The Connecticut Light and Power Company dba Eversource Energy and The United Illuminating Company
SHARED CLEAN ENERGY FACILITY ("SCEF") YEAR 8~~7~~ TARIFF TERMS AGREEMENT
SUBSCRIBER ORGANIZATION

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1. Summary

These Terms and Conditions establish the Program requirements for Subscriber Organizations for the Shared Clean Energy Facilities ("SCEF") program ("Program") consistent with Public Act 18-50, *An Act Concerning Connecticut's Energy Future*, Section 1 of Public Act 22-14, *An Act Concerning Clean Energy Tariff Programs,* and Section 9 of Public Act 25-173, *An Act Concerning Energy Affordability, Access, and Accountability* ("the Acts"), Connecticut General Statute 16-244z, *Renewable Energy Tariffs and* the December 18, 2019, Decision of the Public Utilities Regulatory Commission ("PURA" or "Authority") in Docket No. 19-07-01 *Review of Statewide Shared Clean Energy Facility Program Requirements* ("the Decision"). All definitions and program rules used throughout this Rider conform to the Authority's Year 8~~7~~ Program Manual, presented in Exhibit B – SCEF Year 8~~7~~ Program Manual attached to the Decision.

2. Definitions

The following definitions are applicable to the Program requirements and conform with Conn. Gen. Stat. §§ 16-244z(a) and 16-244x.

2.1 "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;

2.2 "Alternative Compliance Payment" or "ACP" means the compliance rate for failure to meet the renewable portfolio standards specified in Section 16-244c of the Connecticut General Statutes ("General Statutes") or any similar compliance rate established;

2.3 "Approval to Energize" has the meaning outlined in the respective EDC's Interconnection Agreement;

2.4 "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;

2.5 "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;

2.6 "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;

2.7 "Bid" means a responsive submission by a Bidder to the procurement under this Program;

2.8 "Bid Preferences" means preferred policy criteria established by DEEP and approved by PURA to apply in the next procurement process under this Program;

2.9 "Bidder" means an entity that submits a Bid for a Subscriber Organization and the development and

operation of the Shared Clean Energy Facility consistent with the requirements of this Program;

2.10 "Brownfield" means a site that is either: (1) an address that is included on the Connecticut Brownfields Inventory maintained by DEEP and an attestation that such site has not achieved regulatory closure in the form of either a verification report from a licensed environmental professional or from DEEP; or (2) an address with a Phase 2 Environmental Site Assessment from a licensed environmental professional identifying that the site is contaminated with pollutants, unless such pollutants are present solely because soil at such address has been historically intermixed with coal ash, wood ash, coal fragments, coal slag, coal clinkers, asphalt paving fragments, or any combination thereof. For both (1) and (2), the Bidder must demonstrate, to DEEP's sole satisfaction, the site is either abandoned or underutilized because of such contamination;

2.11 "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. Notwithstanding the foregoing, with respect to notices only, Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday;

2.12 "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;

2.13 "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);

2.14 "Core Forest" means unfragmented forested land of at least two hundred and fifty (250) acres that is three hundred (300) feet or greater from the boundary between forested land and non-forested land;

2.15 "Customer" means a retail electric account holder of an Electric Distribution Company ("EDC");

2.16 "Delivery," "Deliver," "Delivered," or "Delivering" means with respect to (i) energy, that energy produced by a Shared Clean Energy Facility that is injected into the electric distribution system within the service territory of the receiving EDC for the benefit of such EDC, and (ii) RECs, those RECs associated with the delivered energy of the Shared Clean Energy Facility as a Connecticut Class I Renewable Energy Source[1];

2.17 "Delivery Term" means the period during which EDC is obligated to purchase energy and the RECs associated with the Facility that are Delivered to EDC by Subscriber Organization, as further defined in Section 5;

2.18 "Department" or "DEEP" means the Connecticut Department of Energy and Environmental Protection;

[1] Consistent with the SCEF Year 8~~7~~ Program Manual, as specified in Section 3.4.1, the EDCs will obtain the CT Class I RPS qualification and will report the generation output to the NEPOOL GIS for creation of the RECs into EDC administered batches or tranches.

2.19 "Development Period Security" means collateral in the form of cash, which shall be provided by the Subscriber Organization to the EDC during the development of the SCEF. Development Period Security shall not earn interest;

2.20 “Effective Date” has the meaning set forth in the first paragraph of the SCEF Tariff Terms Agreement;

2.21 "Electric Distribution Company" or "EDC" has the same meaning as provided in Section 16-1 of the General Statutes;

2.22 “Environmental Attributes” shall mean each of the following that exists under the laws and regulations of the state of Connecticut, or under any other international, federal, regional, state or other law, rule or regulation as of the Effective Date or may come into existence during the twenty-year term of the purchase commitment applicable to the selected Project: (i) GIS Certificates, (ii) credits, benefits, reductions, offsets and other beneficial allowances, including, to the extent applicable and without limitation, performance based incentives or renewable portfolio standard in the state in which the Project is located or in other jurisdictions (collectively, “Allowances”) attributable to the ownership or operation of the Project or the production or sale of Energy that avoids the emission of carbon into the air, soil or water, (iii) other Allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the production of electric generation or the production or sale of Energy that avoids the emission of carbon into the air, soil or water and in which the Subscriber Organization has good and valid title, including any credits to be evidenced by Renewable Energy Certificates or similar laws or regulations applicable in any jurisdiction as such may be amended during the term of the Tariff applicable to the selected Project, (iv) any such Allowances related to (A) oxides of carbon or (B) the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or involving or administered by the Clear Air Markets Division of the United States Environmental Protection Agency or any successor or other agency that is given jurisdiction over a Program involving transferability of specific Environmental Attributes, and (v) all reporting rights with respect to such allowances under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise;

2.23 “Environmental Justice Community” means (A) a United States census block group, as determined in accordance with the most recent United States census, for which thirty per cent or more of the population consists of low income persons who are not institutionalized and have an income below two hundred per cent of the federal poverty level, or (B) a distressed municipality, as defined in subsection (b) of section 32- 9p of the General Statutes;

2.24 “Expected Annual Production” or “Average Annual Production” means the expected average annual production of the Facility as determined by a CT Licensed Professional Engineer;

2.25 “Facility” has the meaning set forth in Section 4, Facility;

2.26 “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;

2.27 "Force Majeure Event" has the meaning set forth in Section 17, Force Majeure;

2.28 "Generation Footprint" means the land area occupied by the generation unit(s). For solar projects the "Generation Footprint" shall mean the land area occupied by the solar panels and the associated inter-row spacing.

2.29 "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 exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government;

2.30 Guidelines for Generator Interconnection ("Guidelines") means the Guidelines for Certified Inverter Based Generating Facility, 20kW or less, which includes Attachments, that describe the protocols and procedures for interconnecting to the Electric Power System, and/or the Guidelines for Generator Interconnection: Fast Track and Study Process, prepared by Eversource Energy and UI to describe the protocols and procedures for interconnecting to the EPS, as may be amended from time to time;

2.31 "Hybrid Project" shall mean Projects that include those which are split between rooftops and ground-mounted systems, including carports and solar canopies.

2.32 "In-Service Date" or "Commercial Operation Date" shall mean the Approval to Energize date listed on the EDC issued Approval to Energize letter to the system owner;

2.33 "Interconnecting Utility" means the utility (which shall be an EDC) providing interconnection service for the Facility to the distribution system of that utility;

2.34 "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;

2.35 "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;

2.36 "kW" means a kilowatt;

2.37 "kWh" means a kilowatt-hour;

2.38 "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;

2.39 "Landfill" means any property that is listed on the Closed Landfills list, though this list is not intended to be exhaustive or an acknowledgement of ideal properties for renewable energy development;

2.40 "Meter" or "Meters" means all electric metering associated with the Facility, including the Production Meter, Facility meter and any other real-time meters, billing meters and back-up meters;

2.41 "MWh" means megawatt-hour, and one MWh shall equal 1,000 kWh;

2.42 "Nameplate Capacity" shall mean the actual nameplate capacity of the Facility, as built, and as certified by an Independent Engineer, as provided in Section 4.3;

2.43 "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;

2.44 “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;

2.45 “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;

2.46 “Non-Defaulting Party” has the meaning set forth in Section 15;

2.47 “Non-Residential Renewable Energy Solutions Program” or “NRES” means the Non-Residential Renewable Energy Solutions Program established pursuant to Public Acts 18-50, 19-35, 22-14, and 23-102.

2.48 "Operating Period Security" means collateral in the form of cash which shall be provided by the Subscriber Organization to the EDC during the operation of the SCEF. Operating Period Security shall earn interest at the Interest Rate;

2.49 “Participants Agreement” means the “Participants Tariff 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”);

2.50 “Parcel” means the clearly defined property boundaries registered with the local municipality before January 1 of the year of the solicitation;

2.51 "Payment" means an amount paid by the EDC to the Subscriber Organization to purchase the output of the Shared Clean Energy Facility as a direct payment from the EDC to the Subscriber Organization;

2.52 "Prepaid RECs" means RECs expected to be created in the future that are associated with Delivered Energy and paid for at the time of payment for Delivered Energy as part of the Purchase Price, as applicable;

2.53 "Procurement Price Cap" means the maximum Purchase Price allowed as part of a Bid in any given solicitation year, as established by DEEP and approved by PURA;

2.54 “Production Meter” means a separate meter dedicated to the measurement of the Facility’s energy output for the determination of the quantity of RECs and energy created;

2.55 "Program" means the Shared Clean Energy Facilities Program developed by DEEP and approved by PURA pursuant to the Acts;

2.56 “Project Site” means the Generation Footprint and any other acreage where activity and discharges occur that are associated with construction of the generation unit(s) and any associated structures, including, but not limited to, perimeter fencing, or where preparation for construction, including, but not limited to, clearing, grubbing, pile driving, soil disturbance, soil compaction by construction equipment, staging and stockpiling, cleaning and washout, grading, excavation, and dewatering occurs;

2.57 "Public Utilities Regulatory Authority” or “PURA” or “Authority” means the Connecticut Public Utilities Regulatory Authority or any successor thereto;

2.58 "Purchase Price(s)" means the price, as selected in the procurement and approved by PURA, to be applied to Delivered Energy and Prepaid RECs;

2.59 "Qualified Bank" means a major U.S. commercial bank or a U.S. branch office of a major foreign bank, in either case, having (i) assets on its most recent audited balance sheet of at least $10,000,000,000, and (ii) a rating for its senior long-term unsecured debt obligations of at least (1) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's, or (2) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both;

2.60 “Regulatory Approval” means approval by the Authority;

2.61 “Renewable Energy Certificate” or “REC” shall mean a certificate created to represent one megawatt hour ("MWh") of production from a Connecticut Class I renewable generation Facility and any and all other Environmental Attributes associated with the energy or otherwise produced by the Shared Clean Energy Facility;

2.62 “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;

2.63 “Rider” means the Rider developed by Eversource Energy ("Eversource") or The United Illuminating Company ("UI") (together, "the EDCs"), whichever is applicable to a SCEF, consistent with this Program and approved by PURA;

2.64 “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);

2.65 "Selected Bidder" means a winning Bidder selected by the EDCs resulting from the procurement consistent with this Program and approved by PURA;

2.66 "Shared Clean Energy Facility" is defined by Section 16-244x of the CT General Statutes;

2.67 “Shared Clean Energy Facility (“SCEF”) Tariff Terms Agreement” means the document executed by the EDC and the Subscriber Organization;

2.68 ‘Solar Canopy’ or ‘Solar Canopies’ or ‘Solar Carport’ shall mean a solar generation Project where the alternating current (AC) Nameplate Capacity of a Project used for generating power is installed above a permeable and/or nonpermeable existing or new parking/driving area, pedestrian walkway, courtyard, canal, or other utilized surface that requires shade, which is installed in a manner that maintains the function of the area beneath the structure and continues to be used or available for use for such purposes for the term of Program participation;

2.69 "Subscriber Organization" is defined by Section 16-244x of the General Statutes. For the purposes of the SCEF Year 8~~7~~ Program Manual, the term Subscriber Organization refers to the Selected Bidder;

2.70 “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 Tariff;

2.71 “Term” has the meaning set forth in Section 5;

2.72 "Tariff" means the Tariff developed by Eversource Energy ("Eversource") or The United Illuminating

Company ("UI") (together, "the EDCs"), whichever is applicable to the SCEF, consistent with this Program and approved by PURA;

2.73 "Tariff Year" means the twelve (12) consecutive calendar months starting on the In-Service Date and each subsequent twelve (12) consecutive calendar month period;

2.74 "Tariff Terms Agreement" means the Shared Clean Energy Facility ("SCEF") Tariff Terms Agreement for the Subscriber Organization, inclusive of the Shared Clean Energy Facility Tariff, Terms and Conditions and all referenced attachments and appendices;

2.75 "Tariff Terms Agreement Approval Date" means the date on which PURA approves the Tariff award.

3. Program Structure

3.1 **Purchase of Energy and RECs.** Under the Program, the EDC will purchase the energy and associated RECs produced by a selected Shared Clean Energy Facility at the Purchase Price approved by PURA for the SCEF. The EDC will remit payment for that purchase in accordance with the EDC's tariff.

3.2 **Security.** Selected Bidders will be required to post Development Period Security and Operating Period Security. The required level of Development Period Security is twenty-five dollars ($25) per kW (AC) of the nameplate capacity of the proposed Facility. The Development Period Security must be provided to the EDC at the time of Bid submission. The EDC shall return the Development Period Security to the Subscriber Organization if at least one of the following conditions is met: (i) the Selected Project enters commercial operation in a timely fashion and begins producing energy consistent with these Program requirements; (ii) the Project's eligibility under the Tariff is terminated for failure to receive Regulatory Approval satisfactory in substance to the EDC; or (iii) the Project's eligibility under the Tariff is terminated due to a force majeure event; or (iv) the Bid is not selected under the procurement for which the Bid was submitted.

3.2.1 Failure by a Selected Bidder/Subscriber Organization to provide Development Period Security as required shall result in immediate and automatic termination of the Project's eligibility under the Tariff, and also trigger reallocation of MWs when appropriate. Development Period Security is forfeited if the Project's eligibility under the Tariff is terminated by the EDC for an event of default, including, but not limited to, the SCEF failing to enter commercial operation within the required timeframe of three calendar years from the date of PURA approval of the Tariff award, or a Bidder choosing to not move forward with their Bid after the Bid has been submitted.

3.2.2 No more than thirty (30) days after a SCEF achieves commercial operation, the associated Selected Bidder/Subscriber Organization shall provide Operating Period Security in an amount equal to the ACP multiplied by fifty (50) percent of the Expected Annual Production of the Facility (in MWh). This amount is intended to secure the Prepaid RECs included in the Purchase Price or to cure any conditions of default. Development Period Security may be converted to Operating Period Security at the Subscriber Organization's election.

3.2.3 If the EDC draws on Development Period Security or Operating Period Security for any reason,

the Selected Bidder/Subscriber Organization shall replenish such security within ten (10) Business Days. Any unused Operating Period Security shall be returned to the Subscriber Organization only after any such security has been used to satisfy any outstanding obligations of the Subscriber Organization in existence at the end of the term of the Tariff.

3.2.4 Development Period Security or Operating Period Security means collateral in the form of cash that can be satisfied through wire transfer, Automated Clearing House ("ACH"), or bank/cashier's check, or other security as may be acceptable to the EDC in its sole discretion. In addition, Development Period Security or Operating Period Security shall be deemed, for all legal purposes, to mean adequate assurance as such term is used in the Uniform Commercial Code ("UCC") and the Bankruptcy Code and amendments thereto. The Parties specifically recognize that the use of Development Period Security or Operating Period Security throughout this Agreement shall not limit any legal right, action, or remedy that would have otherwise been available to the aggrieved Party under either the UCC or Bankruptcy Code.

3.3 **Tariffs.** Each Selected Bid will have its own Tariff Terms Agreement based on its accepted Purchase Price(s) as approved by PURA. Tariff rates will be paid quarterly to Subscriber Organizations based on a cents/kWh calculation of the Purchase Price for the given Tariff Year multiplied by the metered kWh applicable to the SCEF.

4. Facility

4.1 **Facility Type.** A Shared Clean Energy Facility must be a new Class I renewable generation project, as defined in Section 16- 1 of the General Statutes, must emit no pollutants[2], and must be located in Connecticut and is as described in the Facility Information section of the Tariff Terms Agreement. Facilities already constructed or under construction are excluded. Facilities shall be constructed substantially as described in the Tariff Terms Agreement and shall also be subject to the provisions outlined in the Facility Size section herein. For a Facility to qualify as new, construction must commence after the issue date of the solicitation to which the Bidder is responding. For facilities constructed prior to the solicitation issue date but uprated with new production equipment (e.g., new solar panels or turbines) after the solicitation date, the new incremental production equipment may be eligible to the extent that it meets all of the eligibility criteria and is separately metered and compensated.

4.1.1 A SCEF may use federal subsidies, incentives, or tax benefits. However a Facility is ineligible if it receives, or seeks to receive, any Connecticut ratepayer-funded incentives or subsidies, including, but not limited to, net metering, virtual net metering, Public Utility Regulatory Policies Act ("PURPA") tariffs, LREC/ZREC contracts, NRES tariffs, and 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 the Conservation and Load Management Program.

[2] As stated in Public Act 25-173.

4.1.2 Bids must gain approval to interconnect to the EDC's distribution system (via the Eversource or UI standard interconnection process) and must be metered by an EDC-owned meter. Bids must meet Distribution Company applicable Guidelines for Generator Interconnection ("Guidelines") as approved by PURA. The interconnection process is separate and distinct from the SCEF Program.

4.2 **In-Service Date.** A Shared Clean Energy Facility for a Selected Bid shall have three (3) calendar years from the date of PURA approval of the Tariff award to receive an In-Service Date from the EDC.

4.2.1 If the Approval to Energize letter is not issued by such date, the EDC's twenty-year purchase commitment will immediately and automatically terminate. No extensions will be granted to the 3-year deadline for achieving the In Service Date with the exception of extensions granted by the Ombudsperson.[3]

4.2.2 A SCEF that does not achieve its In-Service Date on a timely basis and has its purchase commitment terminated three (3) calendar years after PURA approval of the Tariff award, or any SCEF that becomes ineligible for the Tariff due to a Bidder event of default, may be re-offered into any solicitation for which bidding occurs one (1) calendar years after the date of termination of the purchase commitment. If the SCEF becomes ineligible for the Tariff due to a Bidder event of default, including failure to meet any of the in- service date requirements above, the Development Period Security is forfeited and will not be returned to the Bidder.

4.3 **Facility Size.** A Shared Clean Energy Facility must have a Nameplate Capacity rating greater than one hundred (100) kW (AC) and not exceed five thousand (5,000) kW (AC) pursuant to Section 16-244z (a)(2)(C) and 16-244x of the General Statutes.

4.3.1 The final as-built size of the SCEF shall not exceed the awarded nameplate capacity as indicated on the SCEF Tariff Terms Agreement.

4.3.2 A proposed Facility over five thousand (5,000) kW (AC) cannot be split into smaller Bids to enable that Facility to qualify. However, new generation may be added to an existing generation Facility or facilities. In such case, the total onsite generation may exceed the five thousand (5,000) kW (AC) size limit as long as the installed capacity for the new generation proposed under this Program does not, and any new generation must be separately metered in accordance with the EDC's metering requirements.

4.4 **Final Facility Size.** The Subscriber Organization shall provide notice to the EDC of the In-Service Date

[3] SCEF projects shall therefore be eligible for an extension if at least one of the following five criteria are met:
(1) the generation facility or project is unique and more complex than ordinary customer-sided distributed generation installation projects, such as having additional technology-specific regulatory or local siting requirements; (2) the project developer has worked diligently and in good faith in developing the project since inception; (3) the project is near completion or likely to begin commercial operation within the requested extended deadline; (4) a significant portion of the total project investment has already been made and would potentially be stranded if the contract is terminated; and/or (5) the interconnection process extended beyond the utilities' initial estimates and/or significantly (e.g., one month) beyond the average interconnection process timeline.

and final Facility size two months prior to the In-Service Date and shall notify the EDC immediately upon learning of any changes to the In-Service Date or final Facility size. The final Facility size shall be based on the Facility's as-built configuration.

4.4.1 If the final Facility size exceeds the original description as set forth in the SCEF Tariff Terms Agreement, the SCEF project Tariff enrollment shall be immediately and automatically terminated.

4.4.2 If the final Facility size is less than the original description as set forth in the SCEF Tariff Terms Agreement, Section IV of the Tariff Terms Agreement will be revised. The Subscriber Organization will be required to provide an updated Connecticut Licensed Professional Engineer certification indicating the updated Average Annual Production commensurate with the updated final Facility size. Under no circumstances shall a final Facility size be less than one hundred (100) kW (AC).

5. Term of Agreement; Delivery Term

5.1 **Term of Agreement.** A Shared Clean Energy Facility for a Selected Bid approved by PURA to receive Tariff payments will be eligible for compensation for energy and RECs produced as defined herein and Delivered to the appropriate EDC at the approved Tariff Rate(s) for a twenty- (20-) year term commencing on the first day of the month following the In-Service Date. This Tariff 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 Tariff in accordance with its terms (the "Term").

5.2 **Delivery Term.** The Delivery Term shall continue for a period of twenty (20) years from the first day of the month following the In-Service Date, unless this Tariff is earlier terminated in accordance with the provisions hereof. Subscriber Organization 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 RECs deliveries, whether or not due to one or more Force Majeure Events, even if such delay(s) result in initial Delivery under this Tariff that is subsequent to the In-Service Date. Further, the production and Delivery of qualified RECs shall not occur prior to the first day of the month following the In-Service Date, even if the Facility produces energy or RECs prior to the first day of the month following the In-Service Date. EDC is not obligated to purchase any energy or Connecticut Class I Renewable Energy Credits connected with energy produced by the Facility prior to the first day of the month following the In-Service Date, or after the end of the Delivery Term.

6. Prerequisites for Purchases

6.1 EDC's obligation to begin the purchase of energy and RECs from a SCEF Facility, as elected on the Tariff Terms Agreement, from Subscriber Organization at the rates of payment specified in the Tariff Terms Agreement is contingent upon the satisfaction of all of the following conditions:

6.1.1 Subscriber Organization is either (i) a distribution customer of record of the EDC with Project Site control, (ii) owner of the Project Site with permission of the distribution customer of record of the EDC, or (iii) Authorized Developer;

6.1.2 EDC has received evidence to its reasonable satisfaction that Subscriber Organization has met the requirements of Section 6.1.1;

6.1.3 EDC has received evidence to its reasonable satisfaction that the Facility's In-Service Date has occurred, or will occur, after July 1, 2021;

6.1.4 The Facility has a fully executed Interconnection Agreement;

6.1.5 EDC has received Regulatory Approval;

6.1.6 Subscriber Organization has provided notice in a form acceptable to EDC at its sole discretion, certifying: (a) that generation from the Project that will result in qualifying RECs and energy has begun, (b) the name of the Project as it will appear on the Tariff Terms Agreement, (c) the date that initial Deliveries to EDC under this Tariff are expected, (d) the Facility, as constructed, meets all of the SCEF generation Facility requirements of the Public Act 18-50, and Section 1 of the Public Act 22-14, and (e) the final Facility size;

6.1.7 Subscriber Organization has provided notice in a form acceptable to EDC at its sole discretion, certifying that their Production Meter has been installed and validated in accordance with the applicable requirements and standards issued by the EDC;

6.1.8 For Projects awarded that claim the Solar Carport or Solar Canopy Bid Preference, Subscriber Organization has provided proof that it has installed the Facility exactly as indicated in the Subscriber Organization Tariff Terms Agreement.

6.1.9 For Projects sited on Prime Farmland, Subscriber Organization has followed any rules developed by the Connecticut Department of Agriculture (“DOAG”) and/or the Connecticut Siting Council (“CSC”).

6.1.10 The In-Service Date has occurred.

7. Purchases

7.1 **Purchases of Energy and RECs.** Beginning on the first day of the month following the In-Service Date, provided that the Subscriber Organization has satisfied all Section 6 prerequisites, EDC shall purchase the Delivered Energy, inclusive of RECs, either Prepaid RECs or otherwise, from a Selected Bidder’s SCEF at the price(s) bid by the Bidder and approved by PURA (the “Purchase Price”). EDC’s obligation to purchase the Delivered output from the SCEF is contingent upon the Subscriber Organization'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.

7.1.1 The Delivered output will be paid directly to the Subscriber Organization by EDC on a quarterly basis.

7.1.2 In addition to Subscriber Organization’s sale and EDC’s purchase of RECs, EDC, without the

payment of any additional consideration to Subscriber Organization, shall receive title to, and Subscriber Organization shall convey to EDC, any and all other Environmental Attributes associated with the electricity generated by the Facility.

7.1.3 If the statutory and/or regulatory framework governing SCEF 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), EDC may choose to qualify the Facility in another state or federal program, whether for renewable energy certificates or other Environmental Attributes, and Subscriber Organization shall at such time provide to 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 EDC's request, Subscriber Organization shall cooperate with EDC to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for EDC.

7.1.4 SCEF capacity rights shall be transferred to the appropriate EDC, as all SCEFs are treated as load reducers and may not own capacity rights and participate in the ISO-NE capacity market.

7.2 This Tariff shall not provide the basis for any preferential treatment for any other products or services between the Parties.

8. Payment

8.1 Payment for any RECs and Energy Delivered in accordance with Section 9 of this Tariff shall be made by EDC to Subscriber Organization quarterly.

8.2 **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 8.5. Neither Party shall have the right to 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.

8.3 **Payment Method**. All payments made to the Subscriber Organization shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party in the Tariff Terms Agreement.

8.4 **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.

8.5 **Taxes.** Subscriber Organization shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the SCEF or production of the SCEF arising prior to Delivery. EDC shall pay or cause to be paid all Governmental Charges on or with respect to the SCEF at and after Delivery (other than ad valorem, franchise or income taxes that are related to the

sale of the SCEF and are, therefore, the responsibility of the Subscriber Organization). 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. Delivery

9.1 **Delivery of Energy.** Energy must be delivered to the EDC's electric distribution system. The Subscriber Organization is responsible for all costs associated with scheduling and delivery of the SCEF's energy to the electric distribution system, and the EDC will not be responsible for any costs associated with such Delivery.

9.2 **Delivery of RECs.** Payment by the EDC for Prepaid RECs at the Purchase Price creates a firm obligation on the part of the Subscriber Organization to Deliver RECs associated with the Delivered energy at the time that they are produced in the NEPOOL GIS.

9.2.1 It is the Subscriber Organization's responsibility to operate the SCEF facility in such a way as to ensure that the SCEF facility meets the qualifications requirements of a CT Class I Renewable Energy Source throughout the entire Term and the Subscriber Organization is responsible to provide the EDC with any and all required information to ensure such qualification.

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

9.3 **Reimbursement for Failure to Deliver RECs.** If the SCEF fails to qualify or Deliver the Prepaid RECs associated with the Delivered energy, the EDC will recover the cost of those undelivered RECs by: (1) first, netting an amount equal to the ACP multiplied by the quantity of Prepaid RECs not Delivered from the next quarterly payment(s) made to the Subscriber Organization; and (2), if (1) does not result in timely reimbursement, by drawing down on the Operating Period Security at an amount equal to the ACP, multiplied by the quantity of Prepaid RECs not Delivered.

10. Metering and Interconnection

10.1 **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 Subscriber Organization'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 Subscriber Organization's expense at least once each year. The Subscriber Organization 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 Subscriber Organization shall make such hourly meter data available to the EDC at no cost.

10.2 **Interconnection Agreement.** The Shared Clean Energy Facility shall comply with the terms and conditions of the Interconnection Agreement. Subscriber Organization shall seek such interconnection service from the Interconnecting Utility in accordance with the Interconnecting Utility's applicable interconnection process. The Facility 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 EDC.

11. Covenants, Representations and Warranties

11.1 **Subscriber Organization:** On and as of the effective date, and upon Delivery, the Subscriber Organization hereby covenants, represents and warrants to the EDC as follows:

11.1.1 The Subscriber Organization has and, at all times during the term will have, all necessary power and authority to executed deliver and perform its obligations hereunder;

11.1.2 The execution, delivery and performance of this Tariff by Subscriber Organization has been duly authorized by all necessary action and does not violate any of the terms or conditions of Subscriber Organization'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 Subscriber Organization;

11.1.3 The Subscriber Organization shall sell and Deliver and EDC shall purchase and receive all right, title, and interest in and to the energy and RECs in accordance with the Tariff Terms Agreement and the Terms and Conditions herein for the entire twenty- (20-) year term;

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

11.1.5 The Subscriber Organization 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;

11.1.6 At the time of Delivery, the Subscriber Organization shall convey title to any and all of the Energy and RECs Delivered to the EDC in accordance with the Tariff and Terms and Conditions;

11.1.7 The Energy and RECs must be free and clear of any and all liens or other encumbrances or title defects and the Subscriber Organization 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 and that such Facility is substantially as described in the RFP;

11.1.8 Upon each Delivery, the Subscriber Organization 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;

11.1.9 The Subscriber Organization warrants that as of the initial Delivery date and continuing thereafter, the Facility will be qualified to produce Connecticut Class I Renewable Energy Credits that meet the requirements of the Program;

11.1.10 The Subscriber Organization covenants that it shall not change the Facility, as described in the RFP, without previous written consent of DEEP and the EDC; and

11.1.11 Subscriber Organization covenants that it shall not change the Facility, as described in the Tariff Terms Agreement, without the prior written consent of EDC.

11.2 **EDC:** On and as of the effective date, and upon Delivery, the EDC hereby covenants, represents and warrants to the Subscriber Organization as follows:

11.2.1 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;

11.2.2 The execution, delivery and performance of this Tariff by EDC has been duly authorized by all necessary action and does not violate any of the terms or conditions of 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 EDC;

11.2.3 To the EDC's knowledge, there is no pending or threatened litigation, arbitration or administrative proceeding that materially adversely affects the EDC's ability to perform its obligations under the Tariff; and

11.2.4 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.

12. Regulatory Approval and Cost Recovery

12.1 **Regulatory Approval.** The EDC will not provide credits or payments until PURA approves the Purchase Prices accepted as a result of the RFP process. If PURA does not approve the Purchase Prices, the EDC will not be obligated to pay credits to Subscribers or make payments at the Purchase Price(s) and must wait for approved Purchase Prices from PURA.

12.2 **EDC Cost Recovery.** The EDCs will be allowed to recover all payments made to Subscriber Organizations, as well as all reasonable and prudently incurred costs related to the implementation and administration of the SCEF Year 8~~7~~ Program Manual if approved by PURA through the Non Bypassable Federally Mandated Congestion Charge.

13. Assignment

13.1 **Prohibition on Assignments.** Except as permitted under this Section, the Shared Clean Energy Facility may be assigned by the Subscriber Organization, unless the EDC notifies the Subscriber Organization in writing, within thirty (30) days of receipt of written notice of Subscriber Organization's intent to make an assignment, that the EDC has reasonably determined that such assignment will have a material adverse effect on the Subscriber Organization's creditworthiness or ability to perform its obligations under this Tariff and notifies the Subscriber Organization in writing that the EDC does not consent to the assignment. When assignable, this Tariff shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the parties, except that no assignment, pledge or other transfer of this by either Party shall operate to release the assignor, pledger, or transferor from any of its obligations under this Tariff unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledger, or transferor from its obligations thereunder.

13.2 **Assignments by Subscriber Organization.** The Subscriber Organization may pledge or assign the Facility or the revenues under this Tariff to any Lender as security for the project financing or tax equity financing of the Facility; provided, however, that the Facility shall remain at all times located at the original site.

13.3 **Change of Control over Subscriber Organization.** The EDC's consent shall be required for any "Change of Control" (as defined below) over the Subscriber Organization. The EDC's consent shall be deemed provided within forty-five (45) days of the EDC's receipt of the Subscriber Organization's notice of its intent to Change Control unless the EDC notifies the Subscriber Organization in writing, within thirty (30) days of receipt of the Subscriber Organization's written notice of intent to make a Change of Control, that the EDC has reasonably determined that such a Change of Control will have a material adverse effect on the Subscriber Organization's creditworthiness or the Subscriber Organization's ability to perform its obligations under this Tariff and that the EDC does not consent to such Change of Control. If the EDC does not consent to a Change of Control requested by the Subscriber Organization resulting from a bona-fide, good faith transaction entered into by the Subscriber Organization for a Change of Control within such forty-five day (45 day) period, the Subscriber Organization may withdraw their request to be included in this Program upon sixty (60) days' notice to the EDC. For the purposes of this Section, "Change of Control" shall mean either (a) change in ownership of more than fifty percent (50%) of the equity interest of the Subscriber Organization in the Facility, either directly or indirectly, or (b) a change of control in fact of the Subscriber Organization.

13.4 **Permitted Assignment by the EDC.** The EDC shall have the right to assign this Tariff without consent of the Subscriber Organization 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.

13.5 **Prohibited Assignments.** Any purported assignment of this Agreement not in compliance with the provisions of this Section shall be null and void.

14. Events of Default

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

14.1.1 If a Party materially breaches any or all of its obligations as described in the Tariff and Terms and Conditions and such breach is not cured within twenty (20) Business Days of written notice;

14.1.2 If any representation or warranty or covenant made by a Party proves to have been misleading or false in any material respect when made;

14.1.3 If a party becomes bankrupt.

14.2 **Subscriber Organization Events of Default:** An "Event of Default" shall also mean, with respect to a Subscriber Organization, the occurrence of any of the following:

14.2.1 If the Subscriber Organization, on behalf of or associated with the Shared Clean Energy Facility, 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, NRES tariffs, and 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 4.1.1);

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

14.2.3 If the Shared Clean Energy Facility is not In-Service within 3 years of the date of PURA approval of the Tariff award;

14.2.4 If the Shared Clean Energy Facility is not in-service for the entire term of the Tariff (20 years);

14.2.5 If the Shared Clean Energy Facility does not Deliver energy and/or RECs for the entire 20-year Tariff term;

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

14.2.7 If PURA, or its successor organization, rules a Subscriber Organization to be ineligible under the Tariff for any reason;

14.2.8 If the Subscriber Organization fails to operate the Facility as approved in DEEP's RFP selection process, which includes, but is not limited to, differences in location, size and technology type; or

14.2.9 If the Facility size is less than 100 kW (AC) or greater than 5,000 kW (AC).

14.2.10 If the Shared Clean Energy Facility is proposed to be constructed on a Solar Carport or Solar Canopy and has not installed the Facility exactly as indicated in the Subscriber Organization Tariff Terms Agreement.

15. Remedies Upon Default

15.1 **Remedies.** Upon the occurrence and continuation of an Event of Default, the other Party (the "Non-Defaulting Party") may (i) terminate the relationship upon written notice to the Defaulting Party, and/or (ii) withhold any payments due to the extent of its damages. Both Parties hereby stipulate that the remedies set forth in this Section 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.

15.2 **Other EDC Remedies.**

15.2.1 With respect to a Subscriber Organization default pursuant to Section 14.2.1, (i) this Tariff shall be deemed to have terminated automatically as of the date of such receipt, (ii) Subscriber Organization shall forfeit its Development Period Security or Operation Period Security to EDC, and (iii) Subscriber Organization shall promptly return any amounts to EDC paid for any RECs and energy under this Tariff subsequent to receipt of such grant or rebate.

15.2.2 With respect to a Subscriber Organization default pursuant to Section 14.2.3 (the Shared Clean Energy Facility is not In-Service within 3 years of the date of PURA approval of the Tariff award), this Tariff shall terminate immediately and automatically.

15.2.3 With respect to a Subscriber Organization default pursuant to Section 14.2.10 (the Shared Clean Energy Facility is proposed to be constructed on a Solar Carport or Solar Canopy and has not installed the Facility on a Solar Carport or Solar Canopy exactly as indicated in the Subscriber Organization Tariff Terms Agreement), this Tariff shall terminate immediately and automatically.

16. Notices and Contact Information

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

16.2 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.

16.3 Any correspondence related to the Development Period Security or Operating Period Security should be sent to the Development and Operating Period Security contact at the applicable address set forth in the Tariff Terms Agreement.

16.4 The notice, contact or accounting information specified in the Tariff Terms Agreement and in this Section 16 may be changed from time to time by written notice by either Party to the other Party without amendment of this Tariff. However, such written notice shall not be used for the purposes of Section 13.

17. Force Majeure

17.1 This 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, curtailment of electric distribution services; fire, flood, windstorm, earthquake or other acts of God; strikes, lockouts or other labor disturbances (whether among employees of Subscriber Organization, 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 the Subscriber Organization or Subscriber.

17.2 Except as otherwise set forth in this Tariff, neither Party shall be liable to the other Party for failure or delay in the performance of any obligation under this Tariff 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 Delivery Term of this Tariff. (c) After the In-Service Date, in no event shall a claim of Force Majeure or a Force Majeure Event operate to extend the Delivery Term of this Tariff. (d) After the In-Service Date, 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 Subscriber Organization fails to deliver any RECs and/or Energy from the Facility to EDC, EDC shall have the right to terminate this Tariff without further liability to EDC, by giving Subscriber Organization fifteen (15) Business Days written notice.

18. Limitation of Liability

18.1 With respect to any liability hereunder, neither the Subscriber Organization or Subscriber nor 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.

19. Dispute Resolution

19.1 Except as otherwise expressly set forth herein, for any and all disputes or issues, the Parties shall refer to this Section 17. A Party must respond to the other Party's notice concerning a disputed issue within ten (10) Business Days of first notification unless otherwise specified in this Agreement.

19.2 Any Party may give the other Party notice of any dispute not resolved in the normal course of business ("Initial Notice"). A copy of the Initial Notice shall also be given to the Authority. Such Initial Notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, representatives of both Parties and, at the Parties request, shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by

one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable to resolve the dispute within sixty (60) business days after the delivery of the Initial Notice, a Party may petition the Authority to initiate a proceeding to resolve the dispute. The Parties should report to the Authority any resolution of disputes agreed to by the Parties within five (5) Business Days of said agreement.

19.3 The Parties agree that all disputes or issues arising out of this Agreement shall be brought to the Authority for resolution of the dispute or issues as provided in this Section 19. The Parties waive their right to bring disputes or issues to any other forum except as provided in the Uniform Administrative Procedures Act, Conn. Gen. Stat. § 4-166, et seq.(c).

19.4 Allocation of Dispute Costs. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein. The procedure specified herein shall be the sole and exclusive procedure for the resolution of Disputes.

19.5 Waiver of Jury Trial. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

20. Miscellaneous

20.1 **Records.** The parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least (6) years such records as may be needed to afford a clear history of all deliveries of Payments, Credits, energy and RECs pursuant to the Tariff. For any matters in dispute, the Parties shall keep the records until the dispute is resolved.

20.2 **Audit Rights.** The EDC and the Subscriber Organization have the right throughout the Tariff 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 the Tariff. The party requesting the audit shall pay the other party's reasonable costs allocable to such audit.

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

20.4 **Amendment/Binding Effect.** This Tariff 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 Tariff and, with respect to amendments only, receive Regulatory Approval. This Tariff shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

20.5 **Site Access.** The EDC and its representatives shall have the right, but not the obligation, during business hours, upon reasonable notice to the Subscriber Organization, to visit and view the Facility site, including

but not limited to, for the purpose of verifying compliance with the Facility's description provided in the Tariff Terms Agreement, and final Facility size as of its In-Service Date. The EDC and the Subscriber Organization agree that it shall constitute a material breach by the Subscriber Organization to deny the EDC reasonable access to the site and the Facility and that such material breach shall constitute an Event of Default by the Subscriber Organization under Section 14.

20.6 **Severability.** If any section, phrase or portion of these Terms and Conditions is for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction such section, phrase or portion so adjudged will be deemed separate, severable and independent and the remainder of these Terms and Conditions 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 these Terms and Conditions and the benefits and rights of the EDC and Subscriber Organization or Subscribers are not substantially impaired.

20.7 **Waiver.** No delay or omission by a Party in the exercise of any right under this Tariff 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.

20.8 **Governing Law; Venue; Waiver of Jury Trial.** This Tariff 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. Parties waive the right to a trial by jury. Any dispute arising out of this Tariff shall be governed by Section 19 of this Tariff.

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

20.10 **Indemnification.** Each Party agrees to indemnify, defend and hold harmless the other Party, and any of said other Party's Affiliates, directors, officers, employees, agents and permitted assigns, from and against all third party claims, losses, injuries, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with, arising out of, or alleged to arise out of any event or circumstance first occurring or existing during the period when control and title to the Products is vested in such Party or which is in any manner connected with the performance of this Tariff by such Party, except to the extent that such Claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified. This indemnity shall survive the expiration or termination of this Tariff for the full statutory period allowable by applicable law.

20.11 **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 Tariff.

20.12 **Counterparts; Transmittal.** This Tariff 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 Tariff shall constitute good and valid delivery.

20.13 **Disputes.** Any dispute arising out of these Terms and Conditions shall be governed by the Dispute Resolution provision herein.