

## MASTER CERTIFICATE PURCHASE AGREEMENT

This MASTER CERTIFICATE PURCHASE AGREEMENT (“Agreement”) is dated as of [REDACTED] and is by and between MASSACHUSETTS ELECTRIC COMPANY (“MECo”), a Massachusetts corporation, NANTUCKET ELECTRIC COMPANY (“Nantucket”), a Massachusetts corporation (together “Buyer”) and [REDACTED] a [REDACTED] Corporation (“Seller”). This Agreement provides for the sale by Seller of NEPOOL-GIS Certificates, as defined herein, to Buyer. The Buyer and Seller are referred to herein individually as a “Party” and collectively as the “Parties”.

### ARTICLE 1. BASIC UNDERSTANDINGS

Seller and Buyer have agreed to execute this Agreement in order to establish the terms of Seller’s provision and sale of, and Buyer’s acceptance and purchase of NEPOOL-GIS Certificates to meet a portion of the Massachusetts Electric Company’s and Nantucket Electric Company’s requirements to comply with the Renewable Energy Portfolio Standards and Alternative Energy Portfolio Standard, as defined herein. This Agreement sets forth the terms under which Seller shall sell and deliver, and the Buyer shall purchase and receive a quantity of NEPOOL-GIS Certificates. It is the intent of Buyer and Seller that the transactions hereunder shall meet the Commodity Futures Trading Commission's criteria for the forward contract exclusion, including that the Parties intend to physically settle the transaction, and is therefore not subject to swap regulation.

### ARTICLE 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Article. In addition, except as otherwise expressly provided, terms with initial capitalization used in this Agreement and not defined herein shall have the meaning as defined in the NEPOOL Rules.

**Affiliate** means, with respect to any Party, any entity (other than a person) that, directly or indirectly, controls, or is controlled by or is under common control with such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Alternative Compliance Payment Rate** means the values as stated in the RPS Regulations, APS Regulations, CES Regulations, and CPS Regulation as of the date of this Agreement, in accordance with 225 CMR 14.08(3)(a)2 for RPS Class I NEPOOL-GIS Certificates, 225 CMR 14.08(3)(b)2 for RPS Class I Solar Carve-Out NEPOOL-GIS Certificates, 225 CMR 14.08(3)(c)2 for RPS Class I Solar Carve-Out II NEPOOL-GIS Certificates, 225 CMR 15.08(3)(a)2 for RPS Class II NEPOOL-GIS Certificates, 225 CMR 15.08(4)(a)2 for RPS Class II Waste Energy NEPOOL-GIS Certificates, 225 CMR 16.08(3)(a)2 for APS NEPOOL-GIS Certificates, 310 CMR 7.75(5)(c)1(a)ii for CES NEPOOL-GIS Certificates, 310 CMR 7.75(5)(c)1(b)iii for CES-E NEPOOL-GIS Certificates, or 225 CMR 21.08(3)(a)2 for CPS NEPOOL-GIS certificates, as such regulations may be amended from time to time.

**APS Regulations** means the Alternative Energy Portfolio Standard regulations promulgated pursuant to M.G.L.c. 25A, § 11F ½ that require all retail electricity suppliers to end-use customers in Massachusetts to provide a minimum percentage of electricity sales to contain APS Alternative Generation Attributes, which are derived from certain alternative energy generating

resources, as more explicitly provided for in 225 CMR 16.00, as such regulations may be amended from time to time.

**APS Alternative Generation Attribute** means as defined in Section 16.02 of the Alternative Energy Portfolio Standard.

**APS NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents APS Alternative Generation Attributes.

**Business Day** means a 24-hour period ending at 5:00 p.m. EPT, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts are authorized by law or other governmental action to close.

**Buyer** means the Massachusetts Electric Company and the Nantucket Electric Company, their successors, assigns, employees, agents and authorized representatives.

**CES Regulations** means the Clean Energy Standard regulations found at 310 CMR 7.75 promulgated in conjunction with 310 CMR 7.74, to assist the Commonwealth in achieving the greenhouse gas emissions reduction goals adopted pursuant to M.G.L. c. 21N, Section 3(b), by establishing a clean energy standard (CES) that will increase the level of clean electricity that is purchased from the regional electric grid for consumption in Massachusetts.

**CES NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Clean Generation Attributes.

**CES-E NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Clean Existing Generation Attributes.

**Clean Existing Generation Attribute** means as defined in 310 CMR 7.75(2).

**Clean Generation Attribute** means as defined in 310 CMR 7.75(2).

**Commission** means the Federal Energy Regulatory Commission.

**Confidential Information** means Article 6, and Articles 2 and 3 of the Confirmation.

**Confirmation** means a written confirmation setting forth the specific terms of a Transaction and any modifications to this Agreement for such Transaction. Each Confirmation will be governed by this Agreement, and will be mutually agreed to and executed by the Parties, substantially in the form set forth in Appendix A or in a form otherwise agreed to by the Parties.

**Confirmation Effective Date** means the effective date of the Confirmation as set forth in such Confirmation.

**CPS Regulations** means the Clean Peak Energy Portfolio Standard regulations found at 225 CMR 21.00 to establish a Clean Peak Energy Portfolio Standard to increase clean energy during the periods when Net Demand of electricity is the highest. The total annual sales of each Retail Electricity Product sold to Massachusetts End-use Customers by a Retail Electricity Supplier, under contracts executed or extended on or after January 1, 2020, shall include a minimum percentage of electrical energy sales with Clean Peak Certificates.

**CPS NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents CPS Generation Attributes.

**CPS Generation Attribute** means as defined in 225 CMR 21.02.

**Credit Rating** means with respect to a Party (or its Credit Support Provider, as the case may be) or entity, on any date of determination, (1) the ratings assigned by Moody's, S&P and/or the other specified rating agency or agencies to such Party's (or its Credit Support Provider's, as the case may be) or entity's unsecured, senior long-term debt not supported by third party credit enhancement, or (2) if the applicable entity does not have such a rating, then the rating assigned to such entity by Moody's and/or S&P as its corporate credit rating or issuer rating, or (3) if the applicable entity is a financial institution, its unsecured, unsubordinated, long-term deposits by Moody's, S&P and/or the other specified rating agency or agencies. In the event of an inconsistency in ratings by the rating agencies (a "split rating"), the lowest rating assigned shall control.

**Credit Support Provider** means the entity providing a guaranty substantially in the form set forth in Appendix B of this Agreement guaranteeing the financial obligations of a Party for the benefit of the other Party.

**Department or DPU** means the Massachusetts Department of Public Utilities (formerly known as the Massachusetts Department of Telecommunications and Energy), or its successors.

**Effective Date** means the date of this Agreement.

**EPT** means Eastern Prevailing Time.

**Governing Documents** means, with respect to any particular entity, (a) if a corporation, the (i) articles of organization, articles of incorporation or certificate of incorporation and (ii) the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles or certificate of organization or formation and operating agreement; (e) if another type of entity, any other charter or similar document adopted or filed in connection with the creation, formation or organization of such entity; (f) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any entity or relating to the rights, duties and obligations of the equity holders of any entity; and (g) any amendment or supplement to any of the foregoing.

**Interest Rate** means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

**Investment Grade** means (i) if any entity has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to "BBB-" and a Credit Rating from Moody's equal to "Baa3"; or (ii) if an entity has a Credit Rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to "BBB-" or a Credit Rating from Moody's equal to "Baa3" or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then a

credit rating equal to that mutually agreed to in writing by the Parties in each Party's sole and exclusive judgment.

**ISO** means ISO New England Inc., authorized by the Commission to exercise for New England the functions required pursuant to the Commission's Order No. 2000 (and its progeny) and the Commission's regulations, and any successor organization (including but not limited to a Regional Transmission Organization).

**ISO Tariff** means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended, modified, superseded and supplemented from time to time, and including the Market Rules and Procedures.

**ISO New England Operating Documents** means the ISO Tariff and the ISO New England Operating Procedures, as amended, modified, superseded and supplemented from time to time.

**MA DOER** means the Massachusetts Department of Energy Resources and its successors.

**Market Rules and Procedures** means the Market Rules, Manuals and Procedures adopted by the ISO and/or NEPOOL, as may be amended from time to time, and as administered by the ISO to govern the operation of the NEPOOL markets.

**Material Adverse Effect** means, with respect to a Party, any change in or effect on such Party after the date of this Agreement that is materially adverse to the transactions contemplated hereby, excluding any change or effect resulting from (a) changes in the international, national, regional or local wholesale or retail markets for electric power; (b) changes in the international, national, regional or local markets for any fuel; (c) changes in the North American, national, regional or local electric transmission or distribution systems; and (d) any action or inaction by a governmental authority, but in any such case not affecting the Parties or the transactions contemplated hereby in any manner or degree significantly different from others in the industry as a whole.

**MDPU** means the Department.

**Moody's** means Moody's Investors Service, its successors and assigns.

**MWh** means Megawatt-hour.

**NEPOOL-GIS** means the NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity consumed within New England.

**NEPOOL-GIS Certificates** means an electronic record produced by the NEPOOL-GIS that identifies the relevant generation attributes of each MWh accounted for in the NEPOOL-GIS that complies with the applicable RPS or APS Regulations. NEPOOL-GIS Certificates shall represent the Generation Attributes (as such term is defined in the applicable RPS or APS Regulations) of either Class I Renewable Energy Resources, Class II Renewable Energy Resources, Class II Waste to Energy Renewable Energy Resources or APS Alternative Energy Units and conform to the eligibility criteria set forth in the applicable RPS or APS Regulations, and shall represent title to and claim over all environmental attributes associated with the

specified MWh of generation from either a Class I or Class II Renewable Energy Resources or APS Alternative Energy Units.

**NEPOOL-GIS Certificate Purchase Price** means the price to be paid by Buyer to Seller for each NEPOOL-GIS certificate purchased under this agreement, as specified in the Confirmation.

**NEPOOL-GIS Certificate Quantity** means the number of NEPOOL-GIS Certificates to be purchased by Buyer from seller, as specified in the Confirmation.

**NEPOOL-GIS Certificate Trading Period** means the period for the trading of a NEPOOL-GIS Certificate as specified in the NEPOOL GIS Operating Rules.

**NEPOOL GIS Certificate Type** means the classification of NEPOOL GIS Certificates as specified in the Confirmation and which complies with the applicable RPS or APS Regulations.

**NEPOOL Agreement** means the Second Restated New England Power Pool Agreement dated as of February 1, 2005, as amended or accepted by the Commission and as may be amended, modified, superseded, supplemented and/or restated from time to time.

**NEPOOL GIS Operating Rules** means the New England Power Pool Generation Information System Operating Rules as may be amended from time to time pursuant to the NEPOOL Agreement.

**NEPOOL Rules** means all rules adopted by NEPOOL or the ISO, as such rules may be amended, modified, supplemented or superseded and restated from time to time, including but not limited to, the NEPOOL Agreement, the ISO Tariff, the ISO New England Operating Documents, the Transmission Operating Agreement, the Participants Agreement, the NEPOOL Manuals, and the NEPOOL Operating Procedures, as amended, superseded or restated from time to time.

**RPS Regulations** means the Renewable Energy Portfolio Standard regulations (found as of the date of this Agreement at 225 CMR 14.00 (Class I) and 225 CMR 15.00 (Class II), respectively, promulgated pursuant to M.G.L. c. 25A, § 11F that requires all retail electricity Sellers in Massachusetts to provide a minimum percentage of electricity from certain Class I and Class II renewable energy generating resources, as in effect from time to time.

**RPS Class I NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Class I Renewable Generation Attributes.

**RPS Class I Renewable Generation Attributes** means as defined in Section 14.02 of the Renewable Energy Portfolio Standard – Class I.

**RPS Class I Solar Carve-Out NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Class I Solar Carve-Out Renewable Generation Attributes.

**RPS Class I Solar Carve-Out Renewable Generation Attributes** means as defined in Section 14.02 of the Renewable Energy Portfolio Standard – Class I.

**RPS Class I Solar Carve-Out II NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Class I Solar Carve-Out Renewable Generation Attributes.

**RPS Class I Solar Carve-Out II Renewable Generation Attributes** means as defined in Section 14.02 of the Renewable Energy Portfolio Standard – Class I.

**RPS Class II NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Class II Renewable Generation Attributes.

**RPS Class II Renewable Generation Attributes** means as defined in Section 15.02 of the Renewable Energy Portfolio Standard – Class II.

**RPS Class II Waste Energy NEPOOL-GIS Certificate** means a NEPOOL-GIS Certificate from a resource that represents Class II Waste Energy Renewable Generation.

**Security** means the product of (i) the applicable NEPOOL-GIS Certificate Quantity in a year and (ii) the positive difference between the applicable NEPOOL-GIS Certificate Alternative Compliance Payment Rate and the applicable NEPOOL-GIS Certificate Purchase Price.

**S&P** means Standard & Poor's Rating Group, its successors and assigns.

**Trading Period** means the term as defined in the NEPOOL GIS Operating Rules.

**Transaction** means a particular transaction agreed to by Buyer and Seller relating to the purchase and sale of NEPOOL-GIS Certificates pursuant to this Agreement, as evidenced by the execution of a Confirmation by Buyer and Seller.

**Vintage** means the calendar year that a NEPOOL-GIS Certificate represents as the relevant generation attributes for an energy resource.

### **ARTICLE 3. EFFECTIVE DATE; TERM**

(a) This Agreement shall be effective immediately upon execution by both Parties (“Effective Date”). The term of this Agreement (“Term”) shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days’ prior written notice unless earlier terminated in accordance with the provisions hereof; provided, however, that such termination shall not affect or excuse the performance of any Party under any provision of this Agreement that by its terms or operation survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s).

(b) As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (i) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination and (ii) the obligations of the Parties hereunder with respect to audit rights, remedies for default, damages claims, indemnification and defense of claims shall survive the termination or expiration of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run, subject to any time limits specifically set forth in this Agreement with respect thereto.

(c) Notwithstanding any other provision of this Article 3, in the event this Agreement is terminated in accordance with the termination provisions set forth in Section 6.2, all Transactions shall terminate unless otherwise agreed to in writing by the Parties. For the avoidance of doubt, if an individual Transaction is terminated by either Party in accordance with the termination provisions herein:

(i) any other Transactions currently in effect under this Agreement shall continue in full force and effect until they expire or are terminated under this Agreement; and

(ii) this Agreement (excluding the terminated Transaction) shall continue in full force and effect until its expiration or earlier termination.

## **ARTICLE 4. SALE AND PURCHASE**

### **Section 4.1 Provision Delivery and Receipt**

Seller shall sell and deliver and the Buyer shall purchase and receive NEPOOL-GIS Certificates as specified in the Confirmation. Seller shall utilize the NEPOOL-GIS to transfer the number of NEPOOL-GIS Certificates required to be transferred hereunder for each Trading Period to an account within the NEPOOL-GIS designated by the Buyer on or before the Delivery Date as specified in the Confirmation.

### **Section 4.2 Seller Representations and Warranties**

Seller represents and warrants that:

(a) The NEPOOL-GIS Certificates sold and delivered to the Buyer's account under this Agreement and applicable Confirmation are and shall be free and clear of any liens, encumbrances and title defects;

(b) Seller has obtained, and will maintain, all necessary regulatory approvals required to enable it to provide NEPOOL-GIS Certificates as required by this Agreement and that the NEPOOL-GIS Certificates sold hereunder are and will be compliant with the RPS Regulations or APS Regulations (as applicable) through the date of transfer to Buyer;

(c) The NEPOOL-GIS Certificates sold hereunder have not been, and will not be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction; and

(d) The contents, statements, certifications and representations contained in Seller's proposal for the sale of NEPOOL GIS Certificates are true and accurate in all material respects.

## **ARTICLE 5. AMOUNT, BILLING and PAYMENT**

### **Section 5.1 Amount**

The amount payable by Buyer to Seller for NEPOOL-GIS Certificates shall be the product of (a) the number of NEPOOL-GIS Certificates transferred and confirmed during a Trading Period and (b) the NEPOOL-GIS Certificate Purchase Price for the applicable Vintage in such Trading Period. The Purchase Price and quantity of NEPOOL-GIS Certificates to be transferred and confirmed for each Vintage in a Trading Period shall be as specified in the applicable Confirmation.

The total quantity of NEPOOL-GIS Certificates transferred and confirmed in a Trading Period shall not exceed the sum of the NEPOOL-GIS Certificate Quantities for the applicable Trading Period specified in the applicable Confirmation.

#### Section 5.2 Billing and Payment

(a) After each NEPOOL-GIS Certificate transfer has been confirmed, the Seller shall calculate the amount due and payable to Seller pursuant to this Article and provide an invoice ("Invoice") for such amount. The Invoice shall be provided to the Buyer and shall include sufficient detail for the Buyer to verify its formulation and computation.

(b) The Buyer shall pay Seller the amount due and owing in accordance with Section 5.1 within fifteen (15) Business Days after receiving the Invoice (the "Due Date"). If all or any part of such amount remains unpaid after the Due Date, interest shall accrue after but not including the Due Date and be payable to Seller on such unpaid amount at a rate per annum equal to the Interest Rate in effect on the Due Date.

(c) Each Party shall notify the other Party upon becoming aware of an error in an Invoice (whether the amount is paid or not) and Seller shall promptly issue a corrected Invoice. Overpayments shall be returned by the receiving Party upon request or deducted by the receiving Party from subsequent invoices, with interest accrued at a rate per annum equal to the Interest Rate in effect on the Due Date from the date of the receipt of the overpayment until the date paid or deducted.

#### Section 5.3 Challenge to Invoices

Unless otherwise agreed: (i) either Party may challenge, in writing, the accuracy of Invoices (or the data utilized in the forgoing) and payments no later than twelve (12) months after the Due Date of the Invoice in which the disputed information is contained; (ii) if a Party does not challenge the accuracy within such twelve (12) month period, such Invoice shall be binding upon that Party and shall not be subject to challenge. If an Invoice is paid and thereafter the payment or the Invoice on which the payment was based is disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within three (3) Business Days of such determination along with interest accrued at the Interest Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned.

#### Section 5.4 Taxes, Fees and Levies

Seller shall be obligated to pay all present and future taxes, fees and levies ("Taxes") which may be assessed by any entity upon the Seller's provision of NEPOOL-GIS Certificates to the Buyer. Buyer shall be responsible for all Taxes applicable to the NEPOOL-GIS Certificates for all periods from and after transfer of title of the NEPOOL-GIS Certificates to Buyer from Seller in accordance with this Agreement.

#### Section 5.5 Netting and Setoff



Except for Security provided pursuant to Section 6.3, if applicable (which shall not be considered for purposes of this Section 5.5) and unless otherwise specified in another written agreement between the Parties, all payments under this Agreement or any other agreement between the Parties, shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein or therein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement or such other written agreement. Further, if the Buyer incurs any costs or charges that are the responsibility of Seller under this Agreement, such costs or charges may, at the Buyer's election, be netted against any amount due to Seller under this Agreement. All outstanding obligations to make payment under this Agreement or any other written agreement between the Parties may be netted against each other, set off or recouped there from.

## **ARTICLE 6.           DEFAULT AND TERMINATION**

### Section 6.1   Events of Default

(a)   Any one or more of the following events shall constitute an "Event of Default" hereunder with respect to the Buyer:

(i)   Failure of the Buyer

(A) in any material respect to comply with, observe or perform any covenant, warranty or obligation under this Agreement (but excluding events that are otherwise specifically covered in this Section as a separate Event of Default and except attributable to Seller's wrongful act or failure to act in breach of this Agreement); and

(B) After receipt of written notice from Seller such failure continues for a period of five (5) Business Days, or, if such failure cannot be reasonably cured within such five (5) Business Day period, such further period as shall reasonably be required to effect such cure (but in no event longer than thirty (30) days), provided that the Buyer (x) commences within such five (5) Business Day period to effect a cure and at all times thereafter proceeds diligently to complete the cure as quickly as possible and (y) provides to Seller written documentation of its efforts and plan to cure and estimated time for completion of the cure.

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

(i)   Failure of Seller

(A) in any material respect to comply with, observe, or perform any covenant, warranty or obligation under this Agreement (but excluding events that are otherwise specifically covered in this Section as a separate Event of Default and except attributable to the Buyer's wrongful act or wrongful failure to act in breach of this Agreement); and

(B) after receipt of written notice from the Buyer such failure continues for a period of five (5) Business Days, or, if such failure cannot be reasonably cured

within such five (5) Business Day period, such further period as shall reasonably be required to effect a cure (but in no event longer than thirty (30) days), provided that Seller (x) commences within such five (5) Business Day period to effect such cure and at all times thereafter proceeds diligently to complete the cure as quickly as possible and (y) provides to Buyer written documentation of its efforts and plan to cure and estimated time for completion of the cure;

- (ii) Failure of Seller to transfer NEPOOL-GIS Certificates in the amounts and/or at the times required by, and otherwise in accordance with, Article 4; or
- (iii) Failure of Seller to satisfy its obligation to provide Security when due and in accordance with Section 6.3.

(c) Any one or more of the following events with respect to either Party shall constitute an "Event of Default" hereunder with respect to such Party:

- (i) The entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of such Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or (B) a decree or order adjudging such Party as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Party under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Party or of any substantial part of its property, or ordering the winding up or liquidation of its affairs;
- (ii) The commencement by such Party of a voluntary case or proceeding, or any filing by a third party of an involuntary case or proceeding against a Party that is not dismissed within thirty (30) days of such third party's filing, under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of such Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of a Party or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by such Party in furtherance of any such action; or
- (iii) Any representation or warranty made by a Party is or becomes false or misleading in any material respect.

## Section 6.2 Remedies Upon Default

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

(a) Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to (i) continue performance under this Agreement and exercise such rights and remedies as it may have at law, in equity or under this Agreement and seek remedies as may be necessary or desirable to enforce performance and observation of any obligations and covenants under this Agreement, so long as such rights and remedies are not duplicative of any other rights and remedies hereof, and do not otherwise enable the non-defaulting Party to obtain performance or payments in excess of the performance and payments to which it is otherwise entitled pursuant to this Agreement, or (ii) at its option, give such defaulting Party a written notice (a "Termination Notice"). Termination shall be effective on the date set forth in the Termination Notice, which date shall be no more than twenty (20) Business Days after the date such Termination Notice is provided to the Defaulting Party in accordance with Article 7. Termination of this Agreement shall in no way limit or restrict any Party's right to pursue any legal or equitable remedies available to it arising from an Event of Default.

(b) Notwithstanding any other provision of this Agreement, the cure of an Event of Default or failure to comply with, observe or perform any covenant, warranty or obligation under this Agreement within the period provided therefor in this Agreement shall not release such defaulting Party from its liability to indemnify, save harmless and defend the non-defaulting Party for any claims, demands, suits, losses, liabilities, damages, obligations, payments, costs and expenses (including the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) relating to, arising out of or resulting from such Event of Default or any failure to comply with, observe or perform any covenant, warranty or obligation under this Agreement.

(c) In the event Seller causes or suffers an Event of Default and the Buyer elects to terminate this Agreement, or the Transaction(s) giving rise to the Event of Default, then, on or before five (5) Business Days following issuance of a Termination Notice by Buyer, Seller shall pay the Buyer an amount equal to the positive amount, if any, equal to the product of (i) the number of NEPOOL-GIS Certificates to be transferred to Buyer under this Agreement (or the specific Transaction(s), as applicable) during the Term that have not been so transferred ("Undelivered Certificates"), and (ii) the positive difference, if any, of the applicable Alternative Compliance Payment rate or rates determined in accordance with the RPS or APS Regulations less the applicable NEPOOL-GIS Certificate Purchase Price the Buyer would have had to pay Seller for each Undelivered Certificate if the same had actually been delivered hereunder as and when required, plus all costs, fees and expenses incurred by Buyer in connection with making Alternative Compliance Payment(s) for the Undelivered Certificates. Seller and Buyer agree that the foregoing provision is intended to reflect a mutually acceptable measure of damages for such Event of Default.

(d) In the event the Buyer causes or suffers an Event of Default and Seller elects to terminate this Agreement, or the Transaction(s) giving rise to the Event of Default, then, on or before five (5) Business Days following issuance of a Termination Notice by Seller, the Buyer shall pay Seller the positive amount, if any, equal to the product of (i) the number of NEPOOL-

GIS Certificates required to be transferred by Seller under this Agreement (or the specific Transaction(s), as applicable) during the Term that have not been so transferred (“Untransferred Certificates”) and (ii) the positive difference, if any, of the NEPOOL-GIS Certificate Purchase Price less the average market price as of the date of issuance of such Termination Notice for the number of Untransferred Certificates of a vintage equivalent to the calendar year in which such Untransferred Certificates were to be delivered hereunder as specified in Article 4. Such average market price is to be determined based upon the average of prices quoted by three independent third party brokerage services selected by Seller and reasonably acceptable to the Buyer. Seller and Buyer agree that the foregoing provision is intended to reflect a mutually acceptable measure of damages for such Event of Default.

### Section 6.3            Security

(a) Seller, at all times during the Term of this Agreement, shall either (i) maintain a Credit Rating at least equal to Investment Grade (the “Credit Requirements”) or (ii) provide Security in accordance with Section 6.3(b). Prior to the Confirmation Effective Date and at any time upon the request of Buyer, Seller (or its Credit Support Provider at any time that a guaranty delivered pursuant to Paragraph (A) of Subsection (b) of this Section is in effect) shall establish that it meets the Credit Requirements by providing (x) a certificate of an authorized officer, accompanied by supporting certified financial statements and (y) documentation of all Credit Ratings. Seller shall inform the Buyer within one (1) Business Day of any failure of it or its Credit Support Provider (at any time that a guaranty delivered pursuant to Paragraph (A) of Subsection (b) of this Section is in effect) to meet Credit Requirements, or of being placed by S&P or Moody's on credit watch, under review for a downgrade or with negative implications.

(b) If, at any time during the Term of this Agreement, Seller fails to meet the Credit Requirements, then Seller shall provide (i) Security to the Buyer; and (ii) in one of the following forms, within five (5) Business Days of the occurrence of such failure to meet the Credit Requirements:

- (A) A guaranty of Seller’s obligations hereunder issued by an Affiliate of Seller that meets the Credit Requirements and in substantially the form set forth in Appendix B attached hereto;
- (B) An irrevocable, transferable standby letter of credit (x) 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, (y) in a form acceptable to Buyer, including a provision permitting the Buyer upon an Event of Default by Seller to draw down, on one or more occasions, in whole or in part, as the case may be, on the letter of credit and also permitting the Buyer to draw down an amount equal to the amount specified in Section 6.2(c) without giving effect to Section 5.5 (Netting and Setoff), and (z) that shall terminate no earlier than 120 days following the later of the termination or expiration of this Agreement. If Seller is required to provide the bank with a guarantee or any other form of financial assurance from one or more other entities to secure its letter of credit obligations, then such entities shall also guarantee all of Seller’s obligations to the Buyer under this Agreement;
- (C) U.S. Dollars delivered by wire transfer of immediately available funds.

The amount of payment guarantee (if requested) shall be equal to the cumulative product of the NEPOOL-GIS Certificate Quantity and the positive difference between the Alternative Compliance Payment Rate for the applicable NEPOOL-GIS Certificate Type and Vintage and the NEPOOL-GIS Certificate Purchase Price; or

- (D) Any alternate form of credit support proposed by Seller that the Buyer deems acceptable, in its sole discretion; including but not limited to early or immediate delivery of NEPOOL-GIS Certificates (delivery dates as agreed by parties); provided however, the Buyer is under no obligation to accept any alternate form of credit support and may withhold consent to any such alternate form for any reason.

#### Section 6.4 Forward Contract

Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement, including but not limited to those specified in Section 6, shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

### **ARTICLE 7. NOTICES, REPRESENTATIVES OF THE PARTIES**

#### Section 7.1 Notices

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. It shall either be sent by email, courier, personally delivered (including overnight delivery service) or mailed, postage prepaid, to the representative of the other Party designated in accordance with this Article. Any such notice, demand, or request shall be deemed to be given (i) when sent by email, (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service) or (iii) seven (7) days after deposit in the United States mail, if sent by first class mail return receipt requested.

Notices and other communications by Seller to the Buyer shall be addressed to:

Director, Wholesale Electric Supply  
National Grid  
175 Old Country Road  
Main Office Building, 1<sup>st</sup> Floor  
Hicksville, NY 11801  
(516) 490-9096 (phone)

and

Notices concerning Article 7 shall also be sent to:

Massachusetts General Counsel  
National Grid  
170 Data Drive

Waltham, MA 02451-1120  
(781) 907-1000 (phone)

Notices and other communications by the Buyer to Seller shall be addressed to:

[Name]  
[Company]  
[Address]  
[City, State & Zip]  
[Phone]  
[FAX]

Any Party may change its representative or address for notices by written notice to the other Party; however such notice shall not be effective until it is received by the other Party.

Section 7.2 Authority of Representative

The Parties' representatives shall have full authority to act for their respective Party in all matters relating to the performance of this Agreement. Notwithstanding the foregoing, a Party's representative shall not have the authority to amend, modify, or waive any provision of this Agreement unless they are duly authorized officers of their respective entities and such amendment, modification or waiver is made in accordance with Article 15.

**ARTICLE 8. LIABILITY; INDEMNIFICATION; RELATIONSHIP OF PARTIES**

Section 8.1 Limitation on Consequential, Incidental and Indirect Damages

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.2, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE BUYER NOR SELLER, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARENT OR AFFILIATES, SUCCESSOR OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS, OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES (INCLUDING ATTORNEY'S FEES OR LITIGATION COSTS EXCEPT AS EXPRESSLY PROVIDED IN 13.2 AND IN ACCORDANCE WITH THE LIMITATION THEREUNDER) CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, OR ANY OTHER THEORY OF RECOVERY. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

## Section 8.2 Indemnification

(a) Seller agrees to defend, indemnify and save the Buyer, its officers, directors, employees, agents, successors, assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by Seller, (b) any violation of applicable law, regulation or order by Seller, (c) any act or omission by Seller with respect to this Agreement, first arising, occurring or existing during the Term of this Agreement, 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, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee, or Affiliate of the Buyer or its respective successors or assigns.

(b) The Buyer agrees to defend, indemnify and save Seller, its officers, directors, employees, agents, successors, assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Buyer, (b) any violation of applicable law, regulation or order by Buyer, (c) any act or omission by the Buyer, with respect to this Agreement first arising, occurring or existing during the Term of this Agreement, 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, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee or Affiliate of Seller or its respective successors or assigns.

(c) If any Party intends to seek indemnification under this Section from the other Party with respect to any action or claim, the Party seeking indemnification shall give the other Party notice of such claim or action within thirty (30) days of the later of the commencement of, or actual knowledge of, such claim or action; provided, however, that in the event such notice is delivered more than thirty (30) days after the Party seeking indemnification knows of such claim or action, the indemnifying Party shall be relieved of its indemnity hereunder only if and to the extent such indemnifying Party was actually prejudiced by such delay. The Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such claim or action. The Party seeking indemnification shall not compromise or settle any such claim or action without the prior consent of the other Party, which consent shall not be unreasonably withheld.

## Section 8.3 Independent Contractor Status

Nothing in this Agreement shall be construed as creating any relationship between the Buyer and Seller other than that of independent contractors for the sale and delivery of NEPOOL-GIS Certificates.

## **ARTICLE 9. ASSIGNMENT**

### **Section 9.1 General Prohibition Against Assignments**

Except as provided in Section 9.2, neither Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent, which consent shall not be unreasonably withheld.

### **Section 9.2 Exceptions to Prohibition Against Assignments**

(a) Seller may, without the Buyer's prior written consent, collaterally assign this Agreement in connection with financing arrangements provided that any such collateral assignment that provides for the Buyer to direct payments to the collateral agent (i) shall be in writing, (ii) shall not be altered or amended without prior written notice to the Buyer from both Seller and the collateral agent, and (iii) provided that any payment made by the Buyer to the collateral agent shall discharge the Buyer's obligation as fully and to the same extent as if it had been made to the Seller. Seller must provide the Buyer at least ten (10) days advance written notice of collateral assignment and provide copies of any such assignment and relevant agreements or writings.

(b) The Buyer may assign all or a portion of its rights and obligations under this Agreement to any Affiliate of the Buyer without consent of Seller. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment

## **ARTICLE 10. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of, and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

## **ARTICLE 11. WAIVERS**

No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. The waiver of any single breach or default of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other prior or subsequent breach or default of the Agreement or any other term or condition.

## **ARTICLE 12. LAWS AND REGULATIONS**

(a) This Agreement and all rights, obligations, and performances of the Parties hereunder, are subject to all applicable federal and state laws, and to all duly promulgated orders and other duly authorized action of governmental authorities having jurisdiction hereof.



(b) The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 of the Federal Power Act as that section may be amended or superseded, absent the mutual written agreement of the Parties. Each Party irrevocably waives its rights, including its rights under §§ 205-206 of the Federal Power Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Agreement or any other agreements entered into in connection with this Agreement. By this provision, each Party expressly waives its right to seek or support: (i) an order from the Commission finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties in the Agreement are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter, and that it shall not challenge or support a challenge to the enforceability of the waiver in this Section (b).

(c) Absent the agreement of all Parties to a proposed change, the standard of review for changes to this Agreement proposed by a non-party or the Commission acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

(d) The Parties agree that, if and to the extent that the Commission adopts a final rule or order which requires that, in order to exclude application of the just and reasonable standard of review and to mandate application of the public interest standard of review under the Mobile-Sierra doctrine for a proposed change to this Agreement which is not agreed to by all Parties, the Parties must agree to language which varies from that set forth in Article 12(c) then, without further action of either Party, Article 12(c) will be deemed amended to incorporate the specific language required by such final rule or order as is necessary to have the public interest standard of review under the Mobile-Sierra doctrine apply to any proposed change to this Agreement to which all Parties do not agree.

(e) Nothing in this Article 12 is intended to modify any Party's right to enforce the terms of this Agreement as written.

## **ARTICLE 13. INTERPRETATION, DISPUTE RESOLUTION**

### Section 13.1 Governing Law

The Agreement shall be governed by, and construed and performed in accordance with, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles.

### Section 13.2 Dispute Resolution

All disputes between the Buyer and Seller under this Agreement shall be referred, upon notice by one Party to the other Party, to a senior manager of Seller designated by Seller, and a senior manager of the Buyer designated by the Buyer, for resolution on an informal basis as promptly as practicable. In the event the designated senior managers are unable to resolve the dispute within ten (10) days of receipt of the notice, or such other period to which the Parties may jointly agree, such dispute may be submitted to arbitration, subject to the mutual agreement of the Parties, and resolved in accordance with the arbitration procedure set forth in this Section. The arbitration shall be conducted in Boston, Massachusetts before a single neutral arbitrator

mutually agreed to and appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, Seller and the Buyer shall each choose one arbitrator, who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third arbitrator to act as chairman of the arbitration panel. In either case, the arbitrator(s) shall be knowledgeable in electric utility matters, including wholesale power transactions and power market issues, and shall not have any current or past material business or financial relationships with either Party or a witness for either Party and shall not have a direct or indirect interest in any Party or the subject matter of the arbitration. The arbitrator(s) shall afford each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the then-current arbitration rules of the CPR Institute for Dispute Resolution (formerly known as the Center for Public Resources), unless otherwise mutually agreed by the Parties. Any offer made and the details of any negotiations to resolve the dispute shall not be admissible in the arbitration or otherwise. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of his, her or their appointment and shall notify the Parties in writing of such decision and the reasons therefore, and shall make an award apportioning the payment of the costs and expenses of arbitration among the Parties; provided, however, that each Party shall bear the costs and expenses of its own attorneys, expert witnesses and consultants. . The arbitrator(s) shall be authorized only to interpret, apply and enforce the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction, subject expressly to Section 13.3. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. Nothing in this paragraph shall impair the ability of a Party to exercise any rights or remedy it has under this Agreement, including those in Article 6. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties; provided, however, that either Party, or any of its Affiliates, may provide information regarding the arbitration without limitation to any regulatory agency requesting or requiring such information, Party's attorneys, accountants or tax professionals or to a court in a proceeding to confirm, appeal (as such appeal is limited hereby) or enforce the award; provided, further, that any such provision of information must include a request for confidential treatment.

### Section 13.3 Venue

Each Party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum.

## **ARTICLE 14. SEVERABILITY**

Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining provisions and lawful obligations that arise under this Agreement. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or

unenforceable provision, and (b) the remainder of this Agreement and the application of such provision or circumstances shall not be affected by such invalidity or unenforceability.

#### **ARTICLE 15. MODIFICATIONS**

No modification or amendment of this Agreement will be binding on any Party unless it is in writing and signed by both Parties.

#### **ARTICLE 16. ENTIRE AGREEMENT**

This Agreement, including the Appendices, the tariffs and agreements referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants or undertakings contained in any material provided or otherwise made available by the Seller or the Buyer to each other. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the transactions contemplated hereby.

#### **ARTICLE 17. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

#### **ARTICLE 18. INTERPRETATION; CONSTRUCTION**

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "including" shall mean "including, without limitation". The Parties acknowledge that, each Party and its counsel have reviewed and or revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and it is the result of joint discussion and negotiation.

#### **ARTICLE 19. REPRESENTATIONS; WARRANTIES AND COVENANTS**

Each Party represents to the other Party, upon execution and continuing throughout the Term of this Agreement, as follows:

(a) It is duly organized in the form of business entity set forth in the first paragraph of this Agreement, validly existing and in good standing under the laws of its state of its organization and has all requisite power and authority to carry on its business as is now being conducted, including all regulatory authorizations as necessary for it to legally perform its obligations hereunder.

(b) It has full power and authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by it, and, assuming that this Agreement constitutes a valid and binding agreement of the other Party, constitutes its valid and binding agreement,

enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, or the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which it is bound, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(d) No declaration, filing with, notice to, or authorization, permit, consent or approval of any governmental authority is required for the execution and delivery of this Agreement by it or the performance by it of its obligations hereunder, other than such declarations, filings, registrations, notices, authorizations, permits, consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect.

(e) Neither the execution and delivery of this Agreement by it will nor the performance by it of its obligations under this Agreement will or does (i) conflict with or result in any breach of any provision of its Governing Documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which it or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, in the aggregate, would not have a Material Adverse Effect; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it, which violation would have a Material Adverse Effect.

(f) There are no claims, actions, proceedings or investigations pending or, to its knowledge, threatened against or relating to it before any governmental authority acting in an adjudicative capacity relating to the transactions contemplated hereby that could have a Material Adverse Effect. It is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court or governmental authority which, individually or in the aggregate, would create a Material Adverse Effect.

(g) There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or of its knowledge threatened against it.

(h) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

## **ARTICLE 20. CONSENTS AND APPROVALS**

The Parties shall cooperate so that each Party may take such actions as necessary and required for the other Party to effectuate and comply with this Agreement including to (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (iii) use all

commercially reasonable efforts to obtain all necessary consents, approvals and authorizations of all other entities, in the case of each of the foregoing clauses (i), (ii) and (iii), necessary or advisable to consummate the transactions contemplated by this Agreement. The Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing, press release or public announcement made in connection with the transactions contemplated hereby.

## **ARTICLE 21. SURVIVAL**

Subject to Section 3(b)(ii), as of the expiration of this Agreement in accordance with Article 3 or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination and (b) the obligations of the Parties hereunder with respect to indemnification and defense of claims.

## **ARTICLE 22. CONFIDENTIALITY**

All Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Party's prior written consent. Notwithstanding the foregoing, Confidential Information may be disclosed to a third party: (a) to the extent necessary for the purpose of effectuating the supply, transmission and/or distribution of energy or any other product or service to be delivered pursuant to this Agreement, (b) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order, provided that any such disclosure must include a request for confidential treatment of the Confidential Information, or in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding, provided that in the case of a disclosure pursuant to the foregoing such disclosure must include a request for confidential treatment of the Confidential Information, and (c) to third parties in connection with a merger, acquisition/disposition and financing transactions, or audit, provided that any such third party shall have signed a confidentiality agreement with the disclosing party containing customary terms and conditions that protect against the disclosure of the Confidential Information, that strictly limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

**MASSACHUSETTS ELECTRIC COMPANY**

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_

**NANTUCKET ELECTRIC COMPANY**

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_

**[COMPANY]**

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX A  
MASTER CERTIFICATE PURCHASE AGREEMENT  
FORM OF CONFIRMATION**

This Confirmation is agreed to on \_\_\_\_\_ among **MASSACHUSETTS ELECTRIC COMPANY (“MECo”)**, a Massachusetts corporation, **NANTUCKET ELECTRIC COMPANY (“Nantucket”)**, a Massachusetts corporation (MECo and Nantucket together “Buyer”, and each shall be severally and not jointly liable hereunder) and \_\_\_\_\_ (“Seller”). This Confirmation provides for the sale/purchase of NEPOOL-GIS Certificates specified herein under the terms and conditions of the Master Certificate Purchase Agreement, dated \_\_\_\_\_, 20YY (the “Agreement”), between Buyer and Seller as specified and modified herein. It is the intent of Buyer and Seller that the Transaction shall meet the Commodity Futures Trading Commission's criteria for the forward contract exclusion, including that the Parties intend to physically settle the Transaction, and is therefore not subject to swap regulation. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

**1. Confirmation Effective Date**

This Confirmation shall be binding on the Parties upon the signature date of the last Party to execute this Confirmation (such date the “Confirmation Effective Date”).

**2. NEPOOL-GIS Certificate Purchase Matrix**

<b>Vintage</b>	<b>NEPOOL-GIS CERTIFICATE TYPE</b>	<b>NEPOOL-GIS CERTIFICATE PURCHASE PRICE (\$/CERTIFICATE)</b>	<b>NEPOOL-GIS CERTIFICATE QUANTITY</b>	<b>NEPOOL-GIS CERTIFICATE TRADING PERIOD</b>	<b>DELIVERY TYPE</b>	<b>DELIVERY DATE</b>
TBD	TBD	TBD	TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD	TBD	TBD	TBD

**3. Security**

As specified in the Agreement.

**4. Modifications to the Master Certificate Purchase Agreement**

[To be determined for each Transaction]

**5. Confidentiality**

Articles 2 and 3 of this Confirmation are Confidential Information and governed by Article 22 of the Agreement.

**6. Ratification of the Terms and Conditions of the Agreement**

(a) Except as expressly amended or waived by this Confirmation, the terms, conditions, covenants, agreements, warranties and representations contained in the Agreement are in all respects ratified, confirmed and remade as of the date hereof and, except as amended or waived hereby, shall continue in full force and effect.

(b) Nothing in this Confirmation shall, or shall be construed to, alter or amend any other Confirmation.

**7. Counterparts**

This Confirmation may be executed in counterparts, all of which together shall constitute one and the same instrument.

This Confirmation constitutes part of and is subject to the terms and provisions of such Agreement.

**Remainder of Page Intentionally Left Blank**



IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Confirmation on their behalf as of the Confirmation Effective Date.

**MASSACHUSETTS ELECTRIC COMPANY**

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**NANTUCKET ELECTRIC COMPANY**

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[SELLER]**

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## APPENDIX B

### MASTER CERTIFICATE PURCHASE AGREEMENT FORM OF GUARANTY

#### Guaranty

This Guaranty (this “Guaranty”), dated effective as of [\_\_\_\_\_], 20YY (the “Effective Date”), is made and entered into by [ **Guarantor name** ], a [ ] corporation (“Guarantor”).

#### WITNESSETH:

WHEREAS, Massachusetts Electric Company and Nantucket Electric Company (each, “the Buyer”) and [ ], a corporation organized under the laws of the State of [ ] (“Seller”) and a [ ] of Guarantor, have entered into the Certificate Purchase Agreement dated as of [ ], (as such agreement may be amended and modified by the Buyer and Seller from time to time, the “Agreement”); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Seller and the Buyer;

NOW THEREFORE, in consideration of the Buyer entering into the Agreement, Guarantor hereby covenants and agrees as follows:

- (1) GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the full and faithful timely performance and payment when due of the obligations of Seller that are now due or may hereafter become due and payable to the Buyer under the Agreement (the “Obligations”). This Guaranty shall constitute a guarantee of performance and payment and not of collection. The liability of Guarantor under this Guaranty shall be specifically limited to performance and payments expressly required to be made under the Agreement (even if such payments are or are deemed to be damages) as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Buyer but in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, except to the extent specifically provided in the Agreement, any other damages.
- (2) DEMANDS AND NOTICE. Upon the occurrence and during the continuance of an Event of Default or termination, as may be defined in the Agreement, if Seller fails or refuses to perform or pay any Obligations and the Buyer elects to exercise its rights under this Guaranty, the Buyer shall make a demand upon Guarantor (hereinafter referred to as a “Demand”). A Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Seller has failed to perform or pay and an explanation of why such performance or payment is due, with a specific statement that the Buyer is calling upon Guarantor to perform and/or pay under this Guaranty. Such Demand shall be deemed sufficient notice to Guarantor that it must perform the Obligations within two (2) Business Days, or pay the Obligations within five (5) Business Days, after its receipt of the Demand. A single written Demand shall be effective as to any specific default during the continuance of such default, until Seller or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term

“Business Day” shall mean a day on which commercial banks or financial institutions are open for business in the Commonwealth of Massachusetts.

- (3) REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:
- (a) it is a corporation duly organized and validly existing and in good standing under the laws of the State of [ ] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
  - (b) the execution, delivery and performance of this Guaranty and each transaction contemplated by this Guaranty, do not and will not (with or without the lapse of time, the giving of notice or both), contravene, conflict with or result in a breach of or default under any provision of its constitutional or organizational documents or any writ, order, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
  - (c) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
  - (d) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.
- (4) SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Seller or any other affiliate of Guarantor is or may be entitled to arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, reorganization, dissolution or liquidation of Seller, the lack of power or authority of Seller to enter into, amend and/or perform the Agreement, or waiver or consent with respect to any provision thereof, or a claim as to the Agreement’s validity regularity or enforceability, or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.
- (5) AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and the Buyer.
- (6) WAIVER; TERMINATION. Except as required in Section 2 above, Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment, demand and notice of dishonor concerning the liabilities of Guarantor; and (c) any right to require that any action or proceeding be brought against Seller or any other person, or to require that the Buyer exhaust its remedies against Seller or seek enforcement of any performance against Seller or any other person, or against any collateral pledged by Seller or any other person liable for payment or performance of the Obligations, prior to any action against Guarantor under the terms hereof. Buyer shall not be obligated to file any claim relating to the Obligations in the event that Seller becomes subject to a bankruptcy,

reorganization or similar proceeding, and the failure of the Buyer to so file shall not affect the Guarantor's obligations hereunder.

Except as to applicable statutes of limitation, no delay of the Buyer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes including, without limitation, in the time of payment of and other changes in the terms of the Obligations, or any part thereof and amendments thereto, or any changes and modifications to the terms of the Agreement or waivers thereunder.

Guarantor shall not be discharged or released from its obligations hereunder by any change in the existence, structure or ownership of the Guarantor or Seller or any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or made by Seller in connection with the Agreement is at any time avoided or rescinded or must otherwise be restored or repaid by the Buyer as a result of the bankruptcy of Seller, or otherwise, all as though such payments had not been made.

This Guaranty and the Guarantor's obligations hereunder shall remain in effect for the Term of the Agreement.

NOTICE. Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by electronic mail or facsimile, as follows:

To the Buyer:

Director, Wholesale Electric Supply  
National Grid  
175 East Old Country Road  
Hicksville, NY 11801

To Guarantor:

Phone No.: (516) 545-4110  
Email: [electricsupply@nationalgrid.com](mailto:electricsupply@nationalgrid.com)

Phone No.:

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by electronic mail or by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours and (ii) confirmation of receipt by telephone. . . All Notices by or facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice in accordance with the requirements of this Section.

**SUBORDINATION and SUBROGATION.** If and to the extent that Guarantor makes any payment to Seller pursuant to this Guaranty, any claim which Guarantor may have against Seller by reason thereof shall be subject and subordinate to the prior payment in full of all of the

Obligations. Guarantor agrees that it will not exercise any rights that it may now or hereafter acquire against Seller that arise from the existence, payment, performance or enforcement of the Obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or proceeding, or remedy of any other party against Seller, unless and until all of the Obligations and all other amounts payable under this Guaranty shall have been irrevocably paid, satisfied or discharged in full. MISCELLANEOUS. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws.

This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by the Buyer and its successors and permitted assigns. The Guarantor may not assign this Guaranty in part or in whole without the prior written consent of the Buyer. The Buyer may not assign its rights or benefits under this Guaranty in part or in whole except (i) with the prior written consent of the Guarantor, or (ii) pursuant to a permitted assignment of Agreement (“Assigned Agreement”), in which case the assignee will succeed to the rights of the Buyer hereunder arising after the date of such assignment. Neither the Guarantor nor the Buyer will unreasonably withhold or delay consent to assignment.

This Guaranty embodies the entire agreement and understanding between Guarantor and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

Time is of the essence of this Guaranty. The remedies provided to the Buyer in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_,  
20YY, but it is effective as of the Effective Date.**

[GUARANTOR]

BY:

NAME:

TITLE: