

CPCNH's Annual Solicitation Program to Increase Renewable Energy ("ASPIRE")

ASPIRE CONTRACT

This ASPIRE Contract ("Contract" or "Agreement") is made between the Community Power Coalition of New Hampshire ("CPCNH" or "Buyer"), a New Hampshire non-profit Joint Powers Agency, and _____ ("Seller").

RECITALS

WHEREAS, Seller and CPCNH (collectively "the Parties") desire to enter into this Agreement in order to provide and compensate for the production and delivery of Electricity and Other Products Related to Electric Generation from Seller's electric generating facility described in Attachment A hereto ("the Project" or "the Facility"); and

WHEREAS, CPCNH and Seller may elect to structure the transaction governed by this Agreement as a "Group Net Metering" arrangement, per Attachment G, to maximize the benefits of local, renewable generation to CPCNH's member communities; and

WHEREAS, CPCNH and Seller agree to maintain the flexibility to potentially restructure this Agreement as appropriate under Section 4, if such a restructuring would realize greater economic value for one or both Parties without causing undue burden or economic harm to either Party.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the following meanings.

- a. **Change in Law** means a change after the Effective Date to any law or regulation related to this Agreement or the performance of Seller's or CPCNH's obligations under this Agreement; provided, however, that a change in any federal, state, county or other law related to Taxes or tariffs after the Effective Date shall not be a "**Change in Law**."
- b. **Commission** means the New Hampshire Public Utilities Commission.
- c. **Commissioning** means successfully completing all construction, testing and receipt of all necessary approvals and permits such that the Project may commence commercial operations, and **Commissioned** has the corresponding meaning.
- d. **Commercial Operation Date** means the date on which the Project is **Commissioned** and first commences commercial operations.
- e. **Commercially Reasonable Efforts** means efforts that are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and that do not require

the performing Party to expend any funds or assume liabilities other than expenditures and liabilities that are reasonable in nature and amount in the context of the transaction, activity or undertaking contemplated by this Agreement.

- f. **Delivered**, in the context of Electricity, means delivered to the Delivery Point and successfully injected into the Transmission or Distribution System, and **Deliver** has the corresponding meaning.
- g. **Delivery Point** means, for a Project whose point of interconnection is within the state of New Hampshire, the point of interconnection as specified in the Interconnection Agreement. For a Project whose point of interconnection is located outside of the state of New Hampshire, **Delivery Point** means the New Hampshire Zone as defined by ISO-NE.
- h. **Distribution System** means the system connected to the ISO-NE-Controlled Grid for distributing Electricity at voltages of 50 kV or less, which is owned and operated by the Interconnecting Utility, and includes any structures, equipment or other things used for that purpose.
- i. **Effective Date** shall have the meaning set forth in Section 2.
- j. **Electricity** means electric energy, measured in kWh or MWh.
- k. **Environmental Attributes** means any and all generation attributes under the New Hampshire Renewable Portfolio Standard and under any and all other applicable renewable energy portfolio standards, including international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that is attributable, now or in the future, to the favorable generation or environmental attributes of the Project or Electricity produced by the Project during the Term, including any: credits, certificates, benefits, offsets and allowances computed on the basis of the Project's generation using renewable technology or displacement of fossil fuel-derived or other conventional energy generation; Renewable Energy Certificates issued pursuant to the NEPOOL GIS in connection with Electricity generated by the Project; and voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Electricity by the Project; provided, however, that Environmental Attributes shall not include any tax credits associated with the Project or its generated Electricity.
- l. **Force Majeure** means any act, cause, condition, or event that prevents a Party from performing its obligations under this Agreement, that is beyond the reasonable control of the affected Party, that is not due to the fault or negligence of the affected Party, and that could not have been avoided or overcome by due diligence and the use of Commercially Reasonable Efforts. A **Force Majeure Event** shall not include any of the following, all of which are solely the responsibility of the affected Party: a) CPCNH's inability to economically use or resell any Electricity and Other Products Related to Electric Generation; b) Seller's ability to sell any Electricity and Other Products Related to Electric

Generation at a price greater than that shown in the rate schedule in Attachment F to this Agreement; c) any other economic hardship or changes in market conditions; d) late delivery of machinery, equipment, spare parts and consumables for the Project, except to the extent resulting from a cause or event described in the first sentence of this definition; e) a delay in performance or faulty performance by any of Seller's contractors or suppliers, except to the extent resulting from a cause or event described in the first sentence of this definition; f) failure or breakdown of equipment or facilities comprising the Project, except to the extent resulting from a cause or event described in the first sentence of this definition; or g) a failure or delay on the part of the Interconnecting Utility or its agents to complete network or system upgrades or otherwise perform responsibilities under an Interconnection Agreement, when such failure or delay is attributable to a change in specifications of the interconnection point or the Project by the Seller.

- m. **Good Engineering and Operating Practices** means any of the practices, methods and activities adopted by a significant portion of the North America electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities that, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator of Electricity in light of the facts known at the time the decision was made, reasonably could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and laws and regulations.
- n. **Governmental Authority** means any national, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, court, body, agency, department, bureau or entity with authority to bind a Party at law; provided, however, that "Governmental Authority" shall not in any event include any Party.
- o. **Governmental Charges** means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Electricity or Other Products Related to Electric Generation, either directly or indirectly.
- p. **Group Net Metering** shall have the meaning set forth in Attachment G.
- q. **ISO-NE** means the Independent System Operator of New England, or its successor.
- r. **ISO-NE Administered Markets** has the meaning given to it by the ISO-NE Market Rules.
- s. **ISO-NE Controlled Grid** has the meaning given to it by the ISO-NE Market Rules.
- t. **Interconnecting Utility** means the electric utility with which Seller enters into the Interconnection Agreement.
- u. **Interconnection Agreement** means the agreement or agreements entered into between the Interconnecting Utility and Seller with respect to the connection of the Project to the

Transmission or Distribution Systems.

- v. **Interconnection Costs** mean all costs which are payable by Seller with respect to the interconnection of the Facility to the Transmission or Distribution Systems.
- w. **Meter** means a meter owned by or under the control of the Interconnecting Utility that measures and records the quantity of Electricity that passes through it.
- x. **NEPOOL GIS** means the New England Power Pool Generation Information System, or any successor thereto, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of Electricity generated or consumed within New England.
- y. **Other Products Related to Electric Generation** means any transferable commodity, in addition to Electricity, that is—now or in the future—directly attributable to the generation of electricity from the plant. Examples include, but are not limited to, capacity, ancillary services, and Renewable Energy Certificates (RECs). For purposes of this definition, Other Products Related to Electric Generation does not include tax credits associated with power production.
- z. **Regulatory Approval** means the receipt of any federal, state or local permit, license or other assent of any governmental body, where such assent is required for lawful construction and/or operation of the Project.
- aa. **Renewable Energy Certificates, or RECs** means a certificate or any equivalent determination of a governmental authority representing the Environmental Attributes associated with one megawatt-hour of Electricity generation of the Project including, but not limited to, those which satisfy requirements of a Renewable Portfolio Standard, and shall represent title to and claim over all Environmental Attributes associated with such megawatt-hour of Electricity generation. RECs include all rights to report, at CPCNH's sole discretion, to any person ownership of any of the foregoing that correspond to Electricity sold and Delivered hereunder and CPCNH's purchase of Electricity generated by the Project regardless of whether such Electricity is certified to produce any RECs.
- bb. **Secured Lender** means the lender(s) under a Security Agreement.
- cc. **Security Agreement** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, or other evidences of indebtedness, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Seller's interest granted by the Seller that is security for any indebtedness, liability or obligation of the Seller, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
- dd. **Site Control** means proof of dominion over real property to the extent necessary to construct the Project in accordance with the description set forth on Attachment A. Site control may be established by: (1) fee simple title to such real property; or (2) a legally

enforceable written leasehold or easement interest in such real property for at least the duration of the Agreement; or (3) a legally enforceable written option with all terms stipulated, unconditionally exercisable by Seller, to purchase or lease such real property or hold an easement for such property; or (4) a duly executed contract for the purchase or lease of such real property.

ee. **Station Service** means the Electricity used at the Project for excitation, on-site maintenance, and operation of auxiliary and other facilities that are essential to the operation of the Project.

ff. **Taxes** means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, tariffs, duties and other fees and charges of any nature, whether in effect as of the Effective Date or adopted during the Term, including but not limited to, ad valorem, consumption, excise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, payroll, unemployment, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto; provided, however, that Taxes shall not include any local, state or federal income taxes, franchise taxes or other similar taxes based on the income or net worth of a Party or any deficiency, penalty, addition to tax, interest or assessment related thereto.

gg. **Term** shall have the meaning set forth in Section 2.

hh. **Transmission System** means the ISO-NE-Controlled Grid for transmitting Electricity at voltages of more than 50 kV, which is operated by ISO-NE and includes any structures, equipment or other things used for that purpose.

2. EFFECTIVE DATE AND TERM

This Agreement shall become effective upon its execution by CPCNH (the “**Effective Date**”) and is of no force and effect whatsoever until that time. This Agreement commences on the Effective Date and ends at 11:59 p.m. on the twentieth (20th) anniversary of the Commercial Operation Date (the “**Term**”) unless this Agreement is terminated earlier in accordance with provisions of this Agreement. This Agreement can be extended beyond its original 20-year term, under either the original or revised terms and conditions, if both parties agree in writing to any such extension and potential revisions.

3. AGREEMENT CONTINGENT UPON SUFFICIENT BUYER OR SUBSCRIBER LOAD

This Agreement, in its entirety, shall be contingent upon CPCNH maintaining sufficient load (i.e., aggregate sales of Electricity to its members) over the full Term of the Agreement such that the percentage of CPCNH’s annual load served, or potentially served, by this Agreement shall never exceed 10.0%. In the event that the percentage of CPCNH’s annual load served by this Agreement exceeds 10.0% in any trailing calendar year during the term of this Agreement, CPCNH shall have the right to terminate this Agreement without further liability upon 30 days’ notice of such breach to Seller. For reference, Attachment A sets forth CPCNH’s expected annual load, and the percentage of that expected annual load projected to be served by this Agreement, in the Agreement’s first year.

Similarly, if the Parties initially elect to structure the Project as a Group Net Metering arrangement under Attachment G, but CPCNH and/or Seller is unable, within the **Subscription Period** (as defined below), to identify and enroll a sufficient number of subscribers with sufficient load to fully subscribe the projected annual Electricity generation of Project in its first full year of commercial operations (as per Attachment A), CPCNH shall have the right to terminate this Agreement without further liability upon 30 days' notice to Seller. For purposes of this paragraph, the **Subscription Period** begins on the Effective Date and continues for the lesser of six (6) months or until three (3) months prior to the Project's expected Commercial Operation Date as specified in Attachment A.

4. CHANGE IN LAW

If any Change in Law occurs after the Effective Date that has a material adverse effect on the cost to Seller or the value to CPCNH of performing its obligations under this Agreement, then within thirty (30) days after one Party notifies the other Party of such Change in Law, the Parties shall meet and attempt in good faith to negotiate amendments to this Agreement necessary to preserve the economic value of this Agreement for both Parties. Any disputes arising out of this negotiation process shall be handled according to Section 39.d.

If any Change in Law occurs after the Effective Date that potentially has a material beneficial effect on the economic value that CPCNH may be able to derive from the Project, without having a material adverse effect on the cost to Seller, then within thirty (30) days of CPCNH notifying Seller of such Change in Law, the Parties shall meet and attempt in good faith to negotiate amendments to this Agreement necessary to enable CPCNH to realize that higher economic value. Any disputes arising out of this negotiation process shall be handled according to Section 39.d.

If the Parties are unable to agree upon amendments to this Agreement following the dispute resolution process laid out in Section 39.d, Seller or CPCNH may either (a) terminate this Agreement without further liability or (b) continue to perform under this Agreement; provided, however, that continued performance under this Agreement pursuant to subsection (b) of this paragraph does not constitute a waiver of Seller's or CPCNH's right to later terminate at its sole discretion pursuant to subsection (a) of this paragraph.

5. DELIVERY OF ELECTRICITY AND TRANSFER OF OTHER PRODUCTS RELATED TO ELECTRIC GENERATION

Except as noted in Attachment G, Seller hereby unconditionally sells, transfers and assigns to Buyer all of its right, title and interest in the Electricity and Other Products Related to Electric Generation. Seller shall Deliver Electricity at the Delivery Point. If requested by Buyer, Seller shall use Commercially Reasonable Efforts to obtain, register, certify or deliver the Other Products Related to Electric Generation or any evidence of Buyer's right, title and interest thereto to Buyer, to the ISO-NE Administered Markets or other markets, or as Buyer reasonably may direct otherwise. Except as noted in Attachment G, Buyer shall retain all right, title, and interest in all Other Products Related to Electric Generation. Buyer shall be entitled, unilaterally and without the consent of Seller, to deal with Other Products Related to Electric Generation in any manner it determines, regardless of whether any consideration is separately stated as being

received or paid for by Buyer.

6. SITE CONTROL

Seller warrants that it has the Site Control required for the Project, pursuant to the documentation set forth in Attachment B hereto.

7. INTERCONNECTION APPLICATION

Seller warrants that its interconnection application with the interconnecting utility is complete, pursuant to the documentation set forth in Attachment C hereto. Seller shall pay all required interconnection fees or deposits necessary to remain in the interconnecting utility's queue.

8. MILESTONES

- a. Within thirty (30) business days of being offered this Agreement under an ASPIRE solicitation, Seller must execute this Agreement in full and deliver a signed copy, along with the required contract deposit (per Section 10), to CPCNH.
- b. Within twelve (12) months of the Effective Date of this Agreement, Seller must obtain all necessary federal, state, and local permits required to build and operate the Project, unless the project is a hydroelectric facility that requires a license from the Federal Energy Regulatory Commission. If the project is a hydroelectric facility, Seller shall file an annual update with CPCNH regarding the status of the project's application before the Federal Energy Regulatory Commission. Attachment D lists all required federal, state, and local permits and/or registrations required for the Project to operate under this Agreement.
- c. Within twenty-four (24) months of the Effective Date of this Agreement, Seller must have achieved Commissioning of the Project described in Attachment A.

9. FAILURE TO ACHIEVE MILESTONES

Should Seller fail to meet any of the milestones set forth in Section 8, this Agreement shall be null and void and of no further force and effect. However, Buyer may, at its sole discretion, unilaterally grant extensions relative to any provisions of this Agreement, including but not limited to the milestones set forth in Section 8. If Buyer does unilaterally elect to extend any deadlines relating to any provisions of this Agreement but Seller remains unable to comply with any milestone or other requirements by the extended deadline date, this Agreement shall be null and void and of no further force and effect.

10. CONTRACT SECURITY

Within 30 business days of being offered this Agreement under an ASPIRE solicitation, Seller shall tender to Buyer Contract Security of \$15 per kW_{AC} of Project capacity, in the form of cash, bond, or letter of credit. If the Project is Commissioned before the applicable milestone date set forth in this Agreement (i.e., within 24 months of the Effective Date), the Contract Security will be refunded. If the Project is not commissioned within the applicable milestone date set forth in this contract (or as amended by any extension granted by Buyer), the Contract Security will be forfeited.

11. RATES

Beginning with Commissioning, Buyer shall pay Seller in accordance with the rate schedule set forth in Attachment F hereto. As necessary, to reflect changing legal, regulatory, and/or market conditions, Attachment F may be amended from time to time, as contemplated in Section 4, but only if the Parties agree in writing to any such amendment.

12. PROJECT LOCATION, DESIGN, CONSTRUCTION AND OPERATION

Seller shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A. Seller shall utilize Commercially Reasonable Efforts in the design, construction and operation of the Project in accordance with Good Engineering and Operating Practices, the terms and conditions of any permits or any other Regulatory Approvals issued relative to the Project, and shall be solely responsible for all costs, expenses, liabilities and other obligations associated with the Project. All operations and deliveries shall be subject to the rules and regulations of the Interconnecting Utility and the ISO-NE bulk power system in effect during the Term of this Agreement, and Seller shall be responsible for payment of any costs, sanctions or charges assessed by ISO-NE and/or the Interconnecting Utility arising from actions or inactions of Seller.

13. INTERCONNECTION

Seller shall be solely responsible for the negotiation, delivery and execution of the Interconnection Agreement, along with the payment of all costs and the execution of all responsibilities arising under that Agreement. Seller shall deliver to Buyer a copy of the executed Interconnection Agreement within five (5) business days of its execution. At such time as the Interconnection Agreement is executed, it shall be deemed an integrated part of this Agreement and a copy shall be appended as Attachment E to this Agreement. Buyer shall be named as a named insured under any policies of insurance required under the Interconnection Agreement or as otherwise required in order to operate the Project.

14. TRANSMISSION SERVICES

Seller shall be responsible for arranging for any transmission services required under the terms of the Interconnecting Utility's duly approved transmission tariff, if any, including executing applications for transmission service and transmission service agreements.

15. EXCLUSIVITY

During the Term of this Agreement, Seller shall not (except as necessary under Attachment G) enter into any other agreement for the sale or other conveyance of any portion of the Electricity or any Other Products Related to Electric Generation that are generated by the Project and are the subject of sale under this Agreement. Seller acknowledges that, by entering into this Agreement, Seller is waiving any and all rights to seek an alternative power sales arrangement at any time throughout the Term set forth in this Agreement. This waiver shall extend throughout the full Term contemplated under this Agreement, even if this Agreement is terminated early for any reason by default, for cause or otherwise, unless CPCNH explicitly and in writing releases Seller from this waiver. In the event of a default by Buyer, Seller will be relieved of the waiver contained in this paragraph.

16. STATION SERVICE

Station service, if any is provided by the Interconnecting Utility, shall be priced only in accordance with any applicable tariff, special contract, order or other means approved by the Commission. Seller shall be responsible for paying the cost of any station service or other required third party services to meet its obligations under this Agreement.

17. PAYMENT TO SELLER

Buyer shall pay or cause to be paid to Seller amounts calculated in accordance with Attachment F within 45 days of the end of each billing period during which Electricity and Other Products Related to Electric Generation were Delivered by Seller. Buyer shall have no requirement whatsoever to make payments to Seller for Electricity or Other Products Related to Electric Generation that are not Delivered. As a matter of administrative convenience, Buyer may wait to send payments to Seller until the total amount due to Seller, net of any set offs under Section 34 or Group Net Metering payments due to Buyer from Seller under Attachment G, exceeds \$100.00.

18. ALLOCATION OF TAXES AND GOVERNMENTAL CHARGES

Seller shall pay or cause to be paid all Taxes and Governmental Charges on or with respect to the ownership, construction, and operation of the Project or on or with respect to the generation of Electricity and Other Products Related to Electric Generation. CPCNH shall pay or cause to be paid all Taxes and Governmental Charges on or with respect to CPCNH's receipt of any Electricity or Other Products Related to Electric Generation.

If a Party is required to remit or pay Taxes or Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes or Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with their intent to minimize Taxes and Governmental Charges. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Tax or Governmental Charge for which it is exempt under applicable law to the extent such exemption is properly documented. In the event any sale of Electricity or Other Products Related to Electric Generation hereunder is exempt from or not subject to any particular Tax or

Governmental Charge, the affected Party shall provide the other Party with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If such Party does not provide such documentation, then such Party shall remit or pay such Tax or Governmental Charge and shall indemnify, defend and hold the other Party harmless from any liability with respect to such Tax or Governmental Charge to which the claiming Party claims it is exempt.

Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes and Governmental Charges, so long as no Party is materially adversely affected by such efforts.

19. METERING REQUIREMENTS

Seller shall be responsible for meeting such metering requirements as may be established by Buyer or by Interconnecting Utility or regulatory requirement, all at Seller's expense. At a minimum, all Meters shall meet the requirements of the Small Generator Metering Protocol under Operating Rule 2.1 of the NEPOOL GIS. Either Seller or the Interconnecting Utility may own the meter and shall be responsible for operation, maintenance, and replacement, if necessary, of the meter during the Term of this Agreement. Buyer shall be entitled to access the data output of the meter to confirm production and Delivery of Electricity. The testing of metering equipment shall be at the discretion of Buyer or the Interconnecting Utility. Meter testing requested by Buyer shall be paid for by Seller provided that such tests do not occur more frequently than once per calendar year during the Term of this Agreement. At its own expense, Buyer can request Meter tests that are more frequent than once per calendar year.

20. SETTLEMENT REQUIREMENTS

Seller shall cooperate with Buyer as necessary, and over the full Term of this Agreement, to comply with rules related to settlement of Project generation.

21. FORCE MAJEURE AND FORCE MAJEURE EVENTS

- a. No Event of Default. Neither Seller nor CPCNH shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. Notwithstanding any provision herein to the contrary, CPCNH shall not be obligated to make payments under this Agreement for any period during which Seller is unable to Deliver Electricity and Other Products Related to Electric Generation by reason of a Force Majeure Event. A Force Majeure Event shall not excuse a Party's obligation to pay amounts due and owing under this Agreement other than those excused under this Section 21.a.
- b. Notice and Cure. If a Party is prevented or delayed in the performance of any obligation by a Force Majeure Event, then such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof as soon as reasonably practicable after discovery of the occurrence of the claimed Force Majeure Event. Such notice shall be confirmed in writing as soon as reasonably possible. The suspension of or extension of time for performance shall be of no greater scope and of no longer duration than is required by the Force Majeure Event and the Party affected by a

Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, but shall not be required to make any concession in any labor negotiation or dispute. The Term shall be extended for each day performance is suspended due to a Force Majeure Event; provided, however, that a Force Majeure Event shall not excuse the obligation to make payments for payment obligations accrued before the beginning of the Force Majeure Event.

- c. Termination for Force Majeure. Notwithstanding the foregoing, if a Force Majeure Event prevents full or partial performance under this Agreement for a period of one hundred and eighty (180) consecutive days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party whose performance is not prevented by Force Majeure Event shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

22. EVENTS OF DEFAULT

Under this Agreement, an event of default includes, but is not limited to, any of the following:

- a. Any breach of the terms of this Agreement.
- b. Seller fails to Deliver any Electricity or Other Products Related to Electric Generation from the Project for a period of at least one hundred and eighty (180) consecutive days at any time during the Term, or for more than two hundred and forty (240) non-consecutive days in a rolling two-year period of time at any time after Commissioning.
- c. Commencing on the Commercial Operation Date and until the end of the natural Term of the Agreement, Seller fails to Deliver at least eighty percent (80%) of the Projected Electricity in Attachment A over any two consecutive operating years (with each “operating year” commencing on the Commercial Operation Date or annual anniversary thereof and spanning one full year).
- d. Seller ceases to hold any Regulatory Approval after Commissioning, the failure or cessation of which results in a lack of legal right on the part of Seller to continue to operate the Project.
- e. Any information provided by Seller relative to this Agreement or any information, representations or warranties set out in this Agreement is not true or correct in any material respect when given, or Seller commits any act of fraud in relation to this Agreement or any regulatory proceeding relating to the Project.
- f. By agreement, decree, judgment or order of a court, Seller agrees to be treated as and/or is adjudicated bankrupt or insolvent, or real or personal property of the Project is sequestered or subject to the appointment of any third party and such agreement, decree, judgment, order of appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.

- g. Seller utilizes Electricity (in excess of typical station use), or any source of fuel other than the fuel type specified in Attachment A, for the generation of Electricity.
- h. Seller fails or ceases to comply with Good Engineering and Operating Practices.
- i. Seller fails to comply with applicable statutory requirements or Commission Rules or Commission Orders.

23. CURE PERIOD AND TERMINATION OF AGREEMENT

- a. Remedies of Buyer. Within five business days after learning of an event of default, Buyer shall send a written notice to Seller specifying the default and allowing a cure period of 30 days from the date of notice to Seller. If the default is not cured within the cure period, Buyer shall send a notice of termination to Seller to take effect ten business days after the notice is sent. In the event that CPCNH terminates this Agreement due to a Seller event of default, CPCNH shall be entitled to calculate and receive as its sole remedy for such event of default a termination payment as follows: the present value, discounted at seven percent (7%) per year (or 7%/12 per month), for each month remaining in the Term, of the amount, if any, by which (x) the forward market price of Electricity and Other Products Related to Electric Generation exceeds the applicable price for Electricity and Other Products Related to Electric Generation that would have been paid pursuant to Attachment F, multiplied by (y) the Projected Electricity of the Project pursuant to Attachment A, plus any other amounts due and owing to CPCNH under this Agreement.
- b. Remedies of Seller. Within five business days after learning of an event of default, Seller shall send a written notice to Buyer specifying the default and allowing a cure period of 30 days from the date of the notice to Buyer. If the default is not cured within the cure period, Seller shall send a notice of termination to CPCNH to take effect ten business days after the notice is sent. In the event that Seller terminates this Agreement due to a CPCNH event of default, Seller shall be entitled to calculate and receive as its sole remedy for such event of default a termination payment as follows: the present value, discounted at seven percent (7%) per year (or 7%/12 per month), for each month remaining in the Term, of the amount, if any, by which (x) the applicable price for Electricity and Other Products Related to Electric Generation that would have been paid pursuant to Attachment F exceeds the forward market price of Electricity and Other Products Related to Electric Generation that the Project can sell into without incurring any additional costs or fees, multiplied by (y) the Projected Electricity of the Project pursuant to Attachment A, plus any other amounts due and owing to Seller under this Agreement, plus compensation for the demonstrated loss of any tax benefits (including depreciation).
- c. For purposes of paragraphs a and b in this Section, “the forward market price of Electricity” refers to a generation-weighted average of the Intercontinental Exchange’s on- and off-peak forward prices at ISO-NE’s New Hampshire Zone, while the forward market price of Other Products Related to Electric Generation shall be determined by an average of at least three broker quotes and/or projections. If the remaining Term of this Agreement exceeds the duration of any forward market price curves, then the Parties shall agree upon and adopt

industry-standard methods for extending forward price curves beyond the periods over which they are traded.

- d. Termination of this Agreement, whether by expiration or otherwise, shall not affect or prejudice any rights or obligations of either Party, including those relating to amounts payable under this Agreement up to and including the time of any termination.

24. SECURED LENDER RIGHTS

- a. Seller shall have the right, at its cost, to enter into one or more Security Agreements upon such terms as it desires, provided that:
 - (i) in the case of a deed of trust, syndication agreement or similar instrument by which the trustee or syndication agent holds security on behalf of, or for the benefit of, other lenders, only the trustee or agent shall be entitled to exercise the rights and remedies under the Security Agreement as the Secured Lender on behalf of the lenders;
 - (ii) Buyer shall have no liability whatsoever under any Security Agreement for the payment of the principal sum secured or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same; and
 - (iii) all rights acquired by a Secured Lender under any Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein.
- b. While a Security Agreement remains outstanding, and provided that Buyer has received from Seller prior written notice of the name and address of the Secured Lender, Buyer shall provide a copy of any written notice of default or termination to the Secured Lender at such time that such notice is sent to Seller. Subject to the provisions of this Agreement, a Secured Lender may enforce any Security Agreement and acquire Seller's interest in the Project in any lawful way, subject to (1) receipt of any required Regulatory Approvals, (2) the honoring of all obligations of Seller under this Agreement, and (3) payment of all of Buyer's costs and expenses (including attorney fees) incurred with respect to the acquisition and any related events.
- c. Buyer, upon request of Seller, shall enter into a reasonable acknowledgement and agreement, in such form as Buyer may determine, with Seller and any Secured Lender for the purpose of implementing the Security Agreement protection provisions contained in this Agreement.

25. INDEMNIFICATION OF BUYER

Buyer shall not be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers or contractors of the Seller for any such damages. Seller shall indemnify, defend and hold Buyer

and its respective directors, officers, employees, shareholders, advisors, agents (including contractors and their employees), and Member Community Power Aggregations (collectively, the "Indemnitees") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses, interest accrued thereon (including the costs and expense of, and interest accrued on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable attorney fees and reasonable disbursements in connection therewith), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of the design, construction or operation of the Project or the generation and Delivery of Electricity and Other Products Related to Electric Generation therefrom or any occurrence or event relating thereto, or any occurrence or event on Seller's side of the interconnection point, or a breach by Seller of any of its representations, warranties, obligations or covenants contained in this Agreement.

Notwithstanding anything in this Agreement to the contrary, Seller shall not make any claims, take any actions, or assert any remedies against the Members or prospective Members, or their elected officials, of CPCNH in connection with this Agreement. Seller shall not seek to hold the Members or prospective Members, or their elected officials, of CPCNH liable for the financial obligations of CPCNH under this Agreement. Any claim by Seller against a Member or Members of CPCNH, or their elected officials, arising from or in connection with this Agreement shall be a violation of this Agreement.

26. JOINT AND SEVERAL LIABILITY

If Seller is not a single legal entity, then all such entities comprising Seller shall be jointly and severally liable to Buyer for all representations, warranties, obligations, covenants, and liabilities of Seller under this Agreement.

27. RECORD RETENTION

Seller and Buyer each shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. Without limiting the generality of the foregoing, Seller shall keep all records and other documents that may be necessary to establish, substantiate or maintain any claim or title of Buyer to any Other Products Related to Electric Generation. All such records and other documents shall be maintained as required by law, but for no less than seven (7) years after the creation of the record or data. Seller shall provide or cause to be provided to Buyer reasonable access to the relevant and appropriate financial and operating records and data kept by it or on its behalf relating to this Agreement reasonably required for Buyer to comply with its obligations, or to verify billings, or to verify information provided in accordance with this Agreement or relating to compliance by Seller with this Agreement.

28. PROJECT INSPECTION

Buyer shall have the right to inspect the Project during normal business hours during the term of this Agreement, upon at least five business days' notice to Seller.

29. NOTICES

- a. Unless otherwise stated, all notices pertaining to this Agreement shall be in writing and shall be transmitted, by the Party giving notice, via electronic mail, or if such method is unavailable, via facsimile, first-class mail, courier or hand delivery, and addressed to the other Party as follows:

If to Seller:

If to Buyer:

CPCNH c/o Mark Bolinger
P.O. Box 840
Concord, NH 03302
Mark.Bolinger@CommunityPowerNH.gov

- b. Notice transmitted or delivered as provided above shall be deemed to have been given and received on the day it is transmitted (if by electronic mail or facsimile) or delivered (if by courier or hand delivery), provided such notice is transmitted or delivered on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. If a notice is transmitted or delivered after 5:00 p.m. local time or such day is not a business day, then such notice shall be deemed to have been given and received on the next business day. Either Party, by written notice to the other, may change its contact person, electronic mail address, facsimile number or postal address to which notices are to be sent.

30. NEW HAMPSHIRE'S RIGHT-TO-KNOW LAW AND PUBLIC RECORD REQUESTS

Seller acknowledges that Buyer's records are subject to New Hampshire's Right-to-Know law, NH RSA 91-A. Seller acknowledges that Buyer intends to make public this Agreement and all of its terms, including the price paid for Electricity and Other Products Related to Electric Generation from Attachment F. To the extent that Buyer may receive requests under the Right-to-Know Law for other information (i.e., other than this Agreement or any of the terms therein) provided by Seller to Buyer, Buyer shall notify Seller of the request not later than the next business day after the request is received.

31. BUSINESS RELATIONSHIP

The relationship between the Buyer and Seller is that between independent contractors, and nothing in this Agreement shall create or be deemed to create a relationship of partnership, joint venture, fiduciary, principal and agent or any other relationship between the Parties.

32. BINDING AGREEMENT

Except as set out otherwise in this Agreement, this Agreement shall not confer upon any person or entity, except the Parties and permitted assigns, any rights, interests, obligations or remedies under this Agreement.

33. ASSIGNMENT

Both Parties may assign their rights and duties under this Agreement, and any assignee of either Party shall give the other Party written notice of the assignment within thirty days of the date of the assignment. Nothing in this provision shall be deemed to alter Seller's responsibility or obligations to obtain any and all Regulatory Approvals that may be required in conjunction with a transfer of all or part of any legal interest in the Project.

34. SETOFF RIGHTS

In addition to its other rights of setoff under this Agreement or otherwise arising in law or equity, Buyer may set off any amounts owed to it by Seller, including any payments owed to it by Seller under Attachment G, against any monies owed by Buyer to Seller. If the Group Net Metering Rider in Attachment G is in effect, Seller may set off any amounts owed to it by Buyer against any monies owed by Seller to Buyer.

35. TIME OF ESSENCE

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

36. FURTHER ASSURANCES

Each Party, from time to time on written request of the other Party, shall perform further acts, including execution of documents, as may reasonably be required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or Regulatory Approvals pertaining to the Project.

37. PROHIBITED INTERESTS

Seller maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Seller, to solicit or secure this Agreement. Further, Seller warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Seller, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the term of this Agreement, no member, officer or employee of CPCNH, during the term of their service with CPCNH, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom. For breach or violation of this warranty, CPCNH shall have the right to rescind this Agreement without liability.

38. APPLICABLE LAW AND JURISDICTION; JURY TRIAL WAIVER

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of New Hampshire. The Parties hereby consent and submit to the personal jurisdiction of the courts of New Hampshire or the United States District Court for New Hampshire.

Each party knowingly, voluntarily and intentionally waives any right to a trial by jury in respect of any litigation arising out of, under or in connection with this agreement and any agreement executed or contemplated to be executed in conjunction with this agreement, or any course of conduct, course of dealing, statements (verbal or written) or actions of any party to this agreement. This provision is a material inducement to each of the parties for entering into this agreement.

39. MISCELLANEOUS

a. Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

b. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement.

c. Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall it constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

d. Disputes

The Parties agree to attempt to resolve any dispute, controversy or claim (each, a “**Dispute**”) arising out of or relating to this Agreement or any breach or alleged breach of this Agreement through an informal process that shall be assigned to a senior executive officer of each Party. In the event a Dispute is not resolved within thirty (30) days after the senior executives have first met; provided the first meeting shall occur no later than ten (10) days after notice of the Dispute is received, either Party may seek appropriate relief in an appropriate forum.

IN WITNESS WHEREOF, Seller and Buyer have executed this instrument on the respective dates set forth below.

SELLER: _____

By: _____
Duly authorized agent

Date: _____

BUYER: Community Power Coalition of New Hampshire (CPCNH)

By: _____
Duly authorized agent

Date: _____

Attachment A: Description of Project

Fuel: Solar ☐ Wind ☐ Hydro ☐ Biomass ☐ Landfill Gas ☐ Digester Gas ☐

Capacity (MW_{AC}):

Project Address:

Interconnecting Utility: Eversource ☐ Unitil ☐ Liberty ☐ NHEC ☐ Other ☐ _____

Expected Commercial Operation Date:

Year of Operations	Projected Electricity (MWh/year)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

CPCNH's estimated annual load in Year 1: ~1,500,000 MWh

Projected percentage of CPCNH's annual load served by this Agreement in Year 1: ~ %

Attachment B: Documentation of Site Control

(In order to demonstrate Site Control, Seller shall provide evidence of: (1) fee simple title to such real property; or (2) a legally enforceable written leasehold or easement interest in such real property for at least the duration of the contract Term (i.e. a copy of the recorded memorandum of lease or easement); or (3) a legally enforceable written option with all terms stipulated, unconditionally exercisable by Seller, to purchase or lease such real property or hold an easement for such property; or (4) a duly executed contract for the purchase or lease of such real property.)

Attachment C: Documentation of Complete Interconnection Application

(In order to demonstrate a complete interconnection application, Seller shall provide evidence of:
(i) a copy of the complete application and (ii) a certification from the Interconnecting Utility that it has reviewed the application and deemed it complete.)

Attachment D: Required Permits and Registrations

(Seller shall list all required federal, state, and local permits and/or registrations needed in order for the Project to operate under this Agreement.)

[illegible]

Attachment E: Interconnection Agreement

(The Interconnection Agreement with the Interconnecting Utility must be filed within five business days of its execution, at which point it becomes part of this Agreement as Attachment E.)

Attachment F: Rate and Payment Schedule

The price paid for Electricity and Other Products Related to Electric Generation as measured at the Delivery Point shall be \$_____ per MWh for the full Term. The billing period shall be monthly.

Attachment G: Group Net Metering Rider

This Group Net Metering Rider is in effect as of (Date A): _____

CPCNH Signature: _____ **Seller Signature:** _____

This Group Net Metering Rider is no longer in effect as of (Date B): _____

CPCNH Signature: _____ **Seller Signature:** _____

Without altering any of the terms and conditions of the Agreement to which this Group Net Metering Rider (the “Rider”) is attached (except as necessary to effectuate this rider), or the rights and responsibilities of either Party to this Agreement, this Rider permits CPCNH, in its sole discretion and in order to maximize the value of Project’s output to CPCNH and/or its Member communities, to elect to register the Project to participate in New Hampshire’s Group Net Metering program established under NH RSA 362-A:9, XIV and NH Puc 900 rules (specifically Part Puc 909) and/or En 900 rules when adopted.

Group Net Metering enables a “Host” (a customer-generator, as defined in NH RSA 362-A:1-a, II-b and NH Puc 902.05) to share the economic benefits of its project with one or more “Members” (which, together with the Host, constitute the “Group”). Specifically, under Group Net Metering, the Host is compensated by the interconnecting utility for its energy and capacity value, either via payments (under “traditional” Group Net Metering) or via on-bill credits, for its net exports, which are valued at the applicable net metering credit. Host shares those payments or on-bill credits with Members of the Group under the terms and conditions established between Host and Members in a separate “Group Net Metering Membership Agreement” as defined in NH Puc 902.02 and that complies with NH RSA 362-A:9, XIV and NH Puc 909.05.

If CPCNH makes this election, Seller agrees to assume the role of Host and to perform certain duties associated with that role, as specified below. CPCNH, in turn, recognizes that the interconnecting utility is the offtaker of energy and capacity under Group Net Metering, and instead offers to serve as the Administrator (“Admin”) of the Group Net Metering arrangement, performing as many of the administrative duties associated with Group Net Metering as it can, potentially including, but not limited to, those specified below. Both Parties agree to assume their respective duties and responsibilities with respect to Group Net Metering *in addition to* fulfilling all other respective responsibilities as described in the Agreement to which this Rider is attached. Nothing in this Rider shall be construed to limit or alter the underlying obligations of the parties under the Agreement.

Term of Rider. This Rider goes into effect on the date specified at the top of this Attachment G (**Date A**), and, unless terminated earlier by CPCNH (as of **Date B**, above), will terminate on the twentieth anniversary of the Commercial Operation Date.

Duties and Responsibilities of CPCNH. The duties and responsibilities of CPCNH, acting as Admin under this Rider, may include the following:

- 1) Recruit and enroll (via the standalone “Municipal Host Group Net Metering Membership Agreement” that both CPCNH and Seller have separately reviewed and approved) Group Members of appropriate type (e.g., if Project capacity is 1-5 MW_{AC}, accounts that qualify as “political subdivisions” under RSA 362-A:1-a, II-c) and of sufficient load to satisfy all conditions of NH RSA 362-A:9, XIV and NH Puc 909;

- 2) Undertake and satisfy all requirements related to registering the Host and Members with the New Hampshire Department of Energy (“NH DOE”) and/or the New Hampshire Public Utilities Commission (“NH PUC”);
- 3) Undertake and satisfy all reporting requirements to the NH DOE, NH PUC, and/or the interconnecting utility;
- 4) Track any on-bill credits from the Interconnecting Utility to Host and Members and/or receive, administer, and disburse any payments from the Host (having originated from the Interconnecting Utility) to Members;
- 5) Manage the Group over the full term of this Rider, ensuring full subscription at all times by replacing departing Members with new Members as needed;
- 6) Handle all correspondence with Members, and between Host and Members, throughout the term of this Rider; and
- 7) Undertake any other duties necessary to initiate and maintain a Group Net Metering arrangement pursuant to NH RSA 362-A:9, XIV and NH Puc 909.

Duties and Responsibilities of Seller. The duties and responsibilities of Seller, acting as Host, under this Rider shall include, but not be limited to:

- 1) Review and sign as necessary (in its capacity as Host) all required documentation presented to it by CPCNH (acting as Admin), potentially including but not limited to “Municipal Host Group Net Metering Membership Agreements” between Host and Members, registration forms, reports, and any other documents or correspondence deemed necessary for the purposes of carrying out the terms envisioned by this Rider;
- 2) As Host, Seller will be compensated via payments from the Interconnecting Utility either for all of its net exports under “traditional” Group Net Metering or for its retained portion of its net exports (i.e., the portion not shared with Members) under on-bill crediting. In either case, Seller agrees to remit *all* Group Net Metering payments that it receives as Host from the Interconnecting Utility to CPCNH, in exchange for the payments from CPCNH to Seller contemplated in Section 17 of this Agreement. For convenience, and as contemplated by Section 17 and Section 34 of this Agreement, CPCNH and Seller shall, where and when feasible, net any payments under Section 17 and Attachment G.

This Group Net Metering Rider is an attachment and overlay to the broader Agreement, activated with the intent of enhancing the value of the Project’s output to CPCNH while leaving Seller economically indifferent. Nothing in this Rider shall negate any of the rights and responsibilities of CPCNH or Seller, or anything else, agreed to in this broader Agreement. Both Parties agree to abide by all of the terms and conditions of this Agreement, including this Attachment G subsumed therein.

If, based on its sole discretion, CPCNH determines that this Rider is no longer in its best interests and that the economic value of the Project’s output can be increased by exiting New Hampshire’s Group Net Metering program, CPCNH has the right to terminate this Rider (but not the broader Agreement) early and to work with Seller to structure the Project’s output in such a way as to capture that envisioned higher economic value for the remainder of the Term of the Agreement.