

**FIRST AMENDMENT TO  
POWER PURCHASE AGREEMENT  
(PPA 1)**

This **FIRST AMENDMENT TO POWER PURCHASE AGREEMENT** (this "**Amendment**") is entered into as of August 9, 2010, by and between Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, a Massachusetts corporation (collectively, "**Buyer**"), and Cape Wind Associates, LLC, a Massachusetts limited liability company ("**Seller**"). Buyer and Seller are individually referred to herein as a "**Party**" and are collectively referred to herein as the "**Parties**").

**WHEREAS**, Buyer and Seller are parties to that certain Power Purchase Agreement dated as of May 7, 2010 (designated as PPA 1) (the "**Agreement**") pursuant to which Seller has agreed to sell and deliver, and Buyer has agreed to purchase and receive, Buyer's Percentage Entitlement of the Products during the Services Term (in each case as defined in the Agreement); and

**WHEREAS**, Buyer has submitted the Agreement, and a separate Power Purchase Agreement dated as of May 7, 2010 between Buyer and Seller (designated as PPA 2) ("**PPA 2**") to the Massachusetts Department of Public Utilities in Docket D.P.U. 10-54 in order to obtain the Regulatory Approval required under each of the Agreement and PPA 2; and

**WHEREAS**, the Parties, Martha Coakley, Attorney General of the Commonwealth of Massachusetts and the Massachusetts Department of Energy Resources have entered into a Settlement Agreement dated as of August 4, 2010 (the "**Settlement Agreement**") pursuant to which the Parties agreed to certain modifications to the Agreement; and

**WHEREAS**, this Amendment embodies the modifications to the Agreement described in the Settlement Agreement;

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

1. In the introductory paragraph of the Agreement, the phrase "(this "**Agreement**")" is deleted in its entirety and replaced with "(as amended from time to time in accordance with the terms hereof, this "**Agreement**")."

2. The following definitions are added in the appropriate places in Section 1 of the Agreement:

**"AG"** shall mean the Attorney General of the Commonwealth of Massachusetts and shall include its successors.

**"Determination Date"** shall have the meaning set forth in Section 2.2(f) hereof.

**“Extended Term”** shall have the meaning set forth in Section 2.2(f) hereof.

**“Extension Price”** shall have the meaning set forth in Section 2.2(f) hereof.

**“Extension Regulatory Approval”** means approval by the MDPU of the extension of this Agreement pursuant to Section 2.2(f), which approval shall include without limitation all regulatory authorizations required by the MDPU under then-applicable law, including (i) definitive regulatory authorization providing for the recovery of Buyer’s power purchase costs under this Agreement during the Extended Term through the implementation or continuation of a Power Cost Reconciliation Tariff, (ii) approval of the Purchased Power Accounting Authorization for the Extended Term, and (iii) a definitive regulatory finding that Buyer’s exercise of its right to such extension is prudent and the recovery of the costs incurred under this Agreement through rates is not subject to challenge for the entire Extended Term of this Agreement. Such approvals shall be acceptable in form and substance to Buyer in its sole discretion, shall not include any conditions or modifications that Buyer deems, in its sole discretion, to be unacceptable and shall be final and not subject to appeal or rehearing.

3. Section 2.2(d) of the Agreement is deleted in its entirety and replaced with the following:

(d) At the expiration of the Services Term, the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products delivered prior to such expiration or termination, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, (iii) as set forth in Section 2.2(e), and (iv) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

4. Section 2.2(f) is added to the Agreement, immediately following Section 2.2(e), reading as follows:

(f) Without limiting the rights of Buyer under Section 2.2(e), Buyer shall have the right, exercisable in Buyer’s sole discretion in consultation with the AG, to extend the Services Term and the term during which Buyer is obligated to purchase Buyer’s Percentage Entitlement of the Products from each Phase pursuant to this Agreement for an additional ten (10) years (the **“Extended Term”**), which right shall be exercisable by a written notice from Buyer to Seller not later than ninety (90) days prior to the fourteenth (14<sup>th</sup>) anniversary of the first Partial Commercial Operation Date (the date that is ninety (90) days prior to the fourteenth (14<sup>th</sup>) anniversary of the first Partial Commercial Operation Date is referred to herein as the **“Determination Date”**). In the event that Buyer exercises its right under this Section 2.2(f), (i) the Bundled Price for the Extended Term shall be reset to the “Extension Price” as defined in Exhibit E, which shall remain subject to adjustment for the Forward Capacity Market Payments and Wind

Outperformance Adjustment Credit described in Exhibit E but shall not be subject to annual escalation pursuant to Section 5.1(b) after the fifteenth (15<sup>th</sup>) Escalation Date after the first Partial Commercial Operation Date, and (ii) all other terms and conditions of this Agreement shall remain unchanged. Seller shall provide Buyer written notice of the Extension Price, as described in Exhibit E, no later than one hundred eighty (180) days prior to the Determination Date. Any extension of the Services Term and Buyer's purchase obligation under this Agreement pursuant to this Section 2.2(f) shall be subject to Buyer's receipt of the Extension Regulatory Approval. In the event that the Extension Regulatory Approval is not received within 210 days after the Determination Date, the exercise by Buyer of its right to extend the Agreement under this Section 2.2(f) shall be void and of no further force and effect.

5. Section 4.1(e) of the Agreement is deleted in its entirety and replaced with the following:

(e) Prior to Seller or an Affiliate of Seller entering into a new bilateral agreement or an amendment to an existing agreement to sell any of the output of either the Facility or another offshore wind generating facility within a fifty (50) mile radius from the geographic center of the Facility owned in whole or in part by Seller or an Affiliate of Seller to another Person, Seller shall first take the actions set forth in this Section 4.1(e), as follows:

- (i) Where the term of such agreement is one (1) year or more, Seller shall first offer to Buyer in writing to amend this Agreement to incorporate the terms and conditions of such other agreement or amendment. Buyer shall have twenty (20) days to either: (1) accept all of the terms and conditions of such other agreement or amendment; or (2) accept only the pricing and term provisions included in such other agreement or amendment; or (3) decline all of the terms and conditions of such other agreement or amendment. In the event Buyer chooses either option (1) or (2) above, Seller and Buyer shall amend this Agreement to reflect the accepted terms and conditions and, to the extent Buyer determines such amendment requires MDPU approval or filing, Buyer shall use commercially reasonable efforts to apply for such approval or make such filing in accordance with Section 18. No amendment of this Agreement under this Section 4.1(e)(i) shall affect the quantity of Products to be received and purchased by Buyer under this Agreement.
- (ii) Prior to Seller or an Affiliate of Seller entering into a new agreement to sell any of the output of the Facility or another offshore wind generating facility within a fifty (50) mile radius from the geographic center of the Facility owned in whole or in part by Seller or an Affiliate of Seller to another Person where the term of such agreement is less than one (1) year, Seller or such Affiliate of Seller shall first offer to enter into such agreement for such output with Buyer on the same terms and conditions. Buyer shall have twenty

(20) days to either accept or reject such agreement. In the event Buyer chooses to enter into such agreement, Buyer and Seller or such Affiliate of Seller shall promptly execute such agreement. To the extent Buyer determines such agreement requires MDPU approval or filing, Buyer will use commercially reasonable efforts to apply for such approval or make such filing consistent with Section 18, and such agreement shall not become effective unless and until such MDPU approval is obtained or such MDPU filing is made.

- (iii) If Buyer fails to notify Seller of its choice within twenty (20) days after Buyer's receipt of the offer from Seller or an Affiliate of Seller under clause (i) or (ii) above, Buyer shall be deemed to have elected to decline all of the terms and conditions of such other agreement or amendment. If any required filing with or approval by the MDPU with respect to any amendment or agreement under this Section 4.1(e) as described above is not made or received within one hundred eighty (180) days after Buyer and Seller or an Affiliate of Seller enter into such amendment or agreement, then such amendment or agreement shall be void and of no further force and effect.
- (iv) If Buyer declines to enter into a new agreement or an amendment to this Agreement under this Section 4.1(e) or the MDPU filing or approval relating to such agreement or amendment is not received within one hundred eighty (180) days after Buyer and Seller or an Affiliate of Seller enter into such agreement or amendment, then Seller or such Affiliate of Seller may proceed with the proposed sale of such output of the Facility or such other offshore wind generating facility to another Person under the terms and conditions offered to Buyer.
- (v) This Section 4.1(e) shall only apply to bilateral agreements, and any transactions conducted in ISO-NE's Real-Time or Day-Ahead markets shall not be subject to this Section 4.1(e).

6. Section 4.10 of the Agreement is deleted in its entirety and replaced with the following:

4.10 Reduction of Facility's Nameplate Capacity.

Notwithstanding any other provisions of this Agreement to the contrary, in the event of the termination of that separate Power Purchase Agreement dated as of May 7, 2010 between Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, and Cape Wind Associates, LLC, respecting certain output of the Facility not purchased by Buyer under this Agreement pursuant to Section 8.5 thereof, Seller may then elect not more than once, by written notice delivered to Buyer before the earlier of (x) twenty (20) days after such termination or (y) the first Partial Commercial Operation

Date to occur hereunder, to reduce the nameplate capacity of the Facility so as to be less than the Contract Capacity; provided that Seller may subsequently revise the nameplate capacity from the reduced amount set forth in such notice not more than once, which revision shall be effected by written notice delivered to Buyer prior to the Commercial Operation Date consistent with the provisions of Section 1.b of Appendix X to Exhibit E; provided further that such nameplate capacity may never exceed 468 MW. In such event, the following adjustments shall occur under this Agreement:

- (i) the Contract Capacity hereunder shall be adjusted to mean such reduced MW amount of nameplate capacity of the Facility, as further revised as described above;
- (ii) the Contract Maximum Amount shall be adjusted to mean the lesser of (A) 234 MWh per hour or (B) eighty percent (80%) of the revised Contract Capacity under clause (i) above expressed in MWh per hour; and
- (iii) the Buyer's Percentage Entitlement shall be adjusted to mean the quotient of the revised Contract Maximum Amount under clause (ii) above divided by the revised Contract Capacity under clause (i) above, up to and including such revised Contract Maximum Amount; provided, for the avoidance of doubt, that the adjusted Buyer's Percentage Entitlement shall not in any event exceed eighty percent (80%) of the Products.

Any notice from Seller to Buyer under this Section 4.10 shall include a calculation of the revised Contract Capacity, Contract Maximum Amount and Buyer's Percentage Entitlement and any revised amount of the required Development Period Security and/or Operating Period Security under Section 6.2(f), which calculation shall be subject to approval by Buyer, such approval not to be unreasonably withheld, conditioned or delayed. In no event will any adjustment under this Section 4.10 or under Section 6.2(f) result in any adjustment of any allocation of the Bundled Price per MWh under Section 2 of Exhibit E.

7. Section 6.2(f) of the Agreement is amended to delete the phrase "reduced under Section 4.10" and replace it with "adjusted under Section 4.10."

8. Section 6.5(b) of the Agreement is amended to delete the phrase "paragraph 2.c.ii of Appendix X to Exhibit E" and replace it with "Appendix X to Exhibit E."

9. Section 7.1 of the Agreement is amended to delete the words "Regulatory Approval" in each instance in which such words appear in such section and to replace them with "Regulatory Approval and Extension Regulatory Approval, if applicable."

10. Section 17 of the Agreement is deleted in its entirety and replaced with the following:

## 17. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) delivered by fax or electronic mail (notices sent by fax or electronic mail shall be deemed given upon confirmation of delivery); in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing:

If to Buyer:           Madison N. Milhous  
                                  Director  
                                  National Grid  
                                  100 E. Old Country Road  
                                  Hicksville, NY 11801-4218  
                                  Fax: (516) 545-3130  
                                  Email: [madison.milhous@us.ngrid.com](mailto:madison.milhous@us.ngrid.com)

With a copy to:       Ronald T. Gerwatowski, Esq.  
                                  Deputy General Counsel  
                                  National Grid  
                                  40 Sylvan Road  
                                  Waltham, MA 02451-1120  
                                  Fax: (781) 907-5701  
                                  Email: [ronald.gerwatowski@us.ngrid.com](mailto:ronald.gerwatowski@us.ngrid.com)

And to:                 Jed M. Nosal, Esq.  
                                  Assistant Attorney General  
                                  Massachusetts Office of the Attorney General  
                                  One Ashburton Place  
                                  Boston, MA 02108  
                                  Fax: (617) 727-1047  
                                  Email: [Jed.Nosal@state.ma.us](mailto:Jed.Nosal@state.ma.us)

And to:                 Robert M. Sydney, Esq.  
                                  General Counsel  
                                  Massachusetts Department of Energy Resources  
                                  100 Cambridge Street, Suite 1020  
                                  Boston, MA 02114  
                                  Fax: (617) 727-0030  
                                  Email: [Robert.Sydney@state.ma.us](mailto:Robert.Sydney@state.ma.us)

If to Seller: Christopher Smith  
Chief Financial Officer  
Cape Wind Associates, LLC  
75 Arlington Street  
Boston, MA 02116-3986  
Fax: (617) 904-3109  
Email: [csmith@emienergy.com](mailto:csmith@emienergy.com)

With a copy to: Dennis J. Duffy, Esq.  
Vice President - Regulatory Affairs  
Cape Wind Associates, LLC  
75 Arlington Street,  
Boston, MA 02116-3986  
Fax: (617) 904-3109  
Email: [dduffy@emienergy.com](mailto:dduffy@emienergy.com)

11. Exhibit E to the Agreement is deleted in its entirety and replaced with Appendix A to this Amendment.

12. The usage in this Amendment of terms which are defined in the Agreement is in accordance with the usage thereof in the Agreement.

13. Except as specifically amended hereby, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect, and each of the Parties ratifies and confirms all such terms and provisions. In the event of a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

14. In accordance with Section 18 of the Agreement, this Amendment shall only become effective if it is approved by the MDPU in conjunction with its approval of the Agreement in Docket D.P.U. 10-54.

15. Two or more counterparts of this Amendment may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument. Facsimile signatures hereon shall be deemed to have the same effect as original signatures.

16. Interpretation and performance of this Amendment shall be in accordance with, and shall be controlled by, the laws of the Commonwealth of Massachusetts (without regard to its principles of conflicts of law).

*[Signature Page Follows]*

IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

**MASSACHUSETTS ELECTRIC COMPANY AND  
NANTUCKET ELECTRIC COMPANY, D/B/A NATIONAL GRID**



By:

Name: Richard A. Rapp, Jr.  
Title: Senior Vice President

**CAPE WIND ASSOCIATES, LLC**

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

Name:  
Title:



IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

**MASSACHUSETTS ELECTRIC COMPANY AND  
NANTUCKET ELECTRIC COMPANY, D/B/A NATIONAL GRID**

By: \_\_\_\_\_  
Name: Richard A. Rapp, Jr.  
Title: Senior Vice President

**CAPE WIND ASSOCIATES, LLC**

By: James S. Gordon  
Name: JAMES S. GORDON  
Title: PRESIDENT

Appendix A to First Amendment to  
Power Purchase Agreement (PPA 1)

**EXHIBIT E**

PRODUCTS AND PRICING

1. Payment. Buyer shall, in accordance with the terms of the Agreement and this Exhibit E, with respect to any month, pay to Seller, in immediately available funds, for each MWh Delivered by Seller during such month, the applicable Bundled Price per MWh set forth on Appendix X hereof with respect to the applicable calendar year in which such month occurs (as adjusted pursuant to the applicable provisions of this Exhibit E). In addition, Seller shall, if applicable, provide Buyer with the credit set forth on Appendix Y (the “Wind Outperformance Adjustment Credit”).

2. Allocation of MWh Price. The Bundled Price per MWh for each billing period shall be allocated between Energy and RECs as follows:

RECs = The Massachusetts Class 1 Compliance RECs futures settlement price as published by the Chicago Climate Futures Exchange for the applicable billing period (the “CCFE Index Price”). In the event that the CCFE Index Price is no longer published, the Parties shall in good faith undertake commercially reasonable efforts to agree on a substitute index that reflects the market value of RECs for RPS Class I Renewable Generation Units. Should such a substitute index not be available or if the Parties are unable to agree upon such a substitute index, the RECs will be valued at the “Alternative Compliance Payment Rate” for the RPS published by the DOER for the applicable billing period.

Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Bundled Price per MWh less the RECs allocation determined under this Section 2 for the applicable billing period and less the \$/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section 3 for that billing period.

3. Adjustment to Bundled Price for Forward Capacity Market Payments. The Bundled Price per MWh listed above, as adjusted or escalated pursuant to Section 5.1(b) and this Exhibit E, shall be reduced on a monthly basis by any payments received by or credited to Seller for Buyer’s Percentage Entitlement of Contract Capacity attributable to the Facility (or, prior to the Commercial Operation Date, Buyer’s Percentage Entitlement of the portion of the Contract Capacity attributable to the Phases that have achieved their Partial Commercial Operation Date) sold by Seller in the Forward Capacity Market in the applicable month, which reduction shall not be reduced for any Peak Energy Rents or other penalties incurred by Seller in the Forward Capacity Market. If the Facility (or prior to the Commercial Operation Date the Phases that have

achieved their Partial Commercial Operation Date) has (or have) not qualified as a Capacity Resource or received a Capacity Supply Obligation for the relevant Capacity Commitment Period, Buyer shall calculate the reduction due under this Section 3 assuming that the Facility (or prior to the Commercial Operation Date such Phases) had qualified as a Capacity Resource and received a Capacity Supply Obligation, based on information obtained from Seller and publicly available information from ISO-NE, which calculation shall be binding, absent manifest error. Seller shall use commercially reasonable efforts to cooperate with Buyer in calculating this reduction.

## Appendix X to Exhibit E

### **Bundled Price per MWh**

The “**Bundled Price**” per MWh for Energy, Capacity and RECs shall be determined as set forth in this Appendix X to Exhibit E and shall be subject to adjustment for Forward Capacity Market payments as set forth in Section 3 of Exhibit E and for the Wind Outperformance Adjustment Credit as set forth in Appendix Y to Exhibit E (collectively, the “**Adjustments**”). The Bundled Price shall be equal to the lesser of (A) the Base Price, adjusted to the Tax Credit Adjusted Price, further adjusted to the Financing Adjusted Price, or (B) the Cost Adjusted Price, each as determined below. Subject to Section 5.1(b), the Bundled Price per MWh shall escalate by a factor of 3.5% on each Escalation Date.

1. The “**Base Price**” per MWh for Energy, Capacity and RECs shall be \$187 per MWh of Energy Delivered, commencing in 2013, if the Facility’s projected nameplate capacity (“**Projected Nameplate Capacity**”) is 468 MW, subject to the following.
  - a. In the event that the Facility’s Projected Nameplate Capacity is less than 468 MW (as provided in Section 4.10 of the Agreement), the Base Price for 2013 shall be increased by \$0.0833 for each MW of Projected Nameplate Capacity by which the Facility is reduced below 468 MW, provided that in no event will the Base Price be increased to more than \$193 per MWh of Energy delivered for 2013. In the case of any such increase in the Base Price, the Base Price will be rounded to the nearest whole cent.
  - b. At least ninety (90) days prior to the first Partial Commercial Operation Date, Seller shall notify Buyer in writing of the Projected Nameplate Capacity of the Facility, which notice shall be binding upon Seller for all purposes of this Appendix X. Seller may revise the Projected Nameplate Capacity from the amount provided in such notice not more than once prior to the Commercial Operation Date by written notice to Buyer, and in the event of such revision to the Projected Nameplate Capacity, in addition to the provisions of Section 4.10 of the Agreement, the Base Price and the Bundled Price shall be revised accordingly as of the date of such written notice. In no event shall the actual nameplate capacity of the Facility exceed the Projected Nameplate Capacity included in any such notice from Seller without the written consent of Buyer to such increase. Seller shall also notify Buyer promptly after making any decision to limit the Projected Nameplate Capacity of the Facility to less than 468 MW.

The Parties acknowledge that, while the calculation of the Base Price in this Section 1 was based on the assumption that Seller would construct the Facility using between 110 and 130 wind turbine generators, each with a nameplate capacity of 3.6 MW, Seller is not required by this Agreement to use any particular size or model of wind turbine generator in the Facility. Seller will provide written notice to Buyer promptly after selecting the size(s) and model(s) of wind turbine generators to be used in the Facility.

2. The Base Price described in paragraph 1 above will be adjusted to reflect the Facility's qualification for the ITC and/or the PTC, which adjusted price is referred to as the "**Tax Credit Adjusted Price**," which will be determined as follows:
- a. If the Facility is placed in service on a date when the Facility qualifies for the ITC, regardless of whether Seller or any direct or indirect holder of an equity interest in Seller (an "**Equityholder**") actually claims the ITC for the Facility, the Tax Credit Adjusted Price shall be equal to the Base Price.
  - b. If the Facility is not placed in service on a date when the Facility qualifies for the ITC, but the Facility is placed in service on a date when the Facility qualifies for the PTC, regardless of whether Seller or any Equityholder actually claims the PTC for the Facility, then the Tax Credit Adjusted Price will be equal to the Base Price multiplied by 1.10145.
  - c. If the Facility is placed in service on a date when the Facility qualifies for neither the ITC nor the PTC, the Tax Credit Adjusted Price will be equal to the Base Price multiplied by 1.13526.
  - d. If the Facility qualifies for the ITC or the PTC after the date on which the Facility is placed in service, then the following provisions shall apply:
    - i. regardless of whether Seller or any Equityholder actually claims the ITC or the PTC, beginning with the month immediately following the month in which the Facility prospectively qualifies for the ITC or the PTC, the Tax Credit Adjusted Price will be decreased to the price reflecting such qualification, as described in 2(a) and 2(b) above, for the remainder of the Term; and
    - ii. (x) if the Facility qualifies for the ITC or the PTC retroactively prior to, or within the first twelve (12) months after, the Commercial Operation Date, regardless of whether Seller or any Equityholder makes such a retroactive claim for the ITC or the PTC, then beginning with the month immediately following the month in which the Facility retroactively qualifies for the ITC or the PTC, Buyer will offset against amounts due to Seller, pursuant to Section 5.2(d), an amount equal to (1) the difference between (A) the Bundled Price previously paid by Buyer for the Products generated during the period to which such retroactive qualification applies (the "**Retroactive Period**") and (B) the Bundled Price reflecting such ITC or PTC qualification *times* (2) the MWh of Energy Delivered to Buyer during the Retroactive Period, which offset shall continue until all of such amount has been offset by Buyer, and if the Agreement is terminated prior to the full recovery of such amounts, Seller shall pay to Buyer the amount of any shortfall within thirty (30) days after such termination; or

- (y) if the Facility qualifies for the ITC or the PTC retroactively after the first twelve (12) months after the Commercial Operation Date, and Seller or any Equityholder realizes the ITC or the PTC, then the offset and/or payment provisions of Section 2.d.ii(x) will be effected beginning with the month immediately following the month in which the Facility retroactively qualified for, and Seller or such Equityholder became eligible to realize, the ITC or the PTC.
- iii. To the extent that any change is made to the Tax Credit Adjusted Price pursuant to this Section 2.d after the Commercial Operation Date, a corresponding change will be made to the Bundled Price.
- e. Pursuant to Section 3.3 of this Agreement, to the extent that the Facility is placed in service over time such that the ITC and/or the PTC applies to only certain Phases, the Tax Credit Adjusted Price will be adjusted to a blended price reflecting the Phases that qualify for the ITC and/or the PTC and the Phases that qualify for neither the ITC nor the PTC, calculated based on the number of wind turbine generators that qualify for the ITC and/or the PTC.
- f. Notwithstanding the foregoing, any increase in the Base Price in order to determine the Tax Credit Adjusted Price shall apply only to those Phases that are placed in service, for purposes of the ITC and the PTC, within two years and six months after the closing of Financing sufficient for Seller to proceed with the construction of the Facility, which date may be extended for up to an additional twelve (12) months to account for any period between such closing and the date on which the applicable Phases are placed in service during which a Force Majeure exists, subject in all cases to Article 10 of the Agreement (the “**Price Deadline**”). For the avoidance of doubt, the Tax Credit Adjusted Price for Products generated by all Phases that are placed in service after the Price Deadline shall be equal to the Base Price, subject to the terms of this Agreement.
3. The Tax Credit Adjusted Price may be further reduced, but shall not be increased, to reflect any reduction in debt financing costs realized by the Seller (such adjusted price is referred to herein as the “**Financing Adjusted Price**”), giving effect only to the Debt Financing for the Facility that has been effected as of the time of the initial calculation of the Bundled Price. The Financing Adjusted Price shall be equal to the Tax Credit Adjusted Price, reduced to reflect seventy five percent (75%) of the Buyer’s Percentage Entitlement of the “Net After Tax Benefit,” and the “**Net After Tax Benefit**” shall be equal to the reduced annual payment obligations of Seller for each year of the Term, on an after-tax basis assuming a thirty five percent (35%) tax rate, resulting from Seller’s ability to obtain Debt Financing at an effective weighted average interest rate (taking into account all financing fees and points paid with respect to that Debt Financing) of less than 7.5% per annum. For example, if the effective weighted average interest of the Debt Financing is equal to 5.0%, the Net After Tax Benefit would be calculated for each

year as  $((7.5\% - 5.0\%) * (1-35\%) * \text{average monthly amount of Debt Financing in that year})$ . For purposes of calculating the Financing Adjusted Price, (i) **“Debt Financing”** includes any indebtedness, including without limitation loans, note or bond issuances, convertible debt (prior to its conversion to equity) and/or sale leaseback transactions and any other Financing that would be recorded as indebtedness under generally accepted accounting principles in the United States at the time or as classified as liabilities by a nationally recognized rating agency (including any refinancing of that Debt Financing), (ii) the Facility will be assumed to have the nameplate capacity equal to the Projected Nameplate Capacity provided to Buyer by Seller under Section 1 above, and (iii) the Facility will be assumed to have a 37.1% net capacity factor for the entire Services Term. Seller shall notify Buyer promptly after receiving any information regarding availability, eligibility or qualification for any Federal loan guarantees or other governmental subsidies or incentives.

4. Notwithstanding the foregoing, in no event will the Bundled Price per MWh for Energy, Capacity and RECs during the initial Services Term (but not during the Extended Term) exceed the **“Cost Adjusted Price”**. The Cost Adjusted Price shall be equal to the Bundled Price that would yield the forecasted net revenue stream required in order for Seller to realize a 10.75% IRR, calculated to reflect cash flows as realized or as projected to be realized on the Costs incurred by Seller in constructing the Facility over the entire Services Term (without giving effect to any Extended Term) (the **“IRR Price”**), plus the additional price amount required to increase the Seller's IRR at the Finance Adjusted Price by 40% of the amount by which that IRR exceeds 10.75%, assuming a thirty five percent (35%) tax rate. For example, if Seller could control the actual project costs for the Facility so as to result in a projected IRR of 11.75%, the otherwise applicable Bundled Price would be adjusted downward so that the calculated IRR would be 11.15%. The Cost Adjusted Price shall be calculated once (subject to the last sentence of Section 4.c below), in connection with the initial calculation of the Bundled Price. For purposes of calculating the Cost Adjusted Price:
  - a. **“Costs”** shall mean, in connection with the construction and operation of the Facility, without duplication: (i) costs incurred in connection with development (including meteorology studies, geological and geophysical studies, preliminary design and engineering, permitting, transmission interconnection, and commercial and legal activities); (ii) costs incurred for engineering, procurement, and construction (EPC) (including project management and inspection, detailed engineering and design, labor, supervision, tools, construction equipment, materials, components, supplies, transportation, services and subcontracts); (iii) costs incurred to re-perform defective work; (iv) costs incurred to perform warranty work; (v) sales and use taxes on goods and equipment purchased in connection with the work; (vi) costs of insurance; (vii) Taxes or other fees; (viii) costs to interconnect to the Delivery Point; (ix) the costs of Financing (including closing costs, legal and advisory fees, and interest accumulated in connection with construction); and (x) any capitalized costs of the Facility as determined in accordance with generally accepted accounting principles in the United States and

the Internal Revenue Code, including all regulations promulgated pursuant thereto.

- b. **“IRR”** shall mean that rate of return, compounded on an annual basis, at which (i) the present value of all payments made to Seller for Energy, Capacity and RECs generated by the Facility over the Services Term (not giving effect to any Extended Term), less (ii) the present value of all Costs and reasonably forecasted Operating Costs (defined in Section 5 below) over the Services Term incurred or expected to be incurred by Seller, is equal to zero.
  - c. The price attributable to any Energy, Capacity and RECs generated by the Facility and sold pursuant to a contract with a term of one (1) year or more shall be the price at which such Energy, Capacity and RECs are sold under such contract (including without limitation this Agreement), and the price attributable to any Energy, Capacity and RECs generated by the Facility and either not sold pursuant to a contract or sold pursuant to a contract with a term of less than one (1) year (**“Uncontracted Products”**) shall be deemed to be the arithmetic mean of three (3) forward price assessments for Products prepared by non-affiliated third party experts in the industry (the **“Merchant Calculation”**). One expert shall be selected by each of Buyer and Seller, in their sole discretion, and such experts shall then jointly select a third expert; provided, however, such experts shall have at least ten (10) years experience in the energy industry and shall not have been employees of Buyer or Seller and/or any Affiliates thereof (the **“Third Party Experts”**). The Third Party Experts shall calculate the Merchant Calculation based upon products substantially similar to the Products from the Facility, assuming the same or substantially similar Product term, availability and/or output, additional transmission charges, and credit enhancements as found in this Agreement. Seller shall pay the reasonable costs of the Third Party Experts. Notwithstanding the foregoing, Seller shall notify Buyer of any good faith negotiations for a contract for any Uncontracted Products from time to time prior to the initial calculation of the Bundled Price, and in the event that Seller enters into an agreement for the sale of any Uncontracted Products with a term of one (1) year or more within six (6) months after the calculation of the Cost Adjusted Price, the Cost Adjusted Price and the Bundled Price will be recalculated to reflect such agreement.
  - d. The Facility will be assumed to have the nameplate capacity equal to the Projected Nameplate Capacity provided to Buyer by Seller under Section 1 above and a 37.1% net capacity factor for the entire Services Term.
5. In the event that Buyer exercises its right under Section 2.2(f) of the Agreement to extend the Services Term and its purchase obligations for each Phase under the Agreement for an additional ten (10) years, the Bundled Price shall be reset to the **“Extension Price”**, which shall be equal to an amount such that, based on a capacity factor for the Facility that is equal to the historic capacity factor for the Facility beginning one year after the



Commercial Operation Date, Seller could recover through the Extended Term an amount equal to the sum of (i) the reasonably projected costs of the Facility in each year (such as operating and maintenance costs, unrecovered reserves for decommissioning costs, taxes and any other reasonably projected expenses of the Project, collectively “**Operating Costs**”) expected to be incurred by Seller during the Extended Term, plus (ii) a return (taking into account any projected invoice credits or refunds to Seller) calculated as a weighted average cost of capital that is equal to the return that is generally available to investors in alternative investments of comparable risk, as certified by a qualified independent expert mutually agreed upon by Seller and the AG and multiplied by the total assets reflected on the financial statements of Seller (i.e., Book Assets) at the Determination Date, calculated in accordance with generally accepted accounting principles in the United States at the time. Seller shall certify the Extension Price to Buyer and the AG at least one hundred eighty (180) days prior to the Determination Date in sufficient detail to permit Buyer and the AG to verify all components of the Extension Price, which certification shall include reasonable supporting documentation to confirm all components of the Extension Price. Seller will cooperate in good faith with Buyer and the AG to respond to any questions or information requests in order reasonably to permit them to evaluate Seller’s proposed Extension Price.

6. The Bundled Price during the initial Services Term (but not during any Extended Term) shall be verified by an independent third party retained by the AG (the “**Verification Agent**”) according to the procedure set forth in this Section 6. If requested by the AG, Seller shall pay the reasonable costs of the Verification Agent in performing its functions under this Appendix X to Exhibit E.
  - a. Seller shall, within ninety (90) days after the Commercial Operation Date or as soon thereafter as is practical and within ninety (90) days after any event requiring a recalculation of the Bundled Price (including any component thereof), certify the Bundled Price, including each component thereof set forth above, to the Verification Agent in sufficient detail to permit the Verification Agent to verify all components of the Bundled Price, which certification shall include reasonable supporting documentation to confirm all components of the Bundled Price.
  - b. As soon as practical and in any event within thirty (30) days of receipt of Seller’s certification, the Verification Agent shall issue a draft report to Seller (the “**Draft VA Report**”) confirming Seller’s certification or identifying any amounts or calculations of the Bundled Price that the Verification Agent disputes. The Verification Agent may dispute an amount or calculation based solely on one of the following reasons:
    - i. The amount is inaccurately stated;
    - ii. The amount is not supported by documentation; or
    - iii. Arithmetic or summation errors in calculations.

- c. Upon receipt of the Draft VA Report, Seller, the Verification Agent and the AG shall promptly meet to resolve any discrepancies. Following resolution of any discrepancies, the Verification Agent shall issue a final report of the Bundled Price (the “**Final VA Report**”) and shall deliver such Final VA Report to the AG and Seller. Any dispute about the Final VA Report shall be resolved before the MIDPU, and Buyer and the AG shall each have the right to intervene as a party in any such proceeding.
  - d. Upon receipt of the Final VA Report, the AG shall notify Buyer of the Bundled Price, and Buyer will thereafter pay Seller such Bundled Price, subject to the Adjustments and subject to Section 2.d.iii of this Appendix X to Exhibit E.
  - e. Until such time as the AG has accepted the Final VA Report, Buyer will pay Seller the Base Price or the effective Bundled Price at the time, subject in each case to the Adjustments. Following the issuance of the Final VA Report and acceptance of the Final VA Report by the AG, Seller shall provide Buyer with a reconciliation of payments actually made to Seller and payments that would have been made to Seller had the Bundled Price as described in the Final VA Report been established as of the first Partial Commercial Operation Date or, upon a recalculation of the Bundled Price, upon the occurrence of the event giving rise to the need for such recalculation. Any amount owed Seller or Buyer as a result of the reconciliation shall be paid to the other Party in accordance with the billing and payment terms of the Agreement, together with interest on such amount accruing at the Collateral Interest Rate.
7. In the event that any Phase achieves its Partial Commercial Operation Date in 2012, the Bundled Price for all Products Delivered by such Phase in 2012 shall be the applicable Bundled Price at the time under this Appendix X, reduced by 3.5%.

## Appendix Y to Exhibit E

### **Wind Outperformance Adjustment Credit**

1. The notice delivered under Section 3.1(b) notifying Buyer that Commercial Operations has occurred shall set forth the as-built nameplate generating capacity of the Facility (the "**Actual Nameplate Capacity**").
2. Commencing after the Commercial Operation Date, Seller shall establish and maintain records of the following accounts as of the end of each Contract Year:
  - (a) The Target Production Account, which shall set forth (i) for each Contract Year, an amount (the "**Annual Production Target**"), measured in MWh, equal to the product of (w) the Actual Nameplate Capacity; (x) 8760 hours, (y) a target net capacity factor of 37.1% and (z) Buyer's Percentage Entitlement; and (ii) as of the end of each Contract Year; the cumulative aggregate of all Annual Production Targets during the Services Term, through such date (the "**Aggregate Production Target**"); and
  - (b) The Actual Production Account, which shall set forth (i) for each Contract Year, the quantity of Product, measured in MWh, Delivered to Buyer (the "**Actual Annual Production**"); and (ii) as of the end of each Contract Year, the cumulative aggregate of all Actual Annual Production during the Services Term, through such date (the "**Aggregate Actual Production**").
3. If, as of the end of any Contract Year following the Contract Year in which the Commercial Operation Date occurs, the Aggregate Actual Production exceeds the Aggregate Production Target, as adjusted pursuant to the last sentence of this paragraph (the "**Production Surplus**"), then Seller shall calculate the quantity of Product equal to 50% of such Production Surplus and shall credit such quantity (the "**Wind Outperformance Adjustment Credit**") to Buyer in the next billing cycle, without charge (carrying over any unused credit to subsequent billing cycles if necessary). The amount of any Production Surplus as of the end of any future Contract Year shall be adjusted by deducting the cumulative aggregate Production Surplus from all prior Contract Years (the "**Aggregate Prior Surplus**").
4. Notwithstanding the foregoing, Seller shall not have any obligation to credit any quantity of Product to Buyer, or to make any payment in respect of any surplus in the Aggregate Actual Production over the Aggregate Production Target as of the last Contract Year of the Services Term.