Énergie NB Power

NET METERING AGREEMENT

BETWEEN

_____

AND

NEW BRUNSWICK POWER DISTRIBUTION

AND CUSTOMER SERVICE CORPORATION

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NET METERING AGREEMENT

This **NET METERING AGREEMENT** is entered into as of the _____ day of _____, _____.

BY AND BETWEEN:

_____

CUSTOMER

- and -

NEW BRUNSWICK POWER DISTRIBUTION AND CUSTOMER SERVICE CORPORATION of P. O. Box 2000, 515 King Street, Fredericton NB, Canada E3B 4X1, a Crown Corporation organized under the laws of New Brunswick, (hereinafter called "Disco")

WHEREAS Disco allows for synchronous generation to be interconnected to its distribution system for purposes of supply or export of energy;

AND WHEREAS the Customer has requested permission to interconnect with Disco's distribution system for purposes of supply and export of energy;

AND WHEREAS Disco has agreed to permit the Customer to interconnect with its distribution system under the terms of this Agreement;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions in this Agreement, parties agree as follows:

ARTICLE 1 - APPLICATION

1.1 The Customer shall complete Disco's Net Metering Interconnection Application attached hereto as Schedule "A".

1.2 The Customer's completed application including location of the electrical generating installation and details on the electrical generating unit(s) are hereby incorporated into this Agreement as fully as if it were set forth herein.

ARTICLE 2 - CUSTOMER'S GENERATION UNIT

2.1 The Customer's electrical generating system shall be owned and operated by the Customer and all costs associated with the Customer's generating system shall be borne by the Customer.

2.2 The Customer's electrical generating system shall be located on the Customer's premises. It shall include equipment necessary to meet all requirements established by New Brunswick Department of Public Safety, applicable CSA standards, Disco's Rate Schedules and Policies Manual, and/or any amendments thereto, specifications set out in paragraphs 2.4 and 2.5 hereafter and any and all applicable laws, codes and standards over and above those cited in this provision.

2.3 The Customer's generation unit(s) shall have a name plate rating of not more than 100 kW. The electricity that is generated shall be in compliance with Environment Canada's Environmental Choice Program published in "Certification Criteria Document CCD-003" and must be generated from alternative use electricity, biogas-fuelled electricity, biomass-fuelled electricity, solar powered electricity, water powered electricity, or wind powered electricity.

2.4 The Customer shall comply with the technical requirements for connection as set out in Disco's "Technical Specification for Independent Power Procedures" attached hereto as Schedule "B" and forming part of this Agreement as fully as if it were set forth herein.

2.5 Disco shall have the sole authority to determine which interconnection requirements set forth herein or in the included schedules are applicable to the Customer's generation system.

ARTICLE 3 - METERING

3.1 Disco shall supply, at its cost, and shall own and maintain all the necessary meters and associated equipment used for billing.

3.2 The Customer shall supply, at its cost, a live telephone line connected to the meter, which may be shared, provided arrangements can be scheduled for meter reading times. In addition, the Customer shall provide a suitable location for Disco's equipment described in paragraph 3.1.

3.3 Net metering will not commence until all locations have been approved by Disco.

ARTICLE 4 - MAINTENANCE AND PERMITS

4.1 Customer shall (i) maintain the electric generating system and interconnection facilities in a safe and prudent manner and in conformance with all applicable laws and regulations including, but not limited to, Disco's Interconnection Standards; (ii) obtain any governmental authorizations and permits required for the construction and operation of its electric generating system and interconnection facilities, including

electrical permit; (iii) reimburse Disco for any and all losses, damages, claims, penalties, or liability it incurs as a result of Customer's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of Customer's generating system or failure to maintain Customer's facility as required in this section.

ARTICLE 5 - OPERATION

5.1 The Customer shall not commence operation of the generation system until written approval of the interconnection is given by Disco.

5.2 Once in operation, the Customer shall make no changes or modifications in its equipment, wiring or the mode of operation without the prior written approval of Disco.

ARTICLE 6 - ACCESS TO PREMISES

6.1 Disco may enter Customer's premises or property (i) to inspect without prior notice at all reasonable hours Customer's protective devices and to read the meter; and (ii) to disconnect the interconnection facilities at the Disco's meter or transformer, without notice, if, in Disco's opinion, a hazardous condition exists and such immediate action is necessary to protect persons, or Disco's facilities, or property of others from damage or interference caused by Customer's electric generating facilities, or lack of properly operating protective devices or inability to inspect the same.

ARTICLE 7 - INDEMNITY AND LIABILITY

7.1 The Customer hereby indemnifies and agrees to hold harmless and release Disco and its officers, employees, agents, contractors, shareholders and affiliates (collectively, the "Indemnitees") from and against any and all losses, claims, damages, costs, demands fines, judgments, penalties, obligations, payments and liabilities, together with any costs and expenses (including without limitation legal fees and out-of-pocket expenses and investigation expenses) incurred in connection with any of the foregoing, resulting from, relating to or arising out of or in connection with: (i) any failure or abnormality in the operation of the Customer's generating system or any related equipment; (ii) any failure of the Customer to comply with the standards, specifications, or requirements referenced in this Agreement (including appendices hereto) which results in abnormal voltages or voltage fluctuations, abnormal changes in the harmonic content of the generating facility output, single phasing, or any other abnormality related to the quantity or quality of the power produced by the generating facility; (iii) any failure of the Customer duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or by or on behalf of the Customer or (iv) any negligence or intentional misconduct of Customer related to operation of the generating system or any associated equipment or wiring.

7.2 Disco shall indemnify and save harmless the Customer from all loss, damage or injury to persons or property sustained by any third person, or persons, including employees of the Customer and Disco, arising from negligence of Disco, its agents, servants or

employees, provided that Disco shall be given prompt notice of any such claim and shall have the exclusive right to defend and settle any such claim with the full cooperation of the Customer in such defense.

ARTICLE 8 - ENVIRONMENTAL CONTAMINATION

8.1 The Customer shall comply with all environmental laws, regulations and/or standards with respect to Customer Facilities.

8.2 The Customer shall indemnify and save harmless Disco from all loss, expense, damage or injury to persons or property inclusive of Disco property arising as a result of environmental damage, contamination and/or injury due to or caused by the Customer.

8.3 Disco shall indemnify and save harmless the Customer from all loss, expense, damage or injury to persons or property inclusive of Customer property arising as a result of environmental damage, contamination and/or injury due to or caused by Disco.

8.4 Both parties agree to immediately notify the other of any environmental incident that occurs relative to the terms of this Agreement.

ARTICLE 9 - DAMAGES

9.1 Neither party shall be liable to the other for special or consequential damages, or damages for loss of use arising directly or indirectly from their respective obligations under this contract.

ARTICLE 10 - FORCE MAJEURE

10.1 **Suspension of Obligations.** Neither party shall be liable to the other for, or be considered to be in breach of or default under this Agreement because of, any failure or delay in performance by such party under this Agreement to the extent such failure or delay is caused by or results from any such cause or condition which is beyond such party's reasonable control, or which such party is unable to prevent or overcome by exercise of reasonable diligence (any such cause or conditions, a "Force Majeure"), including breach of contract or failure of performance by any person providing services to Disco.

10.2 **Notice; Required Efforts to Resume Performance.** Any party claiming Force Majeure shall give the other party maximum practicable advance notice of any failure or delay resulting from a Force Majeure, and shall use its reasonable best efforts to overcome the Force Majeure and to resume performance as soon as possible.

10.3 **No Excuse of Payment Obligations.** Notwithstanding any other provision of this Agreement, in no event shall a Force Majeure excuse a party's failure or delay to pay any amounts due and owing to the other party under or pursuant to this Agreement.

ARTICLE 11 - INTERRUPTION OR REDUCTION OF DELIVERIES

11.1 Disco may require Customer to interrupt or reduce deliveries as follows: (a) when necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system; or (b) if Disco determines that curtailment, interruption, or reduction is necessary because of emergencies, or compliance with good electrical practices as determined by Disco.

11.2 To the extent reasonably practicable, Disco shall give Customer notice of possible interruption or reduction of deliveries.

ARTICLE 12- BILLING

12.1 Disco shall bill the Customer monthly for the non-kilowatt hour energy charges due under Disco's Rate Schedules and Policies Manual, plus all outstanding amounts for net kilowatt hour energy consumption. If the Customer generates kilowatt hour energy credits during any month, such credits will be carried over from month to month and subtracted from amounts otherwise due the following month, with the exception that on March 31st of each year, all kilowatt hour energy credits shall be set to zero. Based on GST/HST legislation, the Customer is required to pay HST on their entire electricity requirement and not the net amount.

ARTICLE 13 - TERM AND TERMINATION

13.1 This Agreement shall become effective upon execution by both parties, and shall continue on a month-to-month basis. Either party may terminate this Agreement for any reason upon 30 days notice to the other party. Upon such termination, the terminating party (unless terminated by Disco for breach by the Customer of any terms of this Agreement) shall, at its cost, safely render inoperable all equipment used to back feed onto the distribution system, and shall return all equipment to a standard configuration.

13.2 Disco reserves the right to terminate this Agreement at any time without notice if the Customer fails to comply with the terms of this Agreement or no longer meets the eligibility criteria under the Technical Specifications set out in Schedule "B". The Customer shall advise Disco immediately if it ceases to meet these eligibility criteria. If this Agreement is terminated by Disco for breach by the Customer, the Customer shall pay all costs associated with such termination.

13.3 If the Customer wishes to participate in net metering within 24 months of the termination of this Agreement (unless such termination is not caused, directly or indirectly, by the fault, act or omission of the Customer), the Customer agrees to pay all Disco's costs associated with entering into a new agreement, including all equipment and installation costs.

ARTICLE 14 - PERSONNEL AND SYSTEM SAFETY

14.1 If at any time Disco determines that the continued operation of the Customer's facility may endanger any person, property or Disco's distribution system, or have an adverse effect on the safety or power quality of other customers, Disco shall have the right to disconnect the Customer's facility from Disco's distribution system. The Customer's facility shall remain disconnected until such time as Disco is satisfied that the endangering or power quality condition(s) have been corrected, and Disco shall not be obligated to accept any energy from the Customer during such period. The Customer agrees to pay Disco for all costs incurred by Disco related to disconnection of the Customer's facility under this Agreement if such disconnection is caused, directly or indirectly, by the act or omission of the Customer.

ARTICLE 15 - MISCELLANEOUS

15.1 **Authorization.** Each Party represents and warrants to the other Party that the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary corporate and regulatory action on its part and that the execution, delivery and performance by it of this Agreement does not result in a breach, violation of, or conflict with the terms of any contracts or instruments to which it is a party.

15.2 **Independent Contractors.** The Parties are, and will at all times remain, independent contractors. This Agreement does not create, and will not be construed in any way as creating, the relationship of joint ventures, partners, associates, principal and agent or any similar or like relationship between the Parties which could give rise to joint and several liability.

15.3 **Severability.** If any term of this Agreement is held illegal or unenforceable by a court with jurisdiction over the Agreement, all other terms of this Agreement shall remain in full force, and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially affects the rights, obligations or duties of either Party, the Parties shall substitute a provision by mutual agreement that preserves the original intent of the Parties as closely as possible under applicable law.

15.4 **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile shall be deemed for all purposes to be original counterparts of this Agreement.

15.5 **Further Assurances.** Each Party will, at any time and from time to time, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further documents, assurances or things, and secure all necessary consents, as may be reasonably required for the more perfect observance and performance by the Parties of the terms of this Agreement.

15.6 **No Third Party Beneficiaries.** Except where otherwise provided, this Agreement is not made for the benefit of any person not a party to this Agreement, and no person other

than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

15.7 Notices. Any notice or other communication pursuant to this Agreement shall be in writing and shall be deemed to have been duly given (i) when personally delivered, (ii) on the fifth business day after being mailed by registered or certified mail, postage prepaid, or (iii) on the next business day following the date of transmission by facsimile, to the following addresses:

If to the _____:

_____
_____
_____
_____
_____

If to Disco:

New Brunswick Power Distribution and Customer Service Corporation
P. O. Box 2000
515 King Street
Fredericton, NB
E3B 4X1
Attention: Corporate Secretary and General Counsel

15.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the Parties relating to any transaction contemplated by this Agreement. This Agreement may be amended in writing when executed by both Parties.

15.9 Waiver. Waiver of or failure to exercise any right or remedy hereunder by either Party shall not restrict or limit the future exercise of that right or remedy or the exercise of any right or remedy.

15.10 Assignment. This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any assignment of this Agreement does not relieve the assignor of any obligations under this Agreement.

15.11 Binding Effect. This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, by their duly authorized representatives, as of the date first written above on this _____ day of _____, _____.

CUSTOMER

By: _____

Title:

By: _____

Title:

NEW BRUNSWICK POWER DISTRIBUTION AND CUSTOMER SERVICE CORPORATION

By: _____

Title: Vice-President

By: _____

Title: Corporate Secretary & General Counsel