
2029	\$ 40,360,286	\$ 3,363,357
2030	\$ 41,772,896	\$ 3,481,075
2031	\$ 43,234,947	\$ 3,602,912
2032	\$ 44,748,171	\$ 3,729,014

**Appendix 3**

**Example of Total Facility Cost**

<b>Construction Cost (6 Turbine Target Cost)</b>	
Structural Engineering	\$ 2,259,000
Jacket Fabrication	\$ 9,487,000
Pile Fabrication (72")	\$ 8,656,500
Pile Template Fabrication	\$ 2,538,000
Electrical Cable and Substation	\$ 20,000,000
Topside Fabrication	\$ 4,543,500
Project Management & Inspection	\$ 8,810,385
Offshore Transportation - Template and Piles	\$ 3,635,500
Offshore Transportation - Jacket and transition Piece	\$ 8,172,000
Offshore Installation - Template and Piles	\$ 14,233,900
Offshore Installation - Cable	\$ -
Offshore Installation - Jacket and grouting	\$ 7,192,960
Topside Engineering - Electrical	\$ -
WTG - Siemens 3.6 MW	\$ 56,000,000
Utility System	\$ 240,000
Onshore Electrical	\$ 44,000
Offshore Hookup	\$ 310,400
Offshore Transportation - WTG	\$ 2,050,000
Offshore Installation - WTG	\$ 4,937,240
<b>Total Construction Cost</b>	<b>\$ 153,110,385</b>
Closing Fee	\$ 1,148,328
Interest During Construction	\$ 4,593,312
Development Cost	\$ 10,000,000
<b>Total Facility Cost</b>	<b>\$ 168,852,024</b>

**Appendix 4**

**Example of Section 3(b)**

**6 Turbine Example**

Total Facility Cost	\$	185,737,227
Portion of Total Facility Cost Earning 0% Return	\$	16,885,202
Total Facility Cost in Excess of NTE Cost	\$	-
Tax rate		35.0%
Leasing cost (% of revenue)		1.0%
Monthly Payment Adjustment	\$	109,930

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**Appendix 5****Example of Section 3(d)****6 Turbine Example**

Total Facility Cost	\$	145,212,741
Total Savings	\$	23,639,283
Seller's Share of Total Savings	\$	8,741,814
Buyer's Share of Total Savings	\$	14,897,469
Tax Rate		35.0%
Leasing Cost (% of revenue)		1.0%
<b>Monthly Payment Adjustment</b>	<b>\$</b>	<b>(166,205)</b>

<b>Savings Sharing Scheme</b>		1st Increment	2nd Increment	3rd Increment	4th Increment	5th Increment	6th Increment	7th Increment	8th Increment
Increment Savings Schedule (from Appendix 1)	\$	5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
Cumulative Savings Schedule (from Appendix 1)	\$	5,000,000	\$ 10,000,000	\$ 15,000,000	\$ 20,000,000	\$ 25,000,000	\$ 30,000,000	\$ 35,000,000	\$ 40,000,000
Seller's Percentage Share of the i-th Savings Increment		12.8%	25.6%	38.5%	51.3%	64.1%	76.9%	89.7%	100.0%
Buyer's Percentage Share of the i-th Savings Increment (BCSSI)		87.2%	74.4%	61.5%	48.7%	35.9%	23.1%	10.3%	0.0%
	<b>Total</b>								
Total Savings Breakdown	\$	<b>23,639,283</b>	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 3,639,283	\$ -	\$ -
Seller's Share of Total Savings	\$	<b>8,741,814</b>	\$ 640,929	\$ 1,281,858	\$ 1,922,787	\$ 2,563,717	\$ 2,332,523	\$ -	\$ -
Buyer's Share of Total Savings	\$	<b>14,897,469</b>	\$ 4,359,071	\$ 3,718,142	\$ 3,077,213	\$ 2,436,283	\$ 1,306,761	\$ -	\$ -

**Appendix 6**

**O&M Cost Estimate**

**6 turbines 20 year PPA**

	12/31/12	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
<b>Operational cost</b>											
SG&A	\$ (37,500)	\$ (153,750)	\$ (157,594)	\$ (161,534)	\$ (165,572)	\$ (169,711)	\$ (173,954)	\$ (178,303)	\$ (182,760)	\$ (187,329)	\$ (192,013)
Wind farm site leasing cost	\$ (30,410)	\$ (152,875)	\$ (176,840)	\$ (192,662)	\$ (199,406)	\$ (206,385)	\$ (213,608)	\$ (221,085)	\$ (228,822)	\$ (236,831)	\$ (245,120)
Property tax	\$ (12,500)	\$ (51,250)	\$ (52,531)	\$ (53,845)	\$ (55,191)	\$ (56,570)	\$ (57,985)	\$ (59,434)	\$ (60,920)	\$ (62,443)	\$ (64,004)
Substation payment	\$ (2,500)	\$ (10,250)	\$ (10,506)	\$ (10,769)	\$ (11,038)	\$ (11,314)	\$ (11,597)	\$ (11,887)	\$ (12,184)	\$ (12,489)	\$ (12,801)
Miscellaneous	\$ (6,250)	\$ (25,625)	\$ (26,266)	\$ (26,922)	\$ (27,595)	\$ (28,285)	\$ (28,992)	\$ (29,717)	\$ (30,460)	\$ (31,222)	\$ (32,002)
Contingency	\$ (8,916)	\$ (39,375)	\$ (42,374)	\$ (44,573)	\$ (45,880)	\$ (47,227)	\$ (48,614)	\$ (50,043)	\$ (51,515)	\$ (53,031)	\$ (54,594)
Insurance premium	\$ (382,776)	\$ (1,569,381)	\$ (1,608,616)	\$ (1,648,831)	\$ (1,690,052)	\$ (1,732,303)	\$ (1,775,611)	\$ (1,820,001)	\$ (1,865,501)	\$ (1,912,139)	\$ (1,959,942)
<b>Total operational cost</b>	\$ (480,852)	\$ (2,002,506)	\$ (2,074,726)	\$ (2,139,136)	\$ (2,194,734)	\$ (2,251,796)	\$ (2,310,361)	\$ (2,370,470)	\$ (2,432,163)	\$ (2,495,484)	\$ (2,560,477)
<b>Maintenance cost</b>											
Transmission cable and substations	\$ (50,000)	\$ (205,000)	\$ (210,125)	\$ (215,378)	\$ (220,763)	\$ (226,282)	\$ (231,939)	\$ (237,737)	\$ (243,681)	\$ (249,773)	\$ (256,017)
Foundation structure	\$ (100,000)	\$ (410,000)	\$ (420,250)	\$ (430,756)	\$ (441,525)	\$ (452,563)	\$ (463,877)	\$ (475,474)	\$ (487,361)	\$ (499,545)	\$ (512,034)
Turbine O&M contract fee	\$ (245,450)	\$ (1,006,346)	\$ (1,031,505)	\$ (1,057,292)	\$ (1,083,725)	\$ (1,110,818)	\$ (1,138,588)	\$ (1,167,053)	\$ (1,196,229)	\$ (1,226,135)	\$ (1,256,789)
Required initial spare parts	\$ (280,342)										
Strategic spare parts	\$ (1,376,517)										
Service contract prepayment	\$ (538,445)										
Maintenance vessels cost	\$ (292,725)	\$ (1,200,174)	\$ (1,230,178)	\$ (1,260,932)	\$ (1,292,456)	\$ (1,324,767)	\$ (1,357,886)	\$ (1,391,834)	\$ (1,426,629)	\$ (1,462,295)	\$ (1,498,852)
Expected turbine parts replacement cost (post warranty)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (974,142)	\$ (998,496)	\$ (1,023,458)	\$ (1,049,045)	\$ (1,075,271)
<b>Total maintenance cost</b>	\$ (2,883,479)	\$ (2,821,520)	\$ (2,892,058)	\$ (2,964,359)	\$ (3,038,468)	\$ (3,114,430)	\$ (3,196,433)	\$ (3,274,594)	\$ (3,357,359)	\$ (3,444,793)	\$ (3,532,963)
<b>Total O&amp;M expenses</b>	\$ (3,364,331)	\$ (4,824,026)	\$ (4,966,784)	\$ (5,103,496)	\$ (5,233,202)	\$ (5,366,226)	\$ (5,506,794)	\$ (5,645,064)	\$ (5,792,522)	\$ (5,944,277)	\$ (6,100,440)

	12/31/23	12/31/24	12/31/25	12/31/26	12/31/27	12/31/28	12/31/29	12/31/30	12/31/31	12/31/32
<b>Operational cost</b>										
SG&A	\$ (196,813)	\$ (201,733)	\$ (206,777)	\$ (211,946)	\$ (217,245)	\$ (222,676)	\$ (228,243)	\$ (233,949)	\$ (239,798)	\$ (245,792)
Wind farm site leasing cost	\$ (253,700)	\$ (262,579)	\$ (271,769)	\$ (281,281)	\$ (291,126)	\$ (301,316)	\$ (311,862)	\$ (322,777)	\$ (334,074)	\$ (345,766)
Property tax	\$ (65,604)	\$ (67,244)	\$ (68,926)	\$ (70,649)	\$ (72,415)	\$ (74,225)	\$ (76,081)	\$ (77,983)	\$ (79,933)	\$ (81,931)
Substation payment	\$ (13,121)	\$ (13,449)	\$ (13,785)	\$ (14,130)	\$ (14,483)	\$ (14,845)	\$ (15,216)	\$ (15,597)	\$ (15,987)	\$ (16,386)
Miscellaneous	\$ (32,802)	\$ (33,622)	\$ (34,463)	\$ (35,324)	\$ (36,207)	\$ (37,113)	\$ (38,040)	\$ (38,991)	\$ (39,966)	\$ (40,965)
Contingency	\$ (56,204)	\$ (57,863)	\$ (59,572)	\$ (61,333)	\$ (63,148)	\$ (65,017)	\$ (66,944)	\$ (68,930)	\$ (70,976)	\$ (73,084)
Insurance premium	\$ (2,008,941)	\$ (2,059,164)	\$ (2,110,644)	\$ (2,163,410)	\$ (2,217,495)	\$ (2,272,932)	\$ (2,329,756)	\$ (2,387,999)	\$ (2,447,699)	\$ (2,508,892)
<b>Total operational cost</b>	\$ (2,627,185)	\$ (2,695,655)	\$ (2,765,935)	\$ (2,838,073)	\$ (2,912,119)	\$ (2,988,124)	\$ (3,066,142)	\$ (3,146,226)	\$ (3,228,432)	\$ (3,312,817)
<b>Maintenance cost</b>										
Transmission cable and substations	\$ (262,417)	\$ (268,978)	\$ (275,702)	\$ (282,595)	\$ (289,660)	\$ (296,901)	\$ (304,324)	\$ (311,932)	\$ (319,730)	\$ (327,723)
Foundation structure	\$ (524,835)	\$ (537,956)	\$ (551,404)	\$ (565,190)	\$ (579,319)	\$ (593,802)	\$ (608,647)	\$ (623,863)	\$ (639,460)	\$ (655,447)
Turbine O&M contract fee	\$ (1,288,208)	\$ (1,320,413)	\$ (1,353,424)	\$ (1,387,259)	\$ (1,421,941)	\$ (1,457,489)	\$ (1,493,927)	\$ (1,531,275)	\$ (1,569,557)	\$ (1,608,796)
Required initial spare parts										
Strategic spare parts										
Service contract prepayment										
Maintenance vessels cost	\$ (1,536,324)	\$ (1,574,732)	\$ (1,614,100)	\$ (1,654,453)	\$ (1,695,814)	\$ (1,738,209)	\$ (1,781,665)	\$ (1,826,206)	\$ (1,871,861)	\$ (1,918,658)
Expected turbine parts replacement cost (post warranty)	\$ (1,469,537)	\$ (1,506,275)	\$ (1,543,932)	\$ (1,582,531)	\$ (1,622,094)	\$ (1,662,630)	\$ (1,704,166)	\$ (1,746,822)	\$ (1,790,610)	\$ (1,835,563)
<b>Total maintenance cost</b>	\$ (5,081,321)	\$ (5,208,354)	\$ (5,338,563)	\$ (5,472,027)	\$ (5,608,828)	\$ (5,749,710)	\$ (5,895,828)	\$ (6,047,398)	\$ (6,204,718)	\$ (6,367,966)
<b>Total O&amp;M expenses</b>	\$ (7,708,506)	\$ (7,904,009)	\$ (8,104,498)	\$ (8,310,102)	\$ (8,520,946)	\$ (8,737,934)	\$ (8,960,622)	\$ (9,189,624)	\$ (9,434,150)	\$ (9,694,813)