

CONTRACT FOR THE SALE OF [ENERGY/CAPACITY/RENEWABLE ENERGY CREDITS]  
FROM A QUALIFIED RESOURCE PURSUANT TO THE NORTHERN MAINE RENEWABLE  
ENERGY DEVELOPMENT PROGRAM

This AGREEMENT (“Agreement”) is dated as of the \_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_, a Maine corporation and transmission and distribution utility ("T&D"), and \_\_\_\_\_, a \_\_\_\_\_ ("Seller"). This Agreement sets forth the terms and conditions under which Seller will transfer to T&D, during the Term (as defined below), [Energy/Capacity/Renewable Energy Credits (“RECS”)].

WHEREAS, Section 3210-I of Title 35-A of the Maine Revised Statutes directs the Maine Public Utilities Commission (“Commission”) to approve a long-term contract between one or more investor-owned transmission and distribution utilities and a Seller selected by the Commission pursuant to the Northern Maine Renewable Energy Development Program as established by Section 3210-I(3); and

WHEREAS, pursuant to Section 3210-I(3) of Title 35-A of the Maine Revised Statutes of the Commission’s Rules and Regulations, the Commission has conducted a competitive bidding process; and

WHEREAS, the Commission has evaluated the proposal of the Seller and has selected Seller to transfer to T&D [Energy/Capacity/RECs] from a qualified resource pursuant to the terms and conditions set forth herein.

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

ARTICLE 1  
DEFINITIONS

1.1 Definitions.

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

“Acceptable Credit Support” means either: (a) cash; (b) an irrevocable letter of credit issued by a commercial bank authorized to do business and in good standing in the United States of America with a minimum long-term unsecured debt rating of at least “A-” by S&P or “A3” by Moody’s, or an equivalent debt rating by one of these agencies; or (c) other security acceptable to the Party receiving such credit support and the Commission.

“Applicable Market Rules” means the relevant provisions of the rules, tariffs, manuals or other documents of the ISO-NE or NMISA.

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, a holiday recognized by the State of Maine, or a holiday as defined by NERC. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time [4:00 p.m. for CMP contracts] for the relevant party’s principal place of business. The relevant party, in each instance unless otherwise specified, shall be the party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Capacity” means the capacity in MW of the Facility that can be transacted or monetized in the wholesale market as determined by the Applicable Market Rules.

“Class I Resource” shall have the meaning set forth in 35-A M.R.S. § 3210, subsection 2 and Chapter 311 of the Commission’s Rules.

“Class IA Resource” shall have the meaning set forth in 35-A M.R.S. § 3210, subsection 2 and Chapter 311 of the Commission’s Rules.

"Commercial Operation" means that the Facility is operational and placed into service and such Facility has been constructed, tested, and is fully capable of operating for the purpose of providing the Contract Products as contemplated herein.

"Commercial Operation Date" means the date on which the Facility first commences Commercial Operation; provided, that Seller shall provide at least five (5) Business Days advance notice in writing to T&D of the Commercial Operation Date.

“Commission” means the Maine Public Utilities Commission, and any successor organization.

“Contract Capacity Price” shall have the meaning set forth in Section 3.4.2.

“Contract Energy Price” shall have the meaning set forth in Section 3.4.1.

“Contract Payments” shall have the meaning specified in Section 3.5.

“Contract Products” means the Energy, and/or RECs, and/or Capacity purchased and sold pursuant to this Agreement as specified in Section 3.3.

“Contract Quantity of Capacity” shall have the meaning specified in Section 3.3.2.

“Contract Quantity of Energy” shall have the meaning specified in Section 3.3.1.

“Contract Quantity of RECs” shall have the meaning specified in Section 3.3.3.

“Contract RECs Price” shall have the meaning set forth in Section 3.4.3.

“Contract Year” means each of the twenty (20) 12-month periods that constitute the Delivery Term of this Agreement.

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with the termination of the Agreement, and calculated pursuant to Section 10.2.

"Credit Rating" means the long-term senior unsecured debt rating as issued by S&P or Moody’s. If the ratings by these two ratings agencies differ, then the lower rating will control. If such Party does not have a long-term senior unsecured debt rating, then “Credit Rating” shall mean the long-term corporate credit rating as issued by S&P or Moody’s. In the absence of such a rating by either S&P or Moody’s, then the long-term senior unsecured debt rating from Fitch will control. In the absence of a senior long-term unsecured debt rating, the Seller’s creditworthiness shall be assessed by T&D and the Commission.

“Credit Support” means the security as set forth for T&D or for Seller in Article 6.

“Delivery Term” means the term of deliveries of Contract Products under this Agreement as provided in Section 3.2.

"Delivery Point—Market” or “Market Delivery Point" means the ISO-NE Pricing Node or otherwise applicable location or point at which Seller shall convey Energy to T&D, which will be [define/describe the specific point where the Seller will transfer ownership of the Energy to T&D].

“Designated Transmission Facilities” shall mean facilities that comprise the transmission project selected by the Commission pursuant to 35-A M.R.S. § 3210-I(2) or are otherwise required by that transmission project to meet its obligations pursuant to the Northern Maine Renewable Energy Development Program.

“Dispute Interest Rate” shall have the meaning specified in Section 4.2.3.

“Due Date” shall have the meaning specified in Section 4.2.3.

"Effective Date" means the date when all of the conditions specified in Article 2 are satisfied or waived by the Party for whose benefit such condition exists.

“Energy” means Energy produced from the Facility in the form of electricity, measured in megawatt hours (MWh) at the Market Delivery Point.

“Energy Sales Charge” means the monthly amount to be paid by T&D to Seller for Energy, which shall equal the Contract Energy Price multiplied by the Contract Quantity of Energy delivered to the T&D in the applicable month.

“Energy Storage System” means a commercially available technology that uses mechanical, chemical or thermal processes for absorbing energy and storing it for a period of time for use at a later time, as defined in 35-A M.R.S. § 3210-I(3)(A).

“Facility” means the [insert project type] facility with the Nameplate Capacity of [insert nameplate capacity in MW] located in [insert municipality], [insert state] utilized by Seller to produce and/or provide Contract Products pursuant to this Agreement.

"FERC" means the Federal Energy Regulatory Commission, and any successor organization.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, and calculated pursuant to Section 10.2.

“Generator or Facility Forced Outage” means an immediate reduction in output or capacity or removal from service, in whole or in part, of the Facility by reason of an emergency or threatened emergency, unanticipated failure, or other cause beyond the control of the owner or operator of the Facility, as specified in the relevant portions of the Applicable Market Rules.

“Generator or Facility Planned Outage” means the scheduled removal from service, in whole or in part, of the Facility for inspection, maintenance or repair in accordance with Applicable Market Rules.

“Interconnection Point” means the physical point of connection between the Facility and the Designated Transmission Facilities, located at [identify/describe physical location].

"Investment Grade" means: (i) with regard to a Credit Rating assigned by S&P, a Credit Rating equal to or better than BBB-; (ii) with regard to a Credit Rating assigned by Moody's, a Credit Rating equal to or better than Baa3; (iii) with regard to a Credit Rating assigned by Fitch, a Credit Rating equal to or better than BBB-.

“ISO-NE” means the Independent System Operator or the New England bulk power system or any successor entity.

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

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

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

“Late Payment Rate” shall have the meaning specified in Section 4.2.3.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit

rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss, if any (exclusive of Costs), resulting from termination of the Agreement, determined in a commercially reasonable manner, calculated pursuant to Section 10.2 and subject to Section 10.5.

"Maine Class 1 or Class 1A Renewable Energy Credit (REC)" shall have the meaning set forth in 35-A M.R.S. § 3210, subsection 2 and Chapter 311 of the Commission's Rules.

"Nameplate Capacity" means \_\_ MW [AC].

"NEPOOL GIS" means the New England Power Pool Generation Information System.

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

"Net Worth" means the sum, but without duplication, of (a) the value stated on the books of T&D of the capital stock of T&D and its subsidiaries, plus (b) the amount of the paid-in capital and retained earnings of T&D and its subsidiaries, in each case as such amounts would be shown on a consolidated balance sheet of T&D and its subsidiaries as of the time prepared in accordance with generally accepted accounting principles ("GAAP").

"NMISA" means the Northern Maine Independent System Administrator or any successor entity.

"Party" means either T&D or Seller and "Parties" means both T&D and Seller.

"Pricing Node" means the specific locations on the transmission system for which ISO-NE calculates and publishes wholesale electricity prices.

"Rating Agency" means each of S&P, Moody's, Fitch, and their successors and assigns.

"Renewable Energy Credit" or "REC" means a tradable instrument that represents an amount of electricity generated from eligible resources or renewable capacity resources.

"Replacement Downgrade Event" has the meaning set forth in Section 6.3.

"Replacement Credit Support" has the meaning set forth in Section 6.3.

"Seller" means [insert name] and its permitted successors and assigns.

"Seller Credit Support" has the meaning set forth in Section 6.2.

"T&D" means [Central Maine Power Company/Versant Power Company] and its permitted successors and assigns.

“T&D Downgrade Event” has the meaning set forth in Section 6.1.

“T&D Credit Support” has the meaning set forth in Section 6.1.

“Term” shall have the meaning specified in Section 2.4.

“Terminated Transaction” means a termination of this Agreement under conditions that result in a Termination Payment.

“Termination Payment” has the meaning set forth in Section 10.2.

“Test Energy” has the meaning set forth in Section 3.1.

“Transmission Availability Delay” means that the Designated Transmission Facilities are not available for the Seller to convey and the T&D to receive Energy produced by the Facility [by the date specified in the TSA, subject to any extensions permitted in the TSA]

“Transmission Credit Support” means the credit support provided under the TSA and assigned by T&D to Seller as described in Article 5.

“TSA” means the Transmission Service Agreement or Agreements awarded by the Commission pursuant to the Northern Maine Renewable Energy Development Program.

This Agreement includes certain capitalized terms that are not explicitly defined in this Article 1 or elsewhere in this Agreement. Such capitalized terms shall have the meanings specified in the ISO-NE Tariff and the ISO-NE Market Rules and Manuals, or the Tariff and Market Rules of the NMISA, as applicable, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained herein and a definition contained in the applicable Tariff or Market Rules and Manuals, the definition in this Agreement will control for purposes of this Agreement.

## ARTICLE 2

### CONDITIONS PRECEDENT, EFFECTIVE DATE AND TERM

#### 2.1 Conditions on Obligations of T&D and the Seller.

The obligations of T&D and the Seller under this Agreement and the designation of the Effective Date for the commencement of this Agreement are subject to the fulfillment and satisfaction of each of the following conditions precedent, any one or more of which may only be waived in writing, in whole or in part, by the Party for whose benefit such condition exists. As used in this Agreement, the “Party for whose benefit a condition exists” means the Party whose obligation is contingent upon the occurrence of that condition.

##### 2.1.1 Conditions on Obligations of T&D.

(a) The Seller shall have delivered to T&D within the time frame set forth in Article 6 any required Seller Credit Support.

(b) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date when made and as of the Effective Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), and Seller shall have delivered to T&D a certificate, substantially in the form contained in Exhibit A, dated as of the Effective Date and signed by one of its duly authorized officers specifying that each of the conditions applicable to Seller has been satisfied or waived.

(c) There shall not be any litigation or proceeding pending that restrains, prohibits or prevents or seeks to restrain, prohibit or prevent, the Parties (or either Party) from consummating the transactions contemplated by this Agreement.

(d) All T&D required regulatory approvals shall have been received and are final and in full force and effect pursuant to a final, non-appealable order; and

(e) T&D shall have obtained all required resolutions or other authorizations from the T&D's board of directors and/or senior management authorizing the execution, delivery and performance of this Agreement and any instruments or agreements required hereunder.

#### 2.1.2 Conditions on Obligations of Seller.

(a) All representations and warranties of T&D contained in this Agreement shall be true and correct in all material respects as of the date when made and as of the Effective Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), and T&D shall have delivered to Seller a certificate, substantially in the form contained in Exhibit A, dated as of the Effective Date and signed by one of its duly authorized officers specifying that each of the conditions applicable to Seller has been satisfied or waived.

(b) There shall not be any litigation or proceeding pending that restrains, prohibits or prevents or seeks to restrain, prohibit or prevent the Parties (or either Party) from consummating the transactions contemplated by this Agreement.

(c) All Seller required regulatory approvals shall have been received by Seller and be final and in full force and effect pursuant to a final, non-appealable order, which approvals shall not have materially modified the express terms and conditions of this Agreement; and

(d) Seller shall have obtained all required resolutions or other authorizations from the Seller's board of directors and/or senior management authorizing the execution, delivery and performance of this Agreement and any instruments or agreements required hereunder.

#### 2.2 Satisfaction of Conditions.

Each Party agrees to cooperate in good faith with the other Party and shall take all practicable actions and devote resources reasonably necessary to obtain satisfaction of the conditions set forth in Section 2.1 as soon as reasonably possible. In addition, but without limiting the foregoing, Seller covenants and agrees to deliver any Seller Credit Support required pursuant to Article 6 consistent with the dates specified in Article 6. Failure to deliver said Seller Credit Support in a timely fashion shall constitute an event of default under this Agreement for which T&D may terminate this Agreement under Article 10 and recover damages. Such right to terminate and recover damages shall apply notwithstanding the nonoccurrence of any other condition on Seller's obligations hereunder, it being the intent of the Parties that Seller shall provide financial assurance of its performance consistent with the requirements of Article 6. In the event that Seller terminates this Agreement on account of failure of a condition set forth in section 2.1.2, T&D shall return to Seller any previously provided Seller Credit Support.

### 2.3 Failure to Satisfy Conditions.

In the event that conditions set forth in Section 2.1.1 (Conditions on Obligations of T&D) or Section 2.1.2 (Conditions on Obligations of Seller) are not satisfied or waived on or before [the date thirty (30) days after the date of execution of this Agreement] (or such earlier date as is set forth in Section 2.1.1(a) for certain occurrences), then either Party, at its option, may terminate this Agreement by delivering a notice of termination to the other Party. Notice of termination for failure of a condition must be in writing and issued prior to the date when the condition is belatedly satisfied or waived by the Party for whose benefit such condition exists and shall identify in reasonable detail the condition(s) which have not been satisfied. Upon any termination of this Agreement in accordance with this Section 2.3, neither Party shall have any obligation to the other under this Agreement, and each Party shall return to the other Party any previously provided Credit Support.

### 2.4 Term.

Unless earlier terminated in accordance with Section 2.3, or as otherwise provided in Article 5 and Article 10, this Agreement shall remain in effect from the Effective Date through the end of the Delivery Term. ("Term"). The obligations contained in Section 2.2 are effective immediately, prior to the Effective Date. At the expiration of the Term, the Parties shall no longer be bound by the terms and conditions of this Agreement, except to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement prior to the expiration of the Term.

## ARTICLE 3 TERMS OF TRANSACTION

### 3.1 Scope.

This Agreement enables Seller to convey and sell to T&D and T&D to receive and purchase from Seller the Contract Quantities of Contract Products subject to the terms of this Agreement.

Subject to the terms of the Agreement, during the Delivery Term, Seller shall convey and sell



and T&D shall receive and purchase at the Market Delivery Point, as applicable, the Contract Quantities of Contract Products and T&D shall pay Seller the Contract Payments pursuant to the terms and conditions of this Agreement.

At Seller's sole cost, Seller shall obtain and maintain certification of the Facility as a resource that may be used to satisfy the Maine Class I or Class IA Renewable Portfolio Requirement pursuant to Title 35-A M.R.S. § 3210 and Chapter 311 of the Commission's Rules, or that qualifies as an Energy Storage System as defined in 35-A M.R.S. § 3210-I(3)(A). In the event of a change in the eligibility requirements for a Maine Class I or Class IA Resource, Seller will use commercially reasonable efforts to maintain the Facility's certification or qualification, but failure to maintain the Facility's certification or qualification shall not constitute a breach, violation, or Event of Default by Seller of this Agreement so long as Seller has used commercially reasonable efforts to maintain the Facility's certification.

[For Agreements with RECS as Contract Products: At Seller's sole cost, Seller shall use commercially reasonable efforts to obtain and maintain certification of the Facility under any applicable renewable portfolio standard requirements in other jurisdictions in order to maximize the value of the Contract Products. To the extent Seller does obtain certification of the Facility in another jurisdiction, it shall promptly notify T&D of the new class of RECs available. T&D may request that Seller register the Facility in a new jurisdiction or for a new class of RECs, and Seller will use commercially reasonable efforts to meet that obligation.

[For Facilities or Agreements that include an Energy Storage System, the PPA will include appropriate provisions including but not limited to provisions regarding charging requirements, operations and dispatch.]

Seller has no obligation to sell or deliver any Energy produced by the Facility before the Commercial Operation Date ("Test Energy") to T&D, and Seller may market, sell, and deliver all or portions of the Test Energy from the Facility to one or more third parties.

### 3.2 Delivery Term.

#### 3.2.1 Commencement:

Except in the event of a Transmission Availability Delay, the term of deliveries under this Agreement shall commence on the later of: (i) the Commercial Operation Date; or (ii) the date when the Facility has received all applicable approvals and authorizations required to provide Contract Products pursuant to this Agreement. If a Transmission Availability Delay occurs, the term of deliveries under this Agreement shall occur on the date when the Designated Transmission Facilities become available for the Seller to convey and the T&D to receive Energy produced by the Facility, provided that the Commercial Operation Date has occurred and the Facility has received all applicable approvals and authorizations required to provide Contract Products pursuant to this Agreement.

#### 3.2.2 Termination

The term of deliveries under this Agreement shall terminate at the end of the hour beginning at

23:00 EPT on the day prior to the twentieth (20th) anniversary [or such longer term as approved by the Commission] of the date of commencement of the Delivery Term, unless terminated prior to that pursuant to Article 5.

### 3.2.3 Interruption

Any interruption in the delivery of Contract Products shall not cause an extension of the Delivery Term.

### 3.3 Contract Quantities.

#### 3.3.1 Contract Quantity of Energy.

The “Contract Quantity of Energy” is all [or such other amount as approved by the Commission] of the Energy produced by the Facility and that is transferred by Seller to T&D at the Market Delivery Point. Energy does not include any amounts associated with line or transformer losses between the Facility and the Market Delivery Point.

#### [3.3.2 Contract Quantity of Capacity.

The Contract Quantity of Capacity is \_\_\_\_ MW of Capacity.]

#### [3.3.3 Contract Quantity of RECs.

The Contract Quantity of RECs is all [or such other amount as approved by the Commission] of the RECs produced by the Facility and transferred to T&D.]

### 3.4 Contract Prices.

#### 3.4.1 Contract Energy Price.

The Contract Energy Price shall be as set forth in Exhibit \_\_\_\_ to this Agreement.

#### [3.4.2 Contract Capacity Price.

The Contract Capacity Price shall be as set forth in Exhibit \_\_\_\_ to this Agreement.]

#### [3.4.3 Contract REC Price.

The Contract REC Price shall be as set forth in Exhibit \_\_\_\_ to this Agreement.]

#### [3.4.4 Contract Products Price.

The Contract Products Price shall be as set forth in Exhibit \_\_\_\_ to this Agreement.]

### 3.5 Contract Payments.

The Contract Payments means the monthly amount to be paid, and actually paid, by T&D to Seller for the Contract Products provided by Seller to T&D. [For RECs this may be quarterly payments.] Payment of Contract Payments by T&D is contingent on the delivery of Contract Products in accordance with Section 3.6.

### 3.6 Delivery of Contract Products.

#### 3.6.1 Energy

The Contract Quantity of Energy under this Agreement shall be conveyed by Seller to T&D at the Market Delivery Point.

#### [3.6.2 Capacity

The Contract Quantity of Capacity under this Agreement shall be conveyed by Seller to T&D in accordance with Applicable Market Rules. Seller shall use commercially reasonable efforts to ensure that the value of the Capacity is maximized and that any costs, penalties or other negative consequences associated with the Capacity are minimized.]

#### [3.6.3 RECs

The Contract Quantity of RECs shall be conveyed by Seller to T&D and title of the RECs shall transfer to T&D using the New England Power Pool Generation Information System (NEPOOL GIS) [or the North American Renewables Registry (NAR)] in accordance with the Operating Rules of NEPOOL GIS [and/or NAR] relating to the creation and transfer of all RECs to be purchased.]

### 3.7 Internal Bilateral Transactions.

#### **Versant Power**

The transfer of the Contract Quantity of Energy from Seller to T&D shall be implemented through real-time bilateral transactions in the market settlement system administered by ISO-NE. Unless otherwise provided in internal bilateral transactions (“IBT”) procedures (if any) set forth in this Agreement, Seller shall submit market transactions to ISO-NE that transfer to T&D the Contract Quantity of Energy, with hourly or sub-hourly quantities, delivery point, and other transaction characteristics that replicate the transactions submitted by Seller to ISO-NE, and T&D shall be obligated to accept and confirm submitted transactions, provided they are correct, in accordance with all applicable ISO-NE Market Rules and Manuals. In implementing IBT procedures, the Parties shall comply with the IBT Protocols as specified in ISO-NE Market Rules and Manuals. To the extent there are ISO-NE Schedule 2 charges arising from the IBT, Seller shall pay for any such charges related to

the Seller-side of the transaction and T&D shall pay for any such charges related to the T&D-side of the transaction.

## **CMP**

The Contract Quantity of Energy will be conveyed from Seller to T&D through a Real-Time Internal Bilateral Transaction (“IBT”) in the market settlement system administered by ISO-NE. In implementing the IBT, the Parties shall comply with the IBT Procedure set forth in Exhibit \_\_ to this Agreement.

### 3.8 Seller’s and T&D’s Obligations for Delivery of Contract Products.

Subject to the terms of this Agreement, during the Delivery Term Seller shall convey and sell, or cause to be conveyed, and T&D shall purchase and receive, or cause to be received the Contract Products and T&D shall pay Seller the Contract Payments pursuant to the terms and conditions of this Agreement. [Specific terms governing party responsibility for costs and other obligations related to the conveyance and receipt of the Contract Products will be determined based on the nature and details of the Designated Transmission Facilities.]

### 3.9 Transmission and Scheduling of Delivery of Energy.

[To be determined depending on relevant components of: (1) Bidder’s proposal; (2) provisions related to the operation of an Energy Storage System, if applicable and (3) the nature and terms of the TSA.]

### 3.10 Title, Risk of Loss.

As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Contract Quantity of Energy prior to the Market Delivery Point and T&D shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Contract Quantity of Energy at and from the Market Delivery Point. Title to and risk of loss related to the Contract Quantity of Contract Products shall transfer from Seller to T&D at the Market Delivery Point.

[Different provisions for the transfer of title and risk of loss may be proposed if the Interconnection Point and the Market Delivery Point are not at the same point.]

### 3.11 Facility Planned Outages.

Seller agrees that the only outages of the Facility shall be Generator or Facility Planned Outages, or Generator or Facility Forced Outages. Seller shall determine Planned Outages based on its commercially reasonable judgment and its obligations under this Agreement. Seller shall notify T&D in writing at least ninety (90) days in advance of any Planned Outage. Seller shall provide notice to and consult with T&D regarding any modifications to its Planned Outage when the need for such modifications becomes known to Seller. Seller agrees that it will schedule any Planned Outage in accordance with the ISO-NE Market Rules and Manuals, [or NMISA Market Rules and Tariff] as applicable. Seller will make good faith efforts to undertake Planned Outages in such a way as to ensure

that T&D has a reasonable opportunity to maximize the value of Contract Products, unless expressly agreed by T&D or to comply with NERC requirements or other regulations.

ARTICLE 4  
PRICE, BILLING AND PAYMENT

4.1 Contract Payments.

In consideration for the transfer of the Contract Quantity of Energy [Capacity and/or RECs] to the T&D hereunder, the T&D shall pay to Seller, each month during the Term hereof, the Contract Payments for all Contract Products provided by Seller under this Agreement. [Quarterly payments in case of Seller providing RECs.]

4.2 Billing and Payment.

4.2.1 Regular Billing. Billing for the Contract Payments due each month shall be by invoice sent to T&D by Seller on or before the fifteenth (15th) day of each month. Each invoice shall set forth the calculation of the Contract Payment due for the Contract Products delivered or provided by Seller to T&D through the last day of the immediately preceding month based upon data provided to Seller by ISO-NE, as applicable. If, during the ISO-NE Data Reconciliation Process, the amount of Contract Quantity of Energy delivered is determined to be different than the amount initially billed by Seller in accordance with this Agreement, the resettled quantity will be reflected on the next monthly invoice sent to T&D by Seller, if applicable.

4.2.2 Billing Address.

Both Parties agree to use the following electronic mail addresses for delivery of invoices and related communications:

T&D:

[PPAAdmin@cmpco.com/](mailto:PPAAdmin@cmpco.com)

or:

[apayable@versantpower.com](mailto:apayable@versantpower.com)

Seller:

[email address]

By thirty (30) days prior written notice, either Party may change the address to which such

invoice or related communications will be sent.

#### 4.2.3 Payment by T&D.

(a) The T&D shall pay the amount stated in any invoice from Seller upon the later of: (i) ten (10) days after the date on which the invoice is received by the T&D; or (ii) the twenty-fifth (25<sup>th</sup>) day of the month in which the invoice is received by T&D (“Due Date”). But if the T&D in good faith objects to all or a portion of the invoice, the T&D shall on or before the Due Date: (i) pay the undisputed portion of the invoice; and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If the T&D does not object prior to the Due Date, the T&D shall be obligated to pay the full amount of such invoice, but the T&D may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount, plus interest (calculated using the Dispute Interest Rate set forth in Section 4.2.3(b)) from the date of T&D’s original payment through the date of Seller’s refund payment. If T&D does not object to an invoice within six (6) months of the date of the invoice, such invoice shall be binding upon the T&D and Seller and not subject to challenge by either Party. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 4.2.3(a), survive the expiration or termination of this Agreement. Payments shall be made by electronic funds transfer to an account designated by Seller in the invoice or in a notice delivered to the Seller.

[Quarterly payment provisions will be included in the case of Seller providing RECs]

(b) Any invoiced amounts remaining unpaid and not objected to after the expiration of the period for providing notice of a dispute pursuant to Section 4.2.3(a) shall bear interest accruing from the due date at an annual interest rate equal to the lesser of the maximum rate permitted by the applicable law and the prime rate (sometimes referred to as base rate) for corporate loans as published by The Wall Street Journal, in the money rates section, or in the event The Wall Street Journal ceases publication of such a rate, an equivalent rate selected by Seller, as such rate may be in effect from time to time during the period any such amounts remain unpaid, plus a margin of 200 basis points (“Late Payment Rate”). Any amounts which are the subject of a timely, good-faith dispute by Seller or T&D but which are subsequently determined to be due and owing shall bear interest accruing from the due date at an annual interest rate equal to the prime rate, as defined in the previous sentence (“Dispute Interest Rate”).

(c) Unless the Parties mutually agree otherwise in writing, any payment due under subsection 4.2.3(a) or 4.2.3(b) hereof shall not be subject to monthly netting established by the Parties in the ordinary course of trading and shall be made without setoff or any other reduction on account of any claim Seller may have against T&D, other than a claim for billing adjustment as set forth in subsection 4.2.3(a).

(d) All payments and refunds under this Agreement shall be made in United States dollars.

#### 4.3 Audit Rights of Parties.

Each Party, its affiliates and any third-party representative of a Party shall have the right, at its

sole expense, and upon not less than thirty (30) days' notice to the other Party, to examine the records of the other Party related to the Facility's production of Energy [or other Contract Products], the calculation of payments due from one Party to the other, or records supporting or related any claim by Seller of a Force Majeure event, with such examination to occur during normal business hours upon reasonable notice. Any information gathered during such examination shall constitute Confidential Information subject to the requirements of Article 8.

#### 4.4 Billing Adjustments.

In the event that billing adjustments are required as the result of meter inaccuracies or any other error, the T&D and the Seller shall work together to correct the billing. Notwithstanding the foregoing, errors in metering or in generation settlement may be corrected, and associated financial adjustments may be made, only within the time period specified in the ISO-NE Market Rules, Manuals and Operating Procedures and T&D shall have no obligation to correct any errors outside of this timeframe.

### ARTICLE 5 REQUIRED TRANSMISSION

#### 5.1 Transmission Availability.

The obligation of the Parties to perform under this Agreement is conditioned upon transmission service on the Designated Transmission Facilities being available such that the Seller can deliver and T&D can receive [Energy/Capacity/RECs] produced by the Facility.

#### 5.2 Termination for Lack of Transmission Availability

(a) This Agreement shall terminate in the event that, through no fault of the T&D or Seller, a Transmission Availability Delay occurs and continues [for more than five (5) calendar years after the Effective Date], (the "Transmission Termination Date"). The T&D and the Seller, with the approval of the Commission, may extend the Transmission Termination date.

(b) In the event of termination under Section 5.2(a), harm to the Seller will be limited to liquidated damages as set forth in Exhibit [X], which will be in an amount equal to the Transmission Credit Support provided for Seller in the TSA. After executing the TSA, T&D will assign to Seller its rights in the portion of the Transmission Credit Support designated in the TSA as specifically provided for Seller.

(c) Seller and T&D agree, acknowledge, and stipulate that the liquidated damages defined in Section 5.2(b) constitute fair and reasonable damages in the event of a termination under Section 5.2(a) considering the circumstances, including T&D's lack of control over the completion of the Designated Transmission Facilities, and in light of the uncertainty and inability to quantify or calculate adequately the harm that would result to Seller.

ARTICLE 6  
CREDIT SUPPORT

6.1 T&D Credit Support.

6.1.1 If, at any time during the Term of this Agreement (1) the T&D does not have a Credit Rating or the Credit Rating assigned to T&D by a Rating Agency falls below Investment Grade, (“T&D Downgrade Event”) and (2) T&D’s Net Worth is less than two hundred seventy-five million United States dollars (\$275,000,000), then T&D shall promptly notify Seller of such T&D Downgrade Event and shall deliver T&D Credit Support to Seller in an amount equal to two (2) months of expected Contract Payments as defined in Article 4 and in a form that meets the definition of Acceptable Credit Support (“T&D Credit Support”) within five (5) Business Days of such T&D Downgrade Event. If a T&D Downgrade Event has occurred and T&D’s net worth is greater than two hundred seventy-five million United States dollars (\$275,000,000) then Seller shall have the right to petition the Commission to require T&D to post the T&D Credit Support.

6.1.2 If, after delivery of T&D Credit Support referenced in Section 6.1.1 as a result of a T&D Downgrade Event, the Credit Rating of T&D is restored to Investment Grade or T&D’s Net Worth is more than two hundred seventy-five million United States dollars (\$275,000,000), Seller shall return such T&D Credit Support, with interest if applicable, to T&D within five (5) Business Days of notification from T&D of such upgrade.

6.1.3 At the expiry of the Term, Seller shall return or release all unused T&D Credit Support, with interest if applicable, within five (5) Business Days.

6.1.4 Any cash provided by T&D as T&D Credit Support under this Agreement shall be held in an interest-bearing deposit account selected by Seller in its reasonable discretion; provided, however, that Seller shall have no obligation to segregate any cash provided as T&D Credit Support in a segregated account. Interest shall accrue on that cash deposit at the daily federal funds rate and shall be retained in that account.

6.2 Seller Credit Support.

6.2.1 The Seller Credit Support shall be [An amount to be determined on a project-specific basis based on the Commission’s assessment of the risks and benefits of this contract].

6.2.2 Seller shall deliver Seller Credit Support to T&D [According to the schedule and in the amount(s) approved by the Commission based on the Commission’s assessment of the risks and benefits of this contract].

6.2.3 So long as no Event of Default exists and is continuing [The amount of security may be reduced by the amount(s) and in accordance with the schedule approved by the Commission based on the Commission’s assessment of the risks and benefits of this contract]. T&D shall return



Credit Support in excess of the required amount, with any accrued interest, if applicable, within ten (10) Business Days of T&D's receipt of Seller's written request for return of such Credit Support.

6.2.4 Any cash provided by Seller as Credit Support under this Agreement shall be held in interest bearing deposit account selected by T&D in its reasonable discretion; provided, however, that T&D shall have no obligation to segregate any cash provided as Credit Support in a segregated account. Interest shall accrue on that cash deposit at the daily Federal Funds Rate and shall be retained in that account.

6.2.5 At the expiry of the Term, T&D shall return or release to Seller all unused Credit Support, with interest if applicable.

6.3 Replacement Credit Support. If, at any time, the issuer of the Seller Credit Support, Transmission Credit Support as required in Article 5 or, if required, any T&D Credit Support, fails to possess the minimum applicable requirements as Acceptable Credit Support ("Replacement Downgrade Event"), the Party causing such Credit Support to be issued shall deliver Replacement Credit Support in a form that meets the definition of Acceptable Credit Support and in the amount required pursuant to Sections 6.1.1, 6.2.1, 6.2.2, 6.2.3 or 6.3 ("Replacement Credit Support") within five (5) Business Days of notice of such Replacement Downgrade Event. The other Party shall return the original Credit Support to the Party causing the Replacement Credit Support to be issued within five (5) Business Days after receipt of the Replacement Credit Support.

6.4 Cost and Proceeds of Credit Support. All costs associated with obtaining any credit support required by Sections 6.1, 6.2 or 6.3 shall be the sole responsibility of the Party that caused such credit support to be issued. The Non-Defaulting Party hereunder may use, apply or retain the whole or any part of the proceeds of credit support issued in favor of such Non-Defaulting Party for the payment of amounts owed pursuant to Article 3, Article 4, or Article 10.

6.5 Security Interest. To secure its obligations under this Agreement and to the extent either or both Parties deliver cash as security hereunder, such Party (the "Pledgor") hereby pledges, assigns, conveys and transfers to the other Party (the "Secured Party") and hereby grants to the Secured Party, a present and continuing first priority security interest in and to, and a general first lien upon and right of set off against, all such cash collateral and all proceeds thereof. Pledgor agrees to take such action as the Secured Party may reasonably request, in order to perfect the Secured Party's continuing security interest in, lien on, and right of setoff against such cash collateral and grants authority to the Secured Party to take such actions necessary to perfect the foregoing interests.

6.6 Credit Rating Downgrade. If, during the term of this Agreement, there is an adverse change in the financial condition of a Party or the issuer of any Credit Support such that any of the Rating Agencies downgrades or issues a downgrade warning, the Party must so inform the other Party within five (5) Business Days of such downgrade or warning, provided, however, that any failure to provide notification shall not be a default pursuant to Article 9

6.7 Information to be Provided. In the event of a Replacement Downgrade Event or if a Party does not have a Credit Rating, then the Party required to provide Credit Support will provide the other Party, as soon as reasonably practicable following a written request from the other Party, with its

annual audited financial statements prepared in accordance with generally accepted accounting principles (as defined or applied in the providing Party's jurisdiction of incorporation or statement preparation) ("GAAP") and quarterly unaudited consolidated financial statements prepared in accordance with GAAP (subject to normal year-end adjustments and the omission of footnotes), and in each case fairly presenting the financial condition of the applicable entity or entities (which such providing Party hereby represents and warrants as such) and certified by an authorized officer of the applicable entity; provided, however, in the event such entity is required to make or makes its annual audited and quarterly unaudited financial statements available to the public, then the requesting Party shall use public sources to obtain such information.

## ARTICLE 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and Warranties of T&D.

T&D hereby represents and warrants to the Seller that, as of the Effective Date:

(a) T&D is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.

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

(c) This Agreement is the legal, valid and binding obligation of T&D, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.

(d) Except for T&D required regulatory approvals, no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution, delivery and performance by T&D of

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

(e) There is no action, suit, grievance, arbitration or proceeding (other than proceedings of general applicability to the electrical generation, transmission and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals and permits) pending or, to the knowledge of T&D, threatened against or affecting T&D at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs T&D's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.

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

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

## 7.2 Representations and Warranties of the Seller.

The Seller hereby represents and warrants to T&D that as of the Effective Date:

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

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

(c) This Agreement is the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations

generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.

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

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

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

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

## ARTICLE 8 CONFIDENTIALITY

### 8.1 Confidentiality.

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

shall have otherwise made the information public or shall have consented in writing prior to any such disclosure; (iii) in connection with the required submission or disclosure of this Agreement or any of its terms to the Commission; (iv) pursuant to an order issued by the Commission; or (v) to the extent the information was known to the receiving Party independent of receipt from the disclosing Party and without violation of this Agreement by the receiving Party. The Parties agree that all written communications, including electronic communications, by Seller to T&D during the course of negotiation of this Agreement and concerning the terms of this Agreement, shall be deemed confidential for purposes of this Section 8.1

(b) Notwithstanding the provisions of Section 8.1(a) above, the Parties agree that, upon execution of this Agreement and upon final Commission approval of this Agreement or the entry of a final Commission order authorizing the T&D to enter into this Agreement, this Agreement shall be a public record of the Commission. In addition, the parties agree that T&D may file reports of transactions pursuant to this Agreement with the Commission and with the Federal Energy Regulatory Commission, and the contents of such reports shall not be confidential.

8.1.3 Both Parties shall at all times comply with the ISO-NE Information Policy. To the extent that the ISO-NE Information Policy would impose a stricter confidentiality standard on either Party with regard to any information relating to this Agreement, the Parties agree to comply with that stricter confidentiality standard.

## 8.2 Equitable Relief.

The Parties agree that remedies at law may be inadequate to protect the disclosing Party in the event of a breach of confidentiality, and the receiving Party hereby, in advance, agrees to the granting of injunctive relief in favor of the disclosing Party to prevent the continuation of any such breach without proof of actual damages. The rights and duties accruing from this provision may not be transferred or assigned by any Party without the prior written consent of the other Party.

## ARTICLE 9 EVENTS OF DEFAULT

### 9.1 Events of Default by the Seller.

Any one or more of the following shall constitute an "Event of Default" hereunder with respect to the Seller:

(a) default shall occur in the payment of any amounts due from Seller to T&D hereunder and such failure continues for more than five Business (5) Days after written notice of such failure;

(b) the Seller shall fail to deliver and maintain any Credit Support as required by Article 6 hereof, and such failure continues for more than ten (10) Business Days after written notice of such failure from T&D;

(c) the Seller, or affiliate of Seller, shall fail to either (i) maintain an effective

Market Participant Service Agreement pursuant to the ISO-NE Tariff or (ii) maintain a settlement account established in accordance with the ISO-NE Rules which is sufficient to implement this Agreement, and such failure continues for more than five (5) Business Days after written notice of such failure from T&D;

(d) RESERVED

(e) default shall occur in the performance of any other covenant or condition to be performed by the Seller hereunder and such default is not cured within thirty (30) days after written notice from T&D specifying the nature of such default; provided that, if the defaulting party promptly commences and maintains diligent efforts to cure such default, then the period to cure the default shall be extended up to an additional sixty (60) days as long as such diligent efforts to cure continue;

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

(g) the Seller files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of the Seller or a material portion of the property of Seller;

## 9.2 Events of Default by T&D.

Any one or more of the following shall constitute an "Event of Default" hereunder with respect to T&D:

(a) the T&D shall fail to pay any amounts due from the T&D to Seller hereunder and such failure continues for more than five (5) Business Days after written notice of such failure from Seller;

(b) the T&D shall fail to deliver and maintain any Credit Support as required by Article 6 hereof, and such failure continues for more than ten (10) Business Days after written notice of such failure from Seller;

(c) the T&D shall fail to either (i) maintain an effective Market Participant Service Agreement pursuant to the ISO-NE Tariff or (ii) maintain a settlement account established in accordance with the ISO-NE Rules which is sufficient to implement this Agreement, and such failure

continues for more than five (5) Business Days after written notice of such failure from Seller;

(d) RESERVED

(e) default shall occur in the performance of any other covenant or condition to be performed by T&D hereunder and such default is not cured within thirty (30) days after written notice from the Seller specifying the nature of such default; provided that, if the defaulting party promptly commences and maintains diligent efforts to cure such default, then the period to cure the default shall be extended up to an additional sixty (60) days as long as such diligent efforts to cure continue;

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

(g) T&D files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of T&D or a material portion of its property;

## ARTICLE 10 REMEDIES; TERMINATION PAYMENT

### 10.1 Exercise of Remedies in an Event of Default.

During the continuance of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right: (i) to accelerate all amounts owing between Parties, (ii) to cease making payments that are or may become due hereunder, (iii) to terminate this Agreement at any time during the continuation of such Event of Default, and (iv) to draw upon any Credit Support provided for in Article 6.

### 10.2 Calculation of Termination Payment.

The non-defaulting Party shall calculate, in a commercially reasonable manner, the Losses (or Gains) and Costs, incurred as a result of the termination of the Agreement, including (i) Contract Payments and (ii) Contract Product value that would have been required or realized through the remainder of the Term.

The non-defaulting Party shall set off (i) all such Gains, plus all other amounts due to the defaulting Party under the Agreement against (ii) all such Losses and Costs, plus all other amounts due from the defaulting Party under the Agreement, so that all such amounts shall be netted to a single liquidated amount (the "Termination Payment") payable by one Party to the other. In the event the calculation of the Termination Payment would result in a payment from the non-defaulting Party to the defaulting Party, the Termination Payment shall be zero. Nothing in this Agreement shall be construed as obligating the non-defaulting Party, in the event of a Termination, to enter into any brokerage agreements or other third-party agreements to replace a Terminated Transaction.

In the event that this Agreement terminates pursuant to Article 5, any Termination Payment will be limited to the liquidated damages as specified in Exhibit [X].

#### 10.3 Notice of Termination Payment.

As soon as practicable after termination, notice shall be given by the non-defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment, if any, shall be made by the defaulting Party within five (5) Business Days after such notice is effective.

#### 10.4 Disputes With Respect to Termination Payment.

If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within five (5) Business Days of receipt of non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the defaulting Party, the defaulting Party first shall pay the undisputed portion of the Termination Payment to the non-defaulting Party and transfer credit support in a form that meets the requirements of Acceptable Credit Support to the non-defaulting Party in an amount equal to the disputed portion of the Termination Payment or actually pay the disputed amount to the non-defaulting Party. The non-defaulting Party may not draw on any such Credit Support until the dispute is resolved. Without limiting the foregoing, any disputes between the Parties with respect to the calculation of the Termination Payment shall be conducted in accordance with Article 13 of the Agreement.

#### 10.5 Indirect, Special or Consequential Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR



DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT IN THE EVENT OF AN ACTION COVERED BY THE INDEMNIFICATION PROVISIONS OF ARTICLE 12 OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE 11 FORCE MAJEURE

### 11.1 Force Majeure Event.

Neither Party shall be considered to be a Defaulting Party under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description for any event or circumstance which causes any interruption or failure of service or deficiency in the quality or quantity of service, or any other failure to perform if such failure: (i) is not caused by the affected Party's fault or negligence; (ii) is caused by one or more events, conditions, or circumstances beyond the Party's reasonable control; that (iii) by exercise of reasonable diligence the Party is unable to prevent or overcome (a "Force Majeure") As long as it satisfies the above criteria, a Force Majeure may include, without limitation, storm, flood, lightning, earthquake, explosion, sabotage, terrorism, pandemic, war, insurrection, or act of God or the public enemy. Any obligation to pay an amount otherwise owed may not be excused by Force Majeure. Notwithstanding the foregoing, Force Majeure shall not include: (i) economic hardship of either party; (ii) changes in market conditions (including the loss of either Party's markets) and actions or failures to act of any Governmental Authority or ISO-NE that affect the price of energy, capacity or transmission, (iii) the ability of Seller to sell the Contract Quantity of Capacity and Energy to a third party at a price greater than as set forth in this Agreement; (iv) the ability of T&D to purchase Capacity and Energy from a third party at a price lower than as set forth in this Agreement; (v) equipment failures that are not directly related to Force Majeure; (vi) a Party's failure to timely obtain and maintain all necessary permits; (vii) a Party's failure to satisfy contractual conditions or commitments; or (viii) a Party's lack of or deficiency in funding or other resources.

### 11.2 Performance Excused.

If either Party is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure as defined above, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: (i) the non-performing Party will, as soon

as practicable after the occurrence of Force Majeure, give the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and (iii) the non-performing Party shall use due diligence to remedy its inability to perform. The non-performing Party shall inform the other Party of when it expects to remove the cause, if possible, and what steps it is taking to cure.

## ARTICLE 12 INDEMNIFICATION

### 12.1 Indemnification.

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

### 12.2 Procedures.

Each Indemnified Party shall promptly notify the Indemnifying Party of any Claim in respect of which the Indemnified Party is entitled to be indemnified hereunder. Such notice shall be given as soon as is reasonably practicable after the Indemnified Party becomes aware of each Claim; provided, however, that failure to give prompt notice shall not adversely affect any Claim for indemnification hereunder except to the extent the Indemnifying Party’s ability to contest any Claim by any third-party is materially adversely affected. The Indemnifying Party shall have the right, but not the obligation, at its expense, to contest, defend and litigate, and to control the contest, defense or litigation of, any Claim by any third-party alleged or asserted against any Indemnified Party arising out of any matter in respect of which such Indemnified Party is entitled to be indemnified hereunder. The Indemnifying Party shall promptly notify such Indemnified Party of its intention to exercise such right set forth in the immediately preceding sentence and shall reimburse the Indemnified Party for the reasonable costs and expenses paid or incurred by it prior to the assumption of such contest, defense or litigation by the Indemnifying Party. If the Indemnifying Party exercises such right in accordance with the provisions of this Article 12 and any Indemnified Party notifies the Indemnifying Party that it desires to retain separate counsel in order to participate in or proceed independently with such contest, defense or litigation, such Indemnified Party may do so at its own expense. If the Indemnifying Party fails to exercise its rights set forth in the third sentence of this paragraph, then the Indemnifying Party will reimburse the Indemnified Party for its reasonable costs and expenses incurred in connection with the contest, defense or litigation of such Claim.

### 12.3 Claim.

For purposes of this Article 12, "Claim" means any claim or action threatened or filed by a person other than a Party hereto, and whether groundless, false or fraudulent, that directly or indirectly relates to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorney's fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, and whether such claims are exemplary or punitive in nature.

## ARTICLE 13 DISPUTE RESOLUTION; ARBITRATION

### 13.1 Resolution by Officers of the Parties.

In the event of any dispute between the Parties hereto as to a matter referred to herein or as to the interpretation of any part of this Agreement, including but not limited to this Section 13.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution. Such duly authorized officers may delegate the matter to a non-officer, but only if such delegate is granted full authority to resolve such dispute. Should such officers of the respective Parties fail to resolve the dispute within ten (10) days from such referral, the Parties agree that any such dispute will be referred to the Commission, FERC, or binding arbitration in Portland, Maine, as appropriate, and the provisions of this Article 13 shall apply.

### 13.2 Arbitration Request; Procedures.

If any dispute that is eligible for arbitration has not been resolved by the officers of the Parties within ten (10) days from referral to them, either Party may give notice in writing to the other of its desire to submit the dispute to arbitration and may designate an arbitrator. Within fifteen (15) days after the receipt of such notice, the other Party may, in writing, serve upon the Party invoking such arbitration, a notice designating an arbitrator on its behalf. The two arbitrators so chosen shall within fifteen (15) days after the appointment of the second arbitrator, in writing, designate a third arbitrator. Upon the failure of the Party notified to appoint the second arbitrator within such time, the Party invoking such arbitration may proceed with the single arbitrator. If the first and second arbitrators are unable to agree on a third arbitrator within fifteen (15) days of the appointment of the second arbitrator, the first and second arbitrator shall invoke the services of the American Arbitration Association to appoint a third arbitrator. Said third arbitrator shall, to the extent practicable, have special competence and experience with respect to the subject matter under consideration. An arbitrator so appointed shall have full authority to act pursuant to this Section. No arbitrator, whether chosen by a Party hereto or appointed, shall have the power to amend or add to this Agreement. The Party calling the arbitration shall, within twenty (20) days after either the failure of the other Party to name an arbitrator, or the appointment of the third arbitrator, as the case may be, fix, in writing, a time and a place of hearing (which shall be in Portland, Maine), to be not less than twenty (20) days from delivery of notice to the other Party. The arbitrator or arbitrators shall, thereupon, proceed promptly to hear and determine the controversy pursuant to the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules shall conflict with the then current provisions of the laws of the State of Maine relating to arbitration, such

conflict shall be governed by the then current provisions of the laws of the State of Maine relating to arbitration. Such arbitrator or arbitrators shall fix a time within which the matter shall be submitted to him or them by either or both of the parties, and shall make his or their decision, within ten (10) days after the final submission to him or them unless, for good reasons to be certified by him or them in writing, he or they shall extend such time. The decision of the single arbitrator, or two of the three arbitrators, shall be taken as the arbitration decision. Such decision shall be made in writing and in duplicate, and one copy shall be delivered to each of the parties. In making any award, the arbitrator or arbitrators shall be bound by the limitations on damages found in Article 10 of this Agreement, and the arbitrator or arbitrators by his or their award shall determine the manner in which the expense of the arbitration shall be borne, except that each Party shall pay the costs of its own counsel. Each Party shall accept and abide by the decision. The award of the arbitral tribunal shall be final except as otherwise provided by applicable law. Judgment upon such award may be entered by the prevailing Party in any court designated in Section 14.13, or application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement.

### 13.3 Binding Award.

This agreement to arbitrate and any award made hereunder shall be binding upon the successors and assigns and any trustee or receiver of each Party.

### 13.4 Continued Performance.

No dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the decision of the Arbitrator.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

### 14.1 Assignment.

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

(b) Notwithstanding Section 14.1(a), either Party may assign this Agreement without the prior written consent of the other Party as collateral security to any lenders or financial institutions in connection with any financing, including without limitation any tax equity transactions, by the assigning Party and, at the request of the assigning Party, the non-assigning Party shall execute and deliver a consent to collateral assignment and estoppel certificates, in each case in form and substance reasonably acceptable to the non-assigning Party. Any reassignment of this Agreement by such lenders or financial institutions shall be subject to the assignee meeting all the requirements of the Assigning Party under this Agreement, including, without limitation, the Credit Rating and security

provisions of Article 6. At Seller's request, T&D shall execute and deliver estoppel certificates in form and substance reasonably acceptable to T&D in connection with tax equity transactions in respect of the Facility. Seller shall be responsible for all of T&D's reasonable costs (including reasonable attorneys' fees) of responding to requests by or on behalf of Seller for T&D's issuance under this section of consent to collateral assignment and estoppel certificates. T&D shall execute and deliver estoppel certificates and opinions as may be reasonably requested by financial institutions in connection with tax equity transactions in respect of the Facility. Seller shall be responsible for all reasonable costs of such requests." [For Versant: Seller shall be solely responsible for all of T&D's actual costs (including actual attorneys' fees incurred) of responding to such requests.]

(c) Notwithstanding Section 14.1(a), T&D may assign this Agreement without the prior written consent of the Seller in connection with: (i) any restructuring, disaggregation, or divestiture involving the separation of any of the generation, transmission or distribution functions of T&D into separate entities or the divestiture of all or a major portion of the assets of T&D which serve any one of such functions, provided that the assignee of this Agreement must be capable of performing T&D's obligations under this Agreement; (ii) any acquisition, consolidation, merger or other form of combination of T&D by or with any person or entity; (iii) the purchase, lease or other acquisition (in one or a series of transactions) of all or substantially all of the assets of any other person or entity; (iv) the conveyance, sale, lease, transfer or other disposition (in one or a series of transactions) of all or substantially all of the assets of T&D; or (v) as collateral security to any lenders or financing party in connection with any financing by T&D.

#### 14.2 Notices.

All notices, requests and other communications hereunder (herein collectively a "notice" or "notices"), other than invoices, shall be deemed to have been duly delivered, given or made to or upon any Party hereto if in writing and delivered by hand or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next Business Day delivery to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 14.2.

#### **IF TO T&D:**

Director of Electric Supply  
83 Edison Drive  
Augusta ME 04336  
Attn: Susan Clary  
[Susan.clary@cmpco.com](mailto:Susan.clary@cmpco.com)  
207-629-2180

Legal Department  
83 Edison Drive  
Augusta ME 04336  
Attn: Richard Hevey

[Richard.hevey@cmpco.com](mailto:Richard.hevey@cmpco.com)  
207-621-6546

Or:

By U.S. mail:	By overnight courier
Versant Power	Versant Power
Attn: Legal Notices	Attn: Legal Notices
P.O. Box 932	28 Penobscot Meadow Drive
Bangor, ME 04402-0932	Hampden, ME 04444

With a copy to: [Legalnotices@versantpower.com](mailto:Legalnotices@versantpower.com)

## **IF TO THE SELLER:**

### 14.3 Compliance With Laws.

At all times during the term of this Agreement, the Parties shall comply with all laws, rules, requisitions, and codes of all governmental authorities having jurisdiction over each of their respective businesses which are now applicable, or may be applicable hereafter, including without limitation, all special laws, policies, ordinances, or regulations now in force, as amended or hereafter enacted, which the failure to comply with will result in a material adverse effect on the other Party. The Parties hereto shall maintain all licenses, permits and other consents from all governmental authorities having jurisdiction for the necessary use and operation of their respective business, which the failure to maintain will result in a material adverse effect on the other Party. Nothing herein shall be deemed a waiver of the Parties' right to challenge the validity of any such law, rule or regulation.

### 14.4 Obligation of Good Faith.

Each Party enters into this Agreement agreeing to cooperate in good faith with the other Party and to take all practicable actions and devote the resources reasonably necessary to achieve the objectives of this Agreement.

### 14.5 Fees and Expenses.

Except as otherwise provided herein, each of the Seller and T&D shall pay all fees and expenses incurred by, or on behalf of, such Party in connection with, or in anticipation of, entering into

this Agreement.

#### 14.5 Headings.

The headings to articles and sections throughout this Agreement are intended solely to facilitate reading and references to all articles, sections and provisions of this Agreement. Such headings shall not affect the meaning or interpretation of this Agreement.

#### 14.6 Entire Agreement; Successors and Assigns.

This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns.

#### 14.7 Severability.

The invalidity or unenforceability of any provisions 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, 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.

#### 14.8 Further Assurances.

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement and such transactions and the intention of the Parties hereto.

#### 14.9 Changes in Law.

If and to the extent that during the Term, any laws or regulations shall change which govern any transaction contemplated herein or business operations so as to make either unlawful or impossible to perform, then T&D and the Seller hereby agree to effect such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes and to preserve, as closely as possible, the basic intent and substance of this Agreement and the economic benefits and burdens allocated to each Party under this Agreement. In the event the Parties are unable to agree to such amendments, the matter shall be submitted to binding arbitration pursuant to Article 13 of this Agreement.

#### 14.10 Changes in ISO-NE Rules.

If, after the execution of this Agreement, any right or obligation of a Party under this Agreement is materially altered as the result of any revision to ISO-NE Rules, the Parties agree to negotiate in good faith in an attempt to amend this Agreement to conform to the revised ISO-NE Rules. The intent of the Parties is that any such amendment will preserve, as closely as possible, the basic intent and substance of this Agreement and the economic benefits and burdens allocated to each Party under this Agreement. In the event the Parties are unable to agree to such amendments, the matter shall be submitted to binding arbitration pursuant to Article 13 of this Agreement.

#### 14.11 Counterparts.

This Agreement may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement. Signatures delivered by facsimile, pdf, or other electronic means shall be deemed original signatures.

#### 14.12 Interpretation.

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement.

#### 14.13 Applicable Law and Forum.

When not in conflict with federal laws, interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Maine, except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Except for those matters covered in this Agreement and jurisdictional to the Commission or to FERC or the appellate courts having jurisdiction over FERC matters, any legal action or proceeding arising under or relating to this Agreement must, if it is not subject to arbitration hereunder, be brought in a court of the State of Maine or a federal court of the United States of America located in the State of Maine. For example, any action to enforce an arbitration demand or to confirm or enforce an arbitration award shall be brought in such courts. Both Parties hereby consent to the exclusive jurisdiction of the State of Maine for the purpose of hearing and determining any action not preempted by federal law.

#### 14.14 Several Obligations.

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability or agency relationship on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

#### 14.15 Continuing Obligations.



Notwithstanding any assignments of rights or duties hereunder, neither Party shall be relieved of any duties or responsibilities under this Agreement and this Agreement shall continue in accordance with its terms and such Party shall be and remain liable to the other under all provisions of this Agreement unless the other Party has expressly consented in writing to such release of duties and responsibilities, such consent not to be unreasonably withheld. Further, any payments made by one Party to an assignee of the other Party or any other actions taken by such Party with respect to such assignee shall be in full satisfaction of any duties or responsibilities which the Party would otherwise owe to the other Party, as if made or taken directly to such other Party.

#### 14.16 Changes in Rates, Charges, Terms or Conditions.

The rates, charges, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section that, to the maximum extent permitted by law, the rates, charges, terms and conditions of this Agreement shall not be subject to change. Each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 14.16 shall not apply, provided that, consistent with Section 14.17, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 14.17.

#### 14.17 Regulatory Acknowledgement and Agreements.

Absent the agreement of both Parties to the proposed change, the Parties acknowledge and agree that, to the extent this Agreement is or may be subject to review pursuant to the Federal Power Act, the standard of review for any change or modification to the pricing provisions of this Agreement or any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 14.16 is unenforceable or ineffective as to such Party) or by any person who is not a Party hereto or FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine). To the extent the “public interest” standard cannot be applied to a non-party to this Agreement, then the most stringent standard shall be applicable. Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment will not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

14.18. Survival.

The Parties' rights and obligations under Section 4.3 of Article 4, Article 8, Sections 10.2 through 10.5 of Article 10, Article 12, Article 13, and Sections 14.4, 14.14 and 14.18 of Article 14 shall survive expiration or termination of this Agreement for any reason.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties hereto have caused this Agreement to be duly executed by their respective duly authorized officers as of the date and year first above written.

VERSANT POWER COMPANY/  
CENTRAL MAINE POWER COMPANY

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

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

[SELLER]

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

EXHIBIT A

**OFFICER'S CERTIFICATE  
OF**

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I [officer's name] am [title] of [T&D or Seller], a [state of incorporation] corporation ("\_\_\_\_\_"), and as such am authorized to execute and deliver this certificate on behalf of [T&D or Seller] in connection with the Agreement, dated as of [insert date] between [T&D] and [Seller]. All capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.

I do hereby certify as follows:

1. The representations and warranties of [T&D or Seller] contained in the Agreement are true and correct as of the date hereof.
2. Each of the conditions precedent to the obligations of [T&D or Seller] under Section 2.1 of the Agreement have been either satisfied or waived by [T&D or Seller] on and as of the date hereof.
3. The Effective Date of the Agreement shall be [insert date].

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Its: \_\_\_\_\_