



April 28, 2023

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Post Office Box 30221
Lansing, MI 48909

RE: MPSC Case No. U-21409 – In the matter of the application of CONSUMERS ENERGY COMPANY for approval of the build transfer agreement for the Sunfish Solar 2 project as a Voluntary Green Pricing Program resource.

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find the **Application and Testimony and Exhibits of Consumers Energy Company Witnesses Alexander E. Juhasz and Juan B. Tatis**. Confidential Exhibit A-5 is being filed under seal with the Michigan Public Service Commission.

This is a paperless filing and is therefore being filed only in PDF. Also included is a Proof of Service showing electronic service upon the persons included in Attachment 1.

Sincerely,

Gary A. Gensch Jr.
Phone: 517-788-0698
Email: gary.genschjr@cmsenergy.com

cc: Persons per Attachment 1 to Proof of Service

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of the build transfer agreement)
for the Sunfish Solar 2 project as a)
Voluntary Green Pricing Program resource.)
_____)

Case No. U-21409

CONSUMERS ENERGY COMPANY’S APPLICATION FOR
APPROVAL OF THE BUILD TRANSFER AGREEMENT
RELATED TO THE SUNFISH SOLAR 2 PROJECT

Consumers Energy Company (“Consumers Energy” or the “Company”), pursuant to Section 28(4) of 2008 PA 295, as amended (“Act 295”), MCL 460.1028(4), applies to the Michigan Public Service Commission (“MPSC” or the “Commission”) for approval of a Build Transfer Agreement (“BTA”) to acquire the Sunfish Solar 2 solar facility (“Sunfish Solar 2”). Sunfish Solar 2 will support the Company’s Large Customer Renewable Energy Program (“LC-REP”), which is a Voluntary Green Pricing (“VGP”) program under Section 61 of 2016 PA 342 (“Section 61”). The BTA is consistent with the Company’s amended Renewable Energy Plan (“RE Plan”), approved by the Commission in Case No. U-20984. In support of this Application, Consumers Energy states as follows:

1. Consumers Energy is, among other things, engaged as a public utility in the business of generating, purchasing, distributing, and selling electric energy to approximately 1.9 million retail customers in the state of Michigan. The retail electric system of Consumers Energy is operated as a single utility system, within which uniform rates are charged.

2. Consumers Energy’s retail electric business is subject to the jurisdiction of the Commission pursuant to various provisions of 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; and

Act 295, as amended, MCL 460.1001 *et seq.* Pursuant to these statutory provisions, the Commission has the power and jurisdiction to regulate Consumers Energy's retail electric rates.

3. Section 61 states:

An electric provider shall offer to its customers the opportunity to participate in a voluntary green pricing program under which the customer may specify, from the options made available by the electric provider, the amount of electricity attributable to the customer that will be renewable energy. If the electric provider's rates are regulated by the commission, the program, including the rates paid for renewable energy, must be approved by the commission. The customer is responsible for any additional costs incurred and shall accrue any additional savings realized by the electric provider as a result of the customer's participation in the program. If an electric provider has not yet fully recovered the incremental costs of compliance, both of the following apply:

(a) A customer that receives at least 50% of the customer's average monthly electricity consumption through the program is exempt from paying surcharges for incremental costs of compliance.

(b) Before entering into an agreement to participate in a commission-approved voluntary green pricing program with a customer that will not receive at least 50% of the customer's average monthly electricity consumption through the program, the electric provider shall notify the customer that the customer will be responsible for the full applicable charges for the incremental costs of compliance and for participation in the voluntary renewable energy program as provided under this section.

4. In a July 12, 2017 Order in Case No. U-18349 ("U-18349 Order"), after seeking comments, the Commission provided guidance on VGP programs under Section 61 and required Consumers Energy (among others) to file proposed VGP programs by October 18, 2017. The U-18349 Order also required that VGP programs be revisited at a minimum every two years, beginning in October 2019.

5. In its August 23, 2017 Order in Case No. U-18393, the Commission first approved portions of the Company's LC-REP conditioned on the Company filing the LC-REP for approval

under Section 61. In response to the Commission’s Orders in Case No. U-18393 and Case No. U-18349, Consumers Energy requested in Case No. U-18351 that the Commission designate its Solar Gardens Pilot Program as a VGP program and approve the LC-REP and designate it as a VGP program. In its October 5, 2018 Order in Case No. U-18351, the Commission approved Solar Gardens and LC-REP as VGP programs, subject to certain conditions. The Commission also approved revisions to the Solar Gardens and/or LC-REP programs in Case Nos. U-20649, U-21134, and U-21347.

6. As presented and approved in Case Nos. U-18393 and U-18351, the renewable energy available for subscription in the LC-REP was originally generated from Company-owned wind facilities approved in the Company’s RE Plan. This was expanded to include solar facilities in Case No. U-20649. The Company treats the LC-REP subscription fees collected as revenue that offsets the costs in the RE Plan, and the Power Supply Cost Recovery transfer price is not applied to the subscribed portion of the renewable energy facilities. The LC-REP began with a subscription limit of 115,000 MWh annually, which was increased to 155,000 MWh annually in Case No. U-18351, and to 400,000 MWh annually in Case No. U-20649.

7. In Case No. U-20984, Consumers Energy sought Commission approval to amend its RE Plan to support the removal of the LC-REP annual subscription limit and the addition of renewable energy assets in the RE Plan up to the level of LC-REP customer subscriptions for the VGP program. Pursuant to the Settlement Agreement approved by the Commission in Case No. U-20984 in a September 9, 2021 Order (“U-20984 Settlement Agreement”), Consumers Energy is authorized to add up to 1,000 MW of new wind and solar facilities to support LC-REP. U-20984 Settlement Agreement, paragraph 1. Consumers Energy “may solicit additional renewable energy resources to expand its LC-REP on an annual basis based on customer applications and add

additional renewable energy resources based upon customers' firm subscriptions." U-20984 Settlement Agreement, paragraph 2. In addition, the U-20984 Settlement Agreements states that Consumers Energy will not add a "new renewable energy resource for the LC-REP until it has achieved firm subscriptions totaling 75% of the expected energy production for that resource." *Id.*

8. Act 295 requires Commission approval of contracts entered into under the RE Plan. MCL 460.1028(4) states:

For an electric provider whose rates are regulated by the commission, the electric provider shall submit a contract entered into for the purposes of subsection (3) to the commission for review and approval. If the commission approves the contract, it shall be considered consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process.

Pursuant to MCL 460.1028, Consumers Energy is requesting approval of the BTA related to Sunfish Solar 2.

9. On March 17, 2022, the Company's Independent Administrator, Enel X, issued the 2022 VGP solicitation on behalf of the Company to acquire up to 1,000 MW of additional aggregate nameplate capacity projects. The Company used a competitive VGP solicitation process consistent with prior solicitations for RE Plan assets, the Commission's 2008 Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy which were issued as Attachment D in the December 4, 2008 Order in Case No. U-15800, and the Commission's Competitive Procurement Guidelines for Rate-Regulated Electric Utilities (Not for PURPA Compliance) approved on September 9, 2021, in Case No. U-20852.

10. Project contract types permitted were BTAs, Development Asset Acquisition Agreements ("DAAs"), and Purchase and Sale Agreements. Six respondents submitted proposals

for three unique BTAs and eight unique DAA projects, representing nearly 896 MW of nameplate capacity. Enel X performed an initial screening for eligibility, project requirements, and participation requirements. After proposals were deemed eligible, Enel X ranked the projects utilizing the economic model and scorecard criteria that was developed by the Company. Proposals were evaluated based on cost, value, and other qualitative criteria such as social and environmental impact. Enel X provided blind rankings of proposals based on the points earned for each project.

11. After receiving the blind evaluation results, the Company selected proposals which best covered existing signed LC-REP customer contracts and anticipated customers that were deemed likely to subscribe to LC-REP. Pursuant to this process, the Company provisionally awarded the Sunfish Solar 2 project, which was submitted as a 225 MW project and received the best score using the project scorecard. After the provisional award, customers continued to express interest in and subscribe to LC-REP, and the Company determined that it would need to add more energy production to meet this interest. While the Company evaluated additional projects bid into the RFP, the Company discovered that the 225 MW Sunfish Solar 2 proposal was a portion of a larger 309 MW project. The entire 309 MW project had the same economics as the 225 MW partial-Sunfish Solar 2 project, which would keep it as the highest ranked and most economic proposal. Thus, the Company entered negotiations for the full 309 MW Sunfish Solar 2 project to provide the needed additional supply.

12. On February 24, 2023, Consumers Energy entered into a BTA with Hecate Energy Sunfish Solar 2, LLC for the Sunfish Solar 2 project. Sunfish Solar 2 is a 309 MW solar facility located in Calhoun County, Michigan. The project will require approximately 2,900 acres, for

which land rights have been secured. The Commercial Operation Date (“COD”) of the facility is expected to be on or before December 31, 2025.

13. Under the terms of the BTA, the developer will manage, develop, obtain necessary permits, engineer, procure, construct, and commission Sunfish Solar 2 to the Company’s specifications. Upon issuance of a Notice to Proceed and corresponding payment, the development assets associated with Sunfish Solar 2 will be transferred to the Company, such as all necessary real estate agreements, interconnection agreements, and marketable title to equipment and materials incorporated into the project through such date. The developer will also begin to perform site preparation; procure transformers and solar panels; and complete engineering, construction, startup, and testing. Upon completion of these activities, the Company will finalize the purchase of the solar project and begin to operate the facility.

14. The Sunfish Solar 2 BTA contains several customer protections, which include (1) liquidated damages should there be delays in achieving substantial completion, (2) a Milestone Progress Payment Schedule to ensure the Company pays only upon completion of certain activities or milestones and allow the Company to take ownership of certain project assets as payments are made, and (3) sharing the risk of purchase price adjustments resulting from cost increases due to changes in import costs, changes in law causing delays, or Force Majeure events.

15. The total installed capital cost of the Sunfish Solar 2 project is estimated to be \$453 million or \$1.466 million per MW. The Sunfish Solar 2 BTA results in a \$52.68/MWh Levelized Cost of Energy (“LCOE”) over 30 years and \$51.21/MWh LCOE over 35 years. The total depreciable life cost of the Sunfish Solar 2 project is estimated to be 89% of the market value over 30 years, and the total lifetime cost of the Sunfish Solar 2 project is estimated to be 80% of the market value over 35 years.

16. The \$52.68/MWh LCOE of the Sunfish Solar 2 project is approximately \$32/MWh less than the \$84.24/MWh LCOE of the proxy solar unit originally projected for 2026 in the RE Plan in Case No. U-20984. Given that Sunfish Solar 2's LCOE is more cost-effective than the originally modeled projection, it is anticipated that the addition of this project will sustain a positive regulatory liability balance in the RE Plan.

17. The Company has achieved firm LC-REP subscriptions totaling 93% of the expected MWh energy production of Sunfish Solar 2, and customers are continuing to express interest in subscribing to the program. Since the Company has achieved LC-REP subscriptions totaling more than 75% of the expected energy production of Sunfish Solar 2 prior to the commercial operation date of the project, the U-20984 Settlement Agreement subscription requirement has been met.

18. Consumers Energy requests that the Commission provide assurance that the full actual costs of Sunfish Solar 2 will be recoverable through the combined application of the transfer price mechanism, the Renewable Energy surcharge, if necessary, or other mechanisms as determined by the Commission to recover these costs upon conclusion of the RE Plan period in accordance with MCL 460.1047(6). LC-REP subscriptions will be used to offset the costs of Sunfish Solar 2 in the RE Plan, and the Transfer Price is not applied to the subscribed portion of the facility. The Company proposes to use the 2021 Transfer Price Schedule for the Sunfish Solar 2 BTA that was agreed to in the Settlement Agreement in Case No. U-21197. The Company seeks Commission approval of the Transfer Price Schedule for the life of Sunfish Solar 2. Such approval will minimize the future uncertainty regarding the manner in which these costs will be recovered.

In addition, pursuant to the U-20984 Settlement Agreement, Sunfish Solar 2 will use the return on equity from the Company's most recently approved rate case instead of the return on equity approved under the RE Plan.

WHEREFORE, Consumers Energy Company respectfully requests that the Michigan Public Service Commission issue an order providing as follows:

A. Approving Consumers Energy's Application for approval of the Build Transfer Agreement related to the Sunfish Solar 2 project pursuant to MCL 460.1028, the Orders issued in Case Nos. U-15800, U-15805, and U-20984, and other applicable law;

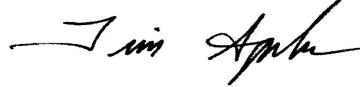
B. Approving the Transfer Prices described in this Application with respect to the Sunfish Solar 2 Build Transfer Agreement;

C. Providing assurance that the full actual costs of the Sunfish Solar 2 project will be recoverable through the combined application of the Transfer Price mechanism, the renewable energy surcharges, and, subsequent to the end of the Renewable Energy Plan period, an appropriate ratemaking mechanism in accordance with MCL 460.1047(6); and

D. Granting such other and further relief that the Commission finds just and reasonable.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Dated: April 28, 2023

By:

Timothy J. Sparks
Vice President of Electric Supply
Consumers Energy Company

By:



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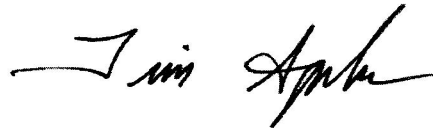
STATE OF MICHIGAN
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Case No. U-21409

VERIFICATION

Timothy J. Sparks, being first duly sworn, deposes and says that he is the Vice President of Electric Supply of Consumers Energy Company; that he has executed the foregoing Application for, and on behalf of, Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief; and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.



Dated: April 28, 2023

Timothy J. Sparks
Vice President of Electric Supply
Consumers Energy Company

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-21409

DIRECT TESTIMONY

OF

ALEXANDER E. JUHASZ

ON BEHALF OF

CONSUMERS ENERGY COMPANY

April 2023

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

1 **Q. Please state your name and business address.**

2 A. My name is Alexander E. Juhasz, and my business address is 1945 West Parnall Road,
3 Jackson, Michigan 49201.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by Consumers Energy Company (“Consumers Energy” or the “Company”)
6 where I am a Senior Engineer responsible for Renewable Resources within the Electric
7 Contract Strategy Department.

8 **Q. Please describe your educational background and work experience.**

9 A. I received a Bachelor of Science Degree in Civil Engineering in 2009 from Michigan
10 Technological University. From 2010 to 2013 I worked as a Staff Engineer at TriMedia
11 Environmental and Engineering, where I was responsible for permitting, design, and cost
12 estimating of commercial projects. From 2014 to 2021, I worked at Nexteer Automotive
13 Corp. in the capacity of a Facilities Engineer and then as an Environmental Engineer. In
14 these two roles, I implemented energy efficiency programs, pollutant reduction control
15 strategies, and waste reduction programs, while also being responsible for ensuring Federal
16 and State environmental compliance and reporting for the site. In 2022, I joined
17 Consumers Energy as Senior Engineer responsible for the Renewable Energy Plan (“RE
18 Plan”) within the Electric Contract Strategy Department.

19 **Q. What are your present responsibilities and duties as a Senior Engineer?**

20 A. My responsibilities include the implementation of the RE Plan, including (1) the
21 development of competitive solicitations that add generation under the RE Plan,
22 (2) negotiations and development of Power Purchase Agreements, and (3) ensuring
23 compliance with the RE Plan.

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

1 **Q. Have you previously provided testimony before the Michigan Public Service**
2 **Commission (“MPSC” or the “Commission”)?**

3 A. Yes. I provided testimony in the following MPSC cases:

4 Case No. U-21197 2021 Renewable Energy Reconciliation.

5 Case No. U-21049 2022 PSCR Reconciliation.

6 **Purpose of Direct Testimony**

7 **Q. What is the purpose of your direct testimony in this proceeding?**

8 A. In my direct testimony, I will address the new Build Transfer Agreement (“BTA”) between
9 the Company and Hecate Energy Sunfish Solar 2 LLC regarding the Sunfish II Solar
10 project (“Sunfish Solar 2”), which was awarded through the 2022 Voluntary Green Pricing
11 (“VGP”) competitive solicitation process. The Company seeks approval of the Sunfish
12 Solar 2 BTA, consistent with the Settlement Agreement approved by the Commission in
13 its September 9, 2021 Order in Case No. U-20984 (“U-20984 Settlement Agreement”).
14 The Sunfish Solar 2 BTA represents the highest-scoring selected bid from the 2022
15 competitive solicitation for supplying the Large Customer Renewable Energy Program
16 (“LC-REP”).

17 **Q. Are you sponsoring any exhibits?**

18 A. Yes. I am sponsoring the following exhibits:

19 Exhibit A-1 (AEJ-1) Report of the Independent Administrator dated
20 March 27, 2023;

21 Exhibit A-2 (AEJ-2) Revenue Requirement and Market Value of Sunfish
22 II Solar; and

23 Exhibit A-3 (AEJ-3) U-21197 Transfer Price.

24 **Q. Were these exhibits created by you or under your supervision?**

25 A. Yes.

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

2022 VGP Competitive Solicitation

Q. Please provide an overview of the solicitation process that the Company used in the 2022 VGP Competitive Solicitation.

A. Pursuant to the U-20984 Settlement Agreement, Consumers Energy is authorized to add up to 1,000 MW of new wind and solar facilities based on LC-REP customer subscriptions. The VGP competitive solicitation process that the Company used is a robust process, which is consistent with prior solicitations for RE Plan assets, the Commission's 2008 Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy which were issued as Attachment D in the December 4, 2008 Order in Case No. U-15800, and the Commission's Competitive Procurement Guidelines for Rate-Regulated Electric Utilities (Not for PURPA Compliance) approved on September 9, 2021, in Case No. U-20852.

Q. What was the reason for running a competitive solicitation?

A. The purpose of the solicitation was to support customer subscriptions to the LC-REP. The Company's current LC-REP resources are fully subscribed, and the Company needed to solicit additional resources to meet customer interest.

Q. Please describe the VGP competitive procurement requirements.

A. Competitive procurement requirements from Case No. U-20852 include, but are not limited to, the following:

- The recommendation to use an Independent Administrator ("IA");
- Prohibition of information sharing between utility affiliates responding to the Request for Proposal ("RFP") and utility personnel involved in any aspect of the RFP process;
- No information sharing between the utility development arm and the procurement arm when utility-owned projects are allowed to bid into a solicitation;

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

- At least 30 days prior to issuance of an RFP, the utility will hold the pre-RFP meeting that includes Staff, potential respondents, and stakeholders;
- Utility shall release draft RFP and solicitation documents 10 days prior to pre-RFP meeting;
- The IA should allow written comments due 10 days after the pre-RFP meeting; and
- BTA templates should be drafted to ensure technology neutrality.

In addition to the above, the evaluation criteria and process is made available to bidders and the IA is responsible for scoring proposals and providing blind rankings to the Company for project selection.

Q. Did the Company conduct a competitive solicitation in 2022 and follow the solicitation guidelines consistent with the RE Plan Settlement Agreement?

A. Yes. The Company retained an IA, Enel X North America, Inc (“Enel X”), to support this solicitation.

Prior to RFP issuance, the draft RFP package was released to Staff, potential respondents, and stakeholders on February 3, 2022 and the Company and Enel X participated in the pre-RFP meeting with Staff, potential respondents, and stakeholders on March 23, 2022 to share information on the VGP program and provide RFP details, including timeline, role of the IA, criteria used to rank proposals, and any other relevant information. Following the pre-RFP meeting, feedback was solicited from all stakeholders. Enel X developed and scheduled the publication of a Consumers Energy RFP advertisement, which was run on the Company’s website from March 17, 2022, through March 31, 2022.

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

On March 17, 2022, Enel X issued the 2022 VGP solicitation on behalf of the Company to acquire up to 1,000 MW of additional aggregate nameplate capacity projects that could be bid into four delivery tranches:

- Existing – 12/31/2022;
- 1/1/2023 – 12/31/2024;
- 1/1/2025 – 12/31/2025; and
- 1/1/2026 – 12/31/2026.

Project contract types were allowed to be Build Transfer Agreements (“BTA”), Development Asset Acquisition Agreements (“DAA”), or Purchase and Sale Agreements (“PSA”). Enel X conducted and monitored the Consumers Energy RFP process in its entirety. As demonstrated in the Report of the Independent Administrator provided as Exhibit A-1 (AEJ-1), Enel X attests that each element of the RFP process was run in a fair and transparent manner and that RFP results were competitive and reflective of market conditions.

Q. Please further explain Enel X’s participation in the 2022 VGP competitive solicitation.

A. Enel X, as the IA for the Company’s 2022 VGP competitive solicitation, supported the Company through RFP development, administered a fair and transparent solicitation independently and without bias, provided support to respondents, collected and evaluated proposals, and produced a blind ranked shortlist to the Company.

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

1 **Q. Please provide a participation summary for the 2022 competitive solicitation.**

2 A. A total of six respondents submitted proposals for three unique BTA and eight unique DAA
3 projects within the sealed Company-owned proposal pricing event, representing nearly 896
4 MW of nameplate capacity as described in Exhibit A-1 (AEJ-1).

5 **Q. Please explain Enel X's evaluations of the proposals submitted in the 2022 VGP**
6 **competitive solicitation.**

7 A. Enel X first performed an initial screening for eligibility regarding proposals, project
8 requirements, and respondent participation requirements. After proposals were deemed
9 eligible, Enel X ranked the projects utilizing the economic model and scorecard criteria
10 that was developed by the Company. In accordance with Section 8.5 of the Consumers
11 Energy RFP, proposals were evaluated based on cost, value, and other qualitative criteria
12 such as social and environmental impact, as outlined within the Scorecard, Appendix J,
13 and Scorecard Guidance document, Appendix I. Enel X provided blind rankings of
14 proposals based on the points earned for each project as scored using the scorecard criteria.

15 **Q. Please explain the award selections.**

16 A. On June 16, 2022, the Company received the final blind evaluation results from Enel X.
17 After receiving the final blind evaluation results, the Company ultimately elected to select
18 proposals which best covered existing signed contract demand and anticipated supply of
19 customers that were deemed likely to subscribe to LC-REP. Consumers Energy selected
20 and provisionally awarded proposals from highest to lowest scorecard points. The
21 Company's process ultimately resulted in the selection of the 309 MW Sunfish Solar 2
22 solar facility.

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

1 **Q. Has the Company reached the minimum subscription requirement from the U-20984**
2 **Settlement Agreement?**

3 A. Yes. The U-20984 Settlement Agreement states that the Company “will not add new
4 renewable energy resource for the LC-REP until it has achieved firm subscriptions totaling
5 75% of the expected energy production for that resource.” Currently the Company has
6 achieved firm subscriptions totaling 93% of the expected MWh energy production of
7 Sunfish Solar 2, and customers are continuing to express interest in subscribing to the
8 program. Since the Company has achieved LC-REP subscriptions totaling more than 75%
9 of the expected energy production of Sunfish Solar 2 prior to the commercial operation
10 date of the project, the U-20984 Settlement Agreement subscription requirement has been
11 met. The applications submitted for the LC-REP and contracts entered into will be made
12 available for Staff review.

13 **Q. What was the largest project size defined in the RFP?**

14 A. The largest project size was stated as 225 MW.

15 **Q. If the maximum project capacity defined in the RFP was 225 MW, why did the**
16 **Company select Sunfish Solar 2 at 309 MW?**

17 A. The Sunfish Solar 2 project was submitted as a 225 MW project, received the best score
18 using the project scorecard as determined by the IA, and was provisionally awarded on
19 June 16, 2022.

20 After the provisional award, customers continued to express interest and execute
21 subscriptions in LC-REP, and the Company determined that it would need to add energy
22 production to meet this interest. While the Company evaluated additional projects bid into
23 the RFP to meet this interest, the Company discovered that the 225 MW Sunfish Solar 2

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

1 proposal was a portion of a larger 309 MW project. This larger portion of the project had
2 the same economics as the 225 MW partial-Sunfish Solar 2 project, which would keep it
3 as the highest ranked and most economic proposal. For this reason, the Company
4 determined to contract for the full 309 MW Sunfish Solar 2 project to provide the additional
5 supply.

6 **Q. Did the Company enter into a BTA for the Sunfish Solar 2 project?**

7 A. Yes. The Company and Sunfish Solar 2 executed the BTA as shown in Exhibit A-5
8 (JBT-2). The contract negotiation process and summary of contract provisions are further
9 discussed in Company witness Juan B. Tatis's direct testimony.

10 **Q. Have you evaluated the cost and market value of the BTA?**

11 A. Yes. The Sunfish Solar 2 BTA results in a lifetime cost of approximately \$836 million or
12 \$51.21/MWh Levelized Cost of Energy ("LCOE") (over 35 years). The LCOE is
13 calculated as the total revenue requirement divided by the energy production, with both
14 discounted over a specified period (e.g., asset life or contract length). The BTA has a
15 projected energy and capacity total lifetime value of approximately \$1,043 million. Exhibit
16 A-2 (AEJ-2) details the forecasted revenue requirements and market value of the BTA.
17 The expected generation in MWh and expected capacity in Zonal Resource Credits
18 ("ZRCs") per year, based on Midcontinent Independent System Operator, Inc. solar class
19 average, are shown in Exhibit A-2 (AEJ-2), columns (b) and (c), respectively. Column (d)
20 shows the expected cost or revenue requirement, for each year of the plant, which includes
21 among other things: capital expenditures, Operating and Maintenance ("O&M") expenses,
22 and depreciation less Production Tax Credit. The expected off-peak and on-peak energy
23 values in \$/MWh and capacity value in \$/ZRC year are provided in Exhibit A-2 (AEJ-2),

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1 columns (e), (f), and (h), respectively. Column (i) shows the expected market value, or
2 energy and capacity value, for each year of the facility. Exhibit A-2 (AEJ-2), line 31,
3 shows the 30-year subtotals for expected generation, revenue requirements, energy value,
4 and total value; this is calculated by summing lines 1 through 30. Line 38 shows the
5 forecast terminal value and associated cost subtotals; this is calculated by summing lines
6 32 through 37. Line 39 shows the 35-year lifetime total including the depreciable life and
7 terminal values; this is calculated by summing lines 31 and 38.

8 **Q. Why has the Company included terminal value and associated cost in this economic**
9 **analysis?**

10 A. The Company's depreciation schedule for solar assets will result in the complete
11 depreciation of the initial capital investment over 30 years. Based on industry
12 benchmarking, the useful life of solar projects is likely 35 years or more, which falls within
13 the National Renewable Energy Laboratory's useful life range¹. Therefore, it is reasonable
14 to assume that the Sunfish Solar 2 project will have a useful life of 35 or more years. When
15 generation assets are owned and operated by the Company, there are various times
16 throughout the life of the asset that the Company can make an economic determination to
17 extend the useful life of the asset by making incremental investments in the facility. This
18 optionality creates customer value by creating opportunities for the Company to
19 economically increase the longevity of Company-owned assets, thereby delaying the
20 retirement of the asset. The Company reflected this value by assigning a terminal value in

¹ See National Renewable Energy Laboratory's useful life estimates for photovoltaics which can be found at <https://www.nrel.gov/analysis/tech-footprint.html>. See also study summary from Lawrence Berkeley National Laboratory which can be found at <https://emp.lbl.gov/news/new-study-finds-increase-expected-useful-life>.

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1 the solicitation economic analysis tool associated with an additional 5 years of useful life
2 beyond the 30-year depreciable life.

3 **Q. Why is the market value of the BTA an important consideration in the evaluation of**
4 **new solar assets?**

5 A. The cost of a new supply asset is only part of the rate impact to the Company's customers.
6 The Company must also consider the offsetting market value of the asset. The
7 consideration of both cost and value can be achieved through a variety of calculations such
8 as the net cost, net value, or a ratio of cost to value. Such calculations provide a better
9 overall comparison of supply options and are necessary when a solicitation may result in a
10 variety of technologies or contractual arrangements. Since the estimated value of a solar
11 asset can vary greatly with changes to capacity factor and capacity credit assumptions, it is
12 imperative for the Company to consider the market value of the asset. The forecasted
13 Sunfish Solar 2 depreciable life cost of \$800.8 million divided by the depreciable life value
14 of \$897.4 million results in a cost-to-value ratio of 89%. The forecast BTA lifetime cost
15 of \$836.2 million divided by the forecast lifetime value of \$1,043.4 million results in a
16 cost-to-value ratio of 80%. These 30-year and 35-year cost-to-value ratios indicate on a
17 total nominal dollar basis that the project is economic compared to purchasing an
18 equivalent amount of energy and capacity from the wholesale market over both the
19 depreciable life and the lifetime of the solar asset. In summary, the cost of the BTA is
20 estimated to be 89% over 30 years and 80% over 35 years of the market value. A lower
21 cost-to-value ratio means that a lower cost is incurred for a comparable value, or
22 alternatively, a higher value is realized for a comparable cost. One additional benefit of

ALEXANDER E. JUHASZ
DIRECT TESTIMONY

1 using a cost-to-value ratio is that it is agnostic to the associated units of measure; meaning
2 the cost-to-value ratio is the same whether comparing total cost, \$/MWh, or \$/MW.

3 **Q. How does Sunfish Solar 2's LCOE compare to what was modeled in the 2021 RE Plan**
4 **Amendment?**

5 A. The Company modeled future proxy additions to the LC-REP in the filed 2021 Renewable
6 Energy Plan amendment, Case No. U-20984. In the original filing in Case No. U-20984,
7 the proxy solar unit projected for 2026 used an LCOE of \$84.24/MWh. In comparison,
8 Sunfish Solar 2's LCOE of \$52.68/MWh (over 30 years) is approximately \$32/MWh less
9 than the proxy unit. Given that Sunfish Solar 2's LCOE is more cost-effective than the
10 originally modeled projection, it is anticipated that the addition of this project will sustain
11 a positive regulatory liability balance in the RE Plan.

12 **Q. Please describe the recovery of Sunfish Solar 2 costs.**

13 A. Consumers Energy requests that the Commission provide assurance that the full actual
14 costs of Sunfish Solar 2 will be recoverable through the combined application of the
15 transfer price mechanism, the Renewable Energy surcharge, if necessary, or other
16 mechanisms as determined by the Commission to recover these costs upon conclusion of
17 the RE Plan. The Company treats the LC-REP subscription fees collected as revenue that
18 will offset the costs of Sunfish Solar 2 in the RE Plan, and the Power Supply Cost Recovery
19 transfer price will not be applied to the subscribed portion of the facility. The Company
20 proposes to use the 2021 Transfer Price Schedule for the Sunfish Solar 2 BTA that was
21 agreed to in the Settlement Agreement in Case No. U-21197. The Company seeks
22 Commission approval of the Transfer Price Schedule for the life of Sunfish Solar 2, which
23 will minimize future uncertainty regarding the manner in which these costs will be

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DIRECT TESTIMONY

recovered. The Transfer Price Schedule from Case No. U-21197 is included as Exhibit A-3 (AEJ-3). In addition, pursuant to the U-20984 Settlement Agreement, Sunfish Solar 2 will use the return on equity from the Company's most recently approved rate instead of the return on equity approved under the RE Plan.

Q. What benefits can be realized with the Sunfish Solar 2 Solar BTA?

A. The Sunfish Solar 2 BTA will provide the following benefits to the Company, the Company's customers, and the surrounding communities:

1. Additional renewable generation needed to support the VGP programs, and
2. The BTA was competitively bid ensuring low cost, economic pricing in accordance with the MPSC competitive procurement guidelines and the U-20984 Settlement Agreement.

Q. Please summarize the Company's request with respect to the Sunfish Solar 2 Solar BTA.

A. Sunfish Solar 2 is a 309 MW solar resource which was reasonably and prudently selected as part of a competitive solicitation process consistent with the U-20984 Settlement Agreement. The Sunfish Solar 2 BTA represents a step in expanding the Company's LC-REP program to procure up to 1,000 MW of new solar or wind resources to meet increased customer desire to subscribe to the program. The Company has obtained customer subscriptions that exceed 75% of expected energy production for Sunfish Solar 2 as required in the U-20984 Settlement Agreement. Since the selection of this resource is consistent with U-20984 Settlement Agreement, the Company is requesting Commission approval of the Sunfish Solar 2 BTA.

Q. Does this complete your direct testimony?

A. Yes, it does.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of the build transfer agreement)
for the Sunfish Solar 2 project as a)
Voluntary Green Pricing Program resource.)
_____)

Case No. U-21409

EXHIBITS

OF

ALEXANDER E. JUHASZ

ON BEHALF OF

CONSUMERS ENERGY COMPANY

April 2023



Report of the Independent Administrator

Consumers Energy Company – 2022

Request for Proposal for Wind and Solar Generation Projects for
the Voluntary Green Pricing (VGP) Program

Dated: March 27, 2023

Final Document



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Executive Summary

Introduction

Consumers Energy Company ("Consumers Energy" or the "Company") retained Enel X North America, Inc. ("Enel X") as its *Independent Administrator (IA) for Consumers Energy's Voluntary Green Pricing ("VGP") Request for Proposals* to serve as an independent third-party administrator in support of its Voluntary Green Pricing solicitation ("VGP Solicitation").

Enel X is based in Boston, MA and has been conducting large-scale energy solicitations on behalf of its utility clients for nearly two decades. Enel X built its proprietary procurement technology and developed robust processes exclusively for energy solicitations. Enel X has continued to invest in technology and has continued to hone its processes with the vision of being the undisputed leader in the high-stakes, high-scrutiny world of large-scale utility energy solicitations.

RFP Purpose, Background

The purpose of the Consumers Energy RFP was to 1) solicit offers for Consumers Energy to acquire solar and/or wind generation projects located in that portion of the lower peninsula of the State of Michigan that is serviced by the Midcontinent Independent System Operator, Inc. ("MISO"). With its RFP, Consumers Energy sought to acquire solar and/or wind generation that provided the lowest net costs to its customers.

Consumers Energy sought to acquire up to 1,000 MWac of nameplate capacity over the next three years to support the Company's expansion of the VGP Program in its Renewable Energy Plan. Consumers Energy sought projects within four tranches based on commercial operation dates with the latest being on or before December 31, 2026, all located in the State of Michigan's Lower Peninsula in support of the VGP program. Maximum total capacity awarded through the VGP Solicitation was dependent on Large Customer Renewable Energy Program (LC-REP) customer demand and was not to exceed 1,000 MWac.

RFP Schedule

The Consumers Energy 2022 VGP Solicitation followed the schedule detailed below (select dates within the RFP Schedule were/are subject to change as-warranted by Consumers Energy):



ID	Event	Date
Phase One Process		
1	RFP Issued, Solicitation Website, Documents Go-Live	Thursday, March 17, 2022
2	Pre-Bid Conference Call	2:00 PM EPT, March 23, 2022
3	Respondent and Project Qualification Application (Appendix A-1, A-2, J) Submission Window Closes / Applications Due	5:00 PM EPT, March 31, 2022
4	Project Application Fees Due	5:00 PM EPT, March 31, 2022
5	Respondent and Project Qualification Application (Appendix A-1) Clarifying Questions, Remediation Requirements Distributed	Thursday, April, 14, 2022
6	Respondent and Project Qualification Application Remediation Actions Due	Monday, April 25, 2022
7	Phase 1 Notice to Proceed Issued to Pre-Qualified Respondents and Outlining Pre-Qualified Projects (see Sections 7.2 and 7.3)	Friday, May 6, 2022
8	Binding Respondent Affidavits, Agreement to Non-Negotiable Contract Template Items Due	5:00 pm EPT, May 16, 2022
9	Pre-Bid Security Due	5:00 pm EPT, May 16, 2022
Phase Two Process		
10	Phase 2 Notices to Proceed Issued (see Section 7.4)	Monday, May 23, 2022
11	Sealed Bid Event(s) Conducted on Solicitation Platform	Tuesday, May 31, 2022
12	Consumers Energy Proposal Evaluation Completion Target	Tuesday, June 28, 2022
13	Conditional Agreements Execution Target	October 2022
14	MPSC Submittal Target	November 2022

Figure 1: 2022 VGP Solicitation Schedule

Summary of Findings

Enel X conducted and monitored the Consumers Energy 2022 VGP Solicitation in its entirety. As demonstrated throughout this report, Enel X attests that each element of the 2022 VGP Solicitation was run in a fair and transparent manner and that RFP results were competitive and reflective of market conditions.



Preparation Phase

Overview

Enel X's involvement within the Consumers Energy 2022 VGP Solicitation Preparation Phase spanned from the release of a notification alerting parties regarding the forthcoming RFP issued on December 10, 2022 through to March 17, 2022 (the date of issuance for the 2022 Consumers Energy RFP).

The Preparation Phase covered a number of key tasks associated with the development and finalization of RFP documents and materials, the support of RFP stakeholders, the development and issuance of an RFP advertisement, the development of an RFP listserv containing over 200 organizations, and other pertinent pre-RFP release tasks.

RFP Documents

Enel X reviewed and provided various comments and proposed modifications to a host of Consumers Energy-developed RFP documents and templates. Additionally, Enel X drafted multiple supporting RFP documents and materials for review and approval by Consumers Energy.

The following RFP documents and materials were developed by Consumers Energy:

1. Consumers Energy Company 2022 VGP RFP for Solar and Wind Generation Projects
2. Appendix C-1: Development Asset Acquisition (DAA) Template
3. Appendix C-2: Development Asset Acquisition (DAA) Term Sheet
4. Appendix C-3: Development Asset Acquisition (DAA) Pricing and Technical Bid Form
5. Appendix D-1: Traditional Build Transfer Agreement (TBTA)
6. Appendix D-2: Milestone Build Transfer Agreement (MBTA)
7. Appendix D-3: Build Transfer Agreement (BTA) Term Sheet
8. Appendix D-4: Build Transfer Agreement (BTA) Pricing and Technical Bid Form
9. Appendix E-1: Purchase and Sale Agreement (PSA) Template
10. Appendix E-2: Purchase and Sale Agreement (PSA) Term Sheet
11. Appendix F-1: Solar Technical Specification
12. Appendix F-2: Wind Technical Specification
13. Appendix F-3: Exceptions to Utility Owned Technical Specifications
14. Appendix G: Development Process of Acceptable Manufacturers List
15. Appendix H: Low Income County List
16. Appendix I: Scorecard Guidance
17. Appendix J: Scorecard
18. Appendix K: Pollinator Scorecard
19. Consumers Energy Economic Models

The following RFP documents and materials were developed and/or provided by Enel X:



1. Utility Dive RFP Advertisement
2. RFP Notice Email Templates
3. Consumers Energy and Enel X Pre-Bid Conference Call PowerPoint Presentation
4. Consumers Energy and Enel X Pre-Bid Conference Call Recording
5. Enel X 2022 W9 Form (to support application fee payments and Pre-Bid Security deposits)
6. Wire Transfer Remittance Form
7. Respondent Bidding Instructions
8. Appendix A-1: Respondent and Project Qualification Application
9. Appendix A-2: Project Qualification Database
10. Appendix B: Binding Bid Agreement and Binding Respondent Affidavit (Project Specific)
11. IRP RFP Questions and Answers (Q&A) Document

RFP Advertisement

Enel X developed and scheduled the publication of a Consumers Energy 2022 VGP Solicitation advertisement, utilizing the advertisement template previously approved for publication by Consumers Energy. The RFP advertisement was run on the public homepage of the Utility Dive website.

For the 2022 VGP Solicitation, the public advertisement was run within multiple sections of the public Utility Dive website, and ultimately captured a total approximately 40,000 unique impressions.

Utility Dive

Utility Dive is public energy industry news website and daily newsletter that covers a wide breadth of news and trends of impact within the utility industry. The public Utility Dive website attracts 215,000+ monthly unique visitors, with primary viewership by the following company types: Investor-Owned Utilities, Municipalities, Solar/Renewables Contractors, Developers, and Energy Performance Contractors.

A banner advertisement and native advertisement for the Consumers Energy RFP was run at the top of the Utility Dive homepage and two additional advertisements were run in-line with the Utility Dive homepage article listings. All advertisements were run from March 17, 2022, through March 31, 2022 and all contained a link to the public Solicitation Website (<http://consumersenergy.com/VGPRFP>) and an email address to the Independent Administrator.

The publication of RFP advertisements marked the conclusion of the Preparation Phase, at which point the RFP process pivoted into its second stage, the Solicitation Phase.

Changes to 2022 VGP Solicitation

A number of RFP process improvements and modifications were proposed and implemented following the 2021 Solar Solicitation. Primary process improvements have been detailed below:

- **Primary Updates to 2022 VGP Solicitation:**



- Inclusion of Wind resources to meet the resource requirements of the RFP
- Use of a Points Based Scorecard for project evaluation and selection
- **Primary Updates to 2022 VGP Solicitation Timeline:**
 - Combined the Respondent and Project Qualification stages into a single event

Solicitation Phase

The Solicitation Phase of the Consumers Energy 2022 VGP Solicitation process covered a wide range of tasks from the issuance of a preliminary RFP notice on December 10, 2021 through the end of the proposal submission window on May 31, 2022.

During the Solicitation Phase, the Consumers Energy RFP was formally issued, would-be Respondents were engaged by Enel X through various communications channels, Respondent Qualification Applications, Project Qualification Applications, Binding Bid Agreements and Binding Respondent Affidavits and associated Respondent and Project pre-qualification materials were collected, a formal Questions and Answers process was managed, pre-bid credit was collected, and proposals were submitted, among a host of other support tasks.

RFP Issuance

On December 10, 2021, a preliminary RFP notice was distributed via email by Enel X to the previously developed RFP listserv. The preliminary RFP notice contained general details regarding the soon-to-be-released RFP and associated documents as well as the email address for the Independent Administrator.

On March 17, 2022, a formal RFP release notice containing Solicitation Website access instructions was distributed via email by Enel X to the RFP listserv, at which point the public Solicitation Website and an initial set of RFP documents and materials were made accessible on the Enel X Solicitation Platform (usernames and passwords were not required to access such content).

The following materials were included within the initial set of RFP documents and materials made publicly available on March 17, 2022:

Document Grouping 1 – Materials Made Publicly Available

1. Consumers Energy Company 2022 VGP RFP for Solar and Wind Generation Projects
2. Appendix A-1: Respondent and Project Qualification Application
3. Appendix A-2: Project Qualification Database
4. Appendix B: Binding Bid Agreement and Binding Respondent Affidavit (Project Specific)
5. Appendix C-1: Development Asset Acquisition (DAA) Template
6. Appendix C-2: Development Asset Acquisition (DAA) Term Sheet
7. Appendix D-1: Traditional Build Transfer Agreement (TBTA)



8. Appendix D-2: Milestone Build Transfer Agreement (MBTA)
9. Appendix D-3: Build Transfer Agreement (BTA) Term Sheet
10. Appendix E-1: Purchase and Sale Agreement (PSA) Template
11. Appendix E-2: Purchase and Sale Agreement (PSA) Term Sheet
12. Appendix F-1: Solar Technical Specification
13. Appendix F-2: Wind Technical Specification
14. Appendix F-3: Exceptions to Utility Owned Technical Specifications
15. Appendix G: Development Process of Acceptable Manufactures List
16. Appendix H: Low Income County List
17. Appendix I: Scorecard Guidance
18. Appendix J: Scorecard
19. Appendix K: Pollinator Scorecard

On April 19, 2022, the following materials were issued and posted to the private (only accessible by pre-qualified Respondents) Solicitation Website:

Document Grouping 2 – Materials Made Privately Available to Pre-Qualified Respondents

1. Build Transfer Agreement Economic Model
2. Development Asset Acquisition Economic Model
3. Purchase and Sale Agreement Economic Model

All parties could access the initial Solicitation Platform website without restriction and without any prerequisite set up work by Enel X (in the same fashion any public website could be accessed). By hosting and promoting (via advertisement) a public RFP website, Enel X ensured that all potential Respondents and other interested parties could access all RFP materials – even if they were not included on the initial RFP listserv.

Solicitation Platform

The Solicitation Platform for the 2022 VGP Solicitation is the Enel X Exchange. For the purpose of the 2022 VGP Solicitation, a public Solicitation Website (accessible without a username and password) was hosted on the Solicitation Platform. The Solicitation Website is further described below. Respondents that were pre-qualified to participate in this RFP received unique usernames and passwords to access the Solicitation Platform. Only pre-qualified Respondents received usernames and passwords to the Solicitation Platform and the required permissions needed to submit proposals. Bidding instructions and demonstration materials were posted on the Solicitation Platform. Multiple demonstrations of the proposal submission process were held for pre-qualified Respondents.

Solicitation Website

The Enel X public Solicitation Website containing Consumers Energy RFP information and materials within Document Grouping 1 was published on March 17, 2022. Following the issuance of Stage 1 Notices to Proceed, the Solicitation Website was made private and became accessible only by Respondents having received Stage 1 Notices to Proceed. Document Grouping 2 was published to the private Solicitation Website on May 6, 2022. The Solicitation Website served as a central RFP data repository throughout the Solicitation Phase and provided all Respondents with a single-site resource for accessing all RFP content necessary to participate within the 2022 VGP Solicitation process and submit proposals.



By utilizing a single site to host all relevant RFP information and documents, Enel X was able to ensure that all Respondents received access to the same materials at the same time. Further, any RFP materials that received updates or amendments were uploaded to the Solicitation Website and notice of their upload was published via email from Enel X, ensuring that parties did not work off of stale versions of amended documents.

ANNOUNCEMENT VIEW: 17135 - CONSUMERS ENERGY COMPANY - 2022 REQUEST FOR PROPOSALS FOR VOLUNTARY GREEN PRICING ("VGPRFP") FOR WIND AND SOLAR RESOURCES - PRICING EVENTS ON MAY 31, 2022

Edit

> General Information

▼ Introduction



RFP Overview:

Consumers Energy Company ("Consumers Energy" or the "Company") is seeking competitive bids in response to this Request for Proposals ("RFP") from participants in the MISO Energy Market or interconnecting to Consumers Energy's electric distribution system in accordance with the Company's expansion of the Voluntary Green Pricing ("VGP") program in its Renewable Energy Plan. Enel X North America, Inc. ("Enel X") will administer a solicitation ("Solicitation") through its solicitation website ("Solicitation Website") on Consumers Energy's behalf in accordance with this RFP. With this RFP, Consumers Energy is soliciting proposals for solar or wind generation projects. Solar and wind generation projects may be in the form of Build-Transfer Agreements ("BTA"), Development Asset Acquisitions ("DAA"), or Purchase and Sale Agreements ("PSA"). Responses to this RFP will only be accepted through the Solicitation Website.

Company Background:

Consumers Energy is the principal subsidiary of Jackson-based CMS Energy Corporation and is Michigan's largest energy provider, providing electricity and/or gas to almost 7 million of the state's 10 million residents in all 68 counties in the Lower Peninsula. Consumers Energy provides electric service to 1.9 million customers. The Company operates five coal-fueled generating units, two oil/gas-fueled and six gas-fueled generating units, 13 hydroelectric plants, a pumped storage electric generating plant, four wind-powered energy parks, four solar photovoltaic generation systems and several combustion-turbine plants that produce electricity when needed during peak demand periods. The Company also purchases power from several independent power producers through long term PPAs.

RFP Purpose and Background:

The purpose of this RFP is to solicit offers for Consumers Energy to acquire solar and/or wind generation assets located in the lower peninsula of the State of Michigan that is serviced by the Midcontinent Independent System Operator, Inc. ("MISO"). The structure of submitted proposals that will be considered in order to accomplish the Company's goals are described in detail within this RFP.

Requested Proposals, Projects:

Consumers Energy is seeking to add up to 1,000 MW of nameplate capacity over approximately the next three years to support the Company's expansion of the VGP Program in its Renewable Energy Plan. The Solicitation is the first in a planned series which will add wind or solar generation resources to support the VGP program. Consumers Energy is seeking facilities, existing or developed, with a maximum nameplate capacity of 225 MWac to bid into tranches based on commercial operation dates ("COD") as outlined below.

Maximum total capacity awarded through the Solicitation will be dependent on Large Customer Renewable Energy Plan (LC-REP) customer demand and is not to exceed 1,000 MW ac. Four tranches will be available to bid into based on COD ranges:

- Existing - 12/31/2022
- 1/1/2023 - 12/31/2024
- 1/1/2025 - 12/31/2025
- 1/1/2026 - 12/31/2026

Consumers Energy's Independent Administrator:

Figure 5: 2022 VGP Solicitation Website on Enel X Exchange Auction Platform

The Solicitation Website remained publicly accessible through the duration of the Respondent Pre-Qualification window. Following the Respondent Pre-Qualification window and the issuance of Stage 1 Notices to Proceed, the Solicitation Website became private (accessible behind-the-password) and Respondents in receipt of Stage 1 Notices to Proceed received user accounts to access the private version of the Solicitation Website.

Respondent Engagement

Enel X made best efforts to engage every invited Respondent individually to ensure receipt of the RFP notice, confirm that they were able to access the Solicitation Website and RFP materials, provide platform training sessions, ensure Respondents were aware of the RFP schedule and milestones, and encourage any open/outstanding questions to be submitted for inclusion within the Questions and Answers log. Enel X also distributed numerous email reminders to all invited Respondents to provide alerts regarding upcoming scheduling milestones and approaching 2022 VGP Solicitation events.

The Enel X Independent Administrator team was accessible to Respondents throughout the 2022 VGP Solicitation process through a variety of communications channels to provide Respondents with any level of required support and guidance.

Pre-Bid Conference Call



On March 23, 2022, Enel X and Consumers Energy hosted a publicly accessible pre-bid conference call for all interested parties. A recording of the pre-bid conference call was posted on the Solicitation Website on March 28, 2022, for those that were unable to attend the call live. A number of Respondents attended the pre-bid conference call live and numerous other individuals downloaded a recording of the call afterwards.

During the Pre-Bid Conference Call, Consumers Energy and Enel X reviewed pertinent details regarding Consumers Energy RFP for Solar and Wind Generation Projects and discussed various RFP participation requirements. While some questions were submitted during the pre-bid conference call, such questions were added to the central Questions and Answers log and not addressed live during the call.

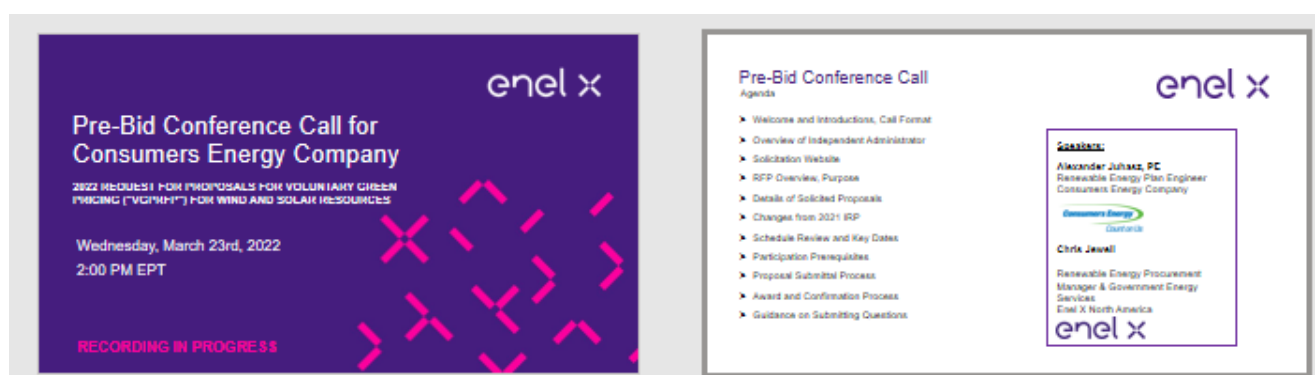


Figure 6: 2022 VGP Solicitation Pre-Bid Conference Call Slide Deck

Questions and Answers Log, Process

A formal Questions and Answers process was launched alongside the issuance of the Consumers Energy RFP on March 17, 2022. All parties were able to submit questions to the central Independent Administrator email account.

Enel X fielded, collated, anonymized, and provided answers to questions on Consumers Energy's behalf when-able within a centrally hosted Questions and Answers document. In the event that Enel X was unable to answer a question, such questions were provided to Consumers Energy for guidance while masking any identifying characteristics of the question submitter. All questions submitted and answers provided were approved by Consumers Energy prior to posting.



Questions and Answers Log

Consumers Energy Company
2022 VGP RFP for Solar and Wind Generation Projects

Version 6

Date of Last Update: 5/23/2022

Figure 7: 2022 VGP Solicitation Questions and Answers Log

A total of 28 unique questions (many parties submitted substantively the same question/questions) were received and addressed across six different issuances of the Questions and Answers log. Each time an updated Questions and Answers log was made available on the Solicitation website a correspondent email notice was issued to the RFP listserv to ensure all parties were aware of its publication.

Respondent, Project, and Contract Template Pre-Qualification

In order to achieve pre-qualification status and obtain permission to submit proposals, RFP Respondents were required to meet a number of participation prerequisites and partake in a multi-stage qualification process consisting of a Respondent and Project Qualification Stage (Stage 1) and a Contracts and Bid Security Qualification Stage (Stage 2).

The two-stage qualification process was designed to ensure that 1) Respondent organizations have sufficient technical and financial capabilities to support to-be-proposed projects, 2) proposed projects will be able to meet or exceed all minimum requirements outlined within the 2022 VGP Solicitation, and 3) Respondents are able to a) sufficiently cover proposal exposure with adequate pre-bid security, b) attest to having met all Solicitation requirements, and c) honor all non-negotiable sections of the Consumers Energy contract templates.

Respondents that timely and fully satisfied all relevant prerequisite requirements associated with each stage of the qualification process received formal Notices to Proceed within subsequent stages of the Solicitation process leading up to the proposal submittal windows. Respondents that ultimately received Stage 2 Notices to Proceed were granted permissions to submit executable proposals for award consideration.

Respondent and Project Qualification Stage (Stage 1)



Respondents interested in participating within the 2022 VGP Solicitation were required to be pre-qualified and meet all relevant participation pre-requisites outlined within the RFP and communicated by Enel X. Respondent organizations were required to complete and submit Respondent and Project Qualification Application (Appendix A-1) including Forms 1 through 8, Project Qualification Database (Appendix A-2) and Scorecard Appendix J by or on March 31, 2022.

Figure 8: 2022 VGP Solicitation Respondent Qualification Application

The following eight forms were contained within the Respondent and Project Qualification Application document package:

- **Form 1 – General Information**
 - Within Form 1 of the Respondent and Project Qualification Application, Respondents are asked to provide general information about their organization. Respondents were able to attach additional sheets and materials if-needed.
- **Form 2 – Contact Information**
 - Within Form 2 of the Respondent and Project Qualification Application, Respondents are asked to provide complete contact information of the primary and secondary RFP representatives within their organization. Assigned Representatives received all communications and were granted permissions to act on the entity's behalf.
- **Form 3 – Financial Information**
 - Form 3 of the Respondent and Project Qualification Application captured financial and credit related information regarding each Respondent organization. Additionally, Respondents were asked to provide details regarding their technical experience in developing renewable projects. Respondents were able to attach additional relevant materials if-needed to cover all requested content outlined within Form 3.
- **Form 4 – Respondent Organization Affiliations**
 - Form 4 of the Respondent and Project Qualification Application provided a means for Respondents to disclose any direct or indirect affiliations held with other prospective



Respondents. If affiliations were identified, Respondents were required to provide further detail in the comments section at the bottom of Form 4 to describe the nature of said affiliations.

- **Form 5 – Summary of Project(s), Project Scorecard Claims**
 - Within Form 5 of the Respondent and Project Qualification Application, Respondents were asked to provide detailed information about their proposed projects and applicable Project Scorecard Claims within the Appendix A-2 Project Qualification Database and Scorecard Appendix J.
-
- **Form 6 – Additional Project Details**
 - Within Form 6 of the Respondent and Project Qualification Application, Respondents were asked to provide specific details regarding their Organization's experience in developing similar projects and any potential impediments that could have prevented specific projects from being qualified to bid in the RFP.
-
- **Form 7 – Acknowledgement of Required Project-Specific Documentation**
 - Within Form 6 of the Respondent and Project Qualification Application, Form 8, Respondents must review and agree to four attestations before printing, signing, scanning, and sending their completed Respondent Qualification Application.
-
- **Form 8 – Acknowledgement of Required Project-Specific Documentation**
 - Within the final form of the Respondent and Project Qualification Application, Form 8, Respondents must review and agree to four attestations before printing, signing, scanning, and sending their completed Respondent Qualification Application.

Enel X reviewed the information provided by Respondents within submitted Respondent and Project Qualification Applications and worked with select Respondents to clarify various form contents as-needed, if-needed.

Following the Respondent Qualification Application submission deadline, a formal remediation period began. Within the remediation period, Enel X provided Respondents with a list of both requests for clarifications and any open remediation needs. Respondents had an opportunity to provide clarifying guidance and/or cures to any identified remediation need(s) prior to the determination and ultimate issuance of Stage 1 Notices to Proceed.

Respondents that met all relevant requirements of the Respondent Qualification Stage received a Stage 1 Notice to Proceed and were provided with detailed information regarding the next steps within the Solicitation Process, including a formal invitation to participate within the Project Qualification Stage (Stage 2).

Respondent and Project Qualification Applications Submitted

The following table details a summary of the submitted Respondent and Project Qualification Applications received by Enel X in advance of the March 31, 2022 submission deadline. No Respondent and Project Qualification Applications were received by Enel X after March 31, 2022 nor were any Respondents denied permission to participate within the RFP process due to inability to meet the Respondent Qualification Application submission deadline.



Criteria	Value
Total Number of Respondents Receiving Stage 1 Notice to Proceed	11

Figure 9: 2022 VGP Solicitation Summary of Respondents Receiving Stage 1 Notices to Proceed

Respondents that submitted Respondent and Project Qualification Applications received receipt confirmation notices from Enel X, which contained a summary of next steps within the RFP process.

Contracts and Bid Security Qualification (Stage 2)

Qualified Respondents with Qualified Projects were provided with DocuSign hosted versions of the Appendix B document package agreements (both a Respondent-specific Binding Bid Agreement and Project-specific Binding Respondent Affidavit(s)) and were required to electronically execute these agreements within DocuSign by May 16, 2022.

Form 1 – Binding Bid Agreement

Consumers Energy Company RFP for Solar and Wind Projects

Insert Respondent Company Name - (Respondent) agrees to be bound on the applicable Transaction Date (defined below) by all price and volume bids (each a "Bid" and collectively, the "Bids") entered by or on behalf of Respondent, with respect to the Consumers Energy Company Request for Proposals for Solar and Wind Generation Projects with bid due dates of May 31, 2022 ("Bid Due Date"), in accordance with the Consumers Energy Company Request for Proposals dated March 17, 2022 (as may be updated, the "RFP") and each such Bid constitutes a firm offer to enter into the applicable transactions offered in the Bids ("Transaction(s)") in accordance with the RFP. Bids will not be subject to any contingencies or conditions.

All Respondents will be bound by their Bids until at least August 31, 2022 ("Valid Proposal Duration"). Respondents selected for provisional contract award are further bound by their Bids through the execution of Definitive Agreements on November 30, 2022, whichever comes first. Consumers Energy Company will declare provisionally awarded Bids(s), and as a condition to proceeding to negotiation of definitive agreements each Respondent declared provisionally awarded will be deemed to have represented that their respective Bid(s) are binding and in compliance with all terms of the RFP, including without limitation, Section 10.3, Contract Negotiations.

By executing this Binding Bid Agreement, Respondent agrees to:

(i) Dutifully work to execute definitive agreement(s) if selected for a provisional award; and (ii) Maintain the applicable Pre-Bid Security in accordance with the RFP. Failure to do so will result in a forfeiture of the Pre-Bid Security. Respondent acknowledges and agrees that it will not attempt to change the binding terms of its Bid(s) during the exclusivity period or during negotiations of the Definitive Agreements, and any attempt to do so will be considered a forfeiture of the Pre-Bid Security.

Respondent agrees that if it fails, in whole or in part, to comply with this Binding Bid Agreement and the related terms of the RFP, it will indemnify Consumers Energy Company for any and all costs, damages and losses incurred in replacing and/or "covering" such Transactions, including, but not limited to any and all costs, damages and losses incurred in selecting new provisionally awarded bids, negotiating replacement Definitive Agreements for the applicable Transactions and/or holding another RFP. Respondent's liability under this paragraph will not exceed the aggregate amount of pre-bid credit posted under Section 7.4, Pre-Bid Security, for all projects included in Respondent's Bids in this RFP that Respondent does not make available to Consumers Energy Company for the full Valid Proposal Duration.

Respondent represents and warrants that it has not, directly or indirectly, entered into a bidding agreement, joint venture for the purpose of bidding in this RFP, consortium or other bidding arrangement pertaining to the RFP, and that it has not, directly or indirectly, entered into any agreement with another respondent regarding bids in the RFP, including, but not limited to, the system on which the bids are placed, when or at what prices bids are withdrawn or switched, or the amount of exit prices.

The submission of this Binding Bid Agreement constitutes the Respondent's acknowledgement and acceptance of all the terms, conditions and requirements of the Consumers Energy Company RFP.

Capitalized terms used but not defined herein will have the meaning ascribed to them in the Consumers Energy Company RFP.

Form 2 – Binding Respondent Affidavit

General Information:

Full Legal Name of Respondent: _____

Operating Name (Bids) of Respondent: _____

Name of Project (Individual Binding Respondent Affidavits are Required for Each Unique Project): _____

Date of Submission: _____

Binding Respondent Affidavit Certifications, Attestations:

In response to the Consumers Energy Company Request for Proposals for Solar and Wind Generation Projects ("RFP") dated and issued on March 17, 2022, Respondent Company or Individual Name "Name of Qualified Project" ("Project") submitted a Project Qualification Application and supporting materials and has received a Stage 2 Notice to Proceed or Stage 2 Conditional Notice to Proceed.

As established within Subsection 7.3 of the RFP, this form of Binding Respondent Affidavit must be completed and submitted on behalf of each qualified project a qualified Respondent intends to propose in response to the RFP.

Therefore, I, Full Legal Name of Authorized Representative at Respondent Organization, being duly sworn, do hereby declare and say under oath as follows:

1. My name is Full Legal Name of Authorized Representative at Respondent Organization and I am authorized to make the following statements on behalf of the named Respondent and the named Project.

2. All the information provided in the Project Qualification Application, Project Qualification Database, and all supporting documents and materials submitted with the Project Qualification Application and all documents and materials submitted in response to the Project Qualification Application Remediation Requirements and all documents submitted subsequent to the initial remediation deadline are accurate, true, and not misleading.

3. The Project Qualification Application, all supporting documentation and all documentation submitted in the remediation response were prepared independently and without collusion or any other action taken to restrain free, competitive bidding.

4. The Project meets or exceeds all minimum requirements outlined within the RFP and its supporting appendices.

5. All Points Based Scorecard claims by the Project and approved in the Project Notice to Proceed or Conditional Notice to Proceed issued remain accurate and true.

Figure 10: 2022 VGP Solicitation Appendix B Agreements

The following two forms were contained within the Appendix B document package:

- **Form 1 – Binding Bid Agreement**
 - Within Form 1 of the Binding Bid Agreement and Binding Respondent Affidavit, Respondents attested to the terms, conditions and requirements of the provisions defined in the Consumers Energy RFP document and that the Bids submitted will be bound until November 30, 2022.
- **Form 2 – Binding Respondent Affidavit**
 - Within Form 2 of the Binding Bid Agreement and Binding Respondent Affidavit, Respondents attested to the terms, conditions and requirements of the provisions defined in the Consumers Energy contract templates.



In order to prevent Respondents from modifying or altering Appendix B agreements, Enel X issued restricted-to-editing versions of each agreement to pre-qualified Respondents via the DocuSign e-signature platform. All Appendix B agreements were executed electronically on the DocuSign platform.

RFP Application Fees

Respondents submitting proposals for generation facilities were required to pay a non-refundable RFP application fee of \$300.00 for each project that it intended to offer through the 2022 VGP Solicitation.

Respondents that did not submit owed application fees in-full prior to the remittance deadline (March 31, 2022) were to be disqualified from submitting proposals through the 2022 VGP Solicitation. In total, 14 Respondents submitted RFP application fees for to Enel X. No Respondents were denied permission to participate further within the RFP process due to inability to post RFP application fees in a timely manner.

Appendix B Document Packages Submitted

The following table details a summary of the executed-via-DocuSign Appendix B document packages received by Enel X in advance of the May 16, 2022, execution deadline. No Appendix B document packages were executed after May 16, 2022, nor were any Respondents denied permission to participate within the RFP process due to inability to meet the Appendix B document package execution deadline (given that all interested parties executed required forms by May 16, 2022).

Criteria	Value
Total Number of Respondents Eligible to submit Bid Security and Docusign	11
Total Number of Respondents submitting Bid Security	7
Total Number of Repondents submitting executed Appendix B agreements	7

Figure 11: 2022 VGP Solicitation Summary of Tender Application Fees, Executed Appendix B Agreements

Of the 11 pre-qualified Respondents with pre-qualified projects that had submitted RFP application fees, four elected not to proceed forward within the 2022 VGP Solicitation and by-choice did not execute Appendix B agreements. The four Respondents that declined to execute Appendix B document packages noted multiple reasons for declining to move forward within the RFP process, from pricing constraints to project development uncertainty.

Pre-Bid Security Collection

All Respondents were required to post pre-bid credit in United States Dollars ("USD"). Respondents were only given the option to remit cash collateral to satisfy pre-bid credit requirements.

The pre-bid credit posting requirement for all Respondents was set at \$1,500 per MW proposed. As an example, a Respondent submitting multiple proposals with a cumulative offer capacity of 200 MW would be required to post \$300,000 in pre-bid security. Pre-bid credit posting amounts are unique to the projects being proposed – i.e. a Respondent proposing the same project via BTA and DAA did not need to post double the amount of pre-bid security.



All Qualified Respondents with Qualified Projects were required to post Pre-Bid Security credit posting cash deposits were detailed within the RFP document and posted on the Solicitation Website. Interest was not to be paid on any pre-bid credit provided.

Failure to provide a Pre-Bid cash deposit would have resulted in Respondent's disqualification from further participation within the RFP. Pre-bid credit for parties selected for provisional award is to be held through the execution of definitive agreements. Pre-bid credit for parties not selected for award will be returned following the conclusion of the Valid Proposal Duration (August 31, 2022).

All 7 of the Respondents that executed Appendix B Document packages continued forward in the 2022 VGP Solicitation and posted required pre-bid security.

No Respondents were denied permission to participate further within the RFP process due to inability to post required pre-bid security in a timely manner. Further, Respondents were able to make adjustments if-needed to pre-bid security in advance of pre-qualification determinations should to-be-offered projects change.

Final Pre-Qualification Statuses

A total of 7 Respondents were eligible to receive Stage 2 Notices to Proceed and permission to offer proposals within the Consumers Energy RFP. All 7 Respondents received Stage 2 Notices to Proceed and permissions to submit proposals in the Company-owned Sealed Bid Event Run on the Enel X Solicitation Platform on May 31, 2022.

Criteria	Value
Total Number of Respondents Receiving Stage 2 Notice to Proceed	7

Figure 12: 2022 Solar Solicitation Summary of Respondents Receiving Stage 2 Notices to Proceed

Within the Stage 2 Notice to Proceed status emails from Enel X, Respondents were provided with a summary of the pre-bid security they posted, a maximum allowed aggregate offer capacity, an Enel X Solicitation Platform username and password, and a detailed Enel X Solicitation Platform user guide (proposal submittal guide).

Proposal Submissions

Company-Owned Proposals

All final Company-owned proposals were required to be submitted through a sealed bid process in order to remain in consideration within the Consumers Energy 2022 VGP Solicitation. The BTA/DAA/PSA sealed event remained open from 9:00 AM EPT until 5:00 PM EPT on May 31, 2022. Within the Company-owned sealed event, Respondents were required to upload final pricing bid forms and any additional relevant proposal documents within the Solicitation Platform.

A total of 6 Respondents submitted Company-owned proposals for 3 unique BTA and 8 unique DAA projects within the sealed Company-owned proposal pricing event.



Preliminary Solicitation Summary

Following the sealed event, Enel X created a 2022 VGP Solicitation Summary containing the aggregate number of projects offered, the aggregate number of Respondents, and aggregate MW totals.

The following bulleted list and summary points detail key components of the summary:

- Total Number of Unique Respondents: 6
- Total Number of Unique Projects submitted for 2022 RFP: 11
 - Total Number of Projects to be Offered via BTA: 3
 - Total Number of Projects to be Offered via DAA: 8
- Total Amount of Capacity (MWac): 896

Conclusion of Solicitation Phase

Enel X affirms that all Respondents in receipt of Stage 2 Notices to Proceed, apart from Respondents withdrawing from the solicitation process voluntarily, were able to successfully submit proposals within the Enel X Solicitation Platform. No Respondents were denied the ability to submit proposals or otherwise limited in their ability to submit proposals, apart from self-derived constraints (posted bid security, application fees, etc.).

Enel X also affirms that throughout the Solicitation Phase, no detail was provided or shared with Consumers Energy containing any Respondent-identifying information that could create any selection bias.

Evaluation Phase

The Evaluation Phase of the Consumers Energy RFP process spanned from May 31, 2022, through June 16, 2022, with primary components of the Evaluation Phase encompassing the initial screening of submitted proposals and the preparation and delivery of blind final evaluation results to Consumers Energy.

Initial Screening for Eligibility

Given the level of detail provided within the Consumers Energy RFP materials regarding proposal/project requirements and the full slate of Respondent prerequisite participation requirements, Enel X observed that Respondent proposals were, for the most part, naturally 'self-screened' through the 2022 VGP Solicitation process. As highlighted by Respondent and project attrition seen through various RFP stages (Respondent Qualification Application submissions, Project Qualification Application submissions, Appendix B document set execution, pre-bid credit posting, etc.), numerous Respondents removed numerous projects from the RFP process that did not meet various requirements or had been deemed infeasible.

BTA Proposal Screening



Upon conducting its initial screening to determine proposal eligibility, Enel X determined that no submitted BTA proposals were ineligible.

DAA Proposal Screening

Upon conducting its initial screening to determine proposal eligibility, Enel X determined that no submitted BTA proposals were ineligible.

Requests for Clarification, Additional Proposal Details

Enel X issued multiple requests for clarification and/or additional proposal details from Respondents that submitted final proposals.

All requests for clarification and/or additional proposal details were related to proposal contents not including bid price (Total Build Transfer Pricing for BTA proposals or DAA Acquisition Pricing for DAA proposals). At no point were any Respondents allowed to change and/or modify their bid price.

Additionally, Respondents were not allowed to modify any proposal terms that would alter the conforming nature of their proposals. Respondents were not given any advantage or disadvantage as a result of the request for clarification process.

Blind Final Evaluation Results

During the Final Evaluation Results phase of the Consumers Energy RFP process, Enel X developed ranked shortlists of each eligible/valid PPA and Company-owned proposals utilizing BTA and DAA Economic Models developed by Consumers Energy.

Within the blind Evaluation Results ranking sheets, Enel X included an individual proposal line item for each valid proposal variant. As an example, if a Respondent submitted the same project and proposal format with an offered cost for a 20-year term and an offered cost for a 25-year term, each offered variant would be evaluated and each would receive its own proposal identifier and line item within the ranked list. Enel X would make note of proposals bearing mutually exclusive award consideration under such scenarios.

Enel X also summarized and included within each ranked shortlist details for eligible aggregate project proposals.

Through the conclusion of the Solicitation Phase and during both the Evaluation and Selection Phases, Respondents did not have any insight into the total number of Respondents that had submitted proposals into the RFP, the total number, quantity, or type of projects offered, or the ranking of their submitted proposals against others. Respondents were, however, aware of the method of which proposals would be evaluated.

Per Section 10.2 of the Consumers Energy RFP; proposals were to be evaluated based on projected costs, projected commodity value, non-price criteria. The economic evaluation consisted of first calculating the total projected cost of a proposal via the Economic Model corresponding to the proposed contract structure. Second, the projected value of the commodities provided by the proposed project was calculated via the Economic Model. The resulting cost and value metrics were used to calculate the Cost-to-Value Ratio for the



proposal. Lastly, the cost, value, and other non-price criteria were evaluated in the Scorecard (Appendix J). Eligible projects were then ranked on the appropriate COD-based blind shortlist based on their total scorecard points.

Enel X provided four COD-based blind shortlist ranking of proposals to the Company for review and selection. Consumers Energy made any provisional selections based on the blind ranking as soon as possible after the bid events. The Company selected winning proposals determined by those which scored the highest number of points given customer demand thresholds for COD timing and pricing.

Distribution of Blind Final Evaluation Results

After obtaining responses to the last remaining requests for clarification the Blind Evaluation Results file was finalized and circulated by Enel X to the Consumers Energy team on June 16, 2022. No Respondent-specific data was conveyed nor were any details provided that would reveal any Respondent-identifying data. Enel X also made note of any mutually exclusive proposal variants.

Evaluation Phase Conclusion

Enel X affirms that throughout the Evaluation Phase, no detail was provided or shared with Consumers Energy containing any Respondent-identifying information that could create any selection bias.

Selection Phase

The Selection Phase of the Consumers Energy RFP process primarily consisted of an independent, internal, review of the Final Evaluation Results conducted by Consumers Energy, which culminated in Consumer Energy's conveyance to Enel X of proposals selected from the Final Evaluation Results for preliminary provisional award.

Consumers Energy utilized the final version of the Proposal Rankings distributed by Enel X on June 16, 2022, to make its preliminary provisional award selections.

Company-owned Proposal Preliminary Section Methodology

As described in Section 10.2 of the Consumers Energy RFP, Consumers Energy sought to provisionally select Company-owned proposals for more capacity than it will ultimately execute definitive agreements for in an effort to ensure a timely, successful conclusion to the 2022 VGP Solicitation.

Consumers Energy Preliminary Provisional Award Selections

On June 17, 2022, Consumers Energy informed Enel X via email of the proposal(s) it had selected for preliminary provisional award. Within email notices to Respondents selected for preliminary provisional



awards, Respondents were reminded that selection for a “provisional award” does not mean that the Respondent is guaranteed a contract, as Consumers Energy may preliminarily award more capacity than it ultimately contracts for to expedite the negotiation and due diligence processes.

Enel X Reveal of Preliminary Provisional Award Blind Proposals

Also on June 17, 2022, Enel X provided Consumers Energy with details of the proposals it selected from the Final Evaluation Results, including the identities of submitting Respondents and associated projects.

Summary tables were provided via email to Consumers Energy on June 17, 2022 for Company-owned preliminary provisional award selections (marking the first time that Consumers Energy has been made privy to proposal details).

Enel X provided Consumers Energy with a cataloged inventory of all relevant proposal materials submitted by the Respondents associated with each selected proposal. Enel X provided such information by way of a secured file sharing site and redacted/withheld any information regarding other projects/proposals submitted by selected Respondents that are not being chosen for preliminary provisional award.

Enel X did not provide Consumers Energy with a complete catalog of all Respondent proposals, as Consumers Energy should remain effectively blind to the proposals not selected for preliminary provisional award (should secondary selections be made).

Preliminary Provisional Award Notices

On June 17, 2022, Enel X distributed preliminary provisional award status notices via email to each of the six Respondents that submitted proposals into the 2022 VGP Solicitation. The preliminary provisional award status notices for each Respondent contained a listing of the proposals they submitted and a notation regarding whether or not the corresponding proposal had been selected for a preliminary provisional award. Respondents were not able to see any proposal data associated with other Respondents, any detail regarding the ranking of their submitted proposals against selected proposals, or any details regarding number of proposals awarded or the detail of such.

Respondents were advised that, pursuant to Subsection 10.2 of the Consumers Energy RFP; Consumers Energy has made preliminary provisional award selections and will soon initiate a due diligence review of selected proposals and Respondents.

Included within the preliminary provisional award status notifications was language that affirmed that a Respondent's selection for a “provisional award” does not mean that the Respondent is guaranteed a contract with Consumers Energy. Furthermore, Consumers Energy's commencement of, and participation in, due diligence reviews and contract negotiations shall not be construed as a commitment to execute a contract with a Respondent. Only execution of a definitive agreement by both Consumers Energy and the Respondent on mutually acceptable terms will constitute a “winning proposal”. Additionally, Respondents not selected for



preliminary provisional awards were reminded that they must hold proposal terms, and pricing, valid until November 30, 2022 in the event Consumers Energy elects to pursue alternate proposals.

Enel X affirms that throughout the Selection Phase, no detail was provided or shared with Consumers Energy containing any Respondent-identifying information that could create any selection bias.

Independent Administrator Conclusions

Analysis of RFP Process

From the onset of the Consumers Energy RFP process, sharp focus was placed on ensuring the fairness and transparency of the RFP process – across all of its primary phases. Enel X was involved in all primary facets of the RFP process from the Preparation Phase onward and concludes that each primary facet of the RFP process was conducted and managed professionally, fairly, and without bias.

During the Preparation Phase, Enel X maintained and monitored its Independent Administrator email account for any general Respondent inquiries and/or feedback related to the upcoming solicitation and engaged with stakeholders as needed.

During the Solicitation Phase, a very wide net, via public advertisement and email notices, was cast to ensure a broad market canvassing of the RFP and open access to all RFP materials by all parties. Across a number of participation prerequisites, all Respondents were held to a uniform standard and provided support to ensure that they could meet such standards. Through the proposal submittal process, all Respondents submitted proposals through the same, central, location on the Enel X Solicitation Platform.

During the Evaluation Phase, Respondents were contacted to clarify proposal attributes and all Respondent proposals were evaluated and scored utilizing the same tools, which had been made available to all parties during the RFP process so that they could see exactly how their proposals would be assessed. During the development of blind Evaluation Results files, Consumers Energy was restricted from accessing any Respondent or project identifying data to ensure that selections could be made in a completely blind environment with no Respondent bias.

During the Selection Phase, Consumers Energy followed a formal process to convey its blind selections prior to receipt of details regarding selected proposals from Enel X. Enel X notified all Respondents of their preliminary provisional award statuses in a uniform fashion while providing clear detail and guidance regarding the nature of preliminary provisional awards.

Throughout the RFP process, Consumers Energy was effectively limited in its involvement and Enel X, as the Independent Administrator, was able to manage the RFP process without undue influence.

Attestations

Enel X attests that the following conditions were satisfied:

- The solicitation process was fair;



- The screening factors and weights were applied consistently and comparably to all bids;
- All reasonably available data and information necessary in order for a potential bidder to submit a bid was provided;
- The IA was provided with or given access to all data, information and models relevant to the solicitation process in order to permit full and timely scoring, testing and verification of assumptions, models, inputs, outputs, and results;
- The confidentiality claims and concerns between the IA and the Owner were resolved in a manner that preserved confidentiality as necessary, yet permitted dissemination and consideration of all information reasonably necessary for the bidding process to be conducted fairly and thoroughly; and
- Evaluations were performed consistent with criteria and methods stated under the solicitation protocol document.

Conflict of Interest Declarations

Enel X affirmed to all Respondents that it is a distinct and independent operating company from Enel Green Power (a renewable energy developer). Further, Enel X stated that it does not have a renewable energy development arm or ability/intent to participate within the Consumers Energy RFP process. While both separate Enel entities share part of a common name and holding company, there are no overlapping components between each entity and absolutely no preferential treatment(s), reciprocal or otherwise, given between Enel X and Enel Green Power.

Enel X, as the Independent Administrator, does not, did not, and will not share the sensitive information provided by Respondents with affiliates of Enel or other Enel Group companies. Further, Enel X has conducted and managed all facets of the Consumers Energy RFP process with the utmost transparency while ensuring that all Respondents are treated fairly, equitably, and without bias (real or perceived).

Enel X takes both our partners' and Respondents' confidentiality and the establishment of a level playing field for all Respondents seriously and has detailed protocols to ensure that all confidential information remains confidential and that all administered RFPs afford equal opportunity to every Respondent.

Enel X employees must observe an obligation of confidentiality and neutrality while performing Independent Administrator services, and may not disclose confidential information outside of Enel X (including employees of other companies of the Enel Group, respondents, other customers, etc.) or provide preferential treatment to any respondent. For this purpose, Enel X has established:

- Physical separation of databases belonging to different companies within the Enel group;
- Regulation of access to the Enel X Solicitation Website; and
- Signature of a specific confidentiality and neutrality declaration by each Enel X employee providing these services in order to define a general duty of confidentiality and neutrality in the performance of their activities.



To further enforce such positions, Enel X also offered all Respondents the opportunity to establish non-disclosure agreements (“NDAs”). Ultimately, only one Respondent established an NDA with Enel X to alleviate perceived concerns and no Respondents declined to participate due to any noted conflict of interest (be it with Enel X or other perceived Respondents).

Recommended RFP Process Improvements

Enel X recommends that Consumers Energy considers the following potential RFP and Solar Solicitation improvements and enhancement(s):

1. Work to incorporate changing market conditions into contract templates and continue to align with industry standards.
2. Seek targeted feedback from Respondents regarding Company-owned constructs and identify reasons for the decline in the number of parties willing to offer projects under these constructs.

Pre-existing recommendations stemming from the previous Solicitations:

1. Continue to evaluate ways in which Evaluation Models may be modified with additional fixed/default calculation/ranking mechanisms and qualitative considerations. Given the bespoke nature of long-term renewable contracts, PPAs, BTAs and DAAs, Enel X recommends that the Consumers Energy Evaluation Models be revised to further limit the amount of Respondent-provided costs, particularly those that are ultimately accounted for outside of proposal prices that are captured within the models, and account for qualitative development risks.
2. Establish locked, forced-response, proposal documents. Enel X recommends that proposal documents be revised and that select fields within proposal documents contain logic that would require Respondents to enter certain values in order to complete.

Line	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Formula	(b) * (0.72) * (f) * (b) * (1 - 0.72) * (e)								
	Year	Generation	Capacity	Total Revenue Requirements	Off-Peak Energy Value	On-Peak Energy Value	Total Value Energy	Capacity Value	Energy and Capacity Value ³
		MWh	ZRC-year	\$	\$/MWh	\$/MWh	\$	\$/ZRC-Year	
1	2026	587,460	116	39,636,355	27.92	33.19	18,629,881	76,125	27,451,978
2	2027	584,641	120	39,118,483	28.98	34.77	19,379,544	77,647	28,678,034
3	2028	583,415	120	34,468,794	29.09	35.48	19,654,860	79,200	29,139,320
4	2029	579,001	120	30,573,476	30.05	36.40	20,044,570	80,784	29,718,719
5	2030	576,181	120	27,344,868	30.80	37.40	20,486,575	82,400	30,354,207
6	2031	573,361	120	24,034,518	31.58	37.77	20,663,503	84,048	30,728,488
7	2032	572,105	120	21,449,804	32.34	38.47	21,025,024	85,729	31,291,309
8	2033	567,722	120	19,935,003	32.34	38.47	20,863,950	85,729	31,130,234
9	2034	564,902	120	17,756,222	32.34	38.47	20,760,321	85,729	31,026,606
10	2035	562,082	120	15,619,368	32.34	38.47	20,656,692	85,729	30,922,977
11	2036	560,794	120	41,410,786	32.34	38.47	20,609,373	85,729	30,875,658
12	2037	556,442	120	40,089,371	32.34	38.47	20,449,434	85,729	30,715,719
13	2038	553,623	120	38,903,904	32.34	38.47	20,345,805	85,729	30,612,090
14	2039	550,803	120	37,747,225	32.34	38.47	20,242,177	85,729	30,508,461
15	2040	549,484	120	36,598,325	32.34	38.47	20,193,722	85,729	30,460,006
16	2041	545,163	120	35,468,646	32.34	38.47	20,034,919	85,729	30,301,203
17	2042	542,343	120	34,352,531	32.34	38.47	19,931,290	85,729	30,197,574
18	2043	539,524	120	33,238,621	32.34	38.47	19,827,661	85,729	30,093,946
19	2044	538,174	120	32,126,962	32.34	38.47	19,778,071	85,729	30,044,355
20	2045	533,884	120	31,017,598	32.34	38.47	19,620,403	85,729	29,886,688
21	2046	531,064	120	29,910,575	32.34	38.47	19,516,774	85,729	29,783,059
22	2047	528,244	120	28,805,941	32.34	38.47	19,413,145	85,729	29,679,430
23	2048	526,864	120	27,703,743	32.34	38.47	19,362,419	85,729	29,628,704
24	2049	522,605	120	26,604,029	32.34	38.47	19,205,888	85,729	29,472,172
25	2050	519,785	120	25,506,850	32.34	38.47	19,102,259	85,729	29,368,543
26	2051	516,965	120	6,001,863	32.34	38.47	18,998,630	85,729	29,264,914
27	2052	515,554	120	6,136,336	32.34	38.47	18,946,768	85,729	29,213,053
28	2053	511,325	120	6,273,499	32.34	38.47	18,791,372	85,729	29,057,657
29	2054	508,506	120	6,413,404	32.34	38.47	18,687,743	85,729	28,954,028
30	2055	505,686	120	6,556,108	32.34	38.47	18,584,114	85,729	28,850,399
31	30 Yr Subtotal	16,407,702	NA	800,803,205	NA	NA	593,806,887	NA	897,409,531
32	2056	504,244	120	6,701,666	32.34	38.47	18,531,117	85,729	28,797,401
33	2057	500,046	120	6,850,135	32.34	38.47	18,376,856	85,729	28,643,141
34	2058	497,226	120	7,001,574	32.34	38.47	18,273,228	85,729	28,539,512
35	2059	494,407	120	7,156,041	32.34	38.47	18,169,599	85,729	28,435,883
36	2060	492,934	120	7,919,798	32.34	38.47	18,115,466	85,729	28,381,750
37	2061	79,006	4	(255,851)	32.34	38.47	2,903,502	85,729	3,234,672
38	Terminal Subtotal	2,567,863	NA	35,373,363	NA	NA	94,369,767	NA	146,032,360
39	Total (line 31+38)	18,975,564	NA	836,176,567	NA	NA	\$ 688,176,654	NA	1,043,441,891
40	30 Yr Average Solar Cost (\$/MWh)			48.81	30 Yr Average Solar Value (\$/MWh)			54.69	
41	30 Yr Average Solar Cost (\$/MW)			3,203,213	30 Yr Average Solar Value (\$/MW)			2,904,238	
42	35 Yr Average Solar Cost (\$/MWh)			44.07	35 Yr Average Solar Value (\$/MWh)			54.99	
43	35 Yr Average Solar Cost (\$/MW)			3,344,706	35 Yr Average Solar Value (\$/MW)			3,376,835	
44	30 Yr Levelized Cost of Energy (\$/MWh)			52.68	30 Yr Cost-to-Value Ratio ¹			89.2%	
45	35 Yr Levelized Cost of Energy (\$/MWh)			51.21	35 Yr Cost-to-Value Ratio ²			80.1%	

Notes:

- 1 Calculated as row 31 column (d) divided by row 31 column (i)
- 2 Calculated as row 39 column (d) divided by row 39 column (i)
- 3 On Peak time modeled at 72%

	2021 Transfer Price Schedule	2022 Transfer Price Schedule
2022	\$66.24	\$63.16
2023	\$65.21	\$62.97
2024	\$67.28	\$63.29
2025	\$68.76	\$64.59
2026	\$70.29	\$66.41
2027	\$72.10	\$68.00
2028	\$74.15	\$69.79
2029	\$76.24	\$71.82

Levelized Cost Calculation

	NGCC	notes
Capacity MW	400	MW
Loading Factor	71.00%	% of time the unit would be dispatched if available
Equivalent Avail.	87.00%	% of time the unit would be available for dispatch.
Capacity Factor	61.77%	(Loading Factor)(Equivalent Availability)
Heat Rate Btu/kWh	6719	BTU/kWh
Fuel Cost \$/MMBtu	\$4.14	\$ per Million BTU
Total Cost MM no AFUDC	\$539.039	MM
AFUDC	\$73.71	MM
Total Cost MM	\$612.745	MM
Fixed Charge Rate	11.59%	% used to calculate fixed cost recovery component
Fixed O&M \$/kW	\$14.62	\$/kW
Annual Lev. Fixed Cost MM	\$71.02	MM
Total Annual Lev. Fixed Cost MM	\$76.87	MM
Fixed Cost \$/kWh	0.0355	\$/kWh
Fuel Cost \$/kWh	0.0278	\$/kWh
Var. O&M \$/kWh	0.0031	\$/kWh
Total Var. Cost	0.0309	\$/kWh
Total Cost \$/kWh	0.06641	\$/kWh

Overnight Cost (MM) 508.8769471

AFUDC		Total Overnight Cost (MM) in 2022 \$	Inflation Rate	Cumulative	Finance Rate
Year	GCC	\$508.877	2%		6.56%
1	5%	25	25.95	25.95	1.70
2	30%	153	158.83	184.78	12.12
3	35%	178	189.01	373.79	24.52
4	30%	153	165.25	539.04	35.36
	1	509	539.039		73.71

Fixed price cost escalation: Fixed portion of levelized cost with 2025 as base year (2026=1)

Variable cost price escalation: Variable portion of levelized cost is multiplied by Nat Gas price forecast index, with 2026 as a base year (i.e. 2026=1).

FIXED Cost Component		\$35.51		VARIABLE		\$30.90					
Producer Price Index--Intermediate Materials		Producer Price Index--Industrial Commodities	Producer Price Index--Machinery & Equipment	Producer Price Index--Metals & Metal Products	Average	Producer Price Index--Utility Natural Gas	Employment Cost Index--Total Private Compensation	Weighted Average (Utility Nat Gas 70% ; Employment Cost 30%)		2021 Transfer Price Schedule	2022 Transfer Price Schedule
2022	-	-	-	-	33.57	-	-	29.59	2022	\$66.24	\$63.16
2023	-	-	-	-	33.87	-	-	29.10	2023	\$65.21	\$62.97
2024	-	-	-	-	34.23	-	-	29.05	2024	\$67.28	\$63.29
2025	-	-	-	-	34.83	-	-	29.76	2025	\$68.76	\$64.59
2026	-	-	-	-	35.51	-	-	30.90	2026	\$70.29	\$66.41
2027	-	-	-	-	36.13	-	-	31.87	2027	\$72.10	\$68.00
2028	-	-	-	-	36.76	-	-	33.03	2028	\$74.15	\$69.79
2029	-	-	-	-	37.41	-	-	34.42	2029	\$76.24	\$71.82

Case No.: U-21197
Exhibit No.: S-1
Witness: C. Matthews
Page No.: 4 of 4

Source: EIA Annual Energy Outlook 2022
[EIA Annual Energy Outlook 2022 Natural Gas Price \(Nominal\)](#)

Period (Used for Levelized Calculation)	Henry Hub Using 2022 Annual Energy Outlook (Nominal)	
2022	1	3.94
2023	2	3.64
2024	3	3.38
2025	4	3.27
2026	5	3.33
2027	6	3.53
2028	7	3.82
2029	8	4.05
2030	9	4.26
2031	10	4.47
2032	11	4.61
2033	12	4.80
2034	13	4.90
2035	14	5.01
2036	15	5.13
2037	16	5.27
2038	17	5.41
2039	18	5.54
2040	19	5.72
2041	20	5.85
Discount Rate		8.98%
Net Present Value Fuel		\$37.81
Levelized Fuel Price		\$4.14

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of the build transfer agreement)
for the Sunfish Solar 2 project as a)
Voluntary Green Pricing Program resource.)
_____)

Case No. U-21409

DIRECT TESTIMONY

OF

JUAN B. TATIS

ON BEHALF OF

CONSUMERS ENERGY COMPANY

April 2023

JUAN B. TATIS
DIRECT TESTIMONY

1 **Q. Please state your name and business address.**

2 A. My name is Juan B. Tatis, and my business address is 1945 West Parnall Road, Jackson,
3 Michigan 49201.

4 **Q. By whom are you employed?**

5 A. I am employed by Consumers Energy Company (“Consumers Energy” or the “Company”).

6 **Q. In what capacity are you employed?**

7 A. I am a Contracts Manager in the Clean Energy Project Development Department.

8 **QUALIFICATIONS**

9 **Q. Please describe your educational background.**

10 A. I received a JD in 1993 and a post-graduate degree in International Contracts Law in 1995
11 from Los Andes University (Colombia). I also obtained an MBA from Mount Saint Mary’s
12 University in Maryland in 2008.

13 **Q. Please describe your business and professional experience.**

14 A. I started my career in 1993 as a Sales Engineer in the Coal Sales Department of Carbocol
15 in Colombia. I was part of a team responsible for sales of 7M/MT of low-sulfur steam
16 coal. The role entailed commercial negotiations of short- and long-term supply agreements
17 with mainly European customers. I also worked in the Chartering Department negotiating
18 competitive freight rates as an important method of enhancing the Company’s delivered
19 price at customer’s ports.

20 From 1998 to 2012, I worked at Bechtel Corporation in various roles of increasing
21 responsibility on domestic and international projects in Power, Telecommunications, and
22 Oil and Gas industries. I contributed to timely and cost-efficient delivery of projects from
23 the Contracts Procurement Departments. In these roles, I was typically responsible for

JUAN B. TATIS
DIRECT TESTIMONY

Contract/Subcontract Formation and/or Contract/Subcontract Administration activities and processes pre and post contract award. I also held corporate roles in Contracts and Business Development and Proposals departments. My last position at Bechtel was Corporate Manager of Subcontracts, where I was responsible for monitoring and updating contract templates used worldwide in addition to developing and training teams on applicable commercial practices, processes, and procedures. In 2012, I joined Foster Wheeler where I assisted the company's Legal Department in supporting projects by negotiating key terms and conditions on major contracts and purchase orders.

In 2017, I joined Consumers Energy and became the Contracts Director supporting the Enterprise Project Management organization. This position supported major projects on their bid and contract negotiation processes, provided commercial and claims avoidance training to EPM Project Managers and Engineers, and supported claims and change request negotiations for both the Gas and Electric organizations. In 2021, I transitioned to support contracting and negotiation processes within the Clean Energy department.

Q. What are your present responsibilities and duties as Contracts Manager?

A. My responsibilities include the coordination of the Company's Due Diligence review of the short-listed bids provided by the Independent Administrator ("IA"). Following a Fatal Flaw and Due Diligence review, my responsibilities also include the negotiation of the shortlisted Company-owned Build Transfer Agreements ("BTAs") or Development Asset Acquisition Agreements ("DAAs").

JUAN B. TATIS
DIRECT TESTIMONY

PURPOSE OF DIRECT TESTIMONY

Q. What is the purpose of your direct testimony in this proceeding?

A. The purpose of my direct testimony is to support the request for approval of the BTA between Hecate Energy Sunfish Solar 2 LLC and the Company, dated February 24, 2023, which will result in a Company-owned solar generation project that was selected in the 2022 Voluntary Green Pricing (“VGP”) competitive solicitation process for acquiring new generation capacity. The Company seeks approval of the Sunfish II Solar 2 Energy Project BTA, consistent with the settlement agreement approved by the Commission in its September 9, 2021 Order in Case No. U-20984.

Q. Are you sponsoring any exhibits?

A. Yes. I am sponsoring the following exhibits:

Exhibit A-4 (JBT-1)	Redacted Build Transfer Agreement by and between Hecate Energy Sunfish Solar 2 LLC, and Consumers Energy Company, dated as February 24, 2023; and
---------------------	---

Exhibit A-5 (JBT-2)	Sunfish Solar 2 BTA Project Schedule.
---------------------	---------------------------------------

Q. Were these exhibits created by you or under your supervision?

A. Yes, I assisted in the BTA negotiations for the project

Q. Please detail how your direct testimony is related to the direct testimony of other Company witnesses?

A. Company witness Alexander E. Juhasz’s testimony provides (1) an overview of the 2022 VGP competitive solicitation process, (2) an explanation of how the Sunfish Solar 2 BTA was selected, and (3) an economic analysis of the Sunfish Solar 2 BTA and comparison to what was modeled in the 2021 Renewable Energy Plan amendment in Case No. U-20984. My testimony details the Company’s Fatal Flaw analysis, Due Diligence process, and

JUAN B. TATIS
DIRECT TESTIMONY

1 contract negotiations that ultimately resulted in the Sunfish Solar 2 BTA provided in
2 Exhibit A-4 (JBT-1).

3 **Q. What is the status of this competitive solicitation as it relates to Company-owned solar**
4 **resource projects?**

5 A. On February 24, 2023, Consumers Energy entered into a BTA with Hecate Energy Sunfish
6 Solar 2 LLC. Under the terms of the BTA, the developer is contractually obligated to
7 manage, develop, obtain necessary permits, engineer, procure, construct, and commission
8 the Sunfish II Solar Energy project to the Company's contractual specifications. Upon
9 issuance of a Notice to Proceed, and corresponding payment, Sunfish Solar 2 will transfer
10 to the Company the development assets associated with Sunfish II Solar, such as all
11 necessary real estate agreements, the interconnection agreements, and marketable title to
12 equipment and materials incorporated into the project through such date. The developer
13 will also begin to perform site preparation, procure transformers and solar panels, complete
14 engineering, construction, startup, and testing. Upon completion of these activities by the
15 developer, the Company will complete the purchase of the solar project and begin to
16 operate the facility.

17 The Commercial Operation Date ("COD") of the facility is expected to be on or
18 before December 31, 2025. This contract was a direct result of contract negotiations with
19 a non-affiliated third party whose conforming proposal was provided to the Company by
20 the IA. The 2022 VGP competitive solicitation process is described in more detail in
21 Company witness Juhasz's testimony.

JUAN B. TATIS
DIRECT TESTIMONY

1 **Q. Please provide an overview of the selected project.**

2 A. The Sunfish Solar 2 BTA is for a 309 MW solar facility located in Calhoun County,
3 Michigan. The project will require approximately 2,900 acres, for which land rights have
4 been secured. The project will be interconnected with the International Transmission
5 Company's 345 kV transmission system in accordance with the terms and conditions
6 outlined in the Midcontinent Independent System Operator, Inc. Generator Interconnect
7 Agreement.

8 **Q. What is the project schedule for the Sunfish Solar 2 BTA?**

9 A. Assuming all conditions precedent are satisfied, as agreed in the BTA, the Company will
10 be able to issue Notice to Proceed on the Sunfish II Solar project no later than March 1,
11 2024, to initiate detailed engineering, procurement of equipment and construction activities
12 that will support a COD of December 31, 2025, as seen in Exhibit A-5 (JBT-2).

13 **Q. Has the Commission previously approved other Company BTAs similar to the**
14 **Company's Sunfish Solar 2 BTA?**

15 A. Yes. The Commission approved the Company's BTA for the Mustang Mile Solar Project,
16 effective January 21, 2021, in its April 8, 2021 Order in Case No. U-20165. The
17 Commission also approved the Company's BTA for Washtenaw Solar, effective
18 October 4, 2021 in its November 18, 2021 Order in Case No. U-20165. Both BTAs were
19 approved as part of the Company's Integrated Resource Plan. The Sunfish Solar 2 BTA
20 has a similar structure to the approved BTA for the Mustang Mile Solar Project.

JUAN B. TATIS
DIRECT TESTIMONY

1 **Q. Please summarize the customer protections which the Company negotiated into the**
2 **Sunfish Solar 2 BTA?**

3 A. The Sunfish Solar 2 BTA contains several customer protections which are similar to the
4 Company's previously approved BTAs listed above. These protections include, but are
5 not limited to (1) liquidated damages to developer should there be delays on achieving
6 substantial completion, (2) a Milestone Progress Payment Schedule which ensures the
7 Company pays only upon completion of certain activities or milestones and simultaneously
8 allows the Company to take ownership of certain project assets as payments are made, and
9 (3) sharing the risk of purchase price adjustments resulting from cost increases due to
10 changes in import costs, changes in law causing delays or Force Majeure events. These
11 clauses are designed to balance risks and protect the Company.

12 **Q. Please explain the expected cost of the Sunfish Solar 2 BTA?**

13 A. The total installed capital cost of the Sunfish Solar 2 BTA project is estimated to be
14 \$453 million or \$1.466 million per MWac. The project is expected to achieve 100%
15 Production Tax Credit, and the project will support the Company by partially fulfilling its
16 VGP customer demand glide path. Company witness Juhasz provides testimony regarding
17 the all-in cost and value forecast for the Sunfish Solar 2 project.

18 **Q. Does this conclude your direct testimony?**

19 A. Yes.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of the build transfer agreement)
for the Sunfish Solar 2 project as a)
Voluntary Green Pricing Program resource.)
_____)

Case No. U-21409

EXHIBITS

OF

JUAN B. TATIS

ON BEHALF OF

CONSUMERS ENERGY COMPANY

April 2023

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Execution Copy

BUILD TRANSFER AGREEMENT

by and between

HECATE ENERGY SUNFISH SOLAR 2 LLC ("Seller")

and

CONSUMERS ENERGY COMPANY ("Buyer")


Dated as of February 24, 2023

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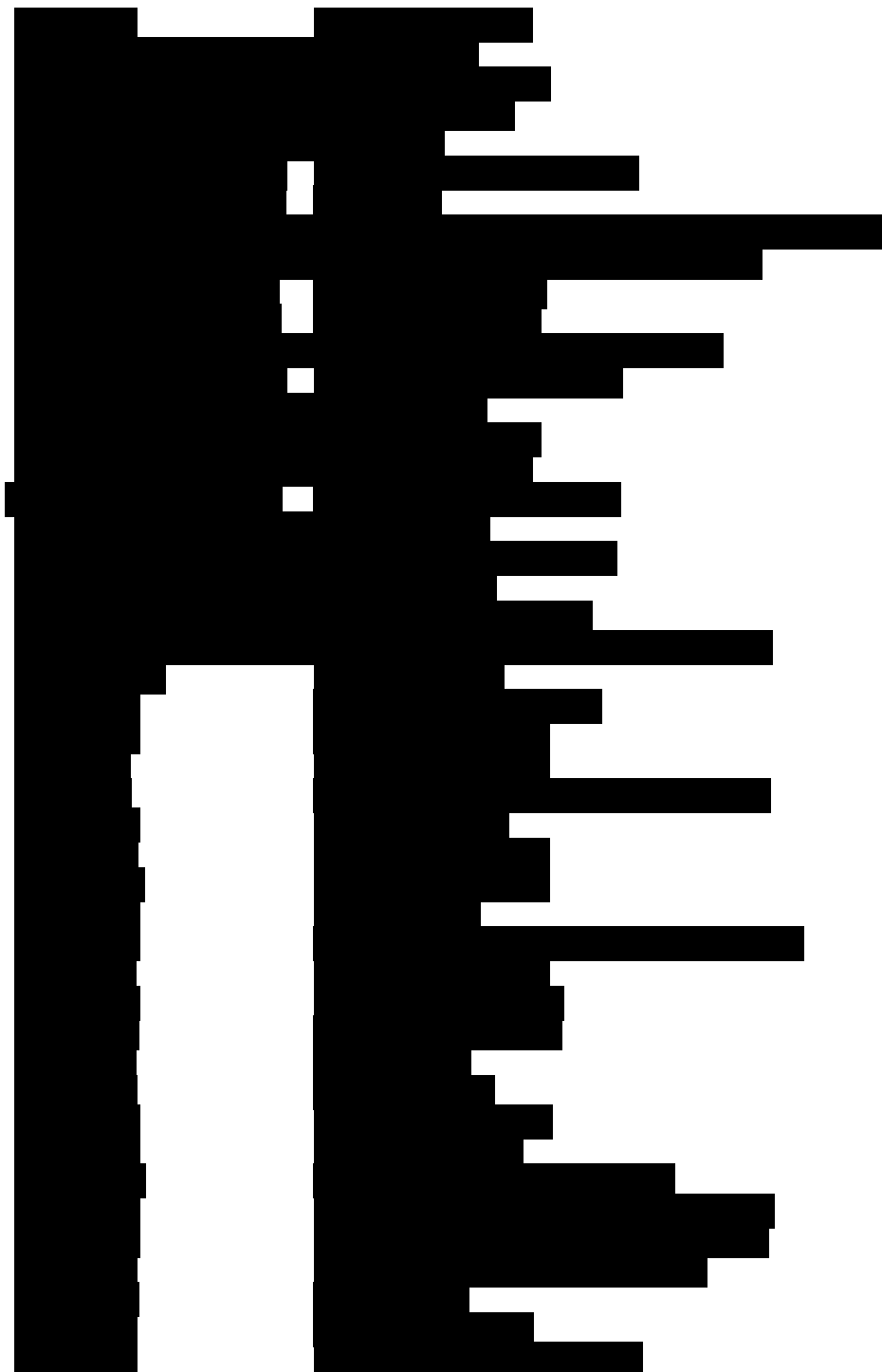
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BUILD TRANSFER AGREEMENT

This BUILD TRANSFER AGREEMENT (together with all exhibits appended hereto, "Agreement"), is made and entered into as of February 24, 2023 ("Effective Date"), by and between Consumers Energy Company, a Michigan corporation ("Buyer"), and Hecate Energy Sunfish Solar 2 LLC ("Seller"). Buyer and Seller shall each individually be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller has secured real property rights for and is developing an approximately 309 MWac (Nameplate Capacity) solar powered electric generating facility, located [REDACTED] (the "Project");

WHEREAS, Seller and its Affiliates possess the requisite expertise and resources to develop the Project for Buyer;

WHEREAS, subject to the Parties' respective obligations hereunder, Buyer desires that Seller, and Seller agrees (i) to procure the system equipment, (ii) to design, construct and install civil works, roads, and electrical works (including the Blocks and Substation) to deliver all of the electrical energy generated by the Project, (iv) to receive and install the system equipment to be procured, (v) and to perform the Work, all as more particularly set forth in this Agreement, on the terms and subject to the conditions of this Agreement; and

WHEREAS, Buyer desires that Seller transfer the Project to Buyer on the terms and subject to the conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated into this Agreement, and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I DOCUMENTS INCLUDED, DEFINITIONS AND CONSTRUCTION

1.1 Specific Definitions.

As used in this Agreement, the following terms shall have the meanings ascribed to them below:

"Access Road" or "Access Roads" shall mean the Project Site roads required in accordance with the Scope of Work for ingress and egress to Project facilities.

"Acquisition Proposal" shall mean any offer, proposal, inquiry or indication of interest from any third party relating to any transaction involving (i) any acquisition or purchase by any

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Person (other than Buyer or an Affiliate of Buyer) of any interest in Seller or the Project Assets; (ii) any merger, consolidation, business combination, or other similar transaction involving Seller or the Project Assets; (iii) any sale, lease, exchange, transfer, acquisition, assignment, option right, or disposition of the assets of Seller or the Project Assets; or (iv) any liquidation, dissolution, recapitalization or other significant corporate reorganization of Seller.

"Additional Solar Energy Agreements" shall have the meaning given to it in Section 3.1.4.

"Affiliate" of a specified Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" shall have the meaning given to it in the Preamble to this Agreement and further includes the documents referenced in this Agreement and all other documents pertaining to this Project that govern the Project, as the same may be modified, amended, or supplemented from time to time as permitted by this Agreement.

"ALTA Survey" shall mean an ALTA/NSPS survey, together with Items 1 (Substation portion of the Project Site only), 2, 3, 4, 5 (2-foot contours except 1-foot contours for the Substation portion of the Project Site), 6(a), 8, 11 (limited to the entire Substation portion of the Project Site and all other locations where improvements are or will be located), 21(a) (PA 132 of 1970 as amended for the Substation portion of the Project Site and as further required for Land Division Act approval [Act No. 288 of the Public Acts of 1967, as amended]), 13, 15 (Substation portion of the Project Site only), 16, and 18 of the Table A requirements, of the Project Site sufficient to issue the ALTA Title Policy, prepared in accordance with the 2021 ALTA/NSPS survey requirements including (i) showing the staked boundaries and specifying the legal description of the Substation, (ii) showing the staked boundaries of all Solar Energy Easements and specifying the legal description of all Solar Energy Easements, (iii) all exceptions to title listed in the Title Commitments, Pro Forma Title Policy, and ALTA Title Policy (as applicable based on the various stages of the title review process for the Project prior to NTP) or referencing such exception as not applicable; (iv) showing all Drain Agreements and Crossing Agreements for the Project, (v) certified by a Michigan licensed surveyor to Buyer and the Title Insurer, and (vi) dated as of a date satisfactory to Buyer and the Title Insurer.

"ALTA Title Policy" shall mean the owner's title insurance policy in an amount not to exceed the Purchase Price issued by the Title Insurer in the condition required and approved by Buyer in the Final Pro Forma Title Policy, prepared in accordance with all standards and industry practice, and without any exceptions, including any of the standard title policy exceptions, other than the Permitted Encumbrances, together with affirmative insurance for the Access Roads, Crossing Agreements and Drain Agreements benefitting the Project.

"Amendment to Option Agreement for Lease of Real Estate" shall have the meaning given to it in Section 3.1.4.

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"Anti-Circumvention Inquiry" means the petition filed with the U.S. Department of Commerce by Cassidy Levy Kent, counsel to Auxin Solar, on February 8, 2022, regarding Anti-Circumvention Inquiry, regarding antidumping ("AD") and countervailing duty ("CVD") (Case No.: A-570-979, C-570-980; (Anti-Circumvention Inquiry Concerning Malaysia, Thailand, Vietnam, and Cambodia); Total No. of Pages: 942; AD/CVD Operations, Office IV) and related investigations, proceedings, determinations and holdings.

"Anti-Circumvention Inquiry Costs" means any costs incurred in connection with the procurement of modules as a result of the Anti-Circumvention Inquiry, including any Taxes, tariffs and antidumping and countervailing duties, which costs may be reflected in an increased price to the modules or as an independent cost.

"Applicable Law" or "Applicable Laws" shall mean all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, Permits, directives, and requirements of all Governmental Authorities (including all regulations or other requirements of a Governmental Authority that have been formally promulgated in a rule making proceeding but, pending final Order, is a proposed or temporary form having force of law) having jurisdiction over a Person (as to that Person), this Agreement, the Project Site or the Project, as applicable. Without narrowing the broad definition but for purposes of greater certainty, shall include the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended; Qualified Agricultural Property requirements (MCL 211.1 et seq.) (including PA 261 of 2000, as amended); Farmland Development Rights (MCL 324.36101 et seq.); all Environmental Laws; FPA; PUHCA; and any zoning ordinance, zoning variance, Special Land Use Permit, setback, noise or other requirements applicable for execution of this Agreement.

"Applicable Permits" shall mean, at any point in time, any Permit that is necessary (including required by Applicable Law) at such time in light of the stage of engineering, acquisition, development, environmental, zoning, construction or operation of the Project to (i) engineer, acquire, construct, test, operate, maintain, repair, own and use the Project; (ii) sell electricity therefrom; or (iii) enter into any contract or to consummate any transaction contemplated thereby.

"As-Built Survey" shall mean the Final ALTA Survey updated to show any changes to the Project Site (such as Project Layout and Permitted Encumbrances) and all improvements as they are constructed or installed on the Project Site and dated by the surveyor after Final Completion in accordance with Section 3.1.5.10.

"Assignment of Crossing Agreements" shall have the meaning given to it in Section 6.1.1.1(3).

"Assignment of Drain Agreements" shall have the meaning given to it in Section 6.1.1.1(5).

"Assignment of Remaining Project Assets" shall have the meaning given to it in Section 6.1.2.

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"Assignment of Solar Energy Agreements" shall have the meaning given to it in Section 6.1.1.1(1).

"ASTM" shall mean ASTM International.

"BEA" shall have the meaning given to it in Section 3.4.1.

"Bill of Sale" shall have the meaning given to it in Section 6.1.2.

"Block" shall mean all Modules, DC wiring, Combiner Boxes or load break disconnects, grounding wires, and other items directly or indirectly electrically connected to the low DC side of a single Inverter (inclusive), and all racking, foundations, conduit, wiring, monitoring and other equipment electrically or mechanically attached to such items.

"Block Crossing Agreements" shall mean Crossing Agreements that pertain to the area around and including one or more Blocks, and do not solely relate to other Project facilities.

"Block Mechanical Completion" shall have the meaning given to it in Section 11.4.

"Block Mechanical Completion Certificate" shall mean the Milestone Completion Certificate for Block Mechanical Completion.

"Block Placed-In Service" shall have the meaning given to it in Section 11.5.

"Block Placed-In Service Certificate" shall mean the Milestone Completion Certificate for Block Placed-In Service.

"Body of the Agreement" shall mean this document without Exhibits, schedules, or other documents referred to therein, including the Project Documents.

"Bond Cost" has the meaning given to it in Section 9.2.3.

"Bonds" shall have the meaning given to it in Section 14.2.

"Books and Records" shall mean all books, files, papers, agreements, correspondence, databases, information systems, programs, software, documents, records, images, diagrams, drawings and the like, and any documentation thereof related to Seller, the Project, or any of the Project Assets, in whatever medium.

"BOS" shall mean balance of system.

"BOS Contract" shall mean the agreement between Seller and the BOS Contractor to engineer, procure and construct the improvements required by this Agreement, which agreement shall be substantially in the form mutually agreed upon by the Parties no later than sixty (60) days prior to NTP.

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"BOS Contractor" shall mean the primary civil and electrical Contractor who contracted with Seller pursuant to the BOS Contract to perform the primary civil and electrical Scope of Work of this Project.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which commercial banks are closed in the State of Michigan.

"Buyer" has the meaning given to it in the Preamble to this Agreement.

"Buyer Capacity Test Delay" means any of the items set forth on, and as provided in Exhibit G – Appendix A or any Buyer Delay that extends the Substantial Completion Deadline beyond November 30, 2025.

"Buyer Delay" shall mean any of the items set forth on, and as provided in, Exhibit O. For clarity, no exercise of Buyer's rights or rejection hereunder, or any exercise of Buyer's rights of inspection or observation or any exercise or use of Dispute resolution rights or procedures, in each case in accordance with the terms of this Agreement, shall be deemed on its own to be a Buyer Delay.

"Buyer Event of Default" has the meaning given to it in Section 18.4.

"Buyer Indemnitee" or "Buyer Indemnitees" has the meaning given to it in Section 15.1.

"Buyer's Authorized Officer" shall mean Buyer's officer who signed this Agreement or such officer's designee as designated in writing and delivered to Seller in accordance with the notice provisions in ARTICLE XXI.

"Buyer's Representative" has the meaning given to it in Section 4.2.3.

"Capacity Test" shall mean the Capacity Test described in Exhibit G – Appendix A.

"Capacity Test Completion" shall have the meaning given to it in Section 11.7.

"Capacity Test Completion Certificate" shall mean the Milestone Completion Certificate for Capacity Test Completion.

"Capacity Test Completion Deadline" means May 15, 2026, provided that such deadline shall be extended, day for day, for any Buyer Capacity Test Delay, Force Majeure, CIL Delay, Interconnection Delay and any days with insufficient irradiance to perform the Work, including commissioning, testing and any Performance Test.

"Change in Importation" means (i) any delay, investigation, seizure, withhold release order (including, but not limited to, the withhold release order on silica-based products produced by Hoshine Silicon Industry Co. Ltd. and its subsidiaries issued by U.S. Customs and Border Protection on June 24, 2021), or other measure implemented under the anti-forced labor provisions of Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) (collectively, "Anti-Forced Labor Actions"), (ii) the Uyghur Forced Labor Prevention Act (Public Law 117–78; 117th Congress;

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Dec. 23, 2021; H.R. 6256; 135 STAT. 1525) and any laws, rules, regulations, guidelines, comments, petitions, investigations, proceedings or actions in connection therewith, or (iii) the Anti-Circumvention Inquiry and any laws, rules, regulations, guidelines, comments, petitions, investigations, proceedings or actions in connection therewith; *provided, however*, that except as expressly set forth in this definition, the laws, rules, regulations, guidelines, comments, petitions, investigations, proceedings related to general shipping, transportation and importation costs will not constitute a Change in Importation.

"Change in Importation Costs" shall mean any increases in cost to the Equipment and Materials which directly result from a Change in Importation, including any Anti-Circumvention Inquiry Costs.

"CIL Delay" shall mean an actual, material delay in Seller's performance of the Work (i) which directly results from a Change in Law or (ii) which directly results from a Change in Importation.

"Change in Law" means the occurrence, after the Effective Date, of any of the following: (i) the adoption or taking effect of any Applicable Law, (ii) any change in any Applicable Law and (iii) any change in the interpretation and application of any Applicable Law by a Governmental Authority with jurisdiction over the change in interpretation and application.

"Change Order" or "Change Orders" is one (1) or more written orders executed and dated by Seller and Buyer's Authorized Officer on behalf of Buyer to make changes to (i) the Work, (ii) any element of the Project Schedule, or (iii) the Purchase Price, which effectively amends this Agreement.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations and Internal Revenue Service guidance promulgated thereunder.

"Combiner Box" means the 1,500 volt DC combiner cabinet containing fusing, non-load break disconnects, and current monitoring equipment.

"Commissioning Plan" shall mean the commissioning procedures required to be completed for issuance of a Block Placed-In Service Certificate, as set forth in the Scope of Work.

"Commissioning Spare Parts" shall have the meaning given to it in Section 6.5.1.

"Conditions Precedent" shall mean, in any context used in this Agreement, the conditions which must be satisfied or waived by a Party before such Party shall have the legal obligation to proceed with the matter referenced in such context, such as conditions for Buyer to issue, or Seller to accept, the NTP.

"Confidential Information" shall mean any data or information, whether written or oral, clearly marked or orally identified, before or during such disclosure, as Proprietary or "Confidential" or reasonably understood as confidential in nature based on the circumstances that the Parties or their respective Affiliates are providing each other for purposes of discussing the

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Project. Confidential Information expressly excludes such information that is already known to the receiving Party at the time that it is disclosed to such Party, or which: (i) becomes publicly known through no wrongful act of the Receiving Party; (ii) is rightfully received from a third Party without restriction on disclosure and without breach of this Agreement; (iii) is independently developed by the Receiving Party; (iv) is approved for release by written authorization of the Disclosing Party; (v) has been furnished by the Disclosing Party to a third party without similar restriction on disclosure; or (vi) is required to be disclosed pursuant to Applicable Laws or other Requirements, Governmental Authorities' requirement or request, or court order, so long as the Party required to disclose the information provides the other Party with prior written notice of any required disclosure pursuant to such Applicable Laws or other Requirements, Governmental Authorities requirement or request, or court order.

"Consents" shall have the meaning given to it in Section 12.7.

"Construction" means construction as such term is used in Code Sections 45(b)(7) and (8) and 48(a)(10) and (11) and any PWA Guidance.

"Construction Contracts" shall mean any contract, work order, or purchase agreement (including the BOS Contract, Subcontracts, Module Supply Agreement, Inverter Supply Agreement and Transformer Supply Agreement) for the engineering, procurement, installation, and/or construction of the Project, including the Equipment and Materials, or other performance of the Project by and between Seller and the applicable Contractor, or by and between Contractors of any tier, which shall be in writing, in the form(s) required by this Agreement, and otherwise comply with the obligations of Seller under this Agreement.

"Contractors" shall mean, collectively, the BOS Contractor and Subcontractors at all tiers that are party to any Construction Contracts and/or responsible for performing any Work, including the Transformer Vendor Inverter Supplier and Module Supplier; and "Contractor" shall mean each of the Contractors.

"Credit Rating" shall mean with respect to any entity, as of any Business Day, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third-party enhancement) by S&P or Moody's; or if such entity does not have an unsecured, senior long-term debt rating, then the rating then assigned to such entity as its issuer ratings by S&P or Moody's.

"Crossing Agreements" shall mean all crossing agreements, easements and other approvals and consents (other than Drain Agreements) to the extent that any portion of the Project facilities must enter on, through, over, across, or under any road, railroad or other right-of-way (including easements, leases, or any other interest, right, or permission that is lesser than fee simple), or other facilities or structures.

"Curative Documents" shall have the meaning given to it in Section 3.1.1.3.

"Cure Provisions" means, in the case of the (a) Investment Tax Credit, Sections 48(a)(10)(B) and 45(b)(8)(D)(i)(II) (including any increase as set forth in (iii), as applicable) of

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the Code (including amounts payable under rules similar to the rules of such Sections of the Code pursuant to Sections 48E(d)(3) and 48E(d)(4) of the Code), and (b) Production Tax Credit, Sections 45(b)(7)(B) and 45(b)(8)(D)(i)(II) (including any increase as set forth in (iii), as applicable) of the Code (including amounts payable under rules similar to the rules of such Sections of the Code pursuant to Sections 45Y(g)(9) and 45Y(g)(10) of the Code).

"Damages" shall mean and include any Loss, damage, injury, decline in value, lost opportunity, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including any attorneys' fee, accounting fee, expert fee or advisory fee), charge, cost (including any cost of investigation), or expense of any nature.

"Debt" of any Person at any date shall mean, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, (iv) all monetary liabilities of such Person under contracts, agreements, or other arrangements, (v) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (vi) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (vii) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, and (viii) all obligations of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty.

"Defect Warranty Period" shall have the meaning given to it in Section 17.3.

"Defects or Deficiencies" shall mean any design, engineering, Equipment and Materials, system, component, workmanship, materials or other Work that: (i) does not conform to the Scope of Work; (ii) does not conform to Applicable Laws or Applicable Permits, in each case in effect as of Substantial Completion; (iii) is of improper or inferior workmanship or material; or (iv) does not conform to Prudent Industry Practices.

"Delay LDs" shall have the meaning given to it in Section 7.6.1.

"Deliverables" shall be the written documents and other information to be furnished to Buyer as specified in ARTICLE VI and any other documents described in this Agreement as deliverable to Buyer including in the Technical Specifications that are to be furnished to Buyer.

"Design Documents" shall mean all drawings and specifications for the Work, including comprehensive drawings, manuals, warranties, and technical specifications setting forth in detail the requirements for the construction of the Project, further including those listed in Exhibit A-Appendix B, provided or created by Seller (or its Contractors) using a licensed engineer/design professional.

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"Deviations Schedule" shall mean the document attached to this Agreement as Exhibit E that provides a Buyer a summary of the variations in the Solar Energy Easements for the Project Site, including when there is no Solar Energy Easement.

"Direct Payments" shall have the meaning given to it in Section 9.8.

"Disclosing Party" shall have the meaning given to it in Section 24.3.1.

"Disclosure Schedule" means an Exhibit disclosing matters related to Seller's representations and warranties contained in ARTICLE XII.

"Dispute" shall have the meaning given to it in Section 23.1.

"Diverse Suppliers" shall have the meaning given to it in Section 2.4.13.

"Dollar" or "\$" shall mean United States dollars.

"Domestic Content Bonus Credit" means the increased amount of credit available for facilities meeting the requirements set forth in Section 45(b)(9) or Section 48(a)(12) of the Code and any Domestic Content Bonus Guidance.

"Domestic Content Bonus Guidance" means any guidance issued by the Secretary of the U.S. Department of the Treasury (including any guidance issued by the Internal Revenue Service) related to Section 45(b)(9) or 48(a)(12) of the Code, as applicable.

"Domestic Content Bonus Qualification Certificate" is defined in Section 9.2.8.

"Domestic Content Bonus Requirements" means the requirements under Section 48(a)(12)(B) of the Code and any Domestic Content Bonus Guidance.

"Domestic Content Tax Contest" is defined in Section 23.10.2.

"Drain Agreements" shall mean all crossing agreements, easements (including any agreements and easements required by the applicable county drain commissioner from the underlying fee owner of such land in connection with the Project facilities) and other approvals and consents to the extent that any portion of the Project must enter on, through, over, across, or under any county drains.

"Effective Date" shall have the meaning given to it in the introductory paragraph of this Agreement.

"EGLE" means the Michigan Department of Environment, Great Lakes, and Energy.

"Environment" shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, air (including indoor air), plant and animal life, cultural and historic resources, and any other environmental medium or natural resource related to the Project.

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"Environmental Attributes" shall mean any and all credits (including any tax credits or grants in lieu of tax credits), benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the generation, purchase, sale or use of renewable electric energy generated by the Project or the use of renewable electric generation technologies by the Project.

"Environmental Claim" shall mean any judicial or administrative action or proceeding, and any other request, demand, notice, investigation or order imposed upon or asserted against Buyer, Seller or the Project by a Governmental Authority or any other person, arising from or in any way related to any of the following: (i) the Release or Threat of Release of any Hazardous Materials affecting the Environment, the Project Site or the Project or any portion thereof; or (ii) any actual or alleged failure to comply with any Environmental Laws relating to the Project Site or the Project.

"Environmental Laws" shall mean any legal requirement or Applicable Law pertaining to the quality of, protection of, impairment of, remediation of, or damage to the Environment, including the following laws: the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Federal Water Pollution Control Act/Clean Water Act, 33 U.S.C. § 1251, et seq.; the Resource, Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Rivers and Harbors Act, 33 U.S.C. § 401, et seq.; the Transportation Safety Act of 1974, 49 U.S.C. § 1801, et seq.; and the Endangered Species Act, 16 U.S.C. § 1531, et seq.; the National Environmental Policy Act, 42 USC § 4321, et seq.; the National Historic Preservation Act, 16 U.S.C. § 470, et seq.; Federal Land Policy and Management Act, 43 U.S.C. § 1701, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668, et seq.; the Migratory Bird Treaty Act, 16 U.S.C. § 703, et seq.; the Michigan Natural Resources and Environmental Protection Act, MCL. 324.101, et seq. (including any future change in judicial or administrative decisions and rules and regulations interpreting, implementing, or applying any such Environmental Laws).

"Environmental Permits" shall mean any Permit or other authorization required by any Environmental Laws.

"Environmental Reports and Studies" shall have the meaning given to it in Section 3.4.

"Equipment and Materials" shall mean all materials, supplies, apparatus, devices, machinery, equipment, parts, special tools, components, construction utilities, instruments appliances, Commissioning Spare Parts, and appurtenances thereto, including the Modules and Substation, and that are (i) required for the design, construction, or operation of the Project in accordance with Prudent Industry Standards; or (ii) described in, required by, reasonably inferable from or incidental to the Scope of Work; and, in each case, which are intended to, or actually do, form a permanent part of the Project.

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"Estoppel Certificate" shall have the meaning given to it in Section 5.2.1.1.

"Exhibit" and "Exhibits" shall have the meaning given to it in Section 1.2.1.

"FAA" shall mean the Federal Aviation Administration and its successors.

"FERC" shall mean the Federal Energy Regulatory Commission and its successors.

"Final ALTA Survey" shall have the meaning given to it in Section 3.1.5.6(3).

"Final Completion" shall have the meaning given to it in Section 11.9.

"Final Completion Certificate" shall mean the Milestone Completion Certificate for Final Completion.

"Final Determination" means the earliest to occur of (a) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final after all allowable appeals (other than appeals to the United States Supreme Court) by either party to the action have been exhausted or the time for filing such appeals has expired; provided that Seller agrees to pay any assessment due to the appropriate Governmental Authority prior to Buyer or Seller pursuing litigation in any court other than the U.S. Tax Court; (b) the date on which the IRS or the U.S. Department of Treasury, as applicable, has entered into a binding agreement with the Buyer in accordance with this Agreement with respect to such issue or on which the IRS or the U.S. Department of Treasury, as applicable, has reached a final administrative determination with respect to such issue which, whether by law or agreement, is not subject to appeal (or the time for appeal has expired); (c) the date on which the time for instituting a claim for refund has expired, or if a claim was filed, the time for instituting suit with respect thereto has expired; or (d) the date on which counsel for the Buyer and the Seller collectively determine that there is no reasonable likelihood of successfully contesting the applicable tax claim.

"Final Payment" shall have the meaning given to it in Section 9.3.7.1.

"Final Pro Forma Title Policy" shall have the meaning given to it in Section 3.1.5.6(3).

"Final Seller's Invoice" shall have the meaning given to it in Section 9.3.7.1.

"First Batch of Solar Energy Agreements" shall have the meaning given to it in Section 3.1.4.

"Force Majeure" shall have the meaning given to it in Section 19.2 provided that the Party who claims Force Majeure has complied with the terms of ARTICLE XIX.

"FPA" shall mean the Federal Power Act, as amended.

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"Full Conditional Waiver" shall mean the written statement, as will be modified if the Construction Lien Act changes to comply with any applicable requirements, substantially in the form attached as Exhibit K, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.4, 9.3.2.5 and 9.3.7.2) each of the Contractors) conditionally waives and releases all Seller Liens with respect to the Work provided the payment set forth in the written statement is received by such Person.

"Full Unconditional Waiver" shall mean the written statement, as will be modified if the Construction Lien Act changes to comply with any applicable requirements, substantially in the form attached as Exhibit K, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.4, 9.3.2.5 and 9.3.7.2) each of the Contractors) unconditionally waives and releases all Seller Liens with respect to the Work.

"Functional Test" shall mean the Functional Test described in Exhibit G-Appendix B.

"Generator Tie Line" shall mean the 345kV transmission line that connects the Substation to the Point of Interconnection, if applicable.

"Global Title Checklist" shall mean the document attached to this Agreement as Exhibit H-Appendix A that provides Buyer a summary of the status of various title (including Curative Documents) and survey activities under way or to be performed by Seller to achieve the conditions and obligations in ARTICLE III of this Agreement.

"Governmental Authority" and "Governmental Authorities" shall mean any (i) national, state, county, municipal, tribal or other local government (whether domestic or foreign) and any political subdivision thereof; (ii) any court or administrative tribunal; (iii) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction (including any zoning authority, FERC, MPSC, or any comparable authority); (iv) any non-governmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction (including the Transmission Owner); or (v) any arbitrator with authority to bind a Party at law or otherwise.

"GSU Transformer" shall mean the Substation Step Up Transformer for stepping up collector line voltage (34.5kV) to transmission voltage (345kV).

"Guaranteed Plant Capacity" means a Plant Capacity of 98% or better of the [REDACTED] MWac at the Point of Interconnection pursuant to a Capacity Test, stated in MWac.

"Hazardous Materials" shall mean any substances, pollutants, contaminants, wastes or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive material, hazardous wastes, toxic substances, asbestos or any materials containing asbestos, any perfluoroalkyl, polyfluoroalkyl or other similar substances, urea formaldehyde or polychlorinated biphenyls) designated, regulated or defined under or with respect to which any requirement or Liability may be imposed pursuant to any Environmental Laws.

"Independent Accountant" shall have the meaning given to it in Section 9.9.3.

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"Independent Engineer" shall mean a nationally or regionally recognized engineering firm, mutually acceptable to and engaged jointly by the Parties and not an Affiliate of either Party, which engineering firm may be replaced from time to time by mutual agreement of the Parties.

"Infrastructure Completion" shall have the meaning given to it in Section 11.5.

"Infrastructure Completion Certificate" shall mean the Milestone Completion Certificate for Infrastructure Completion.

"Infrastructure Facilities" shall mean the Inverters and electrical cable, foundations, Access Roads, grounding grid, electrical switchgear, transformers, Substation, Generator Tie Line, if applicable, and other plant facilities described in the Technical Specifications.

"Insurance" shall have the meaning given to it in Section 14.1.

"Intellectual Property" shall mean (i) United States, international, and non-United States patents and patent applications, (ii) registered and unregistered trademarks and service marks, including the goodwill associated therewith, (iii) registered and unregistered copyrights, and (iv) confidential and proprietary information, including trade secrets and know-how.

"Intellectual Property Claim" shall mean a claim or legal action for actual or alleged unauthorized disclosure, use, infringement, or misappropriation of any license, trade secret, patent, copyright, trademark, proprietary information, service mark, or other intellectual property ownership right arising from Seller's performance (or that of its Contractors or Affiliates) under this Agreement that: (i) concerns the Project or other services or equipment provided by Seller, any of its Affiliates, or any Contractor under this Agreement; (ii) is based upon or arises out of the performance of the Work by Seller, any of its Affiliates, or any Contractor, or the use or provision of any tools or other implements of construction by Seller, any of its Affiliates, or any Contractor; or (iii) is based upon or arises out of the design, engineering or construction of any item by Seller or any of its Affiliates or Contractors under this Agreement, the use of any item according to directions embodied in Seller's final process design, or any revision thereof, prepared or approved by Seller, or the sale or other disposition of any such item.

"Interconnection Agreement" shall mean the Generator Interconnection Agreement (GIA), [REDACTED], by and between Seller, Transmission Owner and the Transmission Provider.

"Interconnection Delay" shall mean a delay in back feed under the Interconnection Agreement beyond August 31, 2025.

"Interconnection Facilities" shall mean the facilities that are required to be constructed by or on behalf of the Transmission Owner to allow the Project to interconnect with the Transmission Owner's transmission facilities at the Point of Interconnection.

"Inverter" shall mean an electrical device that is part of a Block, as defined above, that converts DC energy from the Modules into AC energy, using maximum power point tracking, that

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can then be transformed to provide energy to the AC electrical collection system. The Inverter is further described in the Inverter Supply Agreement.

"Inverter Supplier" shall mean a Contractor who is a Buyer-approved inverter supplier listed in Exhibit A – Appendix B1, or who is otherwise approved by Buyer in writing.

"Inverter Supply Agreement" shall mean the supply agreement to be executed by and between the Inverter Supplier and Seller for the Inverters substantially in the form attached hereto as Exhibit AG.

"Investment Tax Credit" shall mean the 30% renewable energy investment tax credit provided for in 26 USC § 48.

"IRS" means the Internal Revenue Service.

"Job Book" means a manual prepared by Seller containing all Contractors (including the BOS Contractor and Subcontractors), engineering, design, purchasing and all information relating to the Work, including the Job Book for the Blocks and other Work and the other information described in Exhibit AK.

"Key Personnel" shall have the meaning set forth in Section 2.7.2.

"Labor" shall have the meaning set forth in Section 2.7.

"Labor Dispute" shall mean all work stoppages, slowdowns, strikes, disputes, disruptions, boycotts, walkouts, and other labor difficulties.

"LD Cap" shall mean an amount equal to [REDACTED].

"Lender's Certificate" shall have the meaning set forth in Section 3.2.3.

"Letter of Credit" shall mean the irrevocable commitment from a bank that meets the requirements of Section 6.14, and otherwise that conforms to the applicable requirements in Section 6.14.

"Liabilities" shall mean, with respect to a Person, any and all Debts, liabilities and obligations, of any kind whatsoever, whether absolute, accrued, contingent, fixed, known or unknown, or whether due or to become due.

"Lien" shall mean any mortgage, deed of trust, lien (choate or inchoate), Seller Lien, pledge, charge, security interest, assessment, reservation, absolute assignment, collateral assignment, hypothecation, option, purchase right, defect in title, encroachment, easement, reservation of right, or other burden, or encumbrance of any kind, whether arising by contract or under any Applicable Law and whether or not filed, recorded or otherwise perfected or effective under any Applicable Law, or any preference, priority or preferential arrangement of any kind or

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nature whatsoever including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

"Losses" shall mean any and all losses, Liabilities, claims, Damages (including any governmental penalty, or punitive, Delay LDs, Plant Capacity Buydown, Plant Capacity LDs or similar damages), Environmental Claims, deficiencies, diminution in value, interest, costs and expenses (including all attorneys' fees and other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding commenced incident to the enforcement of this Agreement.

"Major Equipment" shall mean modules, inverters, racking, transformers, and the SCADA system.

"Major Equipment Installation" shall mean the permanent installation of the Major Equipment.

"Material Project Contract" shall mean each Project Contract with [REDACTED] and each of the following: the BOS Contract, Module Supply Agreement, Inverter Supply Agreement, the Transformer Supply Agreement and the Project's cable supply agreement.

"Memorandum of Option for Solar Energy Easement" shall mean the Memorandum of Option Agreement for Solar Energy Easement in substantially the form of Exhibit H – Appendix B duly executed by Seller and the landowner, each recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Seller's option to acquire the applicable Solar Energy Easement.

"Memorandum of Option for Lease" shall mean the Memorandum of Option Agreement for Lease in substantially the form of Exhibit H – Appendix I duly executed by Seller and the landowner, each recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Seller's option to acquire the applicable Lease Agreement.

"Memorandum of Option Agreement for Right of Way Easement Agreement" shall mean the Memorandum of Option Agreement for Right of Way Easement Agreement in substantially the form of Exhibit H – Appendix M duly executed by Seller and the landowner, each recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Seller's option to acquire the applicable Right of Way Easement Agreement.

"Memorandum of Solar Energy Easement" shall mean the Memorandum of Easement for each of the Solar Energy Easements in substantially the form attached to the Option Agreement for Solar Energy Easement executed by Seller and the landowner, each recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of the applicable Solar Energy Easement.

"Michigan Content" shall mean Michigan Equipment and Materials and/or Michigan Labor, as applicable.

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"Michigan Equipment and Materials" shall mean the cost to Buyer under this Agreement of all Equipment and Materials manufactured or assembled in the State of Michigan as incorporated into the Work.

"Michigan Equipment, Materials, and Labor Information" shall have the meaning given to it in Section 9.3.2.2.

"Michigan Labor" shall mean the number of labor hours attributed to the construction at the Project Site performed by residents of the State of Michigan.

"Milestone" shall mean each of the following: (i) Block Mechanical Completion, (ii) Substation Completion, (iii) Infrastructure Completion, (iv) Block Placed-In Service, (v) Substantial Completion, (vi) Capacity Test Completion; (vii) Final Completion and (viii) Reclamation and Revegetation Completion.

"Milestone Completion Certificate" shall mean a certificate, substantially in the form of Exhibit N, as applicable setting forth the Milestone to which the Milestone Completion Certificate relates, and setting forth in reasonable detail the basis on which Seller believes that such Milestone has been achieved, and including any supporting materials, documents and calculations, and the results of all testing, in each case to the extent reasonably necessary to support that such Milestone has been achieved and which shall include a punch list for such Milestone (and in the case of Substantial Completion, the Punch List).

"Milestone Date" shall mean a required, critical path date by which the completion of a specific action by Seller is achieved/realized for a Milestone as set forth on the Project Schedule.

"Minimum Credit Rating" shall mean a Person having a senior unsecured credit rating of at least (x) Baa2 (with stable (or better) outlook) from Moody's and (y) BBB (with stable (or better) outlook) from Standard & Poor's or Fitch.

"Minimum Plant Capacity" means a Plant Capacity of 96% or more of the [REDACTED] at the Point of Interconnection pursuant to a Capacity Test.

"MIOSHA" shall have the meaning given to it in Section 2.4.6.

"Module" or "Modules" means the photovoltaic solar modules to be installed on the Project Site as part of the Project, as further described in the Module Supply Agreement.

"Module Supplier" shall mean a Contractor who is a Buyer-approved module supplier listed in Exhibit A – Appendix B1 hereto or who is otherwise approved by Buyer in writing.

"Module Supply Agreement" shall mean the Supply Contracts by and between Seller and the Module Supplier for the supply of modules for the Project, including the Contract for Sale of Modules substantially in the form mutually agreed upon by the Parties prior to procurement of the modules. For clarity, the Parties agree that the pass through of costs of the type described in the

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definition of "Change in Importation Costs" from Module Supplier to Seller, or any amounts to be paid by Seller, in the Module Supply Agreement is not a provision that is adverse to Buyer and shall not be a basis on which Buyer objects to the form of Module Supply Agreement; provided that, for clarity, (i) in no event shall Buyer be responsible to pay any amounts beyond the Purchase Price as provided in this Agreement, and (ii) any such Change in Importation Costs from Module Supplier to Seller shall be considered part of the Total Allocable Cost Increases and thus subject to cost sharing under Section 9.7.2.1 and the Total Purchase Price Adjustment Cap pursuant to Section 9.7.2.

"Monthly Progress Report" shall have the meaning given to it in Section 7.7.1.

"Moody's" shall mean Moody's Investors Services, Inc.

"MPSC" shall mean the Michigan Public Service Commission.

"MPSC Approval" shall mean the approval obtained in accordance with the process set forth in Section 4.3.

"MW" shall mean megawatts.

"Nameplate Capacity" shall have the meaning given to it in the Recitals to this Agreement.

"Non-Block Crossing Agreements" shall mean Crossing Agreements that are not Block Crossing Agreements.

"NTP" shall mean the Notice to Proceed, in substantially the form attached as Exhibit P signed by Buyer and authorizing Seller to commence its performance under this Agreement of the engineering Work relating to the Project and thereafter prosecuting the Work to completion as required by this Agreement.

"NTP Closing" shall have the meaning given to it in Section 6.1.1.

"NTP Deadline" shall mean [REDACTED]

"O&M Manual" shall mean the Vendor Manual, SCADA Manual, drawings that will identify all equipment, Seller's and the Contractors' recommended list of Spare Parts, all safety information and any precautionary measures therefor. The O&M Manual will also include a list of recommended and priced Spare Parts, all Contractors' operating and maintenance procedures, specifications, and requirements for the Equipment and Materials and will include all safety information and any precautionary measures therefor and all other material procedures, specifications, and requirements to start up, operate, shut down, and maintain the Project and its components.

"Obtained Permits" shall mean all Applicable Permits obtained as of the Effective Date in connection with the Project.

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"Operational Scope of Responsibilities Matrix During Construction and Commissioning" shall mean the division of Work activities set forth on Exhibit M to be performed, or caused to be performed, by Buyer or Seller, as set forth therein.

"Operations Date" shall mean the date that Buyer declares as the commercial operations commencement date for the Project under the Solar Energy Easements.

"Option Agreement for Lease of Real Estate" shall have the meaning given to it in Section 3.1.4.

"Option Agreement for Right of Way Easement Form" shall have the meaning given to it in Section 3.1.4.

"Option Agreement for Solar Energy Easement" shall have the meaning given to it in Section 3.1.4.

"Order" shall mean any order, writ, injunction, judgment, decree, ruling, assessment, settlement, determination, or arbitration award of any Governmental Authority or arbitrator.

"Organizational Documents" means the articles or certificate of incorporation and bylaws of a corporation or the equivalent constitutive documents of Seller or Buyer, as applicable, together with a certificate of good standing issued by the State of Seller's or Buyer's incorporation, as applicable, and the State of Michigan.

"OSHA" shall have the meaning given to it in Section 2.4.6.

"Padmount Transformer" shall mean the transformer located next to the Inverter to step up the collector line voltage to 345kV.

"Parent Guarantor" shall mean the Person, if any, that Buyer approves under Section 6.15 to provide the Parent Guaranty.

"Parent Guaranty" shall mean a guaranty from a Parent Guarantor in favor of Buyer, guaranteeing the obligations of Seller under this Agreement, substantially in the form attached hereto as Exhibit AT.

"Part 201" shall have the meaning given to it in Section 3.4.1.

"Partial Conditional Waiver" shall mean the written statement, as will be modified if the Construction Lien Act changes to comply with any applicable requirements, substantially in the form attached as Exhibit K, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.4, 9.3.2.5 and 9.3.7.2) each of the Contractors) conditionally waives and releases all Seller Liens with respect to the Work provided the payment set forth in the written statement is received by such Person.

"Partial Unconditional Waiver" shall mean the written statement substantially as will be modified if the Construction Lien Act changes to comply with any applicable requirements in the

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form attached as Exhibit K, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.4, 9.3.2.5 and 9.3.7.2) each of the Contractors) unconditionally waives and releases all Seller Liens with respect to the Work for which it has been paid.

"Party" or "Parties" shall have the meaning given to them in the Preamble to this Agreement.

"Performance Tests" shall mean the Functional Test and Capacity Test.

"Permit" or "Permits" shall mean (i) each and every national, state, local or other regulatory requirement, permit (including all conditional permits), action, approval, consent, waiver, exemption, variance, franchise, order, judgment, decree, authorization, license, right, registration, filing, recording, submission, tariff, rate, certification, plan or license of, with or from a Governmental Authority or (ii) any required notice to, any declaration of, or with, or any registration by any Governmental Authority, including the Environmental Permits and Special Land Use Permit.

"Permit Applications" shall mean the Applicable Permits in connection with the Project for which Seller has applied.

"Permitted Encumbrances" shall mean (i) Liens for Taxes not yet due and payable or arising after Substantial Completion is achieved; (ii) easements, rights-of-way, reservations, restrictions, Liens and other similar encumbrances and exceptions, each as listed on the Title Commitments, Pro Forma Title Policy, or ALTA Survey that have not been objected to by Buyer pursuant to the provisions of Section 3.1.5, unless such objection has subsequently been waived in writing by Buyer; (iii) Liens created by the act or omission of Buyer and not caused by Seller's acts or omissions, or permitted by Buyer with its written consent; (iv) Seller Liens provided that Seller is in compliance with Section 3.6; (v) Liens which are junior to the applicable Real Property Documents or which are subject to an SNDA with the lienholder and (vi) easements, rights-of-way, reservations, restrictions, Liens and other similar encumbrances and exceptions listed on the Final Pro Forma Title Policy, or if Buyer waives the Condition Precedent in Section 5.2.4 with respect to the Final Pro Forma Title Policy, the Pro Forma Title Policy as of NTP Closing (except as otherwise agreed to by the Parties in any such waiver, as conditions to any such waiver or in an amendment to this Agreement).

"Person" shall mean any natural person, corporation, company, voluntary association, limited liability company, partnership, firm, association, joint venture, trust, unincorporated organization, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Phase I ESA" shall have the meaning given to it in Section 3.4.1.

"Plant Capacity" means the aggregate generation capacity of the Project (MWac) measured at the Point of Interconnection pursuant to, and in accordance with, a Capacity Test.

"Plant Capacity Buydown" shall have the meaning given to it in Section 7.6.

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"Plant Capacity LDs" shall have the meaning given to it in Section 7.6.

"Point of Interconnection" shall mean the tap point where the Project interconnects with the Transmission Owner's Interconnection Facilities, as more fully set forth in the Scope of Work including the Technical Specifications.

"Prevailing Wage and Apprenticeship Requirements" means the requirements under Code Sections 48(a)(10) and (11) and Code Sections 45(b)(7) and (8) and any PWA Guidance.

"Pro Forma Title Policy" shall mean the pro forma/proposed title insurance policy that when the Project Assets for the Project Site are transferred, the Title Insurer agrees to issue the ALTA Title Policy in the condition of the pro forma/proposed title insurance policy together with the Title Policy Endorsements.

"Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard at law or in equity or before any Governmental Authority or any arbitrator or arbitration panel.

"Production Tax Credit" means the renewable electricity production tax credit provided for in Code Section 45.

"Progress Payment" shall mean each payment to be made by Buyer to (i) Seller (or to Seller's Contractors if there is a Seller Lien in existence pursuant to the terms and conditions for payment as provided in this Agreement) or (ii) Seller's designated Contractors for Direct Payment on behalf of Seller; and in each case, in accordance with the Progress Payment Schedule for payments set forth in Exhibit D and the Seller's Invoice, which in the aggregate shall not exceed the Purchase Price, as such amount may only be increased by Change Order or an amendment to the Body of this Agreement.

"Progress Payment Schedule" shall mean the Progress Payment Schedule attached hereto as Exhibit D.

"Project" shall have the meaning given to it in the Recitals to this Agreement.

"Project Assets" shall mean all of the right, title and interest in and to the property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, comprising the Project, including the following:

- (i) The Project Site;
- (ii) Project Documents;
- (iii) All of the tangible and intangible rights and property relating to the Project, including such rights and property pertaining to ownership, construction, repair or

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maintenance of the Project and any and all rights to the Environmental Attributes attributable to the Project or the electricity generated therefrom;

(iv) All insurance benefits, including claims, rights and proceeds, arising from or relating to the Project Assets;

(v) All rights or claims against third parties relating to the Project Assets, whether choate or inchoate, known or unknown, contingent or non-contingent;

(vi) All rights relating to transmission credits, tax credits, warranty and/or damage payments related to the Project Assets, deposits and prepaid expenses, claims for refunds of utility charges and rights to offset in respect thereof; and

(vii) Equipment and Materials.

"Project Contract" and "Project Contracts" shall mean all agreements, instruments, commitments, subcontracts, licenses, and other legally binding arrangements, together with any amendments, restatements, supplements and other modifications thereto, to which Seller or any of its Affiliates is a party and which are necessary for the ownership, development, construction, operation and/or maintenance of the Project, including the Real Property Documents and the Construction Contracts.

"Project Documents" shall mean the following to the extent related to the Project:

(i) Project Contracts;

(ii) Title and Survey Documents;

(iii) Design Documents and Record Drawings together with other Seller-supplied documentation (including Seller-supplied engineering calculations and installation or operating manuals or procedures) that are, or to the extent that same are, prepared or revised by Seller for or in connection with the performance of the Work;

(iv) All Applicable Permits and all Permit Applications or renewals thereof pertaining to the Project and Consents, including all Environmental Permits and Special Land Use Permits;

(v) All Insurance policies that name or benefit Buyer or its Affiliates;

(vi) The Job Book;

(vii) Michigan Equipment, Materials, and Labor Information;

(viii) The O&M Manual;

(ix) Sworn Statements, Full Unconditional Waivers, Full Conditional Waivers, Partial Unconditional Waivers and Partial Conditional Waivers;

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- (x) All Milestone Completion Certificates and supporting, related and ancillary documents for the Project;
- (xi) All Crossing Agreements;
- (xii) All Drain Agreements;
- (xiii) Easements, as applicable, for Access Roads to allow ingress and egress to public roads;
- (xiv) All Real Property Documents Governmental Approvals;
- (xv) Parent Guaranty;
- (xvi) The Real Property Spreadsheet;
- (xvii) Seller's Safety Program, including all safety data, books, and manuals;
- (xviii) All Books and Records; and
- (xix) All other documents necessary or customary for Buyer to use the Project for its intended purpose including all other documents referenced in any of the foregoing documents or this Agreement.

"Project Layout" shall have the meaning given to in Section 3.3.

"Project Manager" is the Person who is one of the Key Personnel with the responsibilities set forth in Section 2.7.1.

"Project Schedule" shall mean the Work schedule setting forth certain stages or elements of the Work and describing the estimated time of completion by Seller of such stages and elements including meeting the Milestones, all as set forth in Exhibit K, subject only to changes as permitted by this Agreement. Buyer Delay is addressed in Section 10.3.3.

"Project Site" shall mean the real property located in Calhoun County, Michigan, upon which the Project, including its Modules, Interconnection Facilities, Substation, Generator Tie Line, if applicable, to the Point of Interconnection, other Project facilities and its access rights will be located, and any additional real property encumbered by interests necessary for the Project including all Access Roads, Crossing Agreements and Drain Agreements, as more particularly described in Exhibit F but otherwise excluding real property with no Project facilities and that is not within three hundred (300) feet of any Project facilities as shown in Exhibit E, which Exhibit E shall be updated as provided in accordance with Section 3.3.

"Property Team Calls" shall have the meaning given to it in Section 3.1.1.2(1).

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"Prudent Industry Standards" shall mean those practices, methods, standards, and acts engaged in or approved by a significant portion of the industry for utility scale solar-powered electrical facilities in the United States that at a particular time in the exercise of good judgment by experienced solar energy developers and/or professional engineering construction firms in connection with the design, engineering, construction, maintenance, repair and use of electrical and other equipment, facilities improvements of such facilities and commensurate with the standards of safety, performance, dependability, efficiency and economy, would reasonably have been expected to accomplish the desired result in a manner consistent with other utility scale solar-powered facilities and all Applicable Laws and Applicable Permits; and provided further that if any portion of such Prudent Industry Standards set forth in this Agreement conflicts with or is less stringent than any Applicable Laws or Applicable Permits, the Applicable Laws and Applicable Permits shall supersede the less stringent or conflicting provisions. Reference to a standard, code or specification of any society, organization, or association shall (unless expressly stated otherwise herein) mean the latest standard, code or specification standard adopted and published at the time of Seller's performance of the Work. Where these methods, standards, manuals or codes differ from technical requirements otherwise specified in this Agreement, the provisions that impose the most stringent requirements upon Seller will, unless expressly provided otherwise in this Agreement, take precedence. Further "Prudent Industry Standards" shall mean project management practices that shall likewise be performed in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to utility scale solar-powered electrical projects. "Prudent Industry Standards" does not necessarily mean one particular practice or method in all cases, but is instead intended to encompass a range of practices and methods under the circumstances; however, this qualification does not authorize Seller to claim that Prudent Industry Standards authorize Seller to violate Applicable Laws, other Requirements or express obligations of Seller in this Agreement.

"PUHCA" shall mean the Public Utility Holding Company Act of 2005.

"Punch List Holdback" shall mean an amount equal to [REDACTED] of the aggregate value of the Punch List Items as of Substantial Completion.

"Punch List Items" or "Punch List" shall mean the written list of items provided by Seller in connection with the achievement of Substantial Completion, identifying those items of Work [REDACTED] that remain to be completed, but that cannot reasonably be expected to impact negatively on the operation, availability for generation or safety of the Project, together with the value of each such item as of Substantial Completion.

"Purchase and Sale" shall have the meaning given to it in Section 9.1.

"Purchase Price" shall mean [REDACTED]

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[REDACTED]

"Purchase Price Allocation Schedule" shall have the meaning given to it in Section 9.9.1.

"PWA Contractor" means any Person other than a Contractor that employs (within the meaning of Sections 3.03(1) or 4.02(1), as applicable, of Notice 2022-61) any other Person to perform any portion of the Work that constitutes Construction or Repair or Alteration.

"PWA Cure Liability" means any amounts payable to any Person pursuant to the Cure Provisions, in each case, as necessary to cure any failure of the Project to satisfy the Prevailing Wage and Apprenticeship Requirements, any applicable penalties and interest, and other than to the extent duplicative with any of the foregoing, any Losses of Buyer or any direct or indirect owner of the Project caused by any noncompliance with the Prevailing Wage and Apprenticeship Requirements.

"PWA Guidance" means IRS Notice 2022-61 (November 29, 2022) and any further guidance issued by the Secretary of the U.S. Department of the Treasury (including any guidance issued by the Internal Revenue Service) pursuant to Sections 45(b)(7), 45(b)(8), 48(a)(10), and 48(a)(11) of the Code, or any provision of the Code that is cross-referenced therein.

"PWA Requirements Certificate" is defined in Section 6.16.1.

"Qualified Apprentice" means an individual who is employed by a Contractor or PWA Contractor and who is participating in a Registered Apprenticeship Program.

"Quality Assurance Plan" shall have the meaning given to it in Section 2.4.7.

"Real Property Documents" shall mean:

- (i) the Option Agreements for Solar Energy Easements;
- (ii) the Memoranda of Option Agreements for Solar Energy Easements;
- (iii) the Memoranda of Solar Energy Easements;
- (iv) the Solar Energy Easements;
- (v) the Option Agreements for Lease of Real Estate;
- (vi) the Memoranda of Amendment to Option Agreement for Lease of Real Estate;
- (vii) the Amendment to Option Agreement for Lease of Real Estate;
- (viii) the Option Agreements for Right of Way Easement Agreements;
- (ix) the Memoranda of Option Agreements for Right of Way Easement Agreements;

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- (x) the Right of Way Easement Agreements;
- (xi) the Assignments of Crossing Agreements;
- (xii) the Assignments of Drain Agreements,
- (xiii) the Assignments of Solar Energy Agreements;
- (xiv) the Warranty Deed and other deeds;
- (xv) and each additional or other agreement, including any restrictive covenants, leases, licenses, easements, instruments, or documents that provide Seller with real property interests in or to the Project Site and in or to the Substation property and documents granting rights over third parties' properties or that otherwise provide Seller with real property rights, interests or permissions in furtherance of the Project as well as ingress and egress to and from a public road, and all of which will be assigned to Buyer as provided in this Agreement.

The Real Property Documents are more particularly identified on Exhibit H. Notwithstanding the foregoing, once Substantial Completion is achieved, the Real Property Documents shall not include any temporary agreements held by Seller or its Contractors that were only necessary for the initial construction activities of the Project.

"Real Property Documents Deadline" shall mean June 30, 2023.

"Real Property Documents Governmental Approvals" shall mean all Consents of Governmental Authorities required under Applicable Law to cause the Real Property Documents to comply with all Applicable Laws including requirements for the conveyance of real property (MCL 565.1 et seq.), the Land Division Act (MCL 560.101 et seq.), Qualified Agricultural Property requirements (MCL 211.1 et seq.) (including PA 261 of 2000, as amended), and Farmland Development Rights (MCL 324.36101 et seq.).

"Real Property Spreadsheet" shall mean the document attached to this Agreement as Exhibit H that provides Buyer with (i) the name of the document, a description of the execution status, term, names of parties to the instrument, and effective dates of all Real Property Documents, (ii) names of the landowners, and (iii) tax parcel identification number(s).

"Receiving Party" shall have the meaning given to it in Section 24.3.1.

"Reclamation and Revegetation Completion" shall have the meaning given to it in Section 11.9.

"Record Drawings" means the complete set of as-built drawings (provided in one (1) electronic copy) prepared by Seller or its Contractors in accordance with Exhibit A-Appendix B/, and which accurately and completely represents in detail the physical placement of Work including all Equipment and Materials, Substation and Generator Tie Line, if applicable, as constructed,

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assembled, erected, and installed. Record Drawings shall also include elementary diagrams, one-line diagrams, wiring diagrams, and physical drawings showing the precise location of all underground power and communication cables.

"Recovery Plan" shall have the meaning given to it in Section 7.3.

"Registered Apprenticeship Program" has the meaning given to such term in Section 3131(e)(3)(B) of the Code and any PWA Guidance.

"Release" shall mean any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment of any Hazardous Material.

"Requirements" shall have the meaning given to it in Section 2.2.

"Repair or Alteration" means alteration or repair work as such terms are used in Code Sections 45(b)(7) and (8) and 48(a)(10) and any PWA Guidance.

"Retainage" shall have the meaning given to it in Section 9.3.2.

"Right of Way Easement Agreement" shall mean collectively or individually, as applicable, the easements granted (or to be granted upon Seller's exercise of its option) by each landowner listed in Exhibit H, pursuant to the Option Agreement for Right of Way Easement Agreement form, and the list of which is attached as part of the Real Property Spreadsheet attached as Exhibit H, as may only be modified as mutually agreed to by the Parties. Unless the context expressly requires otherwise, each Right of Way Easement Agreement and any other amendments must be approved by Buyer.

"SCADA Manual" shall mean the manual provided by SCADA Supplier setting out the instructions and procedures for the operation and maintenance of the SCADA System.

"SCADA Supplier" shall mean a Contractor who is a Buyer-approved SCADA supplier listed in Exhibit A Appendix B1, or who is otherwise approved by Buyer in writing.

"SCADA System" shall mean the supervisory control and data acquisition and output prediction system for the Project, which system must coordinate, communicate and interface with Buyer's systems to allow Buyer to download and transfer all information in the system to Buyer's own internal operating and archival systems.

"Scope of Work" shall mean all of Seller's obligations, duties and responsibilities assigned to be undertaken by Seller pursuant to this Agreement, including those working by or through Seller, including the Contractors, for proper performance and completion of the Project, and further including all Work and requirements described in Exhibit A and its appendices.

"Secured File Transfer Website" shall have the meaning given to it in Section 1.2.2.

"Seller" shall have the meaning given to it in the Preamble to this Agreement.

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"Seller Event of Default" shall have the meaning given to it in Section 18.1.

"Seller Indemnitee" shall have the meaning given to it in Section 15.3.

"Seller Lien" or "Seller Liens" shall have the meaning given to it in Section 3.6.

"Seller's Invoice" shall have the meaning given to it in Section 9.3.2

"Seller's Organization Chart" shall have the meaning given to it in Section 3.2.1.

"Seller's Safety Program" shall have the meaning given to in Section 2.4.6.

"SNDA" shall mean the Subordination, Non-disturbance and Attornment Agreements attached as Exhibit AE, or as modified with the prior written consent of Buyer.

"Solar Data" shall mean all solar data actually generated for the Project by equipment on the Project Site and all final third-party reports and studies regarding such data that are relevant to the use of any of the modules, in each case as amended, supplemented, or updated.

"Solar Energy Easement Form" shall have the meaning given to it in Section 3.1.4.

"Solar Energy Easements" or "Solar Energy Easement" are collectively or individually, as applicable, the easements granted by each landowner listed in Exhibit H, pursuant to the Easement Agreement form attached as Exhibit H, and list of which is attached as part of the Real Property Spreadsheet attached as Exhibit H, as may only be modified as mutually agreed to by the Parties. Unless the context expressly requires otherwise, each Solar Energy Easement and any other amendments approved by Buyer.

"Spare Parts" shall mean spare parts necessary to operate and maintain the Project after the date of Substantial Completion.

"Special Land Use Permit" shall mean the Special Land Use Permit identified on Exhibit R in the following Township: [REDACTED], as approved by the local unit of government pursuant to MCL 125.3502 and MCL 125.3504.

"Subcontract" or "Subcontracts" shall mean individually and collectively the agreements, as the context requires, between BOS Contractor and Subcontractors and between Subcontractors of all tiers that incorporate the certain terms of the BOS Contract consisting of the Insurance, Third-Party Ethics and Compliance Guidelines, liability provisions (payment and performance obligations, compliance with Applicable Laws, indemnities, and warranties), and as otherwise governs the applicable portion of the Subcontractors' Scope of Work.

"Subcontractor" or "Subcontractors" shall mean individually or collectively, as the context requires, the Contractors who have contracted with the BOS Contractor or a subcontractor of any tier below the BOS Contractor to perform a portion of the Scope of Work of this Project, including all materialmen, suppliers and laborers.

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"Submittal Schedule" shall mean Exhibit AC, Exhibit A Appendix A1 and Exhibit A Appendix A2.

"Substantial Completion" shall have the meaning given to it in Section 11.6.

"Substantial Completion Certificate" shall mean the Milestone Completion Certificate for Substantial Completion.

"Substantial Completion Deadline" means [REDACTED], provided that such deadline shall be extended, day for day, for any Buyer Delay, Force Majeure, CIL Delay, Interconnection Delay, and any days with insufficient irradiance to perform the Work, including commissioning, testing and any Functional Test.

"Substation" shall mean collectively and individually the foundations, underground and overhead electrical interconnection lines, GSU Transformers, metering devices, switchgear and protective devices, together with all other associated Equipment and Materials and improvements, which are necessary to convert the 34.5 kV output voltage of the Inverters to the interconnection voltage of 345kV and to provide electrical protection for the Project and Generator Tie Line, if applicable.

"Substation Completion" shall have the meaning given to it in Section 11.4.

"Substation Completion Certificate" shall mean the Milestone Completion Certificate for Substation Completion.

"Sworn Statement" shall mean a written statement substantially in the form attached as Exhibit K.

"Tariff" shall mean a tax or duty imposed by a United States of America Governmental Authority on Equipment and Materials that are imported into the United States of America from other countries and which such Equipment and Materials are used by Seller to complete the Project. Notwithstanding the prior sentence, Tariffs do not include any other costs of Equipment and Materials.

"Tax" or "Taxes" shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, unemployment, disability, social security, excise, severance, stamp, occupation, premium, windfall profit, environmental, customs, import, export, duty, tariffs, capital stock, franchise, profit, withholding, real property and personal property ad valorem taxes and assessments, sales, use, transfer, Transfer Taxes, registration, value added, alternative or add-on minimum, estimated, or other tax, impost, levy or duty of any kind whatsoever, including any interest, penalty, or addition thereto, whether any such Tax is disputed.

"Tax Clearance Certificate" shall have the meaning given to it in Section 12.6.7.

"Tax Contest" is defined in Section 23.10.

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"Tax Return" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes of any kind or nature filed or required to be filed with any Governmental Authority, including any schedule or attachment thereto, and including any amendment thereof.

"Tax Status Letter" shall have the meaning given to it in Section 12.6.7.

"Technical Specifications" shall mean the technical specifications set forth on Exhibit A-Appendix A through L.

"Threat of Release" shall mean a reasonable likelihood of a Release that may require action in order to prevent or mitigate impairment of or damage to the Environment that may result from such Release.

"Title and Survey Documents" shall mean all title and survey documents comprising the Title Commitments, Pro Forma Title Policy, Final Pro Forma Title Policy, ALTA Title Policy, preliminary ALTA Survey, Final ALTA Survey, As-Built Survey and all documents referenced therein.

"Title Commitments" shall mean the ALTA/ACSM title commitments issued by the Title Insurer showing fee, leasehold or easement title to the Project Site is vested with Seller, subject to only Permitted Encumbrances, together with all documents referenced in the title commitments including all vesting deeds for the interest(s) of Seller and the underlying landowner, and that commit the Title Insurer to issue policies in the same condition at the time set forth in this Agreement. Such accompanying documents shall be directly attached to the ALTA/ACSM title commitments and shall be delivered as part of the same digital file in the Secured File-Transfer Website or Seller shall include hyperlinks in the ALTA/ACSM title commitments which lead directly to the referenced accompanying documents.

"Title Insurer" shall mean Stewart Title Guaranty Company.

"Title Objection Notice" shall have the meaning given to it to Section 3.1.5.4.

"Title Policy Endorsements" shall mean the title policy endorsements required by Buyer to ensure provision of all coverage, including deleting or providing affirmative coverage over title objections. The Title Policy Endorsements shall also include the following endorsements for the Project Site: (i) either ALTA 17-06 (Access and Entry) or ALTA 17.1-06 (Indirect Access and Entry); (ii) either ALTA 18-06 (Single Tax Parcel) or ALTA 18.1-06 (Multiple Tax Parcel); (iii) ALTA 22-06 (Location); (iv) ALTA 9.8-06 (Covenants, Conditions, and Restrictions Owner's Policy Land Under Development); (v) ALTA 25-06 (Same as Survey); (vi) ALTA 19-06 (Contiguity-Multiple Parcels)(if applicable); (vii) Zoning 3.2-06 (Zoning-Land Under Development); (viii) Arbitration (if applicable); (ix) Additional Insurance; (x) ALTA 36.2-06 (Energy Project-Leasehold Owner's); (xi) ALTA Form 36.4-06 (Energy Project-Covenants, Conditions and Restrictions-Land Under Development-Owner's); and (xii) ALTA Form 36.6-06 (Energy Project-Encroachment).

"Total Allocable Cost Increases" shall have the meaning given to it Section 9.2.7.1.

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"Total Purchase Price Adjustment Cap" shall mean [REDACTED].

"Transfer Tax" shall mean any sales Tax, use Tax, conveyance Tax, recording Tax, value added Tax, transaction privilege Tax, transaction Tax, conveyance fee, use Tax, stamp Tax, stock transfer Tax or other similar Tax, including any related penalties, interest and additions thereto, related to the transfer of the Project Assets and Work to the Buyer in connection with this Agreement.

"Transformer Supply Agreement" shall mean that certain Equipment and Service Purchase Agreement to be entered into at the NTP Closing with the "Transformer Vendor" for the GSU Transformer substantially in the form attached hereto as Exhibit AG.

"Transformer Vendor" shall mean a Contractor who is a Buyer-approved GSU transformer supplier listed in Section 8.1 of the Scope of Work or who is otherwise approved by Buyer in writing.

"Transmission Owner" shall mean Michigan Electric Transmission Company, LLC (METC), or its successors or assigns under the Interconnection Agreement.

"Transmission Provider" shall mean Midcontinent Independent System Operator, Inc. (MISO), or its successors or assigns under the Interconnection Agreement.

"UCC" shall have the meaning given to it Section 3.2.1.

"UCC Release" shall have the meaning given to it in Section 3.2.3.

"UCC Search" shall have the meaning given to it in Section 3.2.1.

"Vendor Manual" means each major equipment operations manual and data sheets, in the possession of Seller with respect to the Work provided by Contractors including the Module Supplier. For the avoidance of doubt, the inclusion of the Vendor Manual in the O&M Manual shall not relieve Seller of any obligation to ensure that such Vendor Manual conforms to the requirements of this Agreement, including the Scope of Work.

"Warranty" and "Warranties" shall both have the meaning given to them in Section 17.1.

"Warranty Deed" shall have the meaning given to it in Section 6.1.1.1(7).

"Warranty Defect" shall have the meaning given to it in Section 17.2.1.

"Warranty Work" shall have the meaning given to it in Section 17.4.

"Work" shall mean all work and services for the management of the Project, the design, engineering, procurement, construction, start-up and turnover of the Project and the procurement,

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delivery, assembly, erection, installation, commissioning, start-up and turnover of the Blocks, which work and services shall include all aspects of the work and services described in the Construction Contracts, and the Technical Specifications, and the provision of all Equipment and Materials, machinery, tools, labor, transportation, administration and other services and items required to achieve Final Completion, all in accordance with this Agreement including the Project Contracts and the Scope of Work.

1.2 Documents Included.

1.2.1 Exhibits.

This Agreement includes the exhibits which are attached hereto or shall be attached hereto as may be amended, supplemented, or replaced from time to time (individually, "Exhibit" and collectively, "Exhibits"), and which are specifically made a part hereof by this reference. In certain instances when specified in this Agreement, certain exhibits are intended to qualify and limit the representations, warranties or covenants and others are intended to expand or supplement the terms of this Agreement. A Party may only supplement or amend an exhibit to this Agreement by mutual agreement of the Parties.

1.2.2 Online Document Sharing.

When a Party has an obligation to deliver a document (but expressly excluding communications, consents and approvals that are governed by notice provisions of Section 21.1) to the other Party prior to Final Completion, each Party shall fulfill its obligation by delivering the document using Firmex licensed software (as has been established by Seller) for all Real Property Documents, and ProjectWise licensed software (as has been established by Buyer) for all other Project Documents to be delivered under this Agreement, (subject to the last sentence of this Section 1.2.2) each which shall serve as the secured file transfer website that automatically generates notices of a Party's upload of a document to the other Party (each of the two softwares being a "Secured File Transfer Website"). The automatic notice generated by the Secured File Transfer Website shall clarify (by the names of the documents and/or the names of the file folders the documents are being uploaded to) whether the documents being uploaded are for final, fully-executed documents, partially-executed documents or drafts of documents that are in the process of being reviewed and/or executed as such site is intended to serve as the formal notice of a deliverable for purposes of this Agreement. Seller shall maintain/utilize each Secured File Transfer Website at Seller's cost and expense for its use until sixty (60) days after notice to Buyer that the file sharing websites will be closed, which may not occur until the earlier of any of the following events: (i) termination of this Agreement, (ii) the latter of Seller achieving Final Completion or Seller delivering the As-Built Survey. Failure to upload any document to the properly designated folder in a Secured File-Transfer Website, as set forth in this Agreement, shall not constitute a proper upload for the purposes of this Agreement and any relevant review time shall not begin to run until such document is uploaded to the properly designated folder. Notwithstanding anything to the contrary in this Agreement, to the extent Exhibit A Appendix A1, Exhibit A Appendix A2 and Exhibit K expressly state when Project Documents other than Real Property Documents are required to be posted to ProjectWise, Seller shall only be obligated to post such Project Documents to ProjectWise when required by the timing indicated in such Exhibits.

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1.3 Entire Agreement.

This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the date first above stated, and supersedes any and all negotiations, agreements and representations made or dated prior thereto. Subsequent to the date hereof, this Agreement may be supplemented, modified or otherwise amended by mutual agreement or in accordance with the terms of this Agreement. Such amendments, if any, must be in the form of a written amendment to the Body of this Agreement or Change Orders, as applicable, and signed by authorized representatives of both Parties to this Agreement.

1.4 Conflicting Provisions.

In the event of any conflict or inconsistency between or among this Agreement including all documents referenced therein, such conflict shall be resolved in accordance with the following order of precedence (provided that, notwithstanding the following order, physical design or technical requirements of the fabrication or assembly as set forth in the Technical Specifications shall always control in the event of conflicting provisions contained in the other Project Documents): (i) amendments to the Body of this Agreement; (ii) Change Orders; (iii) the Body of this Agreement including other provisions that address conflicts or inconsistencies; (iv) the Scope of Work including the Technical Specifications; and (v) the other Exhibits, Project Contracts and other documents referenced therein and any other Project Documents. Either Party, upon becoming aware of any conflict or inconsistency among any of the components of this Agreement, shall promptly notify the other Party in writing of such conflict or inconsistency. Notwithstanding the definition of Prudent Industry Standards, Prudent Industry Standards cannot supersede the express terms and requirements of this Agreement. To the extent not in conflict or inconsistent, the documents in the Agreement shall be considered complementary and what is required by one shall be binding as if required by all. Any failure to specifically list a requirement in one document, once the requirement is specifically listed in another, shall in no manner imply the inapplicability, or any limitation on the applicability, of such requirement. In the event of a conflict between any of the documents, the provisions that impose the most stringent requirements upon Seller will take precedence, unless and except as may be otherwise determined by Buyer.

1.5 Construction.

1.5.1 Terminology.

Unless otherwise required by the context in which any term appears:

1.5.1.1 Capitalized terms used in this Agreement shall have the meanings specified in this Article or defined elsewhere in this Agreement.

1.5.1.2 The singular shall include the plural and the masculine shall include the feminine and neuter.

1.5.1.3 References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement, and

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references to paragraphs, sections, or clauses shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

1.5.1.4 The words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words "include," "includes" or "including" shall mean "including, but not limited to" or words to similar effect.

1.5.1.5 The term "day" shall mean a calendar day (beginning at 12:00 a.m. and ending at 11:59 p.m.). The term "month" shall mean a calendar month, and the term "year" shall mean a calendar year.

1.5.1.6 Whenever an event is to be performed by a particular date, or a period that ends on a particular date, and the date in question falls on a weekend, or on a day which is not a Business Day, the event shall be performed, or the period shall end, on the next succeeding Business Day.

1.5.1.7 Accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied.

1.5.1.8 All references to a particular entity shall include such entity's successors and permitted assigns.

1.5.1.9 All references herein to any contract (including this Agreement) or other agreement shall be to such contract or other agreement as amended and supplemented or modified to the date of reference.

1.5.1.10 All references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time, including, successor laws.

1.5.2 Headings.

The titles of the articles and sections herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.5.3 Interpretation or Approvals.

Notwithstanding anything else to the contrary in this Agreement, no inspection, review, or approval by Buyer or any representative of Buyer (or any action or inaction of Buyer as a result of or in conjunction with such inspection review) of any design, specification, drawing, plan, manual, test, Equipment and Materials, program, method, procedure or Work

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provided or performed by Seller or any Contractors shall constitute an approval, endorsement, confirmation or acknowledgement by Buyer that the same satisfies the requirements of this Agreement; nor shall any such inspection, review or approval relieve Seller of any of its obligations or liabilities under or arising from this Agreement except when such approval is required by this Agreement and either (i) given in writing and signed by Buyer's Project Representative or (ii) "deemed approved" by Buyer as provided in this Agreement. No waiver or failure by Buyer in whole or in part to exercise any right to inspect, review or approve any design, specification, drawing, plan, manual, test, Equipment and Materials, program, method, procedure or Work shall in any way relieve Seller of full liability for the quality, character, and performance of the Work and every part of it, nor shall it prejudice or affect the rights of Buyer set forth in this Agreement. Seller acknowledges, agrees and understands that all reviews, approvals, consents and determinations required of Buyer for any and all purposes shall be made by Buyer in its sole discretion unless expressly provided otherwise in this Agreement, and further all reviews, approvals, consents and determinations required of Buyer are always furnished for the purpose of evaluating whether in Buyer's reasonable opinion, and not as an expert in design or engineering (even when there is a licensed Person employed by Buyer), whether the information or documents appear to execute upon Seller's general Scope of Work and in no way is to serve as a substitute for, reduction of, or waiver of Seller's and its Contractors' (including their engineers' and other designers') obligations to perform the Work.

ARTICLE II RESPONSIBILITIES OF SELLER

2.1 Seller's Obligation to Provide the Project.

Seller shall fully perform or cause to be performed all the Work in accordance with this Agreement in order to provide Buyer with the Project in accordance with this Agreement. The responsibilities of Seller set forth in this ARTICLE II are in addition to, and not a limitation of, the other responsibilities and obligations of Seller under this Agreement, including the Project Documents.

2.2 Standards of Performance.

Seller, subject to the terms and conditions of this Agreement, represents and agrees that it shall be responsible for the timely performance and prosecution of the Work in accordance with (i) the specific standards set forth in this Agreement, including the Scope of Work and the Technical Specifications; *provided, however*, when there are not specific standards, but rather more general terms, such as "adequate" or "sufficient," Seller shall rely on the professional judgment of a qualified, experienced, licensed engineer to establish the specifications in writing to comply with such terms, further provided such judgment is consistent with design intent of (i) the Scope of Work, (ii) Applicable Permits, (iii) Applicable Laws, (iv) Prudent Industry Standards; and (v) the requirements, terms and obligations of all Project Contracts including all Real Property Documents and Construction Contracts (collectively the "Requirements"). Notwithstanding anything to the contrary in Subsection (v) above, Seller's immaterial noncompliance with the Project Contracts, including all Real Property Documents and Construction Contracts, shall not be considered in assessing whether any Condition Precedent or Milestone has been achieved and shall not prevent the achievement of any such Condition Precedent or Milestone. Any immaterial

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noncompliance referenced in the foregoing sentence shall not be construed to alter Seller's obligations under this Agreement.

2.3 [Intentionally Omitted].

2.4 Provision of Materials, Supplies, and Services.

Seller shall provide or cause to be provided the Equipment and Materials, technical, professional and construction personnel and supervision, construction tools and equipment, and the services required, and shall be responsible for completing the Work in accordance with the terms of this Agreement. Seller shall be responsible for the Work and for coordination and management of all Contractors. In furtherance of the foregoing, Seller shall, and to the extent applicable, cause each Contractor to, do the following:

2.4.1 Handling of Equipment and Materials.

Provide for the handling of Equipment and Materials and construction equipment, including, as necessary, inspection, expediting, shipping, unloading, receiving, quality control, and customs clearance and be responsible for all customs duties, taxes, tariffs, and similar charges payable in connection with the importation of Equipment and Materials into the United States.

2.4.2 Quality of Equipment and Materials.

Ensure that all Equipment and Materials supplied shall be new (unless otherwise agreed by Seller and Buyer) and shall meet the requirements of the Technical Specifications, Scope of Work and all Applicable Permits. References in the Scope of Work to Equipment and Materials, articles or patented processes by trade name, make or catalog number shall be regarded as establishing a standard of quality expected by Buyer. Seller and the Contractors may use any equipment, material, article, or process that is substantially similar to that named in the Scope of Work, subject to the prior written approval of Buyer.

2.4.3 Construction Means and Methods.

Be solely responsible for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work. Seller acknowledges and agrees that it shall not be Buyer's responsibility to oversee, supervise, inspect or otherwise perform any activities that will be inferred to shift, or mandate that Buyer has assumed, responsibility for any actions or inactions of Seller and its Contractors. If Buyer should identify that Seller has not performed a responsibility and Buyer notifies Seller of the same, such action shall not act to shift any responsibility for Seller's actions or inactions, including for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work, to Buyer in any part or way.

2.4.4 Construction Utilities and Other Facilities.

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Provide or cause to be provided all construction utilities required for the performance of the Work and provide, within the Project Site, temporary roads, office space and furniture, telephone facilities, drinking water and sanitary facilities to be used by Contractors in the performance of the Work together with any additional facilities or other conditions required by Applicable Laws.

2.4.5 Maintenance of Project Site.

Keep the Project Site free from accumulation of waste materials, rubbish and other debris resulting from performance of the Work and in compliance with all Requirements; and, reasonably promptly after Substantial Completion, remove from those portions of the Project Site involved in the commercial operation of the Project, in conformity with Applicable Laws and other Requirements, all such waste materials, rubbish and other debris, as well as all tools, construction equipment, machinery and surplus material that would interfere with the commercial operation of the Project or violate any Real Property Documents (specifically excluding materials, tools and construction equipment necessary to complete Punch List Items); and before final departure from the Project Site after completion of the Punch List Items, remove from the Project Site, in conformity with Applicable Laws and other Requirements, all remaining waste and rubbish generated during performance of Punch List work and all remaining materials, tools and construction equipment of Seller and Contractors, leave the Project Site in clean and usable condition, and perform all necessary reclamation or re-vegetation to remedy any crop damage caused to the Project Site or any adjacent real property. Notwithstanding the foregoing, Seller shall not trespass or otherwise enter adjacent real property in performing the Scope of Work.

2.4.6 Project Site Safety.

Establish and memorialize in writing the safety and security precautions and programs as set forth in Exhibit AR, including address and comply with the requirements set forth in the Buyer's Safety/Fire Protection Program, in the Michigan Occupational Safety and Health Act (Act 154 of the Michigan Public acts of 1974) as amended ("MIOSHA"), in the federal Occupational Safety and Health Act ("OSHA"), and in all other Applicable Laws (including all Environmental Laws) and Prudent Industry Standards, Insurance requirements and all other Requirements, and shall likewise comply with (and cause its Contractors to comply with) all other safety measures and procedures reasonably required to be implemented by Buyer at the Project Site (collectively, and as any one or more of them may be subsequently amended, the "Seller's Safety Program"). Seller shall provide appropriate notice of the requirements of, and the obligation to comply with, this Section 2.4.6 to all Persons entering the Project Site, including all of Seller's employees and Contractors, to abide by such rules and regulations and all safety and security laws applicable at the Project Site. Seller shall erect and maintain or cause to be erected and maintained, as required by existing conditions and the progress of the Work, all safeguards for safety and security, including lights, barriers, fences and railings. Seller shall be responsible for placing high priority on safety and health during performance of the Work. Seller shall be responsible for safety related to and during the performance of the Work at the Project Site and shall take reasonable measures to ensure that it and all of its Contractors (including all working by or through Seller) provide and maintain a safe working environment and properly protect (i) all Persons in proximity of the Project Site, employed or otherwise, from risk of injury and danger to health, and (ii) all

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property, including property of Buyer and third parties, from damage or loss. Before commencing Work, Seller shall inspect the Project Site and become familiar with the safety and health conditions there and shall effectively communicate to all of its Contractors all safety, fire and health regulations in force at the Project Site. Notwithstanding anything to the contrary, neither the provision, review, or approval by Buyer of Seller's Safety Program, nor Buyer's or its consultants' entry onto the Project Site, constitutes an assumption by Buyer of any responsibility for the safety and security of Persons or property and shall not relieve Seller and its Contractors of any liability for injury to Persons or damage to property or impose on Buyer any such liability.

2.4.7 Quality Assurance.

Comply with the quality assurance plan in performing the Work, which Quality Assurance Plan is attached hereto as Exhibit AQ and deliverables listed in Exhibit AC, Exhibit A Appendix A1 and Exhibit A Appendix A2 (the "Quality Assurance Plan"). Any changes to the Quality Assurance Plan shall be reviewed in advance by Buyer with Buyer having an opportunity to provide comments; however, Buyer's review and comments shall in no manner act as a transfer of responsibility or liability for the quality of the Work or compliance with the Quality Assurance Plan as such responsibility shall in all respects remain with Seller and its Contractors.

2.4.8 Emergencies.

In the event of any emergency on the Project Site relating to the Work endangering Persons or property, take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as practicable (but in no event later than twenty-four (24) hours after receiving notice of the event), report any such incidents, including Seller's response thereto, to Buyer. Buyer's taking or not taking any emergency action shall not limit Seller's obligations or liability hereunder irrespective of whether before or after Final Completion.

2.4.9 Roads.

Be responsible for all damage it and its Affiliates, Contractors or Persons working by or through such parties cause to public roads and highways on or off the Project Site, including all Access Roads. To the extent a Crossing Agreement, Drain Agreement, agreement for Access Roads or other use agreement associated with the Work, such as temporary use agreement only needed for Seller's construction activities (e.g., staging, access, etc.), that may or may not be a Project Contract requires that activities be taken during and/or to complete the obligations of Buyer or Seller in connection with such agreement, the Scope of Work shall automatically include such obligations. Crossing Agreements, Drain Agreements, agreements for Access Roads or other use agreements associated with the Work shall be provided by Seller to Buyer, and Seller shall use commercially reasonable efforts to deliver to Buyer, no later than seven (7) days after recording of those agreements or execution of those agreements if they will not be recorded.

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2.4.10 Utilities and Drainage Infrastructure.

Confirm the absence or location of existing underground utilities at the Project Site, including drainage tile, in advance of construction involving excavation commencing on the Project Site. Any adjustments to Design Documents required to avoid or address utilities are Seller's responsibility and included in the Purchase Price without additional payment by Buyer.

2.4.11 Interconnection to the Transmission Owner's Transmission System.

Coordinate activities with and provide access to the Transmission Owner to enable installation and commissioning of all associated equipment provided and installed by the Transmission Owner and its agents and allow the Project to interconnect at the Point of Interconnection. Post NTP coordination shall include the Buyer's Representative.

2.4.12 Commissioning.

Conduct all commissioning, start up, synchronization, operation, and testing, including as contemplated in the Commissioning Plan in accordance with this Agreement. Buyer's Representative and up to three (3) teams of two (2) technically qualified employees, agent, or expert shall have the right to be present during the commissioning, start up, synchronization, operation, and testing of the Work pursuant to this Agreement; provided, that Buyer's Representative and any such other Person shall abide by Seller's safety requirements and shall not interfere with the Work. Buyer shall have access to the SCADA network during start up to view all commissioning activities.

2.4.13 Diverse and Michigan-Based Suppliers

Buyer is committed to the development of diverse businesses including minority-owned, women-owned, veteran-owned, disabled and LGBT business enterprises ("Diverse Suppliers") and to returning spend dollars to vendors in the state of Michigan. Seller shall use commercially reasonable efforts to offer Diverse Suppliers and Michigan-based suppliers reasonable opportunities to participate in any subcontracts awarded by Seller. Each calendar quarter from NTP Closing through Final Completion, Seller shall provide a quarterly report to Buyer through the Buyer's reporting portal identifying the Diverse Suppliers and Michigan-based suppliers that were engaged in the execution of the Work by Seller or its Contractors or Subcontractors of any tier and the total dollar value of such subcontracts awarded and amounts spent pursuant to those subcontracts through the end of the prior calendar quarter. Seller shall deliver such quarterly report together with the first Monthly Progress Report Seller delivers following the end of the applicable calendar quarter. Buyer shall advise Seller as to the format for such reporting. Reporting may be for specific goods and services that directly support the fulfillment of the Work (direct spend) or as a ratio of Seller's total sales and/or revenue to that associated with Buyer (indirect spend).

2.5 Information Assistance to Buyer in Dealings with Governmental Authorities.

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Seller shall provide or cause to be provided to Buyer information reasonably requested by Buyer to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by Buyer in dealing with any Governmental Authority in matters relating to the Work and the Project, including providing reasonable documents and information that are in the possession of Seller or its Affiliates and that are required by a Governmental Authority in the event of an IRS audit. In addition to complying with Section 2.7.7.4, Seller shall include in each Project Contract the requirement that the Contractor, Subcontractor, or PWA Subcontractor (to the extent not also a Subcontractor) party thereto shall also provide such assistance as is reasonably requested by Buyer in connection with dealing with any Governmental Authority in matters relating to the Work and the Project, including providing reasonable documents and information that are in the possession of such Contractor, Subcontractor, or PWA Subcontractor, as applicable, or its Affiliates and that are required or requested by a Governmental Authority. Buyer shall be identified as the intended third-party beneficiary of this provision in any contract with a Contractor, Subcontractor, or PWA Subcontractor that is not directly assigned to Buyer.

2.6 Hazardous Chemicals and Hazardous Materials.

Seller shall perform or cause to be performed the following obligations and responsibilities:

2.6.1 Information Concerning Hazardous Chemicals.

As and to the extent required by Applicable Laws, Seller shall provide material safety data sheets, warning labels, or other documentation covering all Hazardous Chemicals, as defined under MIOSHA, furnished under or otherwise associated with the Work. Seller shall provide to Buyer copies of any such applicable safety data sheets prior to the commencement of such Work or at such time as any such substance enter the Project Site.

2.6.2 Action Upon Encountering Hazardous Materials.

If Seller encounters any Hazardous Materials (or materials or substances which Seller reasonably believes to be Hazardous Materials) in or on the Project Site in a location or otherwise under circumstances which would create a safety or health hazard for any Person working on the Project at the Project Site, Seller shall immediately stop any Work to the extent required to avoid any such safety or health hazard and until such safety or health hazard no longer exists or can be safely avoided. Seller shall notify Buyer promptly upon encountering any such Hazardous Materials (or materials or substances which Seller believes to be such Hazardous Materials) at, in, on, under, or emanating from the Project Site. For purposes of this Section 2.6.2, "Hazardous Materials" does not include customary and necessary quantities of commercial products required for completion of the Work, including motor vehicle fuel, when used, stored, and managed in compliance with applicable Environmental Laws.

2.7 Labor and Personnel.

Seller shall provide, or cause to be provided, all management services necessary for the Work and provide, or cause to be provided, all labor and personnel (collectively, "Labor") required

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to timely perform the Work, including management services and personnel, in accordance with the Requirements.

2.7.1 Seller's Representative.

Seller shall employ the person identified as the "Project Manager" and who is also one of the Key Personnel as defined below. The Project Manager shall have full supervision over the completion of the Work, act as the primary point of contact with Buyer regarding all matters relating to the Work, and have full authority to bind Seller.

2.7.2 Staffing; Key Personnel.

Seller shall provide and maintain staff sufficient for the completion of the Work in accordance with the Project Schedule who have the technical and managerial experience, qualifications, certifications, and licenses necessary to perform the Work in accordance with the Requirements. Seller shall provide and maintain a qualified and competent organization at the Project Site with adequate capacity and numbers of construction and startup personnel, equipment, and facilities to execute the Work in a safe, efficient, environmentally sound, and professional manner at a rate of progress in accordance with the Project Schedule. In establishing the Purchase Price and Project Schedule, Seller has investigated the Labor conditions and availability of Labor. Buyer shall be informed of all key personnel, including the Project Manager, construction manager, safety manager, engineering manager, start-up manager and quality manager, as each are identified in Exhibit AS ("Key Personnel"). Seller shall provide the completed Exhibit AS to Buyer at least 15 days prior to site mobilization. Key Personnel shall not be removed or replaced without written notification to Buyer, *provided, however*, Buyer has the right to approve the initial on-site construction manager proposed in Exhibit AS and any subsequent changes of the on-site construction manager, which approval will not be unreasonably withheld. If Buyer fails to respond within five (5) Business Days of notice and request for approval, Buyer's right to approve will be deemed waived for the initial appointment or proposed change of the on-site construction manager (although future changes will still require the same process for approval). Buyer shall have the right to require removal of any on site personnel for cause due to any material breach of this Agreement or Seller Event of Default regarding material safety issues or other material breach and the Seller shall not unreasonably withhold approval of Buyer's written request for such removal.

2.7.3 Licensed Personnel.

Whenever required by Applicable Law or Prudent Industry Standards, Seller agrees to employ licensed personnel to perform engineering, design, architectural or other professional services in the performance of the Work.

2.7.4 Personnel Documents and Language.

Seller shall ensure that at the time of hiring and before performing any Work, all Labor performing the Work (including Labor of Contractors) is in possession of all documents (including visas, driver's licenses, and work permits) as may be required by any and all Applicable Law to perform the Work. Upon request, subject to appropriate confidentiality protections, Seller shall provide any such documentation to Buyer in a timely fashion in order for

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Buyer to verify compliance or to comply with any request or requirement of any Governmental Authority.

2.7.5 Code of Ethics.

Seller represents that it has reviewed and agreed to be bound by, and shall cause all Contractors and all employees, consultants, Affiliates, and representatives, to review and be bound by, the Third-Party Ethics and Compliance Guidelines which are attached as Exhibit AO. Without limiting the other provisions in such Third-Party Ethics and Compliance Guidelines, Seller further represents that it and Persons working on the Project Site cannot possess alcohol, drugs, guns and ammunition at the Project Site as provided in such Third-Party Ethics and Compliance Guidelines. Buyer shall have the right to require Seller to remove from the Project Site any of Seller's employees, Contractors, consultants, Affiliates, or representatives who fail to abide by this Section 2.7.5.

2.7.6 Labor Relations.

2.7.6.1 Seller shall utilize union labor for on-site construction Work.

2.7.6.2 When the Work is performed by building and construction trades Labor, a pre-job conference shall be held with local labor representatives, with reasonably available documentation of such pre-job conferences, if any, to be provided to Buyer, prior to starting Work. Buyer shall be afforded the opportunity to attend and participate in pre-job conferences. Seller shall promptly inform and reasonably cooperate with Buyer on material labor relations matters. Seller shall consult with Buyer prior to rendering its decision(s) on labor relations matters that may impact the timely, efficient, and productive performance of the Work. Seller shall exercise its management rights contained in applicable labor agreements to establish, maintain, and enforce work rules conducive to timely, efficient, productive, and harmonious work operation. Seller shall take reasonable steps to resolve grievances, jurisdictional disputes, or alleged or actual violations of collective bargaining agreements. Subject to the foregoing, Seller shall be solely responsible for management of Labor and labor relations with respect to the Work.

2.7.6.3 Seller shall, and shall cause its Contractors to, use reasonable efforts to adopt practices designed to avoid Labor Disputes, and to minimize the risk of Labor-related delays or disruption of the progress of the Work. Contractor shall advise Buyer promptly, in writing, of any verifiable actual or threatened Labor Dispute.

2.7.7 Prevailing Wage and Similar Requirements.

2.7.7.1 Seller shall ensure that any laborers and mechanics that perform any portion of the Work that constitutes

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Construction are paid wages at rates not less than the prevailing rates for work of a similar character in the locality where such Construction is performed, as most recently determined by the Secretary of Labor at the time of the relevant Work, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

2.7.7.2 Except as provided in this Section 2.7.7.2 Seller shall ensure that the percentage of the total Labor hours incurred in connection with any portion of the Work that constitutes Construction and that is performed by Qualified Apprentices is at least equal to that percentage set forth in that subsection of Code Section 45(b)(8)(A)(ii) applicable to the year in which the Project begins construction within the meaning of Code Section 45 or 48, as applicable. Seller shall and shall ensure that any Person performing any portion of the Work that constitutes Construction and that employs four or more individuals in connection with such Construction employs one or more Qualified Apprentices. In addition, Seller shall comply with, and shall ensure that any Person performing any portion of the Work that constitutes Construction complies with, applicable journeyworker-to-apprentice ratios. In the event that any Person is not able to meet the foregoing requirements, Seller shall provide written documentation demonstrating to Buyer's reasonable satisfaction (i) that Seller or such Person requested Qualified Apprentices from a Registered Apprenticeship Program, and (ii) either (I) such request was denied for reasons other than the failure of Seller, such Person, or any PWA Contractor to comply with the established standards and requirements of such Registered Apprenticeship Program, or (II) such Registered Apprenticeship Program failed to respond to such request within five (5) Business Days. To the extent such documentation is sufficient to avoid the application of any of the requirements set forth in this Section 2.7.7.2 pursuant to Code Section 45(b)(8)(D)(ii), Seller shall be relieved of the obligation to comply with the avoided requirement.

2.7.7.3 Seller acknowledges that the requirements of Section 2.7.7.1 and Section 2.7.7.2 are based on Applicable Law as of the date of this Agreement and are essential to the qualification of the Project for the Investment Tax Credit or the Production Tax Credit, as elected by Buyer. Should new or different requirements be promulgated in PWA Guidance, then such PWA Guidance requirements will be reflected in a Change Order.

2.7.7.4 In addition to any other obligation set forth herein, Seller shall and shall cause all Contractors and PWA Contractors performing any portion of the Work that constitutes Construction or Repair or Alteration to retain Books and Records for the purpose of demonstrating compliance by Seller with Seller's responsibilities set forth in Sections 2.7.7.1, 2.7.7.2, and 17.10, and that such Books and Records shall be maintained in accordance with Code Section 6001. Notwithstanding

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anything to the contrary, Seller shall retain through the statute of limitations period applicable to the Investment Tax Credit or Production Tax Credit, as applicable, plus ninety (90) days, (A) a copy of all contracts by and between Seller and any Contractor providing Work that constitutes Construction or Repair or Alteration of the Project including in connection with work performed by Seller or any Contractor or PWA Contractor engaged by Seller pursuant to any Warranty, (B) any documentation provided to Seller by a Contractor or PWA Contractor for the purpose of demonstrating compliance by such Contractors and PWA Contractors with the responsibilities set forth in Sections 2.7.7.1, 2.7.7.2, and 17.10, and (C) any additional books and records necessary to meet the requirements of Section 6001 of the Code for the purpose of demonstrating compliance by such Contractors and PWA Contractors with the representations set forth in Sections 2.7.7.1, 2.7.7.2, and 17.10.

2.8 Compliance with Applicable Laws.

Seller shall comply, and shall cause all Contractors, employees, agents and representatives to comply, with all Applicable Laws in connection with the performance of Seller's obligations under this Agreement.

2.9 Storage.

Seller shall provide appropriate storage at the Project Site as required to perform the Work. In all storage locations, Seller shall provide security for all Equipment and Materials, including reasonable Spare Parts, materials, supplies, and any equipment required to unload, assemble, erect, install, commission, startup, and test the Work, together with any property owned or leased by Contractors. Seller shall protect the foregoing items and all Work from damage, and shall be responsible for any damage to such property.

2.10 Cooperation Regarding Commercial Operation.

Seller and Buyer recognize that after a Block has been commissioned and placed into commercial operation by Buyer, Seller may be continuing with completion of the Work. Until Substantial Completion has been achieved (or in the case of performing the Capacity Test, until Capacity Test Completion has been achieved) and subject to the requirements of Exhibit G, Buyer shall not unreasonably interfere with Seller's prosecution of the Work. After Substantial Completion has been achieved (or in the case of performing the Capacity Test, after Capacity Test Completion has been achieved) and subject to the requirements of Exhibit G, Seller shall not unreasonably interfere with Buyer's commercial operations and use of the Project Site.

2.11 No Shop.

From and after the date of this Agreement and until and unless this Agreement is terminated, neither Seller nor any of its Affiliates (or its or their agents or representatives) shall, directly or indirectly: (i) solicit, initiate, facilitate, or continue any prior occurring or ongoing

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discussions pertaining to the making, submission or announcement of any Acquisition Proposal to any Person other than Buyer or an Affiliate of Buyer; (ii) furnish any Confidential Information, including regarding Seller, the Project, the Project Assets or the terms of or transactions contemplated by this Agreement, to any Person other than Buyer or an Affiliate of Buyer in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; or (iii) engage (including continuing to engage) in discussions or negotiations with any Person other than Buyer or an Affiliate of Buyer with respect to any Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal.

2.12 Anti-Circumvention Inquiry Costs.

Seller shall reasonably assist and cooperate with Buyer in Buyer's efforts to estimate the Anti-Circumvention Inquiry Costs so that Buyer can estimate such costs at least ten (10) days before NTP Closing.

ARTICLE III PROPERTY

3.1 Real Property Documents.

3.1.1 Generally; Collaboration.

3.1.1.1 Due Diligence; Curative Documents.

Commencing on the Effective Date, Buyer may conduct due diligence of the type and scope customary for transactions of the nature as set forth in this Agreement, and Seller shall make available to Buyer by means of the Secured File-Transfer Website, as described in Section 1.2.2, all Project Documents, including all Real Property Documents and such due diligence materials as Buyer may reasonably request. Executed Curative Documents shall be made available on such Secured File-Transfer Website as soon as practicable after their full execution and no later than as set forth below. Drafts of additional proposed Curative Documents or modified Buyer-approved Curative Documents for Buyer's review and approval shall be sent to Buyer as provided below in Section 3.1.1.3.

3.1.1.2 Collaboration.

(1) Commencing on the Effective Date until NTP Closing, Seller and Buyer shall hold a telephone conference at least [REDACTED] to generally discuss the Real Property Documents, the Deviations Schedule, Title Commitments, preliminary/draft ALTA Survey, status of Drain Agreements and Crossing Agreements, Seller's Real Property Spreadsheet, and the Global Title Checklist ("Property Team Calls").

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(2) Commencing [REDACTED], and thereafter [REDACTED] (on dates to be mutually agreed upon) until the Title Objection Notice is received from Buyer, Seller shall deliver the Global Title Checklist to Buyer organized by parcel (as reflected by the Seller's Real Property Spreadsheet) and Title Commitment reflecting the curative efforts presently underway, identifying the number of Title Commitments received and describing generally the curative efforts underway as well as an updated Seller's Real Property Spreadsheet to the extent updated based on the changes in the Project Site and/or to the Real Property Documents or Substation property.

(3) Commencing [REDACTED] after the receipt of Buyer's Title Objection Notice described in Section 3.1.5.4, Seller shall furnish to Buyer on the [REDACTED] basis as set forth in subsection (2) above a written status update using the itemized Title Objection Notice (which is based on the Global Title Checklist as provided below) to update Buyer on the status of Seller's curative efforts required by Buyer's Title Objection Notice.

(4) Notwithstanding the "no later than" deadlines set forth below, Seller shall work with diligence and good faith to deliver Real Property Documents to Buyer as quickly as commercially reasonably possible, and Buyer shall work collaboratively with Seller in the same manner to review the Real Property Documents and provide objections and other feedback on Seller's proposed curative actions. Both Parties acknowledge and agree that the period between the Effective Date and the NTP Deadline mandates the commitment of both Parties and their vendors to work together in the manner described herein.

3.1.1.3 Curative Documents. Attached as Exhibit AE are copies of Curative Documents that Buyer has approved for Seller to cure title and survey objections customarily raised for projects similar to the Project ("Curative Documents"). Buyer authorizes Seller to utilize these Buyer-approved Curative Documents without having to obtain Buyer's approval in order to expedite Seller's curative actions. If Seller desires to add additional Buyer-approved Curative Documents or materially modify any of the Buyer-approved Curative Documents for one (1) or more parcels, Seller shall present such documents to Buyer for Buyer's review and approval by sending them as proposed/draft Curative Documents to the following specifically designated folder on the Secured File Transfer Website "Curative Documents – Draft Forms for Buyer Approval" accompanied by an automated notice reflecting the upload to such folder. Buyer after receipt shall use good faith efforts to review and approve or provide edits to the same (including furnishing a different Curative Document in lieu thereof), which approved or edited document shall become a Buyer-approved Curative Document as quickly as commercially reasonably possible but in no event later than [REDACTED] after receipt. If Buyer shall fail to respond within the [REDACTED]

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period, Buyer shall be deemed to have waived any objections to the use of such document(s) as updated Buyer-approved Curative Documents. Notwithstanding the foregoing, Buyer and Seller agree that due to the high number of documents involved under this Agreement, all documents submitted to Seller for consideration of being Buyer-approved Curative Documents must be submitted in an organized and efficient manner to facilitate their review. To that end, all documents to be considered for such approval may only be submitted to Seller by being clearly identified as proposed draft Curative Documents and located in the above-referenced required folder of the Secured File Transfer Website. When Curative Documents have been approved by Buyer or deemed approved by Buyer as provided herein, such forms shall be moved to the Secured File Transfer Website folder labeled "Curative Documents – Approved Forms."

3.1.2 Seller's Real Property Spreadsheet and Global Title Checklist.

Seller shall also make available on the secured-file transfer website and update it as provided herein, and at other reasonable times, (a) the Real Property Spreadsheet in the form attached as Exhibit H, that provides a comprehensive status summary of the Real Property Documents, and (b) the Global Title Checklist in the form attached as Exhibit H-Appendix A that provides a comprehensive status summary of the title and survey activities, including the Curative Documents. As Seller updates the Seller's Real Property Spreadsheet and Global Title Checklist (which Global Title Checklist shall become the Title Objection Notice as provided below) from a prior delivery to Buyer in accordance with the scheduled reporting set forth above in this Agreement, Seller shall redline or otherwise identify the changes made since the last update to Seller's Real Property Spreadsheet and Global Title Checklist and upload the redline or other documented changes to the folder of the Secured File Transfer Website identified as the "Real Property Spreadsheets" and "Global Title Checklist" folders with an automated notice accompanying the updates sent to Buyer reflecting the update to such folders. If the update does not include a redline, Seller shall otherwise identify the changes made since the prior update.

3.1.3 Buyer's Iterative Responses.

During the Property Team Calls, Buyer shall work in good faith to furnish comments, objections and guidance on the Real Property Documents, Title Commitments, and preliminary ALTA Survey, either received or otherwise discussed during the Property Team Calls, in an effort to allow the Seller to create a set of Real Property Documents that will meet Buyer's needs as a Condition Precedent to NTP. Whenever Seller furnishes the Global Title Checklist during this iterative process, Buyer will use commercially reasonable efforts to provide its comments, objections and guidance within the Global Title Checklist within [REDACTED]. Notwithstanding the foregoing dates for responses, if Buyer does not respond to one or more items in the Global Title Checklist, such failure to respond to such items shall not be deemed Buyer's approval of such items. Buyer's objections to any conditions, requirements and exceptions in the Title Commitments and preliminary ALTA Survey within the Global Title Checklist during this iterative process shall constitute title objections that will form a part of Buyer's Title Objection Notice, and may also include a listing of information Buyer reasonably requires in addition to the

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Title Commitments and further supporting title documents to determine whether Buyer has any additional objections to title and/or survey. Seller and Buyer acknowledge that, during this iterative review and objection process, there will be certain exceptions and other title matters that Buyer will not be able to fully evaluate prior to its receipt of the preliminary ALTA Survey, and that Buyer reserves the right to object to such matters during the supplemental title and survey review period set forth in Section 3.1.5.4 below. Notwithstanding the foregoing, Buyer and Seller agree that due to the high number of documents involved under this Agreement, all documents submitted to Seller for consideration must be submitted in an organized and efficient manner and filed in the appropriate file in the Secured File Transfer Website to facilitate their review. To that end, all documents to be considered must be clearly identified in the manner it is referred to in this Agreement. All such documents shall be uploaded to the Secured File-Transfer Website in the folder labeled with their corresponding document type accompanied by an automated notice describing the documents uploaded.

3.1.4 Solar Energy Easement and Right of Way Easement Forms.

The Parties agree that Seller shall use the form of Solar Energy Easement attached as Exhibit H – Appendix B ("Option Agreement for Solar Energy Easement Form") for new easements entered into after the Effective Date for the Blocks to be constructed, owned and operated at the Project Site, which shall be considered an acceptable document when properly and validly executed by all landowners within the Project Site. In addition, the Parties agree that, in lieu of the Option Agreement for Solar Energy Easement Form, Seller may use the form of Option Agreement for Right of Way Easement Agreements attached as Exhibit H-Appendix L ("Option Agreement for Right of Way Easement Agreements Form") for parcels within the Project Site that will not host Blocks, and the same will be considered an acceptable document when properly and validly executed by the applicable landowners of such parcels. Notwithstanding the foregoing, Seller has entered into the form of Option Agreement for Lease of Real Estate attached as Exhibit H – Appendix I ("Option Agreement for Lease of Real Estate") for the sites specified in the Real Property Spreadsheet. These Option Agreements for Lease of Real Estate are not acceptable documents, but will be acceptable if amended by the form of Amendment to Option Agreement for Lease of Real Estate attached as Exhibit H – Appendix N ("Amendment to Option Agreement for Lease of Real Estate Form").

[REDACTED], Seller shall deliver to Buyer the applicable executed Real Property Document(s) along with (i) a Deviations Schedule identifying all changes except identification of the landowner and property at issue and (ii) redlining/markings of such Option Agreement for Solar Energy Easement, Option Agreement for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate and Option Agreement for Right of Way Easement Agreements which identifies all changes or variations made in the Option Agreements for Solar Energy Easement, Option Agreements for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate and Option Agreement for Right of Way Easement Agreements compared to the approved forms of Option Agreement for Solar Energy Easement, Option Agreement for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate and approved Option Agreement for Right of Way Easement Agreement Form (collectively, "First Batch of Solar Energy Agreements"). For all remaining Option Agreements for Solar Energy Easement, Option Agreements for Lease of Real Estate, Amendment

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to Option Agreement for Lease of Real Estate and Option Agreements for Right of Way Easement Agreements (and any Buyer-approved variations thereto) to be executed after the Effective Date for the Project Site, Seller shall deliver to Buyer copies of all newly executed Option Agreements for Solar Energy Easement, Option Agreements for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate and Option Agreements for Right of Way Easement Agreements along with the Real Property Spreadsheet and both (i) the updated Deviations Schedule identifying all changes except identification of the landowner and property at issue and (ii) redlining/markings of such Option Agreements for Solar Energy Easement, Option Agreements for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate and Option Agreements for Right of Way Easement Agreements which identify all changes or variations made in such documents compared to the approved forms thereof ("Additional Solar Energy Agreements") within [REDACTED]. As Buyer completes its review and in all cases no later than [REDACTED] of the First Batch of Solar Energy Agreements, and [REDACTED] of each of the Additional Solar Energy Agreements, as applicable, Buyer shall notify Seller if Buyer does not approve any such variations in a Option Agreement for Solar Energy Easement, Option Agreement for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate or Option Agreement for Right of Way Easement Agreement. Seller shall then obtain an appropriate amendment to the Option Agreement for Solar Energy Easement, Option Agreement for Lease of Real Estate, Amendment to Option Agreement for Lease of Real Estate or Option Agreement for Right of Way Easement Agreement to address Buyer's concerns to its satisfaction as one of the Conditions Precedent to Buyer's obligation to issue the NTP. With respect to portions of the Project Site that will be governed, but are not yet governed, by an Option Agreement for Solar Energy Easement or Option Agreement for Right of Way Easement Agreement, Seller's Deviations Schedule shall so specify the location and expected date of receipt of the Option Agreement for Solar Energy Easement or Option Agreement for Right of Way Easement Agreement. Seller shall work in good faith and diligently to obtain any Option Agreements Solar Energy Easements and Option Agreements for Right of Way Easement Agreements required for any variations in the Project Site at least [REDACTED] to allow sufficient time for Buyer to conduct its review of, and grant approvals or objections to, applicable variations in the Option Agreements for Solar Energy Easements and Option Agreements for Right of Way Easement Agreements (which shall include the updated Seller's Real Property Spreadsheet and both the updated Deviations Schedule and redlining/markings of such Option Agreements for Solar Energy Easements and Option Agreements for Right of Way Easement Agreements, each of which identify all changes or variations made in the Option Agreements for Solar Energy Easements and Option Agreements for Right of Way Easement Agreements compared to the approved forms).

3.1.5 Title and Survey of Real Property Interests.

3.1.5.1 Initial Delivery of Title Commitments.

[REDACTED], Seller has obtained individual Title Commitments on all parcels on the Project Site and delivered such Title Commitments to the Secured File-Transfer Website. Seller shall cause the Title Insurer to provide, [REDACTED], a single combined Title Commitment that incorporates such individual Title Commitments.

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3.1.5.2 Initial Delivery of Survey. Seller shall also obtain a preliminary ALTA Survey from a properly Michigan licensed and experienced professional surveyor for the then-current Project Site no later than the Real Property Documents Deadline.

3.1.5.3 Updated Delivery of Global Title Checklist. Concurrently with the delivery of the preliminary ALTA Survey as provided in the preceding paragraph, Seller shall deliver to Buyer an updated Global Title Checklist organized by parcel (as reflected by the Real Property Spreadsheet) and Title Commitment reflecting the curative efforts presently underway or, if cure is not possible, providing a detailed explanation of why cure is not possible and Seller's proposed alternative solution to address issue for Buyer's consideration as part of Buyer's review and approval process herein.

3.1.5.4 Buyer's Survey Review Period. No later than [REDACTED] Buyer shall supplement its existing Title objection notices given through the iterative process by providing Seller with a notice of Buyer's objections to any conditions, requirements and exceptions in the (i) Title Commitments that were not previously reviewed and objected to by Buyer during the iterative process provided for herein, or which were otherwise pending Buyer's survey review, and (ii) preliminary ALTA Survey (which shall not include objections to Permitted Encumbrances) ("Title Objection Notice"). The Title Objection Notice shall continue to be in the form of the Global Title Checklist and may also include a listing of information Buyer reasonably requires in addition to the Title Commitments and supporting title documents to determine whether Buyer has any additional objections to title and/or survey. Hereinafter, Buyer's Title Objection Notice and Global Title Checklist shall be one and the same document, irrespective of the term used.

3.1.5.5 Curative Obligations. [REDACTED], Seller shall notify Buyer how Seller will address each objection or request for information in the Title Objection Notice and the expected date it will do so. Thereafter, Seller shall work with diligence and good faith to furnish all information that Buyer requires pursuant to the Title Objection Notice and cure all objections made by Buyer in the Title Objection Notice by curative actions, including utilizing curative documents on forms approved by Buyer (including those pre-approved as Buyer-approved Curative Documents) and the Title Insurer. During this period, the status updates in the updated Global Title Checklist, as required above in Section 3.1.1.2(3), shall show a reasonably detailed breakdown of curative actions and resolutions for each objection in the Title Objection Notice (which resolution may require a proposed alternative solution for Buyer's approval).

3.1.5.6 Pro Forma Title Policy and ALTA Survey.

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(1) No later than [REDACTED], Seller shall deliver to Buyer (i) a preliminary Pro Forma Title Policy (updated to reflect curative efforts undertaken to date) proposing to insure the Project for an amount at least equal to the value of the improvements to be installed on the Project Site or as otherwise specified by Buyer, (ii) an updated ALTA Survey, (iii) Curative Documents obtained to such date, and (iv) a written summary updating the status of Seller's curative efforts from the immediately preceding status update provided for in Section 3.1.5.4 using the same Title Objection Notice/updated Global Title Checklist that the Parties have been using during this time period prior to NTP. The Pro Forma Title Policy shall be "blacklined" in a manner that clearly and directly identifies the revisions from/to the Title Commitments, or Seller shall otherwise provide a written summary of such revisions if a blackline is not feasible (i.e., where individual Title Commitments are consolidated into a combined Title Commitment).

(2) Seller and Buyer shall work together cooperatively and in good faith towards revising the preliminary Pro Forma Title Policy, ALTA Survey, and Curative Documents in the manner and condition to address Buyer's objections and concerns. Seller shall furnish all information and documents requested and cure all objections made by Buyer including utilizing Curative Documents. Further, Seller shall continue to provide the updates as provided in Section 3.1.1.2 above.

(3) No later than [REDACTED], Seller shall deliver to Buyer a revised preliminary Pro Forma Title Policy, revised ALTA Survey, all Curative Documents fully-recorded (or delivered to the Title Company for recording) when customary, and the updated Title Objection Notice/Global Title Checklist addressing each of the objections made by Buyer and, if any objections could not be addressed, the reason why and any alternatives Seller might suggest to reasonably address Buyer's objection. The revised ALTA Survey and all iterative revisions of the ALTA Survey between the preliminary ALTA Survey delivered as set forth above, and the updated ALTA Survey shall in each instance be "clouded" or "blacklined" in a manner that clearly and directly identifies all revisions, or Seller shall otherwise provide a written summary of such revisions if a blackline is not feasible. The Pro Forma Title Policy shall be "blacklined" in a manner that clearly and directly identifies the revisions from/to the preliminary Pro Forma Title Policy furnished as set forth above. If Buyer approves the revised Pro Forma Title Policy and ALTA Survey, Buyer shall deliver written notice thereof to Seller, and the final Buyer-approved Pro Forma Title Policy shall be referred to as the "Final Pro Forma Title Policy" and the final Buyer-approved ALTA Survey shall be referred to as the "Final ALTA Survey." If Seller shall fail to address all matters raised by Buyer in Buyer's Pro Forma Objection Notice to Buyer's satisfaction, Buyer may

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terminate this Agreement upon notice to Seller as provided in Section 5.2.4 and Section 18.7 of this Agreement.

3.1.5.7 Changes to Project Site. Without limiting the specific requirements in Section 3.1.5.4, in the event that the final Project Site is at any time changed as permitted by this Agreement to include one or more parcels that are not covered by the existing Title Commitments, Final Pro Forma Title Policy, ALTA Survey, and Final ALTA Survey, Seller shall thereafter promptly order Title Commitments and the updated ALTA Survey covering such new parcels and cause the Title Insurer to add such new parcels to the Final Pro Forma Title Policy and surveyor to update the ALTA Survey. Following Buyer's receipt of any such new Title Commitments, including supporting title documents (and updated Pro Forma Title Policy, as applicable), the updated ALTA Survey (and updated Final ALTA Survey, if applicable), new Solar Energy Easements, and updated Deviations Schedule and Real Property Schedule, Buyer shall have the right to provide Seller with an updated Title Objection Notice covering such parcels, in which case the same process set forth in this Section 3.1.5 shall start anew for only those parcels, but the Parties agree to cooperate and work in good faith to each reduce their response time on a pro rata basis to allow the Final Pro Forma Title Policy and Final ALTA Survey prior to the anticipated NTP Closing. For any changes to parcels after the NTP Closing, the Parties shall work in good faith to establish an expedited schedule using the same process set forth in this Section 3.1.5 and adjusting each time period on an equally proportionate basis.

3.1.5.8 Drains. Seller shall require the Surveyor to obtain maps or other identifying information, to the extent available, of any county drains located within the Project Site from the county drain commissioner(s), and for the Surveyor to ensure that any preliminary and updated ALTA Survey and the Final ALTA Survey identify the location of any such County Drains within the Project Site (regardless of whether there is an easement recorded in the office of the register of deeds for the applicable county or in the office of the drain commissioner for the applicable county) that are not released as provided for in this Section 3.1. Buyer's Title Objection Notice and/or Property Team Conference Calls may include objections to Project facilities crossing/encroaching upon county drains, and Seller shall follow the same process for curative efforts to obtain Drain Agreements that address such objections and to assure that the Title and Survey Documents at Substantial Completion reflect such Drain Agreements. Seller shall provide to the Title Insurer copies of any Drain Agreements so as to add them as part of the Title Commitments and supporting documents to the Title Commitments required to be provided to Buyer under this Section 3.1.

3.1.5.9 Crossing Agreements. Seller shall require the Title Insurer to search and include Crossing Agreements as part of the

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Title Commitments and supporting documents to the Title Commitments required to be provided to Buyer under this Section 3.1. Seller shall also ensure that any preliminary and updated ALTA Survey and the Final ALTA Survey identify the location of any Crossing Agreements within the Project Site (regardless of whether it is recorded in the office of the register of deeds for the applicable county or in the office of the drain commissioner for the applicable county) that is not released during any cure period provided for in this Section 3.1. Buyer's Title Objection Notice and/or Buyer's pro forma objection notices may include objections that Seller shall obtain one or more Crossing Agreements and Seller shall follow the same process for curative efforts to obtain Crossing Agreements that address such objections and to assure that the Title and Survey Documents only include or reflect Crossing Agreements that are deemed Permitted Encumbrances by Buyer at (i) NTP with respect to Block Crossing Agreements, and (ii) Substantial Completion with respect to Non-Block Crossing Agreements.

3.1.5.10 As-Built Survey. Upon Final Completion, Seller shall deliver to Buyer the As-Built Survey.

3.1.5.11 Land Owner Information. Seller shall provide Buyer with the following information: (a) within [REDACTED] of construction of the Project, land owner information for the Solar Energy Easements, including without limitation, land owner names, land owner payment amounts, and IRS Form W-9 for each such land owner so that Seller may establish such land owners as Buyer vendors; and (b) no later than [REDACTED] footages of corridors and other facility information as may be needed to calculate land owner payments required under the Solar Energy Easements.

3.2 UCC Search of Personal Property Interests.

3.2.1 Seller's UCC Search. As part of the Milestone Deliverables for NTP and Substantial Completion (each dated no earlier than [REDACTED], as applicable) for personal property and fixtures, including the Blocks and other Project Assets, Seller shall furnish to Buyer searches of the Uniform Commercial Code ("UCC") records of the Michigan Secretary of State or of any other applicable jurisdiction, against Seller and Seller's Affiliates identified on Exhibit T (collectively, "Seller's Organization Chart"), evidencing that no UCC financing statements or other Liens are filed against Seller and any such Affiliates in respect of the Project Assets including the Equipment and Materials (other than Permitted Encumbrances) ("UCC Search").

3.2.2 Buyer's UCC Search. Buyer is authorized to conduct its own UCC Search at any time and from time to time.

3.2.3 Lender Release or Certification. If at any time Seller or any party in Seller's Organization Chart has granted to a lender or mortgagee a Lien on

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the Project Assets other than Permitted Encumbrances, Seller shall by the earlier of [REDACTED] or discovery of such Lien or the Substantial Completion date obtain either (i) a full release and termination of such Lien over the Project Assets from the third party in accordance with Applicable Law ("UCC Release") or (ii) if such Lien is granted by any party in Seller's Organization Chart (other than Seller), either directly or indirectly, a certificate certifying and agreeing that such Lien does not include any Lien or security interest in the Project Assets, in the form attached as Exhibit AV ("Lender's Certificate").

3.3 Project Layout.

Attached as Exhibit F is the preliminary Project Layout of the Project that sets out in schematic format the preliminary location of all improvements of the Project ("Project Layout"). As part of the Milestone Deliverables for NTP and as a Condition Precedent for NTP, Seller shall furnish Buyer an updated Project Layout that is consistent with the Solar Energy Easements, Pro Forma Title Policy, ALTA Survey and Environmental Reports and Studies and Permits and that otherwise complies with the terms and conditions of this Agreement. Thereafter, Seller shall not make any change to the Project Layout, except such changes as may be needed during construction within the fenced area(s) as depicted on the Project Layout at NTP, without the prior written consent of Buyer, which consent shall be effectuated by a Change Order, provided that any such change shall be consistent with the Solar Energy Easements, Pro Forma Title Policy, ALTA Survey and Environmental Reports and Studies, and Permits and that otherwise complies with the terms and conditions of this Agreement. All changes to the Project Layout will be conditioned upon Buyer's ability to conduct the due diligence investigations of, if applicable, new property to be added in accordance with this ARTICLE III.

3.4 Environmental Assessment.

3.4.1 Without limiting Seller's responsibilities set forth herein for Hazardous Materials and compliance with Environmental Laws, [REDACTED]

[REDACTED] Seller shall conduct, for each parcel of the Project Site, a Phase I Environmental Site Assessment in conformance with the most recent versions of the ASTM International Standard Practice E1527-13 ("Phase I ESA"). The purpose of the Phase I ESAs is to establish, for the benefit and protection of Buyer and its interests, all available defenses to environmental liability under Applicable Laws. All Phase I ESAs shall be (a) conducted at Seller's expense; (b) conducted by Stantec Consulting Services Inc. or another reputable environmental consulting firm reasonably acceptable to Buyer; (c) issued in the name of Seller and Buyer; and (d) delivered to Buyer in draft form with a reasonable opportunity [REDACTED]

[REDACTED] to provide comments and suggested revisions, which comments and revisions shall be considered in good faith by Seller or its consultants. If a Phase I ESA identifies one or more Recognized Environmental Conditions (as defined in the applicable ASTM standard practice), Buyer may, after NTP Closing, conduct a Phase II investigation, including sampling and testing of soil, groundwater or other media, to evaluate such Recognized Environmental Conditions. If the Project Site or any one (1) or more parcels of the Project Site is a "facility" as that

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term is defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq. ("Part 201"), Buyer may prepare and disclose to EGLE a Baseline Environmental Assessment ("BEA") pursuant to Section 20126(1)(c) of Part 201. Any such Phase II investigation, BEA, or other post-Phase I environmental report or other work product shall be conducted or prepared at Buyer's expense and shall not delay, impede or interfere with Seller's development and/or construction activities on the Project Site. In the event that the final Project Site is at any time changed as permitted by this Agreement to include one or more parcels that are not covered by then-existing Phase I ESAs prepared pursuant to this Section, Seller shall thereafter promptly conduct one or more Phase I ESAs on such additional parcel or parcels. The Phase I ESAs referenced in this Section are collectively referred to as "Environmental Reports and Studies."

3.5 Project Contracts.

Seller shall not enter into any Material Project Contract that differs from the forms of Project Contracts set forth in this Agreement without the prior written consent of Buyer, except for changes that are not materially adverse to Buyer. Without limiting what may also be considered materially adverse, the Parties agree that any deviations or potential deviations to the warranty provisions of any Material Project Contract shall be considered materially adverse for which Buyer's consent in its sole discretion is required in all instances. Without limiting what may also be considered not materially adverse, the Parties agree that the pass through of costs of the type described in the definition of "Change in Importation Costs" from any Contractor to Seller, or any amounts to be paid by Seller, in any Material Project Contract is not a provision that is adverse to Buyer and shall not require Buyer's consent; provided that, for clarity, (i) in no event shall Buyer be responsible to pay any amounts beyond the Purchase Price as provided in this Agreement, and (ii) any such Change in Importation Costs from Contractor to Seller shall be considered part of the Total Allocable Cost Increases and thus subject to cost sharing under Section 9.7.2.1 and the Total Purchase Price Adjustment Cap pursuant to Section 9.7.2. Seller shall promptly notify Buyer of any potential deviation from the applicable forms of Project Contracts, and, in the event Seller seeks to execute any Material Project Contract with such deviation, Seller shall in addition to the notice above first provide to Buyer the proposed final form of such Material Project Contract, identifying all deviations from the applicable form of Project Contract and whether Seller believes any such deviation is to a warranty provision or is otherwise materially adverse to Buyer, with reasonable time for Buyer to review, dispute Seller's assertion that any such deviation is not to a warranty provision or is otherwise not materially adverse to Buyer, and, to the extent Buyer's approval is required, approve or withhold its approval of such proposed deviation (such approval not to be unreasonably withheld or delayed).

[REDACTED] from Seller, to the extent applicable, Buyer shall raise any such dispute or notify Seller that Buyer does not consent to a deviation requiring Buyer's consent, and if Buyer does not take such action within such [REDACTED], Buyer shall be deemed to have approved, agreed and consented to such Material Project Contract. The Parties shall resolve any dispute regarding the matters set forth in this Section 3.5 in accordance with ARTICLE XXIII. The Parties acknowledge that Seller may enter into several Project Contracts, including several Construction Contracts, splitting the Scope of Work amongst multiple Contractors under multiple Project Contracts, including construction Contractors, and that Seller may do so as long as it complies with the provisions hereof, including

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this Section 3.5, including that in determining whether any Material Project Contract differs from the form set forth herein, such several Project Contracts shall be viewed collectively in the aggregate. Any gaps in responsibility or warranties arising from Seller acting as its own general contractor shall remain as Seller's responsibility notwithstanding anything to the contrary in this Agreement including the limitations of Seller's responsibilities after Substantial Completion. If any changes are made to the Project Contracts that adversely affect the Warranty and Buyer's consent was not obtained, Seller shall remain fully responsible to Seller notwithstanding anything to the contrary in ARTICLE XVII.

Seller shall not enter into a Material Project Contract except with a Contractor or Subcontractor pre-approved by Buyer pursuant to Exhibit AD or Exhibit A Appendix B1 without the Buyer's prior written approval. Seller and Buyer agree that Buyer's approval does not relieve Seller of any of its obligations, duties or responsibilities under this Agreement. Upon the request of Buyer, Seller shall provide to Buyer background information regarding the experience, financial strength, personnel and other information concerning any proposed Contractor or Subcontractor not listed on Exhibit AD or Exhibit A Appendix B1. Seller shall at all times be responsible for the actions, omissions, operations and Work of all Contractors and Subcontractors as provided in this Agreement.

3.6 Liens Arising from Work.

Except to the extent arising with respect to Buyer's failure to make payment under this Agreement and Seller's failure to comply with this Section 3.6: (i) Seller shall not directly or indirectly create, incur, assume, or suffer to be created by it or any Contractor (including any employee, laborer, materialman, or other supplier of goods or services) any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, mechanic's lien, construction lien, charge, or encumbrance on the Work, the Project Site, Project Assets, or any part thereof or interest therein (each a "Seller Lien" and collectively, "Seller Liens"); (ii) upon receipt of payments as provided in this Agreement, Seller shall keep the Project Site, Project Assets, and the Work (including all Equipment and Materials, Contractor equipment and materials), free of Seller Liens; and (iii) upon receipt of payments as provided in this Agreement, Seller shall promptly pay or discharge and discharge of record (including by recording a bond to the extent permitted by and in accordance with Applicable Law) any such Seller Lien or other charges which, if unpaid, might be or become a Seller Lien. Seller shall notify Buyer as soon as practicable after (but in any event within [REDACTED]) the assertion of any Seller Lien in violation of this Agreement. Upon the failure of Seller to promptly discharge or cause to be released any Seller Lien as required by this Section 3.6 within the earlier of [REDACTED], Buyer may, but shall not be obligated to, at Seller's expense (a) pay the lien claimant to discharge the Seller Lien or (b) obtain a surety bond for such Seller Lien. Upon such payment therefor, Buyer shall be entitled to immediately recover from Seller the amount and costs thereof together with all expenses incurred by Buyer (expressly including all actual attorneys' fees) in connection with such payment or set off and deduct all such amounts against any sums owed by Buyer to Seller.

ARTICLE IV RESPONSIBILITIES OF BUYER

4.1 Buyer's General Obligation.

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Buyer agrees to cooperate with Seller and not to unreasonably interfere with Seller and Seller's agents, employees or Contractors during the performance of this Agreement.

4.2 Buyer's Specific Obligations.

Buyer shall be responsible for the following matters and actions to be performed on a timely basis:

4.2.1 Post-NTP Access to Project Site.

i. After Buyer has acquired title to the Project Site, Buyer hereby grants to Seller and to such Persons or entities as the Seller may designate in writing the right of access within the Project Site (including the full extent of Buyer's access rights under the Solar Energy Easements, Crossing Agreements, Right of Way Easement Agreements, Drain Agreements, and rights for Access Roads if and to the extent assigned to Buyer) as necessary to perform its Work hereunder, subject to the requirements of this Agreement and the limitations and requirements of Applicable Laws.

4.2.2 Post-Substantial Completion Access to Project Site.

Following Substantial Completion, Buyer shall grant reasonable rights of ingress and egress to and from the Project Site for Seller and all Contractors sufficient for the performance of Seller's obligations under this Agreement that arise after Substantial Completion, such as completion of the Punch List Items, Performance Tests and to correct Work pursuant to the Warranty.

4.2.3 Buyer's Representative.

Upon the Effective Date and during the term of this Agreement, Buyer shall designate by written notice to Seller a Buyer's Representative who shall be authorized to act on behalf of Buyer, with whom Seller may consult at all reasonable times, and whose written instructions, requests, and decisions will be binding upon Buyer as to all matters pertaining to this Agreement and the performance of Buyer hereunder ("Buyer's Representative"). If the Buyer's Representative does not have authority to approve Change Orders, Buyer shall deliver a notice to Seller identifying such persons within Buyer's organization that do have such authority. Buyer may, at any time by written notice to Seller, change the Buyer's Representative or, if applicable, the persons designated as having authority to approve Change Orders. Buyer's Representative is Juan Tatis. The Buyer's Representative may be changed by Buyer upon notice to Seller from Buyer's Authorized Officer.

4.2.4 Operating Personnel.

Buyer shall supply, or cause to be supplied, operating personnel for training, commissioning and commercial operation following transfer of care, custody and control of the Project or any operating portion thereof for Buyer as deemed necessary by Buyer.

4.2.5 Payment Obligations to Seller.

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Buyer shall pay the Purchase Price and all other sums required to be paid by Buyer pursuant to and in accordance with the terms of this Agreement.

4.2.6 Compliance with Applicable Laws.

Buyer shall comply, and cause all of its employees, agents and representatives to comply, with all Applicable Laws in connection with the performance of Buyer's obligations under this Agreement.

4.2.7 Compliance with Site Rules and Regulations.

Buyer will cause its personnel present on the Project Site to observe and comply with all health, safety, security, environmental and other regulations established by Seller or the Contractor for the Project Site or for any location away from the Project Site where the field construction office for the Project is established (and where Buyer's personnel may be present) that have been made known to Buyer by delivery of a copy thereof to the Buyer's Representative.

4.3 MPSC Regulatory Filing.

4.3.1 Buyer shall submit (a) an application to the MPSC for approval of this Agreement; and (b) an application to the MPSC for approval of the cost recovery filing, in each case, on or before [REDACTED]

4.3.2 The Parties shall diligently and in good faith, using commercially reasonable efforts, pursue such approval from the MPSC. The Parties shall work together, collaborate and mutually support each other in seeking, pursuing and making strategic decisions toward such approval from the MPSC. Each Party shall share information and resources with the other Party, and provide and accept input and feedback from the other Party, toward such approval from the MPSC.

4.3.3 Seller hereby consents to the disclosure of confidential information regarding the Project and its current status in public filings, discovery, and communications with the MPSC, the MPSC Staff and parties to MPSC proceedings to be made by Buyer in connection with seeking approval of this Agreement or in developing the Project; and hereby waives any confidentiality provisions relating thereto currently in effect; provided that (i) Buyer shall use reasonable efforts to seek confidential treatment pertaining to this Agreement and any other confidential information about the transactions contemplated in this Agreement that Buyer has a need to disclose for purposes of MPSC proceedings, and (ii) the Parties will work together in good faith to prepare redacted copies of this Agreement and any other such information for disclosure to any such Person. Notwithstanding the foregoing, Buyer shall have the right to publicly disclose the levelized cost of energy (\$/MWh) for the Project associated with the transactions contemplated in this Agreement.

4.3.4 Subject to Section 18.7, (i) if a final MPSC order, not subject to rehearing or appeal under regulatory and statutory deadlines, approving this

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Agreement is not obtained by [REDACTED], either Party may in its sole discretion terminate this Agreement by providing written notice to the other Party no later than [REDACTED], or (ii) if at any time the MPSC denies approval of this Agreement, either Party may in its sole discretion terminate this Agreement by providing written notice to the other Party no later than [REDACTED] after the MPSC's denial of approval of this Agreement becomes not subject to rehearing or appeal under statutory deadlines.

4.3.5 If the MPSC grants conditional approval of this Agreement, including denial of any cost recovery associated with this Agreement, and the conditions of such approval are not acceptable to Buyer, in its sole discretion, then Buyer shall have the right to terminate this Agreement by providing written notice to the Seller no later than [REDACTED] after the conditional approval becomes not subject to rehearing or appeal under applicable regulatory and statutory deadlines. If the Seller notifies Buyer within [REDACTED] after the issuance of the MPSC conditional approval, as applicable, that such conditional approval contains terms and conditions that will materially increase the cost of Seller of developing, designing or constructing the Project or Seller's ability to achieve Substantial Completion by the Substantial Completion Deadline and Buyer desires to proceed with this Agreement pursuant to the terms of the conditional approval, the Parties shall in good faith negotiate an equitable adjustment to the Purchase Price to account for any such resulting material increase in the Seller's costs or the Project Schedule, as applicable. In connection therewith, the Seller shall provide such evidence as is reasonably requested by Buyer to substantiate such material cost and/or schedule impact to Seller. If the Parties are unable to agree on such changes to the Purchase Price within [REDACTED], the Buyer shall thereafter terminate this Agreement.

4.3.6 If the MPSC grants unconditional approval of this Agreement by the NTP Deadline, Buyer will provide Seller notice of said approval no later than [REDACTED] after the approval becomes not subject to rehearing or appeal under statutory deadlines.

4.4 Wholesale Energy Sales.

The Parties agree that all energy produced from the Project, including any test energy produced, will be owned by Buyer upon generation thereof. As between Seller and Buyer, the Parties agree that Buyer shall have the responsibility to be registered in MISO as a market participant with respect to such energy, and Buyer shall operate in such capacity at Seller's reasonable direction. The Parties agree that at any time prior to Final Completion, all energy produced from the Project will be sold at wholesale by Buyer into the energy markets administered by the Transmission Owner.

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4.5 Cooperation.

4.5.1 In addition to the Parties' obligations to cooperate with respect to commissioning and commercial operations of the Project as provided in Section 2.10 from time to time following the Effective Date until Final Completion, Buyer shall reasonably cooperate with Seller in constructing, developing and transferring the Project in accordance with this Agreement, including in accordance with the schedule and deadlines set forth herein, and Buyer shall execute, acknowledge and deliver any documents reasonably necessary to effectuate the foregoing as provided in this Agreement. Buyer shall cooperate with Seller and its representatives with respect to all filings that Seller elects to make or, pursuant to Applicable Law, shall be required to make in connection with the transactions contemplated by this Agreement. Notwithstanding the transfer of Project Contracts as contemplated by Sections 6.1.1 and 6.1.2, and subject to the provisions of this Agreement, Buyer acknowledges and agrees that Seller or one of its Affiliates will act on behalf of Buyer with respect to the Project Contracts at all times prior to Final Completion with respect to the completion of Punch List Items, Performance Tests, the achievement of Final Completion and any Warranty Work.

4.5.2 To the extent needed for the purpose of achieving Substantial Completion, and until Substantial Completion, Seller will continue to have control over the Project and access to the Project Site in all day-to-day construction, commissioning and operational activities including complying with all Requirements and the requirements for safety set forth in Section 2.4.6. After Substantial Completion, Seller will continue to manage the Construction Contracts in order to achieve Final Completion. Seller's role, rights and obligations as described in this Section 4.5 shall automatically terminate upon Final Completion.

4.5.3 At all times prior to Final Completion, Buyer shall transfer any amounts received by Buyer under any Construction Contract, including liquidated damages, to an account of Seller as directed by Seller, in each case, to the extent related to matters for which the Purchase Price is reduced or Seller is obligated to make a payment to Buyer. On and after the date of Final Completion, to the extent any such amounts received by Buyer under any Construction Contract, including liquidated damages, relate to matters for which the Purchase Price is reduced or Seller is obligated to make a payment to Buyer, Buyer shall transfer such amounts to an account of Seller as directed by Seller.

4.5.4 In furtherance of Seller's rights under this Section 4.5, Buyer shall not, until Final Completion, amend or modify the Construction Contracts without Seller's prior written consent (which Seller shall not withhold unreasonably).

4.6 Performance Acceptance Tests.

Seller shall be responsible for any Performance Acceptance Tests under the Module Supply Agreement or otherwise.

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ARTICLE V NOTICE TO PROCEED

5.1 Buyer's and Seller's Conditions Precedent to the NTP.

The following are both Buyer's and Seller's Conditions Precedent to issuance of the NTP:

5.1.1 MPSC Approval. Buyer has received MPSC Approval as provided in Section 4.3.4 or Section 4.3.5 and which approval must be final and not subject to being overturned or modified on appeal or further appeal, in each case, under regulatory or statutory deadlines, or Buyer has waived this Condition Precedent.

5.1.2 Governmental Authority Consents. Seller must have received and delivered to Buyer the Special Land Use Permit identified on Exhibit R from applicable Governmental Authorities, for Seller's performance of its obligations under this Agreement including the construction and operations (as of Substantial Completion) of the Project; which approvals, variances and permits must be final and not subject to being overturned or modified on appeal or further appeal, in each case, under statutory deadlines. If there has been any change to the Special Land Use Permit (or its equivalent as required by the Governmental Authorities), Seller has notified Buyer of the change and whether it materially adversely affects the Project during operations for Buyer's determination regarding Seller's conclusion. With respect to Consents that are not obtained prior to NTP, Buyer and Seller have agreed on the remaining Consents to be obtained by the earlier of Substantial Completion or the date required by the Governmental Authorities necessary for Seller's timely performance under this Agreement.

5.2 Buyer's Conditions Precedent to the NTP Closing and Issuance of NTP.

The following are Buyer's Conditions Precedent to the NTP Closing and the issuance of the NTP:

5.2.1 Estoppel Certificates; Certification of Status of Material Project Contracts; Status of Real Property Documents.

5.2.1.1 Seller shall have delivered to Buyer an executed estoppel certificate for each Solar Energy Easement, Option Agreement for Solar Energy Easement, Option Agreement for Lease of Real Estate, Right of Way Easement Agreement and Option Agreement for Right of Way Agreement (and any amendment thereto, but expressly excluding portions of the Project Site which are owned by Seller), substantially in the form attached hereto as Exhibit H (with any changes thereto only as approved by Buyer) ("Estoppel Certificate"). Such Estoppel Certificates shall be executed no earlier than [REDACTED]. Notwithstanding the foregoing requirement, Buyer agrees to cooperate in good faith with Seller by agreeing that if Seller can furnish executed Estoppel Certificates for (i) the Solar Energy Easements, the Option Agreements for Solar Energy Easement, the Option Agreements for Lease

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of Real Estate, the Option Agreements for Right of Way Agreement and the Option Agreements for Right of Way Agreement granting rights to real property on which [REDACTED] of Blocks are located based on the Project Layout, and (ii) [REDACTED] of the Solar Energy Easements, the Option Agreements for Solar Energy Easement, Option Agreements for Lease of Real Estate, Right of Way Easement Agreements, and the Option Agreements for Right of Way Agreement granting rights to real property upon which facilities (other than Blocks) are located based on the Project Layout (expressly excluding portions of the Project Site which are owned by Seller), Buyer will accept the foregoing percentages of Estoppel Certificates as meeting Seller's obligations.

5.2.1.2 Seller's certification that on and as of NTP Closing, each Material Project Contract (executed as of NTP Closing) shall be in full force and effect, and neither Seller nor any other Person shall be in breach of or default under any such Material Project Contract, and no event shall have occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of rights or cause or permit termination or acceleration under, or result in the creation of any Lien under any such Material Project Contract (other than Permitted Encumbrances).

5.2.1.3 All tasks contemplated by Sections 3.1 and 3.4 as conditions to NTP have been completed in accordance with Sections 3.1 and 3.4.

5.2.2 Seller's Representations and Warranties. All of the representations and warranties of Seller in this Agreement shall be true and correct in all material respects, except that any representation and warranty that speaks as of another date shall be true and correct in all material respects as of such date;

5.2.3 Estimate of Buyer Importation Costs. Buyer shall have obtained information from Seller or otherwise sufficient to enable it to make a reasonable estimate of Anti-Circumvention Inquiry Costs and to assess whether or not the condition to NTP contemplated by Section 5.2.8 can be satisfied.

5.2.4 Final Documents for the Project Site. Seller has delivered to Buyer (i) the updated Project Layout as described in Section 3.3, (ii) the Final ALTA Survey, (iii) the Final Pro Forma Title Policy evidencing it will be issued at NTP, (iv) all Project Contracts that have been executed and are binding and which are identified on Exhibit AF, as updated to bring current the list of Project Contracts and (v) the Environmental Reports and Studies, in each case, in accordance with ARTICLE III.

5.2.5 Final Project Contracts. The Parties have agreed on the form of BOS Contract, the form of Module Supply Agreement and the form agreements for all other Major Equipment, each of which shall be fully executed and delivered at NTP Closing in exchange for payment of agreed initial milestone payments due

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thereunder (which will be funded from amounts due from the Buyer at NTP Closing in accordance with the Progress Payment Schedule).

5.2.6 Seller's Invoice. Seller has delivered Seller's Invoice for the Progress Payment for the NTP together with all supporting documentation and requirements established in Section 9.3.2.

[REDACTED]

[REDACTED]

5.2.9 Seller Credit Support. Seller shall have posted (i) the Letter of Credit required by Section 6.14, (ii) to the extent consented and agreed to by Buyer in its sole and absolute discretion, the Parent Guaranty contemplated by Section 6.15, and/or (iii) any other form of financial security acceptable to Buyer in its sole and absolute discretion. Notwithstanding any other provision of this Agreement, if NTP Closing does not occur because Seller fails to post or maintain such Letter of Credit, such Parent Guaranty (if applicable) or such other form of acceptable financial security (if applicable), and Buyer terminates this Agreement, Seller shall within [REDACTED] after such termination refund all payments made by Buyer to Seller.

5.3 Seller's Conditions Precedent to NTP Closing and Issuance of NTP.

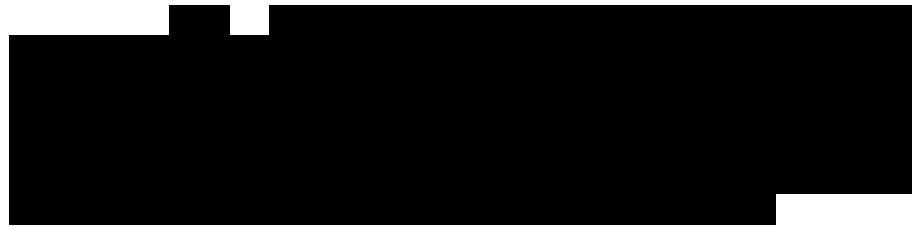
The following are Seller's Conditions Precedent to the NTP Closing and the issuance of NTP:

5.3.1 Buyer's Representations and Warranties. All of the representations and warranties of Buyer in this Agreement shall be true and correct in all material respects, except that any representation and warranty that speaks as of another date shall be true and correct in all material respects as of such date;

5.3.2 Buyer's Performance. Buyer shall have performed and complied in all material respects with this Agreement, including there is no Buyer Event of Default.

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5.3.3 Final Project Contracts. The Parties have agreed on the form of BOS Contract, the form of Module Supply Agreement and the form agreements for all other Major Equipment, each of which shall be fully executed and delivered at NTP Closing in exchange for payment of agreed initial milestone payments due thereunder (which will be funded from amounts due from the Buyer at NTP Closing in accordance with the Progress Payment Schedule).



5.4 Issuance of the NTP or Termination.

When Seller believes that each of the Conditions Precedent to NTP as set forth in Section 5.1, Section 5.2 and Section 5.2.8 are satisfied (or have been waived), it shall so notify Buyer in writing. Buyer shall respond to Seller's notice within [REDACTED] as follows:

5.4.1 If Buyer agrees that each of the Conditions Precedent to the NTP is satisfied, Buyer shall issue the NTP to Seller, and Seller shall promptly commence the engineering Work and timely perform all Work in accordance with this Agreement, including the Project Schedule.

5.4.2 If Buyer disagrees with Seller and determines that one or more of the Conditions Precedent to NTP has not been achieved, Buyer shall notify Seller of the same. Seller shall take, or cause to be taken, such action as may be necessary to achieve such Milestone, and upon completion of such actions shall deliver to Buyer another notification that the NTP's Conditions Precedent are satisfied. The foregoing procedure shall be repeated as necessary until Buyer agrees that the NTP's Conditions Precedent have been achieved; *provided, however*, if the Conditions Precedent to NTP are not satisfied or waived by the NTP Deadline, a Party may terminate this Agreement as provided in Section 18.7.

5.4.3 If the Parties Dispute whether any Condition Precedent to NTP has been satisfied, the Parties shall resolve such Dispute in accordance with ARTICLE XXIII. If Seller issues the notice that it believes that each of the Conditions Precedent to NTP are satisfied, and the Parties Dispute whether that is the case, and such Dispute resolves that the Conditions Precedent to NTP were satisfied, then such Conditions Precedent to NTP shall be deemed to have been satisfied as of the date that Seller delivered such notice and Buyer shall have no right to terminate this Agreement pursuant to Section 18.7, and Buyer shall not be deemed to have an Event of Default and the Parties shall proceed in a diligent manner to the NTP Closing.

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5.5 Use of Seller's Affiliates.

Seller shall obtain the prior written consent of Buyer, which consent shall not be unreasonably withheld, prior to engaging any Affiliate of Seller as a Contractor hereunder for the Work or when an Affiliate of Seller is a Contractor for Work authorized by a Change Order.

5.6 Contractors.

As of the Effective Date, Seller has selected Contractors to perform portions of the Work as identified on Exhibit AD. While not yet selected, Buyer and Seller agree that there are certain Contractors who are considered preferred providers/manufacturers of Equipment and Materials and other portions of the Work as identified on Exhibit AA.

5.7 Construction Contracts.

5.7.1 Seller shall not allow a Contractor to commence performance of any Work prior to executing a Construction Contract that complies with this Agreement, with copies delivered to Buyer (subject to reasonable redactions of pricing and other commercially sensitive terms and conditions), other than pursuant to a limited notice to proceed with respect to such Contractor who will not have a Material Project Contract; *provided, however*, (a) such Contractor furnishes adequate insurance and indemnity consistent with Seller's obligations under this Agreement and by Substantial Completion, all limited notices to proceed are converted into Construction Contracts and copies are then delivered to Buyer; and (b) Seller may issue a limited notice to proceed to a Contractor who will have a Material Project Contract for such Contractor to perform Work on engineering or Equipment and Materials so long as such Work is not performed on the Project Site. Certain forms of Construction Contracts approved by the Parties are attached as Exhibit AG and Exhibit AJ. If Seller desires to use forms of Construction Contracts other than those approved by Buyer under this Agreement, they must in addition to the insurance and indemnity requirements above: (i) identify Buyer as a third-party beneficiary and entitle Buyer to assignment of the Construction Contract as provided in this Agreement; and (ii) provide for payment and performance bonds, at Seller's sole expense, for the Work when the Work is of a nature that can be secured by such security. Notwithstanding the foregoing sentence, Seller shall not enter into any Material Project Contract that differs from the forms of Project Contracts approved by Buyer except in accordance with Section 3.5. Subject to and in accordance with Section 3.5, if Seller enters into any Construction Contracts that varies from such forms of Construction Contract, it shall so notify Buyer of the variation. Notwithstanding any variations in the Construction Contracts or that there is no Construction Contract executed at all, Seller shall remain responsible for the Work, including the Work that Seller is contracting to be done with Contractors, the construction means and methods, and for the acts and omissions of Contractors as provided in this Agreement.

5.7.2 No Construction Contract shall bind or purport to bind Buyer, but each Construction Contract shall provide for assignment of such

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Construction Contract to Buyer upon notice to, and without requiring the consent of, such Contractor. Seller hereby collaterally assigns to Buyer all its interest in all Construction Contracts and the road use and staging agreements necessary during Seller's construction activities now existing or hereafter entered into by Seller for performance of any part of the Work, which assignment will be effective only upon a termination of this Agreement for a Seller Event of Default and only as to those Construction Contracts and the road use and staging agreements necessary during Seller's construction activities that Buyer designates in writing. Such collateral assignment cannot be withdrawn by Seller, and Buyer may accept or reject said assignment at any time by notice to Seller. Upon the effective date of any such assignment of the Construction Contract and the road use and staging agreements necessary during Seller's construction activities to Buyer: (i) Seller shall within [REDACTED] [REDACTED] furnish to Buyer digitally searchable copies (or originals if legally required for enforcement by Buyer) of the designated Construction Contracts and the road use and staging agreements requested by Buyer unless such were previously delivered by Seller; (ii) Buyer shall only assume Liabilities occurring and arising on or after Buyer takes the assignment of the Construction Contracts and road use and staging agreements; and (iii) Buyer shall only be required to compensate a designated Contractor for compensation accruing to it for Work done including Equipment and Materials delivered from and after the date Buyer takes the assignment of the involved Construction Contract, road use, or staging agreement in writing. All Liabilities arising before and all sums due and owing by Seller to a designated Contractor for Work performed or Equipment and Materials supplied prior to the effective date of assignment of such Construction Contract, road use or staging agreement, and all other obligations of Seller accruing prior to such assignment's effective date, shall constitute and remain an obligation solely between such Contractor and Seller, and Buyer shall have no Liability with respect to such sums or any other obligations of Seller.

5.8 Commencement of Construction.

Seller shall not commence, nor cause or authorize others to commence, any construction activities on the Project Site until and unless Seller has given Buyer at least [REDACTED] [REDACTED] notice so as to allow the Buyer to execute and record the Notice of Commencement prepared by Seller in the form attached as Exhibit K and deliver a copy of the recorded Notice of Commencement to Seller. Promptly upon Seller's receipt, and in compliance with the Michigan Construction Lien Act, Seller shall post, or cause the posting, of the recorded Notice of Commencement in a conspicuous place at the Project Site.

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ARTICLE VI DELIVERABLES

6.1 Transfer of Project Assets.

6.1.1 [REDACTED]

("NTP Closing"), Seller shall:

6.1.1.1 Transfer the following Project Assets to Buyer and deliver the same to Buyer:

(1) The assignment document substantially in the form of Exhibit H ("Assignment of Solar Energy Agreements"), for the Solar Energy Easements, Memorandum of Solar Energy Easements, Option for Lease of Real Estate Agreements and Right of Way Easement Agreements to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the applicable Solar Energy Easement, Option for Lease of Real Estate Agreements or Right of Way Easement Agreements duly executed by the landowner, assigning to Buyer all of Seller's right, title and interest in, to and under the Solar Energy Easements, Option for Lease of Real Estate Agreements and Right of Way Easement Agreements;

(2) [Reserved];

(3) At NTP, the assignment document for all Block Crossing Agreements (and any Non-Block Crossing Agreements that are finalized at NTP) substantially in the form of Exhibit H – Appendix F ("Assignment of Crossing Agreements"), to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the Crossing Agreements duly executed by the landowner and/or Governmental Authority having such rights, assigning to Buyer all of Seller's right, title and interest in, to and under the Crossing Agreements;

(4) [Reserved];

(5) To the extent any Drain Agreements are finalized at NTP, the assignment document for such Drain Agreements substantially in the form of Exhibit H ("Assignment of Drain Agreements"), to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the Drain Agreements duly executed by the landowner and/or Governmental Authority having such rights, assigning to Buyer all of Seller's right, title and interest in, to and under the Drain Agreements;

(6) Assignment documents sufficient to transfer to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and any applicably landowner or Governmental Authority, all of Seller's right, title and interest in, to and under any Real Property Document not addressed

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in Section 6.1.1.1(1) through (5), inclusive, except for any Real Property Documents not required to be finalized at NTP under this Agreement;

(7) The Warranty Deed substantially in the form of Exhibit H – Appendix K ("Warranty Deed"), duly executed by Seller and recorded in the applicable county register of deeds office where the Project Site is located, transferring to Buyer marketable title free of Liens (other than Permitted Encumbrances) in the real estate required to be owned by Seller in the Project Site for the Substation pursuant to Exhibit A and all of Seller's right, title and interest therein;

(8) The Real Property Documents Governmental Approvals.

(9) Marketable title free of Liens (other than Permitted Encumbrances) in all Equipment and Materials incorporated in the Project through such date, pursuant to a Bill of Sale in Exhibit I;

(10) The assignment document substantially in the form of Exhibit J for the Interconnection Agreement, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the applicable document duly executed by the counterparty, assigning to Buyer all of Seller's right, title and interest in, to and under the Interconnection Agreement;

(11) The ALTA Title Policy dated the time and date of recording of the Warranty Deed in the same condition as the Final Pro Forma Title Policy for all Real Property Documents; and

(12) The other customary closing documents reasonably required by Buyer or Title Insurer or required by Applicable Laws for the transfer of real property interests in the Project and issuance of the ALTA Title Policy, including, to the extent applicable, an Owner's Affidavit, Notice to the Assessor (for unplatted property), 1099-S, Non-Foreign Property Transfer Affidavit (FIRPTA), and closing statement.

Seller shall take such steps as may be reasonably required to exercise the options included in the Real Property Documents so that the applicable landowners deliver the instruments required upon the exercise of each such option at NTP Closing.

6.1.1.2 The following items shall be delivered by Buyer to Seller at NTP Closing:

(1) Buyer's countersignature pages for the assignments of Real Property Documents to Buyer other than the Warranty Deed;

(2) The NTP Progress Payment established in the Progress Payment Schedule and as further provided in Section 9.3;

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(3) Buyer's closing statement; and

(4) Any other customary closing documents reasonably required by Seller, Title Insurer or required by Applicable Laws for the transfer of real property interests in the Project to Buyer.

6.1.2 Upon Substantial Completion (or any earlier termination of this Agreement in accordance with the provisions hereof), Seller shall assign to Buyer (to the extent not already owned by Buyer) (i) each Project Contract and (ii) marketable title free of Liens (other than Permitted Encumbrances) in any other Project Assets, pursuant to a bill of sale, substantially in the form of Exhibit I ("Bill of Sale"), other than Project Assets transferred at NTP by the Assignment of Solar Energy Agreements, Assignment of Crossing Agreements, Assignment of Drain Agreements, Warranty Deed and Bill of Sale set forth above or the Assignment Agreement Form set forth in Exhibit J ("Assignment of Remaining Project Assets"), or other customary instruments of assignment or transfer in form mutually agreeable to Buyer and Seller for any other Project Assets duly executed by Seller and/or any applicable Seller Affiliate and when required by a Project Document to be assigned duly executed by the other party to the Project Contract and, to the extent customary, recorded with the applicable county register of deeds or other Governmental Authority, assigning to Buyer all of Seller's right, title and interest in, to and under the remaining Project Assets including any Project Documents unless otherwise specified in this Agreement, within the time specified in this Agreement, but in any event no later than Substantial Completion. Each Party agrees to execute and deliver, or cause its respective Affiliates to execute and deliver, such further documents and instruments and to take such further actions after Substantial Completion as may be necessary or desirable and reasonably requested by the other Party to give effect to this Section 6.1.2.

6.2 Engineering & Design.

Seller shall perform (or arrange for performance pursuant to a Construction Contract executed in accordance with this Agreement) all engineering and design services for completion of the Project and performance of the Work in conformity with the requirements of this Agreement. Seller shall design the Project and the Work, using qualified, properly insured, and experienced design and engineering professionals either as employees or as Contractors, in compliance with the Requirements. Seller shall prepare and submit to Buyer for its review and comment all Design Documents in accordance with the Project Schedule and Section 6.11. The Design Documents shall include copies of the Construction Contracts between Seller and each Contractor if not previously furnished to Buyer, all technical submittals from Contractors, and Seller's technical calculations reasonably required to conduct a proper evaluation and review. All engineering and design Work shall be certified by licensed professionals, and all Design Documents requiring sealing shall be sealed by the Engineer of Record as that term is customarily used in Michigan.

6.3 Operational Measures.

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As it prepares the Design Documents, Seller shall strive to implement measures that enhance operational performance of the Project. In its review of the Design Documents, Buyer may propose measures that may improve operational performance. Seller shall review Buyer's proposals and advise on potential impacts to the Work and Project Schedule, provided Seller is not obligated to implement such proposals unless otherwise required by the Scope of Work or documented in a Change Order mutually agreed by the Parties in accordance with Article X.

6.4 Applicable Permits.

Seller shall obtain or cause to be obtained all Applicable Permits required for it and its Contractors, Laborers, and their personnel to perform Work of the type contemplated herein, including the Special Land Use Permits in Exhibit R, as all are Seller's responsibility and expense. The cost of such Applicable Permits is included in the Purchase Price. Seller shall be responsible for meeting all requirements of such Applicable Permits, up to and including final termination or closure of such permits. Exhibit R shall be updated by Seller to comply with all Requirements during the Project and delivered to Buyer, and upon Buyer's receipt and acknowledgment in writing such updated Exhibit R shall be deemed attached hereto. No Work that requires an Applicable Permit shall commence before such Applicable Permit is issued and copies are delivered to Buyer. Copies of all such Applicable Permits not delivered as a Condition Precedent to NTP as part of the Consents or as set forth in the preceding sentence shall be delivered as a Condition Precedent to achieving Substantial Completion. Buyer shall cooperate and respond to any reasonable requests from Seller for input or information with respect to Permit Applications.

6.5 Spare Parts.

6.5.1 Inventory. All spare parts needed for the Commissioning Plan (the "Commissioning Spare Parts") shall be stored at the Project Site in accordance with the Requirements. Seller shall only be entitled to use Commissioning Spare Parts from Buyer's inventory in connection with commissioning activities for the Project if Buyer consents to such use and if such Commissioning Spare Parts are available in inventory. If such use occurs, Seller shall promptly replace or cause to be replaced each Commissioning Spare Part so used with an identical, new Commissioning Spare Part at no additional cost to Buyer and in a timely manner no later than Substantial Completion.

6.5.2 Recommended List. As part of the O&M Manual Deliverable described in Section 6.5.2, Seller shall provide a general list of additional recommended Spare Parts necessary to operate and maintain the Project for a period of [REDACTED] after Substantial Completion. The recommended list shall be delivered in advance of the O&M Manual if necessary to assure Buyer can purchase, assemble and store the same at or prior to Substantial Completion of the Project. Upon the request of Buyer, Seller shall cooperate to permit Buyer to purchase any such additional Spare Parts and to handle (if purchased through Seller), store and maintain all Spare Parts. Such additional cost if required to be paid for by Seller shall be added to the Purchase Price by Change Order.

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6.6 Other Materials.

6.6.1 Job Book. Following NTP, the Job Book shall be updated on a timely basis from time to time and delivered to Buyer for review and comment as the Work progresses.

6.6.2 Delivery. Seller shall furnish to Buyer a reproducible electronic copy (in a format/media satisfactory to Buyer) of final versions of the following: (i) on or before Substantial Completion, each of the O&M Manual and Job Book; and (ii) on or before Final Completion, each of the final Record Drawings (as-built drawings).

6.7 Books and Records, Tax Accounting.

Not later than [REDACTED], a breakdown of the Purchase Price in accordance with the property retirement unit categories and other systems of accounts and in a records format in accordance with Exhibit A-Appendix J together with all Books and Records substantiating the Purchase Price breakdown shall be delivered to Buyer. Overhead and profit shall not be listed as separate items. For physical Project Assets, the Seller will provide the following: retirement unit, quantity, cost, ID number, make, model, serial number, and unit number. For land, the Seller will provide the parcel and deed information.

6.8 Information Updates.

6.8.1 Additional Warranties. Seller shall provide to Buyer a PDF electronic copy of any additional extended-period Equipment and Materials manufacturer warranties of the Contractors.

6.8.2 Disclosure Schedule. Until Substantial Completion is achieved, Seller may update Seller's representations and warranties in Sections 12.5 through 12.19 and 12.21 through 12.24, by providing updated Disclosure Schedules, without the update being a breach of Seller's obligations under this Agreement so long as the new information in such updated Disclosure Schedule does not materially adversely affect the Project or Buyer, and any reference to such Disclosure Schedule shall refer to the most recently updated version of such Disclosure Schedule, a copy of which is attached as Exhibit Z. Seller shall (i) deliver a copy of the update in the form of the Disclosure Schedule attached Exhibit Z and (ii) state in writing whether the new information in such updated Disclosure Schedule materially adversely affects the Project or Buyer. Buyer may object to Seller's assertion that such updated Disclosure Schedule does not materially adversely affect the Project or Buyer. Buyer shall have [REDACTED] from receipt of both the notice and updated Disclosure Schedule to make such objection, failing which the updated Disclosure Schedule shall replace the then-current Disclosure Schedule, a copy of which is attached as Exhibit Z. If Buyer makes such objection to any portion of the updated Disclosure Schedule on the basis that it has determined that such update materially adversely affects the Project or Buyer, Buyer shall notify Seller of such objection. If

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the Parties are unable to resolve such Dispute within [REDACTED] of such notice from Buyer, either Party may refer such Dispute to the dispute resolution process set forth in ARTICLE XXIII. Seller shall provide in the notice that accompanies any updated Disclosure Schedule that Buyer will be deemed to have no objection to the updated Disclosure Schedule unless Buyer objects to Seller's assertion that such updated Disclosure Schedule does not materially adversely affect the Project or Buyer within [REDACTED] of receipt of both the notice and updated Disclosure Schedule.

6.9 Test and Commissioning Results.

Seller shall perform, or caused to be performed, the applicable commissioning tests as required by the Commissioning Plan and provide to Buyer opportunity to review and comment [REDACTED], which for clarity, such review shall be done as part of and within the time frames allocated for Block Placed-In Service in Section 11.1.1. The Parties shall perform, or cause to be performed, their respective obligations under the Operational Scope of Responsibilities Matrix During Construction and Commissioning as set forth in Exhibit M, prior to or after Substantial Completion, as applicable.

6.10 Insurance Information.

The certificates of insurance and endorsements required pursuant to ARTICLE XIV shall be delivered to Buyer.

6.11 Other Documents.

All other Deliverables set forth in this Agreement as a document or information to be provided to Buyer or those listed in Exhibit AC by the date specified in the Project Schedule attached as Exhibit K, shall be delivered to Buyer; *provided, however*, if there is no date specified, then no later than Final Completion.

6.12 Buyer Comment.

Provided that Seller has furnished the necessary information and documents for Buyer's review and comment in accordance with the requirements of this Agreement, including the Project Schedule or Submittal Schedule, as applicable, Buyer shall notify Seller of any resulting comments or queries, which Seller shall consider and address in good faith. Buyer's review and comment to a Design Document does not make any Design Document ISSUED FOR CONSTRUCTION as this is a Seller obligation. Buyer's review and comments to the Design Documents, or any portion thereof, shall not in any way relieve Seller of any of its obligations, representations, or warranties set forth in this Agreement, including with respect to the accuracy of the dimensions, details, integrity, and quality of the Design Documents or the ability of the Project to meet all of the requirements under this Agreement. Buyer's review and comment shall be not as a licensed or qualified engineer, designer, or contractor irrespective of whether Buyer has such qualified persons as employees or agents, but rather to review and comment in accordance with the general intent of Buyer and any such comment shall in no way reduce or eliminate Seller's responsibilities under this Agreement. Buyer's inability to complete its review as a result of Seller's failure to comply

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with its obligations, including the obligation to provide Deliverables or other documents and information required by this Agreement or reasonably requested, shall not constitute a Buyer Change Order, Buyer Delay or a Buyer Event of Default.

6.13 Ownership of Documents.

Before NTP, Seller shall be the exclusive owner of, including all copyrights to, the Design Documents and Record Drawings. On and after NTP, after title transfers pursuant to Section 16.2, Buyer shall be the exclusive owner of, including all copyrights to, the Design Documents and Record Drawings. Seller agrees that no legend, notice or other marking claiming any such Design Documents or Record Drawings as being confidential or proprietary to Seller or to any Contractor shall be included on the same, and should any such Design Documents or Record Drawings include a legend, notice or other marking in violation of the foregoing, Buyer shall be free to disregard same. Buyer shall indemnify Seller and any Contractor, and hold Seller and such Contractor who prepared the Design Documents and Record Drawings harmless from and against any use of the Design Documents and Record Drawings on any project, other than the Project, and any modification to the Design Documents or Record Drawings performed without Seller's participation.

6.14 Letter of Credit.

6.14.1 On the Effective Date and concurrent with Seller's execution of this Agreement, Seller shall deliver to Buyer the original executed Twenty-Seven Million, Nine-Hundred and Fifty-Three Thousand, Six-Hundred and Forty-Three Dollars (\$27,953,643) Letter of Credit guaranteeing and securing (i) re-payment of all amounts paid by Buyer if Buyer is entitled to reimbursement under this Agreement, (ii) due from Seller to any Person, and (iii) to pay or reimburse Buyer for costs associated with Seller's failure to perform or faulty performance of any covenants and obligations to be performed by it pursuant to this Agreement and any other Project Documents. The Letter of Credit shall be issued in the form of Exhibit AN attached hereto. .

6.14.2 At and as a condition to NTP Closing, Seller shall increase the Letter of Credit so that it is equal to twelve and one-half percent (12.5%) of the Purchase Price and is otherwise in full compliance with this Section 6.14.

6.14.3 The cost of the Letter of Credit is included in the Purchase Price. The Letter of Credit shall not terminate until the expiration of the Defect Warranty Period. The Letter of Credit must be by issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "BBB" by S&P and "A3" by 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 or Moody's but not both. If a Credit Rating drops below the acceptable criteria, Seller has five (5) Business Days to provide to Buyer a replacement Letter of Credit meeting all of the requirements set forth in this Agreement.

6.15 Parent Guaranty.

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6.15.1 With Buyer's prior written consent (which Buyer may withhold in its sole and absolute discretion), instead of a Letter of Credit under Section 6.14.1 Seller may at NTP Closing deliver to Buyer a Parent Guaranty guaranteeing and securing Seller's obligations under this Agreement. The Parent Guaranty, if any, shall be issued in the form of Exhibit AT attached hereto. The cost of the Parent Guaranty is included in the Purchase Price. The Parent Guaranty shall not terminate until the expiration of the Defect Warranty Period.

6.15.2 Unless Buyer otherwise agrees in writing, if a Parent Guarantor does not meet the Minimum Credit Rating at any time before the expiration of the Parent Guaranty, Seller shall within five (5) Business Days post or cause Parent Guarantor to post a Letter of Credit that complies with Section 6.14 until Parent Guarantor again meets the Minimum Credit Rating.

6.16 Prevailing Wage and Apprenticeship Requirements

6.16.1 Seller shall provide an officer's certification in form and substance materially identical to that set forth in Exhibit BC ("**PWA Requirements Certificate**") together with the Substantial Completion Certificate. Seller shall include with the PWA Requirements Certificate (A) a copy of all relevant provisions of any Construction Contract that requires a Contractor to comply with the Prevailing Wage and Apprenticeship Requirements, or cause a PWA Contractor to so comply, in each case, with respect to any Work performed by or on behalf of such Contractor or PWA Contractor that constitutes Construction or Repair or Alteration, and (B) the certification of any Contractor or PWA Contractor that such Contractor or PWA Contractor has complied with the Prevailing Wage and Apprenticeship Requirements with respect to any Work performed by or on behalf of such Contractor or PWA Contractor that constitutes Construction or Repair or Alteration, in each case in form and substance materially similar to the PWA Requirements Certificate.

6.16.2 In the event any additional Work that constitutes Construction or Repair or Alteration occurs after Substantial Completion or through the date on which Final Completion occurs, Seller shall provide an amended PWA Requirements Certificate that also reflects such Work.

ARTICLE VII PROJECT PLANNING, SCHEDULING AND CONTROL

7.1 Project Schedule.

Seller shall perform the Work in accordance with the Project Schedule; *provided*, however, Seller shall comply with completing the applicable Work required on or before the Milestone Dates in the Project Schedule (including the Substantial Completion Deadline). The Project Schedule may only be adjusted pursuant to the terms of this Agreement. Notwithstanding the foregoing or anything to the contrary herein, no failure by Seller to perform the Work in accordance with the Project Schedule or complete the applicable Work required on or before the Milestone Dates in the Project Schedule shall constitute a breach or violation of, or default or Seller Event of Default

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under, this Agreement, and Seller shall have no liability to Buyer therefor, except in each case as provided in Section 7.6 and Section 18.1.1.

7.2 Changes to the Project Schedule.

Seller shall promptly notify Buyer in writing of any material delays in the Project Schedule. In addition, written notice of all changes to the Project Schedule shall be given to Buyer as part of the Monthly Progress Report (in accordance with Section 7.7).

7.3 Acceleration of Work.

If at any time Seller is or believes that it is likely to be delayed in meeting any of the Milestone Dates that impact critical path Work by more than [REDACTED], Seller will reasonably promptly notify Buyer and after prompt consultation with Buyer, Seller shall promptly submit to Buyer for review and comment a written recovery plan ("Recovery Plan") to restore the progress of critical path Work to adherence to achieving the Milestone Dates. The Recovery Plan may include acceleration of the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work. Submission and execution of the Recovery Plan shall be at Seller's sole cost and expense.

7.4 [Reserved]

7.5 Acceleration Where Work Is Not Delayed.

If reasonably practicable and upon Buyer's written request to accelerate the Work for Buyer's convenience, Seller may accelerate the Work on the basis of: (i) reimbursement of direct cost (i.e., premium portion of overtime pay to the extent required by Applicable Laws, additional crews, shifts, or Equipment and Material costs, and such other items of cost requested in advance by Seller and approved by Buyer, which approval will not be unreasonably withheld) plus (ii) a reasonable allowance for profit, overhead, and contingency mutually agreed by the Parties not to exceed the percentage set forth in Section 10.7, but with respect to clauses (i) and (ii), there shall be a not-to-exceed amount mutually agreed by the Parties and in any event the foregoing acceleration shall be documented and agreed to in a Change Order signed by both parties. Any acceleration of the Work not specifically requested and approved by Buyer pursuant to this Section in writing by a Change Order shall be at Seller's sole cost and expense. Buyer shall have the right to reasonably audit Seller's calculated direct costs and savings or costs not incurred associated with any acceleration. In the event of any acceleration requested pursuant to this Section, Seller shall, at no cost to Buyer, promptly provide a plan for such acceleration, including Seller's recommendations for the most effective and economical acceleration.

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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7.7 Progress Reports and Meetings.

7.7.1 Following the delivery of the NTP, Seller shall provide Buyer the Monthly Progress Report as required by the Technical Specifications which shall be substantially in the form of and contain the information indicated in Exhibit K – Appendix A ("Monthly Progress Report"). Seller shall update the Project Schedule as part of the Monthly Progress Report to indicate the status of each element of the Project Schedule in reasonable detail or as Buyer may reasonably request.

7.7.2 Seller and Buyer shall conduct meetings at the Project Site or other location if mutually agreeable to the Parties, and according to a mutually agreed meeting schedule throughout construction of the Project, to thoroughly discuss the progress and status of construction. Such meetings shall be attended by Seller's Project Manager (or his or her duly authorized representative) and the Buyer's Representative (or his or her duly authorized representative), and by such additional representatives of each Party as such Party may desire. Buyer's Representative may elect to attend meetings by telephone or video conference.

7.7.3 No later than the last day of each calendar quarter following NTP, Seller shall provide written documentation demonstrating compliance with Section 2.7.7.1 and Section 2.7.7.2 in the forms set forth in Exhibits BA and BB.

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7.8 Visits; Observation at Engineering/Construction Meetings with Third Parties.

7.8.1 In addition to attendance at the meetings and reports as set forth in Section 7.7, Buyer, through Buyer's Representative and one (1) other employee, agent, or expert, shall have the right to (i) observe or cause to be observed the performance of the Work, (ii) visit the Project and Project Site, and (iii) (to the extent Seller is able to arrange for such observation) observe or cause to be observed the manufacture of the Equipment and Materials; *provided, however*, that Buyer shall provide Seller with reasonable advance notice of any visits and such observations and visits shall be with reasonable frequency (other than for routine observation by Buyer's personnel who are regularly on the Project Site). Buyer's observations and visits shall not unreasonably interfere with the performance of the Work or otherwise with Seller's performance of its obligations under this Agreement, and any Persons observing the Work shall abide by any and all safety rules and procedures applicable to the Project and the Project Site. Additional employees, agents, or experts of Buyer may be present during such activities upon reasonable notice, at reasonable times with reasonable frequency.

7.8.2 For purposes of this Section 7.8, Seller shall give Buyer reasonable advance notice of all material engineering and construction meetings that are not part of the regularly scheduled progress meetings in Section 7.7 in order to permit Buyer to send a representative, if it so desires.

ARTICLE VIII INSPECTION AND CORRECTION OF WORK

8.1 Periodic Inspections.

In addition to Buyer's rights to visit the Work as provided above in Section 7.8, Buyer shall have the right to reasonably visit, review or observe any aspect of the Work. Buyer may inform Seller promptly if it believes there are any Defects or Deficiencies in the Work not in conformance with this Agreement, including the Project Documents, and/or if it believes there are Defects and Deficiencies it discovers during any inspection of the Work; *provided, however*, that Buyer's failure to so notify will not constitute a breach of this Agreement. Any visit, review or observation by Buyer or any of its representatives of any part of the Work, or any failure to inspect, shall in no way affect Seller's obligations to perform the Work in accordance with this Agreement. All such visits, reviews or observations shall be conducted in a manner that does not unreasonably interfere with the normal performance and progress of the Work.

8.2 Observance of Tests.

Buyer through Buyer's Representative or authorized Representative and one (1) additional employee, agent, or expert shall have the right to observe all tests of the Project and tests of the Work including (to the extent Seller is able to arrange for such observation) at the Module Supplier's facilities, in each case with reasonable frequency, at reasonable times during normal business hours and upon reasonable advance notice except as otherwise provided in Section 2.4.12. Seller shall give at least [REDACTED] prior notice, unless another time period is otherwise specified in the Scope of Work, to Buyer of any Project tests including the time and

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location of the tests. Additional employees, agents, or experts of Buyer may be present during such activities upon reasonable notice, at reasonable times with reasonable frequency.

8.3 Correction of Work.

Prior to Substantial Completion, Seller shall correct or cause to be corrected, at no additional cost to Buyer, any Defects or Deficiencies in any part of the Work, regardless of the stage of its completion or the time, place or means of discovery of such Defects or Deficiencies; however, Buyer cannot force Seller to correct any Defects or Deficiencies until such interferes with or inhibits achieving Substantial Completion or any Milestone Date thereafter. After Substantial Completion, any remaining Defects or Deficiencies are Punch List Items and shall be addressed as part of the Punch List Items, and Warranty Defects shall be addressed pursuant to the provisions in ARTICLE XVII.

ARTICLE IX PURCHASE AND SALE, PURCHASE PRICE AND PAYMENT

9.1 Purchase and Sale.

In accordance with the Progress Payment Schedule, including the amount to be paid at the NTP Closing, and subject to and upon the terms and conditions of this Agreement, Seller shall irrevocably, unconditionally sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, the Project, which includes all the Project Assets, free and clear of all Liens (other than Permitted Encumbrances for the Real Property Documents) and rights of others, with all Work completed (the "Purchase and Sale").

9.2 Purchase Price.

9.2.1 General.

Buyer agrees to pay, and Seller agrees to accept, an amount in U.S. Dollars equal to the Purchase Price. Subject to this Section 9.2 and Section 9.7, the Purchase Price shall not be changed and, except as otherwise provided in this Agreement, Seller shall not be entitled to any other compensation and reimbursement of expenses in each case without the prior written authorization of Buyer by a Change Order or an amendment to this Agreement. Payments of the Purchase Price shall be made at the times and in the manner provided in this Section 9.2.

9.2.2 Taxes and Change in Law.

9.2.2.1 The Purchase Price includes any and all Taxes (including, subject to the next paragraph in this Section 9.2.2, any increase of such Taxes that may occur during the term of this Agreement) arising out of Seller's or any Contractor's performance of the Work or otherwise imposed on Seller or its Contractors, including: (i) with respect to any Equipment and Materials, Labor, or services provided under this Agreement, any Tax imposed on the Project Assets related to the Work, import duties, customs duties, and harbor and other taxes for imported items; (ii) sales and use taxes on all materials and Labor provided by Seller

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under this Agreement or otherwise on the Work; (iii) Taxes imposed on Seller as a result of Seller's connection with any taxing jurisdiction; and (iv) franchise, income, corporate, doing business, or similar taxes imposed upon Seller or measured by its income or receipts. No amount in addition to the Purchase Price will be due to Seller on account of any such Taxes. For purposes of employment taxes, Buyer shall not be deemed the employer of any individuals performing services under the Agreement on the behalf of Seller or any Contractors, regardless of whether or not such individuals are employed by Seller or by any such Contractors of any tier; and, without limitation, as between Buyer and Seller, Seller shall be liable for any payroll taxes due with respect to any such individual performing services under the Agreement on behalf of Seller or Contractors. Notwithstanding anything to the contrary in this Agreement and further notwithstanding the transfer of title to the Project Assets to Buyer, subject to Section 9.10, Seller shall remain responsible for paying all Taxes levied on the real and personal property of Buyer that constitutes a Project Asset until Substantial Completion. Seller shall timely pay all Taxes, other than those for which Buyer is responsible under this Agreement. Buyer shall be responsible for paying all Taxes on the real and personal property of Buyer that constitutes a Project Asset after Substantial Completion. If Buyer is required by Applicable Law to pay or collect any Taxes for which Seller is responsible under this Section 9.2, then such Taxes paid by Buyer shall be reimbursed by Seller to Buyer by deducting such amount paid from the next Progress Payment owed, if any amounts are still owed to Seller, or within thirty (30) days of Seller's receipt of Buyer's invoice for such reimbursement, as Buyer elects by notice to Seller.

9.2.2.2 The Parties agree that the Purchase Price accounts for the cost of compliance by Seller with Applicable Law in effect as of the Effective Date. Notwithstanding the foregoing, in the event that, after the Effective Date, there is a Change in Law, and if such Change in Law (i) renders the performance of this Agreement (in whole or in part) illegal or unenforceable, (ii) materially increases Michigan sales or use tax payable by Seller or (iii) otherwise materially increases the cost to develop, construct or commission the Project in accordance with this Agreement (*provided*, that for this clause (iii), such Change in Law must also impact the broader solar energy industry in the United States), then the Parties shall meet within no more [REDACTED] after notice from Seller to Buyer to discuss and, acting in good faith, attempt to agree upon any amendments that may be required to this Agreement in order to: (a) take account of the Change in Law such that Seller can continue to comply with the terms of this Agreement, and (b) preserve the allocation of risks, rights and obligations between the Parties and the commercial balance of this Agreement contemplated by the Parties at the Effective Date, including making any changes to the Purchase Price subject to Section 9.2.7.1 to account for any increase in Seller's net costs resulting from such Change in Law. Seller shall use commercially reasonable efforts and coordinate with

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Buyer to mitigate the cost and impacts on the Project Schedule of any such Change in Law. Any savings resulting from the Change in Law shall be netted against costs resulting from the Change in Law to determine net costs. Any net costs resulting from a Change in Law that are allocated to the Parties shall be allocated in accordance with Section 9.2.7.1. For the avoidance of doubt and without expanding the scope of clause (iii), none of the following items shall be considered in determining whether the matters described in the foregoing clause (iii) have occurred: (A) any change in GAAP or other applicable accounting or auditing standards or industry standards; (B) any change in the financial, banking, or securities markets (including any suspension of trading in, or limitation on prices for, securities on the New York Stock Exchange, American Stock Exchange, or Nasdaq Stock Market); (C) any change in general international, national, regional or state economic financial conditions; (D) any change in the income tax or corporate tax rate of Seller or its Affiliates, or any change in how such income tax or corporate tax is imposed on Seller or its Affiliates; or (E) any change in local laws or ordinances at the county or township level.

9.2.3 Bonds.

Upon the reasonable request of Buyer, Seller will notify Buyer of the anticipated date of commencement of construction of the Project and furnish a copy of any available proposed pro forma Bonds. At any time, Buyer may notify Seller whether Buyer requests Bonds on all or specified parts of the construction Work. Within [REDACTED] of such request from Buyer, Seller shall cause to be issued, or cause the applicable Contractor to have issued, such Bonds. Buyer shall pay all costs of such Bonds charged by the surety (without mark-up) ("Bond Costs") directly to the applicable Contractor or surety or to Seller. In the event Seller pays any such costs of such Bonds, Buyer shall reimburse Seller for such costs within [REDACTED] of receipt of an invoice from Seller.

9.2.4 Interconnection Costs.

Each Party shall be responsible for its credit support obligations with respect to the Project's interconnection as set forth on Exhibit AU. Other than such credit support obligations, Buyer shall be responsible for all interconnection costs relating to facilities beyond the Point of Change of Ownership, including Network Upgrades (including Stand Alone Network Upgrades), Affected System upgrades, Distribution Upgrades, Generator Upgrades, Transmission Owner's Interconnection Facilities and System Protection Facilities (such terms all as defined in the Transmission Provider's open access tariff), and all security deposits paid in connection with any of the foregoing, in each case, including any such amounts provided for in the Interconnection Agreement or the Interconnection Facilities Construction Agreement. Buyer shall pay such amounts directly to, and post such security directly with, the Transmission Provider or other applicable Person (except to the extent such payments or security are Seller's responsibility in Exhibit AU). In the event Seller makes any such payments or posts any such security (except to the extent such payments or security are Seller's responsibility in Exhibit AU), Buyer shall promptly reimburse Seller therefor, including that, at the NTP Closing,

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Buyer shall reimburse Seller for any such payments made or security posted by Seller on or before the NTP Closing (except to the extent such payments or security are Seller's responsibility in Exhibit AU).

Buyer shall use its reasonable best efforts to substitute or replace any Credit Support of Seller specified on Exhibit AU with Credit Support that is acceptable to the beneficiary thereof (i.e., the party listed in the column "Supplier" in Exhibit AU) in accordance with the applicable agreement specified on Exhibit AU, and with such replacement or substitute Credit Support that results in the release and discharge of the applicable Credit Support of Seller at the NTP Closing; provided, however, in the event Buyer is unable to replace any cash Credit Support of Seller with noncash Credit Support within five (5) Business Days of NTP Closing, then Buyer shall pay to Seller on such fifth Business Day following NTP Closing, an amount equal to Seller's cash Credit Support and assume all of Seller's right, title and interest in and to such cash Credit Support previously funded by Seller. To the extent that Buyer makes a payment to Seller pursuant to the foregoing proviso, Seller shall promptly (and in any event, within five (5) Business Days of receipt thereof), pay to Buyer any amounts actually refunded to Seller in connection with such Credit Support after receipt of payment from Buyer. Seller shall use reasonable best efforts to assist Buyer in connection with the foregoing, including, but not limited to, facilitating communication between Buyer and the beneficiary regarding replacement Credit Support at least thirty (30) days in advance of the NTP Closing. For purposes of the foregoing, "Credit Support" shall mean letters of credit, cash deposits, guarantees, deposits, bonds, or other financial security arrangements or credit support arrangements.

Prior to NTP Closing, Seller shall use its reasonable best efforts to complete its obligations as specified on Exhibit AU as follows: (a) obtain reimbursement from the Transmission Provider for all amounts of the M2 Deposit, M3 Deposit and M4 Deposit in the amounts listed within Exhibit AU and (b) obtain reimbursement from the Transmission Provider of the Study Deposit in the amount listed within Exhibit AU (identified on Exhibit AU as the "Refund for Remaining Study Deposit Balance") after Buyer obtains Credit Support that is inclusive of such amount. On or after NTP Closing, Buyer is responsible for all financial obligations remaining with regards to the Transmission Provider and Transmission Owner.

[REDACTED]

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[REDACTED]

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9.2.6 Nature of a Fixed Purchase Price Contract.

Seller and Buyer acknowledge that cost risks are inherent in the execution of a fixed price contract for acquisition and construction for a facility of this type. The Purchase Price includes all costs and expenses except as expressly provided otherwise in this Agreement. Seller acknowledges that it may have miscalculated its costs, and may result in Seller (or its Contractors) expending more resources than it estimated or planned and which it did not account for or otherwise intend to expend based on the Purchase Price. Similarly, Buyer acknowledges that Seller may have been conservative in its assumptions regarding the overall cost of the Project, and that the actual cost to Seller for the Project may in fact be significantly less than the Purchase Price. The fact that either Party may have so miscalculated the costs to perform

hereunder, or that either Party expended extra resources that it did not intend to spend as a result of such miscalculation, shall not form the basis for any Change Order or other claim of relief hereunder.

9.2.7 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

9.2.8 Domestic Content.

[REDACTED]

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9.3 Terms of Payment.

Payments of the Purchase Price to Seller shall be made as follows:

9.3.1 Progress Payment Schedule.

Subject to the provisions of this Section 9.3 and Seller's compliance herein, Buyer shall make Progress Payments to Seller in accordance with the Progress Payment Schedule and the provisions herein on account of the Purchase Price, the amounts specified in the form of Seller's Invoice and for which Seller has not previously been paid. Each Progress Payment is included in the Progress Payment Schedule attached as Exhibit D ("Progress Payment Schedule"), and each Progress Payment shall be due and payable only to the extent it is supported by the completion of that corresponding Work for the Progress Payment. Seller shall provide, as part of its invoicing documentation as provided in Section 9.3.2, a monthly cash flow updated based on Work complete, in progress and forecast on the first day of each month.

9.3.2 Seller's Invoices.

For each payment hereunder, Seller shall submit an invoice ("Seller's Invoice") in the form of Exhibit K, including a [REDACTED] retainage of the invoiced amount ("Retainage") (which Retainage will be reduced to the Punch List Holdback at Substantial

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Completion). Seller specifically agrees that it shall not request in any Seller's Invoice the payment of any sum attributable to Work (i) for which Seller has already been paid and (ii) except for the Progress Payment on the Effective Date and at NTP Closing, before the Work has achieved the stage of completion represented by Seller as complete in the applicable Seller's Invoice. Seller's Invoice shall be accompanied by a certificate, signed by an officer of Seller, confirming the completion of the Work described in the Progress Payment Schedule corresponding to the Progress Payment being invoiced. With respect to the Seller's Invoice for the Progress Payment upon Substantial Completion, such Seller's Invoice shall be adjusted to reduce the Retainage withheld by Buyer to the Punch List Holdback. Each Seller's Invoice for all Progress Payments requested must include all of the following or it shall not be deemed a complete Seller's Invoice and Buyer shall have no obligation to make the payment:

9.3.2.1 A document identifying: (i) the Progress Payment Schedule (Exhibit D, updated as provided in clause (viii) of this Section 9.3.2.1); (ii) the related Progress Payments set forth on the Progress Payment Schedule that are then payable; (iii) any other amounts then payable by Buyer to Seller under any other provision hereof if any (without limiting Buyer's or Seller's right to Dispute any amounts requested for payment); (iv) a summary of all Progress Payments previously invoiced by Seller, including the identification number and date of each such Seller's Invoice; (v) a summary of any unresolved Disputes with respect to any Seller's Invoices; (vi) a summary of all Progress Payments previously paid by Buyer and the date such payment was received; and (vii) any Taxes that either Buyer or Seller is required to reimburse the other Party under this Agreement, together with supporting documentation of the same; and (viii) an updated cash flow forecast of the Progress Payment Schedule (Exhibit D) on the first of each month;

9.3.2.2 A list or spreadsheet identifying all Michigan Content, the percentage of Michigan Content, for the period covered by Seller's Invoice together with a cumulative amount through the date of Seller's Invoice ("Michigan Equipment, Materials, and Labor Information"), provided that, in lieu of providing such Michigan Equipment, Materials, and Labor Information with each Seller's Invoice, Seller may include such Michigan Equipment, Materials, and Labor Information in its last Seller's Invoice before Substantial Completion;

9.3.2.3 A Sworn Statement from Seller and any Contractor who is performing in the aggregate more than [REDACTED] of Work (such as the BOS Contractor, Transformer Vendor, and Module Supplier) under its applicable Construction Contract for any Work performed prior to and included in the Seller's Invoice for the Progress Payment;

9.3.2.4 From Seller and each Contractor who performed any Work that Buyer paid for under the prior Progress Payment, a Partial Unconditional Waiver for amounts previously paid to Seller, unless

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the applicable Contractor has completed all its Work under the applicable Construction Contract, in which case Seller shall submit a Full Unconditional Waiver for such Contractor(s); *provided, however*, Buyer waives Seller's obligation to provide the Partial Unconditional Waiver or Full Unconditional Waiver from Contractors whose Construction Contracts collectively do not exceed a total contract price of [REDACTED] in the aggregate but such waiver by Buyer shall not be construed or interpreted as a waiver of Seller's obligations under this Agreement to provide clear title, free of Liens (other than Permitted Encumbrances);

9.3.2.5 From each Contractor who performed any Work that is covered by Seller's current Seller's Invoice for the Progress Payment, a Partial Conditional Waiver for the Work that Buyer is paying for such Work in advance of the receipt of a Partial Unconditional Waiver in accordance the Progress Payment Schedule, unless the applicable Contractor will be completing all its Work under the applicable Construction Contract, in which case Seller shall submit a Full Conditional Waiver for such Contractor(s) that Buyer is paying for such Work in advance of the receipt of a Full Unconditional Waiver; *provided, however*, Buyer waives Seller's obligation to provide the Partial Conditional Waiver or Full Conditional Waiver from Contractors whose Construction Contracts collectively do not exceed a total contract price of [REDACTED] in the aggregate but such waiver by Buyer shall not be construed or interpreted as a waiver of Seller's obligations under this Agreement to provide clear title, free of Liens (other than Permitted Encumbrances);

9.3.2.6 Upon the request for a Progress Payment for achieving Substantial Completion, with respect to Equipment and Materials, to the extent they constitute personal property or may constitute personal property under Applicable Laws, (i) an updated UCC Search as provided in Section 3.2.1, and (ii) evidence that the Equipment and Materials have been delivered and installed on the Project Site; and

9.3.2.7 Upon the request for a Progress Payment for achieving Substantial Completion, the Deliverables described in Section 6.1.2.

9.3.3 Progress Payments.

9.3.3.1 Buyer shall, on the Effective Date, pay the Progress Payment for the Effective Date.

9.3.3.2 Buyer shall, on the date of the NTP Closing, pay the Progress Payment for NTP. Any amounts paid by Seller to Module Supplier under the Module Supply Agreement shall not be invoiced to

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Buyer until the Progress Payment for NTP. Notwithstanding the foregoing, in the event that NTP does not occur, Buyer is not responsible for reimbursing Seller for payments made to Module Supplier under the Module Supply Agreement.

9.3.3.3 Buyer shall pay each other Progress Payment upon (i) the date that is [REDACTED] following the date of Seller's Invoice therefore (if Seller provides an estimate of such Seller's Invoice not less than [REDACTED], and not more than [REDACTED] in advance of submitting such Seller's Invoice) or (ii) the date that is [REDACTED] following the date of Seller's Invoice therefore (if Seller does not provide such estimate), in each case, including all accompanying documentation required by Section 9.3.2 to make the Seller's Invoice complete. For clarity, Buyer may Dispute the amounts requested in or other information contained in Seller's Invoice (or such accompanying documentation). Buyer shall pay to Seller the amount that remains after deduction from the amount requested in the Seller's Invoice of the following amounts: (x) any portion thereof that Buyer Disputes in good faith as not being due and owing (which if Seller disagrees with Buyer's refusal, Seller may refer it to a Dispute to be resolved in accordance with ARTICLE XXIII), (y) any overpayment by Buyer for any previous Progress Payment, and (z) any undisputed amounts payable by Seller to Buyer hereunder, subject to Seller's right to Dispute any reduced amounts it disagrees with in good faith in accordance with ARTICLE XXIII. Subject to Section 9.3.8 and ARTICLE XVIII, the determinations made as contemplated by this Section 9.3.3 shall be made for purposes of payment only and shall not in any way (1) affect, relieve, or reduce Seller's obligations to perform and complete the Work in accordance with the provisions of this Agreement, or (2) be deemed to be a warranty or acceptance by Buyer with respect thereto.

9.3.4 [Intentionally Omitted]

9.3.5 Punch List Holdback Payments.

Following Substantial Completion, Seller may submit to Buyer Seller's Invoices on a monthly basis for Punch List Items completed, and Buyer shall pay any undisputed amounts within [REDACTED] following receipt of such Seller's Invoice and the same documents required for a Progress Payment; provided that in no event shall the amount of the Punch List Holdback be less than [REDACTED] of the aggregate value of the Punch List Items after giving effect to any such payment. In the event of any disagreement with respect to such amounts, the Parties will work in good faith to resolve such dispute, and in the event they are unable to come to a resolution, shall resolve such Dispute in accordance with ARTICLE XXIII.

9.3.6 [Intentionally Omitted]

9.3.7 Final Payment.

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On or after the date on which Final Completion is achieved, Seller shall submit to
Buyer:

9.3.7.1 A final Seller's Invoice (the "Final Seller's Invoice") which invoice shall set forth all amounts due to Seller that remain unpaid in connection with the Work, including any outstanding Punch List Holdback, not to exceed the Purchase Price (payment of such amounts, the "Final Payment");

9.3.7.2 With respect to each Contractor (to the extent not previously delivered), a Full Conditional Waiver and Full Unconditional Waiver as provided in Section 9.3.2 for such Contractor(s); *provided, however*, Buyer waives Seller's obligation to provide the Full Conditional Waiver or Full Unconditional Waiver from Contractors whose Construction Contracts collectively do not exceed a total contract price of [REDACTED] in the aggregate but such waiver by Buyer shall not be construed or interpreted as a waiver of Seller's obligations under this Agreement to provide clear title, free of Liens (other than Permitted Encumbrances); and

9.3.7.3 With respect to Seller, a Full Conditional Waiver for the outstanding amount owed under the Final Seller's Invoice and a Partial Unconditional Waiver for all amounts previously paid to Seller.

Within [REDACTED] after delivery of the foregoing, Buyer shall pay to Seller the undisputed amount due under such Final Seller's Invoice. Buyer shall have the right to conduct an audit at any time pursuant to Section 10.7. At the time of Final Payment, a Full Unconditional Waiver shall be executed by Seller and delivered to Buyer and Full Unconditional Waivers from all Contractors who provided a Full Conditional Waiver as provided in Section 9.3.7.2 above. In the event of any Dispute with respect to such Final Payment, the Parties will work in good faith to resolve such Dispute, and in the event they are unable to come to a resolution, shall resolve such Dispute in accordance with ARTICLE XXIII.

9.3.8 Progress Payment Non-refundable.

Notwithstanding any provision to the contrary herein, each Progress Payment hereunder shall be non-refundable when made, and in no event shall Buyer be entitled to a direct refund of any Progress Payment; provided that Seller shall refund to Buyer any amounts received that have not been expended for Work performed in accordance with this Agreement for the benefit of the Project (such as to pay for materials to be incorporated into the Project or payments made to any Contractor).

9.3.9 Suspension for Payment Disputes.

In the event that amounts for which Seller has invoiced Buyer (in good faith in accordance with Section 9.3.2) that are under Dispute by Buyer are such that (x) amounts for which

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Seller has invoiced Buyer (in good faith in accordance with Section 9.3.2) are more than (y) [REDACTED] of the amount of Purchase Price Buyer actually paid to Seller, then Seller may suspend the Work hereunder and the work of Contractors until such time as the Disputes are resolved to the extent that (x) amounts for which Seller has invoiced Buyer (in good faith in accordance with Section 9.3.2) are less than (y) [REDACTED] of the amount of Purchase Price Buyer actually paid to Seller. Notwithstanding the foregoing, Seller shall not suspend Work under this Section 9.3.9, without first providing Buyer with [REDACTED] notice that this provision has been triggered and that Seller intends to suspend Work. For clarity, the foregoing amounts shall not include payments made for the Modules to Seller or Module Supplier, as applicable. An example illustrating the application of this Section 9.3.9 under certain stated assumptions is attached as Exhibit V. Buyer may make any payment under protest for all or such amounts Seller has invoiced Buyer in order to prevent a Seller suspension of the Work under this Section 9.3.9.] If (1) Buyer declines to pay under protest, (2) Seller suspends its performance under this Section 9.3.9, and (3) Buyer thereafter prevails in its protest of the disputed amount invoiced by Seller, Seller shall not be entitled to any extension of Milestones or other relief under this Agreement with respect to the period during which it suspended its performance.

9.4 Limitations on Payments to Seller.

9.4.1 If Buyer is the subject of a claim with a third party for which Seller is responsible pursuant to this Agreement and, in Buyer's reasonable judgment, there is not sufficient insurance of Seller and its Contractors to pay for any such costs and expenses, Buyer may withhold payment to the extent of such claim.

9.4.2 Any other costs or expenses owed by Seller to Buyer and past due may be deducted from payments owed to Seller.

9.4.3 Any amounts paid to any of the Contractors to eliminate a Seller Lien or avoid the placement of a Seller Lien on the Project or Project Site for Work performed will be deducted as provided in Section 9.8.

9.4.4 Any payments to be paid as Direct Payments as set forth in Section 9.8 will be deducted from amounts owed to Seller as provided in Section 9.8.

9.5 Withholding of Payment.

9.5.1 Buyer shall have no obligation to make any payment to Seller at any time when a Seller Event of Default has occurred and is continuing. Such right to withhold payments due Seller shall be limited to amounts reasonably necessary to cure every Seller Event of Default.

9.5.2 Failure by Buyer to pay any amount Disputed in good faith shall not alleviate, diminish, modify, nor excuse Seller's obligations to perform hereunder. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Seller of any of its obligations hereunder.

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9.6 Payments to Buyer.

Except to the extent otherwise expressly provided herein, any un-Disputed amounts payable by Seller to Buyer under this Agreement shall be due within [REDACTED] of Seller's receipt of Buyer's invoice for such payment.

9.7 Adjustments to Purchase Price.

9.7.1 The Purchase Price may only otherwise be adjusted (i) by increasing the Purchase Price by Change Order or amendment to the Body of this Agreement signed by Buyer for additional Work, or (ii) by reducing the Purchase Price as a result of Delay LDs, Plant Capacity Buydown or Plant Capacity LDs. Any increase in the Purchase Price shall be applied to the payment as described in the Change Order or, if not directed, then to the Progress Payment described in the Change Order and reduction to the Purchase Price shall be applied (x) first, to the Progress Payment for Substantial Completion (y) next, to each Progress Payment preceding the Substantial Completion in reverse order from last to first, and (z) lastly, if there is not sufficient amounts owed, Seller shall reimburse Buyer within [REDACTED] thereafter.

9.8 Manner of Payment: Direct Payments.

All payments to be made to either Party under this Agreement shall be paid in U.S. Dollars and shall be paid electronically (by means of wire) in immediately available funds on the date due or, if such date is not a Business Day, on the immediately succeeding Business Day, to such account as may be designated by such Party from time to time by notice to the other Party in accordance with ARTICLE XXI. Buyer shall pay all amounts payable to Seller hereunder by wiring the applicable amounts in immediately available funds to the accounts designated by Seller in writing by Seller at or prior to Seller furnishing the Seller's Invoice for such amount to be paid. Buyer may pay Progress Payments (or portions thereof) directly to the applicable Contractor for their portion of the Work, which specified amounts shall not be disputed by Seller and shall be in accordance with the payment terms of each Person's respective Module Supply Agreement, Inverter Supply Agreement, Transformer Supply Agreement and Construction Contracts, once Seller is entitled to the Progress Payment in accordance with the terms and conditions set forth in this Agreement, and which payments shall be referred to individually and collectively as the "Direct Payments." For clarity, in the event that NTP does not occur, Buyer shall not be responsible for reimbursing Seller for the payments made by Seller to such Persons, including for Item Number 8.1 of Exhibit D. Except in the case of an assignment of the Construction Contracts as permitted by this Agreement for Work performed after the assignment and Direct Payments, Seller shall be responsible for paying all Contractors in connection with the Work performed by such Contractors. Buyer shall not otherwise have any obligation to pay any Contractor with respect to the Work performed by such Contractors; however Buyer may elect to do so if there is Seller Liens arising from Seller's failure to pay the Contractor for its portion of the Work, provided Buyer first gives Seller [REDACTED] notice of Buyer's intent to pay Contractor so as to allow Seller to either obtain Buyer's agreement to refrain from making payment based on the information Seller provides or to discharge or bond the Seller Lien off the Project Site and allow Seller to pursue the matter with

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such Contractor. If Seller neither convinces Buyer to refrain from making payment and Buyer is acting in good faith nor Seller discharges or bonds the Seller Lien, Buyer shall be free to proceed with making payment to the Contractor.

9.9 Purchase Price Allocation.

9.9.1 Calculation.

Following the Effective Date, from time to time as is necessary for either Party, including in connection with NTP and Substantial Completion, the Parties will work together in good faith to mutually agree to schedule(s) allocating the Purchase Price (and all other capitalized costs) among the Project Assets grouped by the seven (7) asset classes referred to in Treasury Regulations Section 1.1060-1(c) (the "Purchase Price Allocation Schedule"). In connection with NTP and Substantial Completion, the Purchase Price Allocation Schedule shall be completed within [REDACTED] of the NTP Closing and Substantial Completion, as applicable. Any Purchase Price Allocation Schedule shall be revised to take into account subsequent adjustments to the Purchase Price, including any adjustments and any indemnification payments (which shall be treated for Tax purposes as adjustments to the Purchase Price), as mutually agreed by the Parties and in accordance with the provisions of Section 1060 of the Code and the Treasury Regulations thereunder.

9.9.2 Reporting.

The Parties shall report the transaction for federal and, where applicable, state income tax purposes on IRS Form 8594 in accordance with the Purchase Price Allocation Schedule described in Section 9.9.1. Seller and Buyer each agrees to provide the other promptly with any other information required to complete Form 8594.

9.9.3 Disputes.

If the Parties are unable to agree on the Purchase Price Allocation Schedule pursuant to Section 9.9.1 or any subsequent adjustment to the Purchase Price Allocation Schedule, the Parties shall refer such Dispute to an Independent Accountant, which firm shall make a final and binding determination as to all matters in Dispute with respect to this Section 9.9.3 (and only such matters) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountant shall not have the power to modify or amend any term or provision of this Agreement. Each Party shall bear and pay one-half (1/2) of the fees and other costs charged by the Independent Accountant. "Independent Accountant" means a public accounting firm jointly selected by the Buyer and Seller that neither has an existing or prior relationship nor a conflict of interest with Buyer, Seller, or either of their Affiliates.

9.10 Fees and Costs.

Seller shall timely pay all Taxes, rent and other amounts due under the Solar Energy Easements (as may be amended pursuant to the terms of this Agreement by Seller) and other Real Property Documents until Substantial Completion, and the costs other Project Contracts, the Title and Survey Documents (but excluding the Title Policy Endorsements, which shall be Buyer's sole

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cost and expense), Environmental Reports and Studies, UCC Searches, curative documents, and filing fees associated with the Purchase and Sale as each of these costs are included in the Purchase Price. To the extent Seller does not timely pay any such amounts, Buyer may pay such amounts directly to the applicable Person, and Seller agrees to promptly reimburse Buyer for any such amounts paid by Buyer, which Buyer may by notice to Seller elect to deduct from amounts owed to Seller or require payment within [REDACTED] thereafter. After Substantial Completion, Buyer shall timely pay all such Taxes and other amounts and costs as required that become due thereafter. Notwithstanding the foregoing, Buyer shall timely pay all Taxes, and rent and other amounts due under the Solar Energy Easements and other Real Property Documents, to the extent such amounts are based on the Project's improvements on the real property or the operation of or generation of revenue by the Project (for example, increased Taxes based on an increased assessment based on such improvements, or rent payments based on such operations or revenues, such as a percentage of such revenues).

9.11 Intended Tax Treatment.

Buyer and Seller intend for each Block comprising part of the Project to be treated as originally placed in service by Buyer for all federal, state and local income tax purposes and each agree to file all federal, state and local income tax returns in a manner consistent with such intention, unless required by a final determination, within the meaning of Section 1313 of the Internal Revenue Service Code, to the contrary.

ARTICLE X CHANGE ORDERS

10.1 Basis for Change Orders.

The Parties may from time to time enter into written Change Orders executed by Buyer and Seller in accordance with this ARTICLE X. Change Orders are only binding upon a Party when executed by an authorized officer of such Party. All Change Orders shall be originated, considered, and made effective only in accordance with this Section 10.1, and must be utilized notwithstanding that a reference to a Change Order may not be in other applicable sections of this Agreement pertaining to the same. The Parties shall execute a Change Order to document any changes to a Material Project Contract requiring Buyer's consent pursuant to Section 3.5. Notwithstanding the foregoing, the Parties may also make changes by amending the Body of this Agreement using a written amendment to this Agreement as provided in Section 24.14. Notwithstanding anything to the contrary in this Agreement, in no event shall any Change Order, or the subject matter thereof, operate to change the Purchase Price or the Project Schedule or provide Seller with relief from its obligations to pay, or limit Buyer's right to hold back, Delay LDs, except, in each case, to the extent specifically set forth in writing in such Change Order.

10.2 Buyer's Rights to Request Change Orders.

10.2.1 Buyer may, at any time prior to the date that is [REDACTED], request changes to the Work, including the Technical Specifications or the Project Schedule, and within [REDACTED] of receipt of any such request, Seller shall consider and respond, and if practicable, propose a draft Change Order reflecting the changes pursuant to such

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request. Once such draft Change Order is finalized, and executed and delivered by Buyer and Seller, Seller shall proceed to perform in accordance with such Change Order and this Agreement. Any appropriate increase or decrease in the Purchase Price, change in the Project Schedule to the extent it requires Buyer's approval as provided in this Agreement, or change to the Work shall be described in detail in the applicable Change Order.

10.2.2 Buyer may, on or after the date that is [REDACTED], request changes to the Work, including the Technical Specifications or the Project Schedule which Seller may consider in its discretion.

10.3 Seller's Right to Propose Change Orders.

10.3.1 Seller may, at any time prior to the completion of all Work, propose changes to the applicable Work. Buyer shall timely consider such changes but shall have no obligation to make any such changes (except to the extent such changes are expressly required pursuant to this Article X). Seller will not be relieved of any obligation under this Agreement while such a proposed Change Order is under consideration. If, pursuant to this Section 10.3.1, a Change Order is finalized, and executed and delivered by Buyer and Seller, Seller shall proceed to perform in accordance with such Change Order and this Agreement. Any appropriate increase or decrease in the Purchase Price, change in the Project Schedule to the extent it requires Buyer's approval as provided in this Agreement, or change to the Work shall be described in detail in the applicable Change Order.

10.3.2 [REDACTED]

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10.3.3 In the case of any Buyer Delay, Seller shall be entitled to a Change Order to adjust the Project Schedule (including, without limitation, the Substantial Completion Deadline) to the extent of the actual delay caused by such Buyer Delay. Additionally, in the case of any Buyer Delay, Seller shall be entitled to a Change Order memorializing an increase to the Purchase Price to the extent there is a material increase in cost to Seller to perform the Work [REDACTED] of the increased cost. Seller shall notify Buyer of the impending Change Order within [REDACTED] after Seller first becomes aware of the commencement of the Buyer Delay, and the Parties shall endeavor in good faith to negotiate and execute the Change Order after delivery to Buyer of such Seller Change Order request. If Seller shall fail to deliver the proposed Change Order to Buyer in accordance with the requirements herein within [REDACTED]

[REDACTED]. Notwithstanding anything to the contrary in this Section 10.3.3, in any event, Seller shall continue to exercise all reasonable efforts to continue to perform its obligations under this Agreement and shall exercise all commercially reasonable efforts to mitigate or limit Damages to Buyer.

10.3.4 In the case of any Buyer Capacity Test Delay, Seller shall be entitled to a Change Order to adjust the Capacity Test Completion Deadline to the extent of the actual delay caused by such Buyer Capacity Test Delay. Seller shall notify Buyer of the impending Change Order associated with such Buyer Capacity Test Delay within ten (10) days after Seller first becomes aware of the commencement of the Buyer Capacity Test Delay, and the Parties shall endeavor in good faith to negotiate and execute the Change Order after delivery to Buyer of such Seller Change Order request. Notwithstanding anything to the contrary in this Section 10.3.4, in any event, Seller shall continue to exercise all reasonable efforts to continue to perform its obligations under this Agreement and shall exercise all commercially reasonable efforts to mitigate or limit Damages to Buyer.

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10.3.5 In the case of any CIL Delay, Seller shall be entitled to a Change Order to adjust the Project Schedule (including, without limitation, the Substantial Completion Deadline and the Capacity Test Completion Deadline) to the extent of the actual delay caused by such CIL Delay. Seller shall notify Buyer of the impending Change Order within ten (10) days after Seller first becomes aware of the commencement of the CIL Delay, and the Parties shall endeavor in good faith to negotiate and execute the Change Order after delivery to Buyer of such Seller Change Order request. If Seller shall fail to deliver the proposed Change Order to Buyer in accordance with the requirements herein within thirty (30) Business Days after Seller first becomes aware of the commencement of the CIL Delay, Seller shall not be entitled to a Change Order with respect to such CIL Delay. Notwithstanding anything to the contrary in this Section 10.3.5, in any event, Seller shall continue to exercise all reasonable efforts to continue to perform its obligations under this Agreement and shall exercise all commercially reasonable efforts to mitigate or limit Damages to Buyer.

10.4 Remedies for Buyer Delay and Force Majeure.

Notwithstanding anything to the contrary in this Agreement, the change in Project Schedule as provided in Section 10.3.3 and an increase in the Purchase Price as provided in Sections 10.3.3 shall be the sole remedies of Seller for any Buyer Delay. Further notwithstanding anything contrary in this Agreement, the change in Project Schedule as provided in Section 10.3.2 and an increase in the Purchase Price as provided above in Section 10.3.2 shall be the sole remedies of Seller for any Force Majeure.

10.5 Disagreements.

In the event of a Dispute concerning the need for or the substance of a proposed Change Order, such Dispute shall be resolved in accordance with ARTICLE XXIII as a Dispute.

10.6 Price Changes.

Change Orders resulting in an increase in the Purchase Price may be priced according to the time and material rate mutually agreed to by the Parties or other equitable method of calculation, which shall include an allowance for Seller's overhead and profit mutually agreed by the Parties not to exceed the maximum percentage permitted by Section 10.7 with a total not-to-exceed price, or, if the Parties so agree, at a fixed price. If the Parties agree upon a price or payment terms for the changes in the Change Order, the Purchase Price shall be adjusted to reflect the same, and the adjusted Purchase Price will be set forth in the Change Order. Labor costs included in any increase to the Purchase Price will not reflect any premium based on productivity loss or otherwise on diminished efficiency or productivity in the performance of the Work.

10.7 Audit Rights.

Seller shall maintain at all times accurate records, books, logs and documentation that will adequately substantiate in detail Seller's actual out of pocket costs associated with Work authorized and performed under such Change Order on a time and material basis plus an aggregate fee for

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Seller and all Contractors for profit and overhead not to exceed [REDACTED] (unless otherwise agreed to by the Parties in such Change Order) of the cost of the time and the new Work. Seller shall, at its option, either deliver to Buyer a true copy of, or shall make available for inspection and copying by Buyer or its representatives at Buyer's cost, all such Books and Records that may be necessary to adequately substantiate such Work for review and audit by Buyer or its representatives upon Buyer's request during the term of this Agreement and for a period of three (3) years after Final Payment under this Agreement. All such information shall be subject to the provisions of Section 23.4.

[REDACTED]

[REDACTED]

[REDACTED]

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ARTICLE XI COMPLETION OF MILESTONES

11.1 Achievement of Milestones.

11.1.1 When Seller believes that a Milestone has been achieved, it shall deliver to Buyer a corresponding Milestone Completion Certificate in the form as shown in Exhibit N. Such Milestone Completion Certificate shall include (i) the results of all testing relevant to achievement of such Milestone, (ii) the date on which such Milestone was achieved, and (iii) sufficient detail to enable Buyer to determine that the relevant Milestone has been achieved. Buyer shall have [REDACTED] for all Milestones from receipt to accept by countersigning such Milestone Completion Certificate or to deliver to Seller a rejection of such Milestone Completion Certificate together with Buyer's reasonable basis for asserting that such Milestone has not been achieved which for clarity may be that Buyer disputes whether any item should be on the applicable punch list (or in the case of Substantial Completion, the Punch List), in each case, set forth in reasonable detail. If Buyer fails to accept or reject any Milestone Completion Certificate within the foregoing timeframe, Buyer shall be deemed to have accepted such Milestone Completion Certificate. If Buyer rejects any Milestone Completion Certificate, the Parties shall cooperate in good faith to address or correct any issues related to Buyer's rejection; provided, that Seller may continue to perform, or cause to be performed, the Work in its reasonable judgment while the Parties work to address or correct any such issues. If the Parties are unable to agree within [REDACTED], in each case, after submission by Seller to Buyer of the applicable Milestone Completion Certificate, whether such Milestone has been achieved, or on the measures required to achieve such Milestone, either Party may submit the Dispute to the Independent Engineer, whose determination shall be final and binding on the Parties. Notwithstanding anything to the contrary in this Agreement, a Milestone shall be deemed to have been achieved when, and only when, (A) Seller has executed and delivered, and Buyer has countersigned and delivered, the Milestone Completion Certificate applicable to such Milestone or (B) the Independent Engineer delivers a final written determination to the Parties pursuant to the immediately preceding sentence that such Milestone has occurred. The effective date of any Milestone shall be the date on which the Milestone Completion Certificate for such Milestone that is accepted or deemed accepted had been originally submitted by Seller to Buyer hereunder. For the avoidance of doubt, the Parties contemplate that a Milestone may be achieved, and a corresponding Milestone Completion Certificate may be executed, with respect to a discrete subset of the systems, infrastructure or equipment comprising the Project, such as, by way of example only, achievement of a Milestone with respect to a discrete number of Blocks that is less than all Blocks comprising the Project.

11.1.2 It is understood and agreed that acceptance of Milestone Completion Certificates is solely for the purpose of (i) confirming that Buyer agrees (or does not disagree) that the Project has achieved a stage of completion in conformance with the Agreement's requirements but without prejudice to Seller's obligation hereunder to deliver to Buyer in conformance with this Agreement's

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requirements, and (ii) affording the Parties the opportunity to identify and resolve any issues regarding conformance prior to Substantial Completion. Notwithstanding any disagreements or Disputes with regard to achievement of a Milestone, Seller shall continue to prosecute completion of the Work substantially in accordance with the Project Schedule. Notwithstanding the foregoing or any provision to the contrary in this Agreement, the countersigning of any Milestone Completion Certificate by Buyer, or a written determination by the Independent Engineer that a Milestone has occurred following resolution of a Dispute with respect thereto pursuant to Section 11.1.1, shall evidence that the applicable Milestone has been achieved and that the Work related thereto has been accepted (other than for the Work which is part of the Punch List, except in the case of Final Completion). Such acceptance by Buyer shall not be interpreted as a waiver of any Warranty Defects discovered in the future.

11.2 Substation Completion.

Seller shall achieve or cause to be achieved Substation Completion in accordance with this Agreement. "Substation Completion" shall have occurred when the following requirements are met, except with regard to items included on the punch list for Substation Completion:

11.2.1 All access roads and other improvements necessary for performance with the Collection System Substation Work have been completed;

11.2.2 All Equipment and Materials necessary for the Substation have been installed in accordance with the requirements of this Agreement and can be used safely in accordance with this Agreement including all Requirements;

11.2.3 All Equipment and Materials necessary to achieve connection of the Substation to the Point of Interconnection have been installed, and the Substation is either (i) energized, or (ii) immediately capable of being energized upon completion of the Interconnection Facilities by Buyer;

11.2.4 The Substation is mechanically complete in accordance with the requirements of this Agreement, with all relaying, metering, GIA required telemetry communications and other equipment;

11.2.5 All tests and inspections associated with such Substation Equipment and Materials have been completed according to the Requirements and documented (except to the extent the fiber optic cable or the SCADA System cannot be tested);

11.2.6 Seller has prepared and submitted a punch list with respect to the Substation;

11.2.7 The Substation is capable of delivering all of the electrical energy generated by the Blocks to the Point of Interconnection;

11.2.8 The Substation has been successfully energized and tested;
and

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11.2.9 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Substation Completion pursuant to Section 11.1.1.

11.3 Infrastructure Completion.

Seller shall achieve or cause to be achieved Infrastructure Completion in accordance with this Agreement. "Infrastructure Completion" shall have occurred when the following requirements are met, except with regard to items included on the punch list for Infrastructure Completion:

11.3.1 The Project Site roads have been constructed or improved and maintained in accordance with the specifications of this Agreement excluding reclamation work;

11.3.2 Seller has made available to Buyer all quality control documents required for Infrastructure Facilities;

11.3.3 Substation Completion has been achieved;

11.3.4 The grounding grid has been installed and tested and meets the requirements in Scope of Work specifications;

11.3.5 The Equipment and Materials in connection with the foregoing and any other Infrastructure Facilities have been installed in accordance with the manufacturer's installation specifications;

11.3.6 Such Equipment and Materials are mechanically sound and all Equipment and Materials other than the Inverters and Blocks are electrically sound and have been tested and may be operated without damage to the Project or other property and without injury to any person;

11.3.7 Seller has prepared and submitted a punch list with respect to Infrastructure Completion; and

11.3.8 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Infrastructure Completion pursuant to Section 11.1.1.

11.4 Block Mechanical Completion.

For each individual Block, Seller shall achieve or cause to be achieved Block Mechanical Completion with respect to such individual Block in accordance with the requirements of this Agreement. "Block Mechanical Completion," with respect to an individual Block, shall have occurred when the following requirements are met, except with regard to items included on the punch list for Block Mechanical Completion:

11.4.1 all racks for such Block have been installed in accordance with the manufacturer's recommendations and design documents and drawings;

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11.4.2 Padmount Transformers and Padmount Transformer foundations have been completed and Padmount Transformers have been placed in their final location;

11.4.3 the Inverter foundations have been completed and the Inverters have been placed in their final locations;

11.4.4 all of the electrical works necessary to achieve connection of the Padmount Transformers to the Project substation in accordance with this Agreement have been installed, insulated, protected and tested;

11.4.5 the fiber optic cable, if applicable, has been installed and tested and meets the SCADA System and Inverter Supplier's specifications;

11.4.6 all of the electrical works including the installation of all power cable and grounding necessary to energize the Blocks on the circuit are completed in accordance with the requirements of this Agreement;

11.4.7 all Equipment and Materials associated with such electrical works have been installed in accordance with the requirements of this Agreement and checked for adjustment;

11.4.8 such electrical works necessary to achieve connection of such Inverters to Transmission Provider's electrical transmission system (excluding the SCADA System), are either (i) energized or (ii) immediately capable of being energized upon provision of the Interconnection Facilities;

11.4.9 all of such electrical works have been properly constructed, installed, insulated and protected where required for such operation, have been correctly adjusted, are mechanically, electrically and structurally sound in accordance with the requirements of this Agreement, and can be used safely in accordance with this Agreement, Applicable Laws, and Prudent Industry Standards;

11.4.10 the Modules have been installed in accordance with the Module Supplier's installation specifications;

11.4.11 all commissioning tests for a non-energized facility required in the Scope of Work have been completed and the test results are all within the acceptable range;

11.4.12 all quality assurance tests for a non-energized facility required in Scope of Work and for the safe and reliable operation of Project have been completed;

11.4.13 the Inverter, Combiner Box(es), and Padmount Transformer have been installed in accordance with the applicable manufacturer's recommendations;

11.4.14 the collection system circuit connected to the Inverters and all DC, power and control connections from the Modules to Inverter have been installed and tested and meet the Inverter Supplier's specifications and are capable of being electrically connected to the grid and operated without damage to the Project or other property and without injury to any Person;

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11.4.15 Seller has prepared and submitted a punch list with respect to such Block; and

11.4.16 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Block Mechanical Completion with respect to the applicable Block pursuant to Section 11.1.1.

11.5 Block Placed-In Service.

For each individual Block, Seller shall achieve or cause to be achieved Block Placed-In Service with respect to such individual Block in accordance with the requirements of this Agreement. "Block Placed-In Service," with respect to an individual Block, shall have occurred when the following requirements are met, except with regard to items included on the punch list for Block Placed-In Service:

11.5.1 All prior Milestones for such Block (to the extent necessary for such Block to otherwise achieve Block Placed-In Service) have been fully achieved;

11.5.2 all racks, Modules, Inverters, and Padmount Transformers in the associated Block have received backfeed of electrical power;

11.5.3 all racks, Modules, Inverters, and Padmount Transformers in the associated Block have been tested and commissioned in accordance with the manufacturers' requirements and the Transmission Provider's requirements;

11.5.4 the SCADA System is installed, tested, and operating in accordance with manufacturers' requirements and the Interconnection Utility's requirements;

11.5.5 except with regard to Work to be performed in connection with Substantial Completion, Final Completion, Reclamation and Revegetation or as set forth on the punchlist, all other items necessary to complete the Work have been completed;

11.5.6 Seller has prepared and submitted a punch list with respect to such Block; and

11.5.7 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Block Placed-In Service with respect to the applicable Block pursuant to Section 11.1.1.

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11.6 Substantial Completion.

Seller shall achieve or cause to be achieved Substantial Completion in accordance with the requirements of this Agreement. "Substantial Completion" shall have occurred when the following requirements are met, except with regard to Punch List Items:

11.6.1 Seller has achieved Block Placed-In Service for each Block;

11.6.2 All prior Milestones for each Block have been fully achieved, except for Work that qualifies as Punch List Items to be completed prior to Final Completion;

11.6.3 [Reserved]

11.6.4 All quality assurance documentation has been provided to and received by Buyer in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Assurance Plan except for Punch List items;

11.6.5 Each Block and the balance of the Project is capable of delivering electric power to the Point of Interconnection in accordance with the requirements in the Scope of Work;

11.6.6 Seller has completed the Functional Test as provided in, and in accordance with, Exhibit G – Appendix B;

11.6.7 The SCADA System is in compliance with this Agreement and documentation of successful SCADA Control Tests (including automatic voltage regulator functionality) are delivered;

11.6.8 Seller has delivered Project Documents and Deliverables, including preliminary Record Drawings necessary to safely operate the Project (with the final Record Drawings to be delivered at Final Completion), a reasonably complete draft of the O&M Manual, Job Book, Books and Records, Warranties (as provided in Section 6.7.1), and the Assignment of Remaining Project Assets, including the Bill of Sale;

11.6.9 The Project Site has been cleaned-up in accordance with all Requirements including the removal of waste materials and rubbish caused by Seller's Work related activities except for Punch List Items;

11.6.10 The Project Contracts information in Exhibit AF has been updated, with such updates to Exhibit AF marked by redlining or other appropriate mechanism reflecting the changes since Exhibit AF was delivered to Buyer at NTP;

11.6.11 Any issues relating to the Quality Assurance Plan have been resolved in accordance with the Requirements;

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11.6.12 Seller and each Contractor shall have delivered the applicable waivers and other documents required in Section 9.3 as of Substantial Completion; Seller shall have obtained, and Buyer shall have received copies of, all Consents, Approvals and Applicable Permits, including the Special Land Use Permit, set forth on Exhibit R;

11.6.13 Seller shall have delivered a Tax Status Letter to Buyer as required in Section 12.6.7;

11.6.14 Seller has paid all Delay LDs to Buyer previously invoiced pursuant to Section 7.6.1 that were not waived (or such Delay LDs were deducted from the Purchase Price paid to Seller or will be deducted in connection with the Progress Payment for Substantial Completion); and

11.6.15 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Substantial Completion, including the Punch List, pursuant to Section 11.1.1.

11.7 Capacity Test Completion.

Seller shall achieve or cause to be achieved Capacity Test Completion in accordance with the requirements of this Agreement. "Capacity Test Completion" shall have occurred when the following requirements are met:

11.7.1 Seller has achieved the Minimum Plant Capacity pursuant to a Capacity Test as provided in, and in accordance with, Exhibit G – Appendix A;

11.7.2 Seller has paid all Plant Capacity Buydown and Plant Capacity LDs to Buyer previously invoiced pursuant to Section 7.6.2 and Section 7.6.3 that were not waived (or such Plant Capacity Buydown and Plant Capacity LDs were deducted from the Purchase Price paid to Seller or will be deducted in connection with the Progress Payment for Final Completion); and

11.7.3 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Capacity Test Completion, pursuant to Section 11.1.1.

11.8 Final Completion.

Seller shall achieve or cause to be achieved Final Completion in accordance with the requirements of this Agreement. "Final Completion" shall have occurred when the following requirements are met:

11.8.1 Seller shall have achieved Substantial Completion and Performance Test Completion;

11.8.2 Seller has delivered to Buyer the As-Built Survey;

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11.8.3 Seller has delivered each Deliverable identified in Exhibit AC and Exhibit A Appendix A2 and the final O&M Manual;

11.8.4 All Punch List Items have been completed;

11.8.5 All quality assurance documentation has been provided to and received by Buyer in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Plan Summary;

11.8.6 Buyer has received the final Record Drawings in electronic formats as required in Section 6.5.2;

11.8.7 The Project Site has been cleaned-up in accordance with all Requirements, including the removal of waste materials and rubbish caused by Seller's Work related activities;

11.8.8 Seller has restored or repaired, as required by the Real Property Documents or otherwise required by this Agreement including Requirements, all property of landowners that has been physically impacted by performance of the Work;

11.8.9 All other items necessary to complete the Work have been completed;

11.8.10 All Delay LDs, Plant Capacity LDs and Plant Capacity Buydown, and any other payments owing to Buyer by Seller, have been paid in full;

11.8.11 There are no uncured Seller Events of Default; and

11.8.12 Seller has issued the Final Completion Certificate in accordance with , and Buyer has accepted and countersigned the Final Completion Certificate.

11.9 Reclamation and Revegetation Completion

Notwithstanding anything to the contrary contained herein, following Final Completion, Seller shall cause all remaining reclamation and revegetation work under the Agreement to be achieved such that "Final Completion", including reclamation and revegetation work (without any waiver thereto, except for waivers mutually agreed upon by Buyer and Seller) shall have occurred ("Reclamation and Revegetation Completion"). Seller shall deliver to Buyer a Milestone Completion Certificate for Reclamation and Revegetation Completion in accordance with Section 11.1.1. Notwithstanding anything to the contrary contained herein, following Final Completion, Buyer shall provide Seller with access to the Project and authority with respect to the applicable Construction Contracts, in each case to the extent reasonably necessary for Seller to achieve Reclamation and Revegetation Completion.

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ARTICLE XII REPRESENTATIONS AND WARRANTIES OF SELLER

As of the Effective Date and then again reaffirmed as of the NTP Closing and the date Seller achieves Substantial Completion, Seller hereby represents and warrants to Buyer all of the following set forth in this ARTICLE XII; *provided, however*, that to the extent any representation and warranty is specified as being given as of a specific date, such representation and warranty shall be deemed to be made only as of such date and based on the Project Layout on such date:

12.1 Organization.

Seller is duly formed, validly existing and in good standing under its jurisdiction of formation and is duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) require such qualification, including in the State of Michigan. All of Seller's Organizational Documents are in full force and effect, and true, correct and complete copies are attached as Exhibit U to this Agreement.

12.2 Authority.

Seller has the requisite power and authority to (i) conduct its business as now conducted, to own, lease and operate its other assets (including the Project Assets); (ii) to execute and deliver this Agreement and the Project Documents; (iii) and to perform fully its obligations hereunder and thereunder, including to acquire, develop, engineer, design, construct, commission, warrant, own and operate the Project and to enter into all Project Contracts contemplated hereunder to be entered into by Seller and otherwise do all things necessary to effect the transactions contemplated hereby and transferring, or causing the transfer of, the Project and Project Assets to Buyer. Seller is not in violation of any of its Organizational Documents and attached as Exhibit S is Seller's Officer's and Secretary's Certificate and attached as Exhibit T is Seller's Organization Chart identifying Seller's parent affiliates.

12.3 Binding Effect.

Seller has taken all necessary limited liability company action to authorize, effect and approve the transactions set forth in this Agreement and all Project Documents. This Agreement has been duly executed and delivered by Seller. Assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity). Upon the execution and delivery by Seller of the Project Documents to which it is a party, assuming the due authorization, execution and delivery of each such Project Document, each such Project Document will constitute the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

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12.4 No Violations.

Seller's execution and delivery of this Agreement and the execution and delivery by Seller of the Project Documents, together with the consummation and performance of their obligations hereunder and thereunder do not (i) conflict with or violate the Organizational Documents of Seller; (ii) conflict with, violate, constitute a default under, trigger any "change of control" rights or remedies under, impose or create any Lien under, or impose, result in or create any right of any Person related to acceleration of remedies, buy-out rights, rights of first offer or refusal or rights of termination under, any Project Contract; (iii) conflict with or violate any Applicable Law or any Order applicable to Seller, or any of its properties or assets, including the Project Assets; or (iv) require the consent or approval of any Person which has not already been obtained or will not be obtained prior to the applicable Milestone Date, and such shall be delivered to Buyer prior to Substantial Completion.

12.5 Project Assets.

12.5.1 At NTP Closing and thereafter as balance of the Project Assets are transferred, Seller has good, marketable and indefeasible title or easement rights, as applicable under this Agreement, to all of its Project Assets free and clear of any and all Liens (other than Permitted Encumbrances), including those in Exhibit F that identifies the Project Site and Exhibit H that identify all Real Property Documents, that are intended or necessary for Buyer's ownership or use of the Project Site. To Seller's knowledge, there are no unrecorded easements or claims or encroachments or prescriptive easements affecting any portion of the Project Site other than the Permitted Encumbrances. Seller has no legal obligation, contingent or otherwise, or any nonbinding understanding to sell, lease, dispose of, or otherwise transfer or subject to Lien (other than Permitted Encumbrances) any Project Assets.

12.5.2 Except for the pre-NTP Closing zoning and land use proceedings described in the attached Exhibits, are no condemnation, zoning or other land-use proceedings by or before any Governmental Authority, now pending or threatened, with respect to the Project (as it relates to any real property owned, leased or licensed by Seller), including the sale, reduction, or use of the MW power or Environmental Attributes therefrom or any portion thereof, that does or would adversely affect, interfere with or alter the Project, including Buyer's use of the Project Site or the use of the Project. Neither Seller nor its Affiliates has received written notice of any pending or threatened special assessment proceedings affecting any portion of the Project Site nor any proposals, plans, studies, or investigations of any Governmental Authority regarding the Project, including the Project Site.

12.5.3 With respect to the Real Property Documents, when title or assignment of rights thereto is transferred to Buyer as set forth herein:

12.5.3.1 Each of the Real Property Documents is legal, valid, binding, and enforceable against Seller and, to Seller's knowledge, each other party thereto, in accordance with its terms;

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12.5.3.2 Each of the Real Property Documents is in full force and effect and no defaults have occurred and are continuing thereunder, and no event has occurred which, with or without notice or lapse of time or both, would constitute a breach or default thereunder or permit termination, modification or acceleration by any party under any such Real Property Documents, and Seller has not received from, or given to, any counterparty thereto any written notification that any event has occurred which (whether with or without notice, lapse of time or both) would constitute a breach or default thereunder, in any case, which has resulted in or could reasonably be expected to result in any adverse effect;

12.5.3.3 True, correct and complete copies of all Real Property Documents and all amendments to any of the Real Property Documents have been delivered to Buyer as are listed in detail on the attached Exhibit H through the shared electronic online document site described in Section 1.2.2 as will be updated from time to time as provided in this Agreement; and

12.5.3.4 There are no disputes, oral agreements or forbearance programs as to any of the Real Property Documents involving Seller or any of its Affiliates or, to Seller's knowledge, any other Person.

12.5.3.5 None of Seller or any of its Affiliates, and, to Seller's knowledge, no counterparty to any Real Property Documents, is in violation of any Applicable Laws with respect to the Project Site, nor has Seller or any of its Affiliates received any written notification that any Person is in violation of any Applicable Laws with respect to the Project Site.

12.5.4 To Seller's knowledge, there are no plans, studies or efforts by any Governmental Authority to widen, modify or realign, or to impose restrictions on the use of any Access Roads providing access to or within the Project Site, or any portion thereof, which would restrict access, or increase the cost of access, to the Project.

12.5.5 There are no defects or conditions of the soil or land, including any wetlands, which has or could reasonably be expected to have an adverse effect on the Project.

12.5.6 There are no commitments or agreements between Seller or any of its Affiliates and any Governmental Authority or public or private utility adversely affecting the Project Site, or any portion thereof, or any improvements, the Obtained Permits or the Permit Applications that will have an adverse effect on the Project or Buyer.

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12.5.7 To Seller's knowledge, there are no other facts or conditions relating to the Project, including the Project Site, taken as a whole that have or could reasonably be expected to have a material adverse effect on the Project on Buyer.

12.5.8 No mining, mineral or water extraction or development project is under construction or for which permits are currently being obtained, located or planned to be located on or under the Project Site, or any portion thereof, which would have an adverse effect on the use and operation of the Project Site for the development and operation of the Project.

12.5.9 There are no existing or continuing claims against the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller or its Affiliates).

12.5.10 All utility services necessary for the construction and operation of the Project for Buyer's intended purpose are available at the Project Site or will be so available as and when required upon commercially reasonable terms.

12.5.11 The Project Assets comprise all of Seller's right, title and interest in respect of the Project. At Substantial Completion, the Project Assets shall include all of the assets, rights, privileges, consents, approvals and permits necessary for Buyer to, as of Substantial Completion, own and operate the Project in compliance with the Requirements, including Applicable Laws.

12.5.12 No Affiliate of Seller is party to a Project Contract.

12.6 Taxes.

12.6.1 All Tax Returns required to have been filed by or with respect to Seller with respect to the Project and the Project Assets have been duly and timely filed, and each such Tax Return was true, correct and complete; *provided, however*, that no representation is made pursuant to this Section 12.6.1 regarding any Tax attribute of the Project or the Project Assets. All Taxes required to be paid by Seller with respect to the Project or any of the Project Assets (whether or not shown or required to be shown on any Tax Return) have been timely paid.

12.6.2 There is no action or audit now pending, threatened in writing, or to Seller's knowledge proposed action or audit against, or with respect to, Seller with respect to the Project or any of the Project Assets in respect of any Taxes. There are no Liens for Taxes on any of the Project Assets (except for Permitted Encumbrances).

12.6.3 There is no dispute or claim concerning any liability for Taxes with respect to Seller regarding the Project or any of the Project Assets for which notice has been provided, threatened or asserted, or which is otherwise known to Seller. No issues have been raised by any Governmental Authority in writing to Seller in any examination by any Governmental Authority with respect to Seller that, by application of similar principles, reasonably could be expected to result in a

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proposed deficiency for any other Tax period of such Person not so examined for which the statute of limitations has not closed. Seller has not waived (and is not subject to a waiver of) any statute of limitations in respect of Taxes nor has Seller agreed to (and is not subject to) any extension of time with respect to a Tax assessment or deficiency with respect to the Project or any of the Project Assets.

12.6.4 Seller has not received (or is not subject to) any ruling from any Governmental Authority or entered into (or is not subject to) any agreement with a Governmental Authority with respect to Taxes regarding the Project or any Project Assets (other than with respect to property Taxes unrelated to the Project Site).

12.6.5 Seller, with respect to the Project and Project Assets, has no liability for the Taxes of any Person, (i) as a transferee or successor, (ii) by contract, or (iii) otherwise.

12.6.6 For purposes of Section 1445(b)(2) of the Code, Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Code.

12.6.7 Seller shall order a Tax Clearance Certificate from the State and Local Governmental Authority where the Project Site is located in the form attached as Exhibit L ("Tax Clearance Certificate") and obtain and deliver to Buyer a Tax Status Letter from such Governmental Authority indicating whether there are any amounts owed to such Governmental Authority as of NTP (or another date to be mutually agreed) by Seller with respect to the Project and the Project Assets ("Tax Status Letter"). If any amounts are owed, Seller represents and warrants that it shall make timely payment of such amounts, and such amounts paid or to be paid are solely at Seller's cost and expense.

12.6.8 If the Seller delivers a Domestic Content Bonus Qualification Certificate pursuant to Section 9.2.8, (A) each representation, warranty or covenant contained in such Domestic Content Bonus Qualifications Certificate and made by Seller or an Affiliate of Seller is true and correct as of the date made and (B) each representation, warranty or covenant contained in such Domestic Content Bonus Qualifications Certificate and made by any Contractor or PWA Contractor is true and correct as of the date made.

12.6.9 Each representation, warranty or covenant contained in any PWA Requirements Certificate and made by Seller or an Affiliate of Seller is true and correct as the date made and (B) each representation, warranty or covenant contained in any certificate provided by a Contractor or PWA Contractor pursuant to Section 6.16.1 is true and correct as of the date made.

12.6.10 As of the Execution Date, NTP Closing, and the date of Substantial Completion:

12.6.10.1 [Intentionally omitted];

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12.6.10.2 No grants have been provided by any governmental body for use in connection with the Project or with respect to which Seller or any of Seller's Affiliates is the beneficiary and which would require a reduction in Investment Tax Credits;

12.6.10.3 No proceeds of any issue of state or local government obligations have been used to provide financing for the Project on which the interest is exempt from tax under Section 103 of the Internal Revenue Code within the meaning of Section 45(b)(3) of the Internal Revenue Code; and

12.6.10.4 No subsidized energy financing has been provided (directly or indirectly) under a federal, state or local program in connection with the Project within the meaning of Section 45(b)(3) of the Internal Revenue Code.

12.7 Consents and Approvals.

Seller is not required to give any notice to or obtain any consent, approval, order or authorization of or registration, declaration or filing with or exemption (collectively, the "Consents") from any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Project Documents, including the Real Property Documents Governmental Approvals. Copies of Consents shall be delivered to Buyer in a timely manner and (i) with respect to any Work for which a Consent is required, prior to Seller's commencement of the applicable Work; and (ii) with respect to the balance of the Project, on or prior to the date required by the nature of the Consent, but in any event not later than the Substantial Completion date.

12.8 Compliance with Law.

Seller has complied and will continue to comply, and caused each of Seller's Affiliates (to the extent related to the Project) and Contractors to comply, with all Applicable Laws and Orders applicable to each such Party, the Project Assets, and the Project, and has not received any notice of any non-compliance.

12.9 Litigation.

Seller and any of their Affiliates has not received written notice of any Proceeding, and there is no pending or threatened Proceeding, against Seller or that relates to the Project, this Agreement, the Project Documents or any Project Assets. Seller shall notify Buyer of any Proceeding it discovers relating to the foregoing within [REDACTED] of such discovery, including any such Proceeding involving Affiliates, Contractors, or other Persons.

12.10 Project Contracts.

12.10.1 Exhibit AF is a true, correct and complete list of all Project Contracts that have been executed and all of the Material Project Contracts that either

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have been obtained or will be obtained by NTP, Substantial Completion, or Final Completion are specified in Exhibit AF.

12.10.2 Each Project Contract is (i) duly authorized, executed and delivered by Seller; (ii) constitutes a legal, valid, binding and enforceable agreement of Seller, and to Seller's knowledge, each other Person who is a party to the applicable Project Contract; (iii) assignable to Buyer without further action of approvals of any Person other than Seller (or if Consent from any counterparty to a Project Contract is needed, such Consent can be obtained in the ordinary course of business to comply with this Agreement); and (iv) will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement, the Project and the Project Documents.

12.10.3 Neither Seller nor, to Seller's knowledge, any other Person is in breach of or in default under any Project Contract to which such Person is a party, and, to Seller's knowledge, no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of rights or permit termination or acceleration under, or result in the creation of any Lien.

12.10.4 (i) No Project Contract has been mortgaged, pledged, hypothecated, deeded in trust or otherwise subjected to any security interest or Lien other than Permitted Encumbrances and (ii) no Material Project Contract has been amended, modified or supplemented.

12.10.5 At the time any Project Contract is assigned to Buyer pursuant to this Agreement, there are no outstanding payments or obligations pursuant to such Project Contract arising out of the Work owed by the Seller or its Affiliates, on the one hand, to any Person who is a party to such Project Contract, on the other hand, except for residual payments due to a Contractor that (i) will be paid in full to the Contractor before Final Completion, and (ii) the non-payment of which as of Substantial Completion does not constitute a breach or default under such Project Contract.

12.11 Environmental Attributes.

Seller is not party to any agreement to sell electric power from the Project or Environmental Attributes related to the electric power to be generated by the Project.

12.12 Environmental Matters.

12.12.1 Seller is and during all applicable limitation periods has been in compliance with all Environmental Laws except as disclosed to Buyer in the Project Documents. To Seller's knowledge, the Project Site is and during all applicable limitation periods has been in compliance with all Environmental Laws except as disclosed to Buyer in the Project Documents. Seller is not subject to any binding and enforceable Orders relating to protection of the Environment and related

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to the Project nor is Seller by operation of any Environmental Law required to take any action relating to the protection of the Environment by reason of any Hazardous Materials related to the Project or related to the Project Site.

12.12.2 There are no pending or threatened Environmental Claims related to the Project or the Project Site and, to Seller's knowledge, there is no legal or factual basis for the assertion of any Environmental Claim.

12.12.3 Neither Seller nor its Affiliates has and, to Seller's knowledge, no other Person has made, caused or allowed any (a) Releases of Hazardous Materials which have occurred on the Project Site, or (b) Releases of Hazardous Materials which have occurred immediately adjacent to the Project Site, in each case which are or were required to be investigated or reported by Seller, or their Affiliates, or with respect to the Project or any Project Assets, under any Environmental Law.

12.12.4 Seller has completed, as of NTP Closing, the pre-construction surveys identified on Exhibit AW. Except as set forth on Exhibit AW to Seller's knowledge, (i) no species listed or proposed for listing as threatened or endangered under any Environmental Law, or otherwise identified under Environmental Laws as having special status have been observed on the land to be occupied by the Project, (ii) no burial grounds and no archeological resources (which for purposes of this representation shall be deemed to mean any material remains of past human life or activities which are of archeological interest and at least fifty (50) years of age) or paleontological resources (which for purposes of this representation shall be deemed to refer to "fossils" as such term is commonly used) in either case have been identified on the Project Site, and (iii) no cultural or historical sites are located on the Project Site. With respect to any federally listed species identified on Exhibit AW, Seller shall support through Substantial Completion the preparation and pursuit of the Buyer's habitat conservation plan and incidental take permit application for such species.

12.13 Permits.

Exhibit R sets forth a true, correct and complete list of all (i) Applicable Permits required for the development and construction, and, as of Substantial Completion, for operation, ownership and use of the Project, (ii) Obtained Permits as of the Effective Date, and (iii) Permit Applications as of the Effective Date. With respect to the Permit Applications, each such Permit Application has been or will be validly filed as specified in Exhibit R, in compliance with Applicable Laws, and has not been terminated, revoked or modified. Neither Seller, nor an Affiliate of Seller has received (a) a written notice from any Governmental Authority revoking any Obtained Permit or rejecting any Permit Application or (b) a written notice from any Governmental Authority modifying the requirements pertaining to any Obtained Permit or Permit Application. The Parties recognize that inherent in the development and construction of a Project of this nature, new Permits arise from time to time, and as such, at any time (other than at Substantial Completion) the representation in clause (i) of this Section 12.13 is to Seller's knowledge, provided that at Substantial Completion, such representation is not so qualified.

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12.14 Work.

All Work, including the Equipment and Materials, furnished, installed or otherwise performed by, Seller or any Contractors hereunder shall comply with the warranties set forth in Article XVII.

12.15 Project Schedule.

Seller has conducted all necessary due diligence and investigation of the Project Site, its conditions, Applicable Laws, Applicable Permits, Labor skill and availability, and other conditions necessary for Seller to determine that the Milestone Dates as proposed by Seller in this Agreement are reasonable and achievable by Seller, and that Seller is not relying on any information, assurances or other promises of Buyer outside of the terms of this Agreement to establish the Milestone Dates, including the Substantial Completion Deadline.

12.16 Brokers or Finders.

Neither Seller nor any of its Affiliates have engaged any broker, finder or other agent with respect to the Purchase and Sale contemplated by this Agreement and the Project Documents, any sale or financing of the Project, or any Investment Tax Credit or other items or attributes that may be generated by the Project upon operation, including Tax credits or benefits or Environmental Attributes or other pollution or emission credits or benefits, for which Buyer or the Project could become, or are, liable or obligated.

12.17 Absence of Regulation.

12.17.1 Seller is in compliance with PUHCA and the FPA.

12.17.2 The Project is in compliance with all applicable requirements of FERC.

12.18 Intellectual Property.

Seller has rights to all Intellectual Property necessary for the development or use of the Project including all Work. Seller has not (i) infringed upon or misappropriated any Intellectual Property rights of any Person or (ii) received any written charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that a Person must license or refrain from using any Intellectual Property rights of any such Person in connection with the Project).

12.19 Default.

Seller is not in default under this Agreement or any of the Project Documents.

12.20 Solvency.

No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution

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of Seller or any Affiliate of Seller that could affect Seller or, if applicable, Parent Guarantor's ability to perform their respective obligations pursuant to this Agreement and/or, if applicable, the Parent Guaranty. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller or any Affiliate of Seller that could affect Seller or, if applicable, Parent Guarantor's ability to perform their respective obligations pursuant to this Agreement and/or, if applicable, the Parent Guaranty; nor does Seller have any plan or intention and has not received any notice that any other Person has any plan or intention of filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder. Assuming the payment by Buyer of its obligations for Progress Payments under this Agreement, Seller will continuously have sufficient funds available to meet its payment obligations in respect of the Work and the development and construction of the Project pursuant to this Agreement including the Project Contracts.

12.21 Project Credit Support.

Except as set forth in Exhibit AU, Seller has no outstanding letters of credit, guarantees, or other credit assurances that have been issued for the account of Seller other than the Letter of Credit and, if accepted by Buyer in accordance with Section 6.15, any Parent Guaranty or other form of acceptable financial security.

12.22 Insurance.

All Insurance policies required hereunder are in full force and effect, no payment of premiums with respect thereto is past due, and no notice of cancellation or termination has been received by the owner or holder of such policy, except for cancellations or terminations of policies that were replaced with substantially similar coverage and terms prior to the effectiveness of such cancellation or termination and delivered to Buyer. No pending claims exist under any such policies with respect to the Project or the Project Assets.

12.23 FAA Determinations. Seller has not received any communication from the FAA that it objects to the construction of the Project or any portion thereof.

12.24 Solar Data.

Seller has delivered to Buyer true, correct and complete copies of all Solar Data, if any, in Seller's possession, which is identified on Exhibit W.

ARTICLE XIII REPRESENTATIONS AND WARRANTIES OF BUYER

As of the Effective Date and then again reaffirmed as of the NTP Closing and the date Seller achieves Substantial Completion, Buyer hereby represents and warrants to Seller all of the following set forth in this ARTICLE XIII; *provided, however*, that to the extent any representation and warranty is specified as being given as of a specific date, such representation and warranty shall be deemed to be made only as of such date:

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13.1 Organization.

Buyer (i) has been duly incorporated, is validly existing and is in good standing under its jurisdiction of formation and (ii) has been duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) requires such qualification, including the State of Michigan.

13.2 Authority.

Buyer has the requisite power and authority to execute and deliver this Agreement and, subject to receipt of the MPSC Approval and the approval of its Board of Directors, to perform fully its obligations hereunder.

13.3 Binding Effect.

Buyer has taken all necessary corporate action to authorize, effect and approve the transactions set forth herein except as otherwise provided in this Agreement. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

13.4 No Violations.

Buyer's execution and delivery of this Agreement, together with the performance of its obligations hereunder do not (i) violate Buyer's Organizational Documents, (ii) violate or constitute a default under any agreement or instrument to which Buyer is a party or by which Buyer may be bound, (iii) violate any Applicable Law, order, writ, injunction, decree, statute, rule or regulation applicable to Buyer, or its properties or assets, or (iv) except as otherwise provided in this Agreement, require the consent or approval of any Person, which has not already been obtained.

13.5 Consents and Approvals.

Other than the MPSC Approval, Buyer is not, nor will Buyer be, required to give any notice to or obtain any Consent from any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Project Documents or the consummation of the transfer of the Project Assets to Buyer.

13.6 Brokers or Finders.

Buyer has not engaged any broker, finder or other agent with respect to the transactions contemplated by this Agreement, any purchase or financing of the Project, or any purchase or transfer of the investment credit or other items or attributes that may be generated by the Project

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upon operation, including Tax credits or benefits or Environmental Attributes or other pollution or emission credits or benefits, for which Seller could become, or is, liable or obligated.

13.7 Solvency.

No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Buyer. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Buyer or the income of Buyer; nor does Buyer have any plan or intention of and has not received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Buyer is solvent and has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder.

ARTICLE XIV INSURANCE AND BONDS

14.1 Insurance Requirements.

Seller shall, at its sole expense, procure and maintain, and shall cause its Contractors to procure and maintain, throughout the term of this Agreement the types of insurance with the minimum limits as set forth on Exhibit X ("Insurance").

14.1.1 Insurance Deliverables. On the Effective Date, Seller has delivered to Buyer Seller's certificates of insurance and additional insured endorsements, if applicable, for all Insurance then maintained in accordance with Exhibit X. Seller shall maintain or cause to be maintained Builder's Risk insurance. Such Builder's Risk insurance shall be paid for by Seller. [REDACTED], Seller shall furnish a copy of Seller's Builder's Risk of insurance covering the Work that names Buyer as an additional insured and shall maintain such Builder's Risk insurance through Substantial Completion. The Builder's Risk policy shall be prepared and issued in accordance with Exhibit X.

14.1.2 Limits. The limits of Insurance indicated above are minimum requirements that shall not be interpreted or permitted to limit Seller's liability. Buyer's receipt of certificates and endorsements that do not comply with the Insurance requirements or Seller's failure to provide certificates shall not limit or relieve Seller of the duties and responsibilities of maintaining insurance in compliance with these Insurance requirements and shall not constitute a waiver of requirements.

14.2 Bond Requirements.

Seller shall (at Buyer's request and sole expense to be paid directly to Seller or the surety or Contractor) procure and maintain, or to the extent requested by Buyer shall cause its Contractors to procure and maintain, throughout the term of this Agreement payment and performance bonds in accordance with Buyer's directions in Section 9.2.3 and as further provided in Exhibit X ("Bonds").

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14.2.1 Bonds Deliverables. Upon Buyer's request, Seller shall deliver to Buyer the proposed Bonds in accordance with Section 9.2.3.

14.2.2 Limits. The Bond requirements indicated above are minimum requirements that shall not be interpreted or permitted to limit Seller's liability. Buyer's receipt of Bonds that do not comply with this Agreement or Seller's failure to provide Bonds shall not limit or relieve Seller of the duties and responsibilities of maintaining Bonds in compliance with these Bond requirements and shall not constitute a waiver of requirements.

ARTICLE XV INDEMNIFICATION

15.1 Seller's General Indemnity.

Subject to ARTICLE XXII, Seller shall defend and indemnify Buyer, its Affiliates, and their respective employees, agents, partners, shareholders, officers, directors, members, managers, successors, and permitted assigns (each, a "Buyer Indemnatee" and collectively "Buyer Indemnitees"), from and against the following:

15.1.1 All Losses arising from (i) claims for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious act or omission (including strict liability) by Seller, or by those working by or through Seller on the Project, during Seller's performance of this Agreement, including the Work; or (ii) from performing or failing to perform any of its obligations under this Agreement; or (iii) any curative action under any of the Warranties following performance, in each case, of (x) Seller, (y) Seller's Affiliates, and (z) any Contractor until (1) Substantial Completion is achieved and (2) after Substantial Completion to the extent Seller has responsibility for such Contractor's performance with respect to the Punch List or under the Warranty (except to the extent that such performance of Contractor is directed by Buyer), or anyone employed by any of Seller, Seller's Affiliates or such Contractor (to the extent Seller is responsible for such Contractor pursuant to this clause (z));

15.1.2 All Losses that arise out of or result from the following:

15.1.2.1 Except to the extent arising with respect to Buyer failing to pay amounts as and when required under this Agreement (and in turn, amounts owed to any Contractor) (with respect to which Seller shall promptly notify Buyer), (i) any Seller Lien arising in violation of this Agreement on any of the Equipment and Materials, the Work, Project Site, or other Project Assets or any fixtures or personal property included in the Work or forming a part of the Project (whether or not such Seller Lien is valid or enforceable), and (ii) all claims for payment or compensation for Work performed hereunder, whether or not reduced to a Seller Lien, filed by any Contractors (including all Persons performing any portion of the Work);

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15.1.2.2 Employers' liability or workers' compensation claims filed by any employees or agents of Seller or any of its Contractors;

15.1.2.3 All Losses arising from third-party claims, including claims by Contractors and employees of Seller and Contractors, and claims directly from Buyer and Buyer Indemnitees that arise out of or result from (i) the failure of Seller or any of its Contractors to comply with the terms and conditions of this Agreement, including any inaccuracy in or breach of any representation or warranty made by Seller or breach of or failure to perform any covenant of Seller in this Agreement, further including under Applicable Laws and Permits; and (ii) premises liability during Seller's performance of the Work;

15.1.2.4 All Losses for which Seller is responsible under Article XVII.

15.1.2.5 Any and all fines, penalties, or assessments issued by any Governmental Authority that Buyer may incur as a result of executing any applications for the Project that were directly requested in writing by Seller (and in any event, excluding any applications or filings with the MPSC or FERC);

15.1.2.6 All Losses arising from claims by any Governmental Authority that arise out of or result from the failure of Seller to pay, as and when due, all Taxes (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority which Seller is obligated to pay pursuant to the terms of this Agreement;

15.1.2.7 All Losses arising from claims by any Governmental Authority claiming Taxes based on gross receipts or on income of Seller, any of its Contractors, or any of their respective agents or employees with respect to any payment made to or earned by Seller, any of its Contractors, or any of their respective agents or employees under this Agreement;

15.1.2.8 All Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the Project or Project Site, that arise out of or result from:

(1) The use of Hazardous Materials by Seller or any Contractor in connection with the performance of the Work which use includes the storage, transportation, processing, or disposal of Hazardous Materials;

(2) Any Release or Threat of Release of Hazardous Materials in connection with the performance of the Work by Seller or any Contractor; or

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(3) Any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened, or actual violation of any Applicable Laws or Applicable Permits by Seller or Contractor with respect to Hazardous Materials in connection with the performance of the Work.

15.1.2.9 Claims, actions, or suits filed against Buyer or by any Contractor for additional costs incurred or for additional compensation, in each case, arising out of Contractor's performance of the Work or other participation in the Project;

15.1.2.10 Claims, liens, obligations, liabilities, expenses, and causes of action of whatever kind arising out of any employment decision or action made or taken by Seller or its Contractors with respect to its or their employees; and

15.1.2.11 Any fraud, gross negligence, intentional misrepresentation or willful misconduct by Seller, including its Affiliates and Contractors, in connection with this Agreement.

15.1.2.12 Any noncompliance with the Prevailing Wage and Apprenticeship Requirements, including any costs incurred for the purpose of obtaining compliance or any PWA Cure Liabilities; and

15.1.2.13 In the event that Buyer pays to Seller any amount in respect of a Domestic Content Bonus, any failure of the Project to comply with the Domestic Content Bonus Requirement.

WITH RESPECT TO CLAIMS AGAINST BUYER BY SELLER'S EMPLOYEES, SELLER UNDERSTANDS AND AGREES THAT THE INDEMNIFICATION OBLIGATION HEREIN SHALL NOT BE LIMITED IN ANY WAY BY THESE PROVISIONS, AND SELLER EXPRESSLY WAIVES ITS IMMUNITY AS A COMPLYING EMPLOYER UNDER ANY APPLICABLE WORKERS' COMPENSATION LAW, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION.

15.2 Patent Infringement and Other Indemnification Rights.

Subject to ARTICLE XXII, Seller shall defend, indemnify, and hold harmless the Buyer Indemnitee against all Losses arising from any Intellectual Property Claim. If Buyer provides notice to Seller of the receipt of any such claim, Seller shall promptly, but in no event later than thirty (30) days from the date of such notice from Buyer (or earlier, if required to preserve the rights of Buyer with respect to such claim), at its own expense, settle, or defend any such Intellectual Property Claim and Seller shall promptly pay all Losses awarded against or incurred by Buyer and, subject to the next sentence, at Buyer's election: (i) procure for Buyer, or reimburse Buyer for procuring, the right to continue using the infringing service, Equipment and Materials, or other Work; (ii) modify the infringing service, Equipment and Materials, or other Work so that

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the same becomes non-infringing; or (iii) replace the infringing service, Equipment and Materials, or other Work with non-infringing service, Equipment and Materials, or other Work, as the case may be, in each case without adverse impact on the capacity, reliability, utility, operability, value, or useful life of the Project or on its maintenance or repair. If Buyer is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Seller shall take one or more of the actions under the preceding clauses (i), (ii), or (iii) as directed by Buyer and shall promptly use its commercially reasonable efforts to have such injunction removed; *provided, however*, that in no case shall Seller take any action which adversely affects Buyer's continued use and enjoyment of the applicable service, Equipment and Materials, or other Work without the prior written consent of Buyer. Buyer's acceptance of the Deliverables, Equipment and Materials, Commissioning Spare Parts or other components of the Work shall not be construed to relieve Seller of any obligation under this Section 15.2.

15.3 Buyer's Indemnity.

Subject to ARTICLE XXII, Buyer shall defend and indemnify Seller, its Affiliates, and their respective employees, agents, partners, shareholders, officers, directors, members, managers, successors, and permitted assigns (each, a "Seller Indemnatee"), from and against any Losses incurred or suffered by any Seller Indemnatee to the extent resulting from:

15.3.1 Any inaccuracy in or breach of any representation or warranty made by Buyer in ARTICLE XIII of this Agreement;

15.3.2 Any breach of, or failure to perform or fulfill, any covenant, agreement or obligation of Buyer contained in this Agreement;

15.3.3 Any and all liability for Taxes to which the Project Assets or the Work may be subject, assessed or otherwise encumbered with respect to any period for which Buyer is responsible;

15.3.4 Claims for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious act or omission (including strict liability) by Buyer at the Project Site. Notwithstanding anything to the contrary, this indemnity shall only apply for such foregoing acts or omissions by Buyer if and to the extent any Losses are the direct result of Buyer's acts or omissions provided that none of the following apply: (i) the Losses are not covered by Seller's Insurance; (ii) the Losses are not required under this Agreement to be covered by Seller's Insurance; and (iii) the Losses are not Losses customarily covered by insurance similar to Insurance required to be carried by Seller under this Agreement;

15.3.5 Any and all Losses arising on or after, or relating to periods or portions thereof ending on or after, completion of the Project and Seller's obligations hereunder with respect to the Project Assets; and

15.3.6 Any fraud, gross negligence, intentional misrepresentation or willful misconduct by Buyer in connection with this Agreement.

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15.4 Survival of Indemnities.

Seller's representations and warranties in ARTICLE XII and Buyer's representations and warranties in ARTICLE XIII, and the indemnity obligations with respect thereto, shall survive until the second anniversary of the date on which Substantial Completion occurs; *provided, however*, that the representations and warranties of Seller in Sections 12.1, 12.2, 12.3 and 12.4, and of Buyer in Sections 13.1, 13.2, 13.3 and 13.4 shall survive [REDACTED]. Notwithstanding the expiration of the indemnity obligations for breaches of the Seller's representations and warranties, such expiration shall not reduce or limit the Seller's obligations under ARTICLE XVII.

15.5 Additional Indemnity Provisions.

15.5.1 No Party shall have any obligation to indemnify the other Party or its Indemnitees until the aggregate amount of Losses claimed by such Party hereunder exceeds [REDACTED] and, in the event such threshold is exceeded, such Indemnified Party shall be entitled to recover all such Losses above such threshold.

15.5.2 Notwithstanding any provision to the contrary herein, no Party shall be obligated to indemnify the other Party or its Indemnitees to the extent that the negligence or willful misconduct of such other Party or such Indemnitee caused the Losses at issue.

15.6 Attorneys' Fees.

15.6.1 In each case under this Agreement, including under Section 15.1 and Section 15.2 herein, Seller shall indemnify any Buyer Indemnitees actual attorneys' fees and expenses incurred by such Indemnitees in connection with any indemnity claim under this Agreement except to the extent Seller is the prevailing party.

15.6.2 In each case under this Agreement, including under Section 15.3 herein, Buyer shall indemnify any Seller Indemnitees actual attorneys' fees and expenses incurred by such Indemnitees in connection with any indemnity claim under this Agreement except to the extent Buyer is the prevailing party.

ARTICLE XVI TITLE; RISK OF LOSS

16.1 Clear Title.

Seller warrants and guarantees that legal title to and ownership of the Project shall be free and clear of any and all Liens when title thereto passes to Buyer other than Permitted Encumbrances and those created by Buyer; *provided, however*, that nothing in this Section 16.1 shall diminish Seller's obligation to provide Sworn Statements, Partial Conditional Waivers, Partial Unconditional Waivers, Full Conditional Waivers and Full Unconditional Waivers as and when required under this Agreement.

16.2 Title.

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Title to the Project Assets, other than the Work, shall transfer to Buyer as set forth in Section 6.1. With respect to the engineering, procurement, installation and construction Work, title to such Work shall transfer upon the earlier of (i) payment by Buyer for such Work, or (ii) incorporation of such Work, including Equipment and Materials, into the Project.

16.3 Risk of Loss.

16.3.1 Notwithstanding the foregoing, Seller shall bear the risk of loss and damage with respect to the Project and the Work until Seller achieves Substantial Completion. Prior to Substantial Completion: (i) any Work that is damaged or lost while Seller retains risk of loss with respect thereto shall be rebuilt, restored or replaced by Seller, (ii) Seller shall also be responsible for any damage or loss falling within the deductible under such Seller's Insurance (notwithstanding the limitation in Section 15.5.1); and (iii) without limiting the generality of any of the foregoing, Seller shall be fully responsible for any loss, theft or damage to the Work prior to Substantial Completion including all Equipment and Materials intended to be incorporated into the Work, due to theft, pilferage, rust, weathering, and the elements. With respect to the foregoing events, Seller shall forthwith repair or replace the Work including the Equipment and Materials so damaged or destroyed, at its own expense, in accordance with this Agreement.

16.3.2 Buyer shall bear the risk of loss and damage with respect to any Equipment and Materials procured with respect to the Project after Substantial Completion. After Substantial Completion: (i) any part of the Project that is damaged or lost while Buyer retains risk of loss with respect thereto shall be rebuilt, restored or replaced by Buyer (provided, for clarity, this clause shall not relieve Seller of its obligations under Article XVII (Warranties) or with respect to Final Completion (including the Punch List)); (ii) Buyer shall also be responsible for any damage or loss falling within the deductible under such Buyer's insurance; and (iii) without limiting the generality of any of the foregoing, Buyer shall be fully responsible for any loss, theft or damage to the Project after Substantial Completion including all Equipment and Materials intended to be incorporated into the Project, due to theft, pilferage, rust, weathering, and the elements.

ARTICLE XVII WARRANTIES

17.1 Warranty.

Seller warrants and guarantees, subject to and as provided in this ARTICLE XVII ("Warranty" or "Warranties"), to Buyer that all Work conforms to the Work specifications included in the ISSUED FOR CONSTRUCTION Design Documents and Record Drawings and conforms to all Requirements. Without limiting the preceding Warranty, the Seller warrants to Buyer as part of the Warranty as follows:

17.1.1 All Equipment and Materials shall be new, unused, and undamaged and Seller warrants that it has not taken any action or inaction that

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invalidates any Contractors' warranties, including all Module Supplier's and Transformer Vendor's warranties; and all Project Documents provided to Buyer, including the Design Documents and Record Drawings, are authentic, accurate, and complete.

17.1.2 Notwithstanding the foregoing, the Seller's Warranty (subject to the terms of this Article XVII) for the Modules, Inverters, GSU Transformer and Padmount Transformers will not expire upon expiration of the Defect Warranty Period if the Module Supply Agreement's, Inverter Supply Agreement's and Transformer Supply Agreement's warranties are not assignable and assigned to Buyer but such Seller's Warranty rather shall extend and cover the warranty periods for such Equipment and Materials required by the Scope of the Work.

17.1.3 The completed Work shall perform its intended functions as a complete integrated solar energy generation system as described in this Agreement, including the Scope of Work.

17.2 Correction.

17.2.1 Work (or any portion thereof) that fails to comply with the Warranty due to a failure by Seller to comply with the Warranty is a "Warranty Defect."

17.2.2 If any Warranty Defect occurs, Seller shall cause such Warranty Defect to be corrected at no additional cost to Buyer, provided (i) that, to the extent applicable, Buyer has pursued the applicable matter in accordance with Section 17.2.3 below, and (ii) that Buyer gives notice (in reasonable detail) to Seller of the breach of Warranty during the Defect Warranty Period and otherwise in accordance with the provisions herein.

17.2.3 Buyer shall first assert any matter for which it seeks Warranty coverage for the Project against the relevant Contractor or Contractors, as applicable in light of the nature of such matter, in accordance with the applicable Project Contracts and shall provide written notice to Seller of such matter. If such Contractor(s) denies responsibility for such matter, or if such Contractor does not commence correction or complete correction or otherwise respond within [REDACTED] after Buyer asserts such matter in writing against such Contractor(s), then Buyer may assert a claim against Seller or may seek Seller's assistance in prosecuting such matter against the relevant Contractor(s); *provided, however*, that, if Seller is able to demonstrate (including following any applicable dispute resolution process with applicable Contractors) that such Contractor(s) or any other Contractor(s) is in fact responsible for such matter or that such matter is outside of the scope of the Warranty, Seller shall have no liability for such matter.

17.2.4 The Parties agree and acknowledge that the portion of Warranty for which Seller is responsible is not a "wrap" of the underlying warranties

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provided by the Contracts, but is instead a warranty intended to fill in any gaps in Warranty coverage by the Contractors. Except with respect to any gaps in Warranty coverage, which shall be covered by the Warranty for which Seller is responsible, Buyer shall rely exclusively on the Warranties of the Contractors with respect to the quality and performance of the Work and Equipment and Materials provided or performed by the Contractors.

17.3 Defect Warranty Period.

The Warranty shall be effective during the period ("Defect Warranty Period") commencing on the date Substantial Completion is achieved (and before such date, Seller remains responsible for Defects and Deficiencies and its other obligations) and ending on the second [REDACTED]; *provided, however*, (i) that the Defect Warranty Period for any Work, including Equipment and Materials, required to be re-performed, repaired, corrected, or replaced following discovery of any Defects or Deficiency or other noncompliance with the Warranty during the Defect Warranty Period shall re-start the Defect Warranty Period for one year from such correction or repair (provided that such extension is in fact longer than the original Defect Warranty Period); and (ii) this [REDACTED] period supplements, and does not reduce, the warranties of Contractors, including the Module Supplier and Transformer Vendor, for manufactured Equipment and Materials, goods and products, including all manufacturer warranties. Seller shall perform all Warranty Work so that the respective repair or replacement parts are complete and meet the Requirements (and shall not invalidate the provisions of any applicable manufacturer warranty or any other Warranty provided by a Contractor). This Defect Warranty Period does not apply to any other representations or warranties given by Seller, other than the Warranty.

17.4 Correction of Defects.

If the Work is found to contain a Warranty Defect during the Defect Warranty Period, Seller or its Contractors, as applicable, shall have a reasonable opportunity to inspect such Warranty Defect and, at Seller's or its Contractors' own cost and expense (including the cost of labor and equipment), Seller or its Contractors shall uncover, correct, refinish, redesign, repurchase, repair, or replace such Warranty Defect (and any equipment or facility that is disturbed or damaged in the course of such Warranty Work) and otherwise remedy such breach with materials of new and good quality, and re-perform all such defective components of the Work in accordance with the same requirements for the Work of this Agreement within the time period required below in Section 17.5 ("Warranty Work"). Such Warranty Work (i) shall not modify or otherwise limit the performance of the Work including Equipment and Materials, (ii) shall not increase the wear and tear on or degradation of the Project, and (iii) shall not increase operating costs; provided that Warranty Work that conforms to the Scope of Work shall be deemed not to increase operating costs. To the extent not covered in a Contractor's warranty, Seller shall bear all costs and expenses associated with correcting any Warranty Defect, including necessary disassembly, transportation, reassembly, and retesting, as well as re-performing, reworking, repair, replacement, commissioning, and testing such part of the Work as shall be necessary to cause the applicable portion of the Work to conform to the applicable requirements of the Work. If, as part of the Warranty Work, Seller or its Contractors is obligated to repair, replace, or rework any Equipment and Materials, item, or other portion of the Work hereunder, Seller shall undertake a

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technical analysis of the problem and correct the "root cause" as appropriate based on the nature of the Warranty Defect or other breach unless Seller can demonstrate to Buyer's satisfaction, in its sole discretion, that there is not a reasonable risk of reoccurrence of such problem.

17.5 Time for Warranty Work.

Seller shall commence, or cause its Contractors to commence, performance of the Warranty Work within [REDACTED] (or such longer period as Buyer may approve in writing in its sole discretion) after receipt by Seller of a notice from Buyer delivered in accordance with this Section 17.5 specifying a failure of any of the Work to satisfy the Warranty, and requesting Seller to correct the failure, and shall diligently pursue such Warranty Work without interruption or suspension until completion, except that if such Warranty Work constitutes an emergency defined as one that (i) materially and adversely affects the business operations of the Project or (ii) causes or threatens to cause death or substantial injury to any Person or damage or destruction of property, Seller shall commence, or cause its Contractors to commence, performance of Warranty Work within [REDACTED] after notice sent by electronic mail to Seller's Project Manager; *provided, however*, if the emergency is of a nature that in Buyer's judgment, Buyer can mitigate the Losses associated with the emergency by acting immediately, Buyer may act without waiting the [REDACTED] for Seller to perform if necessary to avoid, correct or mitigate such emergency (in which case, Seller shall be responsible for Buyer's reasonable costs of mitigation, subject to Seller's right to dispute whether such acts were necessary to avoid, correct or mitigate the emergency). The Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Project. In all cases, Warranty Work shall be diligently pursued from commencement required thereof and corrected within [REDACTED] of notice except and unless the Warranty Work is of a nature that it cannot be completed within such time period, in which event Seller shall have a mutually agreeable number of days, not to exceed [REDACTED] without Buyer's written consent. During such time periods, Seller may perform the actual Warranty Work or force the Contractors to perform the Warranty Work.

17.6 Warranty Work; Acceptance Tests.

Seller warrants in favor of Buyer that all of the Warranty Work, including all materials incorporated into the Work as part of the Warranty Work or otherwise undertaken pursuant to the Warranties set forth in this ARTICLE XVII shall comply with the Warranty (including all Requirements). Seller and Buyer shall mutually agree on how to demonstrate to Buyer, taking into consideration Buyer's reasonable requirements, that such Warranty Work undertaken pursuant to this ARTICLE XVII and the components changed, repaired, or replaced are and remain in compliance with the Warranty. Seller may assign these requirements to the Contractors; *provided, however*, if no Contractor is responsible, Seller shall remain responsible as provided in Section 17.2. Buyer may, in its reasonable discretion, require the performance and completion of any acceptance tests to be re-run by Seller, at Seller's expense, with respect to the affected Equipment and Materials to evidence the Warranty Work has been completed in accordance with this Agreement.

17.7 Failure to Perform the Warranty Work.

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If Seller does not proceed to complete the Warranty Work, or cause any relevant Contractor to proceed to complete the Warranty Work, required to satisfy any Warranty claim within the time periods for correction required by this ARTICLE XVII, Buyer may elect to perform the necessary Warranty Work to remedy the Warranty Defect pursuant to the Warranty claim, or have third parties perform the necessary Warranty Work, and Seller shall, within [REDACTED] of receiving Buyer's request for payment of the costs of Buyer performing or causing to be performed such Warranty Work, reimburse Buyer for all documented costs and expenses reasonably incurred by Buyer (including costs of Buyer's personnel and actual attorneys' fees) and its Affiliates with respect to such Warranty Work. In the event any of the Warranty Work fails to satisfy the Warranty during the Defect Warranty Period, and any such failure occurs under circumstances where there is an immediate need for repairs, Buyer may perform such Warranty Work for Seller's account without giving the prior notice otherwise required hereunder; provided, that Buyer provides reasonably prompt notice to Seller of such immediate need prior to performing such Warranty Work.

17.8 Risk of Loss or Damage.

Whenever Warranty Work is required pursuant to this or Seller otherwise performs work on the Project pursuant to the Warranties, Seller shall bear the risk of physical loss or damage to the Project to the extent resulting from Seller's activities performing such Work

17.9 WARRANTY DISCLAIMER.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. THERE ARE NO WARRANTIES OTHER THAN THOSE SET FORTH IN THIS AGREEMENT.

17.10 Prevailing Wage Compliance.

Seller shall ensure that any Warranty Work under the Warranty performed by any Contractor or PWA Contractor that constitutes Construction or Repair or Alteration complies with the Prevailing Wage and Apprenticeship Requirements; *provided* that this Section 17.10 shall not apply with respect to Contractors directly engaged by Buyer for Warranty Work. No later than 10 days after completion of any Warranty Work, Seller shall provide a Warranty Certification in form and substance as set out in Exhibit BD.

ARTICLE XVIII DEFAULT; TERMINATION

18.1 Events of Default by Seller.

Seller shall be in default under this Agreement upon the occurrence of any of the following events (each a "Seller Event of Default"):

18.1.1 Seller fails to achieve Substantial Completion by the date that is 121 days after the Substantial Completion Deadline, as it may be extended

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under this Agreement; provided, however, that, without limiting Buyer's remedies under Section 18.2, if Buyer terminates this Agreement pursuant to the Seller Event of Default set forth in this Section 18.1.1, Seller shall not be liable for any further Delay LDs, Plant Capacity Buydown and/or Plant Capacity LDs following such termination;

18.1.2 Seller contravenes any Applicable Law or Applicable Permit such that the ability of Seller or any Contractor to perform the Work in accordance with this Agreement is hindered or the Project or Buyer is adversely affected, except to the extent such violation is directly and solely caused by a Buyer Event of Default and such violation continues for [REDACTED] after notice;

18.1.3 Seller fails to make any payment of any amount when due (other than amounts disputed in good faith) as required to be made by Seller to Buyer hereunder, which failure continues for [REDACTED] after notice of such non-payment, including fails to make prompt payments (which is defined as within [REDACTED] of receipt of notice from Buyer) of undisputed amounts when due to Contractors for Labor, materials, or equipment;

18.1.4 Seller suspends performance of the Work, or any part thereof (except when Seller is permitted in accordance with Section 9.3.9 of this Agreement), or abandons the Project and in any such case Seller does not cure its noncompliance therewith within [REDACTED] after notice from Buyer thereof;

18.1.5 Seller fails to maintain Seller's Insurance required to be maintained pursuant to this Agreement and fails to cure any failures within five (5) days of such failure; *provided, however*, Seller will remain responsible for all losses that should have been covered by the Insurance during such period as provided in ARTICLE XV, ARTICLE XVI and as otherwise provided as a covenant of Seller in this Agreement;

18.1.6 Seller assigns or transfers this Agreement or any right or interest herein except as expressly permitted otherwise in this Agreement;

18.1.7 Seller becomes insolvent, or generally does not pay its Debts as they become due, or admits in writing its inability to pay its Debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization or bankruptcy proceedings are commenced by Seller; and such proceedings are not terminated, stayed or dismissed within [REDACTED] after the commencement thereof;

18.1.8 Seller fails to maintain the Letter of Credit and/or, if applicable, the Parent Guaranty, and fails to cure any such failure within [REDACTED] thereof; or

18.1.9 Seller fails to perform any other material obligation hereunder not otherwise set forth above, or makes a false representation or warranty, if not cured within [REDACTED] notice from Buyer to Seller, except that such [REDACTED]

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█████ cure period shall be extended if (i) curing such failure reasonably requires more than █████; (ii) Seller commences such cure within such █████ period and diligently prosecutes such cure; and (iii) such cure is accomplished within █████ after the date on which Seller first receives a notice from Buyer with respect thereto.

Notwithstanding the foregoing time periods, to the extent such failure creates an emergency or threatening situation that requires Buyer in its judgment to mitigate its Losses, Buyer may, at its cost, take such actions it deems necessary to mitigate its Losses (other than terminating this Agreement).

18.2 Buyer's Rights and Remedies.

In the event of a Seller Event of Default, Buyer (or its successor in interest) shall have the following rights and remedies and may elect to pursue any or all of them as a result of such Seller Event of Default, and Seller shall have the following obligations:

18.2.1 Except as otherwise provided in Section 18.3.3, if such Seller Event of Default continues or extends beyond the date that is 121 days after the Substantial Completion Deadline (as it may be extended under this Agreement), Buyer may terminate this Agreement by giving notice of such termination to Seller and shall have the further rights and remedies set forth in this ARTICLE XVIII. In the event Buyer terminates this Agreement in accordance with the provisions hereof after NTP Closing, Seller (i) shall withdraw from the Project Site, (ii) without limiting Seller's obligations or Buyer's rights, shall assign to Buyer such agreements, including warranties from Seller's Contractors and the remaining unassigned Project Contracts, including Construction Contracts, as Buyer may request, and shall deliver and make available to Buyer all Intellectual Property Rights of Seller related to the Work reasonably necessary to permit Buyer to complete or cause the completion of the Work and to own, operate, repair, maintain, finance, dispose of, demolish, or otherwise use the Project, and in connection therewith Seller authorizes Buyer and its respective agents and successors and assigns to use such information for such purposes, and (iii) shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Seller in the performance of the Work as Buyer may direct; and Buyer may take possession of any or all Project Assets including Seller's Deliverables, and equipment and materials of Seller related to the Work necessary for completion of the Work and the ownership, operation, repair, maintenance, financing, disposition, demolition, or otherwise use the Project (whether or not such is a Project Asset and Project is complete);

18.2.2 Buyer may proceed against any security given by Seller or for the benefit of Buyer for Seller's performance under this Agreement, including the Letter of Credit and/or, if applicable, the Parent Guaranty;

18.2.3 In the event Buyer terminates this Agreement in accordance with the provisions hereof after NTP Closing, Buyer shall have the right (i) to self-perform or employ any other Person to complete the Work by whatever method that

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Buyer may deem necessary in Buyer's judgment, including by enforcing any security given by or for the benefit of Seller for its performance under this Agreement or otherwise, and (ii) to make such expenditures as in Buyer's judgment will accomplish the timely completion of the Work in accordance with the terms of this Agreement, regardless of whether the sum of those expenditures plus all amounts previously paid to Seller under this Agreement exceeds the Purchase Price;

18.2.4 Buyer may seek equitable relief to cause Seller to take action, or to refrain from taking action, or otherwise enforce Seller's obligations or Buyer's rights by specific performance, injunctive and/or other equitable relief (without posting of bond or other security), or to make restitution of amounts improperly received under this Agreement. In the event an action for specific performance is brought, Seller waives any right to challenge the request for specific performance as a remedy as Seller acknowledges that the goods and services being provided under this contract are unique;

18.2.5 Buyer may, in its sole discretion, make such payment to Contractors for undisputed amounts that cures any Seller Event of Default and invoice Seller for the cost of such payment or offset such costs against payments otherwise due to Seller under this Agreement;

18.2.6 Irrespective of whether Buyer terminates this Agreement, Buyer may seek damages subject to the terms of ARTICLE XXII for a Seller Event of Default.

18.3 Consequences of Termination by Buyer.

Upon termination of this Agreement by Buyer, including upon a Seller Event of Default described in Section 18.1, the following provisions shall apply:

18.3.1 In the event Buyer terminates this Agreement in accordance with the provisions hereof after NTP Closing, Seller shall remove its personnel and any personal property belonging to Seller or its personnel from the Project Site (or other location where the field construction office for the Project may be located) except as provided above in Section 18.2, and shall refrain and cause its personnel to refrain from taking from the Project Site or the field construction office any Project Assets including any Project Documents and other documents constituting Confidential Information of Buyer;

18.3.2 Buyer shall be entitled to all legal and equitable remedies that are not expressly prohibited or limited by the terms of this Agreement (including reimbursement of any payment of the Purchase Price to the extent not yet paid to third parties for the benefit the Project (such as to pay for materials to be incorporated into the Project or payments made to any Contractor); *provided; however*, such reimbursement shall not waive Buyer's right to also seek damages as provided in this Agreement).

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18.3.3 Notwithstanding anything to the contrary herein, in the event of a Buyer termination for a Seller Event of Default on or before the NTP Closing, Seller shall within [REDACTED] after such termination refund all payments made by Buyer to Seller; *provided, however*, that this provision does not apply if Seller fails to achieve NTP by the NTP Deadline so long as (prior to such termination) Seller acted in good faith to achieve the Conditions Precedent to NTP.

18.4 Buyer Event of Default.

The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (each, a "Buyer Event of Default"):

18.4.1 Buyer becomes insolvent, or generally does not pay its Debts as they become due, or admits in writing its inability to pay its Debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization or bankruptcy proceedings are commenced by Buyer; and such proceedings are not terminated, stayed or dismissed within [REDACTED] after the commencement thereof;

18.4.2 Buyer fails to make payment of any amount when due (other than amounts disputed in good faith) as required to be made by Buyer pursuant to this Agreement, which failure continues for [REDACTED] after notice of such non-payment is given by Seller to Buyer;

18.4.3 Buyer assigns or transfers this Agreement or any right or interest herein except as expressly permitted otherwise in this Agreement; or

18.4.4 Buyer fails to perform or observe any of its material obligations under this Agreement not otherwise specifically addressed in this Section 18.4, or makes a false representation or warranty in any material respect, and such failure continues for [REDACTED] after notice is given by Seller to Buyer, except that such [REDACTED] cure period shall be extended if (i) curing such failure reasonably requires more than [REDACTED]; (ii) Buyer commences such cure within such [REDACTED] period and diligently prosecutes such cure; and (iii) such cure is accomplished within [REDACTED] after the date on which Buyer first receives a notice from Seller with respect thereto.

18.5 Seller's Remedies.

In the event of a Buyer Event of Default, Seller (or its successor in interest) shall have the following rights and remedies and may elect to pursue any or all of them, as a result of such Buyer Event of Default, and Buyer shall have the following obligations:

18.5.1 Seller may seek equitable relief to enforce the provisions of this Agreement.

18.5.2 Seller may seek damages for Seller's costs not to exceed the limits on Buyer's liability set forth in Section 22.2.

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18.5.3 In the case of a Buyer Event of Default pursuant to Section 18.4.1 or Section 18.4.3, Seller may either suspend Work until the Dispute is resolved or terminate this Agreement, in each case, in accordance with this Section 18.5.

18.5.4 In the case of a Buyer Event of Default pursuant to Section 18.4.2, upon any such Buyer Event of Default resulting from one such non-payment, Seller may suspend Work until such payment is made.

18.5.5 In the case of a Buyer Event of Default pursuant to Section 18.4.2, upon any such Buyer Event of Default consisting of two (2) successive non-payments, Seller may either suspend Work until such payment is made or terminate this Agreement, in each case, in accordance with this Section 18.5.

With respect to suspension of Work by Seller as permitted by this Agreement, (i) Seller shall continue to protect and maintain the Work performed, including those portions on which Work has suspended, and (ii) Seller shall resume performance of the Work upon the cure of (which includes a settlement in lieu of cure of) such Buyer Event of Default.

[REDACTED]

[REDACTED]

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18.7 Termination Prior to NTP.

18.7.1 Buyer's Board of Directors Approval. If, by [REDACTED], Buyer has not obtained its Board of Directors' approval to proceed with the Project, Buyer may terminate this Agreement; provided that, if Buyer does not terminate this Agreement on or before [REDACTED], Buyer shall be deemed to have waived its rights under this Section 18.7.1.

18.7.2 Buyer's Termination Prior to NTP. If any Buyer's Conditions Precedent to NTP in Section 5.1 and Section 5.2 are not satisfied for any reason or otherwise waived by Buyer on or before [REDACTED], Buyer may, with at least [REDACTED] notice to Seller, terminate this Agreement, in which case neither Party shall have any further liability to the other except (i) any obligation that expressly survives termination of this Agreement and (ii) Seller may retain the Progress Payment made on the Effective Date so long as Seller has in good faith been pursuing achieving the Conditions Precedent for NTP. Notwithstanding the preceding sentence, if the termination results from the Condition Precedent in Section 5.2.8 or Section 5.2.9 not being satisfied or waived, Seller shall return the Progress Payment made on the Effective Date to Buyer within [REDACTED] of termination.

18.7.3 Seller's Termination Prior to NTP. If any Seller's Conditions Precedent to NTP in Section 5.1 and Section 5.3 are not satisfied for any reason or otherwise waived by Seller on or before the NTP Deadline, Seller may, with at least [REDACTED] notice to Buyer, terminate this Agreement, in which case neither Party shall have any further liability to the other except (i) any obligation that expressly survives termination of this Agreement and (ii) Seller may retain the Progress Payment made on the Effective Date so long as Seller has in good faith been pursuing achieving the Conditions Precedent for NTP. Notwithstanding the preceding sentence, if the termination results from the Condition Precedent in Section

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5.3.4 not being satisfied or waived, Seller shall return the Progress Payment made on the Effective Date to Buyer within thirty (30) days of termination

18.7.4 Deemed Termination. If, within [REDACTED] after the NTP Deadline, NTP Closing has not occurred and the Parties have not mutually agreed in writing and in their sole respective discretion to extend the NTP Deadline, this Agreement shall be deemed terminated by Buyer under Section 18.7.2.

18.8 Effect of Termination.

If this Agreement is terminated as permitted under this Agreement, all rights and obligations of the Parties hereunder shall terminate and no Party shall have any liability to the other Party, except for the rights and obligations of the Parties that survive the termination of this Agreement, including those obligations of the Parties that by their specific nature must survive termination such as the obligation to indemnify a Party. Notwithstanding anything to the contrary contained herein, termination of this Agreement shall not release any Party from any liability for any breach by such Party of the terms and provisions of this Agreement prior to such termination.

ARTICLE XIX FORCE MAJEURE

19.1 Excuse.

Neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations and shall be excused in the performance of its obligations if such delay or failure under this Agreement is due to an event of Force Majeure to the extent provided in this Agreement.

19.2 Definition of Force Majeure.

"Force Majeure" means any event or circumstance to the extent beyond the control of the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, that occurs following the Effective Date and before the termination of this Agreement and that delays or prevents a Party's timely performance of its obligations under this Agreement, but only to the extent that (i) such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (ii) such event of Force Majeure is caused by factors beyond that Party's reasonable control, and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to foresee, prevent, avoid, mitigate or overcome such event or consequences, including but not limited to the following enumerated events:

19.2.1 Acts of God such as hurricanes, floods, lightning, earthquakes and storms that are abnormally severe and not reasonably foreseeable for the period of time when and the area where such storms occur, based on, in the case of the Project Site, the most recent ten (10) year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce,

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National Oceanic and Atmospheric Administration (NOAA) for the vicinity of the Project;

19.2.2 Fire or explosions;

19.2.3 a failure of performance of a third party providing electric transmission service;

19.2.4 restraint by court order or other Governmental Authority;

19.2.5 Sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

19.2.6 National labor strike which was neither known to Seller or its Contractors nor generally known in the industry prior to the time the Party would have had to hire (or hired) Labor or place (or placed) an order for Equipment and Materials to meet the Milestones;

19.2.7 War, riot, acts of a public enemy, terrorism, or other civil disturbance; and

19.2.8 Epidemics or pandemics, including the COVID-19 pandemic and its resulting effects. Notwithstanding that the COVID-19 pandemic initiated prior to the Effective Date, the Parties acknowledge that the COVID-19 pandemic could have future effects on global supply chains, construction activity and the economy. In light of this, without otherwise reducing Seller's obligations hereunder, including those in this ARTICLE XIX and in particular Section 19.4, the COVID-19 pandemic and its effects may meet the definition of Force Majeure after the Effective Date. The Parties acknowledge that as of the Effective Date, the COVID-19 pandemic has not caused a Force Majeure under this Agreement.

19.3 Exclusions.

None of the following shall constitute an event of Force Majeure:

19.3.1 Economic hardship of either Party;

19.3.2 The non-availability of sun to generate electricity from the Project; provided, for clarity, insufficient irradiance shall provide an extension of the Substantial Completion Deadline as provided in the definition of the Substantial Completion Deadline;

19.3.3 A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority except as otherwise provided in this Agreement such as Buyer's failure to obtain MPSC Approval; provided that such event may constitute Force Majeure if such Party properly and timely submits the application for such item and thereafter uses commercially

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reasonable efforts to secure such item but a Government Authority delays or withholds the processing of such application or issuance of such item and such delay or withholding otherwise meets the requirements of this Article XIX;

19.3.4 Equipment and Materials failure, unless caused by a Force Majeure event;

19.3.5 Climatic and weather conditions, other than those particular climatic or weather conditions specifically identified in Section 19.2.1 above;

19.3.6 Frost laws or other seasonal restrictions on traffic weight limits or speeds;

19.3.7 Subject to Section 19.2.6, any delay, default or failure (direct or indirect) in obtaining materials or Labor by Seller or any Contractor performing any Work or any other delay, default or failure (financial or otherwise) of Seller or any Contractor unless such delay, default or failure is itself caused by a Force Majeure event; and/or

19.3.8 Any change in market conditions that causes a change in price of any Labor or Equipment and Materials required for the Work.

19.3.9 Any current or future investigation, delay, seizure, withhold release order, or other measure implemented under the anti-forced-labor provisions of Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307); provided that, notwithstanding that such event shall not constitute a Force Majeure hereunder, such event may constitute a CIL Delay and the other provisions of this Agreement regarding such event shall be unaffected, including Section 5.2.8, Section 5.3.4 and Section 10.3.5.

19.4 Conditions.

A Party may rely on a claim of Force Majeure to excuse its performance only if such Party complies with all of the following:

19.4.1 Provides prompt notice after becoming aware of such Force Majeure, not to exceed ten (10) days, of such Force Majeure event to the other Party (i) identifying the specific nature of the Force Majeure event, (ii) documenting the commencement date of the Force Majeure event, and (iii) giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement.

19.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

19.4.3 Takes action to correct or cure the event or condition excusing performance so that the necessary suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being

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corrected or cured using commercially reasonable efforts; *provided, however*, that settlement of strikes or other Labor Disputes will be completely within the sole discretion of the Party affected by such strike or Labor Dispute;

19.4.4 Exercises all commercially reasonable efforts to mitigate or limit Damages to the other Party; and

19.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to the Force Majeure event that interfered with the Party's performance.

19.5 Determination.

If Buyer agrees that a Force Majeure event has occurred (including that all conditions required in Section 19.4 were fully performed), then (i) an extension of the Project Schedule as to the specific activity or activities affected, limited to [REDACTED] for each day of Force Majeure Event delay, may be granted. If granted, such extension shall not operate to release Seller or any surety from any of their obligations. Buyer and Seller shall then execute a Change Order reflecting the extension granted for the Force Majeure event; and (ii) an increase in the Purchase Price shall be permitted to the extent provided in Section 10.3.2.

19.6 Termination for Extended Force Majeure, CIL Delay, or Interconnection Delay.

If either Party is rendered unable to perform its obligations hereunder, in whole or in substantial part, after the Effective Date because of an event of Force Majeure, Interconnection Delay or a CIL Delay reflected in a Change Order, at any time after such event of Force Majeure, Interconnection Delay or CIL Delay has continued for a period of [REDACTED] and prior to the performance or resumption of performance by the Party claiming Force Majeure, Interconnection Delay or CIL Delay, the non-affected Party may terminate this Agreement. Notwithstanding the foregoing, the aggregate delay under this Section 19.6 for all Force Majeure events, Interconnection Delays and CIL Delays, whether or not occurring on consecutive days, shall not result in a total delay of more than 365 days, and if such time limit is exceeded, the non-affected Party may terminate this Agreement. In the case of a termination based on an event of Force Majeure, Interconnection Delay and/or CIL Delay, each of the Parties shall be relieved of its obligations under this Agreement except those that expressly survive termination; provided that, if such termination occurs after NTP Closing, Buyer shall pay to Seller the payments set forth in the last paragraph of Section 18.5.

ARTICLE XX SURVIVAL

The terms of the Confidentiality Agreement in Section 24.3, all representations, warranties, covenants of each Party, the indemnification obligations of each Party, financial obligations arising and accruing between the Effective Date and termination of this Agreement in ARTICLE IX, the default remedies in ARTICLE XVIII, notices in ARTICLE XXI, limits of liability in ARTICLE XXII and the provisions of ARTICLE XXIV shall each survive termination of this Agreement in accordance with the terms herein, including Section 15.4.

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ARTICLE XXI NOTICES

21.1 Address.

Any notice or other communication required, permitted or contemplated hereunder shall be in writing, and shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Buyer:

Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
Attn: Juan Tatis
Telephone: (517) 240-0340
Email: Juan.Tatis@cmsenergy.com

And (which is mandatory)

Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
Attn: Kelly Hall
Telephone: (517) 788-2910
Email: Kelly.Hall@cmsenergy.com

To Seller:

Hecate Energy Sunfish Solar II LLC
621 W. Randolph Street
Chicago, IL 60661
Attn: Chris Bullinger, Chief Executive Officer
Telephone: (480) 239-5617
Email: CBullinger@hecateenergy.com

And (which is mandatory)

Hecate Energy Sunfish Solar II LLC
621 W. Randolph Street
Chicago, IL 60661
Attention: Holly Christie, General Counsel
Telephone: (720) 234-9331
Email: hchristie@hecateenergy.com

21.2 Delivery and Receipt.

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if sent by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, upon receipt by the receiving Party; (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier; (iii) if sent by electronic mail, at the time such electronic mail is transmitted by the sending Party as shown by the electronic mail transmittal confirmation of the sending Party; or (iv) if delivered in person, upon receipt by the receiving Party.

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ARTICLE XXII LIMITATION ON LIABILITY

22.1 Limitations on Seller's Liability.

22.1.1 Except as provided in Section 22.1.2 below, Seller's total liability for claims by Buyer arising out of or relating to the performance or non-performance of Seller's obligations under this Agreement, including Seller's indemnity obligations hereunder and including Delay LDs, Plant Capacity Buydown and Plant Capacity LDs shall in no event exceed [REDACTED] (as the same may be adjusted from time to time).

22.1.2 The Seller's total limit of liability with respect to any claim shall not apply, whatsoever:

22.1.2.1 To any (i) amounts paid by Seller to or on behalf of Buyer or Buyer Indemnitee arising out of the willful misconduct, gross negligence or fraud of Seller, its Affiliates, any Contractor or any employee, agent or invitee of any of the foregoing arising on or before Substantial Completion is achieved and thereafter to extent Seller has responsibility for Contractor's performance under the Warranty or Punch List (except to the extent any Contractor is directed by Buyer) or (ii) Seller's indemnification obligations hereunder to the extent occurring with respect to third parties, including any intellectual property claims and any claims by Governmental Authorities; or (iii) any Governmental Authority imposes fines, penalties or other enforcement fees arising from the acts or omissions of Seller, its Affiliates, any Contractor or any or any employee, agent or invitee of any of the foregoing.

22.1.2.2 With respect to any claim for which Seller, including any Contractor or any employee, agent or invitee of any of the foregoing, is responsible under this Agreement that is covered by Seller's Insurance or Bonds or required by this Agreement to be covered by Seller's Insurance or, to the extent requested and paid for by Buyer, the Bonds, in each case, to the extent of such Insurance or Bonds. For clarity, it is the intent of the Parties that the limitation of liability hereunder shall not relieve the insurers' and sureties' obligations for any insured or bonded risks; and any amounts paid by such Persons shall not count against Seller's limitation of liability set forth in Section 22.1.1. In no event shall Seller's total limit of liability operate to limit any Party's recovery against Insurance or Bonds.

22.1.2.3 With respect to any Final Determination that the Project did not satisfy the Prevailing Wage and Apprenticeship Requirements as a result of the performance or non-performance of Seller's obligations under this Agreement or the action or inaction of any Contractors, PWA Contractors, or other Persons providing Work or Warranty Work constituting Construction or Repair or Alteration

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in respect of the Project; *provided* that the amount of such claim shall not exceed the greater of (a) the positive difference between the amount of the Investment Tax Credit or Production Tax Credit, as applicable, that would have been available had the Project satisfied the Prevailing Wage and Apprenticeship Requirements and the amount of Investment Tax Credit or Production Tax Credit, as applicable, allowable with respect to the Project following such Final Determination (and any associated penalties, interest and additions to tax); for the avoidance of doubt, the amount of the Investment Tax Credit or Production Tax Credit, as applicable, shall be measured after the payment of the PWA Cure Liability, if made, and (b) the PWA Cure Liability; provided further that Seller shall not have any liability under this Section 22.1.2.3 with respect to any Work performed by any party directly engaged by Buyer for the performance of Work or Warranty Work.

22.1.2.4 With respect to any Final Determination that the Project did not satisfy the Domestic Content Bonus Requirement other than as a result of Buyer's action or inaction; *provided* that the amount of such claim shall not exceed the positive difference between the amount of the Investment Tax Credit or Production Tax Credit, as applicable, that would have been available had the Project satisfied the Domestic Content Bonus Requirement and the amount of Investment Tax Credit or Production Tax Credit, as applicable, actually claimed by the Buyer (or applicable taxpayer) with respect to the Project following such Final Determination, plus any associated penalties, interest and additions to tax, and to the extent not duplicative of the foregoing, any other Losses of Buyer caused by the failure of the Project to so qualify.

22.2 Limitations on Buyer's Liability.

22.2.1 Except as provided in Section 22.2.2 below, Buyer's total liability for claims by Seller and/or Seller Indemnitees arising out of or relating to the performance or non-performance of Buyer's obligations under this Agreement (but excluding Buyer's obligation to pay the Purchase Price as indicated below) shall in no event exceed [REDACTED] (as the same may be adjusted from time to time).

22.2.2 The Buyer's total limit of liability with respect to any claim shall not apply, whatsoever, to the following:

22.2.2.1 To any (i) amounts paid by Buyer to or on behalf of Seller or a Seller Indemnitee arising out of the willful misconduct, gross negligence or fraud of Buyer or its Affiliates or any employee, agent or invitee of the foregoing or (ii) Buyer's indemnification obligations hereunder to the extent occurring with respect to third parties, including any claims by Governmental Authorities; or (iii) any Governmental Authority imposes fines, penalties or other enforcement fees

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arising from the acts or omissions of Buyer or its Affiliates or any employee, agent or invitee of any of the foregoing.

22.2.2.2 To the obligation to pay the Purchase Price pursuant to this Agreement.

22.3 Damages.

WITHOUT LIMITING THE FOREGOING AND EXCEPT FOR DELAY LRS OR DAMAGES EXPRESSLY CONTEMPLATED BY THIS AGREEMENT, NO PARTY SHALL BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR INCIDENTAL DAMAGES, SPECIAL DAMAGES, EXEMPLARY DAMAGES, CONSEQUENTIAL DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES CONSISTING OF BUSINESS INTERRUPTION, LOST PROFITS, OR PUNITIVE DAMAGES, EXCEPT TO THE EXTENT SOUGHT OR AWARDED AS A RESULT OF A THIRD PARTY CLAIM.

ARTICLE XXIII DISPUTES

23.1 Good Faith Efforts to Resolve Disputes.

The Parties shall make good faith efforts to resolve any claim, dispute, or controversy arising out of or relating to this Agreement, including those arising out of or related to the breach, termination, or invalidity of this Agreement, and those arising in tort or contract (each a "Dispute").

23.2 Step Negotiations.

In the event that either Seller or Buyer concludes, after making a good faith effort to resolve a Dispute in the normal course of business at the Buyer's Representative and Seller's Project Manager level, that such Dispute cannot be resolved informally within [REDACTED] then the aggrieved Party shall have the right to initiate the processes identified in this ARTICLE XXIII.

23.3 Senior Executive Negotiations.

If the Dispute has not been resolved by the Buyer's Representative and Seller's Project Manager within [REDACTED], then either Seller or Buyer shall have the right to give the other written notice of its request to have the Dispute heard by a senior executive of their respective organizations. Each Party shall identify in writing a senior executive(s) who shall have the responsibility and authority to negotiate on behalf of the Parties under this Section. Unless extended by written agreement between the senior executives, this process must occur within [REDACTED] after the written notice requesting negotiations under this subsection.

23.4 Confidentiality.

All negotiations pursuant to Section 23.2 and Section 23.3 shall be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable judicial evidentiary requirements, unless a settlement is reached and agreed to in a writing signed by each Party's representative.

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23.5 Referral to Litigation.

If the Dispute has not been resolved pursuant to the aforesaid procedure within the indicated timeframe set forth above, then either Seller or Buyer may, by notice to the other, submit the Dispute to judicial resolution. The joinder of Contractors and other Persons for whom Seller is responsible or has contracted with regard to this Project shall be permitted and Buyer is a third-party beneficiary of all Contracts; however, Seller shall remain responsible for such Contracts and the Contractors and other Persons under this Agreement.

23.6 Lien Proceedings.

It shall not be deemed a violation of this Section 23.6 for Seller to make any filing or commence any action to assert or perfect a Seller Lien required by Applicable Law to secure the payment by Buyer of amounts overdue to Seller hereunder. If it shall be determined that no payment is owed by Buyer, or the Parties shall reach a settlement on the payment Dispute, or Buyer makes payment which is the subject of the Seller Lien, Seller shall promptly discharge the Seller Lien, and if it shall fail to do so, Seller hereby designates Buyer as Seller's attorney-in-fact to discharge the Seller Lien from the public record so long as such discharge is accompanied by the court order, settlement agreement or evidence of payment of the amount which is the subject of the Seller Lien.

23.7 Continuation of Performance.

Unless (i) this Agreement is terminated by Buyer, (ii) otherwise agreed in writing by the Parties in advance, or (iii) permitted by and in strict compliance with Section 9.3.7 or Section 18.4.2, the Parties shall continue to perform their respective obligations under this Agreement during any Dispute or Proceeding by the Parties in accordance with this ARTICLE XXIII.

23.8 Consent to Exclusive Jurisdiction.

Each of the Parties irrevocably consents and agrees that any Proceeding arising from or related to any Dispute may be brought in any of the state or federal courts having jurisdiction over this Agreement in the state of Michigan and that, by execution and delivery of this Agreement, each Party (i) accepts the exclusive jurisdiction of the aforesaid courts, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court and agrees that such final, non-appealable judgment may be enforced by suit on the judgment or in any other manner provided by Applicable Law, (iii) irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of any Proceeding with respect to this Agreement in any such court, and further irrevocably waives, to the fullest extent permitted by Applicable Law, any claim that any such Proceeding brought in any such court has been brought in an inconvenient forum, (iv) agrees that service of process in any such action may be effected by delivering a copy thereof by the means of notice set forth in ARTICLE XXI hereof, to such Party at its notice address set forth herein, or at such other address of which the other Party hereto shall have been notified, and (v) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law.

23.9 Waiver of Jury Trial.

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Should any Dispute result in a judicial proceeding, each of the Parties knowingly, voluntarily, and intentionally waives, to the extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any such proceeding. Furthermore, each of the Parties 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. This provision is a material inducement for the Parties to enter into this Agreement.

23.10 Tax Contests.

Seller shall provide commercially reasonable support and cooperate with Buyer in connection with any tax proceeding regarding the Project's compliance with Code Sections 48, 48E, 45, and 45Y, as applicable (each, a "***Tax Contest***"). In connection with any such tax proceeding concerning the Prevailing Wage and Apprenticeship Requirements or the Domestic Content Bonus Requirement, Buyer shall timely notify Seller of such audit or examination. Buyer's failure to timely notify Seller of any Tax Contest any proceeding with respect to such Tax Contest shall relieve Seller of its obligations hereunder only to the extent Seller is actually and permanently prejudiced by the lack of such notification. Buyer shall keep Seller reasonably informed of the proceedings of any Tax Contest, shall provide Seller with any written submissions in connection therewith that are relevant to matters for which Seller may have an indemnification obligation under this Agreement and consider in good faith comments that Seller provides prior to the due date for any such submission prior to submission, and (provided that Seller has acknowledged in writing its obligation to indemnify Buyer) shall not agree to a settlement of such Tax Contest without Seller's written consent, not to be unreasonably withheld, conditioned or delayed.

ARTICLE XXIV MISCELLANEOUS

24.1 Expenses.

Except as otherwise expressly set forth in this Agreement, all fees, costs and expenses incurred by a Party in connection with this Agreement and the transactions contemplated hereby, shall be the obligation of the Party incurring such fees, costs or expenses.

24.2 No Stockholder or Member Liability.

The Parties acknowledge and agree that the officers, directors, stockholders, members, managers, other security holders, employees and consultants of Buyer, Seller, and their respective Affiliates are not parties to this Agreement and that the representations, warranties, covenants and agreements made in this Agreement are provided only by Buyer and Seller and Seller's Persons performing Work, as the case may be. The Parties agree that neither Party shall have recourse against any officer, director, stockholder, member, manager, other security holder, employee or consultant of Buyer, Seller or their respective Affiliates under or in connection with this Agreement, whether for any representation, warranty, covenant, agreement (including any indemnification) or otherwise, except, if applicable, the Parent Guaranty.

24.3 Confidentiality.

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24.3.1 Neither Party shall disclose to any Person Confidential Information provided by one Party (the "Disclosing Party") to the other Party ("Receiving Party"). Confidential Information shall not be used for any purposes other than the purposes set forth in this Agreement, shall be held in strict confidence by the Receiving Party and shall not be disclosed without the prior consent of the Disclosing Party, except to such Party's Affiliates, employees, agents, advisors or consultants or Governmental Authorities with a need to know the Confidential Information for the purposes of performing work or reviewing information related to this Agreement or the Project.

24.3.2 Notwithstanding anything contained in this Agreement to the contrary, Buyer shall be permitted to disclose Confidential Information regarding the Project to any Person after the NTP Closing (such as, for example, location, Project size, the make and model of the Modules, site studies, and technology, but, for clarity, not the terms of this Agreement). Notwithstanding anything contained in this Agreement to the contrary, following the NTP Closing, Seller may disclose, without the consent of Buyer, (i) the name, location and size of the Project, the make and model of the Modules, and (ii) that Seller sold and Buyer purchased the Project and Seller is constructing the Project and, following Substantial Completion, constructed the Project. Seller shall not use Buyer or Buyer's Affiliates' name or logo without advance written consent provided by Buyer.

24.4 Public Announcements.

No public announcement (whether in the form of a press release or otherwise) shall be made by or on behalf of either Party or its representatives with respect to the subject matter of this Agreement unless: (i) the other Party has agreed in writing to permit such public announcement to be made, which permission shall not be unreasonably withheld, or (ii) such public announcement is required by Applicable Law and the Party required to make such announcement has given prior written notice in accordance with ARTICLE XXI to the other Party as promptly as practicable prior to such announcement. Any public announcement made as permitted under this Section 24.4 shall be made only in accordance with a text mutually agreed upon by the Parties, such agreement not to be unreasonably withheld or delayed. The Parties shall cooperate in good faith to prepare press releases (including mutual press releases) with, and upon the request of, one another. In furtherance of the foregoing, the Parties agree to the cooperative agreement for stakeholder engagement attached hereto as Exhibit Q.

24.5 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD APPLY ANY OTHER LAW.

24.6 Successors and Assigns; Collateral Assignment; Binding Effect.

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Other than in accordance with this Section 24.6, neither Party may assign its rights or obligations under this Agreement without the prior consent of the other Party, which consent may be withheld in such Party's sole discretion. Seller may not assign its rights or obligations under this Agreement except for the obligations for the Warranty as provided in ARTICLE XVII, unless Buyer provides prior written consent of such assignment, which consent may be withheld in Buyer's sole discretion. Any assignment in contravention of this Section shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

24.7 Severability.

Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

24.8 Section Headings.

The section headings are for the convenience of the Parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties.

24.9 Counterparts; Electronic Versions.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement and any amendments hereto, to the extent executed and delivered by means of a facsimile machine or e-mail of a PDF file containing a copy of an executed agreement (or signature page thereto), shall be treated in all respects and for all purposes as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof.

24.10 No Third-Party Beneficiaries.

This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided in this Agreement (such as Buyer Indemnitee), no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

24.11 Time of Essence.

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking

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such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

24.12 Waiver.

Neither the failure of nor any delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Applicable Law, except as otherwise expressly provided in this Agreement: (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party, (ii) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

24.13 No Partnership or Joint Venture.

The Parties hereto do not intend to create a partnership or joint venture by virtue of this Agreement. No Party shall owe any fiduciary duty to any other Party by virtue of this Agreement or otherwise.

24.14 Entire Agreement; Interpretation; Amendment.

This Agreement represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral and written understandings and all contemporaneous oral negotiations, commitments and understandings between the Parties. This Agreement represents the result of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and none of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, this Agreement shall be interpreted and construed in accordance with its usual and customary meaning, and the Parties hereby waive the application, in connection with the interpretation and construction of this Agreement, of any Applicable Law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. Buyer and Seller may only amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by the Parties and with respect to Buyer, signed by Buyer's Authorized Officer.

24.15 Cooperation.

Each of the Parties agrees to perform all such acts (including executing and delivering such instruments and documents) as shall be reasonably requested by the other Party to fully effectuate each and all of the purposes and intent of this Agreement.

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[SIGNATURE PAGES TO FOLLOW]

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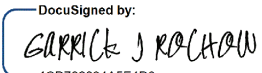
IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the date first above written.

BUYER:

SELLER:

CONSUMERS ENERGY COMPANY

HECATE ENERGY SUNFISH SOLAR 2 LLC

By:  _____
Name: Garrick J. Rochow
Title: CEO

By:  _____
Name: Chris Bullinger
Title: President and CEO

EXHIBIT A THROUGH EXHIBIT BD

REDACTED

A-5 (JBT-2)
IS **CONFIDENTIAL** AND BEING FILED
UNDER SEAL WITH THE MPSC

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of the build transfer agreement)
for the Sunfish Solar 2 project as a)
Voluntary Green Pricing Program resource.)
_____)

Case No. U-21409

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Jennifer Joy Yocum, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on April 28, 2023, she served an electronic copy of **Application and Testimony and Exhibits of Consumers Energy Company Witnesses Alexander E. Juhasz and Juan B. Tatis** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.



Jennifer Joy Yocum

Subscribed and sworn to before me this 28th day of April, 2023.



Crystal L. Chacon, Notary Public
State of Michigan, County of Ingham
My Commission Expires: 05/25/24
Acting in the County of Eaton

ATTACHMENT 1 TO CASE NO. U-21409
(Parties to Case Nos. 20984 and 21134)

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* Receives Public Materials

** Receives Confidential Materials