

cause to be paid all Governmental Charges on or with respect to the RECs at and after Delivery (other than ad valorem, franchise or income taxes that are related to the sale of the RECs and are, therefore, the responsibility of the Seller). 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.

Article 9. Performance Assurance

- 9.1 **Provision of Performance Assurance.** Bidders will be required to post Performance Assurance in an amount equal to the project size in kW (AC) * \$25.00, and Performance Assurance shall not accrue interest. The Performance Assurance must be provided to the EDC on, or before, the Bid deadline of 1:00pm EST on November 18, 2021 to secure Seller's obligations under this Agreement. Seller's failure to provide said Performance Assurance as required shall result in automatic disqualification of the Bid without opportunity to cure.
- 9.2 **Return of Performance Assurance.** Performance Assurance in the original amount posted shall be returned to Seller if at least one of the following conditions is met: (i) the Selected Project receives Approval to Energize by the Guaranteed In-Service Date 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. For purposes of clarification, Buyer has no obligation to return Performance Assurance if the Agreement is terminated due to an Event of Default by Seller.

Article 10. Covenants, Representations and Warranties

- 10.1 **Seller Covenants, Representations and Warranties.** On and as of the Effective Date, and upon Delivery, Seller hereby covenants, represents and warrants to Buyer as follows:
- 10.1.1 Seller 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 Seller has been duly authorized by all necessary action and does not violate any of the terms or conditions of Seller'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 Seller;

10.1.3 There is no pending or (to Seller's knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects Seller's ability to perform its obligations under this Agreement;

10.1.4 Seller 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.

10.2 **Buyer covenants, representations and warranties.** On, as of the Effective Date, and upon Delivery, Buyer hereby represents and warrants to Seller as follows:

10.2.1 Buyer 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 Buyer has been duly authorized by all necessary action and does not violate any of the terms or conditions of Buyer'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 Buyer;

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

10.2.4 Buyer 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.

10.3 **Additional Seller Covenants.** On, as of the Effective Date, and upon Delivery, Seller hereby represents and warrants to Buyer as follows:

10.3.1 At the time of Delivery, Seller shall convey title to any and all of the RECs Delivered to Buyer in accordance with this Agreement free and clear of any and all liens or other encumbrances or title defects and Seller further represents that any and all of the RECs represent generation from a generation 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 Cover Sheet. Upon each Delivery, Seller represents and

warrants to Buyer that (A) it has sold and transferred the RECs once and only once exclusively to Buyer; (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 attributes 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 Buyer 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 under any other renewable energy program; and (D) the RECs, as applicable, meet statutory requirements as they existed as of the Effective Date.

10.3.2 Seller 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 Facility as elected on the Cover Sheet.

10.3.3 Seller is an Account Holder as defined in Rule 2.2 of the NEPOOL GIS Operating Rules.

10.3.4 Seller covenants that it shall not change the Facility, as described in the Cover Sheet, without the prior written consent of Buyer.

10.3.5 If Seller has made this election on the Cover Sheet, Seller covenants that the Facility uses Connecticut manufactured technologies. For the purposes of this and related provisions, including any affidavits, “manufactured” is defined as: “The activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Changing the quality of property includes any substantial overhaul of the property that results in a significantly greater service life than such property would have had in the absence of such overhaul or with significantly greater functionality within the original service life of the property, beyond merely restoring the original functionality for the balance of the original service life.”

10.3.6 Seller covenants that they will inform the Companies if the Facility becomes a participant in the FCM and the MWs accepted into the FCM as soon as the Facility becomes a participant in the FCM.

Article 11. Assignment

- 11.1 **Prohibition on Assignments.** Except as permitted under this Article 11, this Agreement may be assigned by Seller, unless Buyer notifies Seller in writing, within thirty (30) days of receipt of written notice of Seller's intent to make an assignment, that Buyer has reasonably determined that such assignment will have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement and notifies Seller in writing that Buyer does not consent to the assignment. When assignable, this Agreement 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 Agreement by either Party shall operate to release the assignor, pledger, or transferor from any of its obligations under this Agreement 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.
- 11.2 **Assignments by Seller.** Seller may pledge or assign the Facility, this Agreement or the revenues under this Agreement 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.
- 11.3 **Change of Control over Seller.** Buyer's consent shall be required for any "Change of Control" (as defined below) over Seller. Buyer's consent shall be deemed provided within forty-five (45) days of Buyer's receipt of the Seller's notice of its intent to Change Control unless Buyer notifies Seller in writing, within thirty (30) days of receipt of Seller's written notice of intent to make a Change of Control, that Buyer has reasonably determined that such a Change of Control will have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement and that Buyer does not consent to such Change of Control. If Buyer does not consent to a Change of Control requested by Seller resulting from a bona-fide, good faith transaction entered into by Seller for a Change of Control within such forty-five day period, Seller may terminate this Agreement upon sixty (60) days' notice to Buyer. For the purposes of this Section 11.3, "Change of Control" shall mean either (a) change in ownership of more than fifty percent (50%) of the equity interest of Seller in the Facility, either directly or indirectly, or (b) a change of control in fact of Seller.
- 11.4 **Permitted Assignment by Buyer.** Buyer shall have the right to assign this Agreement without consent of Seller in connection with any merger, consolidation, exchange of all of the common stock or other equity interests or other similar transactions involving Buyer that is approved by the Authority.

- 11.5 **Prohibited Assignments.** Any purported assignment of this Agreement not in compliance with the provisions of this Article 11 shall be null and void.

Article 12. Regulatory Approval

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

Article 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 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;
 - 13.1.2 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; and/or
 - 13.1.3 if a Party becomes Bankrupt.
- 13.2 **Additional Seller Events of Default.** An “Event of Default” shall also mean with respect to Seller the occurrence of any of the following:
- 13.2.1 if Seller, on behalf of the Facility, receives, or has received, a grant or rebate from Connecticut Green Bank or either of its predecessors CEFIA or CCEF, or any successor agency or fund (subject to the clarifications set forth in Section 4.1.6), or a contract for the sale of the output of the facility to either of the Electric Distribution Companies; or, if Seller fails to satisfy any and all of the conditions set forth in Article 4 within twelve (12) months of the Delivery Term Start Date; or,
 - 13.2.2 if Seller fails to deliver any RECs from the Facility to Buyer for twenty-four (24) consecutive months.
- 13.3 **Remedies Upon Default.**

13.3.1 **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 13.3.1, and/or (iii) exercise such remedies as provided in this Agreement. Both Parties hereby stipulate that the remedies set forth in this Section 13.3.1 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.

13.3.2 **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, 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 13.3.1.

13.3.3 **Other Buyer Remedies.**

(a) With respect to a Seller default pursuant to Section 13.2.1 (Facility, receives, or has received, a grant or rebate from the Connecticut Green Bank or either of its predecessors CEFIA or CCEF, or any successor agency or fund), (i) this Agreement shall be deemed to have terminated automatically as of the date of such receipt, (ii) Seller shall forfeit its Performance Assurance to Buyer, and (iii) Seller shall promptly return any amounts to Buyer paid for any RECs under this Agreement subsequent to receipt of such grant or rebate.

(b) With respect to a Seller default pursuant to Section 13.2.2, Buyer shall have the right to terminate this Agreement without further liability on the part of Buyer, by giving Seller fifteen (15) Business Days’ notice.

Article 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 in person, by prepaid overnight United States mail or by overnight courier service, return receipt requested, to a Party at the applicable address set forth in the Cover Sheet.
- 14.2 Notices by hand 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. Notice by overnight United States mail or overnight courier service shall be effective on the close of business on the next Business Day after such notice was sent.
- 14.3 Any correspondence related to the Performance Assurance should be sent to the Credit 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.

Article 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 Delivery Term Start Date of this Agreement. (c) After the Delivery Term Start Date, in no event shall a claim of Force Majeure or a Force Majeure Event operate to extend the Delivery Term of this Agreement. (d) After the Delivery Term Start 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 Seller fails to deliver any RECs from the Facility to Buyer, Buyer shall have the right to terminate this Agreement without further liability to Buyer, by giving Seller fifteen (15) Business Days written notice.

Article 16. Limitation of Liability

- 16.1 WITH RESPECT TO ANY LIABILITY HEREUNDER, NEITHER SELLER NOR BUYER 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.

Article 17. Dispute Resolution

- 17.1 Except as otherwise expressly set forth herein, for any and all disputes or issues, the Parties shall refer to this Article 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.
- 17.2 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.
- 17.3 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 Article 17. The Parties waive their right to bring disputes or

issues to any other forum except as provided in the Uniform Administrative Procedures Act, General Statutes of Connecticut § 4-166, et seq.(c).

- 17.4 **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.
- 17.5 **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.

Article 18. Miscellaneous

- 18.1 **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 such records as may be needed to afford a clear history of all deliveries of RECs pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended. This Section shall survive the expiration or termination of this Agreement.
- 18.2 **Audit Rights.** Seller and Buyer 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.
- 18.3 **Accounting Information.** Seller shall provide to Buyer, and in a timely fashion following its request, reasonably requested information that Buyer requires for its accounting analysis or Securities and Exchange Commission reporting purposes. Buyer agrees to treat any information that includes confidential information with the same degree of care that it accords its own confidential information.
- 18.4 **Site Access.** Buyer and its representatives shall have the right, but not the obligation, during business hours, upon reasonable notice to Seller, 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. Buyer and Seller agree that it shall constitute a material breach by Seller to deny Buyer

reasonable access to the site and the Facility and that such material breach shall constitute an Event of Default by Seller under Article 13.

- 18.5 **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 Regulatory Approval. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.
- 18.6 **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.
- 18.7 **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.
- 18.8 **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.
- 18.9 **Governing Law; Venue; Waiver of Jury Trial.** 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. Parties waive the right to a trial by jury. Any dispute arising out of this Agreement shall be governed by Section 17.3 of this Agreement.
- 18.10 **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.
- 18.11 **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 Agreement 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 Agreement for the full statutory period allowable by applicable law.

18.12 **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.

18.13 **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.