

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL**

**MASTER AGREEMENT FOR
DEMAND RESOURCE PROJECTS**

November 1, 2006

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THIS CAPACITY AGREEMENT ("Agreement") dated as of _____, 200__ ("Execution Date"), is by and between [name of distribution company administering this Agreement] ("Buyer") and _____ ("Supplier"). Supplier and Buyer together are the "Parties" and each individually is a "Party" to this Agreement.

WITNESSETH:

WHEREAS, pursuant to General Statutes of Connecticut § 16-243 m(c), also known as Subsection 12(c) of the Public Act 05-01, An Act Concerning Energy Independence (the "Act"), the Connecticut Department of Public Utility Control ("DPUC") must issue a competitive bid solicitation in the form of a Request for Proposals (the "RFP") for new or incremental capacity in Connecticut that will reduce expected Federally Mandated Congestion Costs ("FMCCs") for the benefit of Connecticut's ratepayers; and

WHEREAS, the DPUC carefully evaluated the responses to the RFP, including the response submitted by the Supplier, and concluded that the Supplier is a qualified bidder pursuant to the RFP, and that Supplier's offer to supply ____ MW of Capacity ("Original Base Level FCM Contract Quantity") from a Demand Resource Project pursuant to the terms of this Agreement meets the standards for selection in the RFP;

WHEREAS, according to Subsection 12(i) of the Act, the Buyer and Supplier wish to execute this Agreement in order to formalize their contractual arrangements on the terms and conditions set out herein;

WHEREAS, the Supplier will develop the Demand Resource Project to supply Capacity and (if relevant) other products from the Demand Resource Project into the ISO-NE Markets;

WHEREAS, the Buyer is entering into this Agreement to satisfy certain of its obligations under the Act;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the Parties to this Agreement covenant and agree as follows:

Article 1 General definitions

As used herein, the following terms shall have the following meanings. Initially capitalized terms used but not defined in this Agreement shall have the meanings set forth in the ISO-NE Tariff (defined below), Participant's Agreement (defined below), and/or the Second Restated NEPOOL Agreement (defined below), as applicable. References to a given Article, Section, Subsection, or Exhibit are in reference to Articles, Sections, Subsections, or Exhibits in this Agreement, unless otherwise specified. The terms "hereof", "herein", "hereto", and "hereunder" refer to this Agreement as a whole.

"Act" shall have the meaning set forth in the preamble to this Agreement.

"Additional Ratepayer Funding" has the meaning set forth in Section 3.6.

“Alternative Price Rule” takes the meaning set forth in the Settlement Agreement.

“Annual Contract Price for FCM” refers to the \$/kW amount bid by the Supplier in the RFP to be settled against the FCM, as specified in Section 6.2 in this Agreement for each Contract Year of the Term.

“Annual Contract Price for LFRM” refers to the \$/kW amount bid by the Supplier in the RFP to be settled against the LFRM, as specified in Section 6.2 in this Agreement for each Contract Year of the Term.

“Auction Clearing Price” refers to the market clearing price in any given bidding period in the Forward Reserve Auction of the LFRM, or any successor auction.

“Availability” means the capability of a resource, in whole or in part, at any given time, to produce and supply energy, Capacity, or ancillary services in accordance with accepted electric industry practice, and “Available” shall mean that a resource is capable, in whole or in part, at a given time, to produce and supply energy, Capacity, or ancillary services in accordance with such accepted electric industry practice standard.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (unless such proceeding is dismissed or stayed within thirty (30) calendar days), (ii) makes an assignment or any general arrangement for the benefit of creditors other than collateral assignments or other security instruments in favor of a Financing Party, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bankruptcy” means a proceeding under the Bankruptcy Code.

“Bankruptcy Code” means those laws of the United States of America related to bankruptcy codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

“Base Level FCM Contract Quantity” means the Demand Resource Project’s Demand Reduction Value before any ISO-NE mandated adjustments for reserve margin and line losses, or any other factors, are made, if relevant.

“Base Level LFRM Contract Quantity” means the Demand Resource Project’s LFRM Contract Quantity before any ISO-NE mandated adjustments for reserve margin and line losses, or any other factors, are made, if relevant.

“Business Day” means any day on which Federal Reserve member banks in New York City are open for business. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time (EPT).

“Buyer” means the Party serving as the counterparty to the Supplier in this Agreement.

“Call Option” has the meaning set forth in Section 6.5 of this Agreement.

“Call Option Contract Quantity” refers to the quantity of Capacity in MW terms that the Supplier has offered to supply for the Call Option in this Agreement, as specified in Exhibit D to this Agreement.

“Call Option Supplemental Capacity Payment” means the price in U.S. Dollars per kW per Contract Year for the Supplier to supply the Call Option, listed in Exhibit D to this Agreement.

“Capacity” is the tested ability of a Demand Resource Project to curtail or reduce firm electric load at a given time; this will be defined consistent with the ISO-NE Documents, as amended from time to time.

“Capacity Value” shall be determined based on the formula that ISO-NE applies to the Demand Reduction Value for Demand Resources as it may vary by type of Demand Resource and as it may be amended from time to time. The Capacity Value may include an adjustment to a Demand Resource’s Demand Reduction Value for avoided peak transmission and distribution losses, avoided reserve margin requirements, and/or other factors, as determined by ISO-NE for each type of Demand Resource. If the Demand Resource Project performs as specified in its Proposal, its Capacity Value in a given period will be equal to its FCM Contract Quantity.

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

“Claiming Party” shall mean the Party claiming relief from liability or obligations hereunder as the result of a Force Majeure event or circumstance.

“Code of Conduct” is defined in Exhibit E to this Agreement.

“Commercial Operation” reflects a status under which the Demand Resource Project has officially started commercial operations, and meets all of the requirements set out in Section 2.6 of this Agreement.

“Commercial Operation Date” refers to the date on which the Demand Resource Project is supposed to attain Commercial Operation, as set forth in Exhibit B to this Agreement.

“Commitment Period” refers to the time period for which an FCA contract is valid and is defined in the Settlement Agreement.

“Completion and Performance Security” has the meaning set forth in Section 10.1 of this Agreement.

“CONE” means to the Cost of New Entry in the Forward Capacity Market and in the Forward Capacity Auctions, as defined in the Settlement Agreement.

“Contract Year” means a twelve (12) month period during the Term which begins on the Term Commencement Date or the anniversary date thereof.

“Control Equipment” means the new capital equipment, software and associated services of the Demand Resource Project that enable the Supplier to curtail electrical load in response to operational directions from ISO-NE or any other relevant authorized dispatcher and the market prices for electricity, or at pre-determined times of the day or times of the year.

“Cost of Service Agreements” refers to a type of contract that is signed by the ISO-NE or the DPUC with a generator for the provision of electric supply in exchange for a pre-established series of payments.

“CPR Rules for Non-Administered Arbitration” shall mean the latest rules regarding arbitration available from the International Institute of Conflict Prevention & Resolution, or its successor.

“Credit Rating” means the rating assigned to a Party’s or Qualified Institution’s unsecured senior long-term debt obligations (not supported by third party credit enhancements) or if a Party does not have a rating for its senior unsecured long-term debt, then one rating notch below the rating then assigned to the Party as an issuer and/or corporate credit rating by S&P, Moody’s, or Fitch. If there are split ratings, the lowest of the Credit Ratings will apply.

“Critical Peak Demand Resources,” or any successor thereto, are a type of Demand Resource, as designated by ISO-NE, and shall mean installed measures (i.e., products, equipment, systems, services, practices, and/or strategies) on existing end-use customer facilities that reduce electrical usage during Demand Resource Critical Peak Hours or shift electrical usage from Demand Resource Critical Peak Hours to other hours and reduce the amount of capacity needed to deliver an equivalent or comparable level of service at those end-use customer facilities, or as ISO-NE may otherwise choose to define this category of Demand Resources. Such measures include Energy Efficiency, Load Management, and Distributed Generation.

“Day-Ahead Energy Market” refers to the hourly day-ahead energy market currently operated by ISO-NE, or any successor market thereto.

“Day Ahead Locational Marginal Price” refers to the hourly energy market clearing price in the ISO-NE Day-Ahead Energy Market.

“Defaulting Party” has the meaning set forth in Section 8.6 of this Agreement.

“De-list Bid” takes the meaning as defined in the Settlement Agreement whereby Capacity being bid into the Forward Capacity Market can effectively be removed from the Forward Capacity Market.

“De-listed” shall mean that a resource submitted, and ISO-NE accepted, a De-list Bid.

“Deliverable” shall mean that the Demand Resource Project’s electrical output (if relevant) is electrically interconnected to the ISO-NE System and that the electrical output of the Facility is anticipated to flow to the benefit of Connecticut load during transmission network peak loading conditions, as analyzed by ISO-NE or a competent third party acceptable to the DPUC.

“Demand Reduction Value” is the reduction in end-use demand on the electricity network in the ISO-NE System measured at the end-use customer meter coincident with Demand Resource On-Peak Hours for On-Peak Resources, Demand Resource Critical Peak Hours for Critical Peak Demand Resources, and Real-Time Demand Response Event hours for Real-Time Demand Resources, and any additional categories established by ISO-NE, consistent with ISO-NE determinations for the participation of Demand Resources in the FCM, as they may change from time to time. A Demand Resource consisting of measures that reduce load and generate output simultaneously shall be considered to be Distributed Generation, and such project’s Demand Reduction Value will be determined by whether it is registered as an On-Peak Demand Resource, a Critical Peak Demand Resource, or a Real-Time Demand Response Resource. If the Demand Resource Project is performing as specified in the terms of the Proposal, the Demand Resource Project’s Demand Reduction Value for a given period will be equal to its Original Base Level FCM Contract Quantity.

“Demand Resource” shall mean a resource registered with ISO-NE and defined as one of the following: (1) On-peak Demand Resources; (2) Critical Peak Demand Resources; or (3) Real-Time Demand Response, or any additional or successor categories developed by ISO-NE. Demand Resources are installed measures, systems, and/or strategies that result in additional and verifiable reductions in end-use customer demand on the electricity network in the ISO-NE System during Demand Resource On-Peak Hours or Demand Resource Critical Peak Hours, Real-Time Demand Response Events, or as otherwise established by ISO-NE.

“Demand Resource Project” shall mean the Demand Resource whose Original Base Level FCM Contract Quantity is being contracted through this Agreement.

“Demand Resource Critical Peak Hours” shall be defined as Demand Resource Seasonal Peak Hours and Demand Resource Shortage Hours, or as defined by ISO-NE for the purpose of Demand Resource participation in the FCM, as it may change from time to time.

“Demand Resource On-Peak Hours” shall be defined as hours ending 1400 through 1700, Monday through Friday on non-holidays during the months of June, July, and August and hours ending 1800 through 1900, Monday through Friday on non-holidays during the months of December and January, or as defined by ISO-NE for the purpose of Demand Resource participation in the FCM, as it may change from time to time.

“Demand Resource Seasonal Peak Hours” shall be defined as those hours in which the projected hourly load as shown in the ISO-NE’s most recent next day Forecast System Load, as published daily on ISO-NE’s website by 11:00 local time, for Monday through Friday on non-holidays, during the months of June, July, August, December and January is equal to or greater than 95% of the most recent 50/50 System Peak Load Forecast, as determined by the ISO-NE, for the applicable summer or winter season, or as otherwise defined by ISO-NE for the purpose of Demand Resource participation in the FCM, as it may change from time to time.

“Demand Resource Shortage Hours” shall be defined as hours when the ISO-NE begins to allow the depletion of 30-minute reserve (which at the present is Action Steps 6 or higher of Operating Procedure Number 4) in the Load Zone where the Demand Resource is located, or as otherwise defined by ISO-NE for the purpose of Demand Resource participation in the FCM, as it may change from time to time.

“Demand Resource Verification Consultant” means an independent, third party technical consultant or successor selected by the Supplier and approved by the Buyer, with the qualifications set out below, and whose services are procured at the expense of the Supplier to, among other duties, implement the Measurement and Verification Plan and to confirm to the Buyer, the DPUC and the ISO-NE, as required, that the terms of the Measurement and Verification Plan have been satisfied. If the Demand Resource Verification Consultant is an individual acting in his or her personal capacity, he or she must be licensed as a Professional Engineer in the state of Connecticut, and if the Demand Resource Verification Consultant is a consulting firm, at least one member of the team must be a Professional Engineer licensed in the state of Connecticut.

“Disclosing Party” shall have the meaning set forth in Section 12.11 of this Agreement.

“Dispatch Instruction” shall mean directions given by the ISO-NE to ISO-NE Market participants, which may include instructions to start up, shut down, raise or lower generation, change external transactions, activate or restore Real-Time Demand Resources, pursuant to ISO-NE Market Rules.

“Distributed Generation,” or any successor thereto, is a type of Demand Resource as designated by ISO-NE and shall mean generation resources directly connected to end-use customer load and located behind the end-use customer’s billing meter, which reduce the amount of energy that would otherwise have been produced by other capacity resources on the electricity network in the New England Control Area during Demand Resource On-Peak Hours, Demand Resource Critical Peak Hours, or Real-Time Demand Response Events provided that the capacity of the generation resource registered with the ISO does not exceed 5 MW, or does not exceed the most recent annual non-coincident peak demand of the individual end-use metered customer at the location where the generation resource is directly connected, whichever is greater, or however such category of Demand Resource may be defined by ISO-NE from time to time during the Term of this Agreement.

“DPUC” means the Connecticut Department of Public Utility Control, or any successor thereto.

“Early Termination Date” has the meaning set forth in Section 8.6 of this Agreement.

“Early Termination Payment “ has the meaning set forth in Section 8.7 of this Agreement.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Energy Efficiency” shall be defined as installed measures (i.e., products, equipment, systems, services, practices and/or strategies) on end-use customer facilities that reduce the total amount of electrical energy needed while delivering a comparable or improved level of end-use

services, or as otherwise defined by ISO-NE for the purpose of Demand Resource participation in the FCM. Such measures include but are not limited to the installation of more energy efficient lighting, motors, refrigeration, HVAC equipment and control systems, envelope measures, operations and maintenance procedures, and industrial process equipment.

“Escrow” shall refer to a deposit account held in a Qualified Institution bearing interest equal to 2% above a Qualified Institution’s prime rate.

“Event of Default” has the meaning set forth in Article 8 of this Agreement.

“Execution Date” refers to the later of (i) the date on which both Parties execute this Agreement or (ii) the date on which the second of the Parties executes this Agreement in the event that both Parties were unable to execute the Agreement on the same date.

“Existing Capacity” takes the meaning that is defined in the Settlement Agreement.

“Export Bid” shall take the meaning that is defined in the Settlement Agreement.

“FCA Market Price” shall take the meaning set forth in Section 6.3 of this Agreement.

“FCM Contract Quantity” refers to the quantity of Capacity in MW terms that the Supplier has offered to supply in this Agreement, after adjustments by ISO-NE for losses and reserve margin benefits and other items as relevant, and as may be amended by ISO-NE from time to time.

“Federal Power Act” means the Federal Power Act, 16 U.S.C. §§ 791 et seq, as amended from time to time.

“Federally Mandated Congestion Charges” or “FMCCs” have the meaning set forth in Conn. Gen. Stat. § 16-1 (a) (41), as it may be amended, supplemented, clarified, or interpreted from time to time by the Connecticut General Assembly, and the DPUC.

“FERC” means the Federal Energy Regulatory Commission, or any successor thereto.

“Financial Participant” shall refer to the term used under the US Bankruptcy Code, pursuant to 11 U.S.C 11 § 101 (22A), as it may be amended from time to time.

“Financing Parties” means the lending institutions (including any trustee or agent on behalf of such institutions) providing financing or refinancing, any other credit enhancement or interest rate hedging products to the Supplier for the acquisition, construction, ownership, operation, maintenance, or leasing of the Demand Resource Project.

“Fitch” means Fitch Investor’s Service, Inc., or its successor.

“Force Majeure” means an event or circumstance, such as natural catastrophes, terrorism, war, riots, or acts of God, that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the Claiming Party; and, (iii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing,

none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Supplier's Fuel supply, except when caused by Force Majeure; (b) Supplier's ability to sell Capacity at a price greater than the price set out in Article 6; (c) the breakdown of Supplier's plant and/or equipment, except when caused by Force Majeure; (d) an occurrence or an event that merely increases the costs of, or causes an economic hardship to, a Party; (e) Buyer's ability to procure the supply of Capacity at a price lower than that set forth in Article 6 to this Agreement; and (f) Supplier's inability to sign up sufficient number of end customers.

"Forward Capacity Auction" or "FCA" refers to the annual auction that will be held in the Forward Capacity Market, or any successor auction thereto, but does not include the Reconfiguration Auctions of the FCM.

"Forward Capacity Market" or "FCM" refers to the capacity market that is being established by ISO-NE pursuant to the Settlement Agreement, and any successor market thereto.

"Forward Reserve Auction" or "FRA" refers to the semi-annual auction that will be held in the Locational Forward Reserve Market, and any successor auction thereto.

"Fuel" means any fuel used to start or operate a Demand Resource Project. The type of Fuel used by this Demand Resource Project, if relevant, is specified in Exhibit C to this Agreement.

"GADS" means the Generating Availability Data System ("GADS"), which is managed by NERC and which collects, records, and retrieves operating information from generators.

"Government Agency" means any federal, state, local territorial or municipal government body; any governmental, judicial, regulatory or administrative department, agency, commission, board, bureau, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power, including any independent system operator or any control operator, or any court or governmental tribunal.

"Indemnified Party" has the meaning set forth in Section 12.9 of this Agreement.

"Indemnifying Party" has the meaning set forth in Section 12.9 of this Agreement.

"Initial Notice" has the meaning set forth in Section 12.10 of this Agreement.

"Interconnection Agreement" refers to the contracts that any new Demand Resource Projects must sign with ISO-NE and/or with the entity that owns the transmission or distribution facilities with which such new Demand Resource Project connects in order to interconnect to the New England electricity network (if relevant), as specified by ISO-NE rules on interconnections.

"Investment Grade Rating" means a Credit Rating of "Baa3" or better from Moody's, and "BBB" or better from S&P or Fitch. If there are split ratings, the lowest of the Credit Ratings will apply.

"ISO New England" or "ISO-NE" shall have the meaning that is set forth in the ISO-NE Tariff, or any successor thereto.

“ISO-NE Billing Policy” means Exhibit 1D of ISO-NE Tariff, or any successor thereto.

“ISO-NE Documents” collectively include the ISO-NE System Rules, the ISO-NE Tariff, the Market Rules, ISO-NE Manuals, ISO-NE proceedings and policies, the Participants Agreement, and the Second Restated NEPOOL Agreement.

“ISO-NE Manuals” mean the manuals issued by ISO-NE explaining rules and procedures for the New England wholesale electric power markets and bulk power system, including Market Rule 1 and the ISO-NE Tariff, as it may be amended from time to time, and any successors thereto.

“ISO-NE Markets” refers to all markets currently operated by ISO-NE, and any successor markets thereto, and any additional markets that may be developed by ISO-NE in the future.

“ISO-NE System” or “System” shall refer to the electricity network and wholesale market operated by ISO-NE.

“ISO-NE System Rules” has the same meaning as the defined term “ISO New England System Rules” in Section III of the ISO-NE Tariff, or any successor thereto.

“ISO-NE Tariff” means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as may be amended from time to time, or any successor tariff accepted by FERC.

“kW” shall mean a kilowatt or kilowatts.

“Law” or “Laws” shall mean all laws, rules, regulations, codes, injunctions, judgments, orders, decrees, rulings, interpretations, constitutions, ordinances, common law, or treaty, of a Government Agency.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank. Requirements for qualified Letters of Credit under this Agreement are described in Article 10 of this Agreement.

“LFRM Contract Quantity” refers to the quantity of Capacity in MW terms that the Supplier will be settling against the LFRM in this Agreement, as specified in Exhibit D to this Agreement. Such LFRM Contract Quantity may reflect adjustments to the Base Level LFRM Contract Quantity by ISO-NE depending on ISO-NE’s policies regarding the participation of Demand Resources in the LFRM and applicable ISO-NE Market Rules.

“Load Management” shall be defined as installed measures (i.e., products, equipment, systems, services, practices, and/or strategies) on existing end-use customer facilities that curtail electrical usage or shift electrical usage from Demand Resource Critical Peak Hours to other hours and reduce the amount of capacity needed, while delivering a comparable or acceptable level of end-use service, or as otherwise defined by ISO-NE for the purpose of Demand Resource participation in the FCM. Such measures include but are not limited to energy

management systems, load control, end-use cycling, load curtailment strategies, chilled water storage, and other forms of electricity storage.

“Load Zone” shall refer to the load zones used in ISO-NE for the purpose of the FCM and for settlement of load obligations in the Day-Ahead Energy Market.

“Local Sourcing Requirement” shall take the meaning that is defined in the Settlement Agreement.

“Locational Forward Reserve Market” or “LFRM” refers to the ISO-NE market for procuring locational forward reserves, or any successor market thereto.

“Market Based Rate Authorization” refers to the FERC process authorized pursuant to Section 203 of the Federal Power Act granting generators the right to sell energy, capacity, and/or ancillary services at market based rates.

“Market Change” means any change in the ISO-NE Tariff, including without limitation Section III thereto, Market Rule 1 – Standard Market Design, as well as any other significant and material change to the Market Rules or the operation of the ISO-NE Markets.

“Market Rule 1” means Section III of the ISO-NE Tariff, or any successor tariff accepted or approved by FERC.

“Market Rules” means the market rules established by ISO-NE for the operation of the ISO-NE Markets including but not limited to the Forward Capacity Market, the Locational Forward Reserve Market, and the Day-Ahead Energy Market.

“Measurement and Verification Plan” means the measurement and verification plan prepared and submitted by the Supplier in accordance with Section 2.6(g) and 3.5(d) of this Agreement, which outlines Demand Resource Project specifications, measurement and verification protocols, and performance data. The Measurement and Verification Plan also outlines the measurement and verification activities that shall be undertaken by the Demand Resource Verification Consultant to measure and verify the Demand Resource’s Demand Reduction Value and to confirm that the terms of the Measurement and Verification Plan have been complied with. The Measurement and Verification Plan must be consistent with ISO-NE requirements for Demand Resources participating in the FCM, as may be amended from time to time.

“Measurement and Verification Report” means a periodic report, as specified in Section 3.5(d), on the activities of the Demand Resource Project made in accordance with the Measurement and Verification Plan. The Measurement and Verification Report must be consistent with ISO-NE requirements for Demand Resources participating in the FCM, as amended from time to time.

“Milestone Date” refers to the date by which a specific Milestone Event shall be completed, as laid out in Exhibit B to this Agreement.

"Milestone Event" refers to the end of each phase of the Demand Resource Project's development, culminating in the Demand Resource Project's Commercial Operation. Milestone Events under this Agreement are provided in Exhibit B to this Agreement.

"Monthly Call Option Contract Price" is defined in Exhibit D to this Agreement.

"Monthly Contract Price" is defined in Section 6.3 of this Agreement.

"Monthly Contract Price for FCM" is defined in Section 6.3 of this Agreement.

"Monthly Contract Price for LFRM" is defined in Section 6.3 of this Agreement.

"Monthly Payment Amount" is defined in Section 6.3 of this Agreement.

"Moody's" means Moody's Investors Service or its successor.

"MW" shall mean a megawatt or megawatts.

"NEPOOL" means the New England Power Pool, which is the power pool created by and operated pursuant to the provisions of the Second Restated NEPOOL Agreement, or any successor to the New England Power Pool.

"New Capacity" takes the meaning that is defined in the Settlement Agreement.

"New England Control Area" is as defined in the ISO-NE Tariff.

"Non-Claiming Party" shall mean the counterparty under this Agreement from the Claiming Party.

"Non-Defaulting Party" shall have the meaning set forth in Section 8.6 of this Agreement.

"Non-Disclosing Party" shall have the meaning set forth in Section 12.11 of this Agreement.

"Non-Paying Party" shall have the meaning set forth in Section 6.8(c) of this Agreement.

"North American Electric Reliability Council" or "NERC" means the North American Electric Reliability Council or any successor organization.

"On-Peak Demand Resources," or any successor category thereto, are a type of Demand Resource designated by ISO-NE and shall mean installed measures (i.e., products, equipment, systems, services, practices, and/or strategies) in end-use customer facilities or utility distribution system that reduce the total amount of electrical energy consumed during Demand Resource On-Peak Hours, while delivering a comparable or acceptable level of end-use service, or as otherwise defined by ISO-NE. Such measures include Energy Efficiency, Load Management, and Distributed Generation.

"Original Base Level FCM Contract Quantity" shall refer to the Base Level FCM Contract Quantity that was specified in the Supplier's Proposal and was listed in Exhibit D to this

Agreement at the Execution Date, as may be adjusted pursuant to Section 2.5(c) of this Agreement.

“Original Base Level LFRM Contract Quantity” shall refer to the Base Level LFRM Contract Quantity that was specified in the Supplier’s Proposal and was listed in Exhibit D to this Agreement at the Execution Date, as may be adjusted pursuant to Section 2.5(c) of this Agreement

“Out of Market Bid” takes the meaning that is defined in the Settlement Agreement.

“Participants Agreement” means the “Participants Agreement among ISO-NE as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants” dated as of February 1, 2005, as may be amended from time to time, or any successor thereto accepted by FERC.

“Parties” collectively means both the Supplier and the Buyer.

“Party” means either the Supplier or the Buyer.

“Paying Party” is defined in Section 6.8(c) of this Agreement.

“Peak Energy Rents” or “PER” takes the meaning that is defined in the Settlement Agreement.

“Permits” means all siting, environmental, and local municipal permits and/or approvals that must be obtained in order for a Demand Resource Project to begin or continue operations in the state of Connecticut.

“Person” means a natural person, firm, trust, partnership, limited partnership, limited liability company or corporation (with or without share capital), joint venture, sole proprietorship, governmental entity, or other entity of any kind.

“Project Security Deposit” refers to the security deposit that the Supplier provided during the competitive solicitation process that resulted in this Agreement. The Project Security Deposit for all Demand Resource Projects is U.S. Dollar 5 per kW for each kW of Original Base Level FCM Contract Quantity.

“Proposal” shall refer to the proposal submitted by the Supplier to the DPUC under the DPUC’s competitive solicitation process to encourage the development of new or incremental Capacity in the state of Connecticut which resulted in this Agreement.

“Prudent Utility Practice” means the practices, methods, and acts recognized as good engineering practices applicable to the design, building, and operation of Demand Resource Projects of similar type, size and capacity, and that at a particular time, in the exercise of reasonable judgment in light of the facts known or that shall reasonably have been known at the time a decision was made, will have been expected to accomplish the desired result in a manner consistent with applicable Law, Permits, equipment manufacturer’s recommendations, reliability, safety, environmental protection, and the Supplier’s obligations under this

Agreement. With respect to the Demand Resource Project, Prudent Utility Practice includes (but is not limited to) taking reasonable steps to ensure that:

1. equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Demand Resource Project's needs;
2. sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Demand Resource Project properly (taking into account manufacturers' guidelines and specifications as well as interconnected electric system status), efficiently, and in coordination with the Buyer and ISO-NE and are capable of responding to emergencies as well as normal conditions;
3. preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
4. appropriate monitoring and testing are performed to ensure equipment is functioning as designed and will be expected to function properly during normal, abnormal and emergency conditions;
5. equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, the interconnected system, or contrary to Laws or Permits or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAr) loading, frequency, synchronization, and/or control system limits; and

"Qualified Capacity" shall take the meaning from the Settlement Agreement.

"Qualified Institution" means a commercial bank or trust company with (i) a Credit Rating 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, and (ii) having a capital surplus of at least \$10,000,000,000.

"Ramp Rate" is defined as a Facility's capability to increase or decrease energy output after start-up, synchronization to the system, and technically required hold generation "set" points, for operation between minimum load and maximum continuous rating, as defined in ISO-NE Manuals, as it may be amended from time to time.

"Real-Time Demand Response Event" shall mean the hours when the ISO-NE activates Real-Time Demand Response Resources in the Load Zone where the Demand Resource is located, which shall be consistent with Demand Resource Critical Peak Hours, or whatever hours ISO-NE designates for Real-Time Demand Response Resources.

“Real-Time Demand Response Resources,” or any successor thereto, are a type of Demand Resource as designated by ISO-NE and shall mean installed measures (i.e., products, equipment, systems, services, practices and/or strategies) on existing end-use customer facilities that (i) curtail electrical usage within 30-minutes of receiving Dispatch Instructions from the ISO and (ii) continue curtailing electrical usage from the New England Control Area until receiving Dispatch Instructions from the ISO to restore electrical usage, or as defined by ISO-NE, or as otherwise defined by ISO-NE. Such measures include Load Management and Distributed Generation. The period of curtailment shall be consistent with Real-Time Demand Response Events, or as otherwise defined by ISO-NE.

“Reconfiguration Auction” shall take the meaning from the Settlement Agreement.

“Reliability Must Run Contracts” or “RMRs” refers to contracts that are signed with generators by ISO-NE for reliability purposes and approved by FERC.

“Renewable Attribute” refers to any renewable attribute that a generation, demand side management, energy efficiency, or other project providing capacity may possess, including but not limited to renewable energy credits, Connecticut class III attributes, and low emissions attributes.

“Replacement Price” means the price at which the Buyer, acting in a commercially reasonable manner, purchases or could have purchased Capacity equal to the amount of Capacity that was otherwise not provided by the Supplier in accordance with this Agreement, plus costs reasonably incurred by the Buyer in purchasing such replacement Capacity. Any applicable market prices, including prices in Reconfiguration Auctions, shall be deemed to be commercially reasonable prices for purposes of this definition.

“Representatives” has the meaning set forth in Section 12.11 of this Agreement.

“S&P” means Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., and its successors.

“Second Restated NEPOOL Agreement” or (“SRNA”) refers to the operating agreement that outlines NEPOOL’s governance, which was made effective February 1, 2005, or any successor document thereto approved by FERC.

“Settlement Agreement” refers to the settlement on ISO-NE’s Forward Capacity Market filed with the FERC on March 6, 2006 under Docket Nos. ER03-563-000, ER03-563-030, and ER03-563-055, including (i) any successor agreements thereto approved by FERC and (ii) any terms, provisions and conditions in the ISO-NE Documents or Law that interpret, implement, clarify, settle, amend, or expand upon the terms of the Settlement Agreement or any FERC-approved successor agreement thereto.

“Settlement Amount” means the amount calculated in accordance with Section 8.7 of this Agreement.

“Site” shall mean those parcels of real estate and rights of way on or by which the Demand Resource Project is or will be located.

“Strike Price” shall take the meaning set forth in Section 6.5 of this Agreement.

“Supplier” refers to the entity that pursuant to this Agreement is assuming the obligation of supplying a specified quantity of Capacity in the ISO-NE System for the Term of the Agreement.

“Tax” or “Taxes” means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.

“Term” has the meaning set forth in Article 5 in this Agreement.

“Term Commencement Date” is defined in Section 5.2 of this Agreement.

“Term Termination Date” means the earlier of the date on which (i) this Agreement expires, which will be the day before the Term Commencement Date plus the number of years in the Term, or (ii) the date upon which a Party terminates this Agreement in accordance with the provisions of the Agreement.

“Transition Payment” means the fixed payments for which capacity resources are eligible during the Transition Period under Section VIII of the Settlement Agreement.

“Transition Period” means the time period between December 1, 2006 and the currently anticipated completion day of the Transition Period on May 30, 2010, pursuant to the terms of the Settlement Agreement, as it may be amended from time to time.

Article 2 Demand Resource Project Description and Supplier’s Obligations during Development and Construction

2.1 Summary of Demand Resource Project Development and Construction

- (a) The Supplier shall develop and maintain the Demand Resource Project, which shall consist of a [___] having an aggregate Base Level FCM Contract Quantity of [___] MW, the technology (or technologies) of which complies with the eligibility criteria established by the Act. Exhibit A provides a detailed description of the Demand Resource Project, including (i) the types of Demand Resource technologies, (ii) schedule of corresponding capacity of each type of Demand Resource; and (iii) schedule of corresponding equipment and components for each type of Demand Resource.
- (b) The Supplier shall at no time after the Execution Date of this Agreement modify, vary, or amend in any respect any of the features or specifications of the Demand Resource Project described in Exhibit A, in particular any changes affecting the Demand Resource Project’s Original Base Level FCM Contract Quantity, and if applicable, Availability, level of environmental emissions, or operating efficiency in such a way as will

materially and adversely affect the Supplier's ability to perform its obligations under this Agreement, or which changes the economic balance of this Agreement, as defined by the anticipated payments relative to anticipated benefits under this Agreement for each Party as of the Execution Date.

- (c) The Supplier may make immaterial changes to the Demand Resource Project as long as such immaterial changes do not have an adverse impact on the Supplier's ability to fulfill its obligations under this Agreement. The Supplier must notify the Buyer of any such immaterial changes by providing written notice within thirty (30) calendar days of the immaterial change. The Buyer shall amend this Agreement, as needed, send amended Agreement to Supplier, and file amended Agreement with DPUC within thirty (30) calendar days of the date on which the written notice was sent by the Supplier regarding such immaterial changes.
- (d) If the Supplier seeks to change any features or specifications of the Demand Resource Project in Exhibit A in a manner that is material and which will not adversely affect the Supplier's ability to perform its obligations under this Agreement, the Supplier must submit written notification about such changes and their potential impact on Supplier performance to the Buyer. The Buyer will have thirty (30) calendar days from the date on which the notice is sent to review the Supplier's proposed changes to Exhibit A. The Buyer may object to the Supplier's proposed modifications to the features or specifications of the Demand Resource Project if the Buyer determines that the proposed changes will adversely affect the Supplier's ability to perform its obligations under this Agreement. If there is a disagreement between the Buyer and the Supplier concerning any such changes requested by the Supplier, then such dispute shall be subject to the dispute resolution provisions in Section 12.10 of this Agreement. If the Buyer does not issue a written objection to the proposed changes to the DPUC and the Supplier within thirty (30) calendar days, the proposed change will be automatically approved and the Supplier shall provide an amended Exhibit A to the Buyer and the DPUC within five (5) Business Days. If the Buyer issues a timely objection, the DPUC can review the proposed changes and can approve or deny the Supplier's proposed changes to the features or specifications of the Demand Resource Project.
- (e) No proprietary rights to Supplier's methods, equipment, processes, or other property rights, either tangible or intangible, shall be deemed transferred to Buyer by virtue of this Agreement, and this Agreement shall not be construed to confer any license or other proprietary rights herein.

2.2 Location

- (a) To the extent relevant, the Demand Resource Project shall be interconnected to the System such that the Demand Resource Project's Base Level FCM Contract Quantity shall be counted as a Connecticut resource, and, specifically, a Qualified Capacity resource to meet Connecticut's Local Sourcing Requirement in the FCM or successor thereto over the Term of the Agreement.

- (b) The physical address [or addresses] of the Demand Resource Project will be listed in the first Measurement and Verification Report provided by the Demand Resource Verification Consultant to the Buyer and the DPUC, and will be updated as needed in subsequent periodic Measurement and Verification Reports.

2.3 General Design of Demand Resource Project

The Supplier shall construct the Demand Resource Project according to Prudent Utility Practice, meeting ISO-NE System Rules, the ISO-NE Documents, and all other applicable Laws and Permits. The Supplier shall ensure that the Demand Resource Project is designed, engineered and constructed to operate in accordance with the requirements of this Agreement from the Effective Date until the end of the Term.

2.4 Interconnection

The Supplier shall meet all applicable ISO-NE and DPUC interconnection standards, and shall assume responsibility for and bear all costs and expenses of meeting such interconnection standards, applicable Law and all other interconnection-related costs associated with or triggered by the Supplier's Demand Resource Project.

2.5 Milestones for Commercial Operation

The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Demand Resource Project by the corresponding Milestone Date set out in Exhibit B, and agrees:

- (a) that each of the Milestone Events as described in Exhibit B to this Agreement shall be achieved in a timely manner and by its corresponding Milestone Date for its corresponding Original Base Level FCM Contract Quantity should the Demand Resource Project be coming on line in a staggered manner. The Supplier will provide written notice to the Buyer and the DPUC substantiating and certifying the completion of each Milestone Event (or if not completed, a status report and expected completion date) no later than five (5) Business Days after the Milestone Date;
- (b) that, subject to Section 9.2(c), Commercial Operation for the corresponding Base Level FCM Contract Quantity shall be achieved by the Milestone Date for Commercial Operation listed in Exhibit B hereto, failing which the Supplier shall pay to the Buyer on or before five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages, an amount equal to U.S. Dollars 50 per MW multiplied by the Original Base Level FCM Contract Quantity (MW) for that Commercial Operation Date, for each calendar day after the anticipated Milestone Date for Commercial Operation listed in Exhibit B hereto until Commercial Operation has been achieved for the relevant Original Base Level FCM Contract Quantity;
- (c) that, using a methodology consistent with ISO-NE's approach for verifying a resource's Demand Reduction Value for Demand Resources participating in the FCM, as such

approach may evolve over time, the Supplier must demonstrate that the Demand Resource Project's Demand Reduction Value is equal to or more than the Original Base Level FCM Contract Quantity (MW) (and if relevant its Original Base Level LFRM Contract Quantity) at the date of Commercial Operation for the corresponding Base Level FCM Contract Quantity. The Supplier shall have thirty (30) calendar days to cure any deficiency in the Demand Resource Project's Demand Reduction Value, failing which the Supplier shall pay to the Buyer on or before five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages, a sum of money equal to U.S. Dollars 200 per kW multiplied by the deficiency between the Demand Reduction Value and the Original Base Level FCM Contract Quantity (and if relevant the Original Base Level LFRM Contract Quantity). If after the Commercial Operation Date, the Supplier cannot demonstrate that the Demand Resource Project's Demand Reduction Value is equal to or more than the Original Base Level FCM Contract Quantity (and if relevant the Original Base Level LFRM Contract Quantity), and provided that the Supplier has paid to the Buyer all of the liquidated damages required by this Subsection 2.5(c), the Original Base Level FCM Contract Quantity (and, if relevant, the Original LFRM Contract Quantity) under this Agreement will be revised by the Parties through an addendum to this Agreement which will be submitted in writing to the DPUC to reflect the reduced Base Level FCM Contract Quantity (and if relevant the reduced Base Level LFRM Contract Quantity) (which will be set equal to equal the Demand Resource Project's actual Demand Reduction Value);

- (d) that damages set out in Sections 2.5(b) will not apply if the delay is due to (i) a Force Majeure event; (ii) a material breach by the Buyer of its obligations under this Agreement, pursuant to Article 4; or (iii) a delay in obtaining regulatory approval from the Department of Environmental Protection or the Connecticut Siting Council (or any other relevant Government Agency), which was not caused by the Supplier, by the Supplier's failure to perform a required task, or otherwise not the fault of the Supplier or his agent;
 - a. If there is no delay, the Supplier will provide the Buyer and the DPUC with written notification and supporting documentation of having obtained all required regulatory approvals within two (2) Business Days of the Milestone Date.
 - b. If there is a delay in the regulatory approval process that is not the result of delay on the part of the Supplier or otherwise the Fault of the Supplier, the Supplier will provide written notice of the delay and its cause to the Buyer and to the DPUC within two (2) Business Days of the Milestone Date, requesting that the DPUC exempt it from paying the associated liquidated damages. If the DPUC (in its discretion) accepts this explanation and issues its acceptance in writing within thirty (30) calendar days of the written notice of the delay, the Supplier will be exempt from any damages under Section 2.5(b). Otherwise, the Supplier will be required to pay all damages under Section 2.5 (b).
- (e) that damages set out in Section 2.5(c) will not be owed by the Supplier if ISO-NE changes Market Rules subsequent to December 13, 2006 regarding the eligible categories

of Demand Resources and how such Demand Resources' Demand Reduction Values will be calculated;

- (f) Each Party acknowledges and agrees with respect to these liquidated damages in Sections 2.5(b) and 2.5(c) that:
- a. the actual damage expected as a result of the Supplier's breach of these requirements would be substantial;
 - b. both Parties intend that the Supplier would pay the specified liquidated damages amount for such a breach;
 - c. this amount of damages is not a penalty;
 - d. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer would sustain if the Supplier breaches this provision;
 - e. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and,
 - f. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.

2.6 Requirements for Commercial Operation

The Demand Resource Project will be deemed to have achieved Commercial Operation once the Supplier has completed all of the requirements listed below. Should the Demand Resource Project have a staggered schedule of increasing amounts of Capacity becoming commercially operational over a period of time, the Supplier must attest that each segment of incremental Capacity has achieved the requirements for Commercial Operation, as laid out in this Section 2.6.

- (a) A duly authorized officer of the Supplier familiar with the Demand Resource Project has submitted to the Buyer and the DPUC an affidavit stating that all Permits to construct and/or operate the Demand Resource Project have been obtained in compliance with applicable Law and this Agreement by the Supplier (at the Supplier's sole cost and expense) and are in full force and effect, and that Supplier is in compliance with the terms and conditions of this Agreement and said Permits in all material respects.
- (b) The Supplier has provided the Buyer with copies of all required approvals (if any) from relevant Government Agencies with valid jurisdiction over the Supplier or the Demand Resource Project.

- (c) All Demand Resource Project development, construction, commissioning and testing activities have been completed and relevant Control Equipment (if applicable) has been installed and can be demonstrated to operate.
- (d) The Supplier has delivered to the Buyer and the DPUC documentation from ISO-NE confirming the Supplier's eligibility to participate in and receive compensation from the FCM, and, if relevant, the LFRM.
- (e) If applicable, the Supplier has delivered to the Buyer a certificate addressed to it from the Demand Resource Verification Consultant stating that the Supplier has executed third party contracts that collectively represent 80% or more of the Original Base Level FCM Contract Quantity.
- (f) If the Demand Resource Project has interval metering, the Supplier has provided documentation resulting from the Demand Resource Project's operational test, and any other relevant documentation from ISO-NE attesting to the Demand Resource Project's metering equipment installation and accuracy.
- (g) If the Demand Resource Project does not have interval metering or does not use the utility revenue meter:
 - a. The Supplier has in place a Measurement and Verification Plan, which is consistent with ISO-NE requirements for the FCM, and which has been approved by the Buyer. The Measurement and Verification Plan, which will be paid for by the Supplier, must be consistent with ISO-NE requirements for the Demand Resource technology and for participation in the FCM.
 - b. The Supplier has delivered to the Buyer and the DPUC a report from the Demand Resource Verification Consultant certifying the ability of the Demand Resource Project to reduce its load at a level that is equal to or more than the appropriate month's Demand Reduction Value.
- (h) The Supplier has obtained and submitted to the Buyer certificates of insurance evidencing the coverages required by Section 2.8 of this Agreement.
- (i) The Buyer shall provide commercially reasonable assistance in supporting the Supplier's efforts to attain Commercial Operation in a timely basis and shall provide any documents or information that the Supplier may reasonably request that are necessary for the Demand Resource Project to attain Commercial Operation.

2.7 Progress Reports During Design and Construction; Buyer's ability to view and confirm Supplier Tests and Milestones

- (a) By the fifteenth (15th) day of each January, April, July, October of each Contract Year following the Effective Date of this Agreement and continuing until the Commercial Operation Date, the Supplier shall provide the Buyer and the DPUC with quarterly progress reports in a form agreed to by the Parties describing the status of efforts

made by the Supplier to meet each Milestone Date and the progress of the design and development of the Demand Resource Project. At the DPUC or the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report.

- (b) With respect to each Milestone Event and test that this Agreement requires the Supplier to complete, the Buyer or its designated agent shall have (i) the right (but not the obligation) to obtain access to the Site, the Demand Resource Project, and relevant Supplier records (accompanied by an employee or representative of the Supplier) to confirm that each such Milestone Event has been achieved and/or that each Milestone Event complies with the applicable requirements of this Agreement, and (ii) the right to receive prior notice of, and an opportunity to view, each test the Supplier is required to perform pursuant to this Agreement.

2.8 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors and subcontractors, where appropriate, to maintain from the commencement of construction of the Demand Resource Project to the end of the Term, at its own cost and expense, with insurers reasonably acceptable to the Buyer and authorized to underwrite insurance in the state of Connecticut, all the necessary and appropriate insurance that a prudent Person in the business of the Supplier (developing, constructing, and operating a Demand Resource Project) will maintain, including the following:
 - a. "all-risk" property insurance covering property of every description, in the joint names of at least the Supplier and its principal contractors, insuring not less than the full replacement value of the equipment installed as part of the Demand Resource Project. During the construction of the Demand Resource Project until the Commercial Operation Date, the policy shall include as additional insureds all subcontractors, but only as their interest may appear.
 - b. boiler and machinery insurance, if applicable, in protecting the interest of the Supplier and its principal contractors, and anyone having an ownership interest in the personal property in question, as their respective interests may appear, insuring not less than the full replacement value of the Control Equipment and any other insurable objects forming part of the Demand Resource Project.
 - c. commercial general liability insurance covering death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier's activities in connection with the Demand Resource Project or performance of its obligations under this Agreement.
 - d. to the extent applicable, environmental / pollution liability insurance, providing coverage any third party claims for bodily injury, property damage and clean-up

for pollution and environmental incidents arising out of the construction, operation or maintenance of the Demand Resource Project.

- (b) The Supplier shall provide the Buyer with proof of the insurance required in this Section 2.8 in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, on or before the commencement of construction of the Demand Resource Project, and renewal or replacements on or before the expiration of any such insurance. Buyer shall be named as an “additional insured” party on the insurance policy. Each such certificate of insurance shall require the insurance carrier and/or insurance broker to provide the Buyer with thirty (30) calendar days prior notice in the event of any material change, cancellation, or failure to renew the insurance coverage required by this Section 2.8.

Article 3 Supplier’s Obligations after Commercial Operation of the Demand Resource Project

3.1 New England Market participation before the Forward Capacity Market begins

- (a) The Demand Resource Project must participate in any ISO-NE Markets for which it is eligible during the Transition Period.
- (b) To the extent that the Demand Resource Project is eligible to receive Transition Payments from ISO-NE during the Transition Period, it will do so. Payment under this Agreement to the Demand Resource Project that qualifies for Transition Payments during the Transition Period will be according to the terms of Article 6 of this Agreement.
- (c) If the Demand Resource Project is not eligible to receive Transition Payments from ISO-NE, the Buyer will pay the Supplier its Annual Contract Price for the FCM for its Base Level FCM Contract Quantity during the Transition Period.
- (d) The Supplier must uphold all of its obligations of this Agreement throughout the Transition Period, and, if relevant, all ISO-NE Transition Period-specific obligations.

3.2 New England Market participation after the Forward Capacity Market begins

- (a) The Supplier warrants that the Demand Resource Project’s Base Level FCM Contract Quantity will participate in the Forward Capacity Market and in the Day-Ahead Energy Market. The Demand Resource Project, at the Execution Date, qualifies as one of the following under ISO-NE’s categories for Demand Resources participating in the FCM, or any additional or successor ISO-NE categories.
 - a. On-Peak Demand Resource _____
 - b. Critical Peak Demand Resource _____

- c. Real-Time Demand Response Resource _____
- (b) The Supplier warrants that the Demand Resource Project's Base Level LFRM Contract Quantity will participate in the Locational Forward Reserve Market. The Demand Resource Project's Base Level LFRM Contract Quantity must be equal to or less than the Demand Resource Project's Base Level FCM Contract Quantity. [NOTE: If Supplier is not settling against the LFRM, this provision shall be left blank]
- (c) The Supplier represents, warrants, and covenants that the Demand Resource Project will be capable of fully participating in the ISO-NE Markets referred to in Section 3.2(a) and 3.2(b), based on the design of the Demand Resource Project and the Demand Resource Project's compliance with the technical qualifications in the ISO-NE Documents. If the Supplier is unable to participate in ISO-NE Markets due to events including, but not limited to, the termination of its membership, suspension of membership rights, or the termination of its Market Participant Service Agreement, the Supplier must pay to Buyer liquidated damages representing the Replacement Price of the products that the Supplier would otherwise have supplied into the ISO-NE Markets for the period until a cure is achieved pursuant to Section 8.1(c)b. Each Party acknowledges and agrees with respect to such liquidated damages that (i) the actual damage expected as a result of the Supplier's breach of these requirements would be substantial but such damages are uncertain in amount and/or difficult to ascertain; (ii) both Parties intend that the Supplier would pay the specified liquidated damages amount for such a breach; (iii) this amount of damages is not a penalty; (iv) the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer would sustain if the Supplier breaches this provision; (v) the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and (vi) such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.
- (d) The Supplier further represents, warrants, and covenants that the Base Level FCM Contract Quantity will participate in the selected ISO-NE Markets throughout the Term as specified in Section 6.2 of this Agreement in accordance with all relevant requirements under the ISO-NE Documents.
- (e) The Supplier shall not seek or enter into a Reliability Must Run Contract or a Cost of Service Agreement or any similar arrangement with another third party, ISO-NE, or any Government Agency for any of the Base Level FCM Contract Quantity of the Demand Resource Project during the Term of the Agreement.
- (f) The provisions in this Agreement do not preclude the Supplier from entering into a bilateral agreement to sell its energy (if relevant) or any capacity from the Demand Resource Project in excess of its Original Base Level FCM Contract Quantity as long as it meets all of its obligations under this Agreement.
- (g) The Supplier retains any Renewable Attributes including but not limited to other environmental and/or emissions credits associated with the Demand Resource Project to use at its sole discretion.

- (h) The Supplier must request and ensure that ISO-NE issues monthly invoices that are itemized for the Base Level FCM Contract Quantity.

3.3 Terms of participation by Demand Resource Project in the Forward Capacity Market

- (a) Within two (2) Business Days of the Effective Date of this Agreement, the Supplier will file with ISO-NE, if it has not already done so, any required materials to have the Base Level FCM Contract Quantity from the Demand Resource Project qualify for the Supplier's first Forward Capacity Auction and each subsequent FCA. The costs of qualifying with ISO-NE are the responsibility of the Supplier.
- (b) The Demand Resource Project must be listed as a Qualified Capacity resource to meet Connecticut's Local Sourcing Requirement in the FCM. If the Demand Resource Project's category of Demand Resource becomes ineligible to be listed as a Qualified Capacity resource due to ISO-NE Market Rules changes issued after December 13, 2006, the Supplier and the Buyer will convert this Agreement into a fixed capacity agreement with the Buyer paying the Supplier the Annual Contract Price for the FCM for the Demand Resource Project's Base Level FCM Contract Quantity for each Contract Year in exchange for the Supplier meeting its obligations under this Agreement for the remaining Term of this Agreement. The Buyer and Supplier will submit this amended Agreement to the DPUC for review and approval within five (5) Business Days.
- (c) The Demand Resource Project's Base Level FCM Contract Quantity is required to participate in each Commitment Period over the entire Term of this Agreement.
- (d) If, after the Commercial Operation Date, the Demand Resource Project's Demand Reduction Value decreases due to FCM rule changes by ISO-NE, the Base Level FCM Contract Quantity will be automatically reduced through an addendum to this Agreement for the purposes of settlement under Article 6 of this Agreement. Should subsequent ISO-NE FCM rule changes increase the eligible capacity of the Demand Resource Project's Demand Reduction Value, the Base Level FCM Contract Quantity will be automatically increased up to the Original Base Level FCM Contract Level through an addendum to this Agreement for the purposes of settlement under Article 6 of this Agreement.
- (e) If, after the Commercial Operation Date, the Demand Resource Project's Demand Reduction Value decreases to a level at which it is less than the Base Level FCM Contract Quantity for reasons that are not related to ISO-NE changes to FCM rules and are not due to Force Majeure:
 - a. If the reduction in Base Level FCM Contract Quantity is less than 3% of the Base Level FCM Contract Quantity, the Base Level FCM Contract Quantity is automatically reduced through an addendum to this Agreement for the purposes of settlement under Article 6 until the Demand Resource Project's Demand Reduction Value can be re-tested in accordance with ISO-NE procedures and the Original Base Level FCM Contract Quantity is restored.

- b. If the reduction in Base Level FCM Contract Quantity is more than 3% of the Base Level FCM Contract Quantity, the Supplier shall have twenty-one (21) calendar days to cure before incurring liquidated damages. As of the twenty-second (22nd) day after the Demand Resource Project's Demand Reduction Value decreased below the Base Level FCM Contract Quantity level, the Supplier shall pay to the Buyer liquidated damages equal to the positive difference (if any) between the Replacement Price for the foregone FCM Contract Quantity (FCM Contract Quantity minus Demand Reduction Value) and the amount that Buyer would have paid hereunder during the period from the calendar day when the Demand Reduction Value decreased to a level below the Base Level FCM Contract Quantity until the calendar day that such deficiency is cured, which must be less than forty-five (45) calendar days in total, from the calendar day when the Demand Reduction Value decreased to the level below the Base Level FCM Contract Quantity. As of the forty-sixth (46th) calendar day after the Demand Reduction Value decreased, the Base Level FCM Contract Quantity will be reduced through an addendum to this Agreement for the purposes of settlement under Article 6 until the Demand Resource Project's Demand Reduction Value can be re-tested in accordance with ISO-NE procedures and/or in accordance with the Measurement and Verification Plan and the Original Base Level FCM Contract Quantity level is restored.
- c. Each Party acknowledges and agrees with respect to the liquidated damages pursuant to Section 3.3(e) that:
 - i. the actual damage expected as a result of the Supplier's breach of these requirements will be substantial, but such damages are uncertain in amount and/or difficult to ascertain;
 - ii. both Parties intend that the Supplier will pay the specified liquidated damages amount for such a breach;
 - iii. this amount of damages is not a penalty;
 - iv. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer will sustain if the Supplier breaches this provision;
 - v. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and,
 - vi. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.
- (f) If, after the Commercial Operation Date, the Demand Resource Project's Demand Reduction Value decreases to a level at which it is less than the Base Level LFRM Contract Quantity for reasons that are not related to ISO-NE changes to LFRM rules and are not due to Force Majeure:

- a. If the reduction in Base Level LFRM Contract Quantity is less than 3% of the Base Level LFRM Contract Quantity, the Base Level LFRM Contract Quantity is automatically reduced through an addendum to this Agreement for the purposes of settlement under Article 6 until the Demand Resource Project's Demand Reduction Value can be re-tested in accordance with ISO-NE procedures and the Original Base Level LFRM Contract Quantity is restored.
- b. If the reduction in Base Level LFRM Contract Quantity is more than 3% of the Base Level LFRM Contract Quantity, the Supplier shall have twenty-one (21) calendar days to cure before incurring liquidated damages. As of the twenty-second (22nd) day after the Demand Resource Project's Demand Reduction Value decreased below the Base Level LFRM Contract Quantity level, the Supplier shall pay to the Buyer liquidated damages equal to the positive difference (if any) between the Replacement Price for the foregone LFRM Contract Quantity (LFRM Contract Quantity minus Demand Reduction Value) and the amount that Buyer would have paid hereunder during the period from the calendar day when the Demand Reduction Value decreased to a level below the Base Level LFRM Contract Quantity until the calendar day that such deficiency is cured, which must be less than forty-five (45) calendar days in total, from the calendar day when the Demand Reduction Value decreased to level below the Base Level LFRM Contract Quantity. As of the forty-sixth (46th) calendar day after the Demand Reduction Value decreased, the Base Level LFRM Contract Quantity will be reduced through an addendum to this Agreement for the purposes of settlement under Article 6 until the Demand Resource Project's Demand Reduction Value can be re-tested in accordance with ISO-NE procedures and/or in accordance with the Measurement and Verification Plan and the Original Base Level LFRM Contract Quantity level is restored.
- c. Each Party acknowledges and agrees with respect to the liquidated damages pursuant to Section 3.3(f) that:
 - i. the actual damage expected as a result of the Supplier's breach of these requirements will be substantial, but such damages are uncertain in amount and/or difficult to ascertain;
 - ii. both Parties intend that the Supplier will pay the specified liquidated damages amount for such a breach;
 - iii. this amount of damages is not a penalty;
 - iv. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer will sustain if the Supplier breaches this provision;
 - v. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and,

- vi. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.
- (g) The Supplier must not undertake any actions, or neglect to perform any required actions, such that any portion of its Base Level FCM Contract Quantity no longer counts toward meeting the Local Sourcing Requirement in the state of Connecticut over the Term of this Agreement.
- (h) If applicable, the Supplier must not undertake any actions, or neglect to perform any required actions, such that energy from any portion of its Base Level FCM Contract Quantity is not Deliverable in the state of Connecticut over the Term of this Agreement.
- (i) The Supplier cannot submit a De-List Bid for the Base Level FCM Contract Quantity in the FCA, unless otherwise approved by the DPUC in writing. The Supplier must bid accordingly to ensure the FCM Contract Quantity is not partially, dynamically, or permanently De-listed from the FCA, unless otherwise approved by the DPUC. Such approval can be sought by the Supplier or the Buyer, if it is allowed by ISO-NE for Demand Resources, by requesting it in writing from the DPUC at least one-hundred and twenty (120) calendar days in advance of the qualifications deadlines for the FCA in which the Supplier would like to submit a De-List Bid. If the DPUC approves a request to submit a De-List Bid, the Supplier must bid accordingly in the next FCA.
- (j) The Supplier shall not submit an Export Bid for any portion of the Base Level FCM Contract Quantity in the FCA, unless the DPUC provides prior written approval. Such approval can be sought by the Supplier or the Buyer, if it is allowed by ISO-NE for Demand Resources, by requesting it in writing from the DPUC at least one-hundred and twenty (120) calendar days in advance of the qualifications deadlines for the FCA in which the Supplier would like to submit a Export Bid. If the DPUC approves a request to submit an Export Bid, the Supplier must bid accordingly in the next FCA.
- (k) The Supplier will receive and retain all payments, and be responsible for paying all expenses resulting from the sale of its Base Level FCM Contract Quantity into the FCM. The risk associated with whether or not the Supplier's Base Level FCM Contract Quantity is eligible for participation in, or receives payment from, the Forward Capacity Market is borne by the Supplier.
- (l) The Supplier shall be responsible for any costs or charges imposed on or associated with its Base Level FCM Contract Quantity, the Base Level LFRM Contract Quantity of Capacity, if applicable, or the delivery of energy from such Base Level FCM Contract Quantity.

3.4 Bidding requirements

- (a) The Supplier must comply with all applicable Market Rules and will take on the market risk for the Base Level FCM Contract Quantity participating in the ISO-NE Markets in accordance with the terms of this Agreement during the Term of the Agreement.

(b) The Supplier shall follow the bidding requirements in this Section 3.4(b) of the Agreement for each of the ISO-NE Markets in which the Supplier is contractually obligated to participate pursuant to Section 3.2(a) and 3.2(b) of the Term of the Agreement.

a. Forward Capacity Market (FCM):

- i. In the first FCA for the Demand Resource Project, the Supplier must qualify the Demand Resource Project as Existing Capacity if eligible pursuant to FCM rules and offer the Base Level FCM Contract Quantity of Capacity from the Demand Resource Project into the FCA for a one-year term in a manner consistent with Section 3.4(b)a. ii. If the Demand Resource Project is not eligible to participate in the FCA as Existing Capacity, it must participate as New Capacity and must submit a bid of U.S. Dollars 0 per kW for a one-year term.
- ii. In each subsequent FCA for the remainder of the Term, the Supplier must bid the Base Level FCM Contract Quantity such that it is a price-taker in such FCAs, except for instances allowed by the DPUC pursuant to Sections 3.3(i) and 3.3(j).

b. Locational Forward Reserve Market (LFRM) (if applicable): If pursuant to Section 3.2(b), the Supplier has elected to participate in the LFRM, the Supplier must offer its LFRM Contract Quantity from the Demand Resource Project into the FRA such that it is a price-taker. The Buyer shall assess the Supplier's FRA bidding, once actual bidding data is publicly available. If the Supplier set the Auction Clearing Price in the FRA, Buyer shall invoice the Supplier for the difference between the Auction Clearing Price and the next highest bid, multiplied by the Base Level LFRM Contract Quantity as liquidated damages for not complying with the bidding requirements in this Section 3.4(b)b. Each Party acknowledges and agrees with respect to the liquidated damages pursuant to Section 3.4(b)b that:

- i. the actual damage expected as a result of the Supplier's breach of these requirements will be substantial, but such damages are uncertain in amount and/or difficult to ascertain;
- ii. both Parties intend that the Supplier will pay the specified liquidated damages amount for such a breach;
- iii. this amount of damages is not a penalty;
- iv. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer will sustain if the Supplier breaches this provision;

- v. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and,
 - vi. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.
 - c. Day-Ahead Energy Market (if applicable): The Supplier must offer to sell energy into the Day-Ahead Energy Market at competitive price levels.
- (c) The Supplier may not withhold resources from the Demand Resource Project from any ISO-NE Market in which it has elected to participate either through its bidding behavior or by falsely declaring resources to be unavailable, as per the guidelines used by the ISO-NE in assessing and mitigating market power.
- (d) The Supplier must submit all bidding documentation regarding the Base Level FCM Contract Quantity it provides to ISO-NE to the Buyer and the DPUC demonstrating its compliance with these bidding requirements for the FCA and LFRM as well as an affidavit each Contract Year from a duly authorized officer of the Supplier attesting to compliance with Section 3.4(b) of this Agreement. Bidding data documentation must be sent to the Buyer and the DPUC the same day that it is submitted to ISO-NE, unless compliance with federal law (excluding ISO-NE Billing Policy) requires a delay in the sharing of such information. If Supplier fails to submit this documentation on a timely basis for reasons other than compliance with federal law, the DPUC may instruct the Buyer to withhold 50% of all payments until such time that the monthly documentation has been provided. Such withholding shall not qualify as an Event of Default by Buyer and shall not suspend the performance obligations of the Supplier.
- (e) If any of the documentation provided by the Supplier to the DPUC and the Buyer pursuant to Section 3.4(d) is inaccurate, the Supplier will have ten (10) Business Days from the discovery of such inaccuracy to provide the DPUC and the Buyer with a corrected version.

3.5 Operations and Performance Requirements

- (a) During Commercial Operation, the Supplier shall agree to operate and maintain the Demand Resource Project according to Prudent Utility Practice, consistent with ISO-NE's interconnection standards, and in accordance with all Permits and requirements of Law applicable to the Demand Resource Project.
- (b) At all times during Commercial Operation, the Supplier shall be responsible for all performance requirements mandated by the ISO-NE Documents, including performance requirements (and payment of penalties, if any) associated with the ISO-NE Markets, and successors thereto, that the Supplier is contractually obligated to participate in (pursuant to Section 3.2(a) and 3.2(b) of this Agreement).

- (c) The Supplier does not bear the risk of changes to the ISO-NE transmission system that are beyond the Supplier's control and which may result in the Demand Resource Project no longer qualifying for Connecticut's Local Sourcing Requirement.
- (d) The Supplier shall provide the Buyer with a periodic Measurement and Verification Report, as prepared by the Demand Resource Verification Consultant. The Measurement and Verification Report must be consistent with ISO-NE requirements for Demand Resources participating in the FCM.
 - a. If the Supplier is required to submit monthly reports to ISO-NE, the Measurement and Verification Report will be submitted to the Buyer on a monthly basis.
 - b. If not, the Measurement and Verification Report will be submitted to the Buyer on a quarterly basis.
- (e) The Supplier shall be responsible for providing accurate and up-to-date information on the Demand Resource Project to the Buyer so that Buyer staff can accurately communicate to the public on these programs.
- (f) The Supplier is responsible for responding to all end-use customer inquiries related to the terms of service and proper functioning of the Demand Resource Project's Control Equipment or technology as well as the terms of this Agreement, and for providing adequate customer support as needed. The Supplier shall apply a sticker or other signage to any devices installed at participating customer facilities which shall include a "1-800-number" and notice that customers should contact the Supplier at said number for any questions. The Supplier shall maintain said "1-800-number" throughout the Term of this Agreement. The Supplier shall also commit to respond to customer calls concerning any malfunctioning devices used by the Supplier. The Supplier shall commit to replace or effect repairs to said malfunctioning equipment within ten (10) Business Days from the date that the customer contacts the Supplier via its "1-800-number."
- (g) The Supplier shall provide six one-hour training sessions to the Buyer for it to educate its employees on the Supplier and what it will offer customers pursuant to the terms of this Agreement.

3.6 Other covenants of the Supplier

- (a) The Supplier shall comply with applicable Law and the procedures, rules and regulations of ISO-NE and the requirements of the ISO-NE Documents.
- (b) If applicable, the Supplier, or its agent, will apply for and maintain its Market-based Rate Authorization with FERC.
- (c) The Supplier will comply in full with all relevant and applicable FERC requirements.

- (d) The Supplier must give the Buyer and the DPUC thirty (30) calendar days' notice before it would receive additional state-approved or federal-approved ratepayer funding ("Additional Ratepayer Funding") for the operation of the Demand Resource Project and must submit all information regarding the additional funding to the Buyer and the DPUC at the time of notice.
 - a. Such Additional Ratepayer Funding includes but is not limited to: the Conservation & Load Management Fund, the Connecticut Clean Energy Fund, and any additional funding outside of the RFP process that resulted in this Agreement resulting from the Energy Independence Act.
 - b. Upon the DPUC's receipt of a notice that the Supplier shall receive Additional Ratepayer Funding, the DPUC shall instruct the Buyer and the Supplier to reduce the amount of payments owed from the Buyer to the Supplier by an amount equal to the Additional Ratepayer Funding. The structure of such payment reductions will be determined by the DPUC, based on the nature and structure of the Additional Ratepayer Funding.
 - c. The Supplier agrees that the DPUC can reduce compensation to the Supplier under the terms of this Agreement such that total ratepayer funding for the Demand Resource Project does not exceed the total amount payable to the Supplier anticipated under this Agreement.
- (e) The Supplier must keep separate financial records for the Base Level FCM Contract Quantity, including quarterly profit and loss and balance sheet statements.
- (f) Once the Facility has reached Commercial Operation, cumulative liquidated damages (excluding liquidated damages incurred before Commercial Operation or Early Termination Payments) under this Agreement shall be capped at U.S. Dollars 150 per kW of Original Base Level FCM Contract Quantity. Once cumulative liquidated damages exceed U.S. Dollars 150 per kW of Original Base Level FCM Contract Quantity, the Buyer shall have the option to declare a Supplier Event of Default with no cure.

Article 4 Buyer's Obligations

4.1 Payment to Supplier

- (a) The Buyer shall pay the Supplier and the Supplier shall pay the Buyer the amounts due according to Article 6, as the case may be, in accordance with the terms of this Agreement, based on the amount of FCM Contract Quantity (as may be amended from time to time), LFRM Contract Quantity (as may be amended from time to time), and Call Option Contract Quantity, as detailed in Article 6.
- (b) The Buyer shall not take title to or risk of loss to any products or services generated, delivered, or sold by the Demand Resource Project.

4.2 Certain approvals required

- (a) Supplier acknowledges that the Buyer's obligations under this Agreement shall be of no force and effect unless this Agreement is approved by the DPUC.
- (b) Notwithstanding Section 4.2(a) above, the Buyer agrees to release the Supplier from this Agreement if a DPUC approval is not obtained within one-hundred and eighty (180) calendar days of the Execution Date if the Supplier does not choose to continue to wait for DPUC approval, and the entire Project Security Deposit shall be returned forthwith, including interest accrued on said Project Security Deposit.
- (c) If the Supplier agrees to wait for DPUC approval after one-hundred and eighty (180) calendar days has elapsed, the FCM Annual Contract Price, the LFRM Annual Contract Price (if relevant), and the Annual Call Option Supplemental Capacity Payment (if relevant) will be escalated by the Bureau of Labor Statistics' Producer Price Index for Electric power generation, transmission, and distribution (Series ID: PCU2211-2211) for the period of time between the deadline for the submission of financial bids during the procurement process and the one-hundred and eightieth (180th) calendar day after the Execution Date. These revised figures will constitute the new FCM Annual Contract Price, the LFRM Annual Contract Price (if relevant), and the Annual Call Option Supplemental Capacity Payment (if relevant). The Buyer agrees to release the Supplier from this Agreement if DPUC approval is not obtained three-hundred and sixty (360) calendar days after the Execution Date, and the entire Project Security Deposit shall be returned forthwith, including interest accrued on said Project Security Deposit.

4.3 Other obligations for the Buyer

- (a) The Buyer shall comply with all applicable ISO-NE Market Rules.
- (b) The Buyer shall comply with all of its obligations under this Agreement.
- (c) Using the information and documentation provided to it by the Supplier, the Buyer shall assess Supplier performance as directed in this Agreement.
- (d) The Buyer is responsible for communicating in writing any problems or insufficiency in performance of the Supplier to the DPUC within five (5) Business Days following the Buyer's discovery thereof. The Buyer shall request direction for treatment for any such problems or insufficiency from the DPUC, unless treatment is detailed under this Agreement.
- (e) The Buyer shall comply with all requirements listed in the Code of Conduct, which is attached to this Agreement as Exhibit E.
- (f) The Buyer acknowledges that the payments it receives from the Supplier, including any liquidated damages and/or Early Termination Payments, are for the benefit of and flow back to Connecticut ratepayers.

Article 5 Term

5.1 Execution Date and Effective Date

- (a) This Agreement is executed on the Execution Date.
- (b) This Agreement shall become effective as of the day of the DPUC Decision in Proceeding _____, approving this Agreement (hereinafter, the "Effective Date").

5.2 Term

- (a) The Term of this Agreement shall be [____] years from the Commercial Operation Date (as described in Supplier's Proposal), unless this Agreement is terminated earlier pursuant to Article 8 of this Agreement.
- (b) The first day of the Term is the "Term Commencement Date."

Article 6 Payment Terms and Billing

6.1 Election of Settlement Reference for Capacity

- (a) The Buyer agrees to pay the Supplier and the Supplier agrees to pay the Buyer, as the case may be, the amounts determined pursuant to the terms of Article 6 of this Agreement for the Term of this Agreement.
- (b) The Annual Contract Prices in this Agreement will be settled against (only one option can be marked as selected):
 - a. Option 1: _____ the Market Price in the FCM only ("Option 1")
 - b. Option 2: _____ the Market Price in the FCM and the LFRM ("Option 2")

6.2 Schedule of Annual Contract Prices for Capacity

- (a) The Annual Contract Price for the FCM and the Base Level FCM Contract Quantity under Option 1 and for both the FCM and the LFRM Annual Contract Price and the Base Level FCM Contract Quantity and the Base Level LFRM Contract Quantity under Option 2 for the Demand Resource Project are presented in the table below for each Contract Year of the Term of this Agreement, based on the Proposal submitted by Supplier, and the Milestone Date for the Commercial Operation Date set out by the Supplier in Exhibit B. If Option 2 was selected by the Supplier in Section 6.1, annual contract prices and contract quantities are provided for both the FCM and the LFRM.
- (b) The Base Level FCM Contract Quantity, listed below, will be adjusted based on then-current ISO-NE procedures and assumptions regarding uprates for avoided

Contract Year	Annual Contract Price (\$/kW) for FCM	Annual Contract Price (\$/kW) for LFRM	Base Level FCM Contract Quantity (MW)	Base Level LFRM Contract Quantity (MW)

6.3 Determination of Monthly Payment Amount for Capacity

(a) If Option 1 is selected:

- a. The “Monthly Contract Price for FCM” shall be denominated in \$/kW-month and shall be equal to 1/12th of the Annual Contract Price for FCM (pro-rated for any partial months during the Term) for the Contract Year for the relevant calendar month, as specified in the table in Section 6.2 of this Agreement.
- b. The “FCA Market Price” will be equal to (i) Transition Period fixed payments prior to the Commitment Period of the first FCA, expressed in \$/kW-month (if the Demand Resource Project is eligible for such payment pursuant to Section 3.1), for the duration of the Transition Period or (ii) the Capacity Clearing Price from the applicable annual FCA (pro-rated for any partial months during the Term) for the Contract Year once the Transition Period is complete. The Capacity Clearing Price from the FCA will be based on applicable published values from ISO-NE.
- c. The Base Level FCM Contract Quantity will be adjusted pursuant to then-current ISO-NE procedures for the Demand Resource Project’s category of Demand Resource to account, if relevant, for avoided transmission and distribution losses and reserve margin requirements, and any other adjustments ISO-NE may or may not include in the future to result in the FCM Contract Quantity.
- d. Under Option 1, the “Monthly Payment Amount” will be the difference between the prevailing Monthly Contract Price for FCM and the relevant FCA Market Price, multiplied by the FCM Contract Quantity, as described in the formula below:

Monthly Payment Amount = (Monthly Contract Price for FCM-FCA Market Price) * Base Level FCM Contract Quantity, adjusted pursuant to Section 6.3 (a)c

- i. If the Monthly Payment Amount is positive (i.e., the Monthly Contract Price for FCM is greater than the FCA Market Price), then the Buyer will pay the Supplier the difference between the Monthly Contract Price for

FCM and FCA Market Price, multiplied by the FCM Contract Quantity for that month.

- ii. If the Monthly Payment Amount is negative (i.e., the Monthly Contract Price for FCM is less than the FCA Market Price), then the Supplier will pay the Buyer the difference between the FCA Market Price and the Monthly Contract Price for FCM, multiplied by the FCM Contract Quantity for that month.
- iii. If the Monthly Payment Amount is zero, then no payments are due to either Party.

(b) If Option 2 is selected:

- a. The "Monthly Contract Price for FCM" shall be denominated in \$/kW-month and shall be equal to 1/12th of the Annual Contract Price for FCM for the Contract Year for the relevant calendar month, as specified in the table in Section 6.2.
- b. The "Monthly Contract Price for LFRM" shall be denominated in \$/kW-month (prorated for any partial months in the Term) and shall be equal to 1/12th of the Annual Contract Price for LFRM for the Contract Year for the relevant calendar month, as specified in the table in Section 6.2.
- c. The "FCA Market Price" will be equal to (i) Transition Period fixed payments expressed \$/kW month prior to the first FCA (if the Demand Resource Project is eligible for such payment pursuant to Section 3.1) for the duration of the Transition Period or (ii) the Capacity Clearing Price from the applicable annual FCA (pro-rated for any partial months in the Term) once the Transition Period is complete. The Capacity Clearing Price from the FCA will be based on published values from ISO-NE in the relevant month.
- d. The "LFRM Market Price" will be equal to the Auction Clearing Price in \$/KW per month from the applicable Forward Reserve Auction less the applicable FCM Market Price. The Auction Clearing Price and the Capacity Clearing Price will be based on published values from ISO-NE.
- e. The Base Level FCM Contract Quantity will be adjusted pursuant to then-current ISO-NE procedures for the Demand Resource Project's category of Demand Resource to account, if relevant, for avoided transmission and distribution losses and reserve margin requirements, and any other adjustments ISO-NE may or may not include in the future to result in the FCM Contract Quantity.
- f. The Base Level LFRM Contract Quantity will be adjusted pursuant to then-current ISO-NE procedures for the LFRM for the Demand Resource Project's category of Demand Resource to account, if relevant, for avoided transmission and distribution losses and reserve margin requirements, and any other

adjustments ISO-NE may or may not include in the future to result in the LFRM Contract Quantity.

- g. Under Option 2, the “Monthly Payment Amount” will be:
- i. The sum of (1) The Monthly Contract Price for FCM minus the FCA Market Price, multiplied by the Base Level FCM Contract Quantity adjusted pursuant to Section 6.3 (a)c for that month; and (2) the Monthly Contract Price for LFRM minus the LFRM Market Price, multiplied by the Base Level LFRM Contract Quantity for that month adjusted pursuant to Section 6.3 (b)f, as described in the formula below:

$$\text{Monthly Payment Amount} = [(\text{Monthly Contract Price for FCM} - \text{FCA Market Price}) * \text{Base Level FCM Contract Quantity}] + [(\text{Monthly Contract Price for LFRM} - \text{LFRM Market Price}) * \text{Base Level LFRM Contract Quantity}]$$
 - ii. If the Monthly Payment Amount is positive, the Buyer pays the Supplier.
 - iii. If the Monthly Payment Amount is negative, the Supplier pays the Buyer.
 - iv. If the Monthly Payment Amount is zero, then no payments are due to either Party.

6.4 Adjustments to Monthly Payment Amount for Capacity

- (a) If there is a delay in the Commercial Operation Date (of any segment of Base Level FCM Contract Quantity) of no more than twenty-nine (29) calendar days, the Monthly Payment Amount will be reduced on a pro-rata basis, calculated by the number of days the Demand Resource Project is not yet in operation over the number of days in the month it was originally intended to be in service. This will be a one-time adjustment for each segment of Base Level FCM Contract Quantity to reflect the delay in the Commercial Operation Date. Liquidated damages for the delay, as described in Section 2.5 of this Agreement, will also be applied.
- (b) After the Transition Period, the Monthly Payment Amount will be adjusted pursuant to the performance requirements (and corresponding penalties or other adjustments) imposed by ISO-NE. Note that the Adjustment Ratio does not adjust for the adjustments referred to in Sections 6.3(a)c, 6.3(b)e, and 6.3(b)f.
- (c) During the Transition Period, if applicable, the Monthly Payment Amount will be adjusted pursuant to the performance requirements (and corresponding penalties or other adjustments) imposed by ISO-NE during the Transition Period. Note that the Adjustment Ratio does not adjust for the adjustments referred to in Sections 6.3(a)c, 6.3(b)e, and 6.3(b)f.

- (d) The Supplier must provide the Buyer and the DPUC with a copy of ISO-NE's monthly billing statement regarding the Supplier's activities in the FCM and the LFRM (if applicable) within two (2) Business Days of receipt of such a document. If invoices from ISO-NE's monthly statements are delayed beyond seven (7) Business Days after the end of a calendar month, adjustments to the Monthly Payment Amount pursuant to Section 6.4 (b) above shall be made in the next monthly bill, pursuant to Section 6.8 of this Agreement.

6.5 Call Option [This Section of Agreement will be blank if Supplier did not elect Call Option in his Proposal or the DPUC did not select that Call Option]

- (a) In addition to the obligations and payments described in Sections 6.1, 6.2, 6.3, and 6.4 regarding the Forward Capacity Market, and if relevant, the Locational Forward Reserve Market, the Supplier has agreed to enter into a one-way "Call Option" with the Buyer, to be settled against the hourly Day-Ahead Locational Marginal Price (LMP) for the Connecticut Load Zone for the Call Option Contract Quantity of ____ MW (as nominated in the Proposal by the Supplier and specified in Exhibit D to this Agreement).
- (b) The Buyer will pay the Supplier the Annual Call Option Supplemental Capacity Payment for its Call Option Contract Quantity each Contract Year, as specified in Exhibit D to this Agreement. In exchange for the Call Option Supplemental Capacity Payment, the Supplier will pay to the Buyer the positive difference, if any, between the hourly Day-Ahead Locational Marginal Price for the Connecticut Load Zone and the applicable Strike Price (the calculation of which is specified in Exhibit D to this Agreement), multiplied by the Call Option Contract Quantity.
- (c) If the existing ISO-NE Day-Ahead Energy Market Connecticut Load Zone is restructured, Supplier's obligations shall be automatically redefined to reflect the Parties' intent that settlement shall be based on the geographical area that covers the geographical majority of the state of Connecticut, as best possibly achieved under the restructured load zones.
- (d) Determination of the Call Option Monthly Payment Amounts:
 - a. The Buyer is obligated to pay the Supplier the Monthly Call Option Supplemental Payment, which shall be equal to 1/12th of the Annual Call Option Capacity Supplemental Capacity Payment (pro-rated for any partial months during the Term) for the Contract Year.
 - b. On the first Business Day after each calendar month, the Supplier shall calculate the amounts payable to the Buyer under the Call Option, as described above in Section 6.5(b) of this Agreement, for each hourly Day-Ahead Locational Marginal Price at the Connecticut Load Zone (as published by ISO-NE) for the period in the applicable calendar month. The Monthly Call Option Payment Amount from Supplier to Buyer shall be the sum of the amounts payable from the Supplier to the Buyer in each hour of the applicable calendar month.

- c. The Supplier shall prepare a monthly invoice of the Monthly Call Option Payment Amount, which nets the payments that the Buyer is obligated to make to the Supplier against the amounts that the Supplier is obligated to pay to the Buyer. In addition, the monthly invoice shall reflect additional payment amounts for any adjustments or corrections to Day-Ahead Locational Marginal Price for previous months as posted by ISO-NE that had not previously been reflected in the monthly invoices under this Agreement.
- (e) The Strike Price shall be determined based on the format of the Supplier's submission in the Proposal.
- a. For a Strike Price that was set at a fixed \$/MWh figure, such fixed \$/MWh figure shall be used as the Strike Price.
 - b. For a Strike Price that was set based on a \$/MWh figure that varied by Contract Year, the relevant \$/MWh Strike Price for each Contract Year will be used as the Strike Price.
 - c. For a Strike Price that was set based on a heat rate and a Fuel price index, the Strike Price will initially be set on the Execution Date of the Contract and will be adjusted on a daily basis thereafter using the closing day price of a Fuel price index selected for settlement in the Proposal, as listed in Exhibit D to this Agreement.

6.6 Billing Period

As soon as practicable after the end of each month during the Term but not later than thirty (30) Business Days after the end of such month, the Supplier shall provide the Buyer with a bill for the Monthly Payment Amount for Capacity, pursuant to Section 6.3 and Section 6.4, and the Monthly Call Option Payment Amount, pursuant to Section 6.5. The bill will include a detailed calculation of the aggregate Monthly Payment Amount for purposes of billing, determined in accordance with the provisions of Article 6 of this Agreement. Depending on the determination of Monthly Payment Amount for Capacity and the Monthly Call Option Payment Amount, the Buyer will pay to the Supplier or the Supplier will pay the Buyer, as the case may be.

6.7 Timeliness and Form of Payment

- (a) All bills submitted pursuant to Section 6.6 shall bear the date of rendering and shall be due and payable on or before the later of: (a) the last Business Day of the month, or (b) twenty (20) Business Days following the date on which the Buyer received the Supplier's bill. Any amount remaining unpaid after such period shall bear interest at the rate set forth in the regulations of FERC for interest payments on refunds.
- (b) All payments sent by Buyer to Supplier shall be sent by electronic funds transfer to the bank account specified by the Supplier.

- (c) All payments sent by Supplier to Buyer shall be sent by electronic funds transfer to the bank account specified by the Buyer.

6.8 Adjustments of Invoices and Disputes

- (a) Each bill 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.
- (b) Any further revisions to any bill will be reflected as soon as practicable and in accordance with the ISO-NE Billing Policy and the provisions of Article 6 of this Agreement. All refunds or additional payments owed to either Party shall include the payment of interest from the due date in the case of additional payments and from the payment date in the case of refunds, in either case to the date of payment calculated in accordance with the regulations of the FERC applicable to the payment of interest on refunds.
- (c) If either Party disputes the amount of any bill, it shall so notify the other Party in writing.
 - a. If the disputed amount is unrelated to an Event of Default, 50% of the disputed amount will be paid by the paying Party ("Paying Party"), with the remainder held in Escrow for the benefit of the non-paying Party ("Non-Paying Party") until both Parties have resolved the dispute. Once the dispute has been resolved, interest accrued in the Escrow account will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.
 - b. If the disputed amount is related to a Supplier Event of Default, and, the Buyer is the Paying Party:
 - i. If it is a Supplier Event of Default that has no cure or is an Event of Default that has not been cured within the applicable cure period, then the Buyer shall not pay the disputed amount until the specific Event of Default by Supplier has been cured to the satisfaction of the Buyer, or the dispute has been resolved. Escrow interest accrued in the Escrow account or interest that would have accrued, had payment of a disputed amount been subject to Escrow, will be paid to the Supplier once the Event of Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.
 - ii. If the Supplier Event of Default is due to the Supplier's loss of Market Based Ratemaking Authority, 50% of the disputed amount will be paid by the Buyer, with the remainder held in Escrow until this Event of Default has been cured or the dispute has been resolved. Escrow interest accrued in the Escrow account will be paid to the Supplier once the Event of

Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

- c. If the disputed amount is related to a Buyer Event of Default that has no cure or is an Event of Default that has not been cured within thirty (30) calendar days or pursuant to Section 8.5(a), and if the Supplier is the Paying Party, then the Supplier shall not pay the disputed amount until the specific Event of Default by Buyer has been cured, to the satisfaction of the Supplier, or the dispute has been resolved. Escrow interest accrued in the Escrow account will be paid to the Buyer once the Event of Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.
 - d. If the non-payment by Buyer arises due a reduction in the Demand Reduction Value of the Demand Resource Project (as described further in Section 3.3(e) and 3.3(f) of this Agreement), 50% of the adjusted disputed amount will be paid and the remaining 50% will be held in Escrow until the earlier of (1) a cure and reinstatement of the full Base Level FCM Contract Quantity, or (2) the full cure period has expired and the Supplier has paid the Buyer liquidated damages pursuant to Section 3.3(e) and 3.3(f). Escrow interest accrued in the Escrow account will be paid to the Supplier once the Event of Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.
 - e. If the Event of Default is related to non-performance of a contract covenant in this Agreement that is itself in dispute and not covered by Sections 6.8(c)a. through 6.8(c)d. above, 50% of the disputed amount will be paid by the Paying Party, with the remainder held in Escrow for the benefit of the Non-Paying Party until both Parties have resolved the dispute. Once the dispute has been resolved, interest accrued in the Escrow account will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.
 - f. For all other issues of billing disputes, 50% of the disputed amount will be paid by the Paying Party, with the remainder held in Escrow for the benefit of the Non-Paying Party until the dispute has been resolved. Once the dispute has been resolved, interest accrued in the Escrow account will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.
- (d) Neither Party shall have the right to challenge any monthly bill or to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty-four (24) months from the date the bill was due; provided, however, that in the case of a bill based on estimates, such twenty-four (24) month period shall run from the due date of the final adjusted bill.

6.9 Payment Obligation with Netting

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing under this Agreement to each other on the same date, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement, including any related damages, interest, and payments or credits, shall be netted (to the extent possible) so that only the excess amount remaining due shall be paid by the relevant Party.

6.10 Use of Completion and Performance Security for Payment of Invoices

- (a) Unless the Buyer notifies the Supplier in writing, and except in connection with liquidation and termination in accordance with Article 8 of this Agreement, all amounts netted pursuant to this Article 6 shall not take into account or include any portion of the Completion and Performance Security, which secures the Supplier's performance under this Agreement.
- (b) In the case of non-payment by Supplier, Buyer has the right to monies from the Completion and Performance Security (unless there is a dispute over the billing amount, in which case both Parties shall be guided by Section 6.8(c)) if payment is not made on a timely basis.

Article 7 Representations and Warranties

7.1 Representations of the Supplier

The Supplier represents to the Buyer as follows, and acknowledges that the Buyer is relying on such representations in entering into this Agreement:

- (a) The Supplier is a [legal form of Supplier], [incorporated/organized] under the Laws of [state of], and is registered or otherwise fully qualified to carry on business in the State of Connecticut, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by Bankruptcy.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
 - a. any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

- b. the articles, by-laws or other resolutions of the directors or shareholders of the Supplier;
 - c. any judgment, decree, order or award of any Government Agency or arbitrator;
 - d. any license, Permit, approval, consent or authorization held by the Supplier; or
 - e. any Laws that could reasonably expect to have a material adverse effect on the Supplier or the performance of the Supplier's obligations under this Agreement.
- (d) There is no Bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Government Agency or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, which could reasonably expect to have a material adverse effect on the Supplier, or the ability of the Supplier to perform its obligations under this Agreement.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any license, Permit, certificate, registration, authorization, consent or approval of, any Government Agency as a condition to entering into this Agreement have been satisfied.
- (g) All statements, specifications, data, confirmations, and information that have been set out in the Exhibits to this Agreement are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made from the Supplier to the Buyer under this Agreement and there is no material information omitted from the Exhibits which makes the information in the Exhibits and this Agreement misleading or inaccurate.

7.2 Representations of the Buyer

The Buyer represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

- (a) The Buyer is an electric distribution company regulated by the DPUC and has the requisite power to enter into this Agreement and to perform its obligations hereunder. The executed contract, however, is subject to final contract approval by the DPUC.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by Bankruptcy.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or

violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:

- a. any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - b. the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - c. any judgment, decree, order or award of any Governmental Agency or arbitrator;
 - d. any license, Permit, approval, consent or authorization held by the Buyer; or
 - e. any Law that could reasonably expect to have a material adverse effect on the Buyer or the Buyer's performance of its obligations under this Agreement.
- (d) There is no Bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Government Agency or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer that could reasonably expect to have a material adverse effect on the Buyer or the Buyer's ability to perform its obligations under this Agreement.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any license, Permit, certificate, registration, authorization, consent or approval of, any regulatory authority as a condition to entering into this Agreement have been satisfied.

Article 8 Events of Default; Remedies

8.1 Events of Default of Supplier

- (a) Any of the following shall constitute an Event of Default of Supplier upon its occurrence, with no cure period:
 - a. The Supplier is no longer eligible to participate in the FCM for any reason other than those described in Section 8.1(b), 8.1(c), and 8.1(d).
 - b. The Demand Resource Project is not electrically located within the state of Connecticut and no longer qualifies to meet Connecticut's Local Sourcing Requirement, due to an action of the Supplier or lack of action in instances where action was warranted and the Supplier had the ability to provide such action;

- c. The Supplier becomes Bankrupt;
 - d. The Supplier consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of the Supplier under this Agreement pursuant to an assignment or assumption agreement reasonably satisfactory to the Buyer and the DPUC;
 - e. Supplier seeks or enters into a Reliability Must Run, a Cost of Service contract, or a similar agreement for any part of the Demand Resource Project's Base Level FCM Contract Quantity during the Term of this Agreement;
 - f. The Supplier's dissolution or liquidation;
 - g. The sale by Supplier from the Demand Resource Project to a third party of for any part of the Base Level FCM Contract Quantity;
 - h. The Supplier does not participate in (i) the FCM if the Supplier selected Option 1 in Section 6.1(b) or (ii) the FCM and the LFRM if the Supplier selected Option 2 in Section 6.1(b) of this Agreement.
 - i. The failure of the Supplier to achieve the Commercial Operation Date and its refusal to pay appropriate liquidated damages as required under Section 2.5(b) of this Agreement; or,
 - j. The Supplier intentionally provides false information required by this Agreement or intentionally fails to provide information required by this Agreement on material topics.
 - k. The Supplier exceeds the cumulative U.S. Dollar 150 per kW of Original Base Level FCM Contract Quantity cap on liquidated damages after the Demand Resource Project reaches Commercial Operation (excluding any liquidated damages incurred prior to Commercial Operation or any Early Termination Payments).
- (b) Any of the following shall constitute an Event of Default of Supplier if the Supplier has failed to cure such an Event of Default within five (5) Business Days after the date of written notice given by the Buyer:
- a. The Supplier fails to maintain the project Completion and Performance Security, pursuant to Article 10 of this Agreement, or,
 - b. The Supplier fails to meet its obligations under Section 12.10 of this Agreement.
- (c) Any of the following shall constitute an Event of Default of Supplier if the Supplier has failed to cure such an Event of Default within thirty (30) calendar days after the date of written notice given by the Buyer:

- a. The Supplier's failure to comply with any obligation under this Agreement that would result in a material adverse impact on the Buyer;
 - b. Supplier is unable to participate in the ISO-NE Markets due to events including but not limited to the termination of its membership (or the membership of its agent), or suspension of membership rights or termination of its Market Participants Service Agreement;
 - c. Supplier fails to submit documentation demonstrating compliance with bidding requirements described in Section 3.4 for two (2) consecutive months; or,
 - d. The Demand Resource Verification Consultant does not submit periodic reports on a timely basis.
- (d) Any of the following shall constitute an Event of Default of Supplier if Supplier has failed to cure such an Event of Default within ninety (90) calendar days after the date of written notice given by the Buyer.
- a. The failure of Supplier to achieve Commercial Operation Date, as long as the Supplier is paying liquidated damages to the Buyer, as required under Section 2.5;
 - b. If the Supplier is required to maintain Market Based Rate Authorization from FERC and loses it, but continues to make payments to Buyer when due, including any applicable liquidated damages; or
 - c. The Supplier breaches any other covenant or obligation in this Agreement in a material manner not explicitly listed in Sections 8.1(a), 8.1(b), or 8.1(c).

8.2 Remedies available to the Buyer

If there is an Event of Default by Supplier and such Event of Default is not cured in a timely manner by Supplier pursuant to any applicable cure period provided by this Agreement, the Buyer, with DPUC approval, shall have the right to seek any of the following remedies (or combinations thereof):

- (a) to designate an "Early Termination Date" pursuant to Section 8.6;
- (b) If the Event of Default by Supplier is the voluntary or involuntary filing of a petition commencing a case under the Bankruptcy Code, then the Buyer shall have the right to terminate this Agreement by notice to the Supplier and such termination shall take effect immediately upon issuance of such notice by Buyer to Supplier. The Buyer shall have the right to damages (if any) calculated pursuant to 11 U.S.C § 562, as it may be amended from time to time, and other applicable Law. The Parties agree that each is a Financial Participant for the purposes of the Bankruptcy Code and waive any right to contest the other's status as a Financial Participant in any proceeding under the

Bankruptcy Code. The Early Termination Payment, as described in Section 8.7, will not apply in this instance.

- (c) withhold any payments due to the Supplier under this Agreement unless the Supplier continues to perform according to its obligations under this Agreement in which case the Buyer must compensate the Supplier for its services according to this Agreement; and/or
- (d) exercise any remedy available at Law, in equity, or under this Agreement to the extent an Event of Default shall have occurred and be continuing.

8.3 Financing Parties' Right to Cure Default of Supplier

- (a) Supplier shall provide to Buyer and the DPUC a notice identifying the Financing Parties and providing appropriate contact information for the Financing Parties at the Execution Date of this Agreement, and from time to time during the Term, as such information may change. Following the effective date of such notice, the Buyer shall provide prompt notice of any event described in Section 8.1 hereof to the Financing Parties, and the Buyer will accept a cure performed by the Financing Parties, so long as the cure is accomplished within the applicable cure period set forth in Section 8.1 hereof.
- (b) Within ten (10) calendar days following effective date of written notice from the Financing Parties of default, or Financing Parties' intent to exercise any remedies, Supplier shall deliver a copy of such notice to Buyer and the DPUC.

8.4 Events of Default by Buyer

- (a) Any of the following shall constitute an Event of Default of Buyer with no cure period:
 - a. Buyer's dissolution or liquidation. If there is a successor to the Buyer, this shall not constitute dissolution or liquidation as long as the successor assumes all the rights and responsibilities of the Buyer under this Agreement; and/or
 - b. Buyer consolidates or amalgamates with, or merges into or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all the obligations of Buyer under this Agreement pursuant to an assignment or assumption Agreement reasonably satisfactory to the DPUC.
- (b) The following shall constitute an Event of Default of Buyer if Buyer has failed to cure such an Event of Default within five (5) Business Days after the Buyer receives written notice of such Event of Default from Supplier:
 - a. Buyer fails to meet its obligations under Section 12.10 of this Agreement.

- (c) The following shall constitute an Event of Default of Buyer if Buyer has failed to cure such an Event of Default within ten (10) calendar days after the Buyer receives written notice of such Event of Default from Supplier:
 - a. Buyer's failure to make any payment due hereunder.
- (d) Any of the following shall constitute an Event of Default of Buyer if Buyer has failed to cure such an Event of Default within thirty (30) calendar days after Buyer's receipt of written notice of such Event of Default from Supplier:
 - a. Buyer's failure to comply with any other covenant or obligation under this Agreement that will result in a material adverse impact on Supplier;
 - b. The Buyer intentionally provides false information required by this Agreement or intentionally fails to provide information required by this Agreement on material topics; or,
 - c. The Buyer becomes Bankrupt.

8.5 Remedies available to Supplier

- (a) If the Credit Rating of the Buyer falls below Investment Grade level (as per the notifications required in Section 12.2), the Supplier can submit a notice to the DPUC, notifying the DPUC of the *potential* of an Event of Default. If the DPUC chooses to do so, the DPUC may respond to this notice by facilitating a pre-emptive cure of this *potential* Event of Default.
- (b) In case of an uncured Event of Default of the Buyer pursuant to Section 8.4(a), the Supplier must also send a written notice thereof to the DPUC. If the DPUC issues a reply notice, this reply notice will temporarily suspend the Supplier's ability to seek any of the remedies available to the Supplier at Law, in equity, or under this Agreement for a period of ninety (90) calendar days, while the DPUC undertakes by exercise of its statutory authority to facilitate the process of curing the Event of Default of Buyer. During the above-mentioned ninety (90) calendar day period, the Supplier temporarily can withhold any payments due to the Buyer under this Agreement until a cure has been achieved. Once the Event of Default has been cured, the Buyer must be paid in full by the Supplier.
- (c) If an Event of Default of Buyer shall have occurred and be continuing, and the DPUC has not effected a cure pursuant to Section 8.5(a) within the allotted cure period, the Supplier shall have the right to seek any of the following remedies (or combinations thereof):
 - a. designate an "Early Termination Date" pursuant to Section 8.6;
 - b. withhold any payments due to the Buyer under this Agreement;

- c. if the Event of Default by Buyer is the voluntary or involuntary filing of a petition commencing a case under the Bankruptcy Code, then the Supplier shall have the right to terminate this Agreement by notice to the Buyer and such termination shall take effect immediately upon issuance of such notice by Supplier to Buyer. The Supplier shall have the right to damages (if any) calculated pursuant to 11 U.S.C § 562, as it may be amended from time to time, and other applicable Law. The Parties agree that each is a Financial Participant for the purposes of the Bankruptcy Code and waive any right to contest the other's status as a Financial Participant in any proceeding under the Bankruptcy Code. The Early Termination Payment, as described in Section 8.7, will not apply in this instance;
- d. suspend performance under this Agreement; and/or
- e. exercise any remedy available at Law, in equity, or under this Agreement to the extent an Event of Default has not been timely cured by the Buyer.

8.6 Notice and Declaration of an Early Termination Date

If an Event of Default as set forth in Section 8.1 or Section 8.4, has occurred and is continuing, and any relevant cure period pursuant to Section 8.1 or Section 8.4 has expired, the non-defaulting Party (the "Non-Defaulting Party") shall have the right (i) to notify the defaulting Party (the "Defaulting Party") and to designate a day, no earlier than the effective date of such notice and no later than twenty (20) calendar days after such notice is effective as an early termination date (the "Early Termination Date"); (ii) to request and obtain payment from the Defaulting Party of the Early Termination Payment calculated pursuant to Section 8.7 hereof plus all amounts owed by the Defaulting Party to the Non-Defaulting Party for performance or non-performance that occurred, arose, or accrued prior to the Early Termination Date; and (iii) to terminate the Agreement between the Parties as of the Early Termination Date.

8.7 Calculation of Early Termination Payment

- (a) For all Events of Default other than Bankruptcy as described in Sections 8.2(b) and Section 8.5(b)c., the "Early Termination Payment" will be based on the following "Settlement Amount":
 - a. if Supplier is the Defaulting Party (and there is no cure achieved pursuant to Section 8.1), the "Settlement Amount" will be equal to the aggregate of:
 - i. The present value of the (a) positive difference (if any) between the FCA Annual Contract Price and the Replacement Price for Capacity (as determined in a commercially reasonable manner by the Buyer) multiplied by the (b) FCM Contract Quantity for the then-remaining Term of the Agreement;

- ii. If applicable, the present value of (a) the positive difference (if any) between the LFRM Annual Contract Price and the Replacement Price for LFRM (as determined in a commercially reasonable manner by the Buyer) multiplied by (b) the LFRM Contract Quantity for the then-remaining Term of the Agreement;
 - iii. If applicable, the present value of (a) the positive difference (if any) between (1) the Annual Call Option Supplemental Capacity Payment and (2) the positive difference, if any, between the expected future annual average Day-Ahead Locational Marginal Price for the Connecticut Load Zone (as determined in a commercially reasonable manner by the Buyer) and the Strike Price, multiplied by the (b) Call Option Contract Quantity for the then-remaining Term of the Agreement.
 - iv. The discount rate to be used in the calculation of the Early Termination Payment shall be equal to the discount rate used by the DPUC to evaluate bids in the competitive solicitation process that resulted in this Agreement.
- b. If Buyer is the Defaulting Party (and there is no cure achieved pursuant to Section 8.4 and 8.5), the "Settlement Amount" will be equal to the aggregate of:
 - i. The present value of the (a) positive difference (if any) between the FCA Annual Contract Price and the Replacement Price for Capacity (as determined in a commercially reasonable manner by the Supplier) multiplied by the (b) FCM Contract Quantity for the then-remaining Term of the Agreement;
 - ii. If applicable, the present value of (a) the positive difference (if any) between the LFRM Annual Contract Price and the Replacement Price for LFRM (as determined in a commercially reasonable manner by the Supplier) multiplied by (b) the LFRM Contract Quantity for the then-remaining Term of the Agreement;
 - iii. If applicable, the present value of (a) the positive difference (if any) between (1) the Annual Call Option Supplemental Capacity Payment and (2) the positive difference, if any, between the expected future annual average Day-Ahead Locational Marginal Price for the Connecticut Load Zone (as determined in a commercially reasonable manner by the Supplier) and the Strike Price, multiplied by the (b) Call Option Contract Quantity for the then-remaining Term of the Agreement.
 - iv. The discount rate to be used in the calculation of the Early Termination Payment shall be equal to the discount rate used by the DPUC to evaluate bids in the competitive solicitation process that resulted in this Agreement.

- (b) The Parties must pay one another any outstanding amounts owed.
- (c) The Parties further agree that, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party from the Defaulting Party pursuant to Article 10 of this Agreement shall be withdrawn, drawn on, or otherwise collected or netted against the Early Termination Payment and retained by the Non-Defaulting Party.
- (d) As soon as practicable after such termination and receipt of security, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Early Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such payment amount. Any amount by which the Early Termination Payment exceeds the funds already received shall be paid by the Defaulting Party if it owes any excess within five (5) Business Days after such notice is effective.

8.8 Disputes with respect to Early Termination Payment

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Early Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of the Non-Defaulting Party's calculation of the Early Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that:

- (a) If the Early Termination Payment is due from the Defaulting Party, and the Supplier is the Defaulting Party, then the Defaulting Party shall first transfer the Completion and Performance Security and cash, if needed, in an amount equal to the Early Termination Payment.
- (b) If the Early Termination Payment is due from the Defaulting Party and the Buyer is the Defaulting Party, then the Defaulting Party shall transfer cash to the Non-Defaulting Party in an amount equal to the Early Termination Payment.
- (c) This clause will be applied in accordance with the terms set out in Section 12.10.

Article 9 Force Majeure; Limitation on Liability

9.1 Force Majeure

Each Party shall be excused from performing its respective obligations under this Agreement and shall not be liable in damages or otherwise to the Non-Claiming Party if and to the extent that the Claiming Party is unable to so perform or is prevented from performing its obligations by an event of Force Majeure.

9.2 Limitation on remedies for Force Majeure

- (a) If either Party is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure, then that Party shall be excused from performance of its obligations to the extent that such performance is affected by the Force Majeure, provided that:
- a. The Claiming Party shall, as soon as practicable after the occurrence of Force Majeure, give the Non-Claiming Party's written notice describing the particulars of the occurrence;
 - b. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
 - c. The Claiming Party uses all commercially reasonable efforts to remedy its inability to perform; and,
 - d. Nothing in this Section 9.2 shall affect a Party's obligation to make payments when due or becoming due with respect to performance or non-performance prior to the event of Force Majeure.
- (b) While an event of Force Majeure is in effect, the Claiming Party shall take all commercially reasonable steps to mitigate the effects of Force Majeure, shall inform the Non-Claiming Party in writing on a weekly basis of when it expects to remove the cause of Force Majeure and what steps it is taking to cure or eliminate the event of Force Majeure.
- (c) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, or to not achieve Commercial Operation on or before the date which is one (1) year after the Milestone Date for Commercial Operation, as applicable, then such Milestone Date shall be extended for a period of time equal to the period of delay resulting from such Force Majeure event.
- (d) If an event of Force Majeure described in Section 9.2(c) has delayed the Commercial Operation Date of the Demand Resource Project by more than three-hundred and sixty five (365) calendar days after the original Milestone Date (prior to any extension pursuant to Section 9.2(c)) set out for attaining Commercial Operation of the Demand Resource Project, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Buyer, with the DPUC's approval, may terminate this Agreement upon written notice to the Supplier, and, thirty (30) calendar days after the effective date of notice, this Agreement shall automatically terminate and without any costs or payments of any kind to either Party, and the Completion and Performance Security shall be returned forthwith.
- (e) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder after the Commercial Operation Date for more than three-hundred and sixty five (365) consecutive calendar days, then

notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, then the Buyer, with the DPUC's approval, may terminate this Agreement upon thirty (30) calendar days' written notice to the Supplier, and thirty (30) calendar days after the effective date of the said written notice, this Agreement shall automatically terminate without any costs or payments of any kind to either Party, and the Completion and Performance Security shall be returned forthwith.

- (f) Notwithstanding any provision of this Agreement or applicable Law to the contrary, in the event that the Supplier is excused from the performance of any of its obligations under this Agreement due to an Event of Force Majeure affecting the Supplier, then during the period of such event of Force Majeure, the Buyer shall only be obligated to make payments for the portion of FCM Contract Quantity, LFRM Contract Quantity, or Call Option Contract Quantity, if any, provided by the Supplier to the ISO-NE Markets, on a pro rata basis.
- (g) After the Term Commencement Date, an event of Force Majeure shall not extend the Term of this Agreement.

9.3 Liability and damages

Except as provided for under this Agreement, neither Party shall be liable under this Agreement for any special, indirect, incidental, consequential, or punitive damages of any kind, including but not limited to loss of use, out of pocket expenses, and lost profits (past or future), by statute, in tort or contract, or otherwise.

Article 10 Credit and Security Requirements

10.1 Completion and Performance Security Amount

The Supplier shall provide security to the Buyer on the Effective Date of this Agreement for the performance of the Supplier's obligations under this Agreement, in the applicable amount as set out in Section 10.1 below and in the form described in Section 10.2 (the "Composition of the Completion and Performance Security").

- (a) The amount of the Completion and Performance Security applicable prior to the Demand Resource Project's Commercial Operation Date shall be set at U.S. Dollars 35 per kW of Base Level FCM Contract Quantity.
- (b) Effective upon the Demand Resource Project's Commercial Operation Date, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Section 2.5 and 2.6 have been paid in full by the Supplier, then the amount of the Completion and Performance Security shall be reduced to an amount equal to U.S. Dollars 15 per kW of Base Level FCM Contract Quantity.

- (c) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. Not maintaining the Completion and Performance Security at its full amount shall be an Event of Default with a five (5) Business Day cure, pursuant to Section 8.1(b)a.
- (d) The Supplier shall provide to the DPUC and the Buyer reasonable evidence of any security that Qualified Capacity posts to participate in the FCM before the Demand Resource Project reaches Commercial Operation, as described in Section II.G.2.b of the Settlement Agreement. The amount of security provided to ISO-NE in this case may be used to reduce the Completion and Performance Security required under this Agreement as long as the security provided to ISO-NE is not in the form of a guarantee, such that the total security provided by the Supplier to the Buyer and to ISO-NE for the purpose of Qualified Capacity participating in the FCM totals the Completion and Performance Security calculated in Section 10.1.

10.2 Composition of Completion and Performance Security

- (a) The Completion and Performance Security shall be provided in the form of either (i) cash, which will be held in an interest-bearing Escrow account by a Qualified Institution selected by the Buyer for the benefit of the Buyer, (ii) a Letter of Credit, (iii) a performance bond, (iv) a certified check made payable to Buyer, (v) a bank draft made payable to Buyer, or (vi) other equivalent form of security acceptable to the Buyer acting reasonably, and subject to the approval of the DPUC, but for certainty, shall not include guarantees. The Completion and Performance Security can also be composed of a mix of such instruments so long as the total amount required under Section 10.1 of this Agreement is achieved.
- (b) Costs of the Completion and Performance Security shall be borne by the Supplier.
- (c) If cash is provided by the Supplier for the Completion and Performance Security, such cash will be held in an interest-bearing Escrow account by the Buyer in a Qualified Institution. The interest accrued in this Escrow account will be paid to the Supplier upon the Term Termination Date as long as there are no outstanding disputes between the Parties.
- (d) If a Letter of Credit is used:
 - a. The bank providing the Letter of Credit must be a Qualified Institution, or be otherwise submitted to the DPUC for approval.
 - b. Within two (2) Business Days of the Effective Date, Supplier shall provide to Buyer a Letter of Credit in the amount of \$ [_____] to secure Supplier's performance from the Effective Date until either expiration of this Letter of Credit or the Termination Date. The Letter of Credit shall have a term of not less than one (1) year and an evergreen clause acceptable to the Buyer and the DPUC.

The Letter of Credit shall provide that if this Agreement remains in effect and the Letter of Credit is due to expire, Buyer shall have the right to draw on the full amount of such Letter of Credit. In that event, Buyer will hold such funds until Supplier has provided Buyer with a replacement Letter of Credit or other form of security that meets the requirements of this Article 10 of this Agreement.

- c. If the Credit Rating of the Qualified Institution providing the Letter of Credit falls below the levels specified in the definition of a Qualified Institution, the Supplier shall have five (5) Business Days following written notice by the Buyer to obtain a suitable Letter of Credit from another Qualified Institution, unless the Buyer agrees in writing to extend such cure period.
- (e) If a performance bond is used:
- a. The performance bond must allow the Buyer, acting reasonably, to determine whether the surety will pay or perform the Defaulting Party's obligations.
 - b. The performance bond must require the surety to pay all undisputed amounts requested in writing by the Buyer within five (5) Business Days, and must deposit any disputed amounts into an Escrow account for the benefit of the Buyer pending resolution of the dispute between the Buyer and the surety. Any interest accrued in the Escrow account must be paid to the Buyer or the surety on a pro rata basis depending on how the issue is resolved.
 - c. The performance bond must be irrevocable, and must remain in place for the entire Term of this Agreement.
 - d. The surety must agree to (i) waive notice of any alteration or extension of time provided by either Party under this Agreement; (ii) waive notice of any amendment to this Agreement; (iii) following the occurrence of an uncured Event of Default by the Supplier, the surety must waive any requirement under applicable Law or otherwise that Buyer first proceed against (and obtain judgment against) the Supplier before Buyer can enforce its rights under the performance bond against the surety.
 - e. In the event that Buyer prevails in its attempts to enforce its rights under the performance bond, the surety must agree to pay for all the documented legal costs, fees, and expenses Buyer incurred in the enforcement action.
 - f. The performance bond must be governed by and enforced in accordance with the Laws of the state of Connecticut; and any proceeding under the Performance Bond must be instituted in a court of competent jurisdiction in Hartford County, Connecticut.

Article 11 Contract Administration

11.1 Inspection and Audit

Each Party and the DPUC has the right, at its sole 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, the Supplier shall provide to the Buyer and the DPUC statements evidencing the performance of its obligations. 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 calculated at the interest rate (as defined in Section 6.7) from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

11.2 Notices

- (a) Any notice, demand, or request permitted or required under this Agreement shall be delivered in person, by prepaid overnight United States mail or by overnight courier service, return receipt requested, to a Party at the applicable address set forth below:

To Buyer:
Name or Title:
Company:
Full Address:
City, State, Zip
Telephone:

To Supplier:
Name or Title:
Company:
Full Address:
City, State, Zip
Telephone:

To DPUC:
Executive Secretary
10 Franklin Square
New Britain, CT 06051
Tel: 860-827-1553

- (b) Notices by hand delivery or facsimile (provided a copy is also sent by overnight mail) shall be effective at the close of business on the day actually sent, if sent during sending

Party's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day.

- (c) The addresses for notice specified in Section 11.2(a) may be changed from time to time by written notice by any Party to all other Parties without amendment of this Agreement.

11.3 Records and Billing Verification Rights

- (a) Supplier and Buyer each shall keep complete and accurate records with respect to its performance under this Agreement and shall maintain such data for a period of five (5) years after final billing for verification by the other Party. In the event of any billing dispute, all such records pertaining to the dispute shall be maintained until such later time as the billing dispute is resolved. If a billing dispute establishes that any bill submitted to and paid by Buyer was for an amount greater than properly chargeable under this Agreement, Supplier shall refund to Buyer the excess amount collected together with interest calculated from the date of payment to the refund date in accordance with the regulations of FERC applicable to the payment of interest on refunds. If a billing dispute establishes that any bill submitted to and paid by Buyer was for an amount less than properly chargeable under this Agreement, Buyer shall make such additional payment to Supplier, together with interest calculated from the due date to the date of payment in accordance with regulations of FERC applicable to the payment of interest on refunds.
- (b) In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, each Party shall have the right to verify the accuracy or the calculation of the invoice, at its own expense, to obtain copies of relevant portions of the books and records of the other Party insofar as may be necessary for the purpose of ascertaining the accuracy of any invoice or calculation of payment due. Each Party supplying data hereunder may require that the other Party maintain the confidentiality of such accounts, records and data in accordance with Section 12.11. The Parties agree to individually and jointly request from ISO-NE, or other appropriate source, any data or information that either Party believes is reasonably necessary for purposes of a requested accounting or resolution of a billing dispute.

Article 12 Miscellaneous

12.1 Change of Control, Sale of Demand Resource Project, or Assignment

- (a) Except as part of a collateral assignment in favor of the Financing Parties, no direct or indirect change of control of Supplier shall be allowed without the DPUC's written consent, such consent shall not be unreasonably withheld. The DPUC will not unreasonably withhold its approval so long as the successor entity assumes all responsibilities and obligation of the Supplier under this Agreement and has sufficiently demonstrated to the DPUC that it has the technical, managerial, and financial

wherewithal to serve as the Supplier for the remainder of the Term. The sale or transfer of up to a maximum of 50% of the membership interest or share capital of the Supplier shall not be prohibited by this Section and shall not require consent, so long as the Supplier continues to fulfill its obligations under this Agreement without modification.

- (b) The Buyer may assign, pledge or transfer this Agreement to a successor distribution company, subject to DPUC approval.
- (c) When assigned, this Agreement shall be binding upon, and shall inure to the benefit of, and shall be performed by, each successor and permitted assignee of the Parties, except that no assignment, pledge or 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 DPUC approves to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations hereunder.
- (d) Buyer agrees that (i) Supplier may assign, mortgage, hypothecate, pledge or otherwise encumber, by way of security or collateral, all or any portion of the Supplier's interest in and to this Agreement in favor of any Financing Party and its successors and assigns and (ii) any such Financing Party may assign such interest in and to this Agreement to any subsequent assignee that is also a Financing Party in connection with the sale, transfer, or exchange of its rights under this Agreement. Any such Financing Party may operate the Demand Resource Project pursuant to such assignment upon and after the exercise of such Financing Party's rights and enforcement of its remedies against the Supplier or the Demand Resource Project under any deed of trust or other security instrument, creating a lien in its favor, in each case with notice to, but without the consent of, Buyer, provided that the Supplier has demonstrated to the reasonable satisfaction of the DPUC that any such Financing Party (or the security agent acting on behalf of all the Financing Parties, where there are more than one) has entered into an agreement with the Buyer under which each Financing Party agrees to be fully bound by all the terms and conditions of this Agreement as if the Financing Party had been substituted for by the Supplier. In order for collateral assignment to occur as contemplated in this Section 12.1(d), there must be a single entity designated as trustee on behalf of all Financing Parties and the trustee or agent, on behalf of all Financing Parties, must agree to comply with all provisions in this Section 12.1.

12.2 Notice of Deterioration of Financial Indicators

The Parties shall provide notice to the DPUC and each other of any deterioration of any of their respective Credit Ratings, or any other financial indicators agreed upon in writing between the Buyer and the Supplier at the Execution Date if the Supplier is not a publicly rated entity, immediately upon becoming aware of such deterioration, then the Supplier shall provide written notice to the DPUC and the Buyer of any material deterioration in the Supplier's financial condition.

12.3 Subcontracting

The Supplier may subcontract its duties or obligations under this Agreement without the prior written approval of DPUC and the Buyer, provided, that no such subcontract shall relieve the Supplier of liability for performing any of its duties and obligations hereunder.

12.4 Taxes

- (a) Each Party shall be responsible for all federal, state, and local Taxes incurred by it as a result of entering into this Agreement; provided, however, that Supplier shall be responsible for all Taxes imposed on, or assessed to, the Demand Resource Project, the Site, all payments obtained by the Supplier pursuant to this Agreement and all payments obtained by the Supplier resulting from participation in any of the ISO-NE Markets.
- (b) Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as neither Party is materially adversely affected by such efforts.

12.5 Governing Law

- (a) To the extent that any Party to this Agreement seeks to litigate any dispute under this Agreement, such Party will be required to use the dispute resolution process listed in Section 12.10 of this Agreement. Binding arbitration under this Agreement shall be governed by Conn. Gen. Stat. 52-408 et seq.
- (b) The interpretation and performance of this Agreement shall be governed by the Laws of the State of Connecticut without resort to any conflicts of laws principles that will result in the applications of Laws other than the Laws of the State of Connecticut.
- (c) To the extent that any of the Parties seeks to confirm, vacate, modify, or correct any binding arbitration in Section 12.10(c) of this Agreement, then such request to confirm, vacate, modify, or correct shall be made to a court of competent jurisdiction located in Hartford County, Connecticut, pursuant to Connecticut Gen. Stat. 52-408 et seq., as amended or superseded from time to time. An appeal from a judicial order confirming, vacating, modifying, or correcting an arbitration decision or award shall be made pursuant to Connecticut Gen. Stat. 52-408 et seq., as amended or superseded from time to time.
- (d) Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.
- (e) Any DPUC decisions issued regarding this Agreement shall not be appealable or subject to the Dispute Resolution Procedures outlined in Section 12.10 of this Agreement.

12.6 Adjustments to Comply with Market Changes

In the event of a Market Change that was not reasonably anticipated at Execution Date:

- (a) Either Party shall have the right to initiate an amendment pursuant to this Section 12.6.
- (b) The Supplier agrees to participate in any modified ISO-NE Markets (including but not limited to FCM, LFRM, and Energy Market) as long as they are eligible to do so.
- (c) If the Supplier is completely ineligible to participate in the ISO-NE Markets warranted in Sections 3.2(a) and 3.2(b) or the Market Change has a material and adverse impact on the Supplier demonstrated through an increase in operating or capital costs for the FCM Contract Quantity of more than 15% that is not recovered through revenues (including revenues from other markets):
 - a. The Supplier must provide information on the Market Change and implications for the Supplier's obligations under this Agreement to the Buyer and the DPUC;
 - b. The Buyer and the Supplier must negotiate in good faith such that an amended Agreement restores the economic balance of the Agreement to its level at the Execution Date.
- (d) The Buyer must submit any amendments to the Agreement resulting from this Section 12.6 to the DPUC for approval within five (5) Business Days of completing the amended Agreement.
- (e) Any conflicts regarding this Section 12.6 must be addressed using the guidelines outlined in Section 12.10 of this Agreement.

12.7 Relationship of Parties

The Parties acknowledge that as between the Supplier and the Buyer there is an independent contractor relationship, and that nothing in this Agreement shall create any joint venture, partnership, or principal/agent relationship between the Parties. Neither Supplier nor Buyer shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

12.8 Complete and Full Agreement; Amendments; Severability; Waiver

- (a) This Agreement (including the Exhibits, Schedules and any written supplements hereto) constitutes the entire agreement between the Parties relating to the subject matter.
- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or

modification to this Agreement shall be enforceable unless reduced to writing, approved by the DPUC, and executed by both Parties.

- (c) The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to the applicable law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties hereto and the prevailing economic balance between the Buyer and the Supplier at the Execution Date, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable, subject to DPUC approval. The Parties shall use the Dispute Resolution measures outlined in Section 12.10 if they are not able to achieve agreement.
- (d) Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original, but all of which shall together constitute one and the same instrument.
- (e) The captions to Articles and Sections throughout this Agreement are intended solely to facilitate reading and reference to all Articles, Sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.
- (f) A Party's failure to timely enforce compliance with any term or provision of this Agreement shall not be deemed to be a waiver of any said Party's rights under this Agreement.

12.9 Indemnification

- (a) General. Each Party (each, an "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, its parents and affiliates and its and their respective officers, directors, lenders, trustees, employees, contractors, subcontractors, and agents (each an "Indemnified Party"), from and against any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorneys' fees, and all other obligations by or to third parties arising out of or resulting from the Indemnifying Party's (including its affiliates', agents', employees', contractors' and subcontractors') negligence or actions or omissions under, in connection with, or arising out of, this Agreement; provided, however, that the Indemnifying Party shall not be liable for damages or losses arising out of gross negligence or intentional misconduct by the Indemnified Party, its affiliates and its and their respective officers, directors, trustees, employees, contractors, subcontractors, or agents.
- (b) Indemnification Procedures. A Party seeking indemnification from another Party under this Section 12.9 shall give the other Party notice of such claim as soon as reasonably practical after the commencement of or actual knowledge of, such claim or

action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount (estimated if necessary) of the claim that has been or may be asserted against or sustained by such Party. To the extent that the other Party is reasonably determined to be materially prejudiced as a result of failure to provide such notice, such notice shall be a condition precedent to liability of the other Party under the indemnification provisions of this Agreement. Neither Party may settle or compromise any claim for which indemnification is sought without the prior written consent of the other Party, provided, however, such consent shall not be unreasonably withheld, delayed or conditioned. The indemnification obligations of each Party shall continue in full force and effect regardless of whether this Agreement has expired or terminated, and shall not be limited in any way by any limitation on insurance, on the amount or types of damages (including any such limitations on damages set forth in this Agreement), or by any compensation or benefits payable by the Parties under worker's compensation acts, disability benefit acts or other employee acts.

12.10 Dispute Resolution

Except as otherwise expressly set forth herein, for any and all disputed issues, the Parties shall refer to this Section 12.10. A Party must respond to the other Party's notice concerning a disputed issue within ten (10) Business Days of first notification unless otherwise specified in this Agreement.

- (a) **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business ("Initial Notice"). A copy of the Initial Notice shall also be given to the DPUC. Such Initial Notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, the executives of both Parties and a representative from the DPUC shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- (b) **Mediation.** If a dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's Initial Notice pursuant to Section 12.10 (a) hereof, or if the Parties failed to meet within fifteen (15) Business Days of the delivery of the Initial

Notice, the Parties shall endeavor to settle the dispute by mediation under the then current CPR Rules for Non-Administered Arbitration; provided, further, that if one Party fails to participate in the negotiation as provided in Section 12.10(a) above, then the other Party can initiate mediation prior to the expiration of the thirty (30) Business Days. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals. The mediator must identify the prevailing Party and non-prevailing Party in the dispute, or must find that neither Party was prevailing.

- (c) Binding Arbitration. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof (with the exception of disputes related to the calculation of Settlement Amounts, which shall be addressed as provided in Section Article 6) and with the exception of any dispute in which this Agreement explicitly directs the Parties to submit such dispute to the DPUC, which has not been resolved by one of the non-binding procedures set forth in Sections 12.10(a) and 12.10(b) within fifty (50) Business Days of the delivery of the Initial Notice, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars (\$3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars (\$3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules for Non-Administered Arbitration; provided, further, that if either Party does not participate in one of the non-binding procedures set forth in Sections 12.10(a) and 12.10 (b), then the other may initiate binding arbitration under this Section 12.10(c) prior to the expiration of the fifty (50) Business Day period. The arbitration shall be governed by the Connecticut Gen. Stat. 52-408 et seq. and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Hartford, Connecticut. The arbitrator(s) are not empowered to award damages in excess of (i) compensatory damages plus (ii) any punitive liquidated indirect, special, exemplary or similar damages expressly permitted by this Agreement or expressly authorized by applicable Law. The arbitrators must identify the prevailing Party and non-prevailing Party in the dispute, or must find that neither Party was prevailing.
- (d) The non-prevailing Party must pay the non-prevailing Party's documented fees and expenses associated with mediation and arbitration, including attorneys' fees. If there was no prevailing Party, each Party will bear responsibility for its own fees and expenses. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules for Non-Administered Arbitration. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Agreement. To the fullest extent permitted by law, any mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

- (e) The failure of either Party to comply in a timely fashion with this Section 12.10 shall be considered material and shall result in an Event of Default pursuant to Sections 8.1(b)b and 8.4(b)a.
- (f) To the extent that any of the Parties seeks to confirm, vacate, modify, or correct any binding arbitration in Section 12.10(c) of this Agreement, then such request to confirm, vacate, modify, or correct shall be made to a court of competent jurisdiction located in Hartford County, Connecticut, pursuant to Connecticut Gen. Stat. 52-408 et seq., as amended or superseded from time to time. An appeal from a judicial order confirming, vacating, modifying, or correcting an arbitration decision or award shall be made pursuant to Connecticut Gen. Stat. 52-408 et seq., as amended or superseded from time to time.

12.11 Confidentiality

- (a) The contents of this Agreement and all other documents relating to this Agreement and any information made available by a Party (“Disclosing Party”) to the other Party (“Non-Disclosing Party”) with respect to this Agreement are presumed to be public, unless the DPUC has granted a request for confidential treatment pursuant to Section 12.11(b). To obtain confidential treatment, Parties should file information that they seek to treat as confidential under seal along with a motion for a protective order requesting that the DPUC grant confidential treatment for specific data or information that they deem to be proprietary and confidential. The information filed under seal should clearly be marked “confidential” on the top of each page. The motion should indicate the basis in federal or state law for keeping the information confidential.
- (b) Parties requesting confidential treatment from the DPUC must clearly specify exactly which information they seek to treat as confidential, for how long such confidential treatment shall last, and whether or not the information for which confidential treatment is being sought will be provided on a regular basis and whether it shall be protected each time. Once the DPUC has ruled that such information is confidential, the ruling will be valid for the duration of the term of this Agreement, unless such information has become non-confidential according to Section 12.11(c) of this Agreement.
- (c) All information is automatically non-confidential if such information (i) has become generally available to the public other than as a result of a disclosure by the Non-Disclosing Party or its Representatives, or (ii) may be obtained from a non-confidential source that disclosed such information in a manner that is not known by the Non-Disclosing Party to have violated such entity’s obligations to the Disclosing Party, if any, in making such disclosure.
- (d) In addition, confidentiality status of information does not preclude it from being released to a third party (i) as may be required in response to any summons or subpoena from a regulatory body, or otherwise required in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent

system operator rule (provided that the Non-Disclosing Party shall promptly notify the Disclosing Party of the requested disclosure so that Disclosing Party may seek a protective order or other appropriate remedy, or, in its sole discretion, waive compliance with the terms of this Section 12.11), or (ii) being furnished to the Non-Disclosing Party's Affiliates, and to each of such person's auditors, attorneys, advisors or lenders, investors, potential acquirers, directors or trustees (collectively, "Representatives" without need to know such information in conjunction with this Agreement; provided, however, that any Representatives to whom the Non-Disclosing Party discloses the information shall be required to observe the terms of this Section 12.11.

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed in their names by their respective duly authorized officials.

[corporate name of Buyer]

By: _____

[Buyer Representative's Name]

[Buyer Representative's Title]

[corporate name of Supplier]

By: _____

[Supplier Representative's Name]

[Supplier Representative's Title]

Article 13 Exhibits

The DPUC reserves the right to add additional information to the Exhibits from the Supplier's Proposal at the time of selection of winning projects.

13.1 Exhibit A: Demand Resource Project Description and Site Map

This information will be taken from the Supplier's Proposal to the DPUC's competitive solicitation process, supplemented from time to time with revised data as permitted required in this Agreement. All information submitted in the Proposal is binding at the date of Financial Bid submission.

Legal Name of Supplier:

Demand Resource Project Description:

Nature of Demand Resource Project: [Describe how load reduction is achieved]

For all questions below, if the Demand Resource Project is a multi-site installation, please provide answers for all sites. [Note that not all questions are relevant for each kind of Demand Resource technology. Irrelevant issues will be deleted in actual contract.]

Location (s) of Demand Resource Project:

USGS scale map showing Demand Resource Project Site(s):

Description of the points of demand offset for Connecticut load:

A listing of the Demand Resource Project's major equipment:

Description of project Control Equipment:

Description of project technology:

Capacity of the Demand Resource Project:

Summer normal:

Summer emergency short duration:

Winter normal:

Winter emergency short duration:

Project operating description:

Description of interruptible load under Supplier control, including load location, quantity interrupted for each load, existence of a third party supplying interruptible load, and existing electricity supplier to each load:

Project Ramp Rate, if any:

Project load shaping ability, if any:

Project operating profile (MW production by time of day):

Description of real time status data available from project (if any):

If Demand Resource Project includes a generator:

Location of connected load:

Description of electric generator(s) and generator ancillary equipment:

Installed capacity of Distributed Generation facility (MW):

Description of major balance of plant components:

Project operating description:

Project Ramp Rate, if any:

Project load shaping ability, if any:

Project operating profile (MW production by time of day):

Description of project Control Equipment, if any:

Description of real time status data available from project (if any):

Description of air quality emission monitoring system:

13.2 Exhibit B: Milestone Events and Milestone Dates for the Demand Resource Project

This information will be taken from the Supplier's Proposal to the DPUC's competitive solicitation process. All information submitted in the Proposal is binding at the date of Financial Bid submission. For projects that have staggered amounts of capacity with different milestones, a separate table must be completed for each "batch" of capacity. Likewise, if the Demand Resource Project aggregates several types of Demand Resources, the Supplier must provide the breakdown by (i) type of Demand Resource and (ii) commercial operation schedules.

Note that Milestone Events will vary by technology of Demand Resource Project. Milestone Events that may not apply to all projects have an "as applicable" at the end.

Milestone Event	Milestone Date
Complete design of project	
DR Project Approvals, Site Approvals and Permitting (<i>Applicable only if the Control Equipment includes a generator</i>)	
Completion of connection assessments (including receipt of approvals from ISO-NE, LDC, or Load, as applicable.)	
Engineering, equipment procurement and construction contracts executed (<i>Applicable only if the Control Equipment includes a generator</i>)	
Financial Closing	
Equipment Order	
Major Equipment Delivered	
If the DR Project requires the participation of third party loads, delivery to the Buyer of a certificate addressed to it from the DR Verification Consultant, stating that the Supplier has executed DR Third Party Agreements as collectively represent 80% of the Contract Quantity, which shall occur no later than one year prior to the milestone for Commercial Operation.	
Commencement of Construction (as applicable)	
Completion of Construction (as applicable)	
Connection of Control Equipment to the Load (as applicable)	
Initial test of project operation	
Receipt of ISO-NE certification that Project satisfies its requirements for market participation (as applicable)	

Receipt of independent consulting engineer certification that project operates as designed	
Commercial Operation*	

13.3 Exhibit C: Measurement & Verification Plan

The Measurement and Verification Plan must contain the following minimum elements:

- (a) The Measurement and Verification Plan must meet all requirements for Measurement and Verification laid out in the International Performance Measurement and Verification Protocol, and must be consistent with ISO-NE requirements for Demand Resource participation in the FCM.
- (b) A statement that specifies how the Demand Resource Project will meet the demand reduction requirements of this Agreement.
- (c) A statement that specifies how the baseline will be measured (where applicable)
- (d) How the Control Equipment will be used for measuring and verification including measurement techniques and data collection frequency.
- (e) A description of how Control Equipment outages will be monitored and reported on in the Measurement and Verification Report.
- (f) Discuss detailed implementation of Monitoring and Verification Plan, explaining why certain analytical options selected and what methodologies will be used.
- (g) Discuss how energy savings will be calculated according to the Monitoring and Verification Plan.
- (h) Discuss the contents of the Measurement and Verification Report, as applicable for the Demand Resource technology.

13.4 Exhibit D: Financial Bid Template

This information will be taken from the Supplier's Proposal to the DPUC's competitive solicitation process. All information submitted in the Proposal is binding at the date of Financial Bid submission.

[To be attached after bid selection and contract execution]

13.5 Exhibit E: Code of Conduct

Information Disclosure and Communication Protocols

- 1.1 The distribution company that is serving as the Buyer in this Agreement, and specifically any Reviewing Parties representing the distribution company, will be obliged to sign a DPUC-approved Confidentiality/Non-Disclosure Agreement before receiving this Agreement, which will grant the this Agreement the status of “Protected Materials”.
- 1.2 The Confidentiality/Non-Disclosure Agreement shall be based on the FERC Model Protective Order, which will be approved by the DPUC before the distribution company receives this Agreement.
- 1.3 As per the Confidentiality/Non-Disclosure Agreement, the distribution company will put in place appropriate “Chinese walls” to safeguard commercially sensitive information that the companies will have access to once they become counterparties to this Agreement.
- 1.4 The distribution company will treat as confidential the Protected Materials it receives as an administrator of and counterparty to this Agreement. Protected Materials will not be used except as necessary for the administration of this Agreement, nor shall they be disclosed in any manner to any person except an official Reviewing Representative, who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out his or her responsibilities in this proceeding.