***UI DRAFT [DATE]***

**MASTER WHOLESALE POWER SUPPLY AGREEMENT**

**between**

**THE UNITED ILLUMINATING COMPANY**

**and**

**[Seller]**

**Dated as of**

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**

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**MASTER WHOLESALE POWER SUPPLY AGREEMENT**

This MASTER WHOLESALE POWER SUPPLY AGREEMENT (along with all Transaction Confirmations (as defined below) and the Schedule and Appendices attached hereto, this “***Agreement***”) dated as of [\_\_\_\_\_\_\_\_\_\_\_\_],YEAR (the “***Effective Date***”), is made and entered into by and between The United Illuminating Company, a specially chartered Connecticut corporation (“***UI***”), and, [SELLER], a [STATE] [COMPANY TYPE] (“***Seller***”). UI and Seller are hereinafter sometimes referred to individually as a “***Party***” and collectively as the “***Parties***.”

WITNESSETH THAT:

WHEREAS, UI is an electric distribution company engaged in the purchase, transmission, distribution and sale of electricity in the State of Connecticut. UI is principally engaged in providing distribution and transmission services and offering bundled electricity service;

WHEREAS, UI is required by CGS § 16-244c to provide full requirements electric service for the period commencing January 1, 2007 to any retail customer in its service territory who is eligible for and is taking UI’s Retail Service (as defined below), pursuant to the tariffs to be filed with and approved by the Connecticut Public Utilities Regulatory Authority (“***PURA***”); and

WHEREAS, UI and Seller desire that, pursuant to the terms and conditions of this Agreement, Seller shall be responsible to provide, and UI shall receive and pay for, full requirements electric service (as more fully set forth in this Agreement) to enable UI to satisfy its Retail Service electric service obligations to its customers.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, UI and Seller agree as follows:

ARTICLE ONE: Definitions

Whenever used in this Agreement, the following words and terms with initial letters capitalized shall have the following meanings. Capitalized terms used in this Agreement and not defined herein shall have the meanings ascribed to them in the Restated NEPOOL Agreement, ISO Tariff, ISO Manuals and Participants Agreement, or by ISO. Unless otherwise specified herein, any subsequent changes that affect or alter such definitions shall be expressly incorporated into the definitions in this Agreement.

* 1. “*Affiliate*” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Person. 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.
	2. “*Agreement*” has the meaning given in the opening paragraph of this Agreement.
	3. “*Amended Transaction Confirmation*” has the meaning given in Section 3.3(d)(v).
	4. “*ARR*” means Auction Revenue Rights.
	5. “*Bankruptcy Event*” means with respect to any Person, such Person (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or applies for the appointment of a trustee or custodian, liquidator or receiver of it or a substantial part of its assets or otherwise commences, authorizes or acquiesces in the commencement of any case or other proceeding or cause of action under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar Law of any jurisdiction now or hereafter in effect or takes any action to authorize or in furtherance of the foregoing for the protection of creditors, or if any such petition or application shall be filed against it, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.
	6. “*Business Day*” means a day, other than a Saturday or Sunday, on which commercial banks are not authorized or required to be closed in New York, New York.
	7. “*Capacity Settlement*” means the settlement approved by the FERC in Docket Nos. ER03-563-030 and ER03-563-055, *Devon Power LLC*, 115 FERC ¶ 61,340 (2006), and subsequent order or orders of the FERC on rehearing and addressing filings to the FERC implementing the subject matter of the settlement, including, but not limited to, submissions in Docket Nos. ER06-1465-000, ER07-546-000 and ER07-547-000, or any subsequent modification of the locational installed capacity mechanisms.
	8. “*Cash*” has the meaning given in the Credit Support Annex.
	9. “*CGS*” means the Connecticut General Statutes, as may be amended from time to time.
	10. “*Claim*” or “*Claims*” means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement. In Section 6.1, Claim or Claims is limited to a Person other than a Party to this Agreement.
	11. “*Connecticut Load Zone*” means the Connecticut load zone, currently “LOAD ZONE ID 4004,” Load Zone Description “.Z.CONNECTICUT,” as may be redesignated from time to time.
	12. “*Costs*” has the meaning given in Section 10.2(d).
	13. “*Credit Rating*” means, with respect to any Person, the rating then assigned to such Person’s senior unsecured long‑term debt (not supported by third party credit enhancements) by S&P, Moody’s or Fitch.
	14. “*Credit Requirements*” means Seller’s Credit Requirements with respect to Seller and UI’s Credit Requirements with respect to UI.
	15. “*Credit Support Annex*” means the Credit Support Annex attached hereto as Appendix C.
	16. “*Currently Mandated RPS*” has the meaning given in Section 2.1(j).
	17. “*Customers*” means the customers of UI that purchase Retail Service.
	18. “*Default Rate*” means, for any date, two percent (2%) over the per annum rate of interest equal to the prime lending rate as published in the final Eastern edition of The Wall Street Journal under “Money Rates” on such date; provided, however, the Default Rate shall never exceed the maximum rate permitted by Law.
	19. “*Defaulting Party*” has the meaning given in Section 10.1.
	20. “*Delivered Energy*” means the quantity of Energy delivered by UI to the Transaction Customers as measured at such customers’ meters and estimated in accordance with the Estimation Process and as thereafter adjusted for true‑up in accordance with Section 6.2.
	21. “*Delivery Point(s)*” has the meaning given in Section 2.3.
	22. “*Delivery Term*,” with respect to a particular Transaction, has the meaning given in the applicable Transaction Confirmation.
	23. “*Dispute*” has the meaning given in Section 12.1.
	24. “*Due Date*” has the meaning given in Section 7(b).
	25. “*Early Termination Date*” has the meaning given in Section 10.2(a).
	26. “*Effective Date*” means the date set forth in the opening paragraph of this Agreement.
	27. “*Energy*” means power produced in the form of electricity measured in kilowatt hours or megawatt hours.
	28. “*EPT*” means Eastern Prevailing Time.
	29. “*Estimation Process*” means the process for estimating the amount of Delivered Energy provided by Seller, as further described in Schedule 1.
	30. “*Event of Default*” has the meaning given in Section 10.1.
	31. “*FERC*” means the Federal Energy Regulatory Commission or its successor.
	32. “*Fitch*” means Fitch Inc. or its successor.
	33. “*Force Majeure*” means any cause, event, condition or circumstance beyond a Party’s reasonable control, including storm, flood, lightning, drought, earthquake, fire, explosion, civil disturbance, terrorist act, labor dispute, act of God or public enemy or action of a court, public authority or other governmental body; provided, however, that a cause, event, condition or circumstance shall be deemed to constitute a Force Majeure only to the extent that the cause, event, condition or circumstance (a) adversely affects the availability of the PTF or its operation such that the delivery of some or all of the Energy to be delivered to UI at the Delivery Point(s) is not made, (b) adversely affects the availability of the electrical distribution and transmission system of UI utilized to deliver electric service to its retail customers (but excluding UI’s portion of the PTF) such that the delivery of Energy by UI to some or all of the Transaction Customers is not made, (c) causes a diminution in the Energy available such that load shedding measures are implemented resulting in Energy deliveries not being made to the Transaction Customers, or (d) prevents the financial institution of a Party from transferring or receiving funds electronically. A cause, event, condition or circumstance that (i) affects the availability of, or the cost of generating, Energy at any particular electric generating facility, (ii) affects the availability of any specific transmission line, or the cost of transmitting electricity, or (iii) merely causes an economic hardship to either Party, shall not be deemed a Force Majeure. Without limiting the foregoing and for the sake of clarity, congestion shall not be deemed a Force Majeure.
	34. “*Gains*” has the meaning given in Section 10.2(d).
	35. “*GAAP*” means United States generally accepted accounting principles applied on a consistent basis.
	36. “*Good Utility Practices*” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the geographic region covered by the North American Electric Reliability Council, or any successor entity, during the relevant time period, or any of the practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices or methods generally accepted in the region.
	37. “*Guarantor*” means the Seller but only at such time it receives a Credit Rating of at least BBB-, as determined by S&P or Fitch, or Baa3 as determined by Moody’s.[\_\_\_\_\_\_\_\_\_\_\_\_] corporation. [*Insert name of the Affiliate of Seller providing a guaranty of Seller’s obligations under this Agreement, including but not limited to, establishing and maintaining of the Seller’s Credit Requirements.*]
	38. “*Guaranty*” has the meaning given in the Credit Support Annex.
	39. “*Interest Rate*” has the meaning given in the Credit Support Annex.
	40. “*Internal Hub*” means the group of Nodes identified by ISO as “Location ID 4000” in the ISO reporting system as of the Effective Date or, if not identified by ISO as of the Effective Date, the Node or group of Nodes that provides equivalent pricing for Energy in New England.
	41. “*ISO*” means ISO New England Inc., the private, non-profit entity that serves as the regional transmission organization for New England, or any successor or replacement organization(s), including but not limited to, an independent transmission company.
	42. “*ISO Administrative Tariff*” means Section IV of the ISO Tariff pertaining to recovery of administrative, operating, maintenance and other costs of ISO, or any successor or replacement section, on file at the FERC and in effect from time to time.
	43. “*ISO Administrative Tariff Charges*” are the charges for any and all of the ISO services identified in or covered by Schedules 2 and 3 of the ISO Administrative Tariff, or any successor or replacement schedule(s) on file at the FERC and in effect from time to time.
	44. “*ISO Manuals*” means those manuals posted on the ISO website (www.iso-ne.com) that explain and implement the rules and procedures for the region’s wholesale electric power markets and bulk power system.
	45. “*ISO Tariff*” means the ISO Transmission, Markets and Services Tariff or any successor or replacement tariff on file at the FERC and in effect from time to time.
	46. “*Last Resort Service*” means supplier of last resort service offered by UI as required by CGS § 16-244c(e), as the same may be amended from time to time.
	47. “*Law*” means any law, rule, regulation, order, writ, judgment, decree, executive order or official interpretation thereof or other legal or regulatory determination by a court, regulatory or administrative agency, commission or governmental authority of competent jurisdiction, as the case may be.
	48. “*Legal Proceedings*” means any suit, action, proceeding, judgment, award, ruling or order by or before any court, governmental authority or arbitrator(s).
	49. “*Letter of Credit*” means one or more irrevocable, transferable standby letters of credit issued by a Qualified Institution. Any such Letter of Credit shall be payable at an office in New York City, and all costs of such Letter(s) of Credit shall be borne by the applicant therefor.
	50. “*LMP Differential*” means the sum during the billing period of the load-weighted hourly positive or negative differentials between the Congestion Component and the Loss Component of the ISO-calculated Day Ahead Locational Marginal Prices (the “*LMP*”) for the Delivery Point and Internal Hub, calculated as follows:

*Σi (((CCTi – CHubi) + (LCTi – LHubi)) x RTLi)*; where:

*CCTi* = the Congestion Component of the LMP for the Delivery Point for hour “i” (the Connecticut Load Zone or other point as applicable);

*CHubi* = the Congestion Component of the LMP for the Internal Hub for hour “i”;

*LCTi* = the Loss Component of the LMP for the Delivery Point for hour “i” (the Connecticut Load Zone or other point as applicable);

*LHubi* = the Loss Component of the LMP for the Internal Hub for hour “i”; and

*RTLi* = the hourly real time load(s) for hour “i” assigned to the Transaction Load.

The LMP Differential shall be applicable only to Scenario B Transactions.

* 1. “*Losses*” has the meaning given in Section 10.2(d).
	2. “*Market-Based Rate Authorization*” means the FERC authorization to sell Energy, capacity, Ancillary Services and/or other products at wholesale at market-based rates.
	3. “*Market Products*” means any capacity, all ancillary services (including regulation and frequency response service and operating reserves), locational capacity and/or deliverability requirements, forward reserves and locational forward reserves,as specifically discussed in the Rules, and any other product, service, obligation, or ancillary service that is or may be required by the Rules to serve load subsequent to the Effective Date. The term “Market Products” also includes any and all additional obligations or other costs associated with ownership of the Load Asset during the Term resulting from any change in the Rules that may be implemented or in effect during the Term relating to the wholesale markets administered by ISO that impose or assess additional obligations or other costs on the owner of the Load Asset.
	4. “*Market Rules*” means any market rules, manuals or procedures adopted by ISO for the administration of electric Energy, capacity and Ancillary Services markets in New England, or successor or replacement rules, manuals or procedures, on file at the FERC and in effect from time to time.
	5. “*Material Adverse Change*” means any event, change or effect, or series of related events, changes or effects, individually or in the aggregate, that (a) has been or that could reasonably be expected to be materially adverse to the business, operations, results of operations, affairs, condition (financial or otherwise), assets or properties of a Party, taken as a whole, or otherwise impair the ability of a Party to perform its obligations under this Agreement, or (b) has prevented or materially delayed or impaired the ability of a Party to consummate the transactions contemplated by this Agreement or would reasonably be expected to have such effect(s). “Material Adverse Change,” however, shall not include any of the foregoing caused by, arising out of, related to, or otherwise attributable to: (i) changes in general economic or political conditions or in prices, products, industry capacity or other matters having industry-wide application; (ii) any continuation of an adverse trend or condition; (iii) any change in Law (except with regard to section 3.3(d)(v)) or GAAP; (iv) any increases in energy, electricity, raw materials or other operating costs; (v) any change in financial condition or results of operation of a Party resulting from the announcement of the execution of this Agreement; or (vi) any actions to be taken pursuant to this Agreement.
	6. “*Minimum Guaranty Amount*,” with respect to a particular Transaction, has the meaning given in the applicable Transaction Confirmation.
	7. “*Moody’s*” means Moody’s Investor Services, Inc. or its successor.
	8. “*Negotiation Period*” has the meaning given in Section 3.3(d)(v).
	9. “*Negative Credit Watch*” has the meaning given in the Credit Support Annex.
	10. “*NEPOOL*” means the New England Power Pool or any successor or replacement organization(s).
	11. “*Non‑Defaulting Party*” has the meaning given in Section 10.1(b).
	12. “*NYMEX*” means the New York Mercantile Exchange.
	13. “*Partial Rejection*” has the meaning given in Section 3.3(d)(i).
	14. “*Participants Agreement*” means the “Participants Agreement among ISO as the Regional Transmission Organization for New England and NEPOOL and entities that are from time to time parties hereto constituting the Individual Participants,” dated as of February 1, 2005, as may be amended from time to time, or any successor thereto accepted by the FERC.
	15. “*Parties*” and “*Party*” have the meanings given in the first paragraph of this Agreement.
	16. “*Performance Assurance*” means collateral in the form of (a) Cash, (b) Letters of Credit or, at the option of the Party entitled to the collateral, a guaranty of the obligations of the Party required to provide the collateral hereunder by an Affiliate of that Party, which Affiliate shall meet such Party’s Credit Requirements, or (c) any other form proposed by the Party required to provide the collateral and acceptable to the Party entitled to the collateral.
	17. “*Person*” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.
	18. “*PTF*” means the facilities categorized as “Pool Transmission Facilities” in the ISO Tariff at the Effective Date and such other facilities as may in the future be designated as “Pool Transmission Facilities.”
	19. “*PURA*” has the meaning given in the preamble to this Agreement, and its successors.
	20. “*Qualified Institution*” means an independent, major U.S. commercial bank or a foreign bank with a U.S. branch office which has assets of at least ten billion dollars ($10,000,000,000) and a credit rating of at least “A” by S&P or “A2” by Moody’s.
	21. “*Receivable Amount*” has the meaning given in Section 10.2(a).
	22. “*Reliability Agreements*” means those contracts negotiated under the Rules and entered into between ISO and Resources located within the Connecticut Load Zone and which contracts are accepted by and on file at the FERC.
	23. “*Renewable Portfolio Standards*” means the requirements of Law, including CGS §§ 16-243q, 16-244c and 16-245a,and as may be amended from time to time, requiring that portions of electric supply be provided from certain renewable energy resources, as defined by Law, and which requires that UI’s contracts with its Retail Service suppliers include a provision that obligates such suppliers to meet these requirements mandated under Law or make a payment upon failure to meet the requirements.
	24. “*Representatives*” has the meaning given in Section 6.1.
	25. “*Responsible Officer*” means the president, executive vice president or chief financial officer of a Party, its parent or its Guarantor.
	26. “*Restated NEPOOL Agreement*” means the Second Restated New England Power Pool Agreement effective February 1, 2005, as amended, or any successor or replacement agreement on file at the FERC and in effect from time to time.
	27. “*Retail Service*” means Standard Service and/or Last Resort Service.
	28. “*Rules*” means the Participants Agreement, Restated NEPOOL Agreement, the ISO Tariff, the ISO Manuals and the Market Rules, or successor or replacement agreements, tariffs, manuals or rules, in effect from time to time.
	29. “*Scenario A*,” with respect to a particular Transaction, means that the Seller assumes all risk for the price of Energy at the Delivery Point(s).
	30. “*Scenario B*,” with respect to a particular Transaction, means that UI will reimburse the Seller for the LMP Differential applicable to the Transaction Load if the LMP Differential is positive, and that Seller will reimburse UI for the LMP Differential applicable to the Transaction Load if the LMP Differential is negative. Under a Scenario B Transaction, Seller will reimburse UI for the ARR proceeds applicable to the Transaction Load.
	31. “*SEC*” means the U.S. Securities and Exchange Commission.
	32. “*Seller*” means the entity identified in the first paragraph of this Agreement, and its successors and permitted assigns.
	33. “*Seller’s Credit Requirements*” has the meaning given in Section 5.2(a).
	34. “*Settlement Amount*” has the meaning given in Section 10.2(a).
	35. “*S&P*” means the Standard & Poor’s Rating Group (a division of McGraw‑Hill, Inc.) or its successor.
	36. “*Standard Service*” means fully-bundled electricity service offered by UI as required by CGS § 244c(c), as the same may be amended from time to time.
	37. “*Subject Calendar Year*” has the meaning given in Article Fifteen.
	38. “*Taxes*” means all ad valorem, property, occupation, severance, generation, first use, conservation, British thermal units or energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.
	39. “*Term*” has the meaning given in Article Four.
	40. “*Termination Amount*” has the meaning given in Section 10.2(a).
	41. “*Transaction*” means each particular transaction relating to the purchase and sale of Energy and Market Products pursuant to this Agreement as set forth in a Transaction Confirmation.
	42. “*Transaction* *Confirmation*” means a confirmation that is 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, such document to serve as a supplement or modification of this Agreement with respect to a specific Transaction.
	43. “*Transaction Customers*” means the Customers receiving Energy and Market Products under the terms of a Transaction.
	44. “*Transaction Effective Date*,” with respect to a particular Transaction, has the meaning given in the applicable Transaction Confirmation.
	45. “*Transaction Load*,” with respect to a particular Transaction, has the meaning given in the applicable Transaction Confirmation.
	46. “*Transaction Price(s)*,” with respect to a particular Transaction, has the meaning given in the applicable Transaction Confirmation.
	47. “*Transaction Quantities*,” with respect to a particular Transaction Load, means the amount of Energy, along with the Market Products associated therewith, determined by: (a) first, assuming that in each month remaining through the applicable Delivery Term, Seller would deliver, or cause to be delivered, a quantity of Energy and such Market Products equal to the portion of UI’s Energy and Market Product requirements represented by such Transaction Load delivered to those Customers that were receiving Standard Service or Last Resort Service, as applicable, during each month in the comparable prior year period; and then (b) adjusting such quantity to reflect known increases or decreases in the Transaction Load as of the date of determination.
	48. “*UI*” has the meaning given in the opening paragraph of this Agreement, and its successors and assigns.
	49. “*UI’s Credit Requirements*” has the meaning given in Section 5.2(d).
	50. “*UI Metering Domain*” means the Metering Domain assigned to UI in the ISO Manuals.

# ARTICLE TWO: Obligations and Responsibilities

**2.1 Seller Obligations and Responsibilities**

* + 1. During each Delivery Term, Seller shall sell and deliver or otherwise provide to UI the Energy and Market Products required by UI to serve the applicable Transaction Load for such Delivery Term, except to the extent excused by Force Majeure or by UI’s uncured Event of Default.
		2. Seller will execute and deliver promptly to ISO all contracts and other documents required by ISO in order to transfer settlement credits and obligations to implement the Parties’ rights and obligations under this Agreement.
		3. Seller shall be responsible for all costs and charges, however designated or identified, computed or allocated by ISO, imposed on or associated with the Energy and Market Products delivered by Seller to the Delivery Point(s) or otherwise provided by Seller to UI, including all components (*e.g.*, energy, congestion, and marginal losses) of the Locational Marginal Price and all transition payments for locational installed capacity under the Capacity Settlement associated with UI’s Retail Service obligations. Without limiting the foregoing, any cost or charge that relates to the delivery or provision of Energy and Market Products to UI at any Delivery Point(s) or otherwise for which Seller is responsible under this Agreement shall be borne by Seller.
		4. Seller is solely responsible for all Local Second Contingency Protection Resource NCPC Charges/Credits (formerly known as “Daily RMR Resource Operating Reserve Charges/Credits”) in the hourly markets and any present or future charges or credits of a similar nature associated with the Transaction Load.
		5. Without limiting the provisions of Section 2.1(c), Seller shall be responsible in respect of any and all Energy delivered pursuant to the terms of this Agreement for the cost of any ISO Administrative Tariff Charges assessed with respect to each Transaction Load at the customer meter. In addition to the foregoing, Seller shall be responsible for any costs related to the NEPOOL generation information system that result from Seller’s obligation to serve each Transaction Load.
		6. Except for reasons of Force Majeure, or UI’s uncured Event of Default , Seller’s obligation hereunder to provide Energy and Market Products to UI shall be absolute and unconditional and not excused by the cost or unavailability for any reason of any particular electric generating facilities or transmission facilities, whether owned or controlled by Seller or third parties. Seller shall be required to provide Energy and Market Products to accommodate changes in a Transaction Load for any reason, including seasonal factors, daily and hourly load fluctuations, increased or decreased usage, demand‑side management activities, extreme weather, customers’ exit from or return to the Retail Service and other similar events.
		7. For purposes of this Agreement, each Transaction Load shall be deemed to include, and Seller’s obligations pursuant to this Agreement shall incorporate and include, all Energy and Market Products necessary for UI to meet its back-up service obligations pursuant to CGS § 16-244c, and as may be amended from time to time.
		8. Seller shall, during the Term, to the extent necessary for purposes of implementing this Agreement, maintain a settlement account established in accordance with the Rules that is sufficient to implement this Agreement, all at Seller’s sole expense.
		9. Seller shall, at its sole expense, satisfy any applicable state or federal registration and licensing requirements.
		10. Seller shall at all times meet any Renewable Portfolio Standards, as such standards presently exist (the “***Currently Mandated RPS***”), and as such Currently Mandated RPS may be amended or altered from time to time pursuant to any Law during the Term. In the event that such Currently Mandated RPS are materially increased or decreased during the Term, then Seller shall be responsible for meeting the Renewable Portfolio Standards as so amended or altered. Seller shall be solely responsible for any failure by it to comply with the Renewable Portfolio Standards.
		11. Seller shall be responsible for all distribution losses and costs associated with the Transaction Load that are incurred from the Delivery Point(s) to the Transaction Customer meters. The distribution losses will be fixed at the percentage set forth in the relevant Transaction Confirmation for the duration of the Delivery Term.
		12. In the event and to the extent that ISO assesses upon a Party any costs or charges or category of costs or charges that are allocated to the other Party pursuant to this Agreement, such assessment by ISO shall in no way affect the allocation of costs and charges as between UI and Seller reflected in this Agreement and the respective responsibility of UI and Seller for such contractually allocated costs. Accordingly, in the event that ISO assesses a cost or charge to the Party that, pursuant to this Agreement, is not allocated responsibility for such cost or charge, then the Party responsible for such cost or charge under this Agreement shall promptly reimburse the other Party in an amount equal to such cost or charge.

 **2.2 UI Obligations and Responsibilities**

* + 1. During each Delivery Term, UI shall be obligated to purchase, accept and receive Energy and Market Products from Seller to serve each Transaction Load, except to the extent excused by Force Majeure or by Seller’s Event of Default under Article 10. UI shall pay Seller an amount for each month equal to the Transaction Prices as set forth in the applicable Transaction Confirmation, multiplied by the quantity of Delivered Energy for that month.
		2. UI shall be responsible for any costs or charges imposed on or associated with the delivery of Energy and, as may be required, Market Products, at and from the Delivery Point(s), excluding Seller’s responsibility for distribution losses and costs as set forth in Section 2.1(k).
		3. UI shall, during the Term, to the extent necessary for purposes of implementing this Agreement, maintain a settlement account established in accordance with the Rules that is sufficient to implement this Agreement, all at UI’s sole expense.
		4. Without limiting the provisions of Section 2.2(b), UI shall be responsible in respect of any and all Energy delivered pursuant to the terms of this Agreement for any and all charges for the ISO services identified in or covered by Schedule 1 of the ISO Administrative Tariff, unless such charges include an allocation by ISO of previously identified costs for which Seller is responsible under this Agreement.
		5. UI is solely responsible in respect of any Energy delivered hereunder for the cost of ISO Regional Network Service and UI Local Network Service (as defined under the ISO Tariff). UI is solely responsible for delivering Energy from the Delivery Point(s) to the Transaction Customers.
		6. UI is solely responsible for the fixed cost charges related to any existing or new Reliability Agreements. Such charges are currently allocated to UI on the basis of UI’s share of the Network Load.
		7. To the extent that data is reasonably known and available to UI and UI is permitted to reveal the information contained in such data (*i.e.*, the information is not otherwise confidential, whether pursuant to any Law or by agreement), UI agrees, from time to time and as soon as reasonably practicable after such data becomes actually known to UI, to provide Seller notice of the number of Transaction Customers who have selected a licensed electric retail supplier and who, accordingly, will be switching from the Retail Service to such licensed electric retail supplier for the provision of electric service.

2.3 Delivery Point(s)

* + 1. The Seller shall deliverall Energy and Market Products tothe Delivery Point(s). The “***Delivery Point(s)***” shall be, with respect to the delivery of Energy and provision of Market Products, the point or points of interconnection of the PTF with the UI Metering Domain within the Connecticut Load Zone or, if different, the point applicable to the relevant Market Product designated by ISO to serve the location of the Transaction Load. These point(s) represent the locations at which the ISO Settlement Power System Model establishes the load obligation and where the physical loads of the Transaction Customers exist. The point of interconnection of the PTF with the UI Metering Domain is currently Metering Domain Description, “UNITED ILLUMINATING NODE, Metering Domain ID 12, UNITED ILLUMINATING COMPANY ID 181.” In the event nodal pricing for load is implemented for the New England market by ISO, the Delivery Point(s) for the delivery of Energy and provision of Market Products hereunder shall mean the point or points of interconnection of the PTF with the UI Metering Domain within the Connecticut Load Zone. Under nodal pricing, these point(s) represent the nodes at which the ISO Settlement Power System Model establishes the load obligation and where the physical loads of the Transaction Customers exist and at which point(s) or individual nodes, UI’s Transaction Load withdraws from the PTF. In the event that market changes result in restructuring the existing Connecticut Load Zone into two or more zones, Seller’s delivery obligation will be unchanged and the Parties will make any modifications to this Agreement necessary to reflect the Parties’ intent that delivery of Energy and provision of Market Products should occur at the Delivery Point(s).
		2. The Delivery Point designated in Section 2.3(a) applies to Transactions under Scenario A and Transactions under Scenario B.

2.4 ARR and Financial Transmission Rights

* + 1. If Seller chooses to procure Financial Transmission Rights, then all costs of any such Financial Transmission Rights shall be the responsibility of Seller. UI shall not be responsible for offsetting any costs associated with Seller’s purchase of such rights.

 (b) UI shall retain all ARR proceeds and any other benefits related to sources other than the Transaction Load. UI reserves the right to participate in the auction of Financial Transmission Rights.

ARTICLE THREE: Conditions Precedent; Cooperation; Regulatory Assistance

3.1 UI’s Conditions

UI’s obligations under this Agreement with respect to each Transaction shall be subject to:

* + 1. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the commencement of the applicable Delivery Term(s), with the same effect as though made at that time, and Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed and complied with by it prior to that time.
		2. Within ten (10) days following the applicable Transaction Effective Date(s), there shall be no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by any governmental, regulatory or administrative agency or commission, or any Law in effect that would be reasonably likely to prevent or delay the consummation of the transactions contemplated hereby.

3.2 Seller’s Conditions

Seller’s obligations under this Agreement with respect to each Transaction shall be subject to:

* + 1. The representations and warranties of UI contained in this Agreement shall be true and correct in all material respects as of the commencement of the applicable Delivery Term(s), with the same effect as though made at that time, and UI shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed and complied with by it prior to that time.
		2. Within ten (10) days following the applicable Transaction Effective Date(s), there shall be no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by any governmental, regulatory or administrative agency or commission, or any Law in effect that would be reasonably likely to prevent or delay the consummation of the transactions contemplated hereby.

3.3 Cooperation; Regulatory Assistance

* + 1. UI and Seller shall cooperate with each other and use all commercially reasonable efforts 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) obtain all necessary consents, approvals and authorizations of all other parties necessary or advisable to consummate the transactions contemplated by this Agreement; provided, however, that UI shall be responsible for all of its own costs associated with the PURA review and approval process.
		2. The Parties acknowledge and understand that each Party may be subject to certain filing requirements with the FERC with respect to this Agreement subsequent to the Effective Date. The Parties agree to cooperate reasonably with each other with respect to such federal regulatory filing requirements that either or both of the Parties determine may need to be made after the Effective Date with respect to this Agreement. The foregoing notwithstanding, the final determination as to whether a filing is required with the FERC and the form thereof (including the submissions to be made) shall be made by the Party to whom the filing requirement applies.
		3. The Parties anticipate that Seller, pursuant to its settlement account with ISO, shall be invoiced by ISO and shall receive any credits or refunds due from, or pay any balance owing to, ISO with respect to the Energy and Market Products delivered and otherwise provided hereunder; provided, however, that if any invoice with respect to such Energy and Market Products is issued to UI, Seller shall promptly reimburse UI for all amounts paid by UI in respect of such invoice and UI shall promptly credit or reimburse Seller for all credits or refunds received by UI on such invoice.
		4. The Parties acknowledge and understand that UI must obtain approval from the PURA of the pricing and material terms of this Agreement and each Transaction Confirmation, and the Parties hereby agree as follows:
			1. If the PURA rejects the Transaction Prices and material terms of this Agreement or a Transaction Confirmation by the end of the third (3rd) day following the Transaction Effective Date, then the Transaction shall terminate immediately upon such PURA rejection without any liability to either Party whatsoever; provided, however, that if the PURA rejects UI’s recommendation to approve a bid or portion of a bid relating to a portion of the Transaction Load (a “***Partial Rejection***”), the Parties shall promptly execute and deliver to each other an amendment and restatement of such Transaction Confirmation to reflect only the Transaction Prices and material terms applicable to the bid(s) or portion thereof approved by the PURA.
			2. If the PURA rejects the Transaction Prices and material terms of this Agreement or a Transaction Confirmation during the period beginning on the fourth (4th) day following the Transaction Effective Date and ending on the tenth (10th) day following the Transaction Effective Date, then the Transaction shall terminate immediately upon such PURA rejection; provided, however, in the event of a Partial Rejection the Parties shall promptly execute and deliver to each other an amendment and restatement of the Transaction Confirmation to reflect only the Transaction Prices and material terms applicable to the bid(s) or portion thereof approved by the PURA.
			3. If the PURA fails to issue a decision by the end of the tenth (10th) day following the Transaction Effective Date, then either Party shall have the right to terminate the Transaction by giving one (1) Business Day’s written notice to the other Party.
			4. If a Transaction is terminated pursuant to Section 3.3(d)(ii) or 3.3(d)(iii) or a Partial Rejection occurs pursuant to Section 3.3(d)(ii), then UI shall reimburse Seller only for the net amount of Seller’s documented and commercially reasonable actual net costs directly related to hedging Seller’s price risk exposure, or pro rata portion of such costs in the case of a Partial Rejection, over the period of time between the Transaction Effective Date and the termination of the Transaction in accordance with Section 3.3(d)(ii) or 3.3(d)(iii), or the date of Partial Rejection, as the case may be; provided, however, that in establishing and unwinding the hedges described in this Section 3.3(d)(iv), Seller shall have reasonably structured such hedging arrangements, consistent with its internal practices and within normal industry standards, to protect Seller’s bid(s) as accepted by UI, and Seller shall promptly unwind the hedges on the earliest to occur of (A) the date of the Partial Rejection or the PURA’s rejection of the Transaction Prices and material terms of this Agreement or Transaction Confirmation or (B) the date notice is provided by either Party in accordance with Section 3.3(d)(iii), or if such date is not a Business Day then on the next Business Day. Payment made by UI to Seller pursuant to this Section 3.3(d)(iv) shall be deemed to be liquidated damages and an election of remedies by Seller. Under all circumstances, if the PURA approves the Transaction Prices and material terms of this Agreement or a Transaction Confirmation without making a Partial Rejection within ten (10) days following the Transaction Effective Date, then all hedge costs are borne by the Seller.
			5. If the PURA grants a conditional approval that would be reasonably likely to create a Material Adverse Change to a Party, then such Party may (A) accept the conditions set forth in such conditional approval, in which case the Parties shall promptly execute and deliver to each other an amendment and restatement of the Transaction Confirmation and/or this Agreement to reflect such conditions, (B) terminate the Transaction by giving one (1) Business Day’s written notice to the other Party, in which case such conditional approval shall be deemed a rejection by the PURA for the purposes of this Section 3.3(d), or (C) seek to negotiate such amendments to the Transaction Confirmation, or this Agreement, as may be necessary to restore the balance of consideration hereunder while simultaneously complying with the PURA order. If the Parties seek to negotiate pursuant to the foregoing clause (C) of this subsection (v) and are unable to agree on such amendments within five (5) Business Days after the date of the issuance of the PURA order (the “***Negotiation Period***”), either Party shall have the right to terminate the Transaction, without any liability to the other Party whatsoever, by giving written notice to the other Party within the next Business Day following the end of the Negotiation Period, in which event the Transaction shall be null and void and of no further force and effect from and after the date of termination. If, following negotiations between the Parties pursuant to the foregoing clause (C), the Parties agree to such amendments, then an amendment and restatement of the Transaction Confirmation (the “***Amended Transaction Confirmation***”) shall be executed by the Parties and submitted to the PURA for approval by UI promptly following such execution. The Amended Transaction Confirmation shall be subject to this Section 3.3(d) covering the allocation of hedge cost risks. For the avoidance of doubt, in the event an Amended Transaction Confirmation is executed by the Parties pursuant to this Section 3.3(d)(v), all hedge costs borne by Seller in connection with the Transaction prior to the effective date of the Amended Transaction Confirmation shall be entirely the Seller’s responsibility.
			6. For purposes of Section 3.3(d)(v), a Partial Rejection shall not be considered a “conditional approval,” and vice versa.

ARTICLE FOUR: Term

The Term of this Agreement shall commence as of the Effective Date and continue until terminated by either Party upon written notice to the other Party; provided, however, that, subject to Section 10, neither Party may terminate this Agreement until the expiration or termination of the last to expire Delivery Term.

ARTICLE FIVE: Representations and Warranties; Covenants; Credit Requirements; Guaranty

5.1 Representations and Warranties

* + 1. Each Party represents and warrants to the other Party that:
			1. it is duly organized, validly existing and in good standing under the law of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction within which this Agreement will be performed by it;
			2. except as set forth in Section 3.3(d), there are no regulatory approvals necessary for it legally to perform its obligations under this Agreement that have not been obtained;
			3. the execution, delivery and performance of this Agreement (including all Transaction Confirmations) are within its powers, have been duly authorized by all necessary corporate action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law applicable to it;
			4. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
			5. it is not insolvent, and there is no Bankruptcy Event pending or being contemplated by it or, to its knowledge, threatened against it;
			6. there are no Legal Proceedings that are reasonably likely to constitute a Material Adverse Change;
			7. it acknowledges and agrees that (A) all transfers of Performance Assurance by one Party to the other Party under this Agreement are “margin payments” within the meaning of the Bankruptcy Code and (B) that the Termination Amount constitutes a “settlement payment” and/or a “transfer” under the Bankruptcy Code;
			8. no broker, finder or other Person is entitled to any brokerage fees, commissions or finder’s fees in connection with the transaction contemplated hereby by reason of any action taken by the Party making such representation; provided that each Party shall pay to the other or otherwise discharge, and shall indemnify, defend and hold harmless the other from and against, all claims or liabilities for all brokerage fees, commissions and finder’s fees incurred by the other by reason of any action taken by such Party;
			9. it (A) is acting for its own account, (B) has made its own independent decisions to enter into this Agreement and each Transaction and as to whether this Agreement and each Transaction are appropriate or proper for it based upon its own judgment, (C) is not relying upon the advice or recommendations of the other Party in so doing, (D) has knowledge and experience in financial matters and the electric industry that enable it to evaluate the merits and risks of entering into this Agreement and each Transaction, and (E) understands and accepts, the terms, conditions and risks of this Agreement and each Transaction;
			10. it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, and this Agreement is, and is intended to be, a “forward contract” within the meaning of the United States Bankruptcy Code;
			11. it has entered into this Agreement in connection with the conduct of its business in the ordinary course and it has the capacity and ability to make or take delivery of Energy and Market Products as provided herein;
			12. with respect to Energy and each Market Product, it is a producer, processor, commercial user or merchant handling the same, and it is entering into this Agreement for purposes related to its business as such; and
			13. the material economic terms of this Agreement, and each Transaction Confirmation, have been subject to individual, arm’s length negotiation by the Parties.
		2. Seller hereby warrants to UI that all Energy and Market Products Seller delivers or causes to be delivered to UI pursuant to this Agreement shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point(s).

5.2 Credit Requirements; Covenants

* + 1. Seller represents and warrants that Seller’s or its Guarantor’s Credit Rating is at least BBB- as determined by S&P or Fitch, or Baa3 as determined by Moody’s, provided that if Seller or its Guarantor is rated by more than one such credit rating agency, the lower of such Credit Rating shall be utilized to determine Seller’s or its Guarantor’s compliance hereunder, or Seller has provided cash or a letter of credit in the amount of the Minimum Guaranty Amount as indicated in the Transaction Confirmation (“***Seller’s Credit Requirements***”).
		2. Seller hereby covenants and agrees that it shall maintain Seller’s Credit Requirements for the entire Term.
		3. Seller and its Guarantor shall, (i) within forty-five (45) days of the end of each fiscal quarter, make available to UI electronically (or if not available electronically will furnish in writing at the request of UI) the balance sheet as at the end of such period and the related statement of income, stockholder’s equity, cash flows and changes in financial position of the Seller and its Guarantor for such period, all in reasonable detail and certified by a Responsible Officer as prepared in accordance with GAAP and presenting fairly the financial position and results of operations of Seller and its Guarantor, and (ii) within ninety (90) days after the end of each fiscal year, the audited balance sheet of Seller and its Guarantor as at the end of such year and the related statement of income, stockholder’s equity, and reconciliation of retained earnings and cash flow statement of Seller and its Guarantor for such fiscal year certified by a nationally recognized independent certified public accountant, which audit report shall state that such financial statements present fairly the financial position, results of operations and cash flows of Seller and its Guarantor as at the dates indicated in conformity with GAAP and that the audit conducted by such accountant in connection with such financial statements has been made in accordance with GAAP; provided, however, that the requirements set forth in parts (i) and (ii), above, shall not apply if (A) Seller or its Guarantor is obligated to publicly file such information with the SEC and (B) the Seller or its Guarantor, as the case may be, timely files such information in accordance with applicable SEC regulations.
		4. UI represents and warrants, on and as of the Effective Date, that UI’s Credit Rating is at least BBB- as determined by S&P or Baa3 as determined by Moody’s or BBB- as determined by Fitch, provided that if UI is rated by more than one such credit rating agency, the lower of such Credit Rating shall be utilized to determine UI’s compliance hereunder (“***UI’s Credit Requirements***”).
		5. UI hereby covenants and agrees that it shall maintain UI’s Credit Requirements for the entire Term.

ARTICLE SIX: Delivery

6.1 Delivery, Title, Risk of Loss and Indemnity

* + 1. All Energy and Market Products that Seller delivers, or causes to be delivered, to UI shall be delivered at the Delivery Point(s). Title to and risk of loss related to Energy and Market Products shall pass from Seller to UI at the Delivery Point(s). As between the Parties, Seller shall be deemed to be in exclusive control of Energy and Market Products (and responsible for any damages or injury caused thereby) prior to delivery at the Delivery Point(s), and UI shall be deemed to be in exclusive control of (and responsible for any damages or injury caused thereby) Energy and Market Products at and from the Delivery Point(s).
		2. Except as otherwise provided in this Agreement, and to the extent it relates to performance of its obligations under this Agreement, Seller and UI shall each indemnify, defend and hold harmless the other Party, its Affiliates, and its officers, directors, trustees, employees, agents and representatives (collectively, the “***Representatives***”) from and against any Claims arising from (i) any act, omission, incident, liability, cost or expense (including reasonable attorneys’ fees) occurring when title to Energy and Market Products are vested in the indemnifying Party, (ii) any breach of any representation or warranty made by the indemnifying Party in this Agreement, and (iii) the failure of the indemnifying Party to perform any of the obligations or covenants required to be performed by it under this Agreement. The indemnified Party and the indemnifying Party shall promptly notify the other Party of any Claim and any material developments or amounts due in respect of any Claim, cooperate in the defense of any Claim subject to this Section 6.1, and permit the cooperation and participation of the other Party (at that other Party’s expense) in such Claim. No settlement of any Claim covered by this Section 6.1 shall be made without the prior written consent of each Party to this Agreement, which consent shall not be unreasonably withheld; provided, however, that anything in this Agreement to the contrary notwithstanding, if there is a reasonable probability that a Claim may constitute a Material Adverse Change with respect to an indemnifying Party other than as a result of money damages or other money payments, the indemnifying Party shall have the right, at its own cost and expense, to compromise or settle such claim in any reasonable manner; provided, further, that the indemnifying Party shall have acknowledged in writing its indemnification obligations hereunder with respect to the entire Claim, but the indemnifying Party shall not, without prior written consent of the indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not include as a term thereof the giving by the claimant or the plaintiff to the indemnified Party an unconditional release from all liability in respect of such Claim. In any event, both Parties shall retain the right to participate in the prosecution or defense of any such Claims, and the Party prosecuting and/or defending such Claims shall act reasonably and in accordance with good business judgment giving due recognition to the interests of the other Party.
	1. Determination and Reporting of Hourly Loads
		1. Seller shall be responsible for any bidding of the Transaction Load in the New England market required under ISO Rules. UI shall promptly provide Seller with the most timely and accurate load information, based on UI’s then available and most current internal technology, to facilitate Seller’s fulfillment of its responsibilities under this Section 6.2.
		2. UI shall not be responsible for errors in the load information supplied to Seller pursuant to this Section 6.2 or for costs resulting from such errors to the extent such errors are estimating errors or result from load profiles or other estimates made in good faith in accordance with Good Utility Practices, are in accordance with the applicable standards of the PURA and are not the result of a breach of UI’s obligation under Section 6.2(a).
		3. The Parties recognize that under the Rules, the Transaction Load must be reported to ISO. UI shall be responsible for load estimation in accordance with the Estimation Process in connection with the Transaction Load. UI shall estimate the total hourly Transaction Load based upon average load profiles developed for each customer rate class, actual metered data as available and UI’s Metering Domain system load. **Schedule 1**, attached hereto and incorporated herein by reference, provides a general description of the Estimation Process that shall be employed initially. Notwithstanding the provisions contained in Sections 12.1 through 12.4 and 16.1, UI reserves the right unilaterally, pursuant to a Section 205 application to FERC, if required, to modify the Estimation Process in the future, provided that any such modification shall be designed to improve the accuracy of its results.
		4. UI shall report to ISO the amount of the hourly adjusted Transaction Load including losses in accordance with the Rules, and promptly thereafter, UI shall report the same information to Seller.
		5. Each month, by the payment Due Date in such month, UI shall pay Seller the positive difference, if any, between (i) the amount calculated under Section 2.2(a) and paid by UI for the fourth previous month, and (ii) the amount due to Seller as reconciled pursuant to **Schedule 1** hereto for such fourth previous month.
		6. Each month, by the payment Due Date in such month, Seller shall pay UI the positive difference, if any, between (i) the amount as reconciled pursuant to **Schedule 1** hereto for the fourth previous month, and (ii) the amount calculated pursuant to Section 2.2(a).

ARTICLE SEVEN: Billing and Payments

* + 1. Until trued-up based upon the reconciliation process described in **Schedule 1** hereto, computations by UI of the charges for the purposes of billings hereunder shall be based on estimates of Delivered Energy made in accordance with Article Six. Each month, UI shall (i) calculate the amount payable by UI to Seller for Delivered Energy and Market Products or other charges as contemplated by this Agreement (including any LMP Differential applicable to a Scenario B Transaction) and (ii) provide the calculation in the form of a statement to Seller on or before the tenth (10th) day of the following month. The calculation shall show the total amount due and payable. Each statement shall be subject to adjustment for a period of time equal to the period of time established under the Rules for adjustments to settlement accounts by ISO for any errors in arithmetic computation, estimation, reconciliation or otherwise only to the extent allowed by the terms of this Article Seven or Article Fifteen hereof. If the date on which any statement is due under this clause (a) of this Article Seven is not a Business Day, then such statement shall be deemed to be due on the next following Business Day.
		2. UI shall pay Seller any and all amounts due and payable for Delivered Energy and Market Products or other charges as contemplated by this Agreement on or before the twentieth (20th) day of the month following the month in which delivery occurred (“***Due Date***”). All payments shall be denominated in U.S. Dollars and made by wire transfer in immediately available funds. Any amount(s) remaining unpaid, including any disputed amounts, shall bear interest at the Default Rate from the payment Due Date, but excluding, the date of payment by UI. If any Due Date is not a Business Day, then such Due Date shall be deemed to be the next following Business Day.
		3. If Seller disputes the amount of any statement or payment, Seller shall provide written notice itemizing the basis for its dispute to UI. The owning Party shall pay the undisputed portion and, upon final resolution of any dispute, payment of any remaining amount due to a Party shall be made within five (5) days of the date of the final resolution, together with interest at the Default Rate as provided in clause (b) of Article Seven.
		4. The Transaction Prices include full reimbursement to Seller for all Taxes applicable prior to the Delivery Point(s) for Energy and Market Products delivered or otherwise provided by Seller. To the extent such Taxes are assessed against or paid by UI, Seller shall reimburse UI within five (5) Business Days of receipt by Seller of written evidence of payment by UI and a reconciliation of the amount of any such Taxes. The Transaction Prices do not include reimbursement for Taxes applicable at and after the Delivery Point(s) to Energy and Market Products delivered or otherwise provided by Seller. To the extent such Taxes are assessed against or paid by Seller, UI shall reimburse Seller therefor within five (5) Business Days of receipt by UI of written evidence of payment by Seller and a reconciliation of the amount of any such Taxes. If a Party is exempt from any Taxes, such Party shall provide the other Party, upon written request, a certificate of exemption or other reasonably satisfactory evidence of exemption, and each Party shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall use reasonable efforts to administer this Agreement and implement its provisions to minimize the imposition of Taxes. Notwithstanding any provision herein to the contrary, UI shall be responsible for, and shall pay or reimburse Seller if Seller shall have paid, any Taxes that are enacted or become effective after the Effective Date and which are assessed with respect to Energy and Market Products delivered or otherwise provided by Seller under this Agreement, regardless of where or how assessed.
		5. If Seller and UI are each required to pay an amount in the same month to the other under this Agreement, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) which such Party has or to which it may be entitled arising from or out of this Agreement. All outstanding obligations to make payment under this Agreement may be offset against each other, set off or recouped therefrom.

ARTICLE EIGHT: Force Majeure

* 1. Performance Excused by Force Majeure

Except as otherwise expressly limited by other provisions of this Agreement, and subject to the provisions of Section 8.2, the Parties shall be excused from performing their respective obligations hereunder (other than the obligation to pay for Energy and Market Products previously delivered or otherwise provided) and shall not be liable in damages or otherwise for any such failure to perform, to the extent, but only to the extent, that such performance is prevented by a Force Majeure; provided, however, that no Delivery Term shall be extended by a Force Majeure.

* 1. Obligation to Cure Force Majeure

If any Party relies on the occurrence of a Force Majeure as the basis for being excused from performance of its obligations under this Agreement, such Party shall:

* + 1. provide written notice to the other Party promptly, but in no event later than five (5) days after the initial onset of the Force Majeure, indicating the nature, cause and date of the commencement of the Force Majeure and giving an estimate, to the extent known, of its expected scope and duration;
		2. exercise all commercially reasonable efforts to continue to perform its obligations under this Agreement;
		3. expeditiously take all commercially reasonable action to correct or remedy the Force Majeure or the conditions caused thereby excusing its performance; provided, however, that settlement of strikes or other labor disputes will be within the sole discretion of the Party affected by such strike or other labor dispute;
		4. provide prompt notice to the other Party of the cessation of the Force Majeure or the conditions caused thereby excusing its performance; and
		5. promptly resume performance upon the cessation of the Force Majeure or the conditions caused thereby.

ARTICLE NINE: Assignment

* 1. Consent

Neither Party shall assign this Agreement or its rights hereunder, in whole or in part, without the prior written consent of the other Party, which consent may be withheld in the exercise of its reasonable discretion; provided, however, either Party may, without the consent of the other Party and without relieving itself from liabilty hereunder, (a) transfer or assign this Agreement to an Affiliate of such Party, or (b) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such Party; provided, further, that in each such case, (i) any such assignee shall agree in writing to be bound by the terms and conditions hereof, (ii) any such assignee shall provide notice of such assignment to the non-assigning Party within three (3) Business Days of such assignment, (iii) any assignee of the Seller shall have met the Seller’s Credit Requirements or, in the case of UI, the assignee of UI shall have met UI’s Credit Requirements, and (iv) in the case of the Seller, if the parent of the assignee is not affiliated with the Seller, the parent of the assignee of the Seller shall provide a Guaranty consistent with the terms hereof. Any purported assignment of this Agreement, in whole or in part, in violation of this Section 9.1 shall be null, void, and of no force or effect.

9.2 Successors and Assigns

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

ARTICLE TEN: Default and Termination

* 1. Events of Default

An “***Event of Default***” shall mean any of the following events with respect to a Party (the “***Defaulting Party***”):

* + 1. any representation or warranty made by a Party hereunder shall be false or misleading in any material respect at any time during the Term (other than the events that are otherwise specifically covered in this Section 10.1 as a separate Event of Default (including, but not limited to, the circumstances described in Section 10.1(d))).
		2. a Party shall fail to make when due any payment required by this Agreement if such failure is not remedied within three (3) Business Days after written notice of such failure is given by the other Party (the “***Non‑Defaulting Party***”);
		3. a Party shall fail in any material respect to comply with, observe or perform any covenant or obligation to be performed by it hereunder (other than the events that are otherwise specifically covered in this Section 10.1 as a separate Event of Default) and such failure is not excused by Force Majeure and such failure is not cured by such Party within seven (7) Business Days after written notice thereof is given to such Party by the other Party;
		4. a Party (or the Guarantor in the case of the Seller) shall fail to maintain its respective Credit Requirements; provided, however, that such breach shall not be considered an Event of Default if such Party establishes Performance Assurance in favor of the other Party in the amount described and within the time period set forth in the Credit Support Annex or Section 10.3(b), as the case may be;
		5. a Party shall fail to establish Performance Assurance when due;
		6. in the case of Seller, Seller shall fail to strictly comply with its obligations under the Credit Support Annex;
		7. a Party is subject to a Bankruptcy Event;
		8. in the case of Seller, the failure to deliver Energy and/or Market Products for any length of time and for any reason, except as provided in Article Eight;
		9. in the case of the Seller, (i) the failure to retain Market-Based Rate Authorization with regard to the New England markets and with regard to Connecticut specifically or (ii) the inability to otherwise participate in the New England markets due to events including termination of membership or suspension of membership rights or termination of its Market Participant Service Agreement; or
		10. in the case of the Seller, with respect to the Guarantor:
			1. any representation or warranty made by the Guarantor in any Guaranty provided in connection with this Agreement is false or misleading in any material respect at any time;
			2. the failure of the Guarantor to make any payment required in any Guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice is given by UI;or
			3. the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty made in connection with this Agreement.

10.2 Remedies Upon Occurrence of a Default

If an Event of Default has occurred and is continuing, the Non‑Defaulting Party may (i) establish a date by written notice to the Defaulting Party (which date shall be between one (1) and twenty (20) Business Days after the Non‑Defaulting Party delivers notice) (the “***Early Termination Date***”) on which it shall terminate, liquidate, accelerate and offset or net termination values, payment amounts or other transfer obligations arising under or in connection with this Agreement and (ii) withhold any payments or other performance due under this Agreement. The Parties agree that the Non‑Defaulting Party is not required to seek prior approval from the FERC under 18 CFR § 35.15(a) in order to terminate the Agreement pursuant to this Section 10.2. The Parties agree that, because this is a forward contract, the Non-Defaulting Party is not required to seek permission from any court to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with this Agreement in the event of a Bankruptcy Event with respect to the Defaulting Party, nor shall any such contract rights be stayed, avoided or otherwise limited by operation of any provision of the Bankruptcy Code or by any order of a court or administrative agency in any proceeding under the Bankruptcy Code. If an Early Termination Date has been designated, the Non‑Defaulting Party shall calculate its Gains, Losses and Costs resulting from the termination, liquidation, and acceleration of this Agreement into a single net amount regardless of the timing of such Gains, Losses and Costs or the sales resulting in such amounts (the “***Settlement Amount***”). The Non-Defaulting Party shall determine a single amount (the “***Termination Amount***”) payable by one Party to the other by netting out from the Settlement Amount (a) the sum of (i) any Performance Assurance then in the possession of the Non-Defaulting Party pursuant to this Agreement, plus (ii) any and all other amounts due to the Defaulting Party under this Agreement, against (b) the sum of (i) any and all other amounts due to the Non-Defaulting Party under this Agreement, plus, (ii) at the option of the Non-Defaulting Party, any Performance Assurance then in the possession of the Defaulting Party pursuant to this Agreement. The Termination Amount shall also include all amounts owed but not yet paid or invoiced by a Party to the other Party, whether or not such amounts are due, for performance already provided pursuant to this Agreement as reasonably calculated by the Non-Defaulting Party based on available estimates (collectively, the “***Receivable Amount***”). It is expressly the intent of the Parties that upon termination of this Agreement as provided herein, the Non-Defaulting Party shall be entitled to and specifically retains its right to make any and all offsets, setoffs and recoupments or any similar adjustment with respect to any and all obligations the Defaulting Party may have to the Non-Defaulting Party for any reason in making its determination of the Termination Amount, whether before or after the Bankruptcy Event of a Defaulting Party, as applicable. In no event shall the Termination Amount constitute liquidated damages or an election of remedies, and either Party may pursue any remedies available at Law or in equity against the other Party.

The Gains, Losses and Costs under this Agreement shall be determined by comparing the value of the Transaction Quantities at the Transaction Prices of all Transactions to be performed under this Agreement had such Transaction(s) not been terminated to the same Transaction Quantities at the relevant market prices for the remaining period of the Delivery Term(s). To ascertain market prices for the remaining period of the Delivery Term(s), the Non‑Defaulting Party may consider, but shall not be required to consider, among other things, all of the settlement prices of applicable NYMEX power futures contracts, quotations from leading dealers in energy swap contracts and other bona fide third party offers, all adjusted for the length of the Delivery Term(s) remaining and differences in transmission costs and volume. An adjustment also shall be made, if appropriate for comparison purposes, such that the price contained in any applicable replacement contract, replacement transaction or other applicable determination reflects the obligation of the supplier to bear all costs that are Seller’s obligation under this Agreement and to deliver or otherwise provide Energy and Market Products.It is expressly agreed that a Party shall not be required to enter into replacement transactions in order to determine the Termination Amount.

Within fifteen (15) days of the Early Termination Date, the Non‑Defaulting Party shall provide the Defaulting Party with written notice of the Termination Amount. If the Termination Amount constitutes an aggregate loss to the Non-Defaulting Party, the Defaulting Party shall, within five (5) Business Days of receipt of such notice, pay the Termination Amount to the Non‑Defaulting Party, which amount shall bear interest at the Default Rate from the Early Termination Date until paid. If the Termination Amount represents an aggregate gain to the Non-Defaulting Party, the Non-Defaulting Party shall pay such amount to the Defaulting Party including the Receivable Amount within five (5) Business Days of receipt of such notice.If the Defaulting Party disagrees with the calculation of the Termination Amount, the Defaulting Party, if it is the owing Party, shall pay the full Termination Amount within thirty (30) days and may dispute such calculation in accordance with the dispute resolution process set forth in Article Twelve below.

As used herein with respect to the Non‑Defaulting Party: (i) “***Costs***” shall mean any and all reasonable legal fees and costs incurred in connection with enforcement of a Party’s rights under this Agreement, including the reasonable fees and costs of any consultants employed to assist the Non-Defaulting Party in the determination of the Termination Amount, and any and all brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party in connection with (A) terminating any arrangement pursuant to which it has hedged its obligations and (B) entering into new arrangements which replace this Agreement; (ii) “***Gains***” shall mean an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of the Non‑Defaulting Party’s obligations under this Agreement, determined in a commercially reasonable manner; and (iii) “***Losses***” shall mean an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Non‑Defaulting Party resulting from the termination of its obligations with respect to the Agreement, determined in a commercially reasonable manner. For purposes of the preceding sentence, if and to the extent it is necessary to present value any future payment or revenue stream, such present value shall be determined by assuming a discount rate equal to the rate on U.S. Treasury securities having a maturity date that is closest to the period for which a determination is required to be made under this Agreement as published in the final Eastern edition of The Wall Street Journal under “Money Rates” on the Termination Date plus one hundred (100) basis points. In no event shall the Non‑Defaulting Party’s Gains, Losses or Costs include any penalties. On the due date of any payment under this Section 10.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, and after determining and paying the Termination Amount, return to the other Party any Performance Assurance remaining in the possession of such Party that was not offset in connection with the payment of the Termination Amount.

10.3 Provision of Performance Assurance

* + 1. Seller’s Provision of Performance Assurance. Seller shall provide the Performance Assurance, including the Guaranty (and amendments thereto), in accordance with the Credit Support Annex.
		2. UI’s Provision of Performance Assurance.
			1. If UI is in default pursuant to Section 10.1(d), UI as the Defaulting Party may cure the Event of Default within three (3) Business Days of the occurrence of the breach until such Event of Default no longer exists by (A) accelerating payments such that the monthly amount due and payable to Seller under this Agreement is paid to Seller in accordance with the payment schedule set forth in **Appendix D** and (B) delivering to Seller Performance Assurance as collateral security in an amount equal to the receivablesdue to Seller for the thirty(30) day period immediately preceding the date on which Seller provides notice of an Event of Default pursuant to Section 10.1(d).
			2. If UI has a Credit Rating of BBB- as determined by S&P or Baa3 as determined by Moody’s or BBB- as determined by Fitch and has been placed on Negative Credit Watch, then UI shall, within three (3) Business Days of the date that UI is placed on Negative Credit Watch, accelerate payments due Seller in accordance with Section 10.3(b)(i) above.
		3. Any Performance Assurance held by Seller pursuant to this Agreement (other than accelerated payments made to Seller by UI as provided for in Section 10.3(b)(i) or (ii), which shall not be deemed Performance Assurance) shall be returned to UI within one (1) Business Day of the day on which the Event of Default giving rise to the requirement of Performance Assurance no longer exists. Cash Performance Assurance provided by UI shall bear interest at the Interest Rate, which interest shall accrue to the benefit of UI, and shall be paid to UI, in arrears, on the first Business Day of each calendar quarter. When the Event of Default giving rise to the requirement for UI to deliver Performance Assurance no longer exists or when UI has been removed from Negative Credit Watch, the payment schedule set forth in Article Seven hereof shall immediately apply and be resumed.
		4. If Seller is holding Performance Assurance posted by UI and fails to maintain Seller’s Credit Requirements, UI may demand the immediate transfer of any Performance Assurance held by Seller to a Qualified Institution. In the event that all or any portion of the Performance Assurance to be transferred pursuant to this Section 10.3(d) is in the form of Cash, such Cash Performance Assurance shall be deposited in an interest-bearing account at such Qualified Institution and all interest earned in respect of such Cash Performance Assurance shall be payable by Seller to UI on the first Business Day of each calendar quarter.
		5. The Parties acknowledge and agree that any Performance Assurance that may be required of a Party under this Agreement shall not be provided as a measure of liquidated damages or considered a penalty. In addition to the foregoing, the Parties acknowledge and agree that a Party’s right to receive Performance Assurance pursuant to the terms and conditions contained in this Agreement shall not alter or affect in any way such Party’s rights to any and all remedies that may be available to it at Law or in equity, including but not limited to any and all rights, actions or remedies available to it under the Uniform Commercial Code or the United States Bankruptcy Code.
		6. To secure its obligations under this Agreement and to the extent that UI delivers Performance Assurance to Seller hereunder: (i) UI hereby grants to Seller a present and continuing security interest in, and lien on, and assignment of all Performance Assurance and any and all proceeds therefrom or from the liquidation thereof, whether now or hereafter held by or on behalf of Seller; (ii) UI agrees that, at any time or from time to time, upon the written request of Seller, that UI will execute and deliver such further documents and take such other actions as may reasonably be requested by Seller in order to perfect such security interest; and (iii) without limiting the foregoing, UI hereby irrevocably authorizes Seller, and hereby appoints Seller as its attorney-in-fact with full power of substitution, to file, at any time and from time to time, in any filing office in any Uniform Commercial Code jurisdiction, initial financing statements and amendments thereto related to the Performance Assurance provided and to provide any information required by the Uniform Commercial Code or such other jurisdiction for the sufficiency of filing office acceptance of any financing statement or amendment.

ARTICLE ELEVEN: Limitation of Damages and Liability

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT ANY DAMAGES CALLED FOR HEREIN ARE DETERMINED TO BE LIQUIDATED DAMAGES, THAT THE DAMAGES WOULD OTHERWISE BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, AND THAT SUCH LIQUIDATED DAMAGES ARE A REASONABLE CALCULATION OF THE ACTUAL LOSS OR DAMAGE.

ARTICLE TWELVE: Resolution of Certain Disputes

* 1. Administrative Committee Proceeding

Except as expressly set forth in this Agreement, any and all disputes, disagreements or differences pertaining to or arising out of this Agreement, including whether a dispute, disagreement or difference (collectively, a “*Dispute*”) is subject to the dispute resolution procedures set forth in this Article Twelve, shall, upon written notice from one Party to the other, be referred to a Responsible Officer of each Party, who shall attempt to timely resolve the matter through negotiation. Any negotiation regarding a Dispute shall be treated as a settlement negotiation and shall not be admissible in any subsequent litigation. If such Responsible Officers resolve the matter, such resolution shall be reported in writing and shall be binding upon the Parties. If a Party fails to appoint a Responsible Officer as representative within ten (10) days of written notice of the existence of a Dispute, or the Responsible Officers are unable to resolve the matter within thirty (30) days, then the matter shall proceed to mediation as provided in Section 12.2.

12.2 Mediation

If pursuant to Section 12.1 the Parties are unable to resolve any Dispute, or a Party fails to appoint a Responsible Officer as representative in the required time, such Dispute shall be referred to mediation under the rules of JAMS/Endispute. The mediator shall be an individual with expertise in the electricity industry reasonably acceptable to both Parties. The Parties shall participate in the mediation in a good faith attempt to resolve the Dispute. The mediation shall be held in New Haven, Connecticut**.** Notwithstanding anything to the contrary in this Agreement, the mediator shall have no authority to make a decision or determination that is binding on the Parties. If the Parties fail to resolve the Dispute through mediation as set forth in this Section 12.2 within sixty (60) days, then the Parties may pursue any remedies available to each at law or in equity. Any admission or any offer made or the details of any negotiation regarding the Dispute prior to or during the mediation shall be confidential and not admissible in any other proceeding or action.

* 1. Preliminary Injunctive Relief

Nothing in this Article Twelve shall preclude, or be construed to preclude, the resort by either Party to a court of competent jurisdiction, consistent with Article Nineteen (g), solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending dispute resolution pursuant to this Article Twelve.

* 1. Expense

Each Party shall pay its own expenses in connection with the dispute resolution procedures set forth in this Article Twelve; provided, however, that expense of the mediator and related mediation expenses shall be shared equally by both Parties.

 **12.5** **Exceptions**

The Parties expressly acknowledge and agree that the provisions contained in Sections 12.2 through 12.4 above shall not apply to any Dispute that is subject to the jurisdiction of the FERC. In addition to the foregoing, each Party waives all rights to a trial by jury in any court and in any suit, action or proceeding on any matter arising in connection with or in any way related to this Agreement. Each Party acknowledges that it makes the waiver in the preceding sentence knowingly, voluntarily and only after extensive consideration of the ramifications with its attorneys.

ARTICLE THIRTEEN: Confidentiality

At all times during the Term and for a period ending two (2) years following the termination of this Agreement, Seller and UI each agree not to disclose and to keep confidential, and to cause and instruct its Representatives not to disclose and to keep confidential: (a) any information that is clearly marked “Confidential” or should under the circumstances reasonably be considered confidential; (b) any oral communication that is subsequently reduced to writing and marked “Confidential” or should under the circumstances reasonably be considered confidential; (c) the terms and conditions of this Agreement and any pricing, quantity or other financial information in connection with the Energy and Market Products provided or delivered by Seller hereunder; and (d) all of UI’s customer load data including, but not limited to, such data and information known and referred to as “actual hourly load data.” Notwithstanding the foregoing, any such information may be disclosed: (i) to the Party’s Affiliates and such Affiliates’ Representatives with a need to know and who are advised of the confidential nature of such information and who are bound by confidentiality agreements with the receiving Party that protect third party confidential information; (ii) to the extent required by applicable Law or by any subpoena or similar legal process of any court or agency of federal, state or local government so long as the receiving Party gives the disclosing Party written notice as soon as practicable prior to such disclosure if such notice is permissible under Law; (iii) to lenders, advisors, counsel, and accountants of such Parties and of such Parties’ respective Affiliates; (iv) to the extent the non‑disclosing Party shall have consented in writing prior to any such disclosure; and (v) to the extent any confidential information is available from public non‑confidential sources or has been independently developed by the receiving Party prior to its receipt from the disclosing Party and without use or reference to the disclosing Party’s confidential information. This Article Thirteen shall supersede any prior confidentiality agreement between UI and Seller. Notwithstanding any provision to the contrary herein, UI or Seller may provide copies or information regarding this Agreement to any regulatory agency requesting and/or requiring such information and in any related regulatory proceeding; provided, however, that any such disclosure includes a request for confidential treatment of the Agreement and the redaction of terms considered commercially sensitive by UI or Seller from the copies of the Agreement which are placed in the public record or otherwise made available to third parties. UI and Seller acknowledge and agree that a breach by a Party of this Article Thirteen would result in irreparable and severe injury within a short period of time and that the non-breaching Party shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at Law or equity.

Information of a confidential nature that (A) has become public other than as a result of a breach of this Article Thirteen or (B) was received by the disclosing Party from a third party, which third party disclosed the information without violating legal or contractual restrictions, shall not be subject to this Article Thirteen. UI consents to the disclosure of information by Seller to the FERC consistent with Seller’s Market-Based Rate Authorization and rules and regulations of the FERC.

ARTICLE FOURTEEN: Severability

In the event that any provision of this Agreement is declared or rendered invalid, unlawful or unenforceable by any court of competent jurisdiction or applicable regulatory agency or deemed invalid, unlawful or unenforceable because of a statutory change, such provision shall be reformed to the minimum extent necessary to cause such provision to be valid, legal and enforceable. If no such reformation is possible, then such provision shall be deemed omitted and the balance of the Agreement shall remain valid and enforceable.

ARTICLE FIFTEEN: Auditing of Accounts and Records

Within two (2) years (or such longer period established under Rules for adjustments by ISO to settlement accounts) following each calendar year during the Term (each, a “***Subject Calendar Year***”), during normal business hours, each Party, at its own expense, shall have the right to audit the other Party’s records pertaining to this Agreement during the Subject Calendar Year solely for the purpose of verifying the accuracy of any statement, charge or computation made pursuant to this Agreement, such audit to take place at the offices where such records are maintained; provided, however, that reasonable written notice shall be given prior to any audit, and provided that the audit shall be limited to those portions of such records that relate to services provided under this Agreement for the Subject Calendar Year and that are reasonably necessary to perform the necessary verifications. The Party being audited will be entitled to review the audit report and any supporting materials. Information disclosed in any such audit shall be deemed “Confidential” for purposes of Article Thirteen. The auditing Party shall, if requested by the audited Party, designate an independent auditor to perform such audit. Any overpayment or underpayment revealed as a result of such audit shall be paid by the Party found to be owing such payment(s), together with interest on such amount(s) from the date such payment(s) were due until paid in full hereunder, at the Default Rate, to the Party to whom such payments are owed, within fifteen (15) days of the date on which the audit report is provided to the Party found to be owing such payments.

ARTICLE SIXTEEN: Parties Bound by Terms

Except as provided in Section 6.2(c): (a) Seller and UI each hereby irrevocably waives its rights to change or amend this Agreement in any way through making application to the PURA or the FERC (or to any other governmental agency or authority), or to change this Agreement through unilateral application to the FERC under Sections 205 and 206 of the Federal Power Act (or pursuant to any other provision of Law); and (b) Seller and UI each hereby irrevocably waives its rights to seek any change or to support any application or complaint or other legislative, judicial or regulatory action made seeking a change in the rates or a change in the terms and conditions of this Agreement, absent the mutual agreement of the Parties. Absent the agreement of the Parties to a proposed change, the standard of review for any change to this Agreement, whether proposed by a non-party or the FERC 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).

ARTICLE SEVENTEEN: Notices

Notices shall, unless otherwise specified herein, be in writing and shall be delivered by one of the following methods of delivery: (a) hand delivery; (b) overnight United States mail; (c) nationally recognized overnight courier service; or (d) facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or overnight courier service shall be effective on the next Business Day after it was sent. All notices, requests and statements shall be made as specified below:

To Seller:

**[*Name*]**

**[*Address*]**

**[*Address*]**

Attn:

Fax:

*With a copy to*:

**[*Name*]**

**[*Address*]**

**[*Address*]**

Attn:

Fax:

To UI:

The United Illuminating Company

180 Marsh Hill Road

Orange, CT 06477

Attn: Director, Wholesale Power Contracts

UIPower@uinet.com

A Party may change its addresses by providing notice of same in accordance herewith.

ARTICLE EIGHTEEN: Interpretation

In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa; the terms “any” and “all” mean “any and all”; the term “includes” or “including” shall mean “including, without limitation,”; reference to a Section, Article or Schedule shall mean a Section, Article or Schedule of this Agreement; and the terms “hereof,” “herein,” “hereto,” “hereunder” and “herewith” refer to this Agreement as a whole. Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made. In this Agreement, any reference to “dollars” or use of a “$” symbol shall mean “U.S. dollars.”

ARTICLE NINETEEN: Miscellaneous

* + 1. Each Party shall prepare, execute and deliver to the other Party any documents reasonably required to implement any provision of this Agreement.
		2. Any number of counterparts to this Agreement and any Transaction Confirmation may be executed and each shall have the same force and effect as the original. This Agreement and any Transaction Confirmation may also be executed and delivered by facsimile.
		3. This Agreement shall constitute the entire understanding between the Parties and shall supersede all prior correspondence and understandings pertaining to the subject matter of this Agreement.
		4. Failure of either Party to enforce any provision of this Agreement or to require performance by the other Party of any of the provisions hereof shall not be construed as a waiver of such provisions or affect the validity of this Agreement, any part hereof, or the right of either Party to thereafter enforce each and every provision.
		5. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other relationship that may invoke fiduciary obligations between the Parties.
		6. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
		7. The interpretation and performance of this Agreement shall be in accordance with and shall be governed by the Laws of the State of Connecticut without regard to its conflicts of laws and principles. Subject to Article Twelve of this Agreement, any Dispute or Claim arising out of this Agreement shall be brought in a court of competent jurisdiction located in New Haven County in the State of Connecticut. Each Party hereto irrevocably waives any objection which it may have to the venue of any proceeding brought in any such court and waives any claim that such proceedings have been brought in an inconvenient forum.
		8. This Agreement may be amended only by a written agreement signed by the Parties.
		9. The applicable provisions of this Agreement shall continue in effect after the expiration or earlier termination of this Agreement to the extent necessary to provide for final billings, payments, audits, adjustments and the reports required hereunder related to the period prior to such expiration or earlier termination. Without limiting the generality of the foregoing, the Parties specifically agree that provisions contained in Sections 6.1, 10.2, 10.3, 19(g), 19(i) and 19(j), Articles Eleven, Twelve, Thirteen, Fifteen and Sixteen, and the Credit Support Annex shall survive termination or expiration of this Agreement for a period of six (6) years from the date of such termination or expiration, unless a longer survival period is required by Law.
		10. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

**[Signature Page to Wholesale Power Supply Agreement]**

IN WITNESS WHEREOF, Seller and UI have caused this Agreement to be signed by their respective duly authorized representatives as of the date first above written.

THE UNITED ILLUMINATING COMPANY

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

Name:

Title:

 [***Seller***]

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

 Name:

 Title:

**SCHEDULE 1**

**ESTIMATION PROCESS**

OVERVIEW

The estimation process is a cost effective approach to producing results that are reliable, unbiased and reasonably accurate. The hourly load estimates will be based on rate class average load profiles which are developed from statistically designed samples. Each day, the class load shapes will be scaled to the population of customers served by each supplier. In cases where telemetered data on individual customers are available, they may be used in place of the estimated shapes, if practicable. On a periodic basis that coincides with the Market Rules, the estimates will be refined by incorporating actual usage data obtained from the most recent meter readings. In both processes, the sum of all reported loads to ISO will match the total load of the UI Metering Domain. A description of the estimation process follows.

DAILY ESTIMATION OF SUPPLIER’S LOAD

The daily process estimates the hourly load by rate class for each supplier, including Seller. The following outlines the process used to obtain the estimated hourly load:

On a daily basis, the settlement database is updated with the latest customer information and usage information available for all meters. This data is updated from UI’s customer database and includes new or changed supplier information, new or changed account information, and updated energy usage information.

 Industry-recognized load settlement software calculates an Energy Usage Factor for each account. For the purpose of this Schedule 1, “Energy Usage Factor” means the factor calculated for each individually profiled customer used to adjust the average segment load profile to better represent specific customer hourly usage. The resultant value of the calculated usage factor is the average daily portion of energy used by each account within its respective segment.

 The Proxy Day method selects the historical system load day with the minimum difference to the system load of the day being settled and is the minimum sum of the absolute value of the hourly differences for the historical days in the system.

 This method presumes that weather and other variables have been implicitly considered. Average hourly load segment profiles that assume a usage factor of unity (1.0) for the chosen historical day are employed in that day’s settlement. UI Metering Domain historical system load and segment shapes are utilized in the settlement system.

The amount of load for each segment for each hour is calculated and load for each account is calculated using the calculated energy factor times the load for each hour in its respective average segment profile.

The sum of the supplier loads for each hour must equal the UI Metering Domain system load for the day being settled. The settlement software reconciles the load so that all losses and unaccounted for energy are distributed to each supplier by its representative load to UI Metering Domain system load.

The resultant load is summed by each supplier by hour and reported to ISO on a schedule consistent with the Market Rules.

RECONCILIATION OF SUPPLIER’S LOAD

A reconciliation of all supplier loads will be performed to correspond with the ISO Market Rules. This process will include any system meter reading changes submitted to or changed by ISO during the period that change UI Metering Domain system load.

**APPENDIX A**

**TRANSACTION CONFIRMATION**

**UNDER MASTER WHOLESALE POWER SUPPLY AGREEMENT**

This Transaction Confirmation, dated \_\_\_\_\_\_\_\_, 20XX, (the “***Transaction Effective Date***”), is made and entered into by and between The United Illuminating Company, a specially chartered Connecticut corporation (“***UI***”), and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [corporation] [or] [limited liability company] (“***Seller***”).

W I T N E S S E T H:

WHEREAS, UI and Seller have entered into a Master Wholesale Power Supply Agreement dated \_\_\_\_\_, 20\_\_ (the “***Master Agreement***”); and

WHEREAS, UI and Seller have agreed to the terms of a Transaction wherein Seller will sell, and UI will purchase, full requirements electric service to meet UI’s [Standard Service] [Last Resort Service] obligations subject to the terms of the Master Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements made herein and in the Master Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby and acknowledged by UI and Seller, UI and Seller agree as follows:

1. Governing Terms. This Transaction is governed by, constitutes a part of, supplements, and is subject to the terms and provisions of the Master Agreement. The terms, conditions, covenants, agreements contained in the Master Agreement are in all respects ratified, confirmed and remade as of the Transaction Effective Date hereof and, except as expressly supplemented, amended or waived hereby, shall continue in full force and effect. In the event of any inconsistency between the terms of this Transaction Confirmation and the terms of the Master Agreement, the terms of this Transaction Confirmation shall control for the purposes of this Transaction. All capitalized terms used, but not defined, in this Transaction Confirmation shall have the meaning ascribed to them in the Master Agreement.
2. Representations and Warranties.
	1. Seller hereby represents that the representations and warranties made by Seller in the Master Agreement are true and correct as of the Transaction Effective Date, as though made on the Transaction Effective Date.
	2. UI hereby represents that the representations and warranties made by UI in the Master Agreement are true and correct as of the Transaction Effective Date, as though made on the Transaction Effective Date.
3. Transaction Load. Under the terms of the Master Agreement and this Transaction Confirmation, Seller shall supply all Energy and Market Products required to meet **[**[\_\_\_\_] [(\_\_)] of UI’s Energy and Market Products requirements of the Standard Service Customers at all points in time during the Delivery Term**] [*or*] [**100% of UI’s Energy and Market Products requirements of the Last Resort Service Customers for the Delivery Term**]** (the “***Transaction Load***”).
4. Delivery Term. The “***Delivery Term***” for this Transaction shall be the period commencing at the beginning of the hour ending 0100 EPT on [\_\_\_\_\_\_\_\_\_] 1, 20[\_\_] through the hour ending 2400 EPT on [\_\_\_\_\_\_\_\_\_] [\_\_], 20[\_\_], unless this Transaction is sooner terminated in accordance with the Master Agreement, in which case the Delivery Term shall end at 2400 EPT on the date this Transaction is so terminated.
5. Scenario. (*Choose only one.*) **Scenario A**  **Scenario B** 
6. Transaction Prices. The “***Transaction Prices***” for Delivered Energy and all Market Products associated therewith shall be as follows:

**[*Standard Service Price Matrix:*]**

|  |  |
| --- | --- |
|  | **Energy On-Peak Price Per MWh ($/MWh)** |
| Month | Small C&I | Large C&I | Residential | Street Lights |
| Jan-\_\_ |  $ TBD  | $ TBD  | $ TBD  | N/A |
| Feb-\_\_ | $ TBD  | $ TBD  | $ TBD  | N/A |
| Mar-\_\_ | $ TBD  | $ TBD  | $ TBD  | N/A |
| Apr-\_\_ | $ TBD  | $ TBD  | $ TBD  | N/A |
| May-\_\_ | $ TBD  | $ TBD  | $ TBD  | N/A |
| Jun-\_\_ | $ TBD  | $ TBD  | $ TBD  | N/A |
| Jul-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  | N/A |
| Aug-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  | N/A |
| Sep-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  | N/A |
| Oct-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  | N/A |
| Nov-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  | N/A |
| Dec-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  | N/A |
|  |  |  |  |  |
|  |  |  |  |  |
|  | **Energy Off-Peak Price Per MWh ($/MWh)** |
| Month | Small C&I | Large C&I | Residential | Street Lights |
| Jan-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Feb-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Mar-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Apr-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| May-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Jun-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Jul-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Aug-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Sep-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Oct-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Nov-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |
| Dec-\_\_ |  $ TBD  |  $ TBD  |  $ TBD  |  $ TBD  |

**[*NOTE TO DRAFT: THE ABOVE SHALL BE CONFORMED TO INCLUDE OTHER TIME PERIODS CONTAINED IN SPECIFIC BIDS*]**

**[*Last Resort Service Price Matrix:*]**

|  |  |
| --- | --- |
| **Month** | **Energy On-peak Price Per MWh ($/MWh)** |
| **Jan-\_\_** |   |
| **Feb-\_\_** |   |
| **Mar-\_\_** |   |
|  |  |
| **Month** | **Energy Off-peak Price Per MWh ($/MWH)** |
| **Jan-\_\_** |  |
| **Feb-\_\_** |   |
| **Mar-\_\_** |   |

**[*NOTE TO DRAFT: THE ABOVE SHALL BE CONFORMED TO INCLUDE OTHER TIME PERIODS CONTAINED IN SPECIFIC BIDS*]**

**On-Peak and Off-Peak periods are as follows:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Class** | **Customer Class** | **On-Peak period - weekday hours only** | **Off-Peak period - all weekend hours plus weekday hours below** |
| Standard Service | Residential | HE\* 13 - HE 20 | HE 21 - HE 12 |
| Standard Service | Small C&I | HE 11 - HE 18 | HE 19 - HE 10 |
| Standard Service | Large C&I | HE 11 - HE 18 | HE 19 - HE 10 |
| Standard Service | Street Lighting | - - - - - - - - - -  | All Hours |
| Last Resort Service | N/A | HE 11 - HE 18 | HE 19 - HE 10 |
|  | \* HE means “hour ending.” |

1. Minimum Guaranty Amount. The minimum guaranty amount for this Transaction (the “***Minimum Guaranty Amount***”) is [\_\_\_\_\_\_\_\_\_\_\_].
2. Distribution Losses. For the purposes of Section 2.1(k) of the Master Agreement, distribution losses shall be fixed at [\_\_]% for the Delivery Term.
3. Historical On-Peak and Off-Peak Volumes. Set forth on **Annex I** to this Transaction Confirmation are the historical On-Peak and Off-Peak volumes for the relevant **[**twelve-**]** or **[**three-**]** month period prior to this Transaction, which volumes may be used by UI in connection with calculations to be made under the Credit Support Annex.

**IN WITNESS WHEREOF**, Seller and UI have caused this Transaction Confirmation to be signed by their respective duly authorized representatives as of the date first above written.

THE UNITED ILLUMINATING COMPANY

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

Name:

Title:

[***SELLER***]

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

 Name:

 Title:

**ANNEX I**

**to**

**Transaction Confirmation**

**Historical On-Peak and Off-Peak Volumes**

**[*On Peak and Off Peak Loads for Standard Service (MWh)*]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Month** | **On Peak (MWh) HE 08 - HE 23** | **Off Peak (MWh) HE 24 - HE 07** | **Total** |
| **Jan-0X** |  |  |  |
| **Feb-0X** |  |  |  |
| **Mar-0X** |  |  |  |
| **Apr-0X** |  |  |  |
| **May-0X** |  |  |  |
| **Jun-0X** |  |  |  |
| **Jul-0X** |  |  |  |
| **Aug-0X** |  |  |  |
| **Sep-0X** |  |  |  |
| **Oct-0X** |  |  |  |
| **Nov-0X** |  |  |  |
| **Dec-0X** |  |  |  |
| **Total** |  |  |  |

**[*NOTE TO DRAFT: the above AMOUNTS WILL BE BASED ON SELLER PROVIDING ONE-THIRD OF UI’S Standard service LOAD REQUIREMENTS. CONTRACTS FOR OTHER QUANTITIES AND TERMS WILL BE ADJUSTED ACCORDINGLY*.]**

**[*On Peak and Off Peak Loads for Last Resort Service (MWh)*]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Month** | **On Peak (MWh) HE 08 - HE 23** | **Off Peak (MWh) HE 24 - HE 07** | **Total** |
| **Jan-0X** |  |  |  |
| **Feb-0X** |  |  |  |
| **Mar-0X** |  |  |  |
| **Total** |  |  |  |

**APPENDIX B**

**GUARANTY**

THIS GUARANTY (“***Guaranty***”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 20[\_\_],made by [GUARANTOR] (the “***Guarantor***”), a [COMPANY TYPE] organized and existing under the laws of [STATE], in favor of **THE UNITED ILLUMINATING COMPANY**, a specially chartered corporation organized and existing under the laws of the State of Connecticut (the “***Counterparty***”).

W I T N E S S E T H:

WHEREAS, the Guarantor is the parent company of [\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “***Obligor***”) and expects to receive substantial direct and indirect benefits from the transactions to which this Guaranty relates; and

WHEREAS, the Guarantor enters into this Guaranty in consideration of, and as a material inducement for the Counterparty to have entered into that certain Transaction Confirmation under Master Wholesale Power Supply Agreement dated as of the date hereof (the “***Agreement***”) with the Obligor, to sell energy in the form of electric power and market products to the Counterparty; and

WHEREAS, it is a condition of the Agreement that the Guarantor execute and deliver this Guaranty.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. The Guarantor hereby unconditionally and absolutely guarantees to the Counterparty the prompt and complete payment when due, subject to the grace period set forth in the Agreement and upon demand in writing from the Counterparty to the Guarantor at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_], facsimile no.: [\_\_\_\_\_\_\_\_\_\_\_\_], of any and all amounts payable by the Obligor to the Counterparty (the “***Obligations***”) arising out of or in connection with the Agreement. Notwithstanding the aggregate amount of the Obligations at any time or from time to time under the Agreement, the liability of the Guarantor to the Counterparty shall not exceed [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] dollars ($[\_\_\_\_\_\_\_\_\_]) in the aggregate at any time. Guarantor will be liable for direct damages only and to the extent provided for in the Agreement and this Guaranty. In no event shall Guarantor be liable hereunder or thereunder for consequential, incidental, punitive, exemplary or indirect damages, lost profits or revenues by statute made in tort or contract, under any indemnification provision. All sums payable by the Guarantor hereunder shall be made in immediately available funds.
2. The Guarantor hereby agrees that its obligations hereunder shall be absolute, continuing and unconditional, irrespective of the validity, regularity or enforceability of the Agreement; the absence of any action to enforce the same; any waiver or consent by the Counterparty concerning any provisions thereof; the rendering of any judgment against the Obligor or any action to enforce the same; or any other circumstances that might otherwise constitute a legal or, equitable discharge of a guarantor or a defense of a guarantor. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all Obligations may be or become barred by any statute of limitations, discharged or uncollectible in any bankruptcy, insolvency or other proceeding or otherwise unenforceable. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by the Counterparty upon the insolvency, bankruptcy or reorganization of the Obligor or otherwise, all as though such payment had not been made. Payments by the Guarantor hereunder may be required by the Counterparty on any number of occasions.
3. The Guarantor agrees that the Obligations will be paid and performed strictly in accordance with their respective terms, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Counterparty with respect thereto. The Guarantor waives promptness, diligences, presentment, demand, protest, notice of acceptance, notice of any Obligations incurred and all other notices of any kind, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshalling of assets of the Obligor or any other entity or other person primarily or secondarily liable with respect to any of the Obligations, and all suretyship defenses generally. Without limiting the generality of the foregoing, the Guarantor agrees to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Obligation and agrees that the obligations of the Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (i) the failure of the Counterparty to assert any claim or demand or to enforce any right or remedy against the Obligor or any other entity or other person primarily or secondarily liable with respect to any of the Obligations under the Agreement, provided that in no event shall the liability of the Guarantor exceed the aggregate amount set forth in the Agreement at any time; (ii) any extensions, compromise, refinancing, consolidation or renewals of any Obligation; (iii) any change in the time, place or manner of payment of any of the Obligations or any rescissions, waivers, compromise, refinancing, consolidation, amendments or modifications of any of the terms or provisions of the Agreement or any other agreement evidencing, securing or otherwise executed in connection with any of the Obligations; (iv) the addition, substitution or release of any entity or other person primarily or secondarily liable for any Obligation; (v) the adequacy of any rights which the Counterparty may have against any collateral security or other means of obtaining repayment of any of the Obligations; (vi) the impairment of any collateral securing any of the Obligations, including without limitation the failure to perfect or preserve any rights which the Counterparty might have in such collateral security or the substitution, exchange, surrender, release, loss or destruction of any such collateral security; or (vii) any other act or omission which might in any manner or to any extent vary the risk of the Guarantor or otherwise operate as a release or discharge of the Guarantor, all of which may be done without notice to the Guarantor. To the fullest extent permitted by law, the Guarantor hereby expressly waives any and all rights or defenses arising by reason of (A) any “one action” or “anti-deficiency” law which would otherwise prevent the Counterparty from bringing any action, including any claim for a deficiency, or exercising any other right or remedy (including any right of set-off), against the Guarantor before or after the Counterparty’s commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise, or (B) any other law which in any other way would otherwise require any election of remedies by the Counterparty.
4. If for any reason the Obligor has no legal existence or is under no legal obligation to discharge any of the Obligations, or if any of the Obligations have become irrecoverable from the Obligor by reason of the Obligor’s insolvency, bankruptcy or reorganization or by other operation of law or for any reason, this Guaranty shall nevertheless be binding on the Guarantor to the same extent as if the Guarantor at all times had been the principal obligor on all such Obligations. In the event that acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Counterparty, or for any other reason, all such amounts otherwise subject to acceleration under the terms of the Agreement evidencing, occurring or otherwise executed in connection with any Obligation shall be immediately due and payable by the Guarantor.
5. Subject to the limitations in Section 1, the Guarantor further agrees, as the principal obligor and not as a guarantor only, to pay to the Counterparty on demand, all reasonable costs and expenses (including court costs and legal expenses) incurred or expended by the Counterparty in connection with the Obligations, this Guaranty and the enforcement thereof, together with interest on amounts recoverable under this Section 5 from the time when such amounts become due until payment, whether before or after judgment, at the rate of interest for overdue amounts set forth in the Agreement, provided that if such interest exceeds the maximum amount permitted to be paid under applicable law, then such interest shall be reduced to such maximum permitted amount.
6. The Guarantor agrees that it will do all such things and execute all such documents as the Counterparty may consider necessary or desirable to give full effect to this Guaranty and to perfect and preserve the rights and powers of the Counterparty hereunder. The Guarantor acknowledges and confirms that the Guarantor itself has established its own adequate means of obtaining from the Obligor on a continuing basis all information desired by the Guarantor concerning the financial condition of the Obligor and that the Guarantor will look to the Obligor and not to the Counterparty in order for the Guarantor to keep adequately informed of changes in the Obligor’s financial condition.
7. This Guaranty is intended to be and shall be construed to be a continuing guaranty, without further notice to the Guarantor at the address set forth herein, and shall remain in full force and effect until the satisfaction in full of all Obligations.
8. This Guaranty and the rights and obligations of the Counterparty and the Guarantor hereunder shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule. The Guarantor agrees that any action or claim arising out of any dispute in connection with this guaranty shall be brought in the courts of competent jurisdiction located in New Haven County in the State of Connecticut and consents to the non-exclusive jurisdiction of such court. The Guarantor hereby waives any objection that he or she may now or hereafter have to the venue of any such suit or any such court of that such suit is brought in an inconvenient forum.
9. **The Guarantor hereby waives all rights to a trial by jury in any court and in any suit, action or proceeding on any matter arising in connection with or in any way related to this Guaranty and/or the enforcement of any of the Counterparty’s remedies. The Guarantor acknowledges that it makes this waiver knowingly, voluntarily and only after extensive consideration of the ramifications of this waiver with its attorneys.**
10. This Guaranty shall be binding upon the Guarantor, its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty, its successors and assigns.
11. Any and all suretyship defenses are hereby waived by the Guarantor without limitation, and the Counterparty may at any time, whether before or after termination of this Guaranty, and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) make any change in the terms of the Obligations or Agreement without increasing the liability of the Guarantor beyond the aggregate amount set forth above; (2) take or fail to take any action of any kind in respect of a security for the Obligations; (3) exercise or refrain from exercising any rights against the Obligor or others in respect of the Obligations; (4) compromise or subordinate the Obligations, including any security therefor; or (5) apply any sums received to any indebtedness for which the Obligor is liable, whether or not such indebtedness is an Obligation; provided, that notwithstanding the foregoing, the Guarantor reserves to itself all rights, counterclaims and other defenses which the Obligor is or may be entitled to arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Obligor.
12. Until all Obligations are indefeasibly paid, the Guarantor hereby waives all rights of subrogation, reimbursement, contribution, and indemnity from the Obligor and any collateral held therefor, and the Guarantor hereby subordinates all rights under any debts owing from the Obligor to the Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.
13. The Guarantor may not assign its rights nor delegate its obligations under this Guaranty in whole or in part, without the prior written consent of the Counterparty which may be withheld in the Counterparty’s reasonable discretion, and any purported assignment or delegation absent such consent is void; provided, however, that the Counterparty shall be deemed to have reasonably withheld its consent if the putative assignee or delegatee does not meet the “Seller’s Credit Requirements” (as such term is defined in the Agreement).
14. The failure of the Counterparty to enforce any of the provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce the same. All remedies of the Counterparty shall be cumulative. The terms and provisions hereof may not be waived, altered, modified, or amended except in a writing executed by the Guarantor and a duly authorized officer of the Counterparty.
15. The Guarantor hereby represents and warrants to the Counterparty that the execution, delivery and performance hereof by it are within its corporate powers and have been duly authorized by all necessary corporate action and that this Guaranty constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.
16. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Counterparty and the Guarantor with respect to subject matter hereof. The Counterparty and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
17. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. All notices and other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or telefacsimile (receipt effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received) to the addresses for the Counterparty and the Guarantor set forth herein.

[***Next page is signature page.***]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its legal name by its duly authorized representative as of the date first written above.

GUARANTOR

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

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

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX C**

**CREDIT SUPPORT ANNEX**

The obligations of Seller under the Agreement shall be secured in accordance with the provisions of this Credit Support Annex, which sets forth the exclusive conditions under which Seller will be required to Transfer Performance Assurance and/or increase the amount of the Guaranty, as well as the exclusive conditions under which UI will release such Performance Assurance and/or reduce the amount of the Guaranty.

Paragraph 1. Definitions.

Capitalized terms used in this Credit Support Annex but not defined herein shall have the meanings given such terms in the Agreement. For purposes of this Credit Support Annex, the following terms have the respective definitions set forth below:

“***Aggregate Post-Delivery Term Obligation Amount***” means the aggregate sum of all unsatisfied Post-Delivery Term Obligations for all Transactions.

“***Calculation Date***” means any Business Day on which UI makes the determinations referred to in Paragraphs 3, 4, 5 or 8.

“***Cash***” means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

“***Collateral Account***” shall have the meaning attributed to it in Paragraph 6(a)(iii)(B).

“***Collateral Requirement***” shall have the meaning attributed to it in Paragraph 3(b).

“***Collateral Threshold***” means, with respect to Seller, the collateral threshold, if any, set forth in the Paragraph 3(c).

“***Collateral Value***” means: (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the stated amount then available thereunder to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, UI pursuant to this Credit Support Annex, as determined by UI in a commercially reasonable manner.

“***Credit Rating Event***” shall have the meaning attributed to it in Paragraph 6(a)(iii).

“***Current Mark-to-Market Exposure***” of a Transaction, on any Calculation Date, means a good faith calculation by UI of the summation of the market exposure for each remaining month in the Delivery Term of such Transaction, including the balance of the month in which such calculation is made, in accordance with the following formula:

Σ [MQpeaki x (FPpeaki – CPpeaki) + MQoffi x (FPoffi – CPoffi)]

*Where*:

MQpeaki = On-peak Transaction quantities for month “i” as shown in Annex I to the relevant Transaction Confirmation.

FPpeaki = On-Peak forward price for month “i” as of the time of the exposure calculation, as calculated by UI on a commercially reasonable basis using pricing information from broker sheets, independent reporting services, or electronic trading platforms.

CPpeaki = On-Peak forward price for month “i” as of the time of execution of the relevant Transaction Confirmation, as calculated by UI on a commercially reasonable basis using pricing information from broker sheets, independent reporting services, or electronic trading platforms.

MQoffi = Off-peak Transaction quantities for month “i” as shown in Annex I to the relevant Transaction Confirmation.

FPoffi = Off-peak forward price for month “i” as of the time of the exposure calculation, as calculated by UI on a commercially reasonable basis using pricing information from broker sheets, independent reporting services, or electronic trading platforms.

CPoffi = Off-peak forward price for month “i” as of the time of execution of the relevant Transaction Confirmation, as calculated by UI on a commercially reasonable basis using pricing information from broker sheets, independent reporting services, or electronic trading platforms.

“***Custodian***” shall have the meaning attributed to it in Paragraph 6(a)(i).

“***Downgraded Party***” shall have the meaning attributed to it in Paragraph 6(a)(iii).

“***Eligible Collateral***” means Cash and/or Letter(s) of Credit.

“***Exposure Amount***” shall have the meaning set forth in Paragraph 3(a).

“***Interest Amount***” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day (but excluding any interest previously earned on such Cash); multiplied by (b) the Interest Rate for that day; divided by (c) 360.

“***Interest Period***” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“***Interest Rate***” means the daily effective federal funds rate as published in the applicable statistical release designated as H.15(519), or any successor publication published by the Board of Governors of the Federal Reserve System. If such rate is expressed as a range, the Interest Rate shall equal the arithmetic average of such range.

“***Letter of Credit Default***” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall (i) fail to maintain (A) at least ten billion dollars ($10,000,000,000) in total assets or (B) a Credit Rating of at least “A-” from S&P or Fitch or “A3” from Moody’s and/or (ii) be placed on Negative Credit Watch and UI has reasonably determined in good faith that the events or circumstances addressed in such Negative Credit Watch would more likely than not cause such issuer to fail to maintain the requirements set forth in the preceding clause (a)(i); (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become subject to a Bankruptcy Event; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to Seller in accordance with the terms of this Credit Support Annex.

“***Negative Credit Watch***” means an announcement by Fitch, Moody’s or S&P indicating that a Person’s [Credit](http://financial-dictionary.thefreedictionary.com/Credit%2Brating) Rating is under review, unless such announcement only states that such Person’s Credit Rating may be upgraded.

“***Net Aggregate Market Exposure***” means the net aggregate sum of all Current Mark-to-Market Exposures for all Transactions.

“***Notification Time***” means 11:00 a.m., EPT, on any Calculation Date.

“***Obligations***” shall have the meaning attributed to it in Paragraph 2.

“***Post-Delivery Term Obligations***” means Seller’s financial obligations under Section 2.1(j) and clause (a) of Article Seven of the Agreement with respect to each Transaction, as determined by UI in a commercially reasonable manner.

“***Receivable Offset***” shall mean an estimate of the aggregate sum of the receivables due to Seller for the thirty-five (35) day period immediately preceding the Calculation Date with respect to all Transactions, as calculated by UI in a commercially reasonable manner using actual Transaction Prices and estimated Transaction Load.

“***Reference Market-maker***” means a dealer, broker, clearing house or commodity exchange in the relevant market selected by a Party determining the Exposure Amount in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

“***Rounding Amount***” means $100,000.

“***Transfer***” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

(a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by UI;

(b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to UI; and

(c) in the case of any other type of Performance Assurance, delivery thereof as specified by UI.

Paragraph 2. Encumbrance; Grant of Security Interest. As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from Seller to UI and the performance by Seller of all covenants and obligations to be performed by it pursuant to this Credit Support Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the “***Obligations***”), Seller hereby pledges, assigns, conveys and transfers to UI, and hereby grants to UI a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, UI and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and Seller agrees to take such action as UI reasonably requests in order to perfect UI’s continuing security interest in, and lien on (and right of setoff against), such Performance Assurance. Without limiting the foregoing, Seller hereby irrevocably authorizes UI, and hereby appoints UI as its attorney-in-fact with full power of substitution, to file, at any time and from time to time, in any filing office in any Uniform Commercial Code jurisdiction, initial financing statements and amendments thereto related to the Performance Assurance provided and to provide any information required by the Uniform Commercial Code or such other jurisdiction for the sufficiency of filing office acceptance of any financing statement or amendment.

Paragraph 3. Calculations of Collateral Requirement.

(a) Calculation of Exposure Amount. On any Calculation Date, the “***Exposure Amount***” shall be calculated as follows:

(i) in the event that the Net Aggregate Market Exposure is a positive number, the Exposure Amount shall equal the Net Aggregate Market Exposure multiplied by one hundred twenty percent (120%), minus the Receivable Offset; or

(ii) in the event that the Net Aggregate Market Exposure is zero (0) or a negative number, the Exposure Amount shall equal the Net Aggregate Market Exposure, minus the Receivable Offset, plus the Aggregate Post-Delivery Term Obligation Amount.

Notwithstanding anything else herein to the contrary, in no event shall the Exposure Amount be less than zero (0).

(b) Collateral Requirement. The “***Collateral Requirement***” for Seller means the Exposure Amount, minus the sum of:

(i) Seller’s Collateral Threshold; plus

(ii) the amount of Cash (other than Cash being held by UI in lieu of the Guaranty pursuant to Paragraph 3(d)) previously Transferred to UI, the amount of Cash held by UI as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to Seller; plus

(iii) the Collateral Value of each Letter of Credit (other than any Letter(s) of Credit being held by UI in lieu of the Guaranty pursuant to Paragraph 3(d)) and any other form of Performance Assurance (other than Cash, the Guaranty, or any Performance Assurance being held by UI in lieu of the Guaranty pursuant to Paragraph 3(d)) maintained by Seller for the benefit of UI;

provided, however, that, the Collateral Requirement of Seller will be deemed to be zero (0) whenever the calculation of such Party’s Collateral Requirement yields a number less than zero (0).

(c) Seller’s Collateral Threshold.

(i) The Seller’s “***Collateral Threshold***” set forth in **Table 1**, below, is the maximum level of exposure that a Seller may cover on an unsecured basis using its Credit Rating (if Seller meets the Seller’s Credit Requirements without a Guarantor) or its Guarantor’s Credit Rating.

**Table 1**

**Seller’s Collateral Threshold by Credit Rating**

|  |  |
| --- | --- |
| **Credit Rating** | **Collateral Threshold** |
| **(Seller or Guarantor)** |
| **(the lowest rating is used)** |
| **Moody’s** | **S&P** | **Fitch** | **$ Millions** |
| A2 and above | A and above | A and above | 25 |
| A3 | A- | A- | 20 |
| Baa1 | BBB+ | BBB+ | 15 |
| Baa2 | BBB | BBB | 10 |
| Baa3 | BBB- | BBB- | 5 |
| Baa3 and on Negative Credit Watch | BBB- and on Negative Credit Watch | BBB- and on Negative Credit Watch | 2.5 |
| Below Baa3 or unrated | Below BBB- or unrated | Below BBB- or unrated | 0 |

(d) Guaranty.

(i) In addition to, and not in lieu of, Seller’s obligations under Paragraph 4, if Seller does not meet Seller’s Credit Requirements without a Guarantor, Seller shall, simultaneously with the execution of each Transaction Confirmation, deliver to UI a Guaranty from the Guarantor, in the form set forth in **Appendix B** to the Agreement (“***Guaranty***”) and in an amount equal to (A) the Minimum Guaranty Amount or, at Seller’s sole option, (B) the greater of the Aggregate Minimum Guaranty Amount (as such term is defined below) and the Seller’s Collateral Threshold (the “***Maximum Guaranty Amount***”). In the event the Seller elects to provide a Guaranty in the Maximum Guaranty Amount, the provisions of Paragraph 3(d)(ii) shall not apply.

(ii) If, on any Calculation Date, the Exposure Amount is greater than the aggregate amount of the Minimum Guaranty Amounts for all Transactions (the “***Aggregate Minimum Guaranty Amount***”) but less than or equal to Seller’s Collateral Threshold, then Seller shall, within one (1) Business Day after UI provides written notice thereof to Seller, provide to UI an amendment to the Guaranty from the Guarantor increasing the amount thereof to the Exposure Amount rounded up to the nearest integral multiple of the Rounding Amount. If, on any Calculation Date, the Exposure Amount is greater than Seller’s Collateral Threshold, then Seller shall, in addition to, and not in lieu of, Seller’s obligations under Paragraph 4, within one (1) Business Day after UI provides written notice thereof to Seller, provide to UI an amendment to the Guaranty from the Guarantor increasing the amount thereof to the Seller’s Collateral Threshold amount. If UI’s Exposure Amount shall thereafter decrease to an amount below the Collateral Threshold, UI shall, no less frequently than once every thirty (30) days, set a Calculation Date and permit the Guarantor to amend the Guaranty to decrease the amount thereof to the greater of (i) the Aggregate Minimum Guaranty Amount and (ii) the then-current Exposure Amount rounded up to the nearest integral multiple of the Rounding Amount. Notwithstanding anything else in this Collateral Support Annex to the contrary, in no event shall the amount of a Guaranty be less than the Aggregate Minimum Guaranty Amount.

(iii) Seller shall have the right to substitute, in place of the Guaranty, Eligible Collateral in an amount equal to the required amount of the Guaranty calculated pursuant to this Paragraph 3(d), in which case the Collateral Value of such Performance Assurance shall be subtracted from the Collateral Value of all other Performance Assurance then being held by UI for the purposes of the calculation of Seller’s Collateral Requirement in accordance with Paragraph 3(b).

Paragraph 4. Delivery of Performance Assurance. In addition to, and not in lieu of, Seller’s obligations under Paragraph 3(d), on any Calculation Date on which (a) no Event of Default has occurred and is continuing with respect to UI, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to UI for which there exist any unsatisfied payment Obligations, and (c) Seller’s Collateral Requirement equals or exceeds zero (0), UI may demand by written notice that Seller Transfer to UI, and Seller shall, after receiving such notice from UI, Transfer, or cause to be Transferred to UI, Eligible Collateral for the benefit of UI, having a Collateral Value at least equal to Seller’s Collateral Requirement. The amount of Eligible Collateral required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of Seller on or before the Notification Time on a Business Day shall be provided by the close of business on the next Business Day and (ii) Performance Assurance demanded of Seller after the Notification Time on a Business Day shall be provided by the close of business on the second (2nd) Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) demanded by UI pursuant to this Paragraph 4 shall be Transferred to such address as UI shall specify and any Cash demanded by UI pursuant to this Paragraph 4 shall be Transferred to such account as UI shall specify.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) No less frequently than once every thirty (30) days, UI will set a Calculation Date and will permit a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of UI; provided that, after giving effect to the reduction in Performance Assurance: (i) Seller shall in fact have a Collateral Requirement of zero (0); (ii) no Event of Default with respect to Seller shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations; and provided further that UI will use commercially reasonable efforts to set a Calculation Date more frequently than once every thirty (30) days in the event of significant market fluctuations which would result in a material reduction in the amount of Performance Assurance then being held by UI hereunder. UI will provide written notice of such reduction in Performance Assurance, if any, and such reduction may be effected by the Transfer of Cash to Seller or the reduction of the Collateral Value of an existing Letter of Credit or other Performance Assurance previously issued for the benefit of UI. The amount of Performance Assurance reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys’ fees of UI) shall be borne by Seller. UI shall have five (5) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of UI, the Parties shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default with respect to Seller shall have occurred and be continuing or (ii) an Early Termination Date has occurred or has been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations, Seller may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon five (5) Business Day’s written notice to UI; provided, however, that if such substitute Performance Assurance is not Eligible Collateral, then UI must consent to such substitution. Upon the Transfer to UI and/or its Custodian of the substitute Performance Assurance, UI and/or its Custodian shall Transfer the relevant replaced Performance Assurance to Seller within five (5) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (x) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to UI and/or its Custodian prior to the release of the Performance Assurance to be returned to Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of UI shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (y) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal Seller’s Collateral Requirement. Each substitution of Performance Assurance shall constitute a representation and warranty by Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Credit Support Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of UI pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by UI and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by UI of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, Seller will, upon request of UI, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to UI hereunder shall be subject to the following provisions.

(i) So long as UI maintains UI’s Credit Requirements, UI will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a “***Custodian***”) to hold Cash for UI. In the event UI fails to maintain UI’s Credit Requirements, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to UI and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(iii)(B). Upon notice by UI to Seller of the appointment of a Custodian, Seller’s obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by UI for which the Custodian is acting. If UI or its Custodian fails to satisfy any conditions for holding Cash as set forth above or if UI is not entitled to hold Cash at any time, then UI will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(iii)(B), with UI being considered the “Downgraded Party” (as defined below). Except as set forth in Paragraph 6(c), UI will be liable for the acts or omissions of the Custodian to the same extent that UI would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to UI and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to UI for which there exist any unsatisfied payment Obligations, then UI shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.

(iii) Credit Rating Event. Notwithstanding Paragraph 6(a)(ii), if UI or the Custodian is not eligible to hold Cash pursuant to Paragraph 6(a)(i) (such Person shall be the “***Downgraded Party***” and the event that caused it or its Custodian to be ineligible to hold Cash shall be a “***Credit Rating Event***”) then:

(A) the provisions of Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business within five (5) Business Days following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution to be held in a segregated, safekeeping or custody account (the “***Collateral Account***”) within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for UI. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Credit Support Annex and for the security interest of UI and execute such account control agreements as are necessary or applicable to perfect the security interest of Seller therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of Seller. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of UI, subject to the approval of such instructions by Seller (which approval shall not be unreasonably withheld). UI shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with Seller’s approval.

(iv) Interest Payments on Cash.

So long as no Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of Seller exist has occurred or been designated as the result of an Event of Default with respect to Seller, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that UI or its Custodian is holding Cash, UI will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which shall be retained by UI), the Interest Amount. Seller shall invoice UI quarterly in arrears following the end of each calendar quarter, which invoice shall set forth the calculation of the Interest Amount due, and UI shall make payment thereof by the later of (A) the fifth (5th) Business Day of the first month after the calendar quarter to which such invoice relates or (B) the fifth (5th) Business Day after the day on which such invoice is received. On or after the occurrence of an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, UI or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of UI. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor UI’s properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of UI either a substitute Letter of Credit that is issued by a bank acceptable to UI or other Eligible Collateral, in each case within one (1) Business Day after such refusal; provided that, as a result of Seller’s failure to perform in accordance with (A), (B), or (C) above, Seller’s Collateral Requirement would be greater than zero (0).

(ii) As one method of providing Performance Assurance, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to UI either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first (1st) Business Day after the occurrence thereof (or the third (3rd) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to Seller, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations, then UI may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller’s obligations to UI and UI shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding UI’s receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (X) for any failure to Transfer sufficient Performance Assurance or (Y) for any amounts owing to UI and remaining unpaid after the application of the amounts so drawn by UI.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys’ fees of UI) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(vi) Seller shall be deemed in compliance with Seller’s obligations to timely provide Performance Assurance in the form of a Letters of Credit if the Seller provides a copy of a Letter of Credit via facsimile or electronic mail (in .PDF form) to UI on or prior to the date on which such Letter of Credit is due hereunder; provided that the original Letter of Credit is delivered to UI within one (1) Business Day following the due date thereof.

(c) Care of Performance Assurance. Except as is beyond the exercise of reasonable care in the custody thereof, UI shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. UI shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by UI in good faith except to the extent such loss or damage is the result of such agent’s willful misconduct or negligence. Unless held by a Custodian, UI shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of UI shall be deemed to be the holding and possession of such Performance Assurance by UI for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii), nothing in this Credit Support Annex shall be construed as requiring UI to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to Seller has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, UI may exercise any one or more of the rights and remedies provided under the Agreement, in this Credit Support Annex or as otherwise available under applicable Law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to Seller has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then UI may, in its sole discretion, exercise any one or more of the following rights and remedies:

(i) all rights and remedies available to UI under the Uniform Commercial Code and any other applicable jurisdiction and other applicable Laws with respect to the Performance Assurance held by or for the benefit of UI;

(ii) the right to set off any Performance Assurance held by or for the benefit of UI against and in satisfaction of any amount payable by Seller in respect of any of its Obligations;

(iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or

(iv) the right to liquidate any Performance Assurance held by or for the benefit of UI through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of Seller, including any right of equity or redemption by Seller (with UI having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by Seller in respect of any of its Obligations in such order as UI may elect.

(b) Seller hereby irrevocably constitutes and appoints UI and any officer or agent thereof, with full power of substitution, as Seller’s true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of Seller or in UI’s own name, from time to time in UI’s discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) UI shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to UI for any amount payable by Seller in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

Paragraph 8. Disputed Calculations

(a) If Seller disputes the amount of the Guaranty and/or the amount of Performance Assurance changed by UI by written notice pursuant to Paragraph 3(d), 4 or 5, as applicable, and such dispute relates to the amount of the Exposure Amount claimed by UI, then Seller shall (i) notify UI of the existence and nature of the dispute not later than the Notification Time on the first (1st) Business Day following the date that such notice is given by UI pursuant to Paragraph 3(d), 4 or 5, as applicable, and (ii) if UI is requesting an increase in the amount of the Guaranty or the amount of Performance Assurance, provide (A) an amendment to the Guaranty in the amount requested by UI, if requested in UI’s notice to Seller, and (B) Eligible Collateral to or for the benefit of UI in an amount equal to the amount requested by UI, if requested by in UI’s notice to Seller. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the amount requested by UI and Seller’s own estimate, made in good faith and in a commercially reasonable manner, of Seller’s Collateral Requirement and the amount of the Guaranty in accordance with Paragraph 3(d), 4 or 5, as applicable. If the Parties have not been able to resolve their dispute on or before the second (2nd) Business Day following the date that the demand is made by UI, then the Exposure Amount shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Exposure; provided that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Exposure of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Exposure thereof, and UI shall inform Seller of the results of such recalculation (in reasonable detail). Performance Assurance and/or the amount of the Guaranty shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) Seller will execute and deliver to UI (and to the extent permitted by applicable law, Seller hereby authorizes UI to execute and deliver, in the name of Seller or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Credit Support Annex, including any action UI may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and Seller shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by UI and/or its Custodian under the Agreement and this Credit Support Annex, Seller hereby represents and warrants that:

(i) Seller has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Credit Support Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Agreement and this Credit Support Annex;

(ii) upon the Transfer of Performance Assurance by Seller to UI and/or UI’s Custodian, UI shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) Seller is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Credit Support Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Credit Support Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Credit Support Annex.

(d) Seller shall pay on request and indemnify UI against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Credit Support Annex or the execution, delivery, performance or enforcement of the Agreement and this Credit Support Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Credit Support Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Credit Support Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof. Any reference to a “Paragraph” in this Collateral Support Annex shall mean a Paragraph to this Credit Support Annex.

(g) In lieu of the addresses of the Parties set forth in Article Seventeen of the Agreement, each Party shall provide notices to the other Party required or permitted by this Credit Support Annex by one or more of the methods of delivery permitted by such Article Seventeen or via electronic mail to the following addresses:

 *To Seller*:

 **[*Name*]**

**[*Address*]**

**[*Address*]**

Attn:

Email:

 *To UI*:

Director, Wholesale Power Contracts

180 Marsh Hill Road

Orange, CT 06477

Email: uipower@uinet.com

Each Party may change such address by providing notice of same to the other Party in accordance with this Paragraph 9(g). Notwithstanding the foregoing, any notices permitted or required under Paragraph 8 must be given to the address(es) and in the manner set forth in Article Seventeen of the Agreement and to the address(es) and in the manner set forth in this Paragraph 9(g).

**APPENDIX D**

**Semi-Monthly Payment Schedule**

If semi-monthly payments are required as per Section 10.3(b) of this Agreement, the following schedule shall apply:

* + 1. Until trued-up based upon the monthly reconciliation process described in Schedule 1, computations by UI of the charges for the purposes of billings hereunder shall be based on estimates of Delivered Energy made in accordance with Article Six. Each month, UI shall (i) calculate the amount payable by UI to Seller for the first (1st) through the fifteenth (15th) calendar days of such month (with respect to such month, the “***First Billing Period***”), and provide the calculation in the form of a statement to Seller on or before the twenty-third (23rd) day of such month; and (ii) calculate the amount payable by UI to Seller for the sixteenth (16th) calendar day through the end of such month (the “***Second Billing Period***”), and provide the calculation in the form of a statement to Seller on or before the eighth (8th) day of the following month. The calculation shall show the total amount due and payable for the First Billing Period or the Second Billing Period, as the case may be. If the date on which any statement is due under this Appendix D is not a Business Day, then such statement shall be deemed to be due on the next following Business Day.
		2. UI shall pay Seller any and all amounts due and payable for Delivered Energy or otherwise with respect to the First Billing Period on or before the last day of each month (the “***First Payment Due Date***”), and shall pay Seller any and all amounts due and payable for Delivered Energy or otherwise with respect to the Second Billing Period on or before the fifteenth (15th) day of the next following month (the “***Second Payment Due Date***”). All payments shall be denominated in U.S. Dollars and made by wire transfer in immediately available funds. Any amount(s) remaining unpaid with respect to the First Billing Period after the First Payment Due Date or with respect to the Second Billing Period after the Second Payment Due Date, including any disputed amounts, shall bear interest from the First Payment Due Date or Second Payment Due Date, as applicable, to, but excluding, the date of payment by UI at the Default Rate. If any Due Date is not a Business Day, then such Due Date shall be deemed to be the next following Business Day.