These Terms and Conditions are intended to facilitate the purchase and sale of Energy and Connecticut Class I Renewable Energy Credits ("RECs") for the Non-Residential Renewable Energy Solutions Program ("NRES Program" or "Program") in accordance with Section 3 of Public Act 19-35, *An Act Concerning A Green Economy and Environmental Protection,* Section 1 of Public Act 22-14, *An Act Concerning Clean Energy Tariff Programs,* Section 25 of Public Act 23-102, *An Act Strengthening Protections for Connecticut's Consumers of Energy,* Section 173 of Public Act 24-151, *An Act Authorizing And Adjusting Bonds of the State And Concerning Provisions Related To State And Municipal Tax Administration, General Government And School Building Projects,* and Section 9 of Public Act 25-173, *An Act Concerning Energy Affordability, Access, and Accountability* ("the Acts").

1 Definitions

As used throughout this Agreement, the following terms shall have the definitions set forth in this Article 1. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Program Manual, Interconnection Agreement, Request for Proposals for Non-Residential Renewable Energy Solutions Program, Distribution Company Guidelines for Interconnection, and/or ISO Documents.

1.1 **"Affiliate"** means, with respect to any Party, 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 Party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 **"Agreement"** means this Tariff Agreement inclusive of any and all Attachments.

1.3 **"Authorized Developer"** means a developer that has the written permission of both the site owner and the EDC's distribution customer of record of the site to develop an eligible Facility at said site.

1.4 **"Bankrupt"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.5 **"Bankruptcy Code"** means those laws of the United States of America related to bankruptcy codified and enacted as Title 11 of the United States Code, entitled "Bankruptcy" and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

1.6 **"Bid"** means a responsive submission by a Bidder to the procurement under this Program.

1.7 **"Business Day"** means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time.

1.8 "**Claims**" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

1.9 **"Connecticut Class I Renewable Energy Credits"** means certain NEPOOL GIS Certificates and any and all other Environmental Attributes derived from the energy production of a generation facility that has been qualified by the Authority as a Connecticut Class I renewable resource under Conn. Gen. Stat. § 16-1(a)(26), and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such Connecticut Class I renewable resource. If the Facility ceases to qualify as a Connecticut Class I renewable resource solely as a result of a change in law and Customer is unable, using commercially reasonable efforts, to continue the Facility's qualification as a Connecticut Class I renewable resource after that change in law, "Connecticut Class I Renewable Energy Credits" shall mean Environmental Attributes including any certificates or credits related thereto reflecting generation by the Facility, all of which shall be transferred solely to the EDC.

1.10 **"Connecticut Class I RPS Qualification"** means an order, decision or ruling from the Authority that qualifies a generation unit as a RPS Class I Renewable Energy Source, or that qualifies a portion of the annual electrical energy output of a generation unit as RPS Class I Renewable Generation (as defined in Conn. Gen. Stat. § 16-1(a)(26).

1.11 **"Credit Rating"** means the rating then assigned to Customer's or any referenced third party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if Customer or such third party does not have a rating for its senior unsecured long-term debt, then one rating notch below the rating then assigned to Customer or such third party as an issuer and/or corporate credit rating by S&P, Moody's, Fitch or another Rating Agency. In the event of an inconsistency in ratings (a "split rating"), the lowest of the Credit Ratings shall control.

1.12 **"Customer"** means the entity noted in the Cover Sheet.

1.13 **"Customer of Record"** means the entity noted in the Cover Sheet.

1.14 **"Defaulting Party"** has the meaning set forth in Section 13.1.

1.15 **"Delivery," "Deliver," "Delivered," "Deliveries," or "Delivering"** means with respect to (i) energy, that energy produced by a Facility to the Delivery Point and (ii) RECs, those RECs supplied via an irrevocable Forward Certificate Transfer (as defined in the GIS Operating Rules) to the receiving EDC in the New England Power Pool Geographic Information System ("NEPOOL GIS").

1.16 **"Delivery Point"** shall mean the EDC's meter or point designated by the EDC located on the Customer's premises. All Pprojects, whether Buy-All or Netting have an associated Delivery Point. The Delivery Point may alternatively be referred to as the point of common coupling or the point of interconnection.

1.17 **"Delivery Term"** means the period during which the EDC is obligated to purchase the Purchased Products associated with the Facility that are Delivered to the EDC by Customer, as further defined in Section 2.2.

1.18 **"EDC Parties**" means EDC's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom EDC is in privity of oral or written contract and EDC intends for such other person or entity to perform under the Agreement in any capacity.

1.19 **"Effective Date"** has the meaning set forth in the first paragraph of the Cover Sheet.

1.20 **"Event of Default"** has the meaning set forth in Sections 13.1 and 13.2 hereof.

1.21 **"Expected Annual Production" or "Average Annual Production"** means the expected average annual production of the Facility as determined by a Connecticut licensed Professional Engineer and/or as calculated by the EDC.

1.22 **"Facility"** has the meaning set forth in Article 3, Facility.

1.23 **"Federal Funds Effective Rate"** means the interest rate as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

1.24 **"Fitch"** means Fitch Investor's Service, Inc., or its successor.

1.25 **"Force Majeure Event"** means any cause beyond the reasonable control of, and not due to the fault or negligence of, the affected Party and which could not have been avoided by the affected Party's reasonable due diligence, or was not caused by the affected Party, including, as applicable, war, terrorism, riots, embargo or national emergency, including pandemics and epidemics; curtailment of electric distribution services; fire, flood, windstorm, earthquake, or other acts of God; strikes, lockouts, or other labor disturbances (whether among employees of Customer, its suppliers, contractors, or others); delays, failure, and/or refusal of suppliers to supply materials or services; orders, acts or omissions of the NEPOOL GIS Administrator, as applicable; or any other cause of like or different kind, beyond the reasonable control of Customer. Notwithstanding the foregoing, a Force Majeure Event shall not be based on Customer's ability to sell RECs at a price greater than the Purchase Price(s), the EDC's ability to purchase RECs at a price below the Purchase Price(s), or Purchaser's inability to resell the RECs.

1.26 **Forward Capacity Market ("FCM")** means the forward market for procuring capacity in the New England Control Area, as described in Section III.13 of Market Rule I.

1.27 **"Good Utility Practice"** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric generation industry with respect to producing

electricity from the Facility. Good Utility Practice shall also include any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been reasonably expected to accomplish the desired result at a reasonable cost. Such practices, methods and acts must comply fully with applicable laws and regulations, good business practices, economy, reliability, safety, environmental protection, and expedition, having due regard for current editions of the National Electrical Safety Code and other applicable electrical safety and maintenance codes and standards, and manufacturer's warranties and recommendations. Good Utility Practice are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the electrical generation industry in the United States.

1.28 **"Governmental Authority"** means the federal government, any state or local government or other political subdivision thereof (whether federal, state or local), any court and any administrative agency or other regulatory body, instrumentality, authority or entity pertaining to government.

1.29 **"Guidelines for Generator Interconnection" or "Guidelines"** means the Guidelines for the Interconnection of Residential Single-Phase Certified Inverter-Based Generating Facilities of 20 kW (AC) or Less and all applicable attachments, and/or the Guidelines for Generator Interconnection: Fast Track and Study Process and all applicable attachments, which collectively describe the protocols and procedures for interconnecting to the Electric Power System, as may be amended from time to time.

1.30 **"In-Service Date"** means the Approval to Energize date listed on the EDC issued Approval to Energize letter to the system owner, which shall not be before the date of issuance of the RFP under which the Project was selected.

1.31 **"Interconnecting Utility"** means the utility (which shall be the EDC) providing interconnection service for the Facility to the distribution system of that utility.

1.32 **"Interconnection Agreement"** means an agreement with the Interconnecting Utility regarding the interconnection of the Facility to the electric distribution system of the Interconnecting Utility, as the same may be amended from time to time.

1.33 **"Interest Rate"** means, for any date, the Federal Funds Effective Rate; provided, that in no event shall the applicable interest rate ever exceed the maximum lawful rate permitted by applicable law.

1.34 **"ISO Documents"** means the ISO Tariff, Participants Agreement, RNA, and/or ISO New England Manuals, as applicable.

1.35 **"ISO New England Inc." or "ISO" or "ISO-NE"** means the independent system operator established in accordance with the RTO arrangements for New England, or any successor thereto.

1.36 **"ISO New England Manuals"** means the manuals that ISO-NE issues explaining rules and procedures for the region's wholesale electric power markets and bulk power system, including ISO Tariff, as they may be amended from time to time.

1.37 **"ISO Tariff"** means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as may be amended from time to time, or any successor tariff accepted by FERC.

1.38 **"kW"** means a kilowatt.

1.39 **"kWh"** means a kilowatt-hour.

1.40 **"LREC/ZREC"** means any low and/or zero emission generation projects that have been awarded contracts by the EDCs pursuant to General Statutes Sec. 16-244r or 16-244s.

1.41 **"Meter" or "Meters"** means all electric metering associated with the Facility, including the REC Meter, Facility meter and any other real-time meters, billing meters and back-up meters.

1.42 **"Moody's"** means Moody's Investors Service or its successor.

1.43 **"MWh"** means megawatt-hour, and one MWh shall equal 1,000 kWh.

1.44 **"NEPOOL"** means the New England Power Pool, the power pool created by and operated pursuant to the provisions of the RNA, or any successor to the New England Power Pool.

1.45 **"NEPOOL GIS"** means the New England Power Pool Generation Information System or any successor thereto, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, which accounts for the generation attributes of electricity generated within New England.

1.46 **"NEPOOL GIS Certificate"** means an electronic record produced by the NEPOOL GIS that identifies the relevant generation attributes of each MWh accounted for in the NEPOOL GIS.

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

1.48 **"Non-Defaulting Party"** has the meaning set forth in Section 13.2.1.

1.49 **Non-Residential Renewable Energy Solutions Program Manual ("Program Manual")** means the Program Manual document, which may be amended from time to time.

1.50 **"Participants Agreement"** means the "Participants Agreement among ISO New England Inc. as the Regional Transmission Organization ("RTO") for New England and the New England Power Pool and the 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 Federal Energy Regulatory Commission ("FERC").

1.51 **"Purchase Price" or "Purchase Price(s)"** means the purchase price(s) for the Delivered Purchased Products referenced in the Cover Sheet and as approved by PURA.

1.52 **"Qualified Institution"** means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A" by S&P and "A2" by Moody's, if such entity is rated by both S&P and Moody's or (b)

"A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital surplus of at least Ten Billion Dollars ($10,000,000,000). In the event of an inconsistency in the ratings (a "split rating"), the lowest Credit Rating shall control.

1.53 **"RNA"** means the Second Restated NEPOOL Agreement dated as of September 1, 1971, as amended and restated from time to time, governing the relationship among the NEPOOL Participants, and any successor agreement.

1.54 **"Rating Agency"** means S&P, Moody's, Fitch or an equivalent organization acceptable to the EDC.

1.55 "**Record**" means all working papers and such other information and materials as may have been accumulated by EDC in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

1.56 **"Regulatory Approval"** means the approval of this Agreement by the Authority and such approval is final and not subject to appeal.

1.57 **"Renewable Portfolio Standard" or "RPS"** means the regulations promulgated pursuant to Conn. Gen. Stat. §16-245a, as amended, modified, restated and superseded from time to time, that require a minimum percentage of electricity sold to end-use customers in the State of Connecticut to be derived from certain renewable energy generating resources.

1.58 **"RPS Class I Renewable Energy Source"** means a generation unit that has received a Connecticut Class I RPS Qualification from the Authority, pursuant to Conn. Gen. Stat. § 16-1(a)(26).

1.59 **"S&P"** means Standard & Poor's, a Division of The McGraw-Hill Companies, Inc. and its successors.

1.60 "**State**" means the State of Connecticut, including the Agency and any office, department, board, council, commission, institution or other agency or entity of the State.

1.61 **"Tariff Payment Beneficiary Form"** means Attachment 2 to this Agreement, which includes all information necessary to make payments and/or issue invoices to a Tariff Payment Beneficiary if applicable.

1.62 **"Tax" or "Taxes"** means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.

1.63 **"Term"** has the meaning set forth in Section 2.1.

1.64 **"Trading Period"** has the meanings set forth in Rule 3.2 of the NEPOOL GIS Operating Rules.

1.65 **"Unit Contingent"** means that the RECs are intended to be supplied from the Facility and Customer's failure to deliver is excused to the extent the Facility will not be available to produce and Deliver the purchased RECs.

2 Term of Agreement; Delivery Term

2.1 **Term of Agreement.** This Agreement shall commence as of the Effective Date and shall remain in effect through the final settlement of all obligations hereunder after the expiration of the Delivery Term or the earlier termination of this Agreement in accordance with its terms (the "Term").

2.2 **Delivery Term.** The Delivery Term shall commence on the In-Service Date as provided in the Approval to Energize letter and continue for a period of twenty (20) years, unless this Agreement is earlier terminated in accordance with the provisions hereof. Customer understands and agrees that under no circumstances shall the Delivery Term be extended beyond such twenty-year period from the In-Service Date, irrespective of any delays in Deliveries, whether or not due to one or more Force Majeure Events, even if such delay(s) result in initial Delivery under this agreement that is subsequent to the In-Service Date. Further, the production and Delivery of Purchased Products shall not occur prior to the InService Date, even if the Facility produces energy prior to the In-Service Date. The EDC is not obligated to purchase any Purchased Products connected with energy produced by the Facility prior to the In-Service Date, or after the end of the Delivery Term under this Agreement.

3 Facility

3.1 **Description.** The Facility is as described in the "Facility" section of the Cover Sheet.

3.2 **Construction.** Customer shall construct the Facility as described in the Cover Sheet.

3.3 **Facility In-Service Date; Final Facility Size.** Customer shall provide notice to the EDC of the In-Service Date and final Facility Size within ten (10) Business Days of the commencement of energy production. The final Facility Size shall be based on the Facility's as-built configuration as noted in the Approval to Energize letter issued by the EDC. If the final Facility Size differs from original description as set forth in the Cover Sheet:

3.3.1 Any increase that results in a Facility Size for a Project that exceeds statutory limits for a low emission or zero emission Project, as applicable, shall result in immediate and automatic termination of the Project's eligibility under the Tariff.

3.3.2 Any increase that results in a final in-service Facility Size that is greater than the approved as-Bid Facility Size plus five (5) percent, shall result in immediate and automatic termination of the Project's eligibility under the Tariff.

3.3.3 Any decrease that results in a Project size for a Project which falls outside of the size limits for the category in which the Project was Bid shall be allowed only if the following criteria are met: 1) the size category in which the Project ends up had a Price Cap that was higher than the original Project size category for the applicable

solicitation and EDC; 2) the Purchase Price is below the highest selected Purchase Price in the size category in which the Pproject ends up for the applicable solicitation and EDC; and 3) the Purchase Price remains the same for the Project.

3.3.4 For Projects that do not meet the criteria in Section 3.3.3 hereof, any decrease that results in a Project size for a Project which falls outside of the size limits for the category in which the Project was Bid, subject to a five (5) percent variation shall result in immediate and automatic termination of the Project's eligibility under the Tariff.

3.3.5 If a Project indicated at the time of Bid submission that additional load was expected to materialize over ~~the five years following Bid submission~~five years from the Project's In-Service Date attributable to transportation electrification (i.e., electric vehicles) and/or fuel switching (i.e., air source heat pumps) or New Construction load, the following shall apply:

3.3.5.1 If such load does not materialize within five years of the In-Service Date, a Pproject's compensation shall be reduced proportionally to the unrealized load. For Buy-All Projects, this will result in a reduction in total compensation, and for Netting Projects, this will result in a reduction in the compensation for the RECs generated by the Project, which may result in negative REC payments.

3.3.5.2 If at any point before the In-Service Date, the EDC receives notice that such part or all of the beneficial electrification load or New Construction load[1] will no longer materialize, Section 3.3.5.1 shall not apply. However, the Final Facility Size shall then be limited to the historical load provisions as outlined in the Program Manual and as applicable to the Project, and the Project will only be eligible to receive compensation for the energy and RECs that are generated once the In-Service Date occurs.

4 Prerequisites for Purchases

4.1 The EDC's obligation to begin the purchase of energy and RECs from a NRES Project at the rate(s) of payment specified in the Cover Sheet is contingent upon the satisfaction of all of the following conditions:

[1] In the case of a New Construction Project that has less than the expected New Construction load materialize, the system will be sized to the realized load.

4.1.1 The EDC has received evidence to its reasonable satisfaction that Customer has demonstrated Project site control by the Customer of Record.

4.1.2 The EDC has received evidence to its reasonable satisfaction that the Facility's In-Service Date has occurred, or will occur, after the issue date of the solicitation to which the Customer is responding.

4.1.3 Customer has demonstrated that the Facility is interconnected to the distribution system of the EDC.

4.1.4 The Project has a fully executed Interconnection Agreement.

4.1.5 Customer has provided Performance Assurance that satisfies the requirements of Section 9.1 and in an amount that is no less than the Performance Assurance amount listed in the Cover Sheet.

4.1.6 The EDC has received Regulatory Approval.

4.1.7 Customer has provided certification that no grants or rebates have been received by the Customer of Record from the Connecticut Green Bank or either of its predecessors the Clean Energy Finance and Investment Authority ("CEFIA") or the Connecticut Clean Energy Fund ("CCEF"). For purposes of clarification, this prohibition includes grants or rebates from CEFIA or the CCEF for the installation or construction of the Facility, but does not include projects that receive(d) (i) only predevelopment and/or feasibility funding from Connecticut Green Bank, or (ii) financing in accordance with Conn. Gen. Stat. § 16-245(n) through Connecticut Green Bank. For purposes of this section, the Companies may consult with Connecticut Green Bank regarding the above grants or rebates as they may be applicable to the Facility.

4.1.8 Customer has provided certification that the Project (i) is not on a Shared Clean Energy Facility site; (ii) has not received an agreement under the LREC/ZREC Program or is not currently a Not In-Service LREC/ZREC project; and (iii) has not been split to qualify for a different size category.

4.1.9 Customer has provided notice in a form acceptable to the EDC at its sole discretion, certifying: (a) that generation from the Project that will result in qualifying Purchased Products has begun, (b) the Facility, as constructed, meets all of the low emission or zero emission (as applicable) generation facility requirements of the Acts, and (c) the final Facility Size.

4.1.10 If Customer's Facility has been awarded this Agreement based, in part, on any of the Bid Preferences applicable to the RFP for which the Project was selected, Customer has provided accompanying proof in a form acceptable to the EDC at its sole discretion, that it has installed the Project in accordance with the Bid

Preference which contributed to the project's selection. Such proof must be submitted to the General Contact for the EDC noted in the Cover Sheet at least thirty days prior to the In-Service Date.

4.1.10.1 If the Project has been awarded this Agreement based, in part, on its receipt of the Solar Canopy/Solar Carport Bid Preference as determined by the EDC and noted on the Cover Sheet, the Customer must demonstrate that the Project has been installed exactly as noted on the Cover Sheet, i.e. the final system size of the portion of the Project indicated to be a Solar Canopy/Solar Carport is, in fact, a Solar Canopy/Solar Carport.

4.1.10.2 If a Project indicated at the time of Bid submission that additional load was expected to materialize over ~~the~~ five years ~~following Bid submission~~from the In-Service Date attributable to transportation electrification (i.e., electric vehicles) and/or
fuel switching (i.e., air source heat pumps), the Customer must inform the EDC at the time of notification of the project being In-Service if such beneficial electrification has occurred and/or is still planned.

4.1.11 The In-Service Date has occurred within 3 years of the date of PURA approval of the Tariff award unless an extension has been granted by PURA or the NRES ombudsperson.

4.1.12 If the Project has been awarded this Agreement based, in part, on the fact that it is a SAM Project with 100% of the State and/or Agricultural Beneficial Accounts located in Distressed Municipalities, or a SAM Project with 100% of the Municipal Beneficial Accounts located in Distressed Municipalities and owned by a Distressed Municipality or Beneficial Accounts owned by a Distressed Municipality which is also paying for the Beneficial Accounts' electric service, as determined by the EDC, the Customer has demonstrated via the Beneficial Account Credit Allocation Form, that all Beneficial Accounts are in fact located in Distressed Municipalities or are owned by a Distressed Municipality which is also paying for the Beneficial Accounts' electric service, as determined by the EDC.

4.1.12.1 In the event that a Beneficial Account included on the Beneficial Account Credit Allocation Form submitted for this Project at the time of Bid submission is taken off the Distressed Municipality list, the Project may keep the same Beneficial Account(s) for the 20-year Tariff Term.

5 Purchases

5.1 **Purchases of Energy and RECs.** Beginning on the In-Service Date, provided that the Customer has satisfied all Section 4 prerequisites, the EDC shall purchase the Delivered Energy, inclusive of RECs, from a NRES Project at the Purchase Price as indicated on the Cover Sheet and approved by PURA. EDC's obligation to purchase the Delivered output from the Project is contingent upon the Customer's compliance with the terms of the Program. Upon Delivery, ownership of RECs, energy, and all other Energy and Environmental Attributes shall transfer to the EDC.

5.1.1 Beginning on the date of Customer's satisfaction of all Article 4 prerequisites, Customer shall sell and Deliver, and the EDC shall purchase and receive all Purchased Products in accordance with the terms and conditions of this Agreement. The EDC shall be obligated to purchase only those Purchased Products associated with the energy that is generated by the Facility on and after the satisfaction of all Article 4 prerequisites and continuing through the remainder of the Delivery Term.

5.1.2 The Delivered output will be paid in accordance with the Payment structure(s) outlined in Article 8.

5.1.3 In addition to Customer's sale and the EDC's purchase of RECs, the EDC, without the payment of any additional consideration to Customer, shall receive title to, and Customer shall convey to the EDC, any and all other Environmental Attributes associated with the electricity generated by the Facility. In addition, the EDC shall take title to all available capacity rights associated with the Project.

5.1.4 If the statutory and/or regulatory framework governing the Non-Residential Renewable Energy Solutions Program in effect as of the Effective Date is amended or suspended by any Governmental Authority and/or is otherwise no longer in force (collectively, a "Change" in the regulatory framework), the EDC may choose to qualify the Facility in another state or federal program, whether for renewable energy certificates or other Environmental Attributes, and Customer shall at such time provide to the EDC any documentation and other support as may be needed for such qualification. If during the Delivery Period a change in Connecticut laws or regulations occurs that creates value in Environmental Attributes, then at the EDC's request, Customer shall cooperate with the EDC to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for the EDC.

6 Metering; Interconnection

6.1 **Metering.** All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the "Meters"),

shall be installed, operated, maintained and tested at the Customer's expense in accordance with Good Utility Practice and any applicable requirements and standards issued by the Interconnecting Utility, ISO-NE and NEPOOL GIS; provided that each Meter shall be tested at the Customer's expense at least once each year. The Customer shall be responsible for all costs associated with such metering consistent with all applicable standards and requirements, and the EDC shall own the Meter. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility. The Customer shall make such hourly meter data available to the EDC at no cost.

6.2 **Interconnection Agreement.** This Agreement does not provide for the interconnection of the Facility to the EDC's electric distribution system. Customer shall seek such interconnection service from the Interconnecting Utility in accordance with the Interconnecting Utility's applicable interconnection process. Customer shall comply with the terms and conditions of the Interconnection Agreement. Customer shall be responsible for all costs and expenses associated with the interconnection of the Facility consistent with all standards and requirements set forth by the Interconnecting Utility.

7 Delivery

7.1 **Delivery of Energy.** Energy must be delivered to the distribution system of the EDC in whose service territory the Project is located.

7.2 **Delivery of RECs.** Payment by the EDC for RECs creates a firm obligation on the part of the Customer to Deliver RECs associated with the Delivered energy at the time that they are produced in the NEPOOL GIS.

7.2.1 It is the Customer's responsibility to operate the NRES Project in such a way as to ensure that the NRES Project meets the qualifications requirements of a Connecticut Class I Renewable Energy Source throughout the entire Term and the Customer is responsible to provide the EDC with any and all required information to ensure such qualification.

7.2.2 Customer shall Deliver energy associated with the Facility, and Customer shall not sell, divert, grant, transfer or assign such energy or RECs to any person other than the EDC during the Term unless otherwise specifically provided herein. Customer shall not enter into any agreement or arrangement under which any person other than the EDC can claim such energy or RECs except as otherwise specifically provided herein. The EDC shall have the exclusive title and rights to all Energy, capacity, and RECs, and the right to resell or convey Energy, capacity, and RECs in its sole discretion.

7.3 **Aggregation of RECs.** The EDCs, their affiliates, and any agents, employees, and representatives thereof (collectively "Authorized Representatives"), are authorized to include and represent this Project in the New England Power Pool Generation Information System ("NEPOOL GIS") and/or any U.S. state or domestic or foreign registry for environmental attributes (collectively, "Other Registries"), and to receive and use all Certificates created with respect to energy generated by the Project during the Term. I approve the EDCs inclusion of the Project as part of an aggregation in any state and agree that the EDC will be the Authorized Agent for the Aggregation. In addition, the EDC or its Authorized Representatives, as applicable, may need my assistance to: (a) monitor and record the electrical energy output of the Project, and verify and provide meter data directly to the NEPOOL GIS and/or Other Registries, in accordance with applicable NEPOOL GIS operating rules; (b) perform any and all acts necessary to ensure Eversource/UI's ability to participate in NEPOOL GIS and/or Other Registries and/or otherwise receive and use the Certificates; and (c) obtain, execute, and/or deliver any documentation as appropriate to such registries in order to qualify the Project for the purpose of including and representing the Project in NEPOOL GIS and/or Other Registries.

8 Compensation Structure, Billing, and Payment

8.1 **Compensation Structures.** The Compensation Structure of either Buy-All or Netting Tariff as indicated in the Cover Sheet and further described in Section 3.2 of the Program Manual. The Compensation Structure cannot be modified, either before or after the system receives Approval to Energize from the utility.

8.2 **Bill Credits and Payments to Tariff Payment Beneficiaries**

8.2.1 **Buy-All Tariff:** Payments for all Purchased Products shall occur on a quarterly basis. To the extent the customer elects to apply bill credits to the customers' onsite account or, in the case of State, Agricultural, or Municipal projects, to any Beneficial Accounts, bill credits will be applied on a monthly basis.

8.2.2 A set percentage of the total compensation rate may be assigned to a Tariff Payment Beneficiary. Payments to such Tariff Payment Beneficiaries shall occur on a quarterly basis. Any remaining compensation shall be applied to the Customer of Record's bill in the form of monetary (i.e., dollars, not kWh) credits applied to the Customer of Record on the Customer of Record's bill.

8.2.2.1 If the Customer chooses to modify the percentage of the total compensation rate assigned to a Tariff Payment Beneficiary at any time after the project has executed a Tariff Agreement, an administrative fee, as noted in the most current version of the Program Manual, as may be amended from time to time, may be charged each time such request is made.

8.2.2.2 If a Bidder elects to provide direct payments to a Tariff Payment Beneficiary in the instance contemplated in Section 3.2.2 of the Program Manual, the Bidder must clearly identify the following: 1) the percentage of total compensation to be paid to a Tariff Payment Beneficiary, and 2) the percentage of total compensation to be paid to each of the Customers of Record associated with each existing revenue meter. One hundred (100) percent of the compensation can be allocated to a Tariff Payment Beneficiary.

8.2.3 **Netting Tariff:** The Total Incentive Payment will be divided between two compensation options i) a monetary on-bill credit that will be applied to the Customer of Record's EDC billing account for the Project Site to offset any customer, supply, and delivery charges on a monthly basis and ii) a quarterly cash payment provided to a Tariff Payment Beneficiary ("REC Payments").

8.2.3.1 REC Payments shall be made on a quarterly basis to either the Customer of Record or to a Tariff Payment Beneficiary. One hundred (100) percent of the REC payments can be allocated to a Tariff Payment Beneficiary.

8.2.4 **Payments to Tariff Payment Beneficiary:** The Customer must certify and approve any payments to be made to a Tariff Payment Beneficiary. If the Customer chooses to redesignate the Tariff Payment Beneficiary at any time after the project has executed a Tariff Agreement, an administrative fee, as noted in the most current version of the Program Manual, as may be amended from time to time, may be charged each time such request is made.

8.2.5 If a Tariff payment results in a net bill credit to the Customer of Record, the credit balance will be carried forward indefinitely until the end of the 20-year term as provided for in the EDC's terms and conditions.

8.2.5.1 The Customer of Record may receive an On-Bill Credit Cash Out payment for any accrued Monetary Bill Credits at the end of the 20-year term.

8.2.5.2 Such credits shall also be transferable in the event that the owner of the Facility changes.

8.2.5.3 The EDCs will provide all Customers of Record who have received an OnBill Credit Cash Out of $600 or more in a calendar year with a 1099 tax form.

8.2.6 Eligibility for bill credits remains with the Project in the event that the Customer of Record at the Project Site changes. The new Customer of Record will receive bill credits for the Project.

8.2.7 **Negative REC Payments.** In the event that a Bidder's REC price is negative, as indicated in the Cover Sheet, an invoice for negative REC payments will be issued

to the Tariff Payment Beneficiary in March of each calendar year. Failure to pay such invoice in a timely manner will result in the following penalties:

8.2.7.1 If the Tariff Payment Beneficiary misses their negative REC payment due date by more than six (6) months for three (3) consecutive years, the EDCs shall terminate the Project's eligibility under the Tariff.

8.2.7.2 The EDC's may charge a late payment penalty of up to fifty (50) percent of the missed negative REC payments for payments made more than six (6) months late.

8.3 **Beneficial Account Credits**

8.3.1 Pursuant to Section 3(a)(4) of Public Act 19-35, Projects for State Customers, Agricultural Customers, and Municipal Customers may be sized so as to not exceed the load of a Customer Host Account and up to 5 Beneficial Accounts, plus up to 5 additional non-state or non-municipal Beneficial Accounts if such Beneficial Accounts are critical facilities as defined in subdivision (2) of subsection (a) of section 16-243y of the general statutes, and are connected to a Microgrid. The EDCs will provide for monetary crediting in the form of bill credits ("Beneficial Account Credits") to Beneficial Accounts. The EDCs will allow the Customer Host to determine the allocation percentages for each of the Beneficial Accounts subject to the requirements outlined in Section 3.2 of the Program Manual by providing the required information to the respective EDC via the Beneficial Account Credit Allocation Form. To be eligible as Beneficial Accounts, accounts must meet all requirements set forth in Public Act 19-35. For non-state or non-municipal critical facilities to be designated as Beneficial Accounts, they must be physically connected to the same Microgrid as the Customer Host.[2]

8.3.2 Each Customer Host shall set credit allocation percentages for Beneficial Accounts, and each Beneficial Account shall set credit allocation percentages for each eligible individually numbered account, which may be reapportioned on an annual basis. Appendix C – Beneficial Account Credit Allocation Guidelines in the Program Manual provides more details on the Beneficial Account allocation process.

8.4 **Payment Disputes**. If either Party disputes the amount paid to it by the other Party, it shall so notify the other Party in writing and such disputed amount shall be withheld by such other Party pending resolution of the dispute. Any undisputed amounts shall be paid when due. The paying Party shall be responsible to pay interest on any withheld amounts that are determined to have been properly billed, which interest shall be calculated in the same manner as interest on late payments under Section 8.6. Neither Party shall have the right to

[2] Refer to Appendix C - Beneficial Account Credit Allocation Guidelines in the Program Manual for further guidance regarding re-designation of Beneficial Accounts.

challenge any monthly bill nor to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty-four (24) months from the date the bill was due.

8.5 **Payment Method.** All payments shall be made in accordance with the Tariff-specific payment method(s) described in Article 8 herein. Payments to Tariff Payment Beneficiaries shall be made in accordance with the payment instructions in the Attachment 2: Tariff Payment Beneficiary Form.

8.6 **Interest on Late Payment.** All overdue payments hereunder shall bear interest from (and including) the due date to (but excluding) the date of payment at the Interest Rate.

8.7 **Taxes.** Customer shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Facility or production from the Facility arising prior to Delivery. The EDC shall pay or cause to be paid all Governmental Charges on or with respect to the Purchased Products at and after Delivery (other than ad valorem, franchise or income taxes that are related to the sale of the Purchased Products and are, therefore, the responsibility of the Customer). Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. A tax shall not include any penalty or fines.

9 Performance Assurance

9.1 **Provision of Performance Assurance.** The required amount of Performance Assurance is twenty-five dollars ($25) per kW (AC) of the nameplate capacity of the proposed Project. The Performance Assurance must be provided to the appropriate EDC at the time of Bid submission**.**

9.2 **Return of Performance Assurance.** Performance Assurance shall be returned to the current Tariff Payment Beneficiary, or in the event that a Tariff Payment Beneficiary is not elected, the current Customer only if one of the following conditions is met: (i) the selected project enters commercial operation in a timely fashion and begins producing energy consistent with the rules outlined in the Program Manual; (ii) the Project's eligibility under the tariff is terminated for failure to receive regulatory approval satisfactory in substance to the EDC; (iii) the Project's eligibility under the tariff is terminated due to a force majeure event; or (iv) the ~~b~~Bid is not selected under the procurement for which the ~~b~~Bid was submitted. For purposes of clarification, EDC has no obligation to return Performance Assurance if the Agreement is terminated due to an Event of Default by Customer or if the Bidder chooses not to move forward with a Bid after the Bid has been submitted.

10 Covenants, Representations and Warranties

10.1 **Customer Covenants, Representations and Warranties.** On and as of the Effective Date, and upon Delivery, Customer hereby covenants, represents and warrants to the EDC as follows:

10.1.1 Customer has and, at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder;

10.1.2 The execution, delivery and performance of this Agreement by Customer has been duly authorized by all necessary action and does not violate any of the terms or conditions of Customer's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Customer;

10.1.3 To the Customer's knowledge, there is no pending or threatened litigation, arbitration or administrative proceeding that materially adversely affects the Customer's ability to perform its obligations under the tariff;

10.1.4 The Tariff Payment Beneficiary is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

10.1.5 Customer and Tariff Payment Beneficiary, as applicable, shall sell and Deliver and EDC shall purchase and receive all right, title, and interest in and to the energy, capacity, and RECs in accordance with the Tariff Agreement and the Terms and Conditions herein for the entire twenty (20) year term;

10.1.6 At the time of Delivery, Customer shall convey title to any and all of the Energy, capacity, and RECs Delivered to the EDC in accordance with the Tariff and Terms and Conditions.

10.1.7 The Energy and RECs must be free and clear of any and all liens or other encumbrances or title defects and Customer further represents that any and all of the Energy and RECs represent generation from a Facility that has been qualified by the Authority as eligible to produce RECs pursuant to the Renewable Portfolio Standard;

10.1.8 Upon each Delivery, Customer warrants to the EDC that (A) it has sold and transferred the Energy and RECs once and only once exclusively to the EDC; (B) the RECs and any other Environmental Attributes sold hereunder have not expired and have not been, nor will be sold, retired, claimed or represented as part of electricity output or sale, or used to satisfy any renewable energy or other carbon or renewable generation attribute obligations under the RPS or in any other jurisdiction; (C) that it has made no representation in writing or otherwise, that any

third-party has received, or has obtained any right to, such RECs that are inconsistent with the rights being acquired by the EDC hereunder, including, but not limited to, any right to use the RECs to meet the renewable energy requirements in any other state or jurisdiction, or any other renewable energy program; and (D) the RECs, as applicable, meet statutory requirements as they existed as of the effective date;

10.1.9 If Customer's Facility has been awarded this Agreement based, in part, on any of the Bid Preferences applicable to the RFP for which the Project was selected, Customer covenants that the Facility has been constructed in accordance with the applicable Bid Preference criteria;

10.1.10 Customer warrants that as of the In-Service Date and continuing thereafter, the Facility will be qualified to produce Connecticut Class I Renewable Energy Credits that meet the requirements of the Program; and

10.1.11 Customer covenants that, if ~~they~~Customer indicated at the time of Bid submission that additional load was expected to materialize attributable to transportation electrification (i.e., electric vehicles) and/or fuel switching (i.e., air source heat pumps), they will inform the Companies immediately and provide accompanying proof of installation when the associated beneficial electrification load materializes, but no later than five years from the In-Service Date.

10.1.12 Customer covenants that, if Customer~~they~~ indicated at the time of Bid submission that the Project is a SAM Project with 100% of the State and/or Agricultural Beneficial Accounts located in Distressed Municipalities, or a SAM Project with 100% of the Municipal Beneficial Accounts located in Distressed Municipalities and owned by a Distressed Municipality or Beneficial Accounts owned by a Distressed Municipality which is also paying for the Beneficial Accounts' electric service, all Beneficial Accounts must always be located in a Distressed Municipality or owned by a Distressed Municipality which is also paying for the Beneficial Accounts' electric service, as determined by the EDC. In the event that a municipality of a Beneficial Account indicated at the time of Bid submission is taken off the Distressed Municipality list, the Project may keep the same Beneficial Account(s) for the 20-year Tariff Term.

10.1.13 Customer covenants that the Facility is constructed substantially as described in the Cover Sheet, including but not limited to (i) technology type, and (ii) Rooftop Project designation.

10.1.14 Customer covenants that, if applicable, the Customer Host will maintain the original SAM designation (i.e. State, Agricultural, or Municipal) as designated on the Cover Sheet, throughout the Tariff Term.

10.2 **The EDC Covenants, Representations, and Warranties.** On, as of the Effective Date, and upon Delivery, the EDC hereby represents and warrants to Customer as follows:

10.2.1 The EDC has, and at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder;

10.2.2 The execution, delivery and performance of this Agreement by the EDC has been duly authorized by all necessary action and does not violate any of the terms or conditions of the EDC's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to the EDC;

10.2.3 There is no pending or (to the EDC's knowledge) threatened litigation or administrative proceeding that materially adversely affects the EDC's ability to perform its obligations under this Agreement; and

10.2.4 The EDC is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

11 Change to Customer; Designation of Tariff Payment Beneficiaries; Assignment

11.1 **Change to Customer.** This Agreement will be automatically transferred by Customer to a new Customer, if the Customer changes at any point throughout the duration of the Tariff Term. The Customer Host must maintain the original SAM Designation (i.e., State, Agricultural, or Municipal) as designated at the time of Bid submission throughout the Tariff Term. When transferred, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by the transferee of the Customer, except that no transfer of this Agreement by Customer shall operate to release the Customer from any of its obligations under this Agreement unless the EDC (or its successors or assigns) consents in writing to the transfer and expressly releases the transferor from its obligations thereunder. Such transfer must be communicated to the EDC in writing at least thirty (30) days prior to such transfer becoming effective. In addition, the original Customer, new Customer, and Tariff Payment Beneficiary shall sign and provide an updated Tariff Payment Beneficiary Form thirty (30) days before the transfer is scheduled to occur.

11.2 **Change to Customer of Record**. If the Customer of Record changes at any point throughout the duration of the Tariff Term, Customer shall provide at least thirty (30) days prior written notice to the EDC of such change.

11.3 **Designating Tariff Payment Beneficiaries.** Customers can designate a Tariff Payment Beneficiary to receive a portion of the Purchase Price for Buy-All systems and the Purchase Price for RECs for Netting Tariff systems. Such initial Tariff Payment Beneficiary must be designated at the time of Bid submission.

11.4 **Changing Tariff Payee or Tariff Payment Allocation Percentage.** Customers may submit a revised Tariff Payment Beneficiary Form once per calendar year. As part of this revision, the Customer may change the allocation of direct cash payments vs. monetary on-bill credits for Buy-All systems, as well as the Tariff Payment Beneficiary and/or any relevant payment information. An administrative fee, as noted in the most current version of the Program Manual, as may be amended from time to time, may be charged for any updates to the Tariff Payment Beneficiary forms.

11.5 **Permitted Assignment by the EDC.** The EDC shall have the right to assign this Agreement without consent of Customer in connection with any merger, consolidation, exchange of all of the common stock or other equity interests or other similar transactions involving the EDC that is approved by the Authority.

11.6 **Prohibited Transfers Assignments.** Any purported transfer or assignment of this Agreement not in compliance with the provisions of this Article 11 shall be null and void.

12 Regulatory Approval; Cost Recovery

12.1 **Failure to Obtain Regulatory Approval.** If the EDC notifies Customer that it has received an order from the Authority regarding this Agreement that is not acceptable either in form or substance to the EDC in its sole discretion, the EDC may terminate this Agreement within thirty (30) days after the date of the order. The EDC must provide notice of such termination to Customer in accordance with the provisions of Article 14. Upon such termination, neither Party shall have any further liability hereunder.

12.2 **EDC Cost Recovery.** The Parties recognize and agree that this Agreement and the amounts to be paid to Customer for Purchased Products hereunder, and the reasonable and prudently incurred costs and fees incurred by the EDC associated with this Agreement, are premised upon Authority approval. If the Authority fails to authorize the EDC's full cost recovery of these reasonable and prudently incurred costs and fees, then the EDC may immediately terminate this Agreement.

13 Events of Default; Remedies

13.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

13.1.1 If Customer, on behalf of or associated with the NRES Project, receives, has received, or seeks to receive, EDC ratepayer funded incentives or subsides, including, but not limited to, net metering, virtual net metering, Public Utility Regulatory Policies Act ("PURPA") tariffs, LREC/ZREC contracts, SCEF agreements, Public Act 18-50 tariffs other than those in this Program, any other contract or program of any kind in which an EDC purchases the Facility's energy, capacity, or renewable attributes, and grants or rebates from the Connecticut Green Bank and any of its predecessors or any successor agency or fund or the Conservation and Load Management Program (subject to the clarifications in Section 3.3.5 of the Program Manual);

13.1.2 If Customer fails to satisfy any and all of the conditions set forth in the Tariff, including the Terms and Conditions contained herein;

13.1.3 If the NRES Project is not In-Service within 3 years of the date of PURA approval of the Tariff award, unless an extension has been granted by PURA or the NRES ombudsperson;

13.1.4 If the NRES Project is not In-Service for the entire term of the Tariff (20 years);

13.1.5 If the NRES Project does not Deliver energy and/or RECs for the entire 20-year Tariff Term;

13.1.6 If Customer fails to Deliver Energy and/or RECs from the Facility to the EDC for twelve (12) consecutive months, subject to PURA approval;

13.1.7 If PURA, or its successor organization, rules a Program participant to be ineligible under the Tariff for any reason;

13.1.8 If Customer fails to operate the Facility as approved in the EDC's RFP selection process and as ultimately indicated on the Cover Sheet, which includes, but is not limited to, differences in location, technology type, and/or Rooftop Project designation;

13.1.9 If the Facility Size exceeds the statutory limits for a low emission or zero emission Project, as applicable;

13.1.10 If the final In-Service Facility Size is greater than the approved as-Bid Facility Size plus five (5) percent;

13.1.11 If the final In-Service Facility Size falls outside of the size limits for the category in which the Project was Bid, subject to the five (5) percent variation noted in section 13.1.10;

13.1.12 If a Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within twenty (20) Business Days of written notice of such breach from the other Party;

13.1.13 If any representation or warranty or covenant made by a Party in Article 10 of this Agreement proves to have been misleading or false in any material respect when made;

13.1.14 For Projects where the SAM Customer Host is not the Owner of the Project Site, if the EDCs determine that the SAM Customer Host does not have control of the Project Site, or an unconditional right granted by the Owner of the Project Site to acquire such control by the start of the Tariff Term, at any point during the solicitation process or Tariff Term, the SAM Customer Host may be removed from the Program and the Tariff Agreement may be terminated by the respective EDC; and/or

13.1.15 If a Party becomes Bankrupt.

13.2 **Remedies Upon Default.**

13.2.1 **Remedies.** Upon the occurrence and continuation of an Event of Default, the other Party (the "Non Defaulting Party") may (i) terminate this Agreement upon written notice to the Defaulting Party, (ii) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to this Section 13.2.1, and/or (iii) exercise such remedies as provided in this Agreement. Both Parties hereby stipulate that the remedies set forth in this Section 13.2.1 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

13.2.2 **Suspension of Performance.** Notwithstanding any other provision hereof, if an Event of Default has occurred and is continuing, the Notifying Party may, on notice to the other Party, suspend performance of its obligation to deliver and sell, or receive and purchase, as applicable, Energy and RECs until such Event of Default is cured; provided, however, that any suspension shall not extend the Delivery Term period. Any such suspension shall be without prejudice to any remedy provided herein or otherwise available at law or in equity, including the right to subsequently terminate under Section 13.2.1.

13.2.3 **Other EDC Remedies.**

13.2.3.1 With respect to a Customer default pursuant to Section 13.1.1, (i) this Agreement shall be deemed to have terminated automatically as of the date of such receipt, (ii) Customer shall forfeit its Performance Assurance to the

EDC, and (iii) Customer shall promptly return any amounts to the EDC paid for any Energy and RECs under this Agreement subsequent to receipt of such grant or rebate.

13.2.3.2 With respect to a Customer default pursuant to Section 13.1.3 (the NRES Project is not In-Service within 3 years of the date of PURA approval of the Tariff award, subject to potential a potential extension granted by PURA or NRES ombudsperson), this Tariff shall terminate immediately and automatically.

13.2.3.3 With respect to a Customer default pursuant to Section 13.1.6, the EDC shall have the right to terminate this Agreement without further liability on the part of the EDC, by giving Customer fifteen (15) Business Days' notice.

13.2.3.4 With respect to a Customer default pursuant to Section 13.1.9, 13.1.10, and/or 13.1.11, this Tariff shall terminate immediately and automatically.

14 Notices and Contact Information

14.1 Any notice, demand, or request permitted or required under this Agreement shall be in writing and shall be delivered via electronic mail to the EDC General Contact listed on the Tariff Agreement cover Sheet.

14.2 Notices by electronic delivery shall be effective at the close of business on the day actually received, if received during receiving party's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day.

14.3 Any correspondence related to the Performance Assurance should be sent to the Performance Assurance contact at the applicable address set forth in the Cover Sheet.

14.4 The notice, contact or accounting information specified in the Cover Sheet and in this Article 14 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement However, such written notice shall not be used for the purposes of Article 11.

15 Force Majeure

15.1 **Force Majeure.** (a) Except as otherwise set forth in this Agreement, neither Party shall be liable to the other Party for failure or delay in the performance of any obligation under this Agreement during the Term if and to the extent that such delay or failure is due to a Force Majeure Event. The Party claiming Force Majeure shall notify the other Party of the occurrence thereof as soon as possible and shall use reasonable efforts to resume performance immediately. (b) In no event shall a claim of Force Majeure or a Force Majeure Event

operate to extend the Tariff Term of this Agreement. (c) In the event of (i) a Force Majeure Event of twelve (12) consecutive months duration, or (ii) Force Majeure Events cumulatively totaling twelve (12) months, in which Customer fails to deliver any Energy and RECs from the Facility to the EDC, the EDC shall have the right to terminate this Agreement without further liability to the EDC, by giving Customer fifteen (15) Business Days written notice.

16 Limitation of Liability

16.1 WITH RESPECT TO ANY LIABILITY HEREUNDER, NEITHER CUSTOMER NOR THE EDC SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

17 Miscellaneous

17.1 **Records.** The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least six (6) years following the end of the Term such records as may be needed to afford a clear history of all deliveries of Energy and RECs pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such this Agreement.

17.2 **Audit Rights.** Customer and the EDC shall each have the right throughout the Term and for a period of six (6) years following the end of the Term, upon reasonable prior notice, to audit copies of relevant portions of the books and records of the other Party to the limited extent necessary to verify the basis for any claim by a Party for payment from the other Party or to determine a Party's compliance with the terms of this Agreement. The Party requesting the audit shall pay the other Party's reasonable costs allocable to such audit.

17.3 **Access to Contract and State Data.** The EDC shall provide to the Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning the Agreement and the Agency that are in the possession or control of the EDC within sixty (60) days upon demand from the Agency, and shall provide the data to the Agency in a format prescribed by the Agency and the State Auditors of Public Accounts at no additional cost.

17.4 **Audit and Inspection of Records**.

(a) The Agency may, at reasonable hours, inspect and examine all of the parts of the EDC's and EDC Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Agreement.

(b) The EDC shall maintain, and shall require each of the EDC Parties to maintain, accurate and complete Records. The EDC shall make all of its and the EDC Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.

(c) The State shall make all requests for any audit or inspection in writing and shall provide the EDC with at least ten Business Days' notice prior to the requested audit and inspection date.

(d) The EDC shall keep and preserve or cause to be kept and preserved all of its and EDC Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the EDC shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

17.5 **Accounting Information.** Customer shall provide to the EDC, and in a timely fashion following its request, reasonably requested information that the EDC requires for its accounting analysis or Securities and Exchange Commission reporting purposes. The EDC agrees to treat any information that includes confidential information with the same degree of care that it accords its own confidential information.

17.6 **Site Access.** The EDC and its representatives shall have the right, but not the obligation, during business hours, upon reasonable notice to Customer, to visit and view the Facility site including, but not limited to, the purposes of verifying compliance with the Facility's description as provided in the Cover Sheet, and final Facility Size as of its In-Service Date. The EDC and Customer agree that it shall constitute a material breach by Customer to deny the EDC reasonable access to the site and the Facility and that such material breach shall constitute an Event of Default by Customer under Article 13.

17.7 **Amendment/Binding Effect.** This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement and, with respect to amendments only, receive

the Parties and their respective successors and permitted assigns.

17.8 **Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement shall remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided that the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

17.9 **Entire Agreement.** This Agreement completely and fully supersedes all other understandings or agreements, both written and oral, including any term sheet or confirmation, between the Parties relating to the subject matter hereof.

17.10 **Waiver.** No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

17.11 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Connecticut, without regard to principles of conflicts of law.

17.12 **Headings.** The article and section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

17.13 **No Third Party Beneficiaries.** Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

17.14 **Counterparts; Transmittal.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Facsimile or electronic transmission of this Agreement shall constitute good and valid delivery.

17.15 **Sovereign Immunity**. The parties acknowledge and agree that nothing in this Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Agreement. To the extent that this section conflicts with any other section, this section shall govern.

17.16 **Campaign Contribution Restriction**. For all State contracts, defined in Conn. Gen. Stat. §9-612 as having a value in a calendar year of $50,000 or more, or a combination or series of such agreements or contracts having a value of $100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

17.17 **Executive Orders and Other Enactments.**

17.17.1 All references in this Agreement to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Agreement at any time during its term, or that may be made applicable to the Agreement during its term. This

Agreement shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. At the EDC's request, Customer shall provide a copy of these Enactments to the EDC. Unless otherwise provided by Enactments, the EDC is not relieved of its obligation to perform under this Agreement if it chooses to contest the applicability of the Enactments or the Agency's authority to require compliance with the Enactments.

17.17.2. This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Agreement as if they had been fully set forth in it.

17.17.3 This Agreement may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Agreement as if fully set forth in it.

17.18 **Nondiscrimination**.

(a) For purposes of this Section, the following terms are defined as follows:

i. "Commission" means the Commission on Human Rights and Opportunities;

ii. "Contract" and "contract" mean the Agreement and include any extension or modification of the Contract or contract;

iii. "Contractor" and "contractor" mean EDC and include any successors or assigns of the Contractor or contractor;

iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;

v. “good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

vii. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms “Contract” and “contract” do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3),or (4).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such

disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability,

mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human

Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including

sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(i) Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online ~~b~~Bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box: ☐

17.19 **Compliance with Consumer Date Privacy and Online Monitoring.** Pursuant to section 4 of Public Act 23-16 of the Connecticut General Assembly, EDC shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

17.20 **Whistleblowing.** This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the EDC takes or threatens to take any personnel action against any employee of the EDC in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the EDC shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (i) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Agreement.