



**NON-WIRES SOLUTIONS
FIXED PRICE ENGINEERING, PROCUREMENT,
AND CONSTRUCTION AGREEMENT TEMPLATE**

<Insert Area Name>

<Insert Date>

This Template Agreement is intended to provide a high-level description of certain, but not all, terms that will be included in the draft Agreement. The final Agreement will be subject to negotiations with the individual electric distribution companies and will be customized to address the relevant circumstances. Accordingly, certain provisions in this Template may differ from the draft Agreement and/or final Agreement.

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Exhibits for the final Agreement may include, but are not limited to:

Exhibit A.	Technical Specifications
Exhibit B.	Site Restrictions
Exhibit C.	Form of Change Order
Exhibit D.	Form of Lien Waivers and Releases
Exhibit E.	Payment Schedule; Milestone Schedule
Exhibit F.	Pricing Schedule
Exhibit G.	Site Description
Exhibit H.	Work Protocols
Exhibit I.	Work Schedule
Exhibit J.	Liquidated Damages – Performance Metrics
Exhibit K.	Non-Disclosure Agreement with Data Security Requirements

1. Definitions

2. Services by Contractor

2.1 Contractor's Scope

- Describe Contractor's scope of work ("Work").

2.2 Contractor's EPC Responsibility

- Contractor to provide turn-key EPC project to Utility, including review of site restrictions and conditions.

2.3 Design Services, Deliverables, Ownership and Use; As-Built Drawings

- **Design Services.** Provide all design and engineering services required under the Agreement.
- **Deliverables.** Submit complete and accurate design documents for review and acceptance by Utility prior to starting Work.
- **Ownership and Use.**
 - Utility will have unrestricted and non-exclusive ownership rights to any and all design documents and other information (excluding any intellectual property of Contractor that is or may be the subject of one or more patents, copyrights, trademarks, service marks, proprietary interests and/or data rights).
 - Contractor will provide to Utility all information that could be used in connection with the construction, assembly, installation, control, operation, management, monitoring, maintenance and/or repair of the Work or the Facility.
 - Except for intellectual property of Contractor, such information shall be the property of Utility.
- **As-Built Drawings.**
 - Prepare As-Built drawings upon Utility's acceptance of final design.

2.4 Material Handling and Storage.

- Procure, acquire and otherwise furnish all equipment, materials and supplies required to perform and complete the Work in accordance with the terms and conditions of the Agreement and related documents ("Contract Documents").

2.5 Performance Consumables.

- Provide for any necessary disassembly and reassembly and all other items necessary and normal to complete the Work, including all necessary construction tools and equipment, protective fencing, scaffolding, temporary structures, property of employees and any other similar property, as well as all process fluids and chemical charges.

2.6 Site.

- Provide reasonable security measures to adequately protect the public, the site and the materials, equipment and supplies stored thereon during the Work.
- To the extent applicable to Work and required under Law, develop and prepare all traffic safety and control plans and procedures required in connection with the Work.
- Coordinate all access to the site in advance with Utility.
- Promptly repair and restore all property after completion of the Work.

2.7 Utility's Access and Inspection Rights.

- Provide reasonable access to Utility to such locations and assistance for inspection of Work and tests, upon reasonable notice to Contractor, during normal business hours of Contractor.
- Utility will have the right to inspect any and all Work at the applicable facilities of Contractor, its subcontractors and those under its and/or their respective control, as well as at the applicable storage facilities and/or the site.

2.9 No gifts or Inducements.

- Represent and warrant to Utility that it has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee or agent of Utility for any purpose.

2.10 Community and Public Relations.

- Direct all matters concerning community and/or public relations (including any media inquiries) to Utility.

2.11 Spare Parts.

- The "Fixed Contract Price" will include the provision and delivery (without additional costs and charges) of the spare parts agreed upon by the parties.

3. Responsibilities of Utility

3.1 Facility Interconnection.

- [Project specific/to be negotiated].

3.2 Site.

- Utility possesses or will acquire the right to locate the Facility on the property constituting the "Site."

4. Relationship of Parties

4.1 Independent Contractor.

- Contractor, subcontractors and those persons under its or their control will perform all Work as independent contractors and will not be deemed to be the employees or agents of Utility for any purpose whatsoever.

4.2 Representatives.

- Contractor's Representative will serve at the site as a full-time project manager, and will be responsible for planning, scheduling, updating, and reporting on the Work Schedule, and will be authorized to receive all communications from Utility, provide all approvals or authorizations required and act on behalf of Contractor in all matters concerning the Work.
- Utility's Representative will have the right to inspect the Work and the authority to reject any and all Work that does not conform to the Contract Documents.

4.3 Staffing.

- Assemble and maintain a work force that is professionally qualified and properly trained to complete the Work in accordance with the Work Schedule and to fully meet the requirements, terms, conditions, and provisions of the technical specifications, and all other Contract Documents.
- Union personnel must perform all electrical Work related to the construction of the Facility.

- Whenever required by Law, Contractor will employ the services of only licensed personnel (including professional engineers and certified welders) to perform the Work.
- Ensure the efficient and continuous supervision of labor forces required to complete the Work.

4.4 Subcontractors.

- Subject to Utility's prior consent, which consent may be granted or withheld in Utility's sole and exclusive discretion, Contractor will have the right to cause any or all of the Work to be performed and/or accomplished by subcontractors pursuant to written subcontracts between Contractor and such subcontractors.
- Contractor will be fully responsible for the performance or non-performance of subcontractors.
- Contractor will guarantee that all of the subcontractor rates included in the pricing schedule will remain fixed and firm through Final Acceptance (as defined in the Agreement).
- Contractor will submit, for Utility's review and approval in its sole and exclusive discretion, all subcontracts with subcontractors that are affiliates of Contractor.
- Contractor will furnish to Utility, promptly, but no later than five (5) days after Utility's request, information and documentation regarding Contractor's procurement of equipment, material and supplies, including shipping information.

5. **Compliance With Law and Rules**

5.1 Lawful Compliance.

- Contractor, at its sole cost and expense, will comply, and will cause all subcontractors to comply, with all applicable laws and the Contract Documents, and will acquire and comply, and shall cause its applicable subcontractors to comply, with all terms and conditions of all permits.

5.2 Permits.

- Secure and maintain, at Contractor's sole cost and expense, all "Contractor Permits" (to be designated in negotiated agreement) in a manner that does not adversely affect the Work Schedule.
- The parties will reasonably coordinate permitting activities, consistent with their respective obligations under the Contract Documents and under the Work Schedule.

5.3 Environmental Requirements.

- Ensure strict observance and compliance with environmental laws, best management practices and industry standards and with the Work Protocols with respect to the environment.
- Manage any excess material and/or hazardous materials that result from and/or are encountered during the Work in an environmentally responsible manner.
- Contractor will be solely responsible for the proper identification, documentation, handling, storage, minimization, processing, usage, recycling, re-use, and/or disposal of any and all hazardous materials.
- Contractor will appoint and maintain one or more persons as an Environmental Coordinator who shall ensure that a qualified person or persons be present at all times during the performance of any Work at the site that is materially affected by environmental law and/or implicates the site restrictions, as specified in the Agreement.

5.4 Safety, Health and Accident Prevention.

- Contractor will abide by Utility's requirements regarding safety, health and accident prevention.

5.5 Protection of Public, Work and Property.

- Contractor must continuously provide and maintain: (i) adequate protection of the Work, the property of Utility and its affiliates, and the property of third parties (including adjacent private and public property) from damage, destruction, loss and injury directly or indirectly arising out of, resulting from, or in any way related to the performance of or failure to perform any of the Work.
- Contractor will be solely responsible for all damages to public property and/or private property (including that of Utility) as a result of the Work.

5.6 Small Disadvantaged Businesses ("SDB"); Women Owned Small Businesses ("WOSB"); Service-Disabled Veteran-Owned Small Businesses ("SDV"), Veteran-Owned Small Businesses ("VE") and Businesses Located in and Qualified as Historically Underutilized Business Zones ("HUBZone"); Subcontracting Plan.

- Contractor will be required to submit data and/or subcontracting plans regarding Contractor's utilization and intended utilization of such SDB, WOSB, SDV, VE and HUBZone during the term of the Contract Documents.
- Contractor will supply Contractor's subcontracting plan to Utility within a reasonable time after the effective date of the Agreement and comply with such plan in performing the applicable Work.
- Quarterly, Contractor will submit to Utility information regarding Contractor's use of diverse suppliers.

6. Period of Performance.

6.1 Commencement and Completion.

- Commence the Work immediately upon Utility's issuance of a Notice to Proceed, unless otherwise directed in the Notice to Proceed; any Work performed by Contractor prior to issuance of a Notice to Proceed applicable to such Work will be performed at Contractor's sole risk of and expense.
- Perform and complete the Work in accordance with the Work Schedule and other requirements of the Contract Documents.

6.2 Prosecution of Work.

- Once Work commences, ensure that Contractor and any subcontractor prosecutes the Work continuously, diligently, and at such a rate and in such a manner as necessary for compliance with all requirements of the Contract Documents, including the achievement of each and every Critical Path Event (as defined in the negotiated Agreement) in accordance with the Contract Documents.
- Time is of the essence with respect to Contractor's performance of all of Contractor's obligations under the Contract Documents.

6.3 Force Majeure.

- Neither Party will be liable for delay and/or failure to perform if and to the extent such delay and/or failure is due to Force Majeure (as defined in the Agreement).
- In the event of a Force Majeure, Contractor will be entitled to an extension of time as determined by Utility equal to the time lost by reason of the duration of the Force Majeure to

the extent that such duration results in an actual, unavoidable and material “Critical Path” impact.

6.4 Passage of Title; Risk of Loss.

- Title to materials, equipment and/or supplies to be provided by Contractor as part of the Work will pass from Contractor to Utility immediately upon payment from Utility to Contractor for Work that involves such materials, equipment and/or supplies (excluding payments associated with Substantial Completion or Final Acceptance (each as defined in the negotiated Agreement) without any further act or documentation.
- Contractor will warrant as of the time of transfer of title that Contractor has good and marketable title to all of such materials, equipment and/or supplies, free and clear of any Liens.
- The care, custody and control, risk of damage to or loss of, and liability related to, materials, equipment and/or supplies, and liability thereof, whether stored on or off the site, will remain with Contractor until Substantial Completion.

6.5 Delays; Damages for Delays.

- Utility may at any time request Contractor to delay fabrication and/or delivery of all or any portion of materials, equipment and/or supplies and/or the provision of services to be provided by Contractor under the Contract Documents; Contractor will use its best efforts to accommodate such request.
- Utility’s Delay.
 - If (i) Contractor has notified Utility of a failure by Utility to meet an obligation set forth in the Contract Documents as a Utility obligation, and Utility fails to meet such obligation within a reasonable period after receipt of such notice, and (ii) Contractor experiences a material and adverse delay in a Critical Path Event solely and exclusively as the result of such failure, then Utility will issue a Change Order adjusting the Work Schedule or compensating Contractor.
- Concurrent Delay.
 - Contractor will not be entitled to any compensation or to any adjustment to the Work Schedule for any delay caused by Utility’s failure to meet any obligation under the Contract Documents if there is a simultaneous or concurrent delay to the Work caused by, or attributable to (by assumption of risk or otherwise), Contractor.

6.6 Liquidated Damages for Unexcused Delays.

- If Contractor fails, for reasons that are (i) not attributable to Utility’s breach of any of its obligations under the Contract Documents and (ii) not excused by change order, to achieve Substantial Completion on or before the Substantial Completion Deadline, then Contractor will pay to Utility the liquidated damages (as negotiated in the Agreement).

6.7 Reports.

- Within thirty (30) days after the effective date, Contractor will submit to Utility a baseline estimate of monthly actual expenditures for the Work from the effective date through Final Acceptance, in a form reasonably acceptable to Utility, which baseline estimate must align with the Payment Schedule and the Work Schedule.

7. Compensation and Payment.

7.1 Fixed Contract Price.

- For timely and proper performance of the Work in compliance with all requirements, terms, conditions, and provisions of the Contract Documents, Utility will pay to Contractor the Fixed Contract Price in accordance with a Payment Schedule set forth in the negotiated Agreement.
- Cost impacts due to change orders will be determined in accordance with the terms of the negotiated Agreement.

7.2 Invoicing; Payment.

- Contractor will prepare and submit a monthly invoice to Utility for any payments that accrued under the Contract Documents during the immediately preceding month.
- Utility will have the right to withhold and/or setoff payments.
- Utility will pay each correct invoice or provide written objections to all or any portion of each invoice within thirty (30) days after receipt by Utility.
- Utility will have the right to inspect and audit all of Contractor's and any and all subcontractor's books, records, correspondence, receipts, vouchers and memoranda relating to or affecting the Contract Documents.

7.3 Taxes.

- Utility has been issued a Direct Payment Permit by the Connecticut Department of Revenue Services ("DRS"), which allows Utility to pay Connecticut Sales Tax directly to the DRS. As a result of this permit, suppliers should not charge Connecticut sales tax for Work associated with the Agreement to the extent covered under the applicable Direct Pay Permit.
- Utility will not be required to pay or reimburse Contractor for any taxes levied against Contractor's income or payroll.
- As required by Law, Contractor will provide to Utility a certificate of compliance with the non-resident contractor bonding provisions applicable to all or any portion of the Work for Contractor and each subcontractor.
- Except for sales and use taxes addressed above, the Fixed Contract Price will include and account for all taxes of whatever nature (including any federal, state, local, or foreign income, gross receipts, employment, excise, customs duties, withholding, sales and use (outside of Connecticut), transfer, conveyance, registration, value added, alternative or add-on minimum, or other fees and charges of any governmental authority) and Contractor will be solely responsible for, and hereby assumes all risks associated with, all such taxes associated with the Work and/or the Contract Documents, including all present or future tariffs imposed on the importation any equipment required for the Facility.

8. Changes in Work.

8.1 Change Order Requests.

- Either party may submit a change order request to the other party.
- Claims or disputes directly or indirectly arising out of, resulting from, or in any way related to any potential, actual or asserted change(s) in the Work will not serve as a basis for delay or non-performance by Contractor of the Work.

- Utility will have the right to require Contractor to delete from, change, add to and/or otherwise alter the Work, in each case to the extent that any such deletions, changes, additions or other alterations are of the character described in the scope of Work.
- 8.2 Utility Changes Increasing the Work.
- Utility has the right, in its sole and exclusive discretion, to issue change orders that increase or similarly alter the scope of the Work. If such increase or similar alteration to the scope of Work has material Critical Path impact, the Work Schedule will be equitably adjusted.
- 8.3 Utility Changes Decreasing the Work.
- Utility has the right, in its sole and exclusive discretion, to issue change orders that decrease or similarly alter the scope of the Work. In any such case, Utility will be entitled to receive a suitable and equitable credit against the Fixed Contract Price.
- 8.4 Changes Due to Critical Path Delay Caused by Utility.
- If Contractor experiences a material delay in a Critical Path Event as a direct result of Utility's failure to perform its obligation under the Contract Documents after notice and cure, then Utility will issue a change order based on the Work affected by such delay and the duration of the delay to the Critical Path.
 - If Contractor experiences a material delay in a Critical Path Event as a direct result of Utility exercising its right to temporarily suspend the Work, then Utility will issue a change order adjusting the Work Schedule to offset the actual, demonstrable effect of such material delay in the Critical Path.
- 8.5 Changes Caused by Force Majeure.
- If a Force Majeure results in an actual, unavoidable and material delay in a Critical Path Event, the claiming party will give the other party written notice promptly after learning of the effects of the Force Majeure and will propose changes to the scope of Work and to the Work Schedule, as appropriate, to address the effects of such Force Majeure as soon as possible; *provided*, that Contractor shall not be entitled to any adjustment to the Fixed Contract Price or any other financial compensation of whatever nature as a result of the occurrence of a Force Majeure; *provided*, that in lieu of schedule relief, Utility may accelerate and/or maintain the Work Schedule and adjust the Fixed Contract Price in accordance with the pricing schedule to reflect the actual, demonstrable effect of additional Work necessary to accelerate and/or maintain the Work Schedule.
- 8.6 Work by Others.
- Utility may, at its option, contract with one or more third parties for the performance of work that would otherwise result in a change order. Contractor will have no warranty responsibility for such work performed by others. Contractor will reasonably cooperate with such third parties, and Utility will ensure that such third-party work will be performed so as to not unreasonably interfere with Contractor's activities or achievement of milestone deadlines.

9. Requirements for Acceptance of the Work.

9.1 Factory Tests.

- Contractor will conduct (and/or cause the applicable subcontractors to conduct) all routine, sample, and other factory tests in accordance with, and subject to the notice and other provisions of, the technical specifications and/or as otherwise required by the Contract Documents.

9.2 Readiness for Testing; Acceptance Testing.

- Within fifteen (15) days after Utility's acceptance of the final design in accordance with the Contract Documents, Contractor will prepare and submit to Utility testing methodologies and calculations for "Acceptance Testing" for Utility's review and approval. Such methodologies and calculations must set forth in reasonable detail the procedures to be used including the commissioning process, specific measurements to be made, calculations and computations, the ability to re-test and compare the result of such tests to the result of prior tests, sample reports, proposed instrumentation, and the duration of Acceptance Testing.
- Within forty-five (45) days before Contractor anticipates achieving Readiness for Testing, Contractor will prepare and submit to Utility a test plan for Acceptance Testing for Utility's review and approval. "**Readiness for Testing**" will mean the Facility and all components and subsystems thereof have been installed and checked for proper operation, and are otherwise ready, in Contractor's reasonable opinion, for commencement of Acceptance Testing in accordance with the test plan approved by Utility.
- When Contractor believes that the Work has nearly achieved Readiness for Testing, it will deliver to Utility a Notice of Readiness for Testing at least ten (10) days prior to the date that Contractor anticipates achieving Readiness for Testing.
- Contractor or its testing Subcontractor will conduct all Acceptance Testing for the Work. Contractor will provide Utility with at least five (5) business days prior written notice of the commencement of each Acceptance Test to be conducted by or on behalf of Contractor. Utility may elect whether to have a representative and/or other employee of Utility observe any or all such Acceptance Tests.

9.3 Substantial Completion.

- When Contractor believes that the Work is ready for Substantial Completion, it will deliver to Utility a Certificate of Substantial Completion (the form of which will be attached to the negotiated Agreement). Utility will review and inspect the Work, and either (a) deliver to Contractor a written acknowledgment that Substantial Completion has occurred to Utility's satisfaction, or (b) withhold Substantial Completion in writing with a reasonably detailed explanation of the reasons for such withholding.
- If Utility withholds Substantial Completion, Contractor will promptly take such corrective action as will cause Substantial Completion to occur and will issue to Utility another Certificate of Substantial Completion. Such procedure will be repeated as necessary until Utility issues such written acknowledgment.
- Substantial Completion will be deemed to have been achieved as of the date upon which Utility executes the Certificate of Substantial Completion.

9.4 Punchlist Items.

- Substantial Completion will not be delayed due to minor deficiencies in the Facility as a whole or due to items or Work remaining to be performed or corrected that are not reasonably expected to affect the efficient, safe and normal operation of the Facility.
- At least ten (10) days before Contractor expects Substantial Completion to occur, Contractor will provide to Utility a list of any such items for Work remaining to be performed or corrected ("**Punch List Items**").
- Notwithstanding the occurrence of Substantial Completion, Contractor will remain obligated to complete the Punch List Items in accordance with the Contract Documents.
- Final Acceptance will not occur until the full and final completion of all Punch List Items to the satisfaction of Utility.

9.5 Releases and Waivers.

- In addition to the conditional lien waivers that Contractor must provide with each invoice, Contractor will deliver as a condition of Final Acceptance: (a) an affidavit of Contractor providing that releases or waivers of all liens in connection with the Work have been obtained and/or that such costs have been paid or otherwise satisfied; and (b) original, fully executed lien waivers and releases from Contractor, all subcontractors and all other persons possessing lien rights related to the Work.
- Acceptance by Contractor of final payment will constitute a release by Contractor of Utility from all liens, claims, obligations and other liabilities under the Contract Documents with respect to any Work performed or furnished in connection with the Contract Documents, and/or for any act or omission of Utility or of any other person relating to or affecting the Contract Documents, *except* for any claim specifically identified as pending in the Certificate of Completion and Request for Final Acceptance.

9.6 Notice of Final Acceptance.

- When Contractor believes that the Work is ready for Final Acceptance, it will deliver to Utility a Certificate of Completion and Request for Final Acceptance (the form of which will be attached to the negotiated Agreement). Within ten (10) business days after receipt of such certificate, Utility will review and inspect the Work, and either (a) deliver to Contractor a written acknowledgment that Final Acceptance has occurred to Utility's satisfaction, or (b) withhold Final Acceptance in writing with a reasonably detailed explanation of the reasons for such withholding. If Utility withholds Final Acceptance, Contractor will promptly take such corrective action as will cause Final Acceptance to occur, such procedure to be repeated as necessary until Utility issues such written acknowledgment. Final Acceptance will be deemed to have been achieved as of the date upon which Utility executes the Certificate of Completion and Request for Final Acceptance.

9.7 Document Retention.

- Contractor will, and will ensure that each subcontractor will, (i) preserve all intellectual property, construction documents, Contract Documents, computer software and documentation, studies, data, reports, documents, designs, plans, drawings, calculations, specifications, invoices, or other information, arising out of, used and/or produced in connection with the Work, all in whatever form or media ("**Information**") in its and/or in any subcontractor's care, custody or

control during all Work and for a period of seven (7) years following Final Acceptance of all Work ("**Document Retention Period**"), or (ii) return such Information to Utility in a form acceptable to Utility. Contractor will not destroy any Information prior to the expiration of the Document Retention Period without Utility's prior written consent, which may be granted or withheld in Utility's sole and exclusive discretion.

10. Passage of Title; Risk of Loss.

10.1 Title.

- Title to all equipment, materials and/or supplies furnished as part of the Work will automatically and without further action by the Parties transfer to, and be held by, Utility upon the occurrence of Substantial Completion, in the event that title has not already passed to Utility otherwise under the Agreement.
- Contractor warrants as of the time of transfer of title that Contractor has good and marketable title to all of such equipment, materials and/or supplies, free and clear of any liens.

10.2 Risk of Loss; Liability.

- The care, custody and control, risk of damage to or loss of, and liability related to, equipment, materials and/or supplies furnished as part of the Work (including spare parts, if any), whether stored on or off the site, will remain with Contractor until Substantial Completion, at which time care, custody and control and risk of damage to or loss of, and liability related to, such equipment, materials and/or supplies shall reside with Utility.
- Notwithstanding the foregoing and the occurrence of Substantial Completion, if Contractor retains control of any materials, equipment and/or supplies after Substantial Completion, including in connection with Contractor's completion of Punchlist Items, and/or Contractor stores any materials, equipment and/or supplies at an off-Site Equipment Storage Area after Substantial Completion, Contractor will retain risk of damage to or loss of, and liability related to, materials, equipment and/or supplies, and liability therefor until such items have been incorporated into the Facility and/or Contractor has delivered such items to Utility at the site, as the case may be.

11. Warranties.

11.1 Work Warranty.

- Contractor will unconditionally warrant that all Work will fully conform to all requirements of the Contract Documents and shall be free from any defect or error whatsoever, including in design and workmanship.
- If, during the warranty period, Utility determines that all or any portion of the Work fails to comply with the Contract Documents and/or there is a defect or error in all or any portion of the Work, Contractor will, at its sole cost and expense and at Utility's option, (a) correctly re-perform such Work; or (b) fully reimburse Utility for all costs incurred by Utility to effect such corrective action.

11.2 Facility Warranty.

- Contractor will unconditionally warrant that the Facility will (i) conform to and be designed, engineered and constructed in accordance with the contract drawings, the technical specifications, applicable law (including all permits), and other requirements of the Contract Documents; (ii) conform with, and be designed and engineered according to, professional

standards and skill, expertise and diligence of design professionals regularly involved in utility scale projects similar to the Facility; and (iii) contain the equipment, supplies and materials described in the technical specifications.

- If, during the warranty period, Utility determines that all or any portion of the Work all or any portion of the foregoing warranties are breached, Contractor will, at its sole cost and expense and at Utility's option, (a) correctly re-perform such Work; or (b) fully reimburse Utility for all costs incurred by Utility to effect such corrective action.

11.3 Equipment Warranty.

- Contractor will unconditionally warrant that each and all components of the Facility installed in the Facility: (i) will be new, free from defects in title (including liens), design, materials and workmanship under normal application, installation, use and service conditions; (ii) will comply with and conform to all terms and conditions of the Contract Documents, including the technical specifications and be fit for the purpose intended under the Contract Documents; (iii) equal or exceed the type, grade, quality and condition so specified in the technical specifications; (iv) be furnished by a fully qualified and experienced source whose facilities are employed by qualified personnel who are educated, trained and experienced in the procurement of raw materials, components and/or assemblies; production process(es) and actual production; inspection, testing and quality assurance; and logistics, all as applicable to the services, equipment, materials and/or supplies being furnished as part of the Work or for use or consumption in the course of, in aid of or for incorporation into the Work (including warranty repairs and replacements); and (v) will meet performance guarantees set forth in the technical specifications and have the capability to produce at least ninety percent (90%) of the minimum power rating established by the manufacturer, as determined by Utility in accordance with industry standards (including reasonable adjustments for test conditions).
- If, during the warranty period, Utility determines that any of the foregoing warranties are breached, Contractor will, at Utility's sole option and Contractor's sole cost and expense, either repair or replace all and/or the affected component(s).

11.4 Non-Infringement Warranty.

- Contractor will convey to Utility unrestricted and exclusive right, title, and interest in and to (i) all of the Work; (ii) all materials, equipment and/or supplies; and (iii) all Information (other than Contractor's intellectual property), in whatever form, applicable thereto including the unrestricted and exclusive right to use such Information for whatever purpose Utility may wish.
- neither Contractor nor any subcontractor, nor any other third party will have any right, title, or interest in or to the Work, or any portion thereof including any patent, copyright, trademark, or data rights affecting the Work that is or would be under certain circumstances inconsistent with Utility's right, title, and interest therein.
- all intellectual property is, and/or when so licensed will be, the original development of Contractor and does not infringe upon intellectual property or other rights of others (including any patent, copyright, trade secret or other proprietary rights).
- If Utility determines that any of the warranties set forth above are breached, then Contractor will indemnify Utility and its affiliates and their respective employees, trustees, shareholders, officers, and directors, as well as their respective agents and consultants (each, an "**Indemnified Person**") with respect to any infringement losses.

11.5 Subcontractor Warranties.

- Contractor will obtain usual and customary warranties from subcontractors (including vendors of services, materials, equipment and/or supplies) for the benefit of Utility (as a third-party beneficiary), as well as for Contractor; *provided* that such warranties will be on terms no less favorable than the warranties set forth in the Agreement.

11.6 Repairs and Replacements.

- Contractor will be responsible for all physical damages to the Facility and/or Utility's system resulting from any breach of Contractor's warranties under the Agreement, and if such damage relates to portions of such system outside of the Facility, Utility will be entitled to effect repairs and/or replacements at Contractor's sole cost and expense.
- If it is necessary to remove any equipment and/or materials from the site in order for Contractor to repair, modify or replace the same, Contractor will provide the personnel and equipment necessary for such removal and reinstallation at its own expense, and to the extent permitted under Law, Contractor shall furnish temporary and/or permanent replacements for such equipment and/or materials to ensure uninterrupted operation of the Facility.
- Any cost of shipment of repaired, modified or replacement equipment and/or materials to or from Contractor's plant or any other off-site facility will be borne by Contractor.

12. **Insurance; Performance Assurance.**

- Contractor, at Contractor's sole cost and expense, will obtain and maintain in effect the insurance coverages (with deductibles) in amounts determined by Utility.
- Contractor will provide performance assurance in favor of Utility in an amount and form and from an issuer satisfactory to Utility, and such performance assurance will remain in effect until the expiration of the warranty period. The Fixed Contract Price will include Contractor's cost of procuring such performance assurance.

13. **Suspension; Termination; Remedies.**

- Suspension. Utility may suspend the Work at any time by instructing Contractor to stop all or any portion of the Work and to continue at a later date at Utility's convenience. If such suspension could have a material adverse effect on any Critical Path Events, then Contractor will notify Utility as soon as possible after the issuance of the suspension notice and submit a Change Order Request with respect to such potential change in the Work schedule.
- Termination for Convenience.
 - Utility will have the right to terminate and/or cancel all or any portion of the Contract Documents and/or all or any portion of the Work for any reason or for no reason, for Utility's convenience, and at its sole and exclusive discretion, upon written notice to Contractor.
 - As full and final compensation for the Work performed through the effective date of termination of such Work for convenience, Utility will pay to Contractor, upon Contractor's satisfaction of all applicable terms and conditions of the Contract Documents,
 - a percentage of the Fixed Contract Price equivalent to the percentage of the affected Work completed in compliance with the Contract Documents and based on the Work schedule through the effective date of termination, *less* that

portion of the Fixed Contract Price for the affected Work previously paid to Contractor; and

- Contractor's direct incremental costs for demobilization;
 - *provided*, that the payment due Contractor, when aggregated with all other previous or pending payments to Contractor under the Contract Documents, will not exceed the Fixed Contract Price otherwise payable to Contractor with respect to the affected Work.
- Termination Due to Force Majeure. If either (a) a suspension of performance by Contractor as a result of a Force Majeure exceeds thirty (30) days, or (b) the total number of days in which a suspension of performance by Contractor as a result of all Force Majeure events in the aggregate exceeds thirty (30) days, Utility may terminate all or any portion of the Contract Documents and/or all or any portion of the Work without any liability being owed thereby by Utility to Contractor.
- Events of Default. Upon the occurrence of certain events of default, Utility may terminate all or any portion of the Contract Documents and/or all or any portion of the Work without any liability being owed thereby by Utility to Contractor. "Events of Default" will include, but may not be limited to, the following:
 - any representation or warranty made by Contractor is false or misleading in any material respect;
 - Contractor refuses, neglects or fails in any respect to prosecute the Work (or any portion thereof) in full compliance with the Work schedule;
 - Contractor consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and/or sells, assigns or otherwise transfers the Contract Documents, in each case without Utility's consent;
 - Contractor fails to perform any obligation set forth in the Contract Documents or any other agreement between Contractor and Utility, and fails to cure within five (5) days after receipt of notice; or
 - Contractor or any of its Affiliates becomes bankrupt or insolvent.
- Contractor's Insolvency or Bankruptcy. If Work terminated for default due to Contractor insolvency or bankruptcy, Utility will have the right to take possession and receive assignment of all subcontractors; Contractor will pay Utility the difference in completion cost; Contractor will discontinue Work and turn over all materials and equipment and information related to the Facility to Utility or its new contractor.
- Utility's Right to Cover. If, pursuant to an Event of Default, Utility terminates all or any portion of any of the Contract Documents and/or all or any portion of the Work, Utility may obtain all or any portion of the Work terminated thereby from another contractor with any and all cost in excess of what Utility would have been liable to pay Contractor therefor being chargeable to Contractor.
- Utility's Right to Shut Down. Utility will have the right, at its sole and exclusive discretion, to immediately and temporarily shut down Contractor's operation(s) if: (i) Contractor fails to comply with any requirement(s) or provision(s) of the technical specifications, any applicable law, permit and/or the site restrictions; and/or (ii) any acts or omissions of Contractor in the opinion of Utility result in or are reasonably likely to result in a disruption of the operation of Utility's electric system or of service to customers and/or a condition that endangers or is reasonably likely to endanger life or property, until Utility is assured to its reasonable satisfaction that subsequent operations will strictly comply with such requirements, terms,

conditions, and provisions. Utility will not be liable for any claim, dispute, extra compensation or time extension or payment reimbursement resulting therefrom.

- Utility's Right to Withdraw Work and to Supplement Work.
 - If Contractor fails at any time to prosecute the Work with promptness and diligence, or if Contractor refuses or fails to supply personnel, supervision, or equipment, materials, or supplies of the proper quantity or quality, then Utility, with notice, may (i) withdraw any portion of the Work that, in Utility's sole and exclusive opinion, Contractor will be unable to complete by the date fixed for such completion, and may complete the Work on such withdrawn portion by itself or through any other contractor, subcontractor, or supplier; or (ii) may supplement the Work by providing such additional labor and/or equipment, materials, and/or supplies as it deems necessary to rectify Contractor's default or to complete the Work by the date fixed for its completion.
 - Contractor will be liable to Utility for all costs and expenses for supplementing any and all Work (including overhead and supervision expenses, reasonable attorneys' fees and expenses of litigation and other dispute resolution proceedings, if any, and other costs and expenses of whatsoever kind or nature incurred by Utility).

14. Limitations of Liability.

- Contractor will not be liable to Utility in an amount greater than the Fixed Contract Price for any cause arising out of or relating to the Contract Documents or the Work. Utility's aggregate liability to Contractor will not exceed that portion of the Fixed Contract Price that is due and owing from Utility to Contractor but has not yet been paid.
- The Utility shall not be liable to Contractor for any indirect, incidental or consequential damages.
- Exceptions to Limitations on Contractor's Liability. No provision in the Agreement will limit, alter, or modify the rights or remedies of Utility or the liability of Contractor for (a) any intentional acts of Contractor, any subcontractor, their respective affiliates or the respective directors, officers, employees or agents of Contractor, any subcontractor or their respective affiliates; (b) Contractor's and its affiliates' internal costs related to meeting warranty obligations; (c) indemnities; (d) liquidated damages; (e) losses or damages covered by insurance proceeds; and/or (f) non-compliance with permits or applicable law.

15. Indemnification.

- General Indemnification. Contractor will indemnify each Indemnified Person (as defined above) from and against any and all costs and expenses (including all costs and expenses of litigation, as well as related attorneys' fees), losses, liabilities, fines, penalties, damages, claims, demands, judgments, awards, obligations, actions, or proceedings whatsoever related to the Work or Contractor's obligations under the Contract Documents.
- Environmental Indemnification. Contractor agrees to indemnify each Indemnified Person against any liability, claim, complaint, demand, action, cause of action, audit, investigation, proceeding, obligation, loss, cost, damage, judgment, adjudication, arbitration decision, penalty (including fees and fines), or expense (including court costs, attorneys' fees and/or enhanced oversight expenses) (collectively, the "**Indemnified Environmental Obligations**") suffered or incurred by any of them as a result of, arising out, and/or relating to any acts or omissions of

Contractor, any subcontractors, or their respective agents, or employees related to or involving hazardous materials discovered, encountered, used, generated, stored, handled, processed, released, removed and/or disposed of by any of such persons during the course of the Work, including injury to persons or death, and damage to property.

- **Infringement Indemnification.** Contractor agrees to indemnify each Indemnified Person from any liability, obligation, loss, cost, damage, judgment, adjudication, arbitration decision, penalty (including fees and fines) and expense (including court costs and attorneys' fees) (collectively, the "**Infringement Losses**") suffered or incurred by any of them as a result of, arising out of, and/or relating to (i) the infringement or alleged infringement of any patent, copyright, trademark, service mark and/or other proprietary interest and/or data right relating to the use or design of any equipment, materials, supplies, computer software program or application, or document furnished or used in the performance of Work or to any process(es) or action(s) employed by or on behalf of Contractor or any subcontractor or supplier (at any tier) to Contractor, in connection with the performance of Work under the Contract Documents, and whether or not based upon any act or omission on or off the site; and/or (ii) any allegation that Contractor has made use of Information (including intellectual property licensed hereunder) in which any other person claims a proprietary interest.

16. Dispute Resolution.

- Agreement to include standard dispute resolution provision including (i) negotiation between executives; (ii) mediation and, if dispute remains unresolved, and (iii) arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration.
- Unless otherwise directed in writing by Utility, Contractor will continue performance of the Work in conformance with the terms and conditions of the Contract Documents notwithstanding the existence of any claim, dispute and/or proceeding between the Parties.

17. Contractor's Representations.

- Standard representations and warranties for Contractor in this type of EPC Agreement.

18. Applicable Law; Jurisdiction.

- Agreement will be governed by Connecticut law, and jurisdiction will be exclusively courts of the State of Connecticut.

19. Non-Disclosure with Data Security Requirements; CEII Compliance.

- To the extent that Contractor obtains any critical energy infrastructure information ("**CEII**") (as defined by the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 388.13) in its performance of the Work, or in the performance of its other obligations or exercise of its rights under the Contract Documents, Contractor will keep any and all CEII confidential.
- Utility will also attach a Non-Disclosure Agreement with Data Security rider to the Agreement.

20. Regulatory Approval.

- The obligations of the Parties to perform the Agreement are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. The Agreement may be terminated by either Party in the event that Regulatory Approval is not received within one hundred and eighty (180) days after filing, without liability as a result of such termination.

“Regulatory Approval” shall mean PURA’s issuance of a final decision approving the Agreement (including any amendment of the Agreement), including the continuing authorization for recovery by Owner of all costs incurred under the Agreement and the costs incurred in connection with the Agreement for the entire Term of this Agreement, which approval is acceptable in form and substance to Owner, does not include any conditions or modifications that Owner deems to be unacceptable, and is final and not subject to appeal or rehearing. Without limiting the foregoing, the Regulatory Approval will provide that all costs incurred under the Agreement, including all costs incurred by Owner hereunder and in connection herewith if the Agreement is ever invalidated in whole or in part by a court or agency of competent jurisdiction, and costs incurred in connection with the Agreement shall be recovered by Owner on a timely basis through a non-bypassable fully reconciling component of electric rates, such that Owner is made whole for such costs, and that PURA and any successor agency will not refuse full and complete recovery to make Owner whole for such costs.

21. Evaluation, Measurement, and Verification Plan.

- The evaluation, measurement, and verification plan (“EM&V Plan”) for each project will be developed, in coordination with the Process Monitor, based on the specific system needs and the project (i.e., the specific technology or portfolio of technologies) selected and such EM&V Plan will be attached as an exhibit to the Agreement for PURA’s review and approval.