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June 24, 2020

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

Re: In the matter, on the Commissions own motion, establishing the method and avoided cost calculation for DTE ELECTRIC COMPANY to fully comply with the Public Utilities Regulatory Policy Act of 1978, 16 USC 2601 et seq.
Case No. U-18091 (Paperless e-file)

Dear Ms. Felice:

Please find enclosed, pursuant to the June 10, 2020 order of the Michigan Public Service Commission in Case No. U-18091, a revised Standard Offer Tariff and Standard Offer power purchase agreement (hereinafter the "Tariff and PPA") associated with this proceeding.

The Commission's Order provided:

"B. Within 14 days from the date of this order, DTE Electric Company shall file a revised Standard Offer tariff and Standard Offer power purchase agreement to include the use of surety bonds as a permissible means of credit support as described in this order.

C. Within 14 days from the date of this order, DTE Electric Company shall file a revised Standard Offer power purchase agreement that addresses the exclusivity concerns as described in this order." (Case No. U-18091, Order dated June 10, 2020, p. 12)

DTE Electric Company (DTE Electric or Company) is herewith submitting the Tariff and PPA as directed by the Commission's Order. The enclosed tariff and PPA reflect both the June 10, 2020 changes as well as the Average Annual LMP Forecast prices submitted by Staff pursuant to the

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September 26, 2019 order which were not available at the time of the Company's required October 10, 2019 filing deadline. The Company reserves all of its legal rights with respect to the Commission's Orders, decisions and directives in this Case No. U-18091 (including but not limited to the Company's right to rehearing and appeal). Also enclosed is a proof of service.

Very truly yours,

Jon P. Christinidis

Enclosure

STANDARD OFFER POWER PURCHASE AGREEMENT

BETWEEN

DTE ELECTRIC COMPANY

AND

[_____]

[_____] [____], 20[____]

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STANDARD OFFER POWER PURCHASE AGREEMENT

This Standard Offer Power Purchase Agreement (this “Agreement”) is entered into as of [] [], 20[] (the “Effective Date”) between DTE ELECTRIC COMPANY (“Buyer”) and [], a [insert State of organization], [insert form of organization] (“Supplier”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the MPSC and the FERC;

WHEREAS, Supplier plans to build, own, and operate a proposed [] MW_{AC} (the “Generating Facility Capacity”) generating facility in [] County, Michigan (including any associated facilities and equipment required to deliver the Energy to the Delivery Point, as further described in Exhibits 3.1A and 3.1B hereto, the “Generating Facility”), which it intends to designate as a Renewable Energy System with the MPSC and to certify as a Qualifying Facility with FERC in order to comply with the requirements of this Agreement;

WHEREAS, the parties intend that the Generating Facility will be, and will at all times remain, qualified as a Qualified Facility;

WHEREAS, Supplier desires to sell to Buyer, and Buyer desires to purchase, [] MW_{AC} of the Generating Facility Capacity (“Contract Capacity”) and associated Contract Energy generated by the Generating Facility, in each case upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

“Abandonment Event” means (a) prior to the Commercial Operation Date, Supplier or Supplier’s contractors cease activities related to the development, construction planning, construction, testing, or inspection of the Project for a period of 30 consecutive days and such cessation is not caused by Force Majeure; (b) following the Commercial Operation Date, Supplier ceases operation and maintenance of the Generating Facility for a period of 30 consecutive days and such cessation is not caused by Force Majeure; (c) any event occurs that results in physical damage to a material portion of the Generating Facility or to any material equipment at the Generating Facility (including as a result of Force Majeure) and Supplier either elects to not, or is not permitted to, repair or restore the Generating Facility to substantially the same condition as existed prior to the occurrence of such event; or (d) or a condemnation event occurs with respect to the Generating Facility or a material portion of the Site.

“Act” means the Clean and Renewable Energy and Energy Waste Reduction Act enacted by the State of Michigan and codified as Michigan Compiled Laws, chapter MCL 460.1001 to 460.1211, and the regulations promulgated thereunder, as such Laws may be amended or superseded.

“Administrative Fee” has the meaning ascribed to that term in Section 3.9.2.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“After Tax Basis” means that any payment received or deemed to have been received by a Party must be supplemented by a further payment to such Party so that the net amount actually received by the Party after taking into account all Taxes that would result from the receipt or accrual of such payments is equal to the full amount of the original payment that the Party would have received if no deduction or withholding had been required.

“Agreement” has the meaning ascribed to that term in the preamble of this Agreement.

“A.M. Best” means A.M. Best Company, Inc.

“Auction Clearing Price” and “ACP” mean with respect to a MISO Planning Year, the price (expressed in \$ per MW·Day) determined and announced by MISO in the Planning Resource Auction for such MISO Planning Year for capacity that is located in the Local Resource Zone in which Buyer’s service territory is located and clears in such Planning Resource Auction.

“Bankruptcy Code” means Title 11, United States Code, and any other state or U.S. federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute.

“Billing Period” has the meaning ascribed to that term in Section 4.1.1.

“Business Day” means any day other than Saturday, Sunday, Federal Reserve Bank holiday, or other day that is a holiday observed by Buyer.

“Buyer” has the meaning ascribed to that term in the preamble of this Agreement.

“Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on Exhibit 23.3.

“Capacity” means the instantaneous rate at which Energy can be delivered, received or transferred measured in MW from the Generating Facility.

“Capacity Multiplier” means the capacity factor determined by reference to the table included in Exhibit 3.3, which table reflects the factors that MISO utilizes as of the Effective Date to accredit capacity for a MISO Planning Year.

“Capacity Notification Date” means with respect to a MISO Planning Year, the February 1st that immediately precedes the start of such MISO Planning Year, or if such date is not a Business Day, the immediately preceding Business Day.

“Capacity Rate” means the Auction Clearing Price in \$ per MW-Day.

“Capacity Shortfall Damages” means with respect to a MISO Planning Year, the amount calculated for such MISO Planning Year pursuant to the equation set forth in Section 3.10.

“Capacity Value” means the amount of capacity in MW (equivalent to a Zonal Resource Credit) attributable to the Contract Capacity of the Generating Facility for a specific MISO Planning Year, as calculated pursuant to Exhibit 3.3.

“Change in Control” means the Ultimate Parent ceases to own, directly or indirectly, 100% of the economic and voting interests in Supplier; other than as a result of the sale of equity interests in Supplier to tax equity investors pursuant to the terms of a Financing.

“Commercial Operation” means that Supplier has (a) demonstrated to Buyer’s satisfaction that the requirements set forth in Section 5.4 and Exhibits 5.4A have been satisfied with respect to the Generating Facility, and (b) delivered a certificate to Buyer in the form of Exhibit 5.4B executed by a Responsible Officer of Supplier, together with the required supporting documentation.

“Commercial Operation Date” means the date on which Commercial Operation occurs.

“Confidential Information” has the meaning ascribed to that term in Section 25.1.

“Construction Agreement” means the Construction Agreement for generator interconnection to DTE’s Distribution System, dated as of [_____] [____], 20[____], between Supplier as “Project Developer” and Distribution Provider as “DTE”, as amended, restated, supplemented, or otherwise modified from time to time.

“Contract Representative” of a Party means the individual designated by that Party in Exhibit 26.1 who is responsible for ensuring effective communication, coordination and cooperation between the Parties.

“Contract Capacity” is the value in MW ascribed in the recitals to this Agreement that is the portion of the Generating Facility Capacity that the Supplier agrees to sell to Buyer and Buyer agrees to purchase. “Contract Energy” is the portion of Energy that the Supplier agrees to sell to Buyer and Buyer agrees to purchase and is calculated as the ratio of the Contract Capacity to the Generating Facility Capacity multiplied by the hourly Energy.

“Contract Energy Rate” means the rate to be paid for the Delivered Amount, as selected by Supplier in Exhibit 2.

“Contract Year” means period of 12 calendar months beginning on January 1st of a year and continuing through December 31st of the same year, except that (i) the first Contract Year will begin on the Commercial Operation Date and continue through December 31st of the year in which the Commercial Operation Date occurred, and (ii) the final Contract Year will begin on January 1st of the year during which this Agreement terminates and continue through the day prior to the anniversary of the Commercial Operation Date during such year, or if this Agreement is early terminated, the early termination date of this Agreement.

“Credit Rating” means with respect to a Person and a Relevant Rating Agency, the rating assigned by such Relevant Rating Agency to the long-term, senior, unsecured debt (not supported by third-party credit enhancement) or deposit obligations of such Person, or if no such ratings exists for such Person, the “issuer rating” or “issuer credit rating” (as applicable based on the Relevant Rating Agency) for such Person then assigned by the Relevant Rating Agency.

“Credit Support” means a Letter of Credit, One-Time Escrow Payment, Monthly Escrow Payment or Surety Bond, as selected by Supplier in Exhibit 2.

“Day-Ahead LMP” means the MISO Hourly Day-Ahead Locational Marginal price at the at the commercial price node DECO.NEC.

“Day-Ahead Market” has the meaning ascribed to the term “Day Ahead Energy and Operating Reserve Market” in the MISO Tariff.

“Day-Ahead Schedule” means Supplier’s forecast of (a) the projected availability of the Generating Facility for each hour of the next Operating Day and (b) the projected hourly amount of Contract Energy in MWh, based on projected availability of the Generating Facility and other matters deemed to be relevant by Supplier, that the Generating Facility will produce and deliver to Buyer during each hour of the next Operating Day.

“Defaulting Party” has the meaning ascribed to that term in Section 21.1.

“Delay Damages” has the meaning ascribed to that term in Section 5.7.1.

“Delivered Amount” means with respect to any period, the actual amount of Contract Energy delivered by Supplier and accepted by Buyer at the Delivery Point in accordance with the terms of this Agreement during such period.

“Delivery Point” means the Generating Facility’s point of interconnection with the Distribution System, as more particularly defined in Exhibit 3.1A and Exhibit 3.1B.

“Development Security” has the meaning ascribed to that term in Section 13.1.1.

“Disclosing Party” has the meaning ascribed to that term in Section 25.1.

“Dispute” has the meaning ascribed to that term in Section 17.1.1.

“Distribution Provider” means DTE Electric Company, in its capacity as the owner and operator of the Distribution System.

“Distribution System” means the sub-transmission and distribution systems owned and operated by the Distribution Provider.

“DNP3” means the DNP3 distributed network protocol.

“Effective Date” has the meaning ascribed to that term in the preamble of this Agreement.

“Electric Storage Resource” means a resource capable of receiving electric energy from the grid and storing it for later injection of electricity back to the grid regardless of where the resource is located on the electrical system.

“Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Interconnection Facilities, the Transmission System, the Distribution System, or the transmission or distribution system of other electric utilities that is (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) is reasonably likely to adversely affect, degrade or impair Transmission System or Distribution System reliability or transmission or distribution system reliability of other electric utilities, and including any “Emergency” as such term is defined in the MISO Tariff.

“Energy” means [single][three]-phase,¹ 60-hertz alternating current electrical energy (measured in MWh) generated by the Generating Facility and delivered to the Delivery Point (less Standby Service)

“EPC Contracts” has the meaning ascribed to that term in Section 5.4.

“EPC Contractor” means the contractor(s) engaged by Supplier to engineer, procure and construct the Generating Facility pursuant to the EPC Contracts.

“EPT” means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.

“Escrow Account” means a deposit account governed by an escrow agreement in form and substance acceptable to Buyer in its reasonable discretion for purposes of holding cash retained or deposited, as applicable, to satisfy Supplier’s Credit Support obligations as described in Section 13.2.

“Event of Default” has the meaning ascribed to that term in Section 21.1.

“Expected Capacity Value” means the amount of capacity in MW (equivalent to a Zonal Resource Credit) calculated by multiplying the Contract Capacity by the Expected

¹ **Note to Form:** Include as applicable based on the design of the Generating Facility.

Capacity Multiplier shown on Exhibit 2 for the specific technology of the Generating Facility.

“External Communications Interface” means the electronic connection point at which the Generating Facility’s data is made available to Buyer.

“FERC” means the Federal Energy Regulatory Commission.

“Financing” means any of the following by Supplier’s Lenders: (a) lending money, extending credit, purchasing notes or providing loan guarantees (whether directly to Supplier or to an Affiliate of Supplier) as follows: (i) for the construction, interim or permanent financing or refinancing of the Generating Facility; (ii) for working capital or other ordinary business requirements of the Generating Facility (including the maintenance, repair, replacement or improvement of the Generating Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Generating Facility; or (iv) for any capital improvement or replacement related to the Generating Facility; or (b) participating as an tax equity investor in the Generating Facility.

“Forced Outage” means (a) the removal from availability of a generating unit, transmission line, or other facility for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure resulting in a decrease to available Capacity and (b) the reduction in output of the Generating Facility due to the panels being covered by snow or other debris.

“Force Majeure” has the meaning ascribed to that term in Section 16.2.

“Generating Facility” has the meaning ascribed to that term in the recitals to this Agreement.

“Generating Facility Capacity” has the meaning ascribed to that term in the recitals to this Agreement and may not exceed 550 kW_{AC}.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather, intended to include acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 215(a)(4). In the case of Supplier, Good Utility Practice also specifically means those practices, methods, techniques, standards and acts engaged in or approved by a significant portion of the electric power industry in the United States or any of the practices, methods, techniques, standards and acts that, in the exercise of reasonable judgment in light of the facts known (or that a qualified and prudent contractor or operator, as applicable, could reasonably be expected to have known) at the time a decision is made, would have been expected to

accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition, in each case for use in connection with the design, engineering, supply, construction, start-up, testing, commissioning, completion, operation or maintenance of similar equipment at power generating facilities in the Midwest region of the United States of the same or similar size and type as the Generating Facility, that at the particular time of performance of the work, or of operation of the Generating Facility, (i) in the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced licensed engineer, contractor or operator employing generally accepted professional standards with respect to the performance of the work or the operation of the Generating Facility, as the case may be, would have been expected to accomplish the desired result in a manner consistent with applicable Laws, and (ii) conform in all material respects to the design, engineering, construction, testing, operation, maintenance and other recommendations and guidelines applicable to the equipment in question.

“Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, including NERC, FERC, and MISO, having jurisdiction over such Person or its property or operations.

“Guaranteed Commercial Operation Date” means the date that is 180 days after the Scheduled Commercial Operation Date.

“IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.

“Interconnection Agreement” means the [Parallel Operating Agreement] to be entered into between Supplier as “Applicant” and Distribution Provider as “Utility”, in connection with the Generating Facility, as may be amended, restated, supplemented, or otherwise modified from time to time.

“Interconnection Facilities” means the equipment, supporting software and firmware, and ancillary facilities, including any modifications, additions and upgrades made to such facilities, which are necessary to connect the Generating Facility to the Distribution System as described in Exhibit 3.1A.

“Interest Rate” means, for any date, the lesser of (x) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) plus 2% and (y) the maximum rate permitted by applicable Law.

“kW” means a kilowatt of electrical capacity.

“Law” means any federal, state, local or other law, common law, treaty, code, rule, ordinance, directive, regulation, judicial or administrative order, judgment, decree, ruling,

determination, permit, certificate, authorization, or approval of a Governmental Authority, including the MISO Tariff, that is binding on a Party or any of its property.

“Letter of Credit” means an irrevocable stand-by letter of credit governed by the International Standby Practices (International Chamber of Commerce Pub. 59) and issued by a Qualified Financial Institution for the benefit of Buyer in substantially the form attached as Exhibit 13A to this Agreement.

“Letter of Credit Default” means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of the Letter of Credit ceases to be a Qualified Financial Institution; (ii) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure is continuing after the lapse of any applicable grace period; (iii) the issuer of the Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Letter of Credit; (iv) the Letter of Credit expires or terminates, or fails or ceases to be in full force and effect at any time while required to be maintained pursuant to the terms of this Agreement; or (v) the issuer of the Letter of Credit becomes subject to any event described in Section 21.1.4 or any event analogous thereto occurs with respect to the issuer of the Letter of Credit.

“Local Resource Zone” has the meaning ascribed to that term in the MISO Tariff.

“Major Contracts” has the meaning ascribed to that term in Section 5.11.1.

“Material Adverse Effect” means, with respect to a Party, any event or occurrence of whatever nature which could reasonably be expected to result in a material adverse change in, or material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, assets, liabilities, property, results of operations or condition (financial or otherwise) of such Party.

“Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters owned by Buyer, or its designee, required for (a) an accurate determination of the quantities of Delivered Amounts and Standby Service from the Generating Facility and for recording other related parameters required for the reporting of data to Buyer; and (b) the computation of the payment due to Supplier from Buyer.

“MISO” means Midcontinent Independent System Operator, Inc. and any successor entity thereto that performs the functions of a regional transmission organization with respect to the region in which Buyer and the Generating Facility are located.

“MISO Planning Year” means a “Planning Year” as such term is defined in the MISO Tariff (currently June 1 of a calendar year through May 31 of the following calendar year).

“MISO Tariff” means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for MISO, including the rules, protocols, procedures, business practice manuals, and other standards associated therewith, as the same may be amended, amended and restated, modified or supplemented from time-to-time and approved by FERC.

“Moody’s” means Moody’s Investors Service, Inc.

“MPSC” means the Michigan Public Service Commission.

“MPSC Approval Date” means the later of (x) the date on which an order of the MPSC approving this Agreement in accordance with Section 12.2 is effective, final, and no longer subject to appeal and (y) the date that is 90 days after the date on which the MPSC grants its approval of this Agreement.

“MSA” has the meaning ascribed to that term in Section 5.4.

“MW” means a megawatt of electrical capacity.

“MWh” means a megawatt hour of electrical energy.

“NERC” means the North American Electric Reliability Corporation and any successor entity thereto. References to NERC in this Agreement are deemed to include references to the applicable regional entity designated by NERC.

“Non-Defaulting Party” means the Party that is not the Defaulting Party.

“Off-Peak Day-Ahead LMP” the average of the Day-Ahead LMPs for Eastern Standard Time hours ending 1-6 and 23-24 Monday through Friday, excluding NERC holidays, and hours ending 1-24 Saturdays, Sundays and NERC holidays.

“On-Peak Day-Ahead LMP” the average of the Day-Ahead LMPs for Eastern Standard Time hours ending 7-22 Monday through Friday, excluding NERC holidays.

“Operating Day” has the meaning ascribed to that term in the MISO Tariff.

“Operating Representative” means any of the individuals designated by a Party, as set forth in Exhibit 26.1, to transmit and receive routine operating and Emergency communications required under this Agreement.

“Operating Security” has the meaning ascribed to that term in Section 13.2.1.

“Operations and Maintenance Plan” has the meaning ascribed to that term in Section 5.9.6.1.

“Operator” means an experienced provider of operations and maintenance services to generating facilities similar to the Generating Facility and located in the same geographical area as the Generating Facility selected by Supplier and approved by Buyer in its commercially reasonable discretion to serve as the provider of operations and maintenance services for the Generating Facility.

“Party” and “Parties” have the meaning ascribed to those terms in the preamble of this Agreement.

“Penalties” means any penalties, fines, damages, sanctions or charges, including imbalance charges and fines or penalties, whether now existing or that become effective in the future, attributable to this Agreement and actually imposed on Buyer by any Governmental Authority, NERC, MISO, the Transmission Provider, or the Distribution Provider.

“Person” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

“Planned Outages” scheduled removal from service, in whole or in part, of the Generating Facility for inspection, maintenance or repair with the approval of Buyer.

“Planned Synchronization Date” means [_____] [____], 20[____],² as may be adjusted pursuant to Section 5.6.

“Planning Resource” has the meaning ascribed to that term in the MISO Tariff.

“Planning Resource Auction” and “PRA” have the meaning ascribed to that term in the MISO Tariff.

“Power Quality Standards” means the power quality standards established or otherwise enforced by NERC, MISO, IEEE-SA, National Electric Safety Code, or the National Electric Code (including their respective successor organizations or codes) and that apply to the Generating Facility, including any power quality standards imposed pursuant to the terms of the Interconnection Agreement or by the Distribution Provider or Transmission Provider, as applicable, in each case as they may be amended, restated, superseded, supplemented, or otherwise modified from time to time.

“Product” means all Contract Energy and the Capacity Value and excludes Renewable Energy Benefits.

“Project Milestone” means each of the milestones, obligations, and other requirements listed in Exhibit 5.2.

“Project Milestone Schedule” means the schedule of Project Milestones, completion dates and required documentation specified in Exhibit 5.2.

“Qualified Financial Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or the U.S. branch office of a foreign bank, with (a) a Credit Rating of at least “A-” by S&P and “A3” by Moody’s, and (b) having a combined capital surplus of at least \$1,000,000,000.

“Qualifying Facility” and “QF” mean a small power production facility, as such term is defined in 16 U.S.C. § 796(17)(A), that meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as such Law may be amended or superseded, and is certified in accordance with requirements of the FERC.

² **Note to Form:** Date to be included prior to execution.

“Receiving Party” has the meaning ascribed to that term in Section 25.1.

“Relevant Rating Agencies” means Moody’s and S&P.

“Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances or benefits, however entitled, (a) allocated, assigned, awarded, certified or otherwise transferred or granted by any Governmental Authority in any jurisdiction in connection with the Generating Facility; or (b) associated with the production of electrical energy by the Generating Facility or based in whole or part on the Generating Facility’s use of renewable resources for generation or because the Generating Facility constitutes a renewable energy system or the like or because the Generating Facility does not produce greenhouse gases, regulated emissions or other pollutants, whether any such attributes, reductions, credits, offsets, allowances or benefits exist now or in the future or whether they arise under existing Law or any future Law or whether such attribute, reduction, credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable, but in all cases shall not mean Tax Credits. Renewable Energy Benefits includes such attributes, reductions, credits, offsets, allowance or benefits attributable to all energy generated by the Generating Facility.

“Responsible Officer” means with respect to Supplier, a vice president, senior vice president, chief executive officer, president, member, or manager of Supplier, or if documents executed by Supplier are executed by an entity in its capacity as member, manager, or general partner of Supplier, any individual holding such position with such entity.

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [_____] [____], 20[____],³ as may be adjusted pursuant to Section 5.6.

“SEC” means the Securities and Exchange Commission.

“Settlement Period” has the meaning ascribed to that term in Section 17.1.1.

“Shortfall” means with respect to a Contract Year, the amount calculated for such Contract Year pursuant to the equation set forth in Section 3.10.

“Site” means those parcels of land in [_____] ⁴ County, Michigan, on which the Generating Facility will be located, and all applicable laterals and appurtenances thereto, including the land associated with the Generating Facility’s substation.

“Standby Service” means electrical energy consumed by the Generating Facility and purchased from DTE Electric Company according to Standard Contract Rider No. 3 –

³ **Note to Form:** Date to be included prior to execution.

⁴ **Note to Form:** Location to be included prior to execution.

Parallel Operation and Standby Service and the related provisions of DTE Electric Company's Rate Book for Electric Service.

"Supplier" has the meaning ascribed to that term in the preamble of this Agreement.

"Supplier's Lenders" means any Persons (other than an Affiliate of Supplier) and their permitted successors and assignees (but, for the avoidance of doubt, not any "designee" of Supplier's Lenders for purposes of Section 20), who in the ordinary course of its business, provides debt or tax equity financing for electricity generating facilities and has agreed to provide Financing for the Generating Facility.

"Supplier's Required Permits and Approvals" has the meaning ascribed to that term in Exhibit 5.4.

"Surety Bond" means a bond that is issued by a surety or insurance company listed on the U.S. Treasury list of approved sureties with sufficient bond capacity.

"Synchronization Date" means the first date on which the Generating Facility is energized and operates in parallel with the Distribution System and delivers Test Energy to the Delivery Point.

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

"Tax Credits" means (i) any and all present or future (whether known or unknown) state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Generating Facility, and (ii) present or future (whether known or unknown) cash payments or outright grants of money relating in any way to the ownership or operation of, or the production of Energy from, the Generating Facility.

"Term" has the meaning ascribed to that term in Section 2.2.

"Test Energy" means Energy delivered to and purchased by Buyer prior to the Commercial Operation Date.

"Transmission Provider" means International Transmission Company or any successor operator or owner of the Transmission System.

“Transmission System” means the facilities used for the transmission of electric energy in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.

“Ultimate Parent” means [_____] .⁵

“Zonal Resource Credit” and “ZRC” have the meaning ascribed to that term in the MISO Tariff.

2. **TERM**

- 2.1 Effective Date. This Agreement is effective on the Effective Date; except that subject to the relevant provisions of Section 12.3, the obligation of Buyer to purchase and take delivery of Product will not be effective until the MPSC Approval Date.
- 2.2 Term. Supplier’s obligation to deliver Product, and subject to the occurrence of the MPSC Approval Date and the relevant provisions of Section 12.3, Buyer’s obligation to accept and pay for Product, under this Agreement will commence on the Synchronization Date and thereafter continue for the duration of the term specified in Exhibit 2, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”).

3. **SUPPLY OBLIGATIONS**

- 3.1 Contract Energy. Subject to the other provisions of this Agreement, commencing on the Commercial Operation Date, Supplier shall sell and deliver to Buyer at the Delivery Point, all Contract Energy and comply with all other laws, regulations, Buyer tariffs and riders associated with utilization of Buyer’s electrical system. If less than the full capacity of the Generating Facility is sold to Buyer under this agreement, Supplier represents, warrants and agrees herein that Supplier shall also comply with all other laws, regulations, Buyer tariffs and riders associated with utilization of Buyer’s electrical system for that portion of the Capacity of the Generation Facility not sold to Buyer.
- 3.2 Test Energy. During the period commencing on the Synchronization Date and continuing through the start of the first Contract Year, subject to the condition that (a) Supplier has provided at least 15 days’ prior written notice of Supplier’s intent to generate Test Energy on any day and has otherwise reasonably coordinated with Buyer regarding the scheduling of such Test Energy, and (b) the Generating Facility has been installed and interconnected in accordance with the Interconnection Agreement and such Test Energy is capable of being measured by the Meters, Buyer shall purchase and accept delivery at the Delivery Point of the Test Energy on such day.
- 3.3 Capacity. Buyer has all rights to the Capacity Value of the Generating Facility during the Term. Supplier shall take all actions as may be necessary or reasonably requested by Buyer

⁵ **Note to Form:** Supplier to identify ultimate parent entity prior to execution.

to enable Buyer to receive all allowable credit for the full Capacity Value in the MISO market or any other wholesale market in which Buyer may participate

- 3.4 Dedication. All Product shall be dedicated exclusively to Buyer for the Term of this Agreement. Supplier shall not, without Buyer's prior written consent (which Buyer may withhold in its sole and absolute discretion), (a) sell, divert, grant, transfer, or assign Product to any Person other than Buyer; or (b) provide Buyer with electric energy or capacity from any source other than the Generating Facility.
- 3.5 Title and Risk of Loss. Title to and risk of loss with respect to the Product will pass from Supplier to Buyer at the Delivery Point. Until title passes, Supplier will be deemed in exclusive control of such Product and will be responsible for any damage or injury caused thereby. After title to such Product passes to Buyer, Buyer will be deemed in exclusive control of such Product and will be responsible for any damage or injury caused thereby. Supplier shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.
- 3.6 Buyer's Obligation and Delivery. Subject to the terms of this Agreement, Buyer shall purchase and take delivery of all Contract Energy produced by the Generating Facility (less Standby Service) at the Delivery Point in accordance with the terms of this Agreement. Supplier is responsible for all costs associated with delivery of the Contract Energy to the Delivery Point. Buyer is responsible for all costs associated with receipt of the Contract Energy at the Delivery Point. Notwithstanding anything in this Agreement to the contrary, Buyer is not obligated to purchase or accept delivery of Contract Energy from the Generating Facility if (a) the Generating Facility is not then qualified as a QF or (b) the Generating Facility Capacity is in excess of 550 kW_{AC}.
- 3.7 No Obligation to Purchase. Buyer has no obligation to purchase or to pay for any Energy or Capacity produced by the Generating Facility in excess of the Contract Energy or Contract Capacity. In addition to the foregoing, Buyer has no obligation to purchase or pay for Energy or Capacity from an Electric Storage Resource.
- 3.8 Settlements. Except as otherwise provided in this Agreement, Buyer is responsible for the settlement with MISO of all Contract Energy purchased by Buyer during the Term, including all costs associated therewith, as well as all charges associated with scheduling activities, unless such costs or charges are incurred by Buyer as the result of Supplier's failure to perform its obligations under this Agreement or applicable Law (including the MISO Tariff), or as a result of any inaccurate or incomplete information provided to Buyer with respect to the Generating Facility.
- 3.9 Product Payments.
- 3.9.1 Buyer's Payments to Supplier. Buyer shall pay to Supplier: (i) with respect to Contract Energy, the Contract Energy Rate for each MWh of the Delivered Amount (as determined by data from monthly Meter readings), and (ii) with respect to Contract Capacity, the Capacity Rate for each MW-day of the

Capacity Value delivered to Buyer in accordance with the terms of this Agreement.

3.9.2 Supplier's Payments to Buyer. As consideration for the administrative services performed by Buyer in connection with this Agreement, Supplier shall pay to Buyer an administrative fee of \$1.00 per MWh of the Delivered Amount (the "Administrative Fee").

3.10 Capacity Shortfall Damages. With respect to each MISO Planning Year, Supplier shall ensure (i) that the Generating Facility qualifies as a Planning Resource, (ii) that the Capacity Value is at least equal to the Expected Capacity Value, and (iii) that all rights associated with the Capacity Value are transferred to Buyer in accordance with the relevant provisions of the MISO Tariff and the instructions of Buyer. Notwithstanding the foregoing, Supplier shall not transfer to Buyer, and Buyer is not required to purchase, any portion of the Capacity Value in respect of the MISO Planning Year during which the last day of the Term is scheduled to occur. Subject to the foregoing sentence, if the Capacity Value transferred to Buyer for any MISO Planning Year is less than the Expected Capacity Value, then Supplier shall pay Capacity Shortfall Damages to Buyer for such MISO Planning Year in the amount determined in accordance with the following equation:

$$\text{CSD} = \text{DPY} \times (\text{ECV} - \text{CV}) \times \max[\$0, (\text{ACP} - \text{CR})]$$

where:

CSD = *Capacity Shortfall Damages* for the MISO Planning Year;
DPY = *Days Per Year*, which is equal to 365 or 366, as applicable;
ECV = *Expected Capacity Value*;
CV = *Capacity Value* for the MISO Planning Year;
ACP = *Auction Clearing Price*, for the MISO Planning Year; and
CR = *Capacity Rate*.

Buyer will calculate the Capacity Shortfall Damages for a MISO Planning Year, if applicable, prior the beginning of such MISO Planning Year and invoice Supplier for such Capacity Shortfall Damages as provided in Section 4.1.2.

4. INVOICING AND PAYMENTS

4.1 Invoices.

4.1.1 Invoicing and Payment. Promptly following the end of each month (a "Billing Period"), Buyer shall deliver to Supplier a settlement statement, using Buyer's preferred form, that sets forth the Delivered Amount and Capacity Value for

such Billing Period, together with such additional information as Buyer determines is necessary to enable Supplier to prepare an invoice with respect to the Billing Period. Within five Business Days following receipt of Buyer's settlement statement, Supplier shall deliver to Buyer an invoice in a form acceptable to Buyer in its reasonable discretion specifying: (i) the amount due to Supplier for Delivered Amount delivered to Buyer during the Billing Period and for Capacity delivered to Buyer during such Billing Period, (ii) the Administrative Fee, (iii) subject to Section 4.1.2 below, any other amounts due between the Parties with respect to such Billing Period, (iv) any amount to be retained by Buyer pursuant to Section 13.6 as Credit Support in accordance with the Monthly Escrow Payment, if applicable, and (v) the net amount due with respect to the Billing Period as determined pursuant to Section 4.1.3. Each such invoice provided by Supplier must be based on Meter data available to Supplier and must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice. If data necessary to enable Supplier to calculate any amount is not available by the date it is required to deliver the invoice, Supplier shall calculate such amounts based on its reasonable estimates, subject to accounting once the required data is available.

4.1.2 Buyer Invoiced Amounts. As set forth in this Agreement, Buyer is responsible for invoicing Supplier for certain amounts due under this Agreement, including, (i) Capacity Shortfall Damages pursuant to Section 3.10, (ii) Delay Damages pursuant to Section 5.7.1 in respect of months ended prior to occurrence of the Commercial Operation Date, and (iii) costs and expenses associated with Meters and other equipment pursuant to Section 6.4, and such amounts will not be included in invoices prepared by Supplier pursuant to Section 4.1.1. Supplier shall pay all such amounts invoiced by Buyer within five Business Day following its receipt of Buyer's invoice for such amount.

4.1.3 Netting. With the exception of amounts separately invoiced by Buyer, all payment obligations due and owing between the Parties under this Agreement with respect to a Billing Period, including any damages, interest, and payments or credits, will be automatically satisfied and discharged through netting, and if the aggregate amount payable by one Party exceeds the aggregate amount that otherwise would have been payable by the other Party, replaced by an obligation upon which the larger aggregate amount would have been payable to pay to the other Party the excess of the larger aggregate amount over the smaller aggregate amount. In addition to the foregoing, Buyer may setoff amounts owed by Supplier under this Agreement, including any damages, or any other agreement between the Parties against any amounts owed by Buyer to Supplier under this Agreement. Buyer shall provide notice to Supplier of any such setoff by Buyer, and Supplier shall account for such setoff in its invoice delivered with respect to the applicable Billing Month

4.1.4 Method of Payment. All payments under this Agreement must be made by automated clearing house pursuant to the instructions stated on the applicable

invoice, or if no instructions are stated on such invoice, then to the applicable account specified in Exhibit 26.1. Except as otherwise specified in this Agreement, payments with respect to a Billing Month are due and payable by the applicable Party on or before the later to occur of (x) the last Business Day of the month that follows the Billing Month and (y) the 10th day after receipt of Suppliers invoice for such Billing Month. With respect to each payment to be made under this Agreement, if the due date for such payment is not a Business Day, then such payment will be due on the next Business Day.

- 4.1.5 Deadline for Invoices. If Supplier fails to render an invoice within one year after the end of a Billing Month, Supplier's right to payment in respect of such Billing Month is waived.
- 4.1.6 Interest. Any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.
- 4.2 Corrections to Invoices. Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice under this Agreement, or adjust any invoice for arithmetic or computational error, within 12 months following the date such invoice, or adjustment to an invoice, was rendered. Any dispute with respect to an invoice must be made in writing and state the basis for such dispute. If a Party provides written notice of a dispute with respect to an invoice prior to the applicable due date for such invoice, such Party shall pay the undisputed amount of such invoice when due, but may if not already paid, withhold payment of the disputed portion until such dispute is resolved. If in connection with the resolution of the dispute it is determined that (i) an additional payment is due by a Party, such Party shall make the required payment to the other Party within 10 Business Days following such resolution, together with interest accrued at the Interest Rate from and including the due date to but excluding the date paid or (ii) a Party is entitled to a refund of any amount previously paid, the other Party shall, at the first Party's election either return the amount overpaid within 10 Business Days following such resolution or provide the first Party with a credit on the next invoice delivered following resolution of the dispute equal to the amount overpaid, in each case together with interest accrued at the Interest Rate from and including the date such overpayment was made to but excluding the date repaid by the other Party or reflected as a credit in an invoice delivered by the other Party, as applicable.
- 4.3 Availability of Tax Credits. The payment of the Contract Energy Rate and Capacity Rate with respect to the Product accounts for Tax Credits for which the Generating Facility is or becomes eligible during the Term of this Agreement. The Contract Energy Rate and Capacity Rate is not subject to adjustment or amendment if Supplier fails to receive any Tax Credits, or if such Tax Credits expire, are repealed, recaptured, or otherwise cease to apply to Supplier or the Generating Facility in whole or in part, or Supplier or its investors are otherwise unable to receive, retain, or otherwise benefit from such Tax Credits.

- 4.4 Taxes. Buyer is responsible for any Taxes imposed on or associated with the Delivered Amount after delivery or its receipt at the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Contract Energy or its delivery to the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall indemnify and hold harmless the other Party from and against Taxes imposed on the other Party as a result of a Party's actions or inactions and that otherwise would not have occurred in the absence of this Agreement.

5. **FACILITY CONSTRUCTION, OPERATIONS, AND MODIFICATIONS**

- 5.1 Construction of Generating Facility. Supplier is solely responsible for the planning, design, procurement, construction, start-up, testing, and licensing of the Generating Facility. Supplier shall construct the Generating Facility in accordance with Good Utility Practice and to ensure (a) that Supplier is capable of meeting its supply obligations over the Term and (b) that the Generating Facility is at all times qualified as, and in compliance with all requirements applicable to, a Qualified Facility. Attached as Exhibit 3.1A is the proposed single line diagram of the Generating Facility, the Interconnection Facilities, the Delivery Point and the location of the Meters. On or before the Commercial Operation Date, Supplier shall provide an updated version of Exhibit 3.1A to reflect the as-built configuration of the Generating Facility, Interconnection Facilities, Delivery Point, and Meters.
- 5.2 Performance of Project Milestones. Without limiting its obligations under any other provision of this Agreement, Supplier shall complete each Project Milestone set forth in Exhibit 5.2, and promptly following completion of each such Project Milestone shall deliver to Buyer such documentation specified in Exhibit 5.2 together with such additional documentation and supporting evidence reasonably requested by Buyer demonstrating the completion of the applicable Project Milestone. Each written certification provided by Supplier pursuant to Exhibit 5.2 must be executed by a Responsible Officer and be in a form reasonably acceptable to Buyer. Supplier shall notify Buyer promptly, and in any event within five days, following its determination, or its becoming aware of information that leads to a reasonable conclusion, that a Project Milestone will not be met by the applicable date designated in the Project Milestone Schedule, and if requested by Buyer, shall convene a meeting with Buyer to discuss the situation and possible remediation plans not later than 15 days following Buyer's request. Failure by Supplier to achieve a Project Milestone in accordance with the Project Milestone Schedule (other than the achievement of Commercial Operation Date by the exception of the Guaranteed Commercial Operation Date) does not constitute a breach of this Agreement.
- 5.3 Synchronization Date. At least 15 days, but not more than 20 days, prior to the Synchronization Date, Supplier shall provide written notice to Buyer's Contract Representative that Supplier is preparing to synchronize to the Distribution System and the date on which such synchronization will occur. At such time that Supplier determines that

the requirements for the Synchronization Date set forth in Article 5 and Exhibit 5.4A have been satisfied, Supplier shall provide Buyer with written certification thereof and the other supporting documents as set forth in Exhibit 5.4A. Buyer will have a reasonable period of time to review such evidence and raise any commercially reasonable objections to Supplier's satisfaction of any requirements for the achievement of the Synchronization Date.

5.4 Commercial Operation Date. Supplier shall provide written notice to Buyer of the Scheduled Commercial Operation Date within 10 days following the MPSC Approval Date; which Scheduled Commercial Operation Date may not be more than two years after the MPSC Approval Date. In the event Supplier designates a Scheduled Commercial Operation Date that is later than two years after the MPSC Approval Date, Buyer will have the right to terminate this Agreement in accordance with Section 5.7.2 as if Supplier had failed to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Supplier shall notify Buyer at least 10 days prior to the commencement of any performance and commissioning tests required by the balance of plant or any other necessary engineering, procurement, and construction agreements entered into by Supplier for the Generating Facility (collectively, the "EPC Contracts"); the panel supply agreement entered into by Supplier for the Generating Facility (the "MSA"); and the Interconnection Agreement [(including the Construction Agreement)]⁶. Buyer has the right to have its representatives present at and witness each such test. At such time that Supplier determines that the requirements for achieving Commercial Operation set forth in Exhibit 5.4A have been satisfied, Supplier shall provide Buyer with a written certificate of a Responsible Officer of Supplier in the form attached as Exhibit 5.4B representing that such requirements have been satisfied and including the supporting documents set forth in Exhibit 5.4A. Buyer will have a reasonable period of time to review such evidence and raise any objections to Supplier's satisfaction of any requirements for the achievement of the Commercial Operation Date. Once Buyer has received Supplier's written certificate and is satisfied that Supplier has satisfied the requirements for achieving Commercial Operation set forth in Exhibit 5.4A, Buyer will confirm the achievement of the Commercial Operation Date by executing the certificate provided by Supplier. If Buyer determines that the requirements for Commercial Operation were satisfied concurrently with or prior to its receipt of Supplier's written certification, then the Commercial Operation Date will be the date on which Buyer received Supplier's written certification, and if Buyer determines that the requirements for Commercial Operation were not so satisfied, the Commercial Operation Date will be the date thereafter on which Buyer determines that the final requirement for Commercial Operation was satisfied, as specified by Buyer in connection with its execution of Supplier's certificate.

5.5 Construction Updates and Reporting. Supplier shall on a monthly basis provide to Buyer in a written form acceptable to Buyer a report that includes the status in achieving Project Milestones, progress in obtaining any approvals or certificates in connection with achieving the Commercial Operation Date, and a discussion of any foreseeable disruptions or delays. The monthly project reports must be provided by no later than the 15th day of every month for the previous month. Upon request of Buyer, Supplier shall meet with

⁶ **Note to Form:** Include if applicable in connection with interconnection of the Generating Facility.

Buyer to review this data and any information related to Supplier's status in achieving the Project Milestone activities listed in the Project Milestone Schedule.

- 5.6 Planned Synchronization Date and Scheduled Commercial Operation Date. In the event that Supplier's construction, testing, or commissioning of the Generating Facility is delayed due to Force Majeure, Buyer's breach of its obligations under this Agreement, or any delay in the completion of the Interconnection Facilities not attributable to or caused by Supplier, the Planned Synchronization Date and Scheduled Commercial Operation Date will be extended on a day-for-day basis by the period during which the Force Majeure is continuing; Supplier's construction, testing, or commissioning is prevented due to such breach by Buyer; or such delay in the completion of the Interconnection Facilities, as applicable, except that in no event will the duration of such extension be greater than 180 days.

5.7 Delay Damages.

- 5.7.1 In the event Supplier fails to achieve Commercial Operation by the Scheduled Commercial Operation Date, then for each day thereafter until the date on which Supplier achieves Commercial Operation, Supplier shall pay to Buyer liquidated damages equal to (i) the Auction Clearing Price multiplied by (ii) the Contract Capacity of the Generating Facility multiplied by (iii) the Capacity Multiplier ("Delay Damages"). Buyer will invoice Supplier for accrued Delay Damages on a monthly basis, except that if the Synchronization Date has occurred, then Supplier shall include any Delay Damages payable by Supplier in respect of the month in which the Synchronization Date occurred in its invoice delivered pursuant to Section 4.1.1 with respect to such month.
- 5.7.2 In the event Supplier fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer will have the right to terminate this Agreement by providing written notice of such termination to Supplier, and Supplier shall pay to Buyer as liquidated damages the positive amount, if any, equal to the Development Security less the amount of Delay Damages paid.
- 5.7.3 The provisions of this Section 5.7 are in addition to, and not in lieu of, any of Buyer's rights or remedies under Article 21.

5.8 Modification.

- 5.8.1 Supplier shall not make any change or other modification to the Generating Facility, whether temporary or permanent, that (a) could (i) expose Buyer to any additional liability or increase its obligations under this Agreement; (ii) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any Person other than a Party; (iii) adversely affect the useful generating life of the Generating Facility; or (iv) result in a change to the Capacity Value of the Generating Facility, the Delivery Point, the major equipment (including the inverters, panels, SCADA protection, and control systems) at the Generating Facility, the direct current capacity of

the Generating Facility, the response to remote commands, the number of SCADA points, or the rate of production or delivery of Contract Energy or Energy; in each case without the prior written consent of Buyer, which may be withheld in its sole and absolute discretion, except that Supplier may replace any equipment at the Generating Facility where such replacement is necessary in response to damage, malfunction, wear and tear, or expiration of the commercial life of the equipment to be replaced, or (b) that is not permitted pursuant to the terms of the Interconnection Agreement. Without limiting the foregoing, Supplier shall provide written notice to Buyer of any temporary or permanent change to the performance or operating characteristics of the Generating Facility. Such notice must be provided as soon as is reasonably practicable under the circumstances, and in any event in advance of the implementation of such change, and must describe in reasonable detail the nature of such change and impact of such change, expected or otherwise, to the Generating Facility, including the rate of production and delivery of Contract Energy or Energy and any interconnection and transmission issues, and must include such additional information as may be required by Buyer. Any changes or other modifications to the Generating Facility (including any modification with respect to which Buyer has provided its consent or Supplier is required to provide prior notice) must be conducted by Supplier in accordance with Good Utility Practice, applicable terms of the Interconnection Agreement, and all applicable Laws and reliability criteria, as such may be amended from time to time.

- 5.8.2 Without limiting any applicable provisions of the Interconnection Agreement, if Buyer at any time determines that the design or operation of the Generation Facility creates any condition that requires modification to Buyer's systems or facilities, Buyer will notify Supplier of such condition and give the Supplier a reasonable opportunity to implement any actions necessary to correct the condition at Supplier's sole cost and expense. If the condition is not corrected by Supplier within a reasonable period of time, Buyer may, at its sole election (i) take such actions as Buyer determines are necessary or appropriate in order to correct the condition, (ii) disconnect or direct Supplier to curtail the output of the Generating Facility until actions necessary to correct the condition have been completed, or (iii) take any combination of the foregoing. If Buyer takes any actions to correct the condition, Supplier shall reimburse Buyer for any and all costs and expenses within five Business Days following Supplier's receipt of Buyer's invoice for such amounts. If disconnected, Buyer will reconnect the Generating Facility as soon as is reasonably practical after Supplier demonstrates to Buyer's satisfaction that the relevant conditions have been corrected.

5.9 Operation and Maintenance.

- 5.9.1 Supplier shall ensure that all Energy generated by the Generating Facility satisfies the Power Quality Standards and all other voltage, power factor, and other interconnection and parallel operating requirements specified in the

Interconnection Agreement, as applicable. Except as required pursuant to the Interconnection Agreement, Supplier shall not install any power factor correction equipment at the primary voltage level unless Buyer has provided its prior written consent to the installation of such equipment.

- 5.9.2 Supplier shall at all times operate, maintain and repair, or, if applicable, shall cause its Operator to operate, maintain and repair, the Generating Facility in accordance with Good Utility Practice and, without limiting the foregoing, in order to ensure that (a) Supplier is capable of meeting its supply obligations over the Term; (b) the Generating Facility is at all times qualified as a Qualifying Facility; and (c) Supplier is at all times in compliance with all requirements of a Qualifying Facility set forth in applicable Law. In connection with the foregoing, Supplier shall, and as applicable, shall cause the Operator, (i) to maintain records of all operations of the Generating Facility in accordance with Good Utility Practice, (ii) to provide to Buyer, on request, copies of any regularly prepared operations and maintenance status reports of the Generating Facility that Supplier provides to MISO or Supplier's Lenders, (iii) to follow such regulations, directions and procedures of the Transmission Provider, Distribution Provider, MISO, NERC and any applicable Governmental Authority to protect and prevent the Transmission System and Distribution System from experiencing any negative impacts resulting from the operation of the Generating Facility and to otherwise cause the Generating Facility to be operated consistent with all applicable NERC, MISO, and Transmission Provider or Distribution Provider requirements (including applicable requirements under the Interconnection Agreement), and (iv) to cause all Energy generated by the Generating Facility to meet the Power Quality Standards. Each Party shall use all reasonable efforts to avoid any interference with the other's operations.
- 5.9.3 If a representative of the Operator or Supplier identifies an unsafe condition at the Site or with respect to the Generating Facility at any time during the course of performing any inspection of or maintenance at, or while otherwise present at, the Site or the Generating Facility, Supplier shall or shall cause the Operator to promptly provide Buyer with notice of such unsafe condition and the actions being taken and to be taken in order to remedy such unsafe condition. Supplier shall, or shall cause the Operator to, promptly implement appropriate hazard protection measures, including by placing appropriate signage, following the identification of any unsafe condition, and shall maintain such hazard protection measures until such time as Supplier or Operator has corrected the unsafe condition. In addition to the foregoing, Supplier shall at all times maintain at the Site and the Generating Facility, appropriate warning placards and other signage in accordance with Good Utility Practice. Any unsafe conditions at the Site or the Generating Facility may be designated as an Emergency by Buyer.

- 5.9.4 Supplier shall perform such generator testing of the Generating Facility as is necessary or as Buyer may request in order to comply with MISO Tariff or Distribution Provider, as applicable, requirements.
- 5.9.5 Supplier shall, and shall cause the Operator to, comply with all current and future NERC Reliability Standards applicable to either or both Generator Owners and Generator Operators, in each case as they pertain to the Generating Facility, including critical infrastructure protection standards.
- 5.9.6 Following the Commercial Operation Date, Supplier shall:
- 5.9.6.1 Devise and implement, or cause the Operator to devise and implement, an operations and maintenance plan, or implement an existing plan, that includes the status of the Generating Facility and each of the major components thereof in order to maintain such equipment in accordance with Good Utility Practice (the “Operations and Maintenance Plan”). Such Operations and Maintenance Plan must (i) include Supplier’s plan to maintain facilities built on site to support communications and control using Good Utility Practice, (ii) provide for the physical and cyber security of the Generating Facility and its related systems, and (ii) if applicable, be consistent with the requirements of any Financing agreement in place as of such date. Supplier shall keep, or cause the Operator to keep, all records with respect to inspections, maintenance, and repairs of the Generating Facility. The Operations and Maintenance Plan and all records associated therewith must be available for inspection by Buyer at the Generating Facility or at Supplier’s offices during Supplier’s regular business hours upon reasonable notice.
 - 5.9.6.2 If requested by Buyer, at a frequency not to exceed once per Contract Year, provide Buyer with a written report in a form reasonably acceptable to Buyer containing a detailed description regarding the ongoing operations of the Generating Facility during such Contract Year, including the status of the operations of the Generating Facility or any component thereof, any equipment or other operational or maintenance failure, any defects or other issues and any repairs, and any replacements or other remediation provided or to be provided therefor;
 - 5.9.6.3 Provide administrative and periodic reporting, as requested by Buyer at a frequency not to exceed once per Contract Year, including (a) safety records that include, without limitation, Occupational Safety and Health Administration recordable and non-recordable incidents, Site safety meeting information, and other data reasonably requested by Buyer; (b) operational reports on various aspects of the Generating Facility, including performance, capacity

factor, availability, weather, and generation data to confirm that the requirements of this Agreement have been met, which reports shall be in forms reasonably acceptable to Buyer; and (c) quality assurance and quality control activities.

5.9.6.4 Provide written notice to Buyer describing in reasonable detail any hazardous conditions that develop with or otherwise exist at the Generating Facility, including failure or improper operation of the protective relaying and communications equipment, in each case as soon as is practicable following the occurrence thereof.

5.9.6.5 Provide written notice to Buyer describing in reasonable detail any actual or attempted breach or compromise of the physical or cyber security of the Generating Facility or its related systems, in each case as soon as is practicable following the occurrence thereof.

5.10 Operation and Maintenance Agreement. Supplier shall provide Buyer with a complete copy of the operations and maintenance agreement for the Generating Facility as soon as practicable after the execution thereof, but in no event later than 30 days prior to the Commercial Operation Date. Supplier shall ensure that such agreement requires the Operator to operate and maintain the Generating Facility in accordance with the terms hereof. Contemporaneously with the provision of such agreement(s), Supplier shall also provide a certified copy of a certificate warranting that the Operator is a corporation, limited liability company or partnership in good standing with, and qualified to business in, the State of Michigan.

5.11 Generating Facility Contracts.

5.11.1 Within 30 days after the MPSC Approval Date, Supplier shall deliver to Buyer a written certification executed by a Responsible Officer of Supplier certifying that the following major contracts governing the design and construction of the Generating Facility and the ability of Supplier to deliver Contract Energy to Buyer at the Delivery Point have been entered into and are in full force and effect: contracts for the manufacture, procurement or supply, delivery, engineering, construction and installation of generating (including inverters and tracking systems), step-up transformation equipment, and transmission equipment (including the MSA and EPC Contracts); real property contracts covering the entire Site, including easement, crossing, and other agreements necessary for the interconnection of the Facility; and applicable electric transmission service and/or interconnection agreements (collectively, the “Major Contracts”).

5.11.2 Prior to the execution of any Material Contract, Supplier shall provide Buyer with sufficient information for Buyer to be reasonably assured that Supplier has selected financially responsible vendors and contractors as part of the Generating Facility construction process.

- 5.11.3 Upon demand made by Buyer at any time, Supplier shall provide Buyer with documentation reasonably acceptable to Buyer evidencing that Supplier has the financial capability to construct and operate the Generating Facility in accordance with the requirements of this Agreement and the Material Contracts.

6. **REVENUE METERING REQUIREMENTS**

- 6.1 **Meters.** Buyer will provide, install, own, operate and maintain all Meters, or if otherwise required by the Interconnection Agreement, Buyer will have the right to install, own, operate, and maintain such additional Meters as may be permitted pursuant to the terms of the Interconnection Agreement. The Meters will be used for quantity measurements under this Agreement and must meet all applicable requirements of MISO and the Transmission Provider or Distribution Provider, as applicable. Where applicable, separate metering of Standby Service may be required to accurately meter the Generating Facility load. Such separate metering must be bi-directional and must be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. Buyer may install a dedicated dial-up voice-grade circuit for Buyer to access the billing meter. In addition to the foregoing, Buyer has the right to install such additional metering equipment, and to make such changes to any metering equipment and any metering requirements, at the Generating Facility, in each case as it may determine is necessary or appropriate in connection with this Agreement.
- 6.2 **Location.** Meters will be installed in equipment provided by Buyer, or as otherwise reasonably determined by Buyer to effectuate this Agreement. If the Meters are located on the low voltage side of the transformer(s), metered values may be reduced to account for actual transformer losses in accordance with the manufacturer's specifications if such losses are not metered. In addition, if Meters are not located at the Delivery Point, then for purposes of calculating the Delivered Amount, metered values will be adjusted to account for losses, as calculated by Buyer, between the location of the Meters and the Delivery Point.
- 6.3 **Non-Interference.** Neither Party shall undertake any action that may interfere with the operation of the Meters. A Party shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters by such Party.
- 6.4 **Metering Costs.** Supplier is responsible for all costs and expenses associated with the installation, testing, maintenance, and operation of the Meters and other equipment installed by Buyer at the Generating Facility, and Buyer may periodically invoice Supplier for such costs and expenses incurred by Buyer.
- 6.5 **Meter Testing and Metering Accuracy.** Buyer is responsible for testing of the Meters. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer will repair and recalibrate or replace the Meters, and will adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and 90 days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest

prior test and calibration of the Meters; except that the adjustment period may not exceed 90 days. If adjusted payments are required, payments will be based upon the Parties' best estimate of the Delivered Amount and agreed upon within 30 days after the date on which the inaccuracy was rectified. In such event, the Parties' adjusted payments will be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount the dispute shall be resolved in accordance with Article 17.

- 6.6 Failed Meters. If the Meters fail to register, payments due to Supplier for Contract Energy will be based upon Buyer's estimate of the Delivered Amount for the lesser of the period in which the inaccuracy existed and 90 days. If the period in which the inaccuracy existed cannot be determined, adjusted payments will be made for a period equal to one-half of the elapsed time since the latest prior test, except that the adjustment period may not exceed 90 days. In such event, the Parties' estimated payments will be in full satisfaction of payments due hereunder.
- 6.7 Site Access. In addition to, but without limiting, any rights of access to the Generating Facility and the Site granted under any site access or other agreement between Supplier and DTE Electric Company, whether in its capacity as Buyer, Distribution Provider, or otherwise, Buyer has the right to access the Site and the Generating Facility at any time for the purpose of reading, inspecting, testing, and otherwise maintaining Buyer's Meters and other equipment and to perform such other inspections of the Site and the Generating Facility as Buyer may determine are appropriate in connection with the performance of this Agreement. In furtherance of the foregoing, Supplier shall at its own expense take such actions as are necessary to maintain continuous safe access to the Site and the Generating Facility, including by providing Buyer with keys, passcodes, and other information necessary to exercise such right of access; performing snow removal; providing off-road parking facilities; performing applicable maintenance necessary to maintain safe access roads, gates, and parking facilities; and taking such other actions as are necessary for Buyer and its representatives to have safe access to the site. Buyer shall cause its representatives to observe while at the Site, such reasonable environmental, health, and safety precautions and policies as Supplier may require and that have been communicated to Buyer and the applicable representatives.

7. **EMERGENCY AND CURTAILMENT**

- 7.1 Generation Requirements. Supplier shall promptly comply with any applicable requirements or instructions of any Governmental Authority, NERC, MISO, or the Transmission Provider or Distribution Provider, as applicable, regarding the reduced or increased generation of the Generating Facility, whether in response to an Emergency or otherwise. If Buyer is assessed Penalties due to Supplier's failure to comply with reduced or increased generation order, Supplier shall reimburse Buyer for any and all costs (including interest and other transaction costs) associated with such Penalties.
- 7.2 Notification. Supplier shall provide prompt oral and written notification of any Emergency to the Operating Representative of Buyer. If requested by Buyer, Supplier shall provide a description in reasonable detail of the Emergency and any steps employed to cure it.

- 7.3 Action. In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid or mitigate injury, danger, damage or loss to its own equipment and facilities, or to expedite restoration of service. The Party taking such action shall give the other Party prior notice, if practicable, before taking any action.
- 7.4 Outage Coordination. In the event of an Emergency, if and when Buyer requests Supplier not to institute a Planned Outage of the Generating Facility, Supplier agrees to take all commercially reasonable steps to avoid instituting the Planned Outage until such time as the condition of the Emergency has passed.
- 7.5 Curtailments. Buyer may immediately suspend purchases from the Supplier and curtail or disconnect (or direct Supplier to curtail or disconnect, as applicable) the Generating Facility: (i) if Supplier has failed to comply with any material term of this Agreement, including Sections 5.8.2, 5.9.1, 5.9.2, or 5.9.4 of this Agreement, or an Event of Default has occurred with respect to Supplier, and in each case the failure or Event of Default is continuing; (ii) during an Emergency, including abnormal circuit configurations or isolated operation of the Supplier's generation; (iii) if hazardous conditions develop with or otherwise exist at the Generating Facility, including failure or improper operation of the protective relaying and communications equipment; (iv) if the Transmission Provider or Distribution Provider is required to facilitate system maintenance, system construction, or other activities related to the prudent or safe operation of the Transmission System or Distribution System, as applicable; (v) if there is a breach of physical or cyber security with respect to the Generating Facility; or (vi) if Buyer's available and dispatched generating units are operating at minimum load ("light-load conditions") either (x) when Buyer's system load, less generation regulating margin, is lower than the sum of the minimum operating levels of all of the Buyer's base load units (non-cycling) that are available and operating, or are expected to be operating, during the next on-peak period expected to occur during the next 24-hour period or (y) as declared by MISO or the Transmission Provider, if applicable or (vii) if the Generating Facility produces Energy in excess of the Generating Facility Capacity when averaged over a two minute period pursuant to the Interconnection Agreement. With respect to any curtailment under this Agreement, Supplier shall curtail deliveries of Energy, in whole or in part and in any quantity and duration specified by Buyer, immediately upon notice through Buyer's SCADA system or by any other reasonable means selected by Buyer, except that with respect to a curtailment that occurs as a result of an Emergency, Buyer shall rescind such curtailment instruction as soon as is reasonably practicable once the Emergency is resolved. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any Person.

8. **PLANNED AND FORCED OUTAGES**

- 8.1 Planned Outages. Starting at least 30 days prior to the Commercial Operation Date, Supplier shall provide to Buyer a written schedule of Planned Outages (including maintenance outages) for the next 24 months, and shall thereafter on a monthly basis provide Buyer with an updated schedule for the upcoming 24 month period. The schedule provided by Supplier must be in the format requested by Buyer and must include a

reasonable description of each proposed Planned Outage, including its anticipated duration, the portion of the Generating Facility affected, the purpose of such Planned Outage, and such other information as Buyer may reasonably request. Supplier shall provide Buyer with reasonable advance notice of any change in the Planned Outage schedule or a change in the start date or the end date of any Planned Outage. Buyer has the right to direct that Supplier modify to the dates or duration (or both) of any Planned Outage with respect to the Generating Facility, and Supplier shall use commercially reasonable efforts to accommodate any such modification. Supplier shall input Planned Outages to Buyer's electronic scheduling system or by such other system as Buyer may direct. Supplier shall not modify the Planned Outage schedule without Buyer's prior approval. Supplier shall not start any Planned Outage at the Generating Facility without providing notice to Buyer's Operating Representative five Business Days prior to the start of such Planned Outage.

- 8.2 Mitigation. Supplier shall use commercially reasonable efforts to minimize the impact of any Planned Outage, including by minimizing the portion of the installed of the Generating Facility subject to a Planned Outage at any time, and unless required in order to comply with any warranty applicable to the Generating Facility, Supplier shall not schedule a Planned Outage during the months of June through September.
- 8.3 Forced Outage. Supplier shall promptly, and in any event within 30 minutes following the occurrence thereof, provide Buyer with notice of any Forced Outage, including the amount of the Capacity of the Generating Facility that is not available because of such Forced Outage and the expected return date and time of such Capacity. Initial notice of a Forced Outage must be provided to Buyer's Operating Representative. Supplier shall update such report as necessary to advise Buyer of changed circumstances, and with respect to any continuing or anticipated Forced Outages, by no later than 5:00 am EPT through Buyer's scheduling system (or such other system as Buyer may direct) for the next seven days. Supplier shall in writing confirm any oral notice of a Forced Outage as soon as practicable following such notice.
- 8.4 Day-Ahead Schedule. By no later than 5:00 am EPT on each day, Supplier shall provide Buyer with Day-Ahead Schedules for the next seven Operating Days in accordance with the procedures established by Buyer for the submission thereof, as may be modified from Buyer from time to time.

9. **DATA COMMUNICATION AND TECHNOLOGY REQUIREMENTS**

- 9.1 Equipment. At least 30 days prior to the Synchronization Date, Supplier shall, at its expense, install (and shall thereafter maintain) all necessary equipment to allow the Generating Facility to receive and respond, in compliance with DNP3 Application Note AN2013-001 (DNP3 Profile for Advanced PV Generation and Storage), to control signals sent by Buyer's SCADA system by the Commercial Operation Date. Supplier shall make all necessary repairs or replacements within two days after receipt of notice from Buyer of any (i) inoperable telecommunications path; (ii) inoperable software; or (iii) faulty instrumentation. In the event that Supplier reasonably determines that such repair is expected to take longer than two days to complete, Supplier shall provide Buyer with notice

of such delay, including the reason for the delay and an estimated completion time. Buyer has the right to disconnect or direct Supplier to curtail the output of the Generating Facility during any period with respect to which the Generating Facility is unable to either or both receive or respond to controls consistent with DNP3 standards sent by Buyer's SCADA system. If applicable, Buyer will reconnect the Generating Facility as soon as is reasonably practical after Supplier demonstrates to Buyer's satisfaction that the Generating Facility is again capable of reliably receiving and responding, in accordance with DNP3 standards, to signals sent by Buyer's SCADA system.

- 9.2 External Communications Interface. The External Communications Interface, and the data provided at the External Communications Interface provided for data exchange between the Generating Facility and Buyer, will accommodate and conform to the protocol of EPRI/DNP3.org's AN2013-001 standard, or its successor, for process, statistical, historical, control, and descriptive information. Supplier shall make all data categorized as mandatory within AN2013-001 standard, or its successor, available to Buyer at the External Communications Interface.

10. REPORTS AND OTHER COMMUNICATIONS

- 10.1 Generator Availability Data System (GADS) Performance Data. Supplier shall collect performance and event data associated with the Generating Facility and shall report such data to Buyer upon Buyer's request.
- 10.2 Operations Log. Without duplication of the requirements of Section 5.9.6.2, Supplier shall maintain an operations log, which must include the Delivered Amount for each hour, unplanned maintenance outages and Planned Outages, circuit breaker trip operations, partial deratings of equipment, and any other significant event or information related to the operation of the Generating Facility. The operations log must be available for inspection by Buyer at the Generating Facility upon reasonable advance request, and Supplier shall make the data that supports the log available on a real time basis by remote access to Buyer, if Buyer acquires the necessary equipment and software license to process the data by remote access.
- 10.3 Operations and Maintenance Plan. At least 30 days prior to the Commercial Operation Date and thereafter at least 30 days prior to the start of each Contract Year, provide Buyer with a copy of the Operations and Maintenance Plan and associated budget for the Generating Facility for the upcoming Contract Year (including, for the first Contract Year, the period following the Commercial Operation Date) evidencing Supplier's ability to meet its obligations under this Agreement, its Financing, and under each Material Contract, in each case as they may arise.

11. COMPLIANCE

- 11.1 Compliance with Laws. Each Party shall comply with all relevant Laws and shall, at its sole cost and expense, maintain in full force and effect all relevant permits, authorizations, licenses and other authorizations material to the maintenance of its facilities and the

performance of obligations under this Agreement. Each Party and its representative shall comply with all relevant requirements of MISO, the Transmission Provider, the Distribution Provider, NERC and each Governmental Authority to ensure the safety of its employees and the public.

- 11.2 Good Utility Practice. Buyer and Supplier shall perform, or cause to be performed, their obligations under this Agreement in all material respects in accordance with Good Utility Practice.
- 11.3 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facility is in violation of Laws that relate to Supplier or the operation or maintenance of the Generating Facility and could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.
- 11.4 Notification of QF Status. No later than 30 days prior to the Synchronization Date, Supplier shall deliver to Buyer a written certification executed by a Responsible Officer of Supplier certifying that the Generating Facility is a QF and is in compliance with all applicable regulatory requirements for generating, selling and delivering Product to Buyer, including applicable provisions of the Federal Power Act, NERC standards, FERC regulations, and the MISO Tariff, together with such supporting documentation as is necessary to enable Buyer to verify the certifications set forth in such certificate. Supplier shall notify Buyer, as soon as practicable, of any changes in the status of the Generating Facility as set forth in such certificate.

12. APPROVALS

- 12.1 Condition Precedent. Unless Buyer waives its right to terminate this Agreement pursuant to Section 12.3, each Party's performance of its respective obligations under this Agreement is subject to Buyer obtaining the MPSC approval as described in Section 12.2.
- 12.2 MPSC Approval. Within 60 days following the Effective Date, Buyer shall submit this Agreement to the MPSC for approval consistent with MCL Sections 460.6j, 460.6v and any other applicable statutory requirements.
- 12.3 Failure to Obtain Approval; Conditional or Denial of Approval and Future Disallowance.
 - 12.3.1 If (a) the MPSC fails to take action granting its approval or acceptance of this Agreement pursuant to Section 12.2 in an order that is effective, final, and no longer subject to appeal on or prior to [_____] [____], 20[____]⁷ or (b) issues an order denying Buyer's application for approval of this Agreement and Buyer's requested cost recovery mechanism as set forth in such application in its entirety, then this Agreement shall terminate and cease to be of any force or effect as of

⁷ **Note to Form:** Date to be specified prior to execution.

such date, in the case of clause (a) or as of the date of such order, in the case of clause (b).

- 12.3.2 If the MPSC has ruled in an order that Buyer will not be permitted complete recovery from its customers of the capacity and energy charges to be paid pursuant to Sections 3 and 4, then Buyer shall have the right to adjust the charges to be paid by Buyer under Sections 3 and 4 to reflect the charges which the MPSC indicates Buyer can recover from its customers, except that any such adjustment shall be effective no earlier than the date of such MPSC order. Pending appellate review of such order and final determination of the charges under this Agreement that may be recovered by Buyer from its customers, the amounts not paid to the Supplier due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the Supplier. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination.
- 12.3.3 Supplier shall refund to Buyer any portions of the capacity and energy charges paid by Buyer to Supplier under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer's sole option, Buyer shall offset said amounts against amounts owed Supplier by Buyer as provided in Section 4.
- 12.3.4 Notwithstanding the foregoing, Supplier shall have the right to terminate this Agreement without further liability at any time following a disallowance order up to 60 days following final resolution of any appeal of or collateral challenge to such order by giving Buyer 30 days' notice of such termination.
- 12.3.5 Buyer shall not seek a Disallowance Order and shall use good faith, commercially reasonable efforts to oppose any proposal to disallow costs included in this Agreement. Nothing in this Agreement shall constitute a waiver of any rights Supplier may have to appeal or collaterally challenge a Disallowance Order as a violation of Supplier's rights or as otherwise unlawful.
- 12.3.6 Buyer will not be liable to Supplier for damages or any other amount in connection with the termination of this Agreement pursuant to Section 12.3.1 or Section 12.3.4.
- 12.3.7 The provisions of this Section 12.3 control over any conflicting provisions of this Agreement.
- 12.4 Cooperation. Each Party agrees to notify the other Party of any significant developments in obtaining any approval in connection with achieving Commercial Operation, including MPSC approval. Each Party shall use reasonable efforts to obtain such required approvals

and shall exercise due diligence and shall act in good faith to cooperate with and assist the other Party in acquiring each approval necessary to effectuate this Agreement.

- 12.5 Intervention. At the request of Buyer, Supplier shall at its sole cost and expense (a) timely file a petition for leave to intervene in the MPSC proceeding related to the approval of this Agreement, (b) retain counsel to represent Supplier in such proceeding, and (c) actively support the regulatory approval process.
- 12.6 Policy Change. If due to any change in Law occurring after the Effective Date, including the repeal of or any relevant amendment to the Public Utility Regulatory Policies Act or any modification of any applicable MPSC requirement, Buyer is no longer required to purchase power from generating facilities comparable to the Generating Facility, then Buyer will have the right to terminate this Agreement at any time following the effectiveness of such change in Law upon no less than 30 days' prior written notice to Supplier and without liability to Supplier (other than for obligations that accrued prior to such termination).

13. CREDITWORTHINESS AND SECURITY

13.1 Development Security.

- 13.1.1 Supplier shall provide to Buyer as security for the performance of Supplier's obligations hereunder, Credit Support in an amount equal to \$5,000 per MW_{AC} of the Contract Capacity (the "Development Security"), which Credit Support will support Supplier's obligations under this Agreement prior to the achievement of the Commercial Operation Date.
- 13.1.2 Supplier shall post the Development Security within three Business Days after the Effective Date and shall thereafter maintain the Development Security in effect until the applicable date determined by reference to Section 13.1.3. Supplier shall replenish the amount of Development Security applied by Buyer to Supplier's obligations under this Agreement within three Business Days following such application.
- 13.1.3 Any portion of the Development Security not applied to the obligations of Supplier under this Agreement will be released to Supplier within 15 Business Days following the earlier of (a) the date on which no obligations of Supplier remain outstanding following termination of this Agreement in accordance with its terms; and (b) the date on which Supplier has posted the Operating Security to Buyer. With the prior written consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 13.2.

13.2 Operating Security.

- 13.2.1 Supplier shall provide to Buyer as security for the performance of Supplier's obligations hereunder, Credit Support in an amount equal determined pursuant

to Exhibit 2 (the “Operating Security”), which Credit Support will support Supplier’s obligations under this Agreement from and after the achievement of the Commercial Operation Date.

- 13.2.2 If Supplier selects a Letter of Credit, One-Time Escrow Payment or Surety Bond for the form of Credit Support in Exhibit 2, Supplier shall post the Operating Security by no later than three Business Days prior to the day on which the Generating Facility achieves Commercial Operation and shall thereafter maintain the Operating Security in effect until the applicable date determined by reference to Section 13.2.3. If Supplier selects a Monthly Escrow Payment for the form of Credit Support in Exhibit 2, Buyer shall retain escrow payments in accordance with Section 13.6. Supplier shall replenish the any amount of Operating Security applied by Buyer to Supplier’s obligations under this Agreement within three Business Days following such application.
- 13.2.3 Any portion of the Operating Security not applied to the obligations of Supplier under this Agreement will be released to Supplier within 15 Business Days following the date on which no obligations of Supplier remain outstanding following termination of this Agreement in accordance with its terms.
- 13.3 Draw and Application. If at any time a default or Event of Default with respect to the Supplier has occurred, or if an early termination date in respect of this Agreement has occurred or been designated by Buyer as a result of an Event of Default with respect to Supplier, then, and in addition to the other rights and remedies set forth in the Agreement, Buyer will have the right exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under applicable law with respect to Credit Support in the form of Escrow held by Buyer; (ii) any rights and remedies available to Buyer under the terms of any Letter of Credit provided for its benefit, (iii) any rights and remedies available to Buyer under the Terms of the Surety Bond provided for its benefit ; and (iv) the right to setoff any present or future amounts payable by Supplier under this Agreement against any Credit Support held by Buyer (or any obligation of Buyer to transfer that Credit Support to Supplier).
- 13.4 Credit Support in the Form of a Letter of Credit.
 - 13.4.1 With respect to any Letter of Credit posted by Supplier as Development Security or Operating Security, Supplier shall replace the Letter of Credit with alternative Credit Support in an amount equal to the amount available to be drawn under such Letter of Credit (x) on or before the date that is 30 Business Days prior to the expiration date of such Letter of Credit and (y) within one Business Day following the occurrence of a Letter of Credit Default with respect to such Letter of Credit.
 - 13.4.2 Each Letter of Credit must specify that Buyer has the right to draw the full amount available under such Letter of Credit, at Buyer’s sole discretion (1) if an Event of Default has occurred and is continuing with respect to Supplier or this Agreement has terminated in connection with the occurrence of an Event

of Default with respect to Supplier and (2) if a Letter of Credit Default has occurred with respect to the Letter of Credit or 30 or fewer Business Days remain until the expiration date of the Letter of Credit and Supplier has failed to replace the Letter of Credit with alternative Credit Support as required by this Agreement.

- 13.4.3 All costs and expenses associated with establishing, maintaining, renewing, amending, or terminating a Letter of Credit are the responsibility of Supplier, and Supplier shall within five Business Days following receipt of Buyer's invoice reimburse Buyer for any such costs and expenses (including, without limitation, fees and expenses of Buyer's external legal counsel) incurred by Buyer in connection with same.
- 13.5 Credit Support in the Form of One-Time Escrow Payment If Supplier selects the One-Time Escrow Payment for the form of Credit Support as identified in Exhibit 2, Buyer shall establish an Escrow Account with the administrative costs incurred by that account to be borne by the Supplier, and shall maintain in such account cash in an amount equal to the required amount of Operating Security. Interest on cash provided in accordance with this Section 13.5 shall accrue at the rate established for the Escrow Account.
- 13.6 Credit Support in the Form of Monthly Escrow Payment If Supplier selects the Monthly Escrow Payment for the form of Credit Support as identified in Exhibit 2, Buyer shall establish an Escrow Account with the administrative costs incurred by that account to be borne by the Supplier. Buyer will retain or deposit to the Escrow Account for each Billing Period an amount equal to the monthly payment determined in Exhibit 13.6. Interest on cash provided in accordance with this Section 13.6 shall accrue at the rate established for the Escrow Account.
- 13.7 Credit Support in the Form of a Surety Bond If Supplier selects the Surety Bond form of Credit Support in Exhibit 13.7 – Form of Surety Bond, all Surety Bonds provided by Supplier in accordance with this Agreement shall be subject to the following provisions: Unless otherwise agreed to in writing by the Parties, each Surety Bond shall be maintained for the benefit of Buyer. Supplier shall (i) if necessary to maintain a Surety Bond throughout the term of this Agreement, renew or cause the renewal of each outstanding Surety Bond on a timely basis as provided in the relevant Surety Bond, ii) if the institution that issued an outstanding Surety Bond has indicated its intent not to renew such Surety Bond, provide either a substitute Surety Bond, or a Letter of Credit in accordance with Section 13, in each case at least thirty (30) Business Days prior to the expiration of the outstanding Surety Bond, iii) replace a Surety Bond in full in the event such Surety Bond is drawn upon to satisfy the provisions of Section 13 herein, and (iv) if an institution issuing a Surety Bond shall fail to honor Buyer's properly documented request to draw on an outstanding Surety Bond, provide cash within one (1) Business Day after such refusal. **If Supplier fails to provide Buyer with a replacement Surety Bond, Letter of Credit, or any other security in an equal amount and in a form acceptable to Buyer thirty 30 days prior to the effective termination date of the Surety Bond, Seller shall cause the institution that issued the Surety Bond to either rescind its cancellation notice by registered or certified**

mail, or pay Buyer the penal sum of the Surety Bond less any amounts previously paid hereunder by the institution that issued the Surety Bond or Supplier.

- 13.7 No Buyer Security. Buyer does not have, and will not have, any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments, or provide any other financial assurances, in any form whatsoever, and Supplier will not have reasonable grounds for insecurity with respect to Buyer and hereby waives any and all rights it may have, including rights at Law or otherwise (including Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines), to require Buyer to provide any financial assurances in respect of its obligations under this Agreement.

14. **INDEMNIFICATION**

- 14.1 Supplier Indemnification. Supplier shall indemnify, defend and hold Buyer and its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, attributable to or resulting from the maintenance, possession or operation of the Plant, except those caused solely by the negligence or willful misconduct of Buyer. Without limiting the foregoing, Supplier shall at Buyer's request, defend at Supplier's expense any suit or proceeding brought against Buyer for any of the above-named reasons; provided that Buyer notifies Supplier in writing of any such claim and promptly tenders to Supplier the control and defense of any such claim with Supplier's choice of counsel. Buyer shall cooperate with Supplier, at Supplier's expense, in defending such claim and Buyer may join in defense with counsel of its choice at its own expense. Buyer may not settle any such claim without Supplier's prior written consent. Supplier's indemnification shall not include damage and injuries occurring on Buyer's own system after the Point of Delivery, unless the damage to or injuries occurring on such system are caused by the negligence or willful misconduct of Supplier.

- 14.2 Buyer Indemnification. Buyer shall indemnify, defend and hold the Supplier, its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on Buyer's own system after the Point of Delivery, except those caused solely by the negligence or willful misconduct of Supplier. Without limiting the foregoing, Buyer shall at Supplier's request, defend at Buyer's expense any suit or proceeding brought against Supplier for any of the above-named reasons; provided that Supplier notifies Buyer in writing of any such claim and promptly tenders to Buyer the control and defense of any such claim with Buyer's choice of counsel. Supplier shall cooperate with Buyer, at Buyer's expense, in defending such claim and Supplier may join in defense with counsel of its choice at its own expense. Supplier may not settle any such claim without Buyer's prior written consent.

15. **LIMITATION OF LIABILITY**

- 15.1 Responsibility for Damages. Notwithstanding anything under Article 14 to the contrary and except where caused by Buyer's sole gross negligence, as between the Parties, Supplier is solely responsible for all physical damage to or destruction of the property, equipment

and/or facilities owned by it (including the Generating Facility), and Supplier hereby releases Buyer from any reimbursement for such damage or destruction.

15.2 Limitation on Damages.

- 15.2.1 THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.
- 15.2.2 WITH RESPECT TO THE BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. SUBJECT TO THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES RELATED TO, ARISING OUT OF, OR RESULTING FROM PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT.
- 15.2.3 FOR PURPOSES OF CLARIFICATION, DELAY DAMAGES, PAYMENTS MADE BY EITHER PARTY TO SATISFY PENALTIES, AND PAYMENTS OWING UNDER SECTIONS 3.10, 4.4, 5.7, OR 24.6 ARE NOT CONSIDERED SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS SECTION 15.2. IN ADDITION, THIS LIMITATION ON DAMAGES DOES NOT APPLY WITH RESPECT TO (A) CLAIMS WITH RESPECT TO WHICH THE APPLICABLE PARTY HAS AN INDEMNIFICATION OBLIGATION UNDER ARTICLE 14, (B) LIABILITY ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY OR (C) DAMAGES FOR RISKS FOR WHICH THE APPLICABLE PARTY IS REQUIRED TO BE INSURED PURSUANT TO THIS AGREEMENT.
- 15.2.4 TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER ARE LIQUIDATED, INCLUDING ANY DAMAGES UNDER SECTION 3.10 OR SECTION 5.7, THE PARTIES

ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

15.3 Survival. The provisions of this Article 15 survive any termination of this Agreement.

16. **FORCE MAJEURE**

16.1 Excuse. Subject to Section 16.4, neither Party shall be considered in default under this Agreement for any failure in the performance of its obligations, and will be excused in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product), if the performance of such obligations is prevented due to an event of Force Majeure.

16.2 Force Majeure. “Force Majeure” means, subject to Section 16.3, any of the following enumerated events that occurs subsequent to the Effective Date and before the termination or expiration of the Term of this Agreement, but only to the extent that (a) such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (b) such event is caused by factors beyond that Party’s reasonable control, (c) 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 prevent, avoid, mitigate or overcome such event or consequences and (d) such Party has satisfied the requirements of Section 16.4:

16.2.1 Acts of God such as hurricanes, floods, tornados, 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 Site, the most recent 10-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for the vicinity of the Generating Facility;

16.2.2 Sabotage, destruction, or vandalism of, or other damage to, facilities, equipment, or systems relating to the performance by the affected Party of its obligations under this Agreement;

16.2.3 War, riot, acts of a public enemy or other civil disturbance; or

16.2.4 Subject to Section 16.3, strike, walkout, lockout or other significant labor dispute.

16.3 Exclusions. Force Majeure does not include, and may not be based on, any of the following:

16.3.1 Economic hardship of either Party, including Supplier’s failure to obtain Financing for any reason;

- 16.3.2 The non-availability of the renewable resource to generate electricity from the Generating Facility, including as a result of climactic and weather conditions of any type or magnitude, the development of structures, or other changes in environmental conditions in the area of the Generating Facility;
- 16.3.3 A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, except to the extent it is caused by an event that qualifies under Sections 16.2.3 or 16.2.4;
- 16.3.4 Supplier's failure to satisfy a Project Milestone, except to the extent it is caused by an event that qualifies as Force Majeure under Section 16.2;
- 16.3.5 With respect to any strike, walkout, lockout or other labor disputes and labor matters: (i) any labor shortage affecting Supplier or any of its subcontractors, unless caused by a Force Majeure, (ii) any labor disturbances, disputes, boycotts or strikes (whether primary or secondary in nature) involving Supplier or any of its subcontractors taking place at a facility of Supplier or any of its subcontractors; except that, the exception provided in the preceding clause (ii) will not apply when any such labor disturbance, dispute, boycott or strike (x) is a national action or (y) extends beyond the geographic regional area of the State of Michigan (for labor disputes, disturbances, boycotts or strikes taking place at the Generating Facility) or extends beyond the geographic regional area of a facility of Supplier or any of its subcontractors (for labor disputes, disturbances, boycotts or strikes taking place at a facility of Supplier or any of its subcontractors);
- 16.3.6 Mechanical or equipment failure, unless caused by an event that qualifies as Force Majeure;
- 16.3.7 Climatic and weather conditions, other than those particular climatic or weather conditions specifically identified in Section 16.2.1 above;
- 16.3.8 Supplier's inability to obtain, any delay in Supplier's ability to obtain, and any change in market conditions that causes a change in price of, any labor or material or equipment required to develop, construct, commission, test, own, operate, or maintain the Generating Facility or generate or deliver the Products therefrom, including as a result of the imposition of any tariffs, quotas, or other trade restrictions with respect thereto;
- 16.3.9 Any restrictions on transportation attributable to seasonal weight restrictions on the road system throughout the State of Michigan (which vary by county), are in effect for the county(ies) where the Generating Facility is located;
- 16.3.10 Supplier's ability to sell Products to a third party at a price greater than the Product price or Buyer's ability to purchase Products from a third party at a price less than the Product price;
- 16.3.11 The use of the Site by any third party;

- 16.3.12 A failure of performance of any third party, including any Person providing electric interconnection or transmission service, except to the extent that such failure was caused by an event that would otherwise be Force Majeure (and for purposes of the definition of Force Majeure, as if such third party were a Party); or
 - 16.3.13 Any action or inaction of a Governmental Authority, including the enactment of any changes to the Internal Revenue Code.
- 16.4 Conditions. A Party may rely on a claim of Force Majeure to excuse its performance only to the extent that, and for so long as, such Party:
- 16.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
 - 16.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - 16.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being corrected or cured using commercially reasonable efforts; except 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;
 - 16.4.4 Exercises all commercially reasonable efforts to mitigate or limit damages to the other Party; and
 - 16.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.
- 16.5 Termination for Force Majeure. Subject to Section 21.2.4, in the event that a Party is prevented for performing its material obligations under this Agreement due to Force Majeure for a period of at least 180 consecutive days, the other Party may by written notice to the affected Party terminate this agreement without liability to the affected Party (other than for obligations that accrued prior to such termination).

17. **DISPUTE RESOLUTION**

17.1 Disputes.

- 17.1.1 Except as otherwise provided in this Agreement, in the event a dispute arises between the Parties regarding the application or interpretation of any provision of this Agreement (a “Dispute”), the Party alleging the dispute shall promptly notify the other Party the dispute in writing. If the Parties shall have failed to resolve the dispute within 10 days after delivery of such written notice, each

Party shall, within five days after receipt of a written demand from the other Party to do so, direct a representative who has authority to settle the Dispute and who is at a higher level of management than such Party's Contract Representative to confer in good faith within five days with a similar representative from the other Party to resolve the dispute. Should the Parties be unable to resolve the dispute to their mutual satisfaction within 15 days (collectively, the "Settlement Period"), each Party will have the right to take such actions and pursue such rights and remedies as may be available to it under applicable Law in order to pursue the resolution of such dispute.

- 17.1.2 Unless stated otherwise herein, all disputes shall be resolved in accordance with the dispute resolution procedures set forth in this Article 17. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive relief from a court of competent jurisdiction, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo and (b) nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party. Despite such actions, the Parties shall continue to participate in good faith in the procedures specified in this Article 17.

- 17.2 Right of Termination. The requirements of this Article 17 will not be deemed a waiver of any right of termination relating to the Agreement.

18. NATURE OF OBLIGATIONS

- 18.1 Relationship of the Parties. The provisions of this Agreement will not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 18.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

19. RIGHT OF FIRST OFFER

- 19.1 Right of First Offer. Supplier (or any direct or indirect parent of Supplier) shall not during the Term, or if this Agreement is terminated due to Supplier's Event of Default or failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date, for a period of two years following such termination, (a) sell or transfer the Generating Facility (or any material portion thereof), including as part of a sale-leaseback financing, to a Person other than an Affiliate (other than pursuant to a Financing in which Supplier retains operational control of the Generating Facility and remains obligated under this Agreement) or (b) effect or permit a Change in Control, in each case, unless prior to such sale, transfer or Change in Control, Supplier provides written notice of such sale, transfer or Change in Control to Buyer and provides Buyer with the right to negotiate in good faith with Supplier and any applicable Affiliate for a period of not less than 90 days, unless otherwise agreed to by Buyer, the terms of the sale or transfer of the Generating Facility, or membership

interests with respect to such Change in Control, to Buyer or its designee on an exclusive basis. If Buyer desires to enter into such negotiation, Buyer must notify Supplier of such decision within 30 days after Buyer's receipt of Supplier's notice. Supplier will provide in a timely manner, all information regarding the Generating Facility that is customary or reasonably requested, and allow Buyer and its representatives with access to the Generating Facility, to allow Buyer to perform due diligence and to negotiate in good faith for the purchase of the Generating Facility or membership interests, as applicable.

- 19.2 Subsequent Limitations. Unless Buyer and Supplier or its relevant Affiliate reach agreement on the terms of sale or transfer to Buyer following Buyer's election to negotiate with Supplier and its relevant Affiliate, Supplier must comply with Article 20 in any assignment or delegation of Supplier's rights, interests or obligations herein to a purchaser of the Generating Facility or membership interests, as applicable.
- 19.3 Renewal of Right of First Offer. In the event that Supplier does not execute an agreement, subject to receipt of appropriate regulatory approvals, to sell or transfer the Generating Facility or membership interests, as applicable, to any Person in accordance with this Article 19 within 270 days of the date that Supplier provided Buyer with written notice pursuant to Section 19.1, Supplier (or any direct or indirect parent of Supplier) shall then only sell or transfer the Generating Facility or membership interests, as applicable, after providing Buyer with written notice and the opportunity to negotiate again in accordance with Section 19.1.

20. ASSIGNMENT

- 20.1 Buyer Assignment. Buyer may assign this Agreement without Supplier's consent, if such assignment is made: (a) to any successor to Buyer that is a public utility regulated as to rates and service by the MPSC pursuant to applicable Law; (b) to a legally authorized governmental or quasi-governmental agency charged with providing retail electric service in Michigan; (c) as otherwise required by Law or by operation of Law; or (d) to an Affiliate of Buyer that is reasonably expected to be capable of performing Buyer's obligations under this Agreement. With respect to any assignment of this Agreement by Buyer, if such assignee has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's and agrees in writing to assume the obligations of Buyer under this Agreement, then upon such assignment and assumption by the assignee, Buyer will be released from its obligations under this Agreement.
- 20.2 Supplier Assignment. Supplier may, without relieving itself from liability hereunder, but subject to Section 20.7, transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds hereof, or any part of its ownership interest in the Generating Facility, in connection with any Financing of the Generating Facility.
- 20.3 Mutual Prohibition. Except as stated above, neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by either Party, including with respect to Supplier, by operation of Law, without the prior written consent of the other Party, which

consent shall not be unreasonably withheld, conditioned or delayed. Any assignment of this Agreement in violation of the foregoing shall be null and void *ab initio*.

- 20.4 Transfers of Ownership. Subject to Article 19 and Section 20.2, during the Term, Supplier shall not sell, transfer, assign or otherwise dispose of its ownership interest in the Generating Facility (or any part of the Generating Facility) to any Person unless (a) Supplier has received Buyer's consent to a transfer of this Agreement and the consent of each counterparty to a Major Contract (if required) to the transfer of such Major Contract to such third-party and (b) Supplier and such third party have entered into an assignment and assumption agreement, in form and substance satisfactory to Buyer, Supplier and such third-party, pursuant to which such third-party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement, and the Major Contracts, and (c) concurrently with the effectiveness of such Assignment, has satisfied the obligations then applicable to Supplier under Article 13.
- 20.5 Assignee Obligations. Supplier shall procure and deliver to Buyer an undertaking, enforceable by Buyer, from each Person that possesses a security interest in the Generating Facility to the effect that, if such party forecloses on its security interest, (a) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement and the Major Contracts (except as provided in Section 20.7.1), and (b) it will not sell, transfer or otherwise dispose of its interest in the Generating Facility to any Person absent an agreement from such Person to assume Supplier's obligations under and otherwise be bound by the terms of this Agreement.
- 20.6 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 20.7 Collateral Assignment by Supplier. If Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders in accordance with Section 20.2, Supplier must provide at least 30 days' prior written notice to Buyer of such potential transfer, pledge, encumbrance or assignment, including the address of Supplier's potential Lenders. In connection with any Financing of the Generating Facility mentioned in the preceding sentence, Buyer will make reasonable efforts to provide such consents to assignments, certifications, representations, and information as may be reasonably requested by Supplier or Supplier's Lenders in connection with the Financing, except that in responding to any such request, Buyer will have no obligation to provide any consent, or enter into any agreement, that Buyer determines may adversely affect any of its rights, benefits, risks or obligations under this Agreement. Supplier shall reimburse Buyer for the costs and expenses (including, without limitation, the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Supplier or Supplier's Lenders, in each case within five Business Days following Supplier's receipt of Buyer's invoice. Without limiting the foregoing limitation of Buyer's obligations, any such consent and agreement must provide that:
- 20.7.1 If Supplier's Lenders (or their designee identified in writing to Buyer) take possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), then Supplier's

Lenders (or such designee) will assume all of Supplier's obligations under this Agreement other than monetary obligations of Supplier under this Agreement that are due and owing to Buyer as of the assumption date; except that if prior to such assumption, Buyer advises Supplier's Lenders that Buyer will require that Supplier's Lenders (or their designee) cure (or cause to be cured) any Supplier Event of Default hereunder existing as of the possession date (irrespective of when such Event of Default occurred) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement in respect of such Event of Default, then Supplier's Lenders (or their designee) at their option, and in their sole discretion, may elect to either: (a) cause such Event of Default to be cured, or (b) not assume this Agreement; and

20.7.2 If (a) Supplier's Lenders elect to sell or transfer the Generating Facility (after directly or indirectly taking possession of, or title to, the Generating Facility) and this Agreement is assumed pursuant to Section 20.7.1 in connection therewith or (b) subject to Section 20.5(b), the sale of the Generating Facility otherwise occurs through the actions of Supplier's Lenders (excluding a foreclosure or similar sale where the purchaser is a third-party), then, as a condition of such sale or transfer, (i) Supplier's Lenders must cause the buyer or transferee of the Generating Facility to assume all of Supplier's obligations arising under this Agreement (including the assumption of any monetary obligations of Supplier outstanding on the date of such sale or transfer), (ii) all Events of Default must be cured, (iii) such assignment and assumption of this Agreement by the buyer or transferee of the Generating Facility must comply with the requirements of Section 20.4, and (iv) the buyer or transferee of the Generating Facility (A) have creditworthiness that is equal to or superior to the creditworthiness of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, (B) have, or contract with an operator who has, experience in operating renewable energy generating facilities that is equivalent or superior to that of the current operator of the Generating Facility, as determined by Buyer in its reasonable discretion, and (C) must be otherwise acceptable to Buyer in its reasonable discretion.

20.8 Change in Control. Any Change in Control of Supplier (whether voluntary or by operation of law) requires the prior written consent of Buyer, which may be subject to such terms and conditions as Buyer may deem, in its sole and absolute discretion, are necessary to ensure that Buyer will not be adversely affected due to the occurrence of such Change in Control. Supplier shall not undergo a Change in Control without Buyer's prior written consent.

21. **DEFAULT AND REMEDIES; TERMINATION**

21.1 Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article 16, an event of default ("Event of Default") will be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:

- 21.1.1 The failure by the Party to comply with any material obligations imposed upon it under this Agreement (other than any obligation separately identified as an Event of Default) unless such failure has been resolved to the satisfaction of the other Party within 30 days following the failing Party's receipt of written notice of such failure;
 - 21.1.2 The failure by the Party to make any payment under this Agreement when due if such payment is not made within 10 Business Days following the failing Party's receipt of written notice of such failure;
 - 21.1.3 Any representation or warranty made by the Party in connection with this Agreement proves to have been incorrect or misleading in any material respect when made or repeated;
 - 21.1.4 The Party (a) becomes insolvent or bankrupt, (b) makes an assignment for the benefit of creditors, (c) is unable to pay its debts as they become due or admits in writing its inability to pay its debts (d) commences insolvency, receivership, reorganization or bankruptcy proceedings, or (e) has insolvency, receivership, reorganization or bankruptcy proceedings commenced against it, and either (x) such proceedings are not terminated, stayed or dismissed within 60 days after the commencement thereof, or (y) such Party takes an action indicating its consent or approval thereof or its acquiescence thereto; or
 - 21.1.5 The Party assigns this Agreement other than in accordance with the provisions of Article 20.
- 21.2 Supplier Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article 16, an Event of Default shall be deemed to have occurred with respect to Supplier upon the occurrence of one or more of the following events:
- 21.2.1 The Generating Facility (i) at any time prior to qualification as a QF does not satisfy the requirements for qualification as a QF, or (ii) at any time after receiving qualification as a QF, fails to qualify as a QF;
 - 21.2.2 The Capacity of the Generating Facility is at any time greater than 550 kW_{AC};
 - 21.2.3 Based on information provided by Supplier or otherwise available to Buyer, Buyer determines that the Generating Facility is unlikely to achieve Commercial Operation prior to the expiration of any applicable distribution or transmission feasibility study conducted in connection with the proposed interconnection of the Generating Facility;
 - 21.2.4 An event of default (however defined or described) has occurred with respect to Supplier under the Interconnection Agreement [or the Construction Agreement] or any other event or condition has occurred with respect to Supplier that would, with the passage of time, the giving of notice, or both,

permit a party other than Supplier to terminate the Interconnection Agreement [or the Construction Agreement];⁸

- 21.2.5 An Abandonment Event occurs with respect to the Generating Facility or any portion of the Site and such failure has not been resolved to the reasonable satisfaction of Buyer within 10 days following the occurrence of such Abandonment Event;
 - 21.2.6 Supplier fails to design, construct, install, operate, maintain or repair the Generating Facility in accordance with Good Utility Practice or fails to maintain or comply with any permit, approval, consent, or other authorization necessary for the construction, operation, or maintenance of the Generating Facility;
 - 21.2.7 An event of default (however defined or described) has occurred with respect to Supplier under any Material Contract or any other event or condition has occurred with respect to Supplier that would, with the passage of time, the giving of notice, or both, permit Supplier's counterparty thereto to terminate such Material Contract;
 - 21.2.8 Supplier fails to comply with its obligations under Article 13 and such failure has not been resolved to the reasonable satisfaction of Buyer within 10 days following the occurrence of such failure;
 - 21.2.9 A Change in Control occurs with respect to Supplier other than in accordance with the requirements of Article 20 or unless Buyer's has provided its consent to such Change in Control, any direct or indirect owner of Supplier enters into any agreement that upon the closing of the transaction(s) contemplated therein would result in a Change in Control; or
 - 21.2.10 Supplier fails to comply with the provisions of Article 24.
- 21.3 Remedies. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may, subject to Article 15, (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party designating a date not earlier than the effective date of such notice as the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Law; or (v) exercise any combination of the foregoing. In addition to the foregoing, Buyer may suspend performance of its obligations under this Agreement during the continuance of any event or condition affecting Supplier that, after the lapse of any required notice or cure period, would be an Event of Default with respect to Supplier.

⁸ **Note to Form:** Include if applicable in connection with the interconnection of the Generating Facility.

- 21.4 Effect of Termination; Survival of Obligations. The termination of this Agreement for any reason will not release either Party from any applicable provisions of this Agreement with respect to:
- 21.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement;
 - 21.4.2 Credit support obligations under Article 13, which survive until all obligations of the applicable Party are fully performed;
 - 21.4.3 Indemnity obligations contained in Article 14, which survive to the full extent of the statute of limitations period applicable to the relevant claim;
 - 21.4.4 Limitation of liability provisions contained in Article 15;
 - 21.4.5 For a period of one year after the termination date, the right to submit a payment dispute pursuant to Article 17;
 - 21.4.6 The resolution of any dispute submitted pursuant to Article 17 prior to, or resulting from, termination;
 - 21.4.7 The provisions of Article 19, which survive for the periods specified therein;
 - 21.4.8 For a period of one year after the termination date, the confidentiality provisions contained in Article 25; and
 - 21.4.9 Provisions addressing governing law; and
 - 21.4.10 Any other provision of this Agreement that contemplates performance by a Party following termination.

22. **REPRESENTATIONS AND WARRANTIES OF SUPPLIER**

Supplier represents and warrants the following to Buyer as of the Effective Date, the date of achievement for each Project Milestone and the beginning of each Contract Year, as applicable:

- 22.1 Organization. Supplier is a [*indicate type of business entity*] duly organized, validly existing and in good standing under the laws of the [*indicate the state of formation*] and has all requisite power and authority to own, lease and/or operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business as a [*indicate type of business entity*] and is in good standing in Michigan and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

- 22.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all necessary [*indicate type of business entity*] actions necessary to authorize the execution, delivery and performance of this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 22.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Supplier does not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority that has not previously been made or obtained, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 22.4 Regulation as a Utility. Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 22.5 Availability of Funds. Supplier has sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto, including as are necessary to develop, construct, operate, and maintain the Generating Facility.
- 22.6 Permits, Authorizations, Licenses, Grants, etc. Supplier, or an Affiliate thereof, has applied or will apply for or, if then required has received, the consents, permits, approvals, authorizations, licenses and grants listed in Exhibit 22.6, and no other consents, permits, approvals, authorizations, licenses or grants, etc. are required by Supplier to construct and operate the Generating Facility and fulfill Supplier's obligations under this Agreement.
- 22.7 Related Agreements. Supplier has entered into or will enter into all necessary and material agreements as listed in Exhibit 22.7 related to Supplier's obligations under this Agreement, and no other material agreements are required for Supplier to perform its obligations under this Agreement.
- 22.8 Certification. The Generating Facility qualifies (or when made prior to Commercial Operation, will qualify on or prior to the Commercial Operation Date) as a Qualifying Facility and Supplier has been and is in compliance with all requirements of Law applicable thereto.

- 22.9 Title. Supplier owns all Product attributable to the Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third-party.
- 22.10 Generating Facility Site. Supplier either (a) owns the real property on which the Generating Facility is located or (b) has obtained the necessary rights to construct, own and operate the Generating Facility on such real property, throughout the Term.

23. **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants the following to Supplier as of the Effective Date, the date of achievement for each Project Milestone and the beginning of each Contract Year, as applicable:

- 23.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in Michigan and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 23.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a Party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 23.3 Consents and Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 23.3, the execution, delivery and performance of this Agreement by Buyer does not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings and notices which become applicable to Buyer as a result of specific regulatory status of Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged, which consents, approvals, authorizations, permits, filings and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to

any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

24. INSURANCE

- 24.1 General Requirements. Supplier shall maintain at all times during the Term, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If converted to an occurrence form policy, the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer. If written on a "claims made" basis, Supplier shall maintain the general/commercial liability policy in full force and effect for a period of no less than three years from the date of termination of this Agreement. Upon Supplier's receipt of any notice of cancellation or expiration, Supplier shall immediately provide notice thereof to Buyer.
- 24.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with (i) an insurer or eligible surplus lines insurer qualified to do business in the State of Michigan with, on a continuous basis, a financial strength rating of "A-" or better and from A.M. Best and that satisfies the requirements of A.M. Best financial size category "IX" or larger, and (ii) shall include provisions or endorsements:
- 24.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
 - 24.2.2 Stating that no cancellation or expiration of the policy shall be effective until 30 days have passed from the date notice thereof is actually received by Buyer; and
 - 24.2.3 Naming Buyer as an additional insured on the commercial general liability insurance policies of Supplier using additional insured endorsement satisfactory to Buyer; and
 - 24.2.4 Waving insurer's rights of subrogation against Buyer.
- 24.3 Certificates of Insurance. Within 30 days after the Effective Date, but in any event not later than 30 days prior to the Synchronization Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within 30 days after each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer at any time, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance must provide the following information:

- 24.3.1 The name of insurance company, policy number and expiration date;
 - 24.3.2 The coverage required and the limits on each, including the amount of deductibles, which must be for the account of Supplier maintaining such policy; and
 - 24.3.3 A statement indicating that Buyer must receive at least 30 days' prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy.
- 24.4 Inspection of Insurance Policies. Buyer has the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 24.5 Supplier's Minimum Insurance Requirements.
- 24.5.1 Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than \$1,000,000 per occurrence and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable.
 - 24.5.2 Commercial General Liability. Commercial General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least \$5,000,000 per occurrence and at least \$5,000,000 annual aggregate.
 - 24.5.3 Business Automobile Liability. Business Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least \$2,000,000 per occurrence and at least \$2,000,000 aggregate.
 - 24.5.4 Builder's Risk. Builder's Risk insurance shall be of the "all risk" type, shall be written in completed value form, and shall protect Supplier against risks of damage to buildings, structures, and materials and equipment that constitute part of the Generating Facility, whether on Site or in transit, unless transit is covered under a separate policy, including off-Site storage.
- 24.6 Failure to Comply. If Supplier fails to comply with the provisions of this Article 24, Supplier shall save harmless and indemnify Buyer from any direct and indirect loss and liability, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 24, in accordance with the indemnification provisions of Article 14.
- 24.7 Deductibles Provisions. Any deductible provisions of insurance required under this Article 24 shall be for the sole account of Supplier, and the amounts of such deductibles must be acceptable to Buyer in its discretion.

25. CONFIDENTIALITY

- 25.1 Confidential Information. “Confidential Information” means information provided by one Party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as “confidential” or “proprietary” or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information described in Section 25.3.
- 25.2 Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party’s similar information is treated within the Receiving Party’s organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party further agrees that it shall restrict disclosure of Confidential Information as follows:
- 25.2.1 The Receiving Party may disclose Confidential Information solely to (a) its agents, contractors and representatives as may be necessary to comply with and enforce the terms of this Agreement, (b) its Affiliates, shareholders, directors, officers, employees, third parties performing work related to this Agreement for such Receiving Party, advisors, consultants, actual and potential equity (including tax equity) investors and lenders (and their respective advisors, consultants and agents) and representatives as necessary, (c) any Governmental Authority in connection with seeking any required regulatory approval, (d) to the extent required by applicable Law, (e) in the case of Buyer only, potential transferees of Energy or Capacity and (f) potential assignees of this Agreement (together with their agents, advisors and representatives), as may be necessary in connection with any such assignment (which assignment or transfer must be in compliance with Article 20) in each case after advising those agents of their obligations under this Article 25.
- 25.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall if permitted and practicable under the circumstances, provide the Disclosing Party with prompt notice of such request or requirement in order to enable Disclosing Party to seek an appropriate protective order or other remedy and to consult with Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. Notwithstanding the foregoing, if Receiving Party is advised by its counsel that it is required to disclose the Confidential Information, the Receiving Party will:

- 25.2.2.1 Have the right to furnish that portion of the Confidential Information that the Receiving Party is advised by counsel is legally required; and
- 25.2.2.2 Shall use commercially reasonable efforts, at the expense of the Disclosing Party, to cause the Confidential Information so disclosed to be accorded confidential treatment.

Section 25.2.2 only applies to information disclosed as contemplated by Section 25.2.1. A Receiving Party will not be deemed to have violated this Section 25.2 if its officers and employees have discussions or other interactions with, or disclose information to, staff members of the MPSC, FERC or other regulatory bodies in which information about the Generating Facility and this Agreement is disclosed. The Receiving Party will endeavor to cause any such person to advise such staff members that information about the Generating Facility and this Agreement is confidential, but the Receiving Party will not be in breach of this Agreement if such staff members subsequently disclose such information.

25.3 Excluded Information. Confidential Information does not include the following:

- 25.3.1 Information that is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Article 25;
- 25.3.2 Information that was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party; and
- 25.3.3 Information that becomes available to the Receiving Party on a non-confidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose such information to the Receiving Party and the Receiving Party, exercising reasonable due diligence, should have known of such obligation.

25.4 Injunctive Relief Due to Breach. The Parties agree that remedies at Law may be inadequate to protect each other in the event of a breach of this Article 25, and the Receiving Party hereby in advance agrees that the Disclosing Party will be entitled to seek, without proof of actual damages, temporary, preliminary and permanent injunctive relief from any Governmental Authority restraining the Receiving Party from committing or continuing any breach of this Article 25.

25.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby, and a Party shall not issue any such public announcement, statement or other disclosure without having first received the written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed, except as may be required by Law. Supplier shall reasonably cooperate with Buyer regarding its educational, promotional, marketing, and other informational activities with respect to the Generating Facility, including by providing Buyer with reasonable

access to the Generating Facility for such activities. Notwithstanding the first sentence of this section, Buyer has the right to use information about the Generating Facility, including its location, capacity, and other factual data and images of the Generating Facility in connection with Buyer's educational, promotional, marketing, and other informational activities. It shall not be deemed a violation of this Article 25 to file this Agreement with the MPSC or FERC for approval as required by applicable Law.

26. **MISCELLANEOUS**

26.1 **Notices and Other Information.**

26.1.1 All notices and other communications hereunder must, unless expressly specified otherwise, be in writing and addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in Exhibit 26.1. A Party may update its information included in Exhibit 26.1, including its Contract Representative and Operating Representative, by providing written notice other Party in accordance with this Section 26.1. Any changes to Exhibit 26.1 do not constitute an amendment to this Agreement.

26.1.2 All notices or submittals required by this Agreement must be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, electronic mail or facsimile transmission. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 2:00 pm EPT, and if transmitted after that time, on the following Business Day; except that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice is effective upon such tender.

26.1.3 All oral notifications required under this Agreement must be made to the receiving Party's Operating Representative and must promptly be followed by notice as provided in the other provisions of this Section 26.1.

26.2 **Integration.** This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations, whether written or oral, by the Parties with respect to such subject matter.

26.3 **Counterparts.** This Agreement may be executed in one or more duplicate counterparts, each of which will be deemed an original and when taken together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in secured electronic format will be effective as delivery of a manually executed counterpart of this Agreement.

- 26.4 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign Law is deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise, and any such reference also means a reference to such Law as the same may be amended, modified, supplemented or restated and be in effect from time to time. The words “include,” “includes” and “including” in this Agreement are not limiting, and are deemed in all instances to be followed by the phrase “without limitation”. References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated and where the context requires, words, including capitalized terms, importing the singular includes the plural and vice versa. The words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. Whenever an event is to be performed by a particular date, or a period 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 must be performed, or the period will end, on the next succeeding Business Day. All accounting terms not specifically defined herein are to be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied. All references to a particular Person include such Person’s successors and permitted assigns, or in the case of a Governmental Authority, the successor to such Governmental Authority’s functions. All references herein to any contract (including this Agreement) or other agreement are to such contract or other agreement as amended and supplemented or modified.
- 26.5 Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor may they be used to aid in any manner in the construction of this Agreement.
- 26.6 Discontinued or Modified Index. If any index utilized herein is discontinued or substantially modified, then such index will be modified to the most appropriate available index, with appropriate basis changes to take into account any changes in the location of measurement.
- 26.7 Right to Review. Buyer and Supplier each have the right to review during normal business hours copies of the relevant books and records of the other Party at such Party’s home office to confirm the accuracy of such as they pertain to transactions under this Agreement, including but not limited to verification of information contained in invoices. The review must be consistent with standard business practices and must be preceded by reasonable notice to the other Party. Reasonable notice for a review of the previous month’s records is a minimum of five Business Days. If a review is requested of other than the previous month’s records, then notice of that request must be provided with a minimum of 14 Business Days’ notice by the requesting Party. The notice must specify the period to be covered by the review. The Party providing records may exercise its rights under Article 25 to protect the confidentiality of the records. Each Party will be responsible for its own costs and expenses in connection with any such review unless such review reveals that the reviewing Party made an overpayment to or received an underpayment from the

other Party, in which case the costs and expenses of such review will be the responsibility of the non-reviewing Party, and the non-reviewing Party shall pay such costs and expenses within five Business Days following receipt of the other Party's invoice.

- 26.8 Severability. If any essential provision of this Agreement is declared invalid in whole or in part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then a Party adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party 30 days' prior written notice of such termination. Concurrently with, and as a condition of, termination of this Agreement, the Parties shall enter into good faith negotiations to amend this Agreement to remedy the invalidated provision(s) or enter into a new agreement that reasonably preserves the rights, obligations and economic positions of the Parties under this Agreement in light of the invalidated provision(s). If the Parties cannot reach an agreement, they shall submit any disputed matters to the Michigan Public Service Commission for binding resolution. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right of termination.
- 26.9 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing or course of performance between the Parties constitutes a waiver of the rights of either Party under this Agreement. Any waiver will be effective only by a written instrument signed by the Party granting such waiver, and such does not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. Except as otherwise provided in this Agreement, the remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.
- 26.10 Amendments. All amendments to this Agreement must be mutually agreed upon by the Parties, produced in writing, and executed by an authorized representative of each Party in order to be effective. Buyer may submit an amendment to the MPSC, FERC, or other Governmental Authority as applicable, for filing, acceptance or approval, and, if such approval is required, any such amendment will not become effective unless and until such approval is received. If Buyer submits an amendment to the MPSC, FERC, or other Governmental Authority for approval or acceptance and such approval or acceptance is granted subject to any conditions or qualifications that Buyer, in its sole and absolute discretion, determines are not acceptable, then Buyer may without liability (other than for obligations incurred prior to terminations) terminate this Agreement at any time during the 90-day period that follows such the issuance of such approval or acceptance, by providing written notice of such termination to Supplier.
- 26.11 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.
- 26.12 Choice of Law. The terms and provisions of this Agreement are to be interpreted in accordance with the laws of the State of Michigan applicable to contracts made and to be

performed within the State of Michigan and without reference to the choice of law principles of the State of Michigan or any other state. The Parties mutually consent to the jurisdiction of the courts of the State of Michigan and of the Federal Courts in the Eastern District of Michigan, and hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in such Michigan state or federal court. Each Party irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Party at its address specified in or pursuant to the provisions of Section 26.1. Each Party agrees that a final judgment in any such action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section 26.12 affects the right of a Party to serve legal process in any other manner permitted by law or affect the right of such Party to bring any action or proceeding against the other Party or its property in the courts of any other jurisdiction.

- 26.13 Further Assurances. The Parties shall execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party, may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 26.14 Forward Contract. The Parties acknowledge and agree that (a) this Agreement constitutes a “forward contract” within the meaning of the Bankruptcy Code or a “swap agreement” within the meaning of the Bankruptcy Code; (b) each Party hereto is a “forward contract merchant” or a “swap participant” within the meaning of the Bankruptcy Code; (c) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (d) all transfers of eligible credit support or other performance assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (f) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.
- 26.15 No Third-Party Beneficiaries. Except with respect to the rights of the Indemnified Parties in Article 14, (a) nothing in this Agreement nor any action taken hereunder may be construed to create any duty, liability or standard of care to any third-party, (b) no third-party has any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first stated above.

BUYER:

DTE ELECTRIC COMPANY

By: _____

Name:

Title:

SUPPLIER:

[_____]

By: _____

Name:

Title

EXHIBIT 2

AGREEMENT PROVISIONS

CONTRACT CAPACITY: [] MW_{AC}

Applicable technology	Generating Facility Technology	Expected Capacity Multiplier (ECM)	Expected Capacity Value (ECV) (Contract Capacity x ECM) <small>Fill in value for applicable technology.</small>
<input type="checkbox"/>	Wind	0.16	
<input type="checkbox"/>	Solar	0.50	
<input type="checkbox"/>	Biomass	0.95	
<input type="checkbox"/>	Hydroelectric	0.63	
<input type="checkbox"/>	Landfill Gas	0.91	
<input type="checkbox"/>	Cogeneration	0.90	

TERM (Contract Years):

Applicable Term	Term (Contract Years)
<input type="checkbox"/>	5
<input type="checkbox"/>	10
<input type="checkbox"/>	15
<input type="checkbox"/>	20

RATES

☒ No Capacity Need or Short-Term Capacity Need

Contract Energy Rate (\$/MWh):

☒ Actual Day-Ahead LMP

or

☐ 5-year Forecasted On/Off-Peak Day-Ahead LMP followed by actual Day-Ahead LMP

Contract Year	On-Peak Day-Ahead LMP (\$/MWh)	Off-Peak Day-Ahead LMP (\$/MWh)
1		
2		
3		
4		
5		
6 through Term	Actual Day-Ahead LMP	

Contract Capacity Rate (\$/MW-day):

☒ PRA ACP for each applicable MISO Planning Year (currently June 1 through May 31)

RATES (continued)☐ Capacity Need**Contract Energy Rate (\$/MWh):**

Contract Year	BWEC Variable Cost Forecast (\$/MWh)
1	
2	
3	
4	
5	
6 through Term	BWEC Actual Variable Cost for the prior calendar year

Contract Capacity Rate (\$/MW-year):

BWEC Fixed Capacity Component

CREDIT SUPPORT

- ☐ Letter of Credit
- ☐ One-time Escrow Payment
- ☐ Monthly Escrow Payments
- ☐ Surety Bond

OPERATING SECURITY

Term	Operating Security Rate (\$/MW of ECV)	Operating Security (ECV x Operating Security Rate) Fill in total dollar value for applicable Term.
5	\$20,000	
10	\$60,000	
15	\$105,000	
20	\$125,000	

EXHIBIT 3.1A

**ONE-LINE DIAGRAM OF GENERATING FACILITY
AND
INTERCONNECTION FACILITIES**

One-line diagram:

See attached one-line diagram of the Generating Facility, which indicates the Interconnection Facilities, the Delivery Point, ownership and the location of Meters, which location must be reasonably satisfactory to Buyer. In accordance with Exhibit 5.4A, Supplier must deliver a final (as-built) version of this Exhibit 3.1A prior to or concurrently with the achievement of Commercial Operation.

EXHIBIT 3.1B

DESCRIPTION OF GENERATING FACILITY

1. Generating Facility:
2. Location: County, Michigan
2. Owner:
3. Proposed Operator:
4. Generating Facility Capacity: MW_{AC}
5. Contract Capacity: MW_{AC}
6. Narrative Describing Major Equipment:
7. Point of Interconnection / Delivery Point:

The ["Point of Interconnection"] ["Point of Delivery"]⁹ as such term is defined in the Interconnection Agreement
8. Map of Site showing anticipated locations of major equipment, Meters, and Delivery Point:

See attached
9. As built site drawing signed by a professional engineer licensed by the State of Michigan that shows the locations of major equipment, Meters, and Delivery Point

To be attached prior to or concurrently with the achievement of Commercial Operation

⁹ **Note to Form,:** Include as applicable based on the interconnection of the Generating Facility.

EXHIBIT 3.3

CAPACITY VALUE CALCULATION

The Capacity Value in any month is equal to the Contract Capacity multiplied by the Capacity Multiplier defined in the table below.

$$\text{Capacity Value} = \text{Contract Capacity} \times \text{Capacity Multiplier}$$

For purposes of the following table:

0 = Capacity Multiplier is equal to 0

E = If the Commercial Operation Date occurs by the Capacity Notification Date, the Capacity Multiplier is equal to the Expected Capacity Multiplier for the specific technology as defined in Exhibit 2, and if the Commercial Operation Date does not occur by the Capacity Notification Date, the Capacity Multiplier is equal to 0

P = Capacity Multiplier is equal to value used by MISO to convert the capacity of a generating facility to a Zonal Resource Credit.

	Cap.	1st Contract Year												2nd Contract Year												3rd Contract Year												
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
COD																																						
1st Contract Year	J	0	0	0	0	0	E	E	E	E	E	E	E	E	E	E	E	E	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	F	0	0	0	0	0	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	M	0	0	0	0	0	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	A	0	0	0	0	0	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	M	0	0	0	0	0	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	E ¹	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	J	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	J	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	
	S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	
	O	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	
	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
	D	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E

EXHIBIT 5.2

PROJECT MILESTONE SCHEDULE

Requirement	Required Completion Date:	Required Documentation and Supporting Evidence	Date Completed
Synchronization Date			
[Distribution Provider has completed its distribution interconnection study and has provided the study results and unexecuted Interconnection Agreement to Supplier [and the Construction Agreement has been executed and is in full force and effect]] [The Interconnection Agreement has been executed and is in full force and effect] ¹⁰	Effective Date	True, correct, and complete copy of the [Construction Agreement][distribution interconnection study results] ¹¹ and of the Interconnection Agreement	
Supplier has transferred the Development Security required by <u>Section 13.1</u>	5 Business Days after Effective Date	The Development Security	
All Major Contract are executed and in full force and effect	30 days after MPSC Approval Date	Written certificate as required pursuant to <u>Section 5.11.1</u>	
Supplier has provided full notice to proceed EPC Contracts for the Generating Facility and construction of the Generating Facility has commenced	[] [], 20[] ¹²	Written certification, together with a copy of the executed “Notice to Proceed” acknowledged by the construction contractor and documentation from qualified professionals indicating that physical work has begun on-site regarding the construction of the Generating Facility.	
Supplier has delivered to Buyer the certificates of insurance required by <u>Section 24.3</u>	30 days after Effective Date but no later than 30 days prior to the Synchronization Date	Certificates of insurance required by <u>Section 24.3</u>	
Supplier has installed all data communication and technology equipment required pursuant to <u>Section 9.1</u>	30 days prior to Synchronization Date	Written certification, together with documentation evidencing that all necessary equipment has been delivered to and installed at the Generating Facility and that the Generating Facility will be able to receive and	

¹⁰ **Note to Form:** Include as applicable based on interconnection of the Generating Facility.

¹¹ **Note to Form:** Include as applicable based on interconnection of the Generating Facility.

¹² **Note to Form:** Parties to specify required date prior to execution.

		respond to DNP3 control signals sent by Buyer's SCADA system	
Generating Facility is qualified as a QF	30 days prior to Synchronization Date	Written certification that Supplier has filed for and obtained QF status under applicable Law as required by <u>Section 11.4</u>	
Supplier has received FERC market-based rate authority	30 days prior to Synchronization Date	Written certification that Supplier has filed for and obtained authority to make wholesale sales of capacity, energy and ancillary services at market-based rates Law as required by <u>Section 11.4</u>	
Installation and testing of the Meters is complete	[] [], 20[] ¹³	Not applicable	
Supplier has provided Buyer with written notice of the expected Synchronization Date as required by <u>Section 5.6</u>	15 days but not more than 20 days prior to the Synchronization Date	Written notice from Supplier as required by <u>Section 5.6</u>	
Supplier has provided Buyer with written notice of, and coordinated with Buyer for the delivery of, Test Energy as required under <u>Section 3.2</u>	15 days prior to the first delivery of Test Energy	Written notice from Supplier as required by <u>Section 3.2</u>	
Synchronization Date	Planned Synchronization Date	Buyer's Meters record Energy being delivered from the Generating Facility to Buyer, and Supplier certifies to Buyer in writing that the Generating Facility has satisfied the definition of Synchronization Date	

Commercial Operation Date			
Supplier has obtained all permits, licenses, easements and approvals to construct and operate the Generating Facility	[] [], 20[] ¹⁴	Written documentation and decisions from the appropriate agencies indicating hearings during which such approvals were granted, together with final written decisions from those agencies in which the approval was provided	
Supplier has delivered the initial Planned Outage schedule required by <u>Section 8.1</u>	30 days prior to Commercial Operation Date	The initial Planned Outage schedule	
Supplier has delivered a complete copy of the operations and maintenance agreement as required under <u>Section 5.10</u>	30 days prior to Commercial Operation Date	A true, correct, and complete copy of the operations and maintenance agreement for the Generating Facility	

¹³ **Note to Form:** Parties to specify required date prior to execution.

¹⁴ **Note to Form:** Parties to specify required date prior to execution.

Supplier has delivered a copy of the initial Operations and Maintenance Plan and budget as required under <u>Section 10.3</u>	30 days prior to Commercial Operation Date	A true, correct, and complete copy of the initial Operations and Maintenance Plan and budget	
Supplier has provided notice to Buyer of commencement of commissioning tests as required by <u>Section 5.4</u>	10 days prior to commencement of commissioning tests	Written notice from Supplier as required by <u>Section 5.4</u>	
Supplier has delivered the Operating Security required under <u>Section 13.2</u>	3 Business Days prior to the Commercial Operation Date	The Operating Security	

EXHIBIT 5.4A

CONDITIONS TO COMMERCIAL OPERATION

The requirements that must be satisfied to achieve Commercial Operation of the Generating Facility are as follows:

1. All of the permits, approvals, authorizations, and consents necessary for the operation and maintenance of the Generating Facility ("Supplier's Required Permits and Approvals") have been obtained and are in full force and effect, all applicable appeals periods regarding such Supplier's Required Permits and Approvals have expired and no appeal of such Supplier's Required Permits is pending, and such Supplier's Required Permits and Approvals are not subject to any unsatisfied conditions that could reasonably be expected to allow for material modification or revocation.

Required Documentation: A list of Supplier's Required Permits and Approvals, including information specifying with respect to each such Supplier's Required Permit and Approval, (i) the date of issuance, (ii) the term, (iii) the issuing or granting authority, (iv) the purpose or nature thereof, and (v) any material conditions or limitations thereunder that may adversely affect the performance by Supplier of its obligations under this Agreement, and if requested by Buyer, a copy of each Supplier's Required Permit and Approval.

2. The Generating Facility has been constructed and tested and is being operated in accordance with the EPC Contracts, the MSA, and the Interconnection Agreement. The Generating Facility is available to commence normal operations in accordance with the Major Contract and all applicable manufacturers' warranties.

Required Documentation: The final (as-built) version of Exhibit 3.1A and site drawing required by Exhibit 3.1B, together with such other documentation and supporting evidence as Buyer may reasonably request.

3. "Substantial Completion" (as such term is defined in the EPC Contracts or the MSA, as applicable) of the panels, inverters, and other significant systems comprising the Generating Facility has occurred, as evidenced by the certifications required to be furnished to us by the EPC Contractor in connection with the Commissioning of such panels and inverters, true and correct copies of each of which are attached hereto.

Required Documentation: A copy of each certification furnished by the EPC Contractors in connection with the foregoing.

4. All facilities necessary for the interconnection of the Generating Facility to the Distribution System have been commissioned have been interconnected and synchronized with the facilities of the interconnecting utility in accordance with such utility's interconnection requirements. The Interconnection Agreement is in full force and effect, all requirements for parallel operation thereunder have been satisfied, and Supplier is not in breach of any of its obligations under such Interconnection Agreement.

Required Documentation: A copy of any certificate or other notice provided or received by Supplier in connection with the foregoing, together with such other documentation and supporting evidence as Buyer may reasonably request.

5. Supplier has received an independent engineer's written certification stating that the Generating Facility has been completed in all material respects (except punch list items that do not materially and adversely affect the safe and reliable operation, performance, or maintenance of the Generating Facility).

Required Documentation: A copy of the certification provided by the independent engineer.

6. Supplier is in compliance with the Standard Offer Power Purchase Agreement in all material respects.

Required Documentation: Such documentation and other supporting evidence as Buyer may reasonably request.

7. Supplier has demonstrated the reliability of the Generating Facility's communications systems and External Communications Interface, and the Generating Facility is capable of receiving and reacting to signals from Buyer's SCADA system in accordance with DNP3.

Required Documentation: Such documentation and other supporting evidence as Buyer may reasonably request.

8. Supplier has satisfied each Project Milestone set forth in Exhibit 5.2.

Required Documentation: All documentation that Supplier is required to provide to Buyer in connection with the satisfaction of the Project Milestones.

EXHIBIT 5.4B

FORM OF COD CERTIFICATION

[SUPPLIER'S LETTERHEAD]

DTE Electric Company
[Address for notices]
Attention: [_____]

[_____, 20[___]

This Certificate is being delivered by the undersigned, [a][the] [officer title] of [*insert Supplier name*] ("Supplier"), pursuant to Section 5.4 of the Standard Offer Power Purchase Agreement, dated [_____] [___], 20[___] (the "PPA"), between Supplier and DTE Electric Company ("Buyer"). Capitalized terms used herein have the meanings set forth in the PPA.

The undersigned hereby certifies to Buyer as of the date hereof (the "Commercial Operation Date"), that:

1. The undersigned is the duly [elected][appointed] and authorized [officer title]¹⁵ of Supplier and is authorized and empowered to deliver this certificate to Buyer.

2. All of the permits, approvals, authorizations, and consents necessary for the operation and maintenance of the Generating Facility ("Supplier's Required Permits and Approvals") have been obtained and are in full force and effect, all applicable appeals periods regarding such Supplier's Required Permits and Approvals have expired and no appeal of such Supplier's Required Permits is pending, and such Supplier's Required Permits and Approvals are not subject to any unsatisfied conditions that could reasonably be expected to allow for material modification or revocation. A list of Supplier's Required Permits and Approvals, including information specifying with respect to each such Supplier's Required Permit and Approval, (i) the date of issuance, (ii) the term, (iii) the issuing or granting authority, (iv) the purpose or nature thereof, and (v) any material conditions or limitations thereunder that may adversely affect the performance by Supplier of its obligations under the PPA, and a copy of each Supplier's Required Permit and Approval requested by Buyer is attached as Annex A to this certificate.

3. The Generating Facility has been constructed and tested and is being operated in accordance with the EPC Contracts, the MSA, and the Interconnection Agreement. The Generating Facility is available to commence normal operations in accordance with the Major Contract and all applicable manufacturers' warranties. A final (as-built) version of Exhibit 3.1A to the PPA and site drawing required by Exhibit 3.1B, together with the other documentation and supporting evidence requested by Buyer in connection with the foregoing requirement, are attached as Annex B to this certificate.

¹⁵ **Note to Form:** Complete as appropriate based on organizational structure of Supplier.

4. “Substantial Completion” (as such term is defined in the EPC Contracts or the MSA, as applicable) of the panels, inverters, and other significant systems comprising the Generating Facility has occurred, as evidenced by the certifications required to be furnished to us by the EPC Contractor in connection with the Commissioning of such panels and inverters, true and correct copies of each of which are attached hereto. True, correct, and complete copies of each certification furnished by the EPC Contractors in connection with the foregoing requirement are attached as Annex C to this certificate.

5. All facilities necessary for the interconnection of the Generating Facility to the Distribution System have been commissioned have been interconnected and synchronized with the facilities of the interconnecting utility in accordance with such utility’s interconnection requirements. The Interconnection Agreement for the Generating Facility is in full force and effect and Supplier is not in breach of any of its obligations under such Interconnection Agreement. A copy of each certificate and other notice provided or received by Supplier in connection with the foregoing, together with such other documentation and supporting evidence requested by Buyer in connection with the foregoing requirement, is attached as Annex D to this certificate.

6. Supplier has received an independent engineer’s written certification stating that the Generating Facility has been completed in all material respects (except punch list items that do not materially and adversely affect the safe and reliable operation, performance, or maintenance of the Generating Facility). A true correct and complete copy of such certification is attached as Annex E to this certificate.

7. Supplier is in compliance with the PPA in all material respects. The documentation and other supporting evidence requested by Buyer in connection with the foregoing requirement is attached as Annex F to this certificate.

8. Supplier has demonstrated the reliability of the Generating Facility’s communications systems and External Communications Interface, and the Generating Facility is capable of receiving and reacting to signals from Buyer’s SCADA system. The documentation and other supporting evidence requested by Buyer in connection with the foregoing requirement is attached as Annex G to this certificate.

9. Supplier has satisfied each Project Milestone set forth in Exhibit 5.2 and has provided Buyer with all documentation required in connection with the satisfaction of such Project Milestones.

[SUPPLIER]

By: _____
Name:
Title:

By its execution of this certificate, Buyer acknowledges that Supplier has satisfied all requirements for the achievement of Commercial Operation as of the date specified below:

Commercial Operation Date: _____

DTE ELECTRIC COMPANY

By: _____

Name:

Title:

EXHIBIT 13.1A

IRREVOCABLE STAND-BY LETTER OF CREDIT

Letter of Credit, form of
(Specimen--SBLC)

NAME/ADDRESS OF (USA) CONFIRMING BANK [IF ISSUER IS FOREIGN]:
BENEFICIARY:

DTE Electric Company

[Address 1]

[Address 2]

[City, State, Zip]

Contact: [] Tel: []

REF: IRREVOCABLE STANDBY LETTER OF CREDIT NO. (REF. NO.)

We (the “**Issuing Bank**”) hereby establish our Irrevocable Non-Transferable Standby Letter of Credit (“**Credit**”) in your favor for the account of _____ (“**Applicant**”), for the aggregate amount not exceeding _____ United States Dollars (\$) (“**Available Amount**”), available to you (“**Beneficiary**”) at sight upon demand at our counters at [*specify location*] on or before the expiration hereof against presentation to us of the Beneficiary’s Sight Draft drawn on us, along with a signed and dated statement, with all blanks and necessary details filled in, referencing our Letter of Credit No. _____, stating the following:

“Applicant has failed to make a payment to us when due in the amount of USD _____ under the Standard Offer Power Purchase Agreement between Beneficiary and [] dated as of [], 20[], and [*Applicant’s Name*] (“**Applicant**”), which amount remains due and owing as of the date of this certificate. Accordingly, we hereby demand payment of USD _____ under the Credit.”

–OR–

“The Credit will expire on [*expiration date*], which date is thirty (30) days or less from the date of this drawing request, and we have not received from the Applicant replacement Credit Support in the amount and within the time period specified in the in the Standard Offer Power Purchase Agreement between Beneficiary and [] (the “**Applicant**”) dated as of [], 201[]. Accordingly, we hereby demand payment of the full amount available to be drawn under this Letter of Credit.”

–OR–

“A Letter of Credit Default, as defined in the Standard Offer Power Purchase Agreement between Beneficiary and [] (the “**Applicant**”) dated as of [], 20[] (the “**Agreement**”), has occurred with respect to the Credit and we did not receive from the Applicant

replacement Credit Support in the amount and within the time period specified in the Agreement. Accordingly, we hereby demand payment of the full amount available to be drawn under this Letter of Credit.”

This Credit shall expire on [*insert date that is one year from the date of issuance*], but shall automatically extend without amendment for additional one year periods from such original or any subsequent expiration dates, unless we send our written notice to Beneficiary at least ninety (90) days prior to any such expiration date via courier, notice of our intention not to automatically extend this Credit beyond the then current expiration date.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Credit shall be duly honored upon presentation as specified. Drawings may be presented by facsimile (“**FAX**”) to FAX number: _____ under the telephone pre-advice to _____; provided that such FAX presentations are received on or before the expiry date on this Credit in accordance with the terms and conditions of this Credit, it being understood that any such FAX presentation shall be considered the sole operative instrument of drawing, not contingent upon presentation of the original letter of credit or original documents with respect thereto.

The Available Amount will be automatically reduced by the amount of each drawing hereunder.

The Issuing Bank shall have a reasonable amount of time for examination, not to exceed three (3) days banking days following presentation.

Except as otherwise expressly stated herein, this Credit is subject to the International Standby Practices (1998) I.C.C. Publication No. 590 (“**ISP98**”). As to matters not covered by ISP98, this Credit shall be subject to and governed by the laws of the State of New York without regard to its conflicts of law provisions that would apply the laws of another jurisdiction.

Yours faithfully,

(Name of Issuing Bank)EXHIBIT 13.6

MONTHLY ESCROW PAYMENTS

Buyer will retain during each Billing Period the Monthly Escrow Payment calculated per the formula below until the Escrow Account equals or exceeds the Operating Security identified in Exhibit 2.

$$\text{Monthly Escrow Payment (\$)} = \$1,200 \times \text{Expected Capacity Value}$$

Once the Escrow Account has reached the value of the Operating Security, Buyer will cease withholding Monthly Escrow Payments.

Any amounts, including accumulated interest, remaining in the Escrow Account after termination of this Agreement shall be paid by Buyer to Supplier on the final Billing Period settlement of the Agreement.]

EXHIBIT 13.7 – FORM OF SURETY BOND

FORM OF SURETY BOND ACCEPTABLE TO BUYER TO BE SUPPLIED BY BUYER
WHEN SECURITY BOND USED AS A FORM OF SECURITY

EXHIBIT 23.3

BUYER'S REQUIRED REGULATORY APPROVALS

MPSC approval of this Agreement on the terms specified in Section 12.3, in one or more orders or decisions that are final and no longer subject to appeal.

EXHIBIT 26.1

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

Supplier:

[_____]

Contact	Mailing Address	Phone	E-mail
---------	-----------------	-------	--------

Contract Representative:
Name and/or Title

Operating Representative:
Name and/or Title [Mailing & Physical Address
if different]

Operating Notifications:
Prescheduling
Real-Time
Monthly Checkout

Invoices:
Name and/or Title [Mailing & Physical Address
if different]

**PAYMENT
INSTRUCTIONS**

Bank Name
Bank Address
Bank City, ST & Zip
Account Name
ABA
Account Number

Buyer:

[DTE Electric Company]

CONTRACT REPRESENTATIVES

Contact	Mailing Address	Phone	E-mail
---------	-----------------	-------	--------

General:

Generation Optimization –

Scheduling/Generation

Dispatch/Emergencies (24x7):

Generation Optimization –

Invoices:

Generation Optimization –

Settlements

Legal Notices:

General Counsel

DTE Electric Company

ACH PAYMENT

INSTRUCTIONS

Bank Name

ABA:

Account Number:

Exhibit A

STANDARD CONTRACT RIDER NO. 5

**SMALL POWER PRODUCTION
AND COGENERATION FACILITIES
20 MW AND SMALLER**

AVAILABILITY: Full service customers, including station service customers, with on-site small power production or cogeneration facilities 20MW and smaller that seek to sell electric output from their facility to the Company may receive service under this tariff. This rate is available only to customers who obtain qualifying facility (QF) status from the Federal Energy Regulatory Commission. Prior to interconnection, the customer shall provide a copy of such notification to the Company. A Standard Offer under this tariff is applicable to QF's less than or equal to 550 kW.

CHARACTER OF SERVICE:

A Sales to customers:

1. As specified under the applicable filed rate.

B Sales by the Customer to the Company:

1. As specified under the Standard Offer or negotiated contractual agreement.

C The customer shall install, at their expense, the necessary controlling, additional metering and protective equipment according to specifications of the Company. The Company shall not be liable for damage to customer-owned equipment caused by the interconnection.

D Billing for both sales to and sales from the customer will be calculated by the Company.

RATE:

A Sales to Customers:

1. Customer loads that are normally served by the customer's generator or prime mover must take standby service under Rider 3 unless otherwise exempted under the provisions of Rider 3 and must take supplemental service under an appropriate base tariff.

B Sales by the Customer to the Company:

1. **Energy Only Sales:** For customers electing to sell only energy to the Company as the customer determines such energy to be available. The rate will be based on the day-ahead MISO hourly locational marginal price for the DTE Electric appropriate load node.

Issued _____, 2019
D. M. Stanczak
Vice President
Regulatory Affairs
Detroit, Michigan

Effective for service rendered on
and after _____, 2017

Issued under authority of the
Michigan Public Service Commission
dated _____, 201____
in Case No. U-18091

STANDARD CONTRACT RIDER NO. 5 (Contd.)

**SMALL POWER PRODUCTION
AND COGENERATION FACILITIES
20 MW AND SMALLER**

2. Capacity and Energy Sales:

The Company does not have a capacity need at this time. The provisions under Short Term, Intermittent or No Capacity Need as set forth below are in effect for new projects.

Capacity Need:

When the Company has a capacity need during its 5-year planning horizon, the capacity and energy rate shall be based on the Blue Water Energy Center and paid as set forth below. A Standard Offer Rate will apply to facilities with a capacity of 550 kW or less. The rate for facilities having a capacity over 550kW up to 20MW will be made under negotiated agreement. For existing facilities, no recognition will be made for capacity unless substantial proof is shown that the generator and protective equipment is new or equivalent to new. Customers who have previously obtained and maintained qualifying status from Federal Energy Regulatory Commission (FERC) for facilities with capacity over 550 kW with active long term capacity contracts with DTE Electric under former Rider Nos. 5 or 6 on October 14, 2019 shall be eligible for the pricing provision applicable to when the Company has a capacity need.

Standard Offer Rate - Capacity Need:

The rate will be based on the combined capacity and energy costs of Blue Water Energy Center and will consist of a fixed capacity component of \$14.02 per MWh and variable energy component for variable O&M and fuel costs. The variable energy component during the first five (5) years of operation will be set based on the BWEC Variable Cost table below. Thereafter, the variable energy component will be determined annually based on the prior year actual variable O&M and fuel costs for the Blue Water Energy Center.

Operating	BWEC Variable Cost
Year	\$/MWh
2019	22.38
2020	22.90
2021	24.33
2022	26.99
2023	29.91
2024	31.26
2025	33.01
2026	34.02
2027	33.75
2028	34.06
2029	34.18

Issued _____, 2019
D. M. Stanczak
Vice President
Regulatory Affairs
Detroit, Michigan

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in Case No. U-18091

STANDARD CONTRACT RIDER NO. 5 (Contd.)

**SMALL POWER PRODUCTION
AND COGENERATION FACILITIES
20 MW AND SMALLER**

Standard Offer Rate - Capacity Need (contd):

Renewable Energy Credits: Renewable Energy Credits (RECS) are owned by the Customer. The Company may, but need not, purchase RECs from Customers at a mutually agreeable price. Any agreement for the purchase of RECs shall be under separate agreement.

Contract Term: All customers must select a contract term of 5, 10, 15 or 20 years.

Early Termination:

Sellers shall be required, based on the options made available by the Company, to select a form of security to cover the financial risk associated with the Company's cost for replacement capacity in the event the QF ceases operation prior to the end of the term of the Power Purchase Agreement.

Security shall be provided through a letter of credit, one-time escrow payment, monthly escrow payments, **or surety bond in forms acceptable to the Company**. The amount of security required will be based on the estimated amount of capacity the seller will deliver and the term of the contract.

The early termination security amount will be calculated using the following table:

Contract Term (Years)	Early Termination Security Amount
5	\$20,000 x Expected Annual ZRCs
10	\$60,000 x Expected Annual ZRCs
15	\$105,000 x Expected Annual ZRCs
20	\$125,000 x Expected Annual ZRCs

Customer's will be required to execute a Standard Offer Contract with the Company.

3. Short Term, Intermittent or No Capacity Need

During periods when the Company does not need capacity or when only a short term or intermittent capacity need exists during its 5-year planning cycle, the Company will contract to purchase capacity and energy with capacity rates based on MISO's annual one-year Planning Resource Auction ("PRA") for short-term capacity needs in MISO Zone 7 corresponding to each year capacity is provided and energy rates will be based on the day-ahead MISO hourly locational marginal price for the DTE Electric appropriate load node. A Standard Offer Rate will apply to facilities with a capacity of 550 kW or less. The rate for facilities having a capacity over 550kW up to 20MW will be made under negotiated agreement.

Issued _____, 2019
D. M. Stanczak
Vice President
Regulatory Affairs
Detroit, Michigan

Effective for service rendered on
and after _____, 2017

Issued under authority of the
Michigan Public Service Commission
dated _____, 201____
in Case No. U-18091

STANDARD CONTRACT RIDER NO. 5 (Contd.)

**SMALL POWER PRODUCTION
AND COGENERATION FACILITIES
20 MW AND SMALLER**

Standard Offer Rate – Short Term, Intermittent or No Capacity Need:

The capacity rate will be based on MISO's annual one-year Planning Resource Auction ("PRA") for short-term capacity needs in MISO Zone 7 corresponding to each year capacity is provided and the energy rate will be based on the day-ahead MISO hourly locational marginal price for the DTE Electric appropriate load node. The QF shall have the option to receive avoided energy costs based on actual MISO day-ahead LMP for the life of the contract or the QF may opt to receive avoided energy costs for a five-year fixed term based on the five-year forecast of on-peak and off-peak MISO LMP as provided in the table below followed by a variable rate based on actual MISO day-ahead LMP for the remainder of the contract term.

Average Annual LMP Forecast (\$/MWh)		
Year	On-Peak	Off-Peak
2019	\$35.66	\$26.59
2020	\$34.61	\$25.38
2021	\$33.65	\$24.82
2022	\$32.71	\$24.03
2023	\$32.40	\$23.93
2024	\$31.38	\$23.08
2025	\$30.55	\$22.43

Renewable Energy Credits: Renewable Energy Credits (RECS) are owned by the Customer. The Company may, but need not, purchase RECs from Customers at a mutually agreeable price. Any agreement for the purchase of RECs shall be under separate agreement.

Contract Term: All customers must select a contract term of 5, 10, 15 or 20 years.

Early Termination:

Sellers shall be required, based on the options made available by the Company, to select a form of security to cover the financial risk associated with the Company's cost for replacement capacity in the event the QF ceases operation prior to the end of the term of the Power Purchase Agreement.

Security shall be provided through a letter of credit, one-time escrow payment, monthly escrow payments, **or surety bond in forms acceptable to the Company**. The amount of security required will be based on the estimated amount of capacity the seller will deliver and the term of the contract.

Issued _____, 2019
D. M. Stanczak
Vice President
Regulatory Affairs
Detroit, Michigan

Effective for service rendered on
and after _____, 2017

Issued under authority of the
Michigan Public Service Commission
dated _____, 201____
in Case No. U-18091

STANDARD CONTRACT RIDER NO. 5 (Contd.)

**SMALL POWER PRODUCTION
AND COGENERATION FACILITIES
20 MW AND SMALLER**

The early termination security amount will be calculated using the following table:

Contract Term (Years)	Early Termination Security Amount
5	\$20,000 x Expected Annual ZRCs
10	\$60,000 x Expected Annual ZRCs
15	\$105,000 x Expected Annual ZRCs
20	\$125,000 x Expected Annual ZRCs

Customers will be required to execute a Standard Offer Contract with the Company.

4. **Administrative Expense:** A one mill per kilowatthour charge shall be assessed to all customers on this rate to offset the Company's additional administrative expenses associated with these transactions.

Issued _____, 2019
D. M. Stanczak
Vice President
Regulatory Affairs
Detroit, Michigan

Effective for service rendered on
and after _____, 2017

Issued under authority of the
Michigan Public Service Commission
dated _____, 201____
in Case No. U-18091

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commissions own motion,)	
establishing the method and avoided cost calculation)	
for DTE ELECTRIC COMPANY to fully comply)	Case No. U-18091
with the Public Utilities Regulatory Policy)	
Act of 1978, 16 USC 2601 et seq.)	
_____)	

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ESTELLA R. BRANSON, being duly sworn, deposes and says that on the 24th day of June, 2020, she served a copy of DTE Electric Company's revised Standard Offer Tariff and Standard Offer Power Purchase Agreement along with the Proof of Service upon the persons on the attached service list via e-mail.

ESTELLA R. BRANSON

Subscribed and sworn to before
me this 24th day of June, 2020.

Karyn B. Kazyaka, Notary Public
Macomb County, Michigan
My Commission Expires: 7-21-2023
Acting in Wayne County

ADMINISTRATIVE LAW JUDGE

Honorable Martin D. Snider
7109 West Saginaw Hwy, 3rd Floor
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sniderm@michigan.gov

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