

## AGREEMENT FOR PURCHASE AND SALE OF RENEWABLE ENERGY CERTIFICATES

THIS AGREEMENT FOR THE PURCHASE AND SALE OF RENEWABLE ENERGY CREDITS (this “**Agreement**”) is made as of the Effective Date, by and between DTE Energy Trading, Inc., whose address is 414 South Main Street, Suite 200, Ann Arbor, MI 48104 (“**DTE**”) and Brick Township Board of Education, whose address is 101 Hendrickson Blvd, Brick, NJ 08724 (“**Counterparty**”). DTE and Counterparty are each a “**Party**” and, collectively, are the “**Parties**.”

WHEREAS, the Parties wish to provide terms and conditions pursuant to which they are entering into this Agreement for the purchase and sale of Renewable Energy Certificates pursuant to both the Commercial Terms (“**Part A**”) and the General Terms (“**Part B**”), as set forth below;

NOW, THEREFORE, in consideration of their mutual covenants herein, the Parties, intending to be legally bound, agree as follows:

### Part A – Commercial Terms

#### Commercial Terms--Generally:

<b>Transaction Reference:</b>	20160804 - 5864944
<b>Effective Date:</b>	08/18/2016
<b>Seller:</b>	Brick Township Board of Education
<b>Buyer:</b>	DTE Energy Trading, Inc.
<b>Applicable Standard:</b>	NJ Solar as defined in New Jersey A.C. 14:8-1.2, 14.8-2 et seq. and P.L. 2012, c.24, as applicable to the Vintage transferred hereunder
<b>Certified Renewable Energy Facility:</b>	Not specified
<b>Vintage:</b>	2016
<b>Start of Generation Period:</b>	06/01/2015
<b>End of Generation Period:</b>	05/31/2016
<b>Contract Quantity (MWh)/ Delivery Obligation:</b>	300
<b>Contract Price (\$/MWh):</b>	\$245.00
<b>Total Contract Price:</b>	\$73,500.00
<b>Delivery Date:</b>	On or before 09/05/2016
<b>Payment Before Delivery [Yes][No]:</b>	No
<b>Applicable Tracking System:</b>	PJM-GATS
<b>Applicable Tracking System Account Name:</b>	DTE Energy Trading, Inc.
<b>Buyer Delivery Contact [Name, Email]:</b>	Paul Joyce, paul.joyce@dteenergy.com
<b>Seller Delivery Contact [Name, Email]:</b>	James Edwards, jedwards@brickschools.org
<b>Special Provisions, if any:</b>	

## Part B – General Terms

### 1. DEFINITIONS

1.1 Definitions. In addition to any other terms defined in the Agreement, the following terms shall have the meaning ascribed to them as set forth below:

“**Accept**” or “**Acceptance**” means Buyer’s electronic acceptance in the Applicable Tracking System of the Delivery of the RECs in its Account, in accordance with the operating rules and procedures of the Applicable Tracking System.

“**Acceptance Deadline**” means the amount of time Buyer has to Accept the RECs pursuant to Section 2.2 of this Agreement.

“**Account**” means a Party’s electronic account with the Applicable Tracking System.

“**Adequate Assurance**” means cash, prepayment, a Guaranty, or Letter of Credit in the form, amount and for the term reasonably acceptable to the Party in whose favor Adequate Assurance is being provided.

“**Administrator**” means the entity with jurisdiction over the Applicable Tracking System.

“**Alternative Compliance Payment**” or “**ACP**” means any monetary payment made to a governmental authority as an alternative to submitting RECs for compliance with a RPS, or equivalent concept limiting the price of RECs under a RPS, as set forth in the Applicable Standard.

“**Applicable Standard**” means the provincial, state or federal RPS identified in the applicable program, other mandatory or voluntary standard(s), or set of rules set forth in Part A.

“**Applicable Tracking System**” means the environmental registry and information system set forth in Part A that tracks the environmental and fuel attributes of generation, and any successor tracking system that both Parties agree in their reasonable commercial judgment facilitates the sale and purchase of the REC.

“**Attestation Form**”, if set forth on the line “Special Provisions” in Part A, means documentation provided from Seller to Buyer transferring title to the REC, specifying the Certified Renewable Energy Facility, Delivered Quantity, Generation Period, and other information with respect to the REC sold herein as well as declarations made by Seller with respect to such REC to be completed in accordance with, and on the form required under, the Applicable Standard.

“**Business Day**” means any day except a Saturday or Sunday or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“**Buyer**” means the Party set forth in Part A that is obligated to purchase, receive and Accept the RECs, under the conditions specified in this Agreement.

“**Certified Renewable Energy Facility**” means one or more electric generation units, other facilities or installations set forth in Part A, or upon Delivery if not set forth in this Agreement that has

been determined by the Certifier to meet the requirements of the Applicable Standard and is designated as qualified for the Applicable Standard on the Applicable Tracking System.

“**Certifier**” means the entity with jurisdiction over the qualification of a resource as a Certified Renewable Energy Facility pursuant to the Applicable Standard.

“**Commercial Operation Date**” or “**COD**”, if set forth on the line “Special Provisions” in Part A, means the date post-testing for a specified Certified Renewable Energy Facility when it is licensed, operational from a commercial perspective, and can consistently generate RECs that it can transfer to another party.

“**Confidential Information**” has the meaning defined in Section 10.1.

“**Contract Price**” means the amount payable by Buyer to Seller for each REC set forth in Part A.

“**Contract Quantity**” means the quantity of RECs set forth in Part A to be Delivered by Seller to Buyer.

“**Defaulting Party**” shall have the meaning set forth in Section 8.

“**Deliver**”, “**Delivered**” or “**Delivery(ies)**” means the initiation of the electronic transfer of RECs from Seller’s Account to Buyer’s Account in accordance with the Applicable Standard and the operating rules and procedures of the Applicable Tracking System.

“**Delivered Quantity**” means the quantity of RECs Delivered.

“**Delivery Date(s)**” means the date(s) by which Delivery of the Contract Quantity shall occur as set forth in Part A; provided that Delivery is not required to occur prior to one (1) Business Day after full execution of this Agreement. In the event this Agreement requires Buyer to pay Seller before Delivery, then Delivery shall occur by the later of: (i) the Delivery Date set forth in Part A; or (ii) one (1) Business Day after Seller receives the Payment Amount from Buyer.

“**Eastern Prevailing Time**” or “**EPT**” means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Eastern Time Zone.

“**Effective Date**” means the date set forth in Part A.

“**Energy**” means three-phase, 60 Hz electrical energy expressed in MWhs produced during the Generation Period giving rise to the creation of the REC.

“**Event of Default**” shall have the meaning set forth in Section 8.

“**Firm**” means Seller shall Deliver the Contract Quantity of RECs by the Delivery Date, unless excused by Force Majeure or Buyer’s failure to perform.

“**Force Majeure**” means an event or circumstance which materially adversely affects the ability of a Party (the “**Claiming Party**”) to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Effective Date and which is not within the

reasonable control of, or the result of negligence by, the Claiming Party, and which Claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of reasonable care including but not limited to acts of God; fire; flood; earthquake; war; explosions; lightning; hurricanes; tornadoes; riots; or terrorism that affects one or both Parties. “**Force Majeure**” may not be based on (i) the loss or failure of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the RECs; (iii) Seller’s ability to sell the REC to a third party on terms superior to Seller’s terms herein; (iv) Seller’s ability to produce the RECs, if Seller’s obligation is Firm; or (v) Buyer’s ability to purchase similar RECs from a third party on terms superior to Buyer’s terms herein. With respect to a Party’s obligation to make payments hereunder, Force Majeure will be only an event or act of a governmental authority that on any day disables the banking system through which a Party makes such payments.

“**Generation Period**” means the calendar year, quarter, or other specified period of time set forth in Part A in which the Energy associated with the RECs is or will be generated.

“**Guarantor**” means, with respect to a Party, the guarantor, if any, specified for such Party on the line “Special Provisions” in Part A. A guarantor shall be identified as either Seller’s Guarantor or Buyer’s Guarantor, as applicable.

“**Guaranty**” means a guaranty of payment from a Guarantor, in a form, amount and for a term all reasonably acceptable to the Party to whom the Guaranty is being issued.

“**Interest Rate**” means a per annum rate of interest equal to two (2%) percent over the prime lending rate as published from time to time in The Wall Street Journal under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), but in no event to exceed the maximum lawful rate.

“**Letter of Credit**” means an irrevocable, transferable, standby letter of credit, governed by the International Standby Practices rules, International Chamber of Commerce Pub. 590 and issued by a Qualified Institution utilizing such form as may be required by such Qualified Institution and as may be reasonably acceptable to the Party in whose favor the letter of credit is issued.

“**Market Exposure**” means, as reasonably calculated and substantiated upon request, the product of: (i) the difference between the Contract Price and the Market Price for the Undelivered Quantity, and (ii) the Undelivered Quantity.

“**Market Price**” means the average of market quotes for the Undelivered Quantity from reputable brokerage firms or third-party intermediaries actively engaged in the purchase and sale of RECs under the Applicable Standard or, if no such quotes from such firms or intermediaries are available, any other reasonable method selected to value the Undelivered Quantity; provided, however, that the Market Price for purposes of this Agreement shall not in any event exceed the highest Alternative Compliance Payment for the Undelivered Quantity under the Applicable Standard; and further provided that a broker quote can only be used if RECs meeting the Applicable Standard are available for purchase or sale, as applicable, on the day of the quote.

“**MWh**” means megawatt-hour.

“**Non-Defaulting Party**” shall have the meaning given in Section 9.1.

“**Not Specified**” if set forth on the line “Certified Renewable Energy Facility” in Part A, means that for the associated term or characteristic not explicitly defined in this Agreement, Seller may Deliver the Contract Quantity of any such term or characteristic that meets all other specific requirements pursuant to the Applicable Standard and this Agreement.

“**Payment Amount**” means an amount equal to the product of: (i) the Contract Price, and (ii) the Delivered Quantity. If this Agreement requires Buyer to pay Seller before the Delivery of RECs, then Delivered Quantity means the expected Delivery Quantity.

“**Payment Due Date**” has the meaning set forth in Section 4.1.

“**Qualified Institution**” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or foreign bank with a US branch office, with (i) a rating for its deposit obligations of at least (a) “A-” by Standard & Poor’s Financial Services LLC (“**S&P**”) and “A3” by Moody’s Investors Service, Inc. (“**Moody’s**”), if such entity is rated by both S&P and Moody’s, or (b) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P and Moody’s, but not both.

“**Renewable Energy Certificate(s)**” or “**REC(s)**” means a certificate, credit, allowance, green tag, or other transferable indicium, howsoever entitled, that is associated with, but separate from, the generation of one (1) MWh of Energy from a Certified Renewable Energy Facility. To the extent applicable, the term “**RECs**” includes Solar Renewable Energy Certificate(s) (“**SRECs**”).

“**Renewable Portfolio Standard**” or “**RPS**” means a local, state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of Energy sold or used by specified entities to be generated from a Certified Renewable Energy Facility.

“**Seller**” means the Party set forth in Part A that is obligated to sell, assign and Deliver the RECs, under the circumstances specified in this Agreement.

“**Settlement Amount**” means, as determined in a commercially reasonable manner by the Non-Defaulting Party as of the Early Termination Date:

(a) if Seller is the Defaulting Party, an amount equal to the sum of: (i) the positive difference, if any, obtained by subtracting the Contract Price from the Market Price multiplied by the Undelivered Quantity, plus (ii) if and as applicable, any broker costs charged by brokers actively engaged in the purchase and sale of RECs under the Applicable Standard incurred by Buyer for entering into any replacement transaction to purchase the Undelivered Quantity minus (iii) the Contract Price multiplied by the Delivered Quantity for which Seller has not been paid by Buyer, if any; and

(b) if Buyer is the Defaulting Party, an amount equal to the sum of: (i) the positive difference, if any, obtained by subtracting the Market Price from the Contract Price multiplied by the Undelivered Quantity, plus (iii) if and as applicable, any broker costs charged by brokers actively engaged in the purchase and sale of RECs under the Applicable Standard incurred by Seller for entering into any replacement transaction to sell the Undelivered Quantity plus (iii) the Contract Price multiplied by the Delivered Quantity for which Seller has not been paid, if any.

“**Standing Order**” means, if set forth on the line “Special Provisions” in Part A, that Seller is required to put in place instructions to the Administrator for sufficient irrevocable transfers to Buyer’s Account of the Contract Quantity within five (5) Business Days following execution of this Agreement by both Parties. Should the Delivered Quantity exceed the quantity required for the respective year under the irrevocable transfers, Buyer will return any excess generation to Seller within five (5) Business Days of Delivery.

“**Term**” has the meaning set forth in Section 2.1.

“**Undelivered Quantity**” means the difference between the Contract Quantity and the Delivered Quantity.

“**Unit Contingent**” shall mean that Seller’s obligation to Deliver the Contract Quantity of RECs shall be excused to the extent the Parties have specified a particular Certified Renewable Energy Facility as the generator of the RECs, and (i) the Certified Renewable Energy Facility specified in Part A is unavailable as a result of a Forced Outage (*as defined in the NERC Generating Unit Availability Data System (GATS) Forced Outage reporting guidelines*), (ii) the RECs have not been generated within the relevant Vintage or other time frame agreed to by the Parties due to a Force Majeure event affecting such Certified Renewable Energy Facility, or (iii) such other disruptions in supply from such Certified Renewable Energy Facility as may be further specified and conditioned on the line “Special Provisions” in Part A occurred. In any such event, Seller shall not be liable to Buyer for any damages, including any amounts determined under Section 9 herein.

“**Vintage(s)**” means the time period(s), e.g., calendar year, energy year, reporting year, etc., set forth in Part A for which RECs produced during the Generation Period are eligible for the purpose of complying with the Applicable Standard as that time period is defined by the Applicable Standard.

## **2. TERM; SALE & PURCHASE OBLIGATIONS; OTHER PARTY OBLIGATIONS**

2.1 Term. This Agreement shall commence on the Effective Date and shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless terminated earlier or discharged pursuant to the terms hereof. Provisions of this Agreement which are stated or reasonably implied to survive such termination or discharge shall so survive until satisfied or waived.

2.2 Sale and Purchase Obligations. With respect to Delivery, Seller will sell, assign and Deliver the Contract Quantity to Buyer’s Account, using the Applicable Tracking System Account Name, on or before the Delivery Date. Upon receiving written (e.g., facsimile, electronic, etc.) confirmation from the Applicable Tracking System that a transfer order has been initiated by Seller, Buyer must purchase, receive, and Accept the RECs within two (2) Business Days of Delivery by Seller.

2.3 Buyer’s Account Name, Rejection Rights; & Related Issues.

(a) Buyer’s Account Name. In the event that Buyer’s Account name in the Applicable Tracking System is different than Buyer’s legal name, Buyer shall set forth its Account name on the line “Applicable Tracking System Account Name” in Part A.

(b) Buyer's Rejection Rights. If the RECs Delivered to Buyer do not meet the terms of this Agreement as of the date Delivery was made by the Seller, Buyer may reject Delivery of such RECs within two (2) Business Days of Delivery by Seller. If Buyer justifiably and timely rejects Delivery, then Seller must, within two (2) Business Days of such rejection, take the necessary steps to fulfill its performance obligations under this Agreement. If Seller timely replaces the RECs as stated above, then Seller shall have satisfied its obligations regarding timely Delivery.

(c) Certified Renewable Energy Facility Delivery Obligation. If a Certified Renewable Energy Facility is set forth in Part A, then Seller shall Deliver RECs from that Certified Renewable Energy Facility without excuse other than Force Majeure, unless Buyer agrees in a prior writing that Seller may Deliver from an alternative Certified Renewable Energy Facility.

(d) Firm Delivery Obligation. Unless otherwise set forth on the line "Contract Quantity (MWh)/Delivery Obligation:" in Part A, the Delivery obligation for each REC is a Firm obligation.

(e) Delivery Costs. Each Party shall bear its own expenses associated with Delivery and Acceptance.

(f) De-Certification of Certified Renewable Energy Facility. If the Certifier determines the Delivered Quantity does not meet the Applicable Standard upon Delivery because the Certified Renewable Energy Facility was de-certified prior to the date Delivery was made by the Seller, then Seller must, within two (2) Business Days of notification of de-certification, take the necessary steps to fulfill its performance obligations and Deliver such Delivered Quantity as set forth in this Agreement. If Seller timely replaces such Delivered Quantity as stated above, then Seller shall have satisfied its obligations regarding timely Delivery.

2.4. Transfer of Title. All rights, title and interest to and in the Delivered Quantity shall transfer from Seller's Account to Buyer's Account when recorded in the Applicable Tracking System consistent with the operating procedures thereof. Upon either Party's receipt of notice from the Administrator that transfer of the Delivered Quantity pursuant to this Agreement will not be recognized or Delivery was not made as required, that Party will promptly notify the other Party by providing a copy of such notice. Both Parties shall cooperate in taking necessary and commercially reasonable actions to cause such transfer to be recognized by the Administrator and have the Delivered Quantity be transferred and Accepted to the Buyer's Account.

2.5 Representations and Warranties of Both Parties. As of the Effective Date and upon each subsequent Delivery, each Party hereby represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its

governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like;

(e) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(f) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make Delivery or Accept Delivery, as applicable, of all RECs set forth in Part A.

2.6 Representations and Warranties of Seller. As of the relevant Delivery Date, Seller hereby represents and warrants to Buyer that:

- (a) it has the right to sell the RECs;
- (b) the RECs have not been sold for any other purpose or use;
- (c) the RECs are free and clear of all liens or other encumbrances; and
- (d) the RECs were generated to meet the applicable Vintage(s).

### **3. TAXES AND FEES**

Each Party shall be responsible for the taxes levied upon it by any governmental authority; provided, however, that Buyer will be responsible for any sales tax imposed under this Agreement. As used herein “taxes” means, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth. A tax is not a penalty or a fine.

### **4. BILLING AND PAYMENT INSTRUCTIONS**

4.1. Invoicing and Payment. Seller may send a written invoice to Buyer within the earlier of: (a) Buyer’s Acceptance of the RECs in the Applicable Tracking System, or (b) two (2) Business Days after Seller Delivers RECs to Buyer. Within ten (10) Business Days of receipt of Seller’s invoice (the



“**Payment Due Date**”), Buyer shall pay Seller the Contract Price for the Delivered Quantity. If DTE is the Buyer, then Seller must properly complete and return Buyer’s *IRS Form W-9, and Electronic Funds Transfer Form*, unless previously provided, before Buyer is obligated to make payment. If payment is not made by the Payment Due Date, without limiting Seller’s rights and remedies, the past due amount shall carry interest at the Interest Rate.

**4.2. Payment Netting.** If Buyer and Seller are each required to pay amounts in respect of purchases and/sales hereunder and under any other REC agreement between the Parties on the same day, then, upon written notice (e.g., facsimile, electronic, etc.) from one Party to the other, such amounts with respect to each Party shall be aggregated, and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

**4.3 Payment Instructions.** Payment shall be made by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as set forth below, or as otherwise notified in writing to the Party making payment by the Party to whom payment is to be made.

**If to DTE:**

Invoices to DTE will be sent to:

DTE Energy Trading, Inc.  
414 South Main Street, Suite 200  
Ann Arbor, MI 48104  
Attn: Annette Pfankuch, Accounting  
Phone: (734) 887-2065  
Fax: (734) 887-2140  
Email: [dte\\_env\\_sttlmts@dteenergy.com](mailto:dte_env_sttlmts@dteenergy.com)

Payments to DTE will be sent to:

DTE Energy Trading, Inc.  
414 South Main Street, Suite 200  
Ann Arbor, MI 48104  
Attn: Annette Pfankuch, Accounting  
Phone: (734) 887-2065  
Fax: (734) 887-2140

ACH financial transfer instructions will be specified in DTE invoice.

**If to Counterparty:**

Invoices to Brick Township Board of Education will be sent to:

Brick Township Board of Education  
101 Hendrickson Blvd, Brick, NJ 08724  
Attn:  
Phone:  
Email:

Payments to Brick Township Board of Education will be sent to:

Brick Township Board of Education  
101 Hendrickson Blvd, Brick, NJ 08724  
Attn:  
Phone:  
Email:

ACH financial transfer instructions:

Beneficiary Bank Name:  
[Bank Name]  
[Street Address]  
[City], [State] [Zip]  
Phone: [Phone Number]  
Routing/ABA Number: [Routing Number]

Beneficiary:  
[Beneficiary]  
Account # [Account Number]

**5. ASSIGNMENT**

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

**6. FORCE MAJEURE**

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then the obligations of the Claiming Party will, to the extent they are

affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. Such Party must give notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, and such notice must be confirmed in writing to the other Party. The Party receiving such notice of Force Majeure will have until the end of the second Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

## **7. REMEDIES FOR FAILURE TO DELIVER/RECEIVE & ACCEPT**

7.1 Seller's Failure. If Seller fails to sell, assign and Deliver, all or part of the Contract Quantity of RECs to the Buyer by the Delivery Date, and such failure is not excused under the terms of this Agreement (*e.g., Unit Contingent*) or by Buyer's failure to perform, then Seller shall pay Buyer within five (5) Business Days after invoice receipt, the sum of (i) the positive difference, if any, obtained by subtracting the Contract Price from the Market Price multiplied by the Undelivered Quantity, plus (ii) if and as applicable, any broker costs charged by brokers actively engaged in the purchase and sale of RECs under the Applicable Standard incurred by Buyer for entering into any replacement transaction to purchase the Undelivered Quantity. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

7.2 Buyer's Failure. If Buyer fails to receive and Accept, all or part of the Delivered Quantity of RECs by the Acceptance Deadline, and such failure is not excused by Seller's failure to perform, then Buyer shall pay Seller within five (5) Business Days after invoice receipt, the sum of the product of: (A) the Contract Price and (B) the Delivered Quantity.

## **8. EVENTS OF DEFAULT**

An "**Event of Default**" means, with respect to a Party (the "**Defaulting Party**"), the occurrence of any of the following: (i) failure by such Party to make, when due, any payment required under this Agreement, if such failure is not remedied within two (2) Business Days after written notice of such failure is given by the other Party; (ii) any representation or warranty made by such Party that is incorrect or misleading in any material respect when made or when deemed made or repeated; (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except for such Party's obligation to Deliver or Accept the RECs, the exclusive remedy for which is provided in Sections 7.1 and 7.2, respectively) if such failure is not remedied within three (3) Business Days after written notice is given by the other Party; (iv) such Party becomes Bankrupt; (v) fails to provide Adequate Assurance under Section 11 within two (2) Business Days following receipt of written notice or (vi) with respect to such Party's Guarantor, if any, (a) if any representation or warranty made by a Guarantor in connection with this Agreement is incorrect or misleading in any material respect when made or when deemed made or repeated, (b) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with the Agreement and such failure is not remedied within three (3) Business Days after written notice, (c) a Guarantor becomes bankrupt, (d) the failure of a Guarantor's Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party, or (e) a Guarantor shall repudiate, disaffirm, disclaim or reject, in whole or in part, or challenge the validity of any Guaranty.

## 9. REMEDIES UPON DEFAULT

9.1 Remedies. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “**Non-Defaulting Party**”) shall have the right: (i) to designate a date, upon at least two Business Days’ written notice to the Defaulting Party, as an early termination date (“**Early Termination Date**”) to accelerate the amounts owing under this Agreement and liquidate and terminate this Agreement, (ii) withhold any payments due in respect of this Agreement, and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the termination of this Agreement as of the Early Termination Date.

9.2 Notice of Payment of Settlement Amount. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Settlement Amount and whether the Settlement Amount is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Settlement Amount shall be paid by the Party that owes it within two (2) Business Days after the notice is received.

9.3 Calculation Disputes. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount, the Defaulting Party shall, within two (2) Business Days of receipt of the Non-Defaulting Party’s calculation, pay the undisputed amount and provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided however that if the Settlement Amount is due from the Defaulting Party, the Defaulting Party shall first transfer Adequate Assurance to the Non-Defaulting party in an amount equal to the disputed amount that has not been paid.

9.4 Setoff. Each Party reserves all rights, setoff, recoupments, counterclaims or other remedies and defenses (to the extent not expressly waived or denied in this Agreement) that such Party has or to which such Party may be entitled arising from or out of this Agreement.

9.5 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE

NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## 10. CONFIDENTIALITY

10.1 Confidentiality Generally. “**Confidential Information**” means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement, (b) information that was already known by either Party on a non-confidential basis prior to this Agreement, (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party, and (d) information that is developed by receiving Party or its affiliates independently and without access to the Confidential Information of disclosing Party. Except as provided in this Section 10.1 and 10.2, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party’s prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons’ respective attorneys, accountants, representatives, agents and employees who have a need-to-know such Confidential Information related to this Agreement.

10.2 Authorization to Disclose. The Parties are expressly authorized to disclose the existence of this Agreement and certain REC details to affect Delivery of such RECs or otherwise comply with any relevant Applicable Standard while using commercially reasonable efforts to preserve the confidentiality of any other information unnecessary for such requirements, notwithstanding any agreement between the Parties regarding the protection of Confidential Information. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by the applicable law, statute, ordinance, decision, order or regulation. Before such disclosure such Party shall promptly notify the other Party of the required disclosure, if legally permissible, such that the other Party may attempt (if such other Party so chooses and at such other’s Party’s expense) to cause that court, governmental agency or authority to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain. Notwithstanding the foregoing, if a Party is required to make a disclosure pursuant to this Section 10.2, then it will, if possible, request that such disclosure be accorded confidential treatment.

10.3 Injunctive Relief; Survival. Each of the Parties acknowledges and agrees that the other Party would be irreparably harmed if any Confidential Information of the Disclosing Party were to be disclosed to third persons, or if any use were to be made of such Confidential Information other than that permitted under this Agreement, and further agrees that the disclosing Party shall have the right to seek injunctive relief upon any violation or threatened violation of the terms of this Section 10, in addition to all other rights and remedies available at law or in equity, without having to post a bond or

other security. The Parties' obligations under this Section 10 shall survive for a period of one (1) year following the expiration or termination of this Agreement.

## **11. CREDIT**

If either Party ("X") has reasonable grounds for insecurity regarding the creditworthiness of the other Party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), then X shall provide Y with written demand requesting Adequate Assurance to cover adverse Market Exposure X has to Y. Upon receipt of such notice, Y shall provide Adequate Assurance to X within two (2) Business Days of receipt of such notice. In the event that Y fails to provide Adequate Assurance with two (2) Business Days following receipt of notice, then an Event of Default shall be deemed to have occurred with respect to Y.

## **12. REGULATORY CHANGE**

After the Effective Date and during the Term of this Agreement, if any statute, rule, regulation, permit or authorization is enacted, amended, granted or revoked (including a final order of a court having jurisdiction) which has the effect of: (i) materially changing the ability of Seller to Deliver RECs to Buyer so that implementation of this Agreement becomes illegal or unenforceable, or (ii) repealing the Applicable Standard in its entirety so that the implementation of this Agreement becomes impossible or impracticable, is considered a regulatory change (each a "**Regulatory Change**"). If a Regulatory Change occurs, then this Agreement automatically terminates with no further payment or performance obligation except for such obligations that accrued prior to such termination.

## **13. BANKRUPTCY CODE PROVISIONS**

The Parties intend that: (i) this Agreement is a "forward contract" within the meaning of the Bankruptcy Code, (ii) all payments made or to be made by one Party to the other Party, pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code, (iii) all transfers of credit support by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code, and (iv) each Party's rights under Section 9.1 of this Agreement constitutes a "contractual right to liquidate" this Agreement within the meaning of the United States Bankruptcy Code.

## **14. CONSENT TO RECORDING**

Each Party consents to the creation of a tape or electronic recording ("**Recording**") of telephone conversations between each Party's trading, marketing or scheduling employees or contractors. Such Recordings shall be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording and agrees to notify its employees and contractors of such monitoring or recording and to obtain any necessary consent of such employees and contractors.

## **15. ENTIRE AGREEMENT; SEVERABILITY**

This Agreement, together with any attachments or exhibits specifically referenced herein, constitutes the entire agreement between the Seller and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written instrument signed by Buyer and Seller.

Any part of this Agreement that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the Parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

## **16. COUNTERPARTS**

This Agreement may be executed by PDF or facsimile and in one or more counterparts, all of which taken together will constitute one and the same original instrument.

## **17. GOVERNING LAW; WAIVER OF TRIAL BY JURY & ATTORNEYS' FEES**

17.1 Governing Law and Jury Trial Waiver. This Agreement shall be construed, enforced, and performed in accordance with the laws of the State of New York, without recourse to its principles governing conflicts of law that would apply the law of another jurisdiction. **AS A MATERIAL INDUCEMENT TO EACH PARTY TO ENTER INTO THIS AGREEMENT, THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING HERETO, ANY RECS OR THE AGREEMENT CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

17.2 Attorneys' Fees. In the event of any suit or other proceeding between the Parties arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs (including at the trial and appellate levels) and expenses of investigation.

## **18. WAIVER; AMENDMENT**

None of the terms or conditions of this Agreement may be amended or waived except in writing and signed by both Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party's right to seek such performance at a later time. Similarly, a Party's waiver of its rights with respect to any Event of Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Event of Default or matter.

## **19. NOTICES**

All notices, payments and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery, reputable overnight courier, facsimile transmission, electronic mail or the electronic equivalent. The communications shall be sent to the following addresses, and shall be effective when received:

**If to Counterparty:**

Brick Township Board of Education  
101 Hendrickson Blvd, Brick, NJ 08724  
Attn:  
Telephone:  
Facsimile:  
Email (for Invoices):

**If to DTE:**

DTE Energy Trading, Inc.  
414 South Main Street, Suite 200  
Ann Arbor, MI 48104  
Attn: Contract Administration/Legal  
Telephone: 734-887-2042 (Marcia Hissong, Asst. General Counsel)  
Facsimile: 734-887-2235  
Email: [hissongm@dteenergy.com](mailto:hissongm@dteenergy.com)

***With a copy also to:***

Jay McCall/Erica Reicher  
Telephone: 734-887-4183 (*Jay*);  
734-887-4184 (*Erica*)  
Email: [DTE\\_ENV\\_Desk@dteenergy.com](mailto:DTE_ENV_Desk@dteenergy.com)

Each Party represents that the person signing this Agreement on its behalf is authorized to enter into this Agreement. Each Party also understands and agrees to the terms and conditions herein and agrees to be bound thereby. Each Party acknowledges its obligations of good faith and fair dealing under this Agreement (including commercially reasonable mitigation of damages, if any, so far as possible), notwithstanding any contrary provision herein or in applicable law.

**DTE Energy Trading, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Brick Township Board of Education**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_