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NE rules



SHARED FINANCIAL INTEREST CUSTOMER NET ENERGY BILLING AGREEMENT
(Facilities of Less Than 5 MW)

BETWEEN VERSANT POWER AND

PROJECT NAME: _____

EFFECTIVE DATE: _____

Contract date to be filled in by the utility.

VERSANT POWER
CUSTOMER NET ENERGY BILLING AGREEMENT

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VERSANT POWER CUSTOMER NET ENERGY BILLING AGREEMENT
Facility of Less Than 5 MW

Project Name: _____

This AGREEMENT is dated _____, and is between Versant Power (the “Company”), a Maine corporation having its office and principal place of business in Bangor, Maine, and Project Sponsor (as hereinafter defined), _____ on behalf of the customers of the Company identified in Exhibit 1 or Exhibit 2 to this Agreement who comprise the members or subscribers of the _____ (the “Customers”). In situations where the Customer is developing the Facility itself and will be the only entity that will be a Financial Interest Customer for that Facility, the term “Customer” shall be applicable. In situations where the Project Sponsor is developing the Facility and one or more other entities will be a Financial Interest Customer for the Facility, the term “Project Sponsor” shall be applicable.

Chapter 313 of the Rules and Regulations of the Maine Public Utilities Commission requires that transmission and distribution utilities engage in annualized net energy billing arrangement with customers who meet the qualification and use standards of Chapter 313.

Chapter 313 allows for the netting of the output of a shared ownership facility (an eligible facility in which more than one customer has a financial interest) against the usage of the owners of such facility.

The Project Sponsor/Customers have requested that the Company engage in shared financial interest net energy billing with the Customers as described in Chapter 313.

The Parties therefore agree as follows:

ARTICLE I: DEFINITIONS

As used herein, the terms below are defined as follows:

“Bi-directional Meter” means a single meter that is capable of measuring both (i) the kilowatt-hours delivered to the Company’s system from the Facility and (ii) the kilowatt-hours that flow from the Company’s system to the Facility.

“Billing Period” is the period of time (approximately thirty (30) days) over which (i) Customers usage is measured for billing purposes and (ii) generation of metered energy from the Facility is recorded.

“Certificate of Completion” is the form adopted by the Company, in accordance with Chapter 324 of the Commission Rules for electrician certification that the facility is fully operable and meets the requirements of State and Local electrical codes for interconnection to the Transmission & Distribution electric system. {Note – Definition is not applicable for existing resources.}

“Commercial Operation Date” means the date on which the Project is commercially operational, placed into service, and interconnection operations have commenced. The Commercial Operation Date cannot be before the date as stated on the Certificate of Completion or other written permission to operate or authority to interconnect the Facility provided by the T&D Utility. {Note – Definition is not applicable for existing resources.}

“Commission” is the Maine Public Utilities Commission established under Title 35-A of the Maine Revised Statutes or any succeeding state regulatory agency having jurisdiction over public utilities.

“Competitive Electricity Provider” is a marketer, broker, aggregator, or any other entity selling electricity to the public at retail in Maine.

“Construction Period” has the meaning set forth in Section III of this Agreement.

“Credits” are the number of kilowatt-hours of Out Energy measured during any Billing Period.

“Customers” are those customers of the Company having a financial interest in the Facility, as identified in Exhibit 1 or Exhibit 2 to this Agreement (as they may be updated or amended from time to time).

“Delivery Period” is the period of time beginning on the Commercial Operation Date and ending on a date up to 20 years after the Commercial Operation Date, during which the Company applies Bill Credits in accordance with this Agreement.

“Distributed Generation Procurement” means the program administered by the Commission pursuant to Title 35-A, chapter 34-C of the Maine Revised Statutes, as may be amended from time to time.

“Effective Date” has the meaning set forth in Article III of this Agreement.

“Facility” is all of the generating plant and equipment which the Project Sponsor owns, or has a financial interest, including the _____ kW _____ [fuel type] generator located at Company service address _____, Maine, as more fully identified in the Interconnection Agreement between the Company and _____ [Customer Name/Project Sponsor].

“Facility Account” is the retail service account representing the physical location of the Facility and any associated retail usage, as measured by a Bi-directional Meter or by an In Meter and an Out Meter.

“Facility’s Interconnection Equipment” is all equipment and facilities owned by the Project Sponsor and located on the Facility’s side of the Point of Delivery required by the Company to be installed to interconnect and deliver energy to the Company’s system, including but not limited to connection, switching, transformation, protective relaying and safety equipment.

“Facility Owners” means _____.

“Financial Interest” means, with respect to the Facility, facility ownership or shared ownership, a lease agreement, a power purchase agreement, or other agreements sufficient to represent a financial interest in the Facility, including an agreement to purchase Credits from the Facility.

“In Energy” is the kilowatt-hours delivered to the Customers from the Company’s system as measured by the In Meter(s) or a Bi-directional Meter during the Billing Period.

“In Meter(s)” are the metering equipment used to measure the kilowatt-hours that flow from the Company’s system to the Customers.

“Megawatt” or “MW” means megawatts denominated in alternating current (AC).

“Net Energy” is the difference between the kilowatt-hours delivered by the Company to the Customers and the kilowatt-hours delivered from the Facility to the Company over the same time period and determined as if measured by a single meter capable of registering the flow of electricity in two directions.

“Net Energy Billing” means net energy billing arrangements under Title 35-A M.R.S. sections 3209-A or 3209-B.

“Out Energy” is the kilowatt-hours delivered to the Company’s system from the Facility as measured by the Out Meter(s) or a Bi-directional Meter during the Billing Period.

“Out Meter(s)” are the metering equipment used to measure the kilowatt-hours delivered from the Facility to the Company’s system.

“Party” means either the Company or Customers and “Parties” means both the Company and Customers.

“Point of Delivery” is the location where the Facility’s Interconnection Equipment and the Company’s system are connected.

“Project Sponsor” means _____, the entity or its successor or assignee that develops, owns, manages, operates, or is otherwise the responsible entity for a Facility in which there are Financial Interest Customers other than the Project Sponsor.

“Rules” are such Rules and Regulations promulgated by the Commission as shall be in effect from time to time. References in this Agreement to particular provisions of the Rules shall be construed to refer to analogous provisions of any succeeding set of Rules promulgated by the Commission, notwithstanding that such provisions may be designated differently.

“Shared Financial Interest” means a financial interest in the Facility that is shared among a group of Shared Financial Interest Customers.

“Shared Financial Interest Customers” mean the Shared Financial Interest Customers who have a Financial Interest in the Facility identified in this Agreement.

“Shared Financial Interest Facility” means the shared facility in which the Shared Financial Interest Customers listed in Exhibit 1 or Exhibit 2 have a shared financial interest.

“Standard Offer Provider” is the provider(s) of standard offer service chosen pursuant to Chapter 301 of the Rules.

“Unused Credits” are Credits that, in accordance with this Agreement, remain after Credits are applied to all customer accounts for the current Billing Period. Unused Credits do not include any Credits that have been eliminated in accordance with the provisions of paragraph (D) of Article IV.

ARTICLE II: QUALIFICATIONS

The eligibility qualifications for net energy billing among Shared Financial Interest Customers under Chapter 313 of the Rules and Regulations of the Maine Public Utilities Commission require that (i) the Facility use a renewable fuel or technology as specified in 35-A M.R.S. § 3210(2)(B-3), with the additional requirement that a fuel cell must derive its energy from a renewable fuel or technology, (ii) the Facility has an installed capacity of less than 5.0 MW, (iii) the Facility is located in the service territory of the Company, (iv) the Facility qualifies as eligible to participate in Net Energy Billing pursuant to 35-A M.R.S § 3209-A or 35-A M.R.S § 3209-B, and (v) the Customers each have a legally enforceable financial interest in the Facility and have the rights to the benefits of the output of the Facility.

The Parties agree that as of the effective date of this Agreement, the Facility and the Customers identified in Exhibit 1 or Exhibit 2 meet these qualifications based on information provided to the Company by the Project Sponsor. Customers (or Project Sponsor) further agree that they shall at all times during the term of this Agreement continue to meet these qualifications.

In accordance with the Commission’s Advisory Ruling dated February 9, 2021 in Docket No. 2020-00332, the Commission determined that battery storage can be combined with a renewable fuel or technology as defined in 35-A M.R.S. § 3210(2)(B-3) so long as there are controls in place that prevent the battery storage unit which is paired with the NEB facility from being charged from the grid, or if the battery is capable of charging from the grid, controls are in place which would prevent the battery from discharging energy to the grid. The Net Energy Billing application submitted by the Customer contains a section in which Customer stated whether the Facility is paired with battery storage and if controls have been or will be in place to prevent the battery storage unit which is paired with the NEB facility from being charged from the grid, or if the battery is capable of charging from the grid, controls have been or will be put in place which would prevent the battery from discharging energy to the grid. In accordance with the Advisory Ruling, for Customers with Facilities greater than 100 kW in size that are paired with battery storage, the Customer must submit an annual attestation affirming that the controls necessary to prevent the battery from being charged from the grid remain in place. Company will initiate the annual attestation process and will track responses. In the event that a Customer does not provide the annual attestation or is found to have removed or modified the controls such that the battery can be charged from the grid, then (i) the Customer will be deemed ineligible to participate in Net Energy Billing, (ii) Company may immediately terminate this Agreement without following the Breach provisions set forth in Article XII of this Agreement, and (iii) Company may require that the Customers/Project Sponsor refund to Company the value of credits provided under this Agreement.

If the Customer removes both the battery and the controls from the Facility, the attestation requirement will cease upon notification of the removal. If the battery remains at the Facility site, the Customer must continue to submit an annual attestation.

The Customers/Project Sponsor and Company are jointly responsible for using commercially reasonable efforts to monetize the value of the output of the facility. In order to ensure that ratepayer value is optimized, the timing of the battery discharge to the grid must occur from 7:00 a.m. through 11:00 p.m. non-holiday, weekdays. This period is subject to change if there is a shift in the ISO-NE wholesale market peak period that would optimize ratepayer value. In such event, Company will notify the Customer of the change in the hours allowed for battery discharge and will amend the contract to set forth the new hours. Company will audit the facility generation and may require the Customers/Project Sponsor Facility to install additional metering to track battery discharge to the grid. Any incremental costs associated with additional metering associated with the battery storage facility will be borne by the Customers/Project Sponsor.

Notwithstanding anything in this Agreement to the contrary, to be used for Net Energy Billing, a distributed generation resource must meet all applicable requirements of Maine's Net Energy Billing statutes (including but not limited to 35-A M.R.S. §§ 3209-A and 3209-B), the Commission's Rules, and any other applicable law, statute, or regulation, including, without limitation, the following:

- A Facility with a nameplate capacity of greater than 2 MW and not more than 5 MW must, on or before December 31, 2024, reach commercial operation by the date specified in this Agreement or by the date specified with an allowable modification to the Agreement, in accordance with 35-A M.R.S. § 3209-A(7)(E); and
- A Facility with a nameplate capacity of at least 1 MW and not more than 2 MW must, on or before December 31, 2024, reach commercial operation by the date specified in this Agreement or by a date specified with an allowable modification to this Agreement, in accordance with 35-A M.R.S. § 3209-A(9).

Customers/Project Sponsor agrees that it shall at all times during the term of this Agreement meet the qualifications set forth in the preceding paragraphs, as applicable.

ARTICLE III: TERM AND EFFECTIVE DATE

For new resources, this Agreement has two periods that together comprise the Term of the Agreement. The Company shall issue this Agreement within 10 Business Days of either (i) the execution of the Interconnection Agreement for the Facility, or (ii) for a Facility that does not have an interconnection agreement but has an interconnection queue position, and the Customer has provided to the Company documentation that it has attained Financial Interest for at least ninety percent (90%) of the Facility capacity, output, or other form of participation or subscription. The Company shall execute this Agreement within fifteen (15) Business Days of receiving this Agreement signed by the Customer/Project Sponsor. This Agreement is effective when fully executed by the Parties (the "Effective Date").

- (a) The Construction Period commences on the Effective Date and ends on the Commercial Operation Date. Customer/Project Sponsor shall provide notice to the Company a minimum of ten (10) Business Days in advance of the Commercial

- (b) Operation Date. The Construction Period must be completed in accordance with the deadlines set forth in 35-A M.R.S. §§ 3209-A and 3209-B, as applicable, as described in Article II above. Customer/Project Sponsor may seek an extension of the Construction Period for an interconnection-related delay or circumstances beyond Customer's control, or as consented to by the Company, with consent not being unreasonably withheld.
- (c) The Delivery Period of the Agreement, with respect to applying Bill Credits, begins on the Commercial Operation Date of the Facility and continues through the twentieth (20th) anniversary of the Commercial Operation Date.

For existing resources, the Delivery Period of the Agreement with respect to applying Bill Credits, begins on the Effective Date and continues through the 20th anniversary of the Effective Date.

ARTICLE IV: NET ENERGY BILLING

The following methodology will be utilized by the Company in determining Customers' payment obligations for (i) transmission and distribution service provided by the Company and (ii) electric generation service provided by either the Standard Offer Provider or a Customers' Competitive Electricity Provider. If any individual customer's Competitive Electricity Provider provides the individual customer with a separate bill for generation service, the Company shall timely provide the necessary data and information to the Competitive Electricity Provider to compute net energy billing charges but the Company shall not in any way be responsible for computing the charges or performing any netting for this separate generation service bill. The initial application of Credits for customers under this Agreement may require two Billing Periods to implement. In order to facilitate billing under this Agreement, the utility reserves the right to place all customers listed in Exhibit 1 or Exhibit 2 in the same billing cycle.

A. Facility Account

The Facility will have its own retail account that will be established in the name of the Project Sponsor or one of the Customers. The person in whose name such account is established shall be responsible for payment of any charges associated with this account, including, but not limited to, any charges that are fixed amounts or calculated on units other than kilowatt-hours.

B. Measurement of Generation

The Facility will have metering equipment that is capable of measuring both In Energy and Out Energy. For each Billing Period of the Facility account described in Paragraph (A) above, Out Energy and In Energy from the Facility will be calculated and reported to the Project Sponsor. If there is Out Energy during any Facility Billing Period, then such Out Energy shall be applied to Shared Financial Interest Customers' accounts as described in Paragraph (C) below. Any Facility usage that is not covered by the application of Unused Credits shall be paid for by the Project Sponsor under the Company's applicable Electric Delivery Rate Schedules and Terms and Conditions on file with the Maine Public Utilities Commission, as well as the Project Sponsor being responsible to pay for the applicable generation service provided by either the Standard Offer Provider or the Facility's Competitive Electricity Provider.

C. Application of Out Energy and Unused Credits

If during a Facility Billing Period there is Out Energy and/or Unused Credits available, then such Out Energy and/or Unused Credit shall be applied to Shared Financial Interest Customers' accounts and allocated on a percentage basis as identified in Exhibit 1, or on a cascading basis according to the priority order in the Facility as selected by the Shared Financial Interest Customers as identified in Exhibit 2; the election between percentage basis and cascading basis shall be in the sole discretion of Project Sponsor. Such Out Energy and/or Unused Credits shall be applied to the Shared Financial Interest Customers' Billing Period for the Facility Billing Period in which Out Energy was determined. For each Billing Period, the Company shall report the allocation of Credits for that Billing Period and the accumulation of Unused Credits to each Shared Financial Interest Customer on the Customer's monthly billing statement. If cascading credit allocation is elected, any Unused Credits will be stored with the Facility account. Any customer usage during any Billing Period that is not covered by the application of Out Energy Credits or Unused Credits shall be paid for by the Shared Financial Interest Customers under the Company's applicable Electric Delivery Rate Schedules and Terms and Conditions on file with the Maine Public Utilities Commission, as well as the Shared Financial Interest Customers being responsible to pay for the applicable generation service provided by either the Standard Offer Provider(s) or applicable Competitive Electricity Provider(s).

D. Unused Credits

As Shared Financial Interest Customers are invoiced each month, current month Credits are first applied and then, if applicable, banked Unused Credits are drawn from the customer's bank. In applying banked Unused Credits to a customer account, the oldest Unused Credits will always be drawn from the account bank first. Unused Credits expire on a rolling 12-month basis. Accordingly, any Unused Credits that remain in the customer account bank will be eliminated after the twelfth month and will not be applied against customer invoices. The customer will receive no compensation for these eliminated Unused Credits.

E. Charges

Net Energy Billing only applies to kilowatt-hour usage charges. Any other charges that are applicable to customer accounts and that are recovered by the Company other than through kilowatt-hour usage charges will be collected by the Company and are the responsibility of the customers. Shared Financial Interest Customers are responsible for all other charges, which are applicable and recovered by the Company either through fixed charges or charges based on billing units other than kilowatt-hours.

F. Modifications to Credit Allocations

Only the Customer/Project Sponsor has the authority to request modification to this Agreement and all such requests must be transmitted by the acceptable means identified in Article XXII (regarding notices). The Project Sponsor is required to inform the Company of any requested modifications to the agreement, including any changes to the allocation designations contained in Exhibits 1 or 2, as soon as possible. Any such changes in fixed or cascading allocations to existing customers listed on Exhibit 1 or 2 shall be made prospectively beginning with the next Billing Period following an accepted request. Requested changes that affect the application of Credits for newly added customers under this agreement will be made on a prospective basis only and may

require two Billing Periods to implement. The Company will provide notice to Customer whether any such request has been accepted by the Company or the basis for any denial of such request.

G. Substitution for Final Billed Accounts

To ensure the uninterrupted allocation of credits following the final billing and deactivation of a Shared Financial Interest account, the Project Sponsor is required to provide the Company with notification of any replacement accounts or reallocation of Credits to existing Shared Financial Interest Customers accounts within thirty (30) days of receiving notice of an account's final billing. If the Shared Financial Interest Facility Account invoice is generated prior to that date, Credits allocated to the final billed account will be credited to the Facility Account. Such Credits will be subsequently reallocated to the designated replacement account or reallocated to existing Shared Financial Interest Customers accounts as directed by the Customer/Project Sponsor.

If the Customer/Project Sponsor fails to provide notification of a replacement account or other reallocation instructions within 30 days of notification of an account's final billing, then at the conclusion of such thirty (30) days, excess Credits allocated to the Facility Account will remain on that account and will not be manually transferred to different account(s). If the terminating account is final billed on the scheduled meter read date of the Facility Account, the terminating account will receive Credits on its final bill. If the terminating account is final billed on any other date, the account will not receive Credits but would be eligible to receive any Unused Credits from prior Billing Periods.

H. Application of kWh and Financial Credits

If an individual customer participates in one or more Net Energy Billing arrangements and/or also receives financial credits in any Distributed Generation arrangement, the customer's consumption will first be reduced by any applicable kWh credits before financial credits are applied. Separate banks will be created for kWh and financial credits and each will expire based upon the terms applicable to each type of contract under which the credits are acquired.

ARTICLE V: INTERCONNECTED OPERATION

This Agreement governs solely the terms and conditions under which the Company will engage in shared financial interest net energy billing with the Shared Financial Interest Customers. It **does not** authorize the Project Sponsor or Shared Financial Interest Customers to interconnect the Facility with the Company's electric system. The terms and conditions of interconnected operation shall be set forth in a separate Interconnection Agreement between the Project Sponsor and the Company. The Project Sponsor or Shared Financial Interest Customers **may not operate** the Facility in parallel with the Company's system until the Company provides you with written notification specifically stating that all of the requirements for interconnection have been satisfied.

ARTICLE VI: METERING

The Company will install metering equipment as necessary 1) to accomplish the billing as described in Article IV: Net Energy Billing of this Agreement and 2) to collect the applicable State of Maine sales tax on the In Energy. In the event that the Company determines that it is necessary

to separately record In Energy and Out Energy, the Company will bear the additional cost of metering equipment to separately record In Energy and Out Energy.

In the event that the Project Sponsor or Shared Financial Interest Customers request that the Company install nonstandard metering equipment or metering equipment which is in addition to the metering that the Company determines is necessary to accomplish Net Energy Billing, the Company will install such nonstandard or additional metering as quickly as practicable in the normal course of the Company's business as provided in the Terms and Conditions § 12.9 of the Company's Electric Rate Schedule. The Company will charge its incremental costs of owning, maintaining, and installing such nonstandard or additional metering to the Customers. The Company will charge its incremental billing costs resulting from such nonstandard metering equipment installed at the Project Sponsor or Shared Financial Interest Customer's request. The Company, at its sole discretion, may require advance payment from the Customers for such nonstandard or additional metering.

The Company will own, maintain, and read all metering equipment necessary for Net Energy Billing. If the Out Meters are not at the same voltage as the Point of Delivery, the metered energy quantities shall be adjusted to the delivery voltage as provided in the Terms and Conditions § 12.8 of the Company's Electric Rate Schedule, as may be amended from time to time, filed with and accepted by the Commission.

ARTICLE VII: ACCESS

The Company shall have the right of access to premises where the Facility is located, and to all property furnished by the Company installed therein, at all reasonable times during which service is provided to the Shared Financial Interest Customers or Project Sponsor, and on its termination, for the purpose of reading meters, or installation, inspection and repair of equipment used in connection with its energy, or removing its property, or for any other proper purposes.

The Project Sponsor or Shared Financial Interest Customers, at their expense, shall maintain suitable and safe access to all equipment owned by the Company on the Customer's property. If the Project Sponsor or Shared Financial Interest Customers' property is secured by a gate, chain or similar device, the Project Sponsor or Shared Financial Interest Customers shall install the device to allow installation of a Company owned lock for access to this property.

ARTICLE VIII: MONTHLY REPORTING

Until such time as the Company automates its billing system to provide such information directly on the Facility Account invoice, by the twentieth (20th) day of each month following the month in which the Credits are applied, the Company shall provide Project Sponsor with a report describing the allocation of Credits to Shared Financial Interest Customers in the corresponding Billing Period. The data provided will include, for each customer account, the account number, percent allocation and Credit amount applied, as well as an indication of any of the accounts which were final billed and are consequently no longer active. The data will also include total Facility production, total Credits generated, and total Credits allocated to Shared Financial Interest Customers' accounts.

ARTICLE IX: BILLING ADJUSTMENTS

The Company shall, at least monthly, provide the Customer a report showing the generation from the Facility. The Company and Customer are jointly responsible for identifying errors. For Customers with generators participating in the kilowatt-hour program, the Customer must review the total generation in the billing cycle and report any suspected meter data errors to the Company within 10 business days of the invoice. Once the Company receives an email from the Customer regarding a potential meter data error, the Company will investigate and communicate findings to the Customer. Errors that are identified and brought to the Company's attention as described in this paragraph will be corrected within the time-period set forth in the ISO-NE tariff or market rules. Meter data errors that are discovered after the 10-day period will only be corrected if the utility is able to correct within the ISO-NE resettlement deadline.

In the event that billing adjustments are required as the result of meter inaccuracies or any other error, the Company and the Shared Financial Interest Customer (or Project Sponsor or Project Sponsor's designated agent, as applicable) will work together to correct the billing. Company and Shared Financial Interest Customer (or Project Sponsor or Project Sponsor's designated agent, as applicable) shall work together in good faith to make the billing adjustment as soon as practicable and shall make every attempt to correct the billing within one (1) Billing Period from identification of the need for the billing adjustment.

If Credits allocated were found to be lower than they should have been, the Company will perform a true-up and allocate the previously un-allocated Credits during the next Billing Period. The Credits will expire 12 months from the date they were allocated to the Shared Financial Interest Customer(s).

If Credits allocated were found to be higher than they should have been, the Company will perform a true-up and reduce the Credits during the next Billing Period by the previously over-allocated Credit amount.

If the Company and Shared Financial Interest Customer (or Project Sponsor or Project Sponsor's designated agent, as applicable) cannot resolve the billing adjustment to their mutual satisfaction, they may commence the dispute resolution process in Article XVI below.

ARTICLE X: GOVERNMENTAL AUTHORIZATIONS

The Customers or Project Sponsor shall ensure that all governmental authorizations and permits required for operation of the Facility are obtained and maintained during the term hereof. The Customer or Project Sponsor shall provide copies of any such authorizations, permits and licenses to the Company upon request.

ARTICLE XI: ASSIGNMENT

This Agreement shall not be assigned, pledged or transferred by any of the Customers (or Project Sponsor, if Project Sponsor is counterparty) or the Company without the written consent of the non-assigning Party, which consent shall not be untimely or unreasonably withheld: provided that either Party may assign this Agreement without prior written consent of the non-assigning Party (i) to an affiliate of said Party, (ii) as collateral security to any lenders, investors,

or financial institutions in connection with any financing for the Facility, or (iii) in connection with a tax equity transaction including, without limitation, a sale leaseback, partnership flip, or inverted leasing structure. Project Sponsor (i) may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests this Agreement as collateral for any financing or refinancing and (ii) may assign this Agreement to the Facility Owner. All assignees, pledgees or transferees shall assume all obligations of the Party assigning the Agreement. If this Agreement is assigned without the written consent of the non-assigning Party (except as otherwise provided above), the non-assigning Party may terminate the Agreement as to that Customer(s) only.

If the Customer/Project Sponsor is a closely-held corporation, then for the purposes of this Article a sale of all or substantially all of the voting securities of the Customer/Project Sponsor to a third party shall be deemed an assignment of this Agreement; provided that a sale of all or substantially all of the membership interests of a limited liability company shall not be deemed an assignment of this Agreement; provided further that a change of control in a parent entity that directly or indirectly owns or controls Customer shall not be deemed an assignment of this Agreement.

If this Agreement is assigned from the Customer (or Project Sponsor) to another party, by virtue of any insolvency proceeding, then the assignee, within 90 days of assumption of this Agreement, shall reimburse the Company for all reasonable expenses incurred by the Company in conjunction with such insolvency proceeding.

The Company and the Customer (or Project Sponsor) agree that in determining whether any withholding of consent to an assignment shall be reasonable, it shall be understood that it is of the essence of this Agreement that (i) the Customer/Project Sponsor have a Financial Interest in the Facility as defined herein, (ii) the assignee be a transmission and distribution customer of the Company, and (iii) the assignee shall have a valid Interconnection Agreement with the Company. For that reason, the Company may reasonably refuse to consent to any assignment of this Agreement that would result in a change either in the type or the location of the Facility contemplated in this Agreement.

ARTICLE XII: BREACH; TERMINATION

Customer/Project Sponsor may terminate this Agreement at any time in its sole discretion by providing notice to the Company not less than one hundred and eighty (180) days before such termination.

In the event of breach of any material terms or conditions of this Agreement, if the breach has not been remedied within thirty (30) days following receipt of written notice thereof from the other Party (provided that, if the breaching Party has commenced and is diligently pursuing efforts to cure such breach, then such 30-day period shall be extended until the earlier of (i) 30 additional days or (ii) end of diligent efforts to cure the breach), then the non-breaching party may terminate this Agreement by written notice at any time until cure of such breach occurs. In the event of any proceedings by or against any Party in bankruptcy, insolvency or for appointment of any receiver or trustee or any general assignment for the benefit of creditors (excluding, for the avoidance of doubt, an assignment in accordance with Article XI or other collateral assignment to obtain project financing), the other Party may terminate this Agreement.

If the Customer/Project Sponsor increase the capability or the capacity of the Facility to exceed 4.999 MW, this Agreement shall immediately terminate. The Company shall not be liable to the Customer/Project Sponsor for damages resulting from a termination pursuant to this paragraph.

If the Facility produces zero (0) kilowatt-hours during any period of twelve (12) consecutive Billing Periods after the Commercial Operation Date [Effective Date for existing resources] for a reason other than a force majeure event, the Company may also terminate this Agreement. The Company shall not be liable to the Customers for damages resulting from a termination pursuant to this paragraph.

ARTICLE XIII: WAIVER

Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

ARTICLE XIV: MODIFICATION

No modification to this Agreement shall be valid unless it is in writing and signed by all Parties hereto.

ARTICLE XV: APPLICABLE LAWS

This Agreement is made in accordance with the laws of the State of Maine and shall be construed and interpreted in accordance with the laws of Maine, notwithstanding any choice of law or rules that may direct the application of the laws of another jurisdiction.

If, after the execution of this Agreement, any right or obligation of either Party under this Agreement is materially altered as the result of any change in applicable laws or regulations, the Parties agree to negotiate in good faith to amend this Agreement to conform to the revised law or regulation. If the Parties are unable to come to an agreement as to the appropriate amendment of this Agreement in the event of a change in applicable laws or regulations, then the Party whose right or obligation is materially altered as a result of such change in law or regulations may terminate this Agreement by providing the other Party with sixty (60) days prior written notice, in which case the Parties respective rights and obligations will be governed by the applicable revised law or regulation after such termination of this Agreement.

ARTICLE XVI: DISPUTE RESOLUTION

In the event of any dispute between the Parties hereto as to a matter referred to within this Agreement or as to the interpretation of any part of this Agreement, the Parties shall refer the matter to their duly authorized representatives for resolution. Should such representatives of the respective Parties fail to resolve the dispute within ten (10) days from such referral, the Parties agree that any such dispute shall be referred to the Commission for resolution. To the extent that the Commission declines to resolve the dispute or lacks the jurisdiction to do so, the Parties may pursue any rights or remedies available at law or in equity and consistent with this Agreement in connection with the dispute.

ARTICLE XVII: LIMITATION OF LIABILITY

Each Party's liability to the other Party for any loss, claim, injury liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred.

ARTICLE XVIII: INTEGRATION

The terms and provisions contained in this Agreement between the Customer/Project Sponsor and the Company constitute the entire Agreement between the Customer/Project Sponsor and the Company and shall supersede all previous communications, representations, or agreements, either verbal or written, between the Customer/Project Sponsor and the Company with respect to net energy billing and this Agreement.

ARTICLE XIX: SEVERABILITY

The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision set forth herein.

ARTICLE XX: CAPTIONS

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive or definitive or to affect the meaning of the contents or scope of this Agreement.

ARTICLE XXI: APPOINTMENT OF PROJECT SPONSOR

Under Chapter 313, customers are required to appoint a single contact person to be responsible for all communications between the Customers and the Company. By signing this Agreement on behalf of the customers, the Project Sponsor represents and warrants that it (1) has been legally designated as Project Sponsor of the Customers, (2) has the authority to legally bind the Customers to the provisions of this Agreement and (3) has full power and authority to act on behalf of each and every customer with respect to this Agreement. The Company shall be entitled to rely on the statements and representations made by the Project Sponsor regarding the implementation and administration of the provisions of this Agreement. Customers will be required to indemnify and hold harmless the Company for acts performed in accordance with or in reliance upon the direction of the Project Sponsor. Through this Agreement, the Customers are undertaking a joint obligation with joint and severable liability for performance of obligations under this Agreement. Any action arising out of this Agreement may be brought against any one or more of the customers without joining the rest.

The Company stipulates that the Customers may form a mutual benefit non-profit corporation that is comprised of the Customers, and that corporation may appoint a Project Sponsor to act on behalf of the customers.

ARTICLE XXII: NOTICES

All notices under this Agreement shall be in writing and shall be deemed sufficient if personally delivered or if sent by U.S. mail, first class, postage prepaid, as follows:

To Customer/Project Sponsor:

Contact Person Name: _____

Contact Person Address: _____

Contact Person Town, State Zip: _____

Contact Person Telephone: _____

Email Contact Person: _____

To Company:

Versant Power
P.O. Box 932
Bangor, ME 04402-0932
Attn: LEGAL NOTICES
Email: legalnotices@versantpower.com

The Company and Customer/Project Sponsor, upon thirty (30) days written notice to the other in accordance with this Article, may change a name or address to which notices under this Agreement must be sent.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed, all as of the day and year first above written.

PROJECT SPONSOR

By: _____

Name: _____

Its: _____

VERSANT POWER

By: _____

Name: _____

Its: _____

Exhibit 1 – Percentage Allocation

The sum of all percentages must equal 100%.		
Customer Name	Account No.	% Allocation
		%
		%
		%
		%
		%
		%
		%
		%
		%
		%

Note: The complete customer list only needs to be provided prior to the Commercial Operation Date of the Facility and can be included with the Net Energy Billing Application.

Exhibit 2 – Cascading Allocation

Customer Name	Account No.	Cascade Order
		1
		2
		3
		4
		5
		6
		7
		8
		9
		10

Note: The complete customer list only needs to be provided prior to the Commercial Operation Date of the Facility and can be included with the Net Energy Billing Application.