

November 18, 2009

**VIA HAND DELIVERY & ELECTRONIC MAIL**

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

**RE: Docket 4111 - Review of Proposed Town of New Shoreham Project  
Pursuant to RI General Laws § 39-26.1-7**

Enclosed for filing with the Commission is a new unsigned copy of a power purchase agreement (“PPA”) for the potential purchase of renewable power from Deepwater Wind Block Island, LLC (“Deepwater”).

As of the time of preparing this filing this afternoon, National Grid<sup>1</sup> and Deepwater had not reached agreement. Thus, National Grid is again filing an unsigned PPA that is incomplete.

As the Commission and other parties are aware, National Grid has spent the last two months attempting to negotiate the best possible power purchase arrangement it could achieve for customers in connection with this proposed demonstration project. The Company strived to do so in order to provide the Commission with a complete agreement that could be approved or disapproved by the Commission, after a full review and evidentiary hearings. During this process, the Company has been particularly mindful of the cost to customers. As stated above, however, an agreement has not been reached. This filing letter provides a summary of the outstanding issues and National Grid’s comments.

Summary of Pricing and Outstanding Issues

While Deepwater was not able to offer a price that National Grid can unconditionally endorse, National Grid and Deepwater were able to negotiate most of the non-price terms to a mutually satisfactory conclusion. In addition, Deepwater provided a true fixed price arrangement, removing two of the most troubling pricing provisions that National Grid identified in its filing of October 15. Specifically, the provisions that would have allowed Deepwater to recover all of its operation and maintenance expenses on an annual basis, as well as the provisions that would have adjusted the price if the project’s capacity factor was less than anticipated, have been dropped. As a result of moving from six to eight turbines, Deepwater also has been able to lower its price offer from 30.7 cents to 25.3 cents per kilowatt-hour in 2013, the first full year of operation. The escalation rate remains the same at 3.5% per year. While National Grid had hoped that Deepwater would be able to offer a firm, unconditional price between 20 to 25 cents per kilowatt-hour in 2013, but to this point, they have not done so.

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<sup>1</sup> Submitted on behalf of The Narragansett Electric Company d/b/a National Grid (herein referred to as National Grid or the Company).

National Grid understands, however, that the Deepwater project could achieve some cost-savings benefits if the project obtains a loan guarantee from the U.S. Department of Energy (“DOE”). As part of the American Recovery and Reinvestment Act (the so-called “Stimulus Act”), the DOE loan guaranty program was revised to provide loan guaranties for certain commercial and innovative renewable energy projects. It is National Grid’s understanding that Deepwater has applied for a loan guaranty under this program. National Grid has not performed a formal analysis of the cost impact and, for that reason, is not able to quantify how much of a price reduction can be achieved. Nevertheless, there would be a project cost reduction in such event because any loan guarantee, if obtained, would likely facilitate Deepwater obtaining a significantly lower debt cost for the project. While this issue was identified last week, Deepwater had not made a proposal for a price reduction associated with this potential benefit as of the time of preparing this filing this afternoon.

Another pricing issue that was identified, but not resolved, related to potential benefits if Deepwater’s project is able to produce more energy than is currently assumed in the pricing proposal. Specifically, National Grid understands that the pricing provided by Deepwater, which is reflected in Appendix X to Exhibit E to the PPA, is based on certain assumptions about the capacity factor of the facility. National Grid has requested that Deepwater include in its pricing proposal a reduction in the pricing if that capacity factor ultimately turns out to be better than the projected value used for purposes of calculating the pricing. This price reduction would share the benefit of that better-than-projected capacity factor between Deepwater and National Grid’s customers. It was National Grid’s understanding that Deepwater intended to provide a proposal to address this issue. However, Deepwater had not provided a proposal to address this issue as of the time of preparing this filing this afternoon.

#### Comments on the Policy Issues Facing the Commission

National Grid believes that the question whether the Commission should approve an agreement turns on the Commission’s view of what the objective of the agreement may be. Specifically, if the objective is to achieve a reasonably priced long term contract for renewable generation, compared to other potential renewable generation choices in the market, then it is National Grid’s view that this project remains too expensive at a price of 25.3 cents per kilowatt-hour (escalating at 3.5% per year). Not only is this a relatively high price, but this price does not include the cost of the cable from Block Island to the mainland. National Grid believes that there are likely to be other renewable generation projects that will present less expensive renewable generation options for customers that will achieve the same or greater environmental benefits. These would be projects that are able to take advantage of economies of scale or may be smaller in size but do not confront the types of additional costs associated with this complex off-shore demonstration project.

If, on the other hand, the objective is to facilitate a small-scale off-shore wind demonstration project for Rhode Island, and also establish a transmission link to Block Island, there may be a rational basis for the Commission to approve the agreement. In the context of a small-scale off-shore wind demonstration project, it may be reasonable to assume that the price

will be more expensive on a unit cost basis because it cannot, by definition, achieve economies of scale. In such case, however, it will be imperative for customers and the public to understand that they will be paying a significant premium for twenty years to achieve the objective. Having stated this, however, National Grid believes that the price of 25.3 cents per kilowatt-hour in 2013 is still too high and, therefore, the Company is not endorsing an agreement at such price level, regardless of the objective.

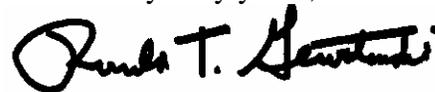
National Grid appreciates the difficult decision faced by the Commission regarding the question whether an agreement should be approved and executed by the Company. To be clear, National Grid is disappointed that the price is not lower and remains concerned about impacts on rates, but the Company also understands that this project is a demonstration of a relatively new technology, with a small number of turbines. On a larger scale basis, we would expect the unit price to be lower, but Deepwater was not able to achieve sufficient economies of scale to bring the price down further, despite increasing the number of turbines to eight. In reviewing the proposal, the Commission undoubtedly will want to take into account the cost impacts on customers and determine whether the benefits outweigh the costs. Rhode Island has less than 490,000 electric customers, resulting in a smaller customer base than would be available in other states to absorb the cost of such a project. Thus, a project that may be reasonable for customers to support in order to meet climate change objectives in one state may or may not be reasonable in Rhode Island where the rate impact is higher per customer. As such, this presents a challenging policy question to be addressed and decided by the Commission for the State of Rhode Island.

November 25<sup>th</sup> Filing

National Grid will file testimony on November 25 providing further details about the PPA issues, available market information regarding other renewable generation projects, and an analysis of the rate impacts on customers. In addition, National Grid will address the two remaining non-price issues in the PPA, which relate to the *force majeure* clause. National Grid and Deepwater were not able to resolve those issues as of the time of preparing this filing this afternoon.

The Company looks forward to assisting the Commission in considering the project and any potential agreement.

Very truly yours,



Ronald T. Gerwatowski

Enclosures

cc: Docket 4111 Service List  
Leo Wold, Esq.  
Steve Scialabba, Division

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate was electronically submitted, hand delivered, and/or mailed to the individuals listed below.



\_\_\_\_\_  
Joanne M. Scanlon

November 18, 2009

Date

**National Grid – Review of Proposed Town of New Shoreham Project  
Docket No. 4111 Service List Updated 10/30/09**

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**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
Exhibit F	Form of Certification of Extension and New Escalation Date

## 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 demonstration scale 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);<sup>1</sup>

**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.

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<sup>1</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

**“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.

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

**“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.

**“Escalation Date”** shall have the meaning set forth in Section 5.1(b) hereof.<sup>2</sup>

**“Event of Default”** shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 hereof and Section 9.2 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, guarantees, 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.

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<sup>2</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

**“Interconnecting Transmission Provider”** shall mean Buyer and/or an Affiliate of Buyer, together with their successors and assigns under the Interconnection Agreement.

**“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 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-Claiming Party**” shall have the meaning set forth in Section 10.1(c) hereof.

“**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 Outage”** shall mean any full or partial outage or curtailment of the Transmission Cable occurring for any reason.<sup>3</sup>

**“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.

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<sup>3</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

**“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 extended or 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

pursuant to Section 10.3. Any extension of the Commercial Operation Date under this Section 3.1(b) will result in an adjustment of the Escalation Date as set forth in Section 5.1(b).<sup>4</sup>

(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 6.1, 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;

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<sup>4</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

(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, consistent with Good Utility Practice;

(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, as evidenced by commissioning certificates issued by the manufacturer of the Facility's wind turbine generators;

(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) Physical Interconnection. Seller shall, during the Services Term, maintain a physical interconnection with the Delivery Point.

(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 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.

(a) 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 during a Transmission Cable Outage.

(b) For any Transmission Cable Outage that occurs during the Services Term, lasts longer than fourteen (14) days and is not related to ordinary scheduled maintenance of the Transmission Cable or associated lines or substation equipment, Seller may elect to extend the Services Term day for day by the period of that Transmission Cable Outage; provided, however, that all such extensions of the Services Term elected by Seller under this Section 4.4(b), together with all extensions of the Services Term elected by Seller for Force Majeures under Section 10.3, shall not exceed thirty six (36) months in the aggregate. Any election to extend the Services Term under this Section 4.4(b) must be made in writing prior to the end of the Transmission Cable Outage giving rise to that extension. Any extension of the Services Term under this Section 4.4(b) will result in an adjustment of the Escalation Date as set forth in Section 5.1(b).<sup>5</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 the provisions of 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 the provisions of Section 4.4, Buyer shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other

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<sup>5</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

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, but the Price shall be adjusted as described in Part 3 of Exhibit E regardless of whether ISO-NE accepts that qualification).

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.

(a) Price. 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.

(b) Escalation of Price. Consistent with Appendix X of Exhibit E, the Price shall escalate by a factor of 3.5% on each Escalation Date. For purposes of this Agreement, the "**Escalation Date**" shall initially be January 1, 2010 and each January 1 thereafter; provided, however, that if Seller elects (i) to extend the Commercial Operation Date pursuant to Section 3.1(b), (ii) to extend the Services Term pursuant to Section 4.4(b), or (iii) to extend the Services Term pursuant to Section 10.3, then each Escalation Date occurring after Seller notifies Buyer in writing of its extension election shall be delayed by the period of that extension. All delays in the Escalation Date occurring under this Section 5.1(b) shall be cumulative (i.e., shall also take into account all prior extensions), such that the period of time between January 1 of a year and the Escalation Date corresponding to that year shall be equal to the total number of days of all extensions elected by Seller under Sections 3.1(b), 4.4(b) and 10.3 collectively. Notwithstanding any provision of this Agreement to the contrary, in no event will there be more than twenty-three (23) Escalation Dates during the Term. Upon the election of any extension of the Commercial Operation Date under Section 3.1(b) or the extension of the Services Term under Section 4.4(b) or Section 10.3, Seller shall deliver a certification in the form of Exhibit F setting forth the total

number of days of such extension and establishing the new annual Escalation Date beginning with the date such certification is delivered. Buyer shall approve such certification in its sole discretion, and any dispute regarding such certification shall be resolved in accordance with Section 11.<sup>6</sup>

## 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 (10th) 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

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<sup>6</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

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 later to occur of (i) the Effective Date or (ii) the satisfaction of the Transmission Cable Conditions (or the waiver thereof by Buyer in its sole discretion). 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 be \$30 per installed kW of Capacity and shall be subject to replenishment from time to time, within five (5) Business Days after Buyer draws on the Operating Period Security, up to the amount required by this Section 6.1(b), but in any event, not to exceed \$1,800,000 on an aggregate, cumulative basis, including all prior Credit Support provided as Operating Period Security.. 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 such 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>7</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.

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<sup>7</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.

(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 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 and the execution and delivery hereof. Buyer shall notify Seller within five (5) Business Days after receipt of each of the PPA Regulatory Approval.

8.2 Filing for PPA Regulatory Approval. Buyer has made a filing with the PUC with respect to the PPA Regulatory Approval on October 15, 2009, as supplemented by Buyer's filing with the PUC on November 13, 2009. Seller may intervene and participate in the PPA Regulatory Approval proceeding.

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 6.1, 12 and 13.

8.4 Additional Seller 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 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 order or decision becomes final and non-appealable or December 31, 2010 is referred to as the “**Transmission Cable Condition Date**”), then, unless the Seller has notified Buyer in writing that it intends to exercise its rights under Section 8.5(b) hereof within 15 days of the Transmission Cable Condition Date, either Party may terminate this Agreement by giving written notice of such termination to the other Party not earlier than 15 days and 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 6.1, Section 12 and Section 13.

(b) If Seller delivers the notice described in 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.

(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 of the version proposed by Buyer 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 6.1, 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. 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 reached after the additional 60-day negotiating period or (y) 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 6.1, 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.

## **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), 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:

$$\sum_N [(CV - MV) + P]$$

where:

" $\sum_N$ " is the summation over the Services Term.

"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 (the "**Claiming Party**"); (ii) that could not have been prevented or avoided by the Claiming Party through the exercise of reasonable diligence; and (iii) that limits, prohibits or prevents the Claiming Party from performing its obligations under this Agreement. Notwithstanding the foregoing, under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to the Claiming Party, (x) any occurrence or event that was caused by the Claiming Party, (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 the Claiming Party's lack of preparation, the Claiming Party's failure to timely obtain and maintain all necessary Permits (excepting the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals), failure to satisfy contractual conditions or commitments, or

lack of or deficiency in funding or other resources shall each not constitute a Force Majeure. Force Majeure shall also not include any Transmission Cable Outage, which, for purposes of this Agreement, is addressed exclusively in Section 4.4.

(b) Subject to the Claiming Party's compliance with Section 10.2, if a Claiming Party is unable by Force Majeure to perform any of its 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. Such inability shall be promptly corrected by the Claiming Party 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) Notwithstanding the foregoing, if a Force Majeure prevents full or partial performance by the Claiming Party under this Agreement for a period of thirty-six (36) months or more, the Party whose performance is not prevented by Force Majeure (the "**Non-Claiming Party**") shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

(d) Without limiting the generality of the last sentence of Section 10.1(a), 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 and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

## 10.2 Procedure for Claiming and Resolving Force Majeure.

(a) The Claiming Party shall give written notice of any claimed Force Majeure to the Non-Claiming Party promptly upon the occurrence of such claimed Force Majeure and, in any event, within three (3) Business Days of such claimed Force Majeure. Such notice shall provide details regarding the nature, extent and expected duration of the claimed Force Majeure, the day and time when the claimed Force Majeure began, its anticipated effect on the ability of the Claiming Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such claimed Force Majeure, and shall be updated or supplemented to keep the Non-Claiming Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure.

(b) The Non-Claiming Party shall, within three (3) Business Days of its receipt of the notice described in Section 10.2(a), either acknowledge or dispute the occurrence of the claimed Force Majeure in writing. Any failure to respond to a notice under Section 10.2(a) within three (3) Business Days shall be deemed to be acknowledgement of the Force Majeure by the Non-Claiming Party. If the Non-Claiming Party disputes the occurrence of the Force Majeure, that dispute shall be resolved in accordance with the dispute resolution provisions in Section 11.

(c) The Claiming Party shall notify the Non-Claiming Party in writing of the resolution of any Force Majeure promptly and in any event within three (3) Business Days after such resolution.

Such notice shall include details regarding the nature of the resolution of the Force Majeure, the date on which the Force Majeure was resolved and a commitment by the Claiming Party to recommence the performance in full of its obligations under this Agreement effective as of the date the Force Majeure was resolved, as set forth in such notice. The Non-Claiming Party shall, within three Business Days of its receipt of that notice, either acknowledge or dispute the resolution of the Force Majeure in writing. Any failure to respond to a notice under this Section 10.2(c) within three (3) Business Days shall be deemed to be acknowledgement of the resolution of the Force Majeure by the Non-Claiming Party. If the Non-Claiming Party disputes the resolution of the Force Majeure, that dispute shall be resolved in accordance with the dispute resolution provisions in Section 11.

10.3 Extension of Agreement; Effect on Price. For any Force Majeure that occurs during the Services Term and lasts longer than sixty (60) days, the Claiming Party may elect to extend the Services Term day for day by the period of that Force Majeure; provided, however, that all such extensions of the Services Term elected by Seller under this Section 10.3, together with all extensions of the Services Term elected by Seller for Transmission Cable Outages under Section 4.4(b), shall not exceed thirty six (36) months in the aggregate. Any election to extend the Services Term under this Section 10.3 must be made in writing prior to the end of the Force Majeure giving rise to that extension. Any extension of the Services Term under this Section 10.3 will result in an adjustment of the Escalation Date as set forth in Section 5.1(b).<sup>8</sup>

## 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

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<sup>8</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

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 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 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 nameplate capacity of the Facility will be no more than thirty (30) MW.

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

**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 results 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. 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.

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. 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 by Seller during such month, the Bundled Price per MWh set forth on Appendix X hereof with respect to the applicable calendar year in which such month occurs (as adjusted pursuant to the applicable provisions of this Exhibit E).
2. 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 2 for the applicable billing period and the \$/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section 3 for that billing period.
3. 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 is or 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 3 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.

## APPENDICES

Appendix X: Bundled Price per MWh

## **Appendix X**

### **Bundled Price per MWH**

The Bundled Price per MWH shall be \$221/MWh, commencing in 2009. Subject to Section 5.1(b), the Bundled Price per MWH shall escalate by a factor of 3.5% on each Escalation Date.<sup>9</sup>

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<sup>9</sup> The language in this section was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.

**EXHIBIT F<sup>10</sup>**  
**Form of Certification of Extension and New Escalation Date**

Deepwater Wind Block Island, LLC (“**Seller**”) delivers this certification pursuant to Section 5.1(b) of the Power Purchase Agreement dated as of [\_\_\_\_\_] (the “**Agreement**”) between Seller and The Narragansett Electric Company, d/b/a National Grid (“**Buyer**”). All capitalized terms not defined herein have the meanings given to them in the Agreement.

Seller certifies as follows:

1. Seller has elected to [extend the Commercial Operation Date pursuant to Section 3.1(b) of the Agreement] [extend the Services Term pursuant to Section 4.4(b) of the Agreement] [extend the Services Term pursuant to Section 10.3 of the Agreement], and the total period of such extension is [\_\_\_\_\_] days.

2. As a result of such extension and taking into account all prior extensions of the Commercial Operation Date and Services Term under the Agreement:

a. the Services Term [will begin on [\_\_\_\_\_] and] will end on [\_\_\_\_\_].

b. the Escalation Date from today until the earlier of the expiration of the Term or the election by Seller of another extension pursuant to Section 3.1(b) of the Agreement, Section 4.4(b) of the Agreement or Section 10.3 of the Agreement, shall be [\_\_\_\_\_] of each year.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certification this [\_\_] day of [\_\_\_\_\_].

DEEPWATER WIND BLOCK ISLAND, LLC

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

Acknowledged and Agreed:

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

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

<sup>10</sup> The language in this Exhibit was provided to Deepwater Wind Block Island, LLC on November 13, 2009, and as of the close of business on November 17, 2009, Deepwater Wind had not provided a response to this language.