**RENEWABLE ENERGY PURCHASE AGREEMENT**

**BETWEEN**

**CONSUMERS ENERGY COMPANY**

**AND**

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Table of Contents

1. DEFINITIONS 1

2. GENERAL PROVISIONS 9

2.1 Effective Date and Term 9

2.2 Security for Performance 10

3. PRODUCT TO BE SUPPLIED 11

3.1 Permits and Laws 12

3.2 Commercial Operation Date 12

3.3 Emission Allowances/Environmental Attributes 13

3.4 Renewable Energy Registration 13

3.5 Test Energy 14

4. METERING 14

5. CONSTRUCTION OF PLANT 15

5.1 Seller’s Responsibility 15

5.2 Seller’s Obligation to Acquire Plant Site 15

6. OPERATION OF PLANT 15

6.1 Seller’s Operating Obligations 15

6.2 Outages of Generating Equipment 15

6.3 Resource Adequacy 16

6.4 Obligations to MISO 16

6.5 Communications 17

6.6 Plant Generation Offers; Curtailment 17

6.7 Contract Termination Requirements 18

7. COMPENSATION 18

7.1 Product Payment 18

7.2 Test Energy Payment 19

7.3 Incidental Energy Payment 19

7.4 Curtailment Energy Payment 19

8. EVENTS OF DEFAULT 20

9. BILLING 20

9.1 Billing Procedure 20

9.2 Disputes 21

10. EARLY TERMINATION 21

10.1 Failure to Deliver 22

10.2 Event of Default 22

10.3 Duty to Mitigate 22

11. ADMINISTRATIVE COMMITTEE 22

11.1 Purpose 22

11.2 Membership 22

11.3 Meetings 23

11.4 Functions 23

11.5 Expenses 23

12. FORCE MAJEURE 23

12.1 Definition 23

12.2 Obligations Under Force Majeure 24

12.3 Continued Payment Obligation 24

13. INDEMNITY 25

14. DISAGREEMENTS 25

14.1 Administrative Committee Procedure 25

14.2 Arbitration 26

14.3 Obligations to Continue 26

15. CHANGES CONCERNING MISO 26

16. SUCCESSORS AND ASSIGNS; OPTION 27

16.1 Successors and Assigns 27

17. GOVERNING LAW 27

18. HEADINGS 27

19. NOTICE TO PARTIES 27

20. WAIVER 28

21. CONFIDENTIALITY 28

22. NONSEVERABILITY 29

23. MISCELLANEOUS 29

23.1 No Third Party Beneficiaries 29

23.2 Disclaimer of Joint Venture, Partnership and Agency 29

23.3 Variable Interest Entity 29

24. ENTIRE AGREEMENT AND AMENDMENTS 31

25. ELIGIBLE CONTRACT PARTICIPANT 31

26. COUNTERPARTS AND ELECTRONIC DOCUMENTS 31

27. LIMITATION OF LIABILITY 31

28. REPRESENTATIONS 32

**EXHIBIT A – Payment Security Amount Schedule**

**EXHIBIT B – Form of Guaranty**

**EXHIBIT C – Form of Collateral Assignment**

**EXHIBIT D – Form of Estoppel Certificate**

**EXHIBIT E – Product Purchasing Price Schedule**

RENEWABLE ENERGY PURCHASE AGREEMENT

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CONSUMERS ENERGY COMPANY

AND

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 This RENEWABLE ENERGY PURCHASE AGREEMENT, herein called “Agreement,” made as of August \_\_, 2018, is by and between Consumers Energy Company, a Michigan corporation, One Energy Plaza, Jackson, Michigan, herein called “Buyer,” and \_\_\_\_\_\_\_\_\_\_, a Michigan company with offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_herein called “Seller.” Buyer and Seller are herein sometimes referred to individually as “Party” and collectively as “Parties” where appropriate.

WITNESSETH:

 WHEREAS, this Agreement has been prepared pursuant to Michigan Public Act 295 of 2008, MCLA 460.1; and

 WHEREAS, Buyer anticipates that the renewable energy credits sold by Seller to Buyer under this Agreement may, in the process of satisfying the requirements for renewable energy under Acts 295 and 342 (defined below), also satisfy the requirements of any federal legislation and/or regulatory requirement affecting Buyer with regard to the acquisition of renewable energy and emission allowances; and

 WHEREAS, Buyer owns electric facilities and is engaged in the generation, purchase, distribution and sale of electric energy in the State of Michigan; and

 WHEREAS, Seller wishes to deliver and sell and Buyer wishes to receive and purchase all electric capacity, electric energy, Renewable Energy Credits (defined below) and all other emission allowances and/or environmental attributes from and associated with the Plant (defined below) in the quantities specified herein on and after its Initial Operation Date (defined below) for the term of this Agreement.

 NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

 1. DEFINITIONS

 As used in this Agreement, the following terms shall have the following meanings unless specifically stated otherwise in this Agreement:

 “Act 81” – Means Michigan Public Act 81 of 1987 (as amended and as in effect on the date of this Agreement without giving effect to any amendment, repeal, supplement or modification of such act enacted after the date hereof).

 “Act 295” – Means Michigan Public Act 295 of 2008 (as amended and as in effect on the date of this Agreement, without giving effect to any amendment, repeal, supplement or modification of such act enacted after the date hereof).

 “Act 342” – Means Michigan Public Act 342 of 2016, (as amended and as in effect on the date of this Agreement, without giving effect to any amendment, repeal, supplement or modification of such act enacted after the date hereof).

 “Act 304” – Means Michigan Public Act 304 of 1982 (as amended and as in effect on the date of this Agreement, without giving effect to any amendment, repeal, supplement or modification of such act enacted after the date hereof).

 “Administrative Committee” – The committee established pursuant to Section 11, Administrative Committee.

 “Affiliate” – Means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

 “Bankrupt” – Means with respect to either Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition remains undismissed for a period of sixty (60) Days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

 “Billing Month” – Means the Calendar Month during which Product was delivered. The first Billing Month with respect to Delivered Energy and Delivered RECs shall commence with the Commercial Operation Date and end on the last day of the Calendar Month in which the Commercial Operation Date occurs.

 “Business Day” – Means a Calendar Day other than Saturday, Sunday or a Holiday.

 “Calendar Day” or  “Day” – Means the twenty-four (24) hour period beginning at 12:00 a.m. midnight Eastern Standard Time and ending at 11:59:59 p.m. Eastern Standard Time. The terms Day and Calendar Day may be used interchangeably and shall have the same meaning.

 “Calendar Month” or  “Month” – Means the 28, 29, 30, or 31 Day period (as applicable) that begins on the first Day of a Month and ends on the last Day of the Month. The terms Month and Calendar Month may be used interchangeably and shall have the same meaning.

 “Calendar Year” or  “Year” – Means the twelve (12) Month period beginning January 1 and ending the next subsequent December 31. The terms Year and Calendar Year may be used interchangeably and shall have the same meaning.

 “Capacity” – Means the instantaneous rate measured in MW at which Energy can be generated, delivered, received or transferred from the Plant.

 “Commercial Operation Date” – Means the date established pursuant to Subsection 3.2, Commercial Operation Date.

 “Commissioned” – Means, with respect to any Plant solar array, that such solar array has been installed and that Seller has taken all action necessary to enable the solar array to commence extended and automated operation to deliver Energy to the Point of Delivery.

 “Contract Capacity” – Means the nameplate capacity of the Plant in MW.

 “Contract Energy” – Means \_\_\_\_\_\_\_ MWh.

 “Contract Maximum Energy” – Means 120% of the Contract Energy.

 “Contract Term” – Is defined in Subsection 2.1, Effective Date and Term.

 “Curtailment Energy” – Is defined in Subsection 6.6, Plant Generation Offers; Curtailment.

 “Delivered Energy” – Means the Energy produced by the Plant and delivered by Seller to the Point of Delivery, but not to exceed Contract Maximum Energy on a Planning Year basis, as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 4, Metering.

 “Delivered RECs” – Means all RECs granted to Seller pursuant to Act 295 associated with Delivered Energy, including any Michigan incentive RECs, as such RECs are delivered to Buyer via the receipt by Buyer of such RECs in Buyer’s MIRECS account.

 “Effective Date” – Is defined in Subsection 2.1, Effective Date and Term.

 “Emergency” – Means (i) any Emergency condition (or similar successor term), as defined by the MISO Rules or the Interconnection Agreement, or (ii) a transmission system condition identified by MISO, including a system reliability condition related to endangering life, property or public safety, or the ability to maintain safe adequate continuous and reliable electric service, and that, in order to achieve same, a curtailment of the Plant or firm transmission service that reduces or precludes delivery of Energy to or from the Point of Delivery is required.

 “Environmental Attribute(s)” – Means an instrument used to represent the environmental benefits associated with a fixed amount of electricity generation, usually from a specific generating plant. Environmental Attributes represent the general environmental benefits of renewable generation such as air pollution avoidance. The exact quantity of the environmental benefit (e.g. pounds of emission reductions of a given pollutant) may not be indicated by an Environmental Attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not trading markets for such pollutants or benefits exist. For the avoidance of doubt, Environmental Attributes excludes (i) any local, state or federal depreciation deductions or, Federal Tax Benefits, other tax credits or cash grants providing a tax or cash benefit to Seller or its owners based on ownership of, or energy production from, any portion of the Plant that may be available to Seller or its owners with respect to the Plant under applicable laws, and (ii) depreciation and other tax benefits arising from ownership or operation of the Plant.

 “Federal Funds Effective Rate” – Means, for any day, the interest rate per annum equal to the rate published as the Federal Funds Effective Rate by the Federal Reserve Bank in its release H.15 (519) (or, if such day is not a Business Day, for the preceding Business Day).

 “Federal Tax Benefits” or “FTB” – Means: (i) renewable electricity production tax credits (“PTC”) under Internal Revenue Code Section 45 or its successor, or (ii) investment tax credits under Internal Revenue Code Section 48 or its successor (“ITC”).

 “Force Majeure” – Is defined in Subsection 12.1, Definition, of Section 12, Force Majeure.

 “Generation Resource CPNode” – Has the meaning ascribed to such terms in the MISO Rules.

 “Holiday” – Means the holidays observed by MISO. As of the date of this Agreement, such holidays include New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, or if the Holiday occurs on a Sunday, the Monday immediately following the Holiday.

 “Initial Operation Date” – Means the date upon which Test Energy deliveries begin.

 “Incidental Energy” – Means Energy delivered by Seller from the Plant to the Point of Delivery that exceeds Contract Maximum Energy on a Planning Year basis, as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 4, Metering.

 “Incidental Energy Rate” – Means the real-time LMP for the Generation CPNode for the hour that Incidental Energy is delivered

 “Interconnection Agreement” – Means the agreement between Seller and the applicable electric transmission or electric distribution system owner and/or operator which describes the terms and conditions regarding the connection of the Plant to such electric transmission or electric distribution system.

. “Interest Rate” – Means the Federal Funds Effective Rate.

 “Joint Banking Day” – Means a Calendar Day on which the banks used by both Parties for financial settlement hereunder are open for business.

 “Letter of Credit” – Means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) “A-” by S&P and “A3” by Moody’s, if such entity is rated by both S&P and Moody’s or (b) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s but not both, in a form reasonably acceptable to Buyer, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the Buyer.

 “Locational Marginal Price” or “LMP” – Has the meaning ascribed to such term in the MISO Rules.

 “MIRECS” – Means the Michigan Renewable Energy Certification System, including any successor thereto.

 “MISO” – Means the Midcontinent Independent System Operator, Inc. including any successor thereto and subdivisions thereof.

 “MISO Rules” – Means the Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, of MISO, as amended from time to time, including any successor tariff or rate schedule approved by the Federal Energy Regulatory Commission, together with any applicable MISO Business Practice Manual as amended from time to time.

 “MPSC” – Means the Michigan Public Service Commission.

 “MW” – Means a megawatt of electrical capacity.

 “MWh” – Means a megawatt-hour of electrical energy.

 “NERC” – Means the North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

 “Payment Security Amount” – Means the amount shown on the Payment Security Amount Schedule set forth in Exhibit A.

 “Planning Year” – Has the meaning ascribed to such term in the MISO Rules.

 “Plant” – Means the solar-power electric generating facility known as the “\_\_\_\_\_ \_\_\_\_\_\_\_\_” having Capacity in the amount of Contract Capacity and located at the Plant Site which shall include, but not be limited to: generating equipment, including auxiliary and back-up; electric delivery facilities; administrative structures; and such other necessary and related facilities, equipment and structures associated with the generation of electricity.

 “Plant Potential” – Means the number provided to Buyer in real-time through the Buyer’s SCADA system, which depicts Seller’s real-time calculation of the Potential Energy capable of being provided by the Plant to Buyer as measured at the Point of Delivery. Plant Potential shall be calculated as the aggregate Energy available in real-time for delivery at the Point of Delivery using the best-available data obtained through commercially reasonable methods; and shall be dependent upon measured solar array availability, and derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery.

 “Plant Site” – Means the site upon which the Plant will be located in\_\_\_\_\_\_\_\_, Michigan. Such site shall be located in an electric service area of the state of Michigan serviced by MISO and be of sufficient area to include the Plant shall comply with all laws, regulations and/or requirements imposed by any law, governmental agency or authority.

 “Point of Delivery” – Means the location at which Seller shall deliver Energy from the Plant to Buyer at the applicable electric transmission or electric distribution system as established in the Interconnection Agreement, which shall be the same point as the point of interconnection of the Plant as set forth therein.

 “Potential Energy” – Means the quantity of the Energy that the Plant is capable of delivering at the Point of Delivery. In the event that Plant Potential is not a reliable proxy for Potential Energy, Potential Energy shall be calculated as the aggregate Energy available for delivery at the Point of Delivery using the best-available data obtained through commercially reasonable methods; and shall be dependent upon measured solar array availability, and derate(s) and transmission line losses, and any other adjustment (including, as applicable, adjustments based upon time of Day) necessary to accurately reflect the Plant’s capability to produce and deliver Energy to the Point of Delivery

 “Product” – Means (a) all Delivered Energy and RECs associated with Delivered Energy produced by and associated with the Plant; (b) all Capacity and associated Resource Adequacy Capacity supplied by and associated with the Plant; (c) all Incidental Energy produced by and associated with the Plant, and (d) all Environmental Attributes and emission allowances associated with Delivered Energy produced by and associated with the Plant.

 “Product Purchase Price” – Means the price shown in $/MWh on the Product Purchase Price Schedule set forth in Exhibit E.

 “Prudent Utility Practices” – Means the practices generally followed by the electric utility industry with respect to solar energy, as changed from time to time, which generally include, but are not limited to, engineering, operating, safety, reliability, equipment, and adherence to applicable industry codes, standards, regulations and laws. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the solar-energy generation industry in the Midwestern United States.

 “Reliability Authority” – Means MISO, International Transmission Company, Michigan Electric Transmission Company, NERC, ReliabilityFirst Corporation, and any successor entity to the foregoing entities, and any other regional reliability council and any other regional transmission organization, in each case having jurisdiction over either or both of the Parties, the Plant, or MISO’s transmission system, whether acting under express or delegated authority.

 “Renewable Energy Credit(s)” or “REC(s)” – Has the meaning specified in Act 295, Act 342, or any successor law.

 “Resource Adequacy Capacity” – Means the Unforced Capacity value for the Plant for each Planning Year as determined by MISO under the MISO Rules on an annual basis as converted to ZRCs by Buyer.

 “Statement” – Is defined in Subsection 9.1, Billing Procedure.

 “Tax Benefits” – Means an amount equal to: (i) the Federal Production Tax Credits (PTCs) under Internal Revenue Code Section 45 or its successors, to which Seller (or its owners) would have been entitled with respect to Energy that could have been delivered but for Buyer’s curtailment of Energy pursuant to this Agreement; plus (ii) a “gross up” dollar amount to take into account the federal, state and local income tax to Seller on such payments in lieu of PTCs so that the net amount retained by Seller, after payment of federal, state and local income taxes, is equal to the amount set forth in clause (i) of this definition. For purposes of determining the foregoing, Seller shall be deemed to be subject to tax at the highest statutory corporate income tax rates for the highest income bracket (federal, state or local, as applicable) for Seller or its parent, as appropriate, that are in effect or scheduled to be in effect for the tax year in which the receipt of such Tax Benefits payment is taxed.

 “Termination Deadline COD” – Is defined in Subsection 3.2, Commercial Operation Date.

 “Test Energy” – Means that Energy which is produced by the Plant prior to the Commercial Operation Date, delivered to Buyer at the Point of Delivery, which is necessary in order to perform all testing of the Plant or otherwise produced by the Plant and delivered to the Point of Delivery prior to the Commercial Operation Date.

 “Unforced Capacity” – Has the meaning ascribed to such term in the MISO Rules.

 “Zonal Resource Credits” or “ZRCs”– Has the meaning ascribed to such term in the MISO Rules.

 2. GENERAL PROVISIONS

 2.1 Effective Date and Term

 This Agreement shall be submitted by Buyer to the MPSC for approval of the payments set out herein for the purposes of Act 304, Act 81, Act 295, Act 342 and all other applicable law. The foregoing submission shall specifically request MPSC approval of cost recovery of all payments set forth in this Agreement, as well as approval of the portion of such payments that is recovered as a booked cost of purchased and net interchanged power pursuant to Act 304, the portion of such payments that is recovered as part of the incremental costs of compliance pursuant to Act 295 and Act 342, and any financial recovery available to Buyer under MCL 460.6s or MCL460.6t. Buyer shall use good faith, commercially reasonable efforts to (i) make such requests and file this Agreement with the MPSC as soon as reasonably practicable (but in no event later than thirty (60) Days following the date this Agreement is executed by both Parties), and (ii) obtain the approvals described above, and Seller shall cooperate reasonably with Buyer’s efforts to make such requests and seek such approvals.

 This Agreement shall be effective upon execution by both Parties and approval of the MPSC as described herein (the first date upon which all of the foregoing conditions have been satisfied is called the “Effective Date”). In the event that the MPSC does not approve this Agreement as described herein within ninety (90) Days following the date this Agreement is submitted to the MPSC for approval, then this Agreement shall be rendered void ab initio. Once effective, unless terminated as provided in this Agreement, this Agreement shall commence on the Commercial Operation Date and continue in effect for fifteen (15) years, plus any additional days that may be necessary to complete a Planning Year (such number of years and days is herein called the “Contract Term”).

 2.2 Security for Performance

 At least thirty (30) Days prior to the first Planning Year to occur after the Commercial Operation Date, Seller shall provide and maintain security in an amount equal to Seller’s potential liability for performance of this Agreement as set forth in Exhibit A. Such payment security shall be provided via one of the forms provided for in this Subsection 2.2. Any portion of the security remaining upon expiration or termination of this Agreement shall be returned to Seller by Buyer within sixty (60) Days of such expiration or termination. Seller may change the form of such security at any time and from time to time upon reasonable prior notice to Buyer provided that (i) such security is at all times consistent with this Subsection 2.2 and (ii) Seller provides the replacement security instrument prior to terminating or withdrawing the then existing security instrument.

 2.2.1 Letters of Credit

 If Seller selects the Letter of Credit form of providing security, Seller shall provide such security in the applicable amount by the date specified above in this Subsection 2.2. All Letters of Credit provided in accordance with this Agreement shall be subject to the following provisions:

 Unless otherwise agreed to in writing by the Parties, each Letter of Credit shall be maintained for the benefit of the Buyer. The Seller shall (A) if necessary to maintain a Letter of Credit throughout the term of this Agreement, renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or cash in accordance with Subsection 2.2.2 below, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Buyer’s properly documented request to draw on an outstanding Letter of Credit, provide cash within two (2) Business Days after such refusal.

 2.2.2 Interest Bearing Account

 If Seller selects the interest bearing account form of payment security, Seller shall provide a cash payment to Buyer in the applicable amount by the date specified above in this Subsection 2.2. Buyer shall establish an interest bearing account with the administrative costs incurred by that account to be borne by the account with the cash payment provided by Seller. Interest on cash provided in accordance with this Subsection 2.2.2 shall accrue at a rate per annum equal to the Interest Rate.

 2.2.3 Guaranty

 If Seller selects the guaranty form of payment security, such guaranty shall be substantially in the form of Exhibit B hereto, from a guarantor, of sufficient financial size that is acceptable to Buyer in its sole reasonable discretion and with a credit rating of at least BBB+/Baa1. If the credit rating of the guarantor is downgraded below BBB+ by S&P or below Baa1 by Moody’s or there has been a material adverse change in the creditworthiness of the guarantor, then Seller shall be required to convert the guarantee provided to an alternative form of security instrument meeting the criteria set forth in either Subsections 2.2.1 or 2.2.2 no later than thirty (30) Days after receiving notice from Buyer that such conversion is required pursuant to this paragraph.

 3. PRODUCT TO BE SUPPLIED

 Subject to the terms and conditions of this Agreement, beginning on the Commercial Operation Date, and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller, all Product that Seller supplies from the Plant. Compensation for such Product shall be paid in accordance with Section 7, Compensation. Notwithstanding the above, beginning on the Initial Operation Date, Buyer shall pay Seller for Test Energy delivered to the Buyer by Seller to the Point of Delivery at the rate set forth in Subsection 7.2. As between the Parties, Seller shall be deemed to be in control of the Energy output from the Plant up to and until delivery at the Point of Delivery and Buyer shall be deemed to be in control of such Energy from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy output shall transfer from Seller to Buyer at the Point of Delivery.

 Seller shall accomplish delivery of Delivered Energy hereunder by submitting the appropriate meter data associated with the Plant’s Energy output to Buyer in accordance with Section 4, Metering.

 Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver Energy from the Plant to the Point of Delivery. Buyer shall be responsible for all electric losses, transmission service and other service arrangements and all other costs required to deliver Energy from and beyond the Point of Delivery.

 Seller shall use its commercially reasonable best efforts to ensure the receipt of Delivered RECs by Buyer within one hundred twenty (120) Days after the end of each applicable Billing Month. Seller shall register the Plant with MIRECS prior to the Commercial Operation Date. Prior to the Commercial Operation Date, Buyer shall register, establish and maintain an account with MIRECS and provide information regarding such account to Seller, such that Seller may utilize a forward transfer or transfer-redirect process to allow Delivered RECs to be directly deposited into Buyer’s MIRECS account.

 3.1 Permits and Laws

 Seller shall secure all licenses and permits required by law, regulation or ordinance pertaining to the generation of Energy and the sale of Capacity in accordance with this Agreement and Seller shall maintain all such licenses and permits throughout the term of this Agreement. In addition, Seller shall comply with all applicable ordinances, laws, orders, rules and regulations pertaining to the above licenses and permits made by any governmental authority or public regulatory body. At any time during the term of this Agreement, Buyer may request that Seller provide copies of any such licenses and permits.

 3.2 Commercial Operation Date

 The Commercial Operation Date will be the first date on or after \_\_\_\_\_\_\_\_, 2021 upon which all of the following conditions precedent have been satisfied:

 (a) Seller shall have provided proof to Buyer that it has an executed Interconnection Agreement for the Plant and that it has been authorized under the terms of such agreement to begin parallel operation.

 (b) Seller shall have received an approved registration of the Plant from MIRECS.

 (c) Seller shall have provided proof via commissioning reports of the solar array manufacturer that at least \_\_\_\_\_ MW of Plant nameplate capacity has been Commissioned.

 Seller shall request Buyer to confirm the Commercial Operation Date by providing Buyer with a written notice indicating that Seller believes the Plant has satisfied the above conditions as of a date specified in such notice. Buyer shall provide written notice to Seller within five (5) Business Days of Seller’s notice stating that either Seller has satisfied all of the above conditions precedent or providing reasons why Seller has not satisfied all of the above conditions precedent; provided that failure of Buyer to provide such notice within such time period shall be deemed to be Buyer’s acceptance and agreement that such conditions have been satisfied.

 If the Commercial Operation Date fails to occur on or before May 31, 2021 (subject to extension by Force Majeure pursuant to Section 12, Force Majeure, but in no event shall such extension exceed one hundred eighty (180) Days from the aforesaid date) (such later date the “Termination Deadline COD”) it shall be an Event of Default in accordance with Section 8, Events of Default. For each day that Seller fails to reach a Commercial Operation date after May 31, 2021, Seller shall pay Buyer an amount equal to $\_\_\_\_\_\_\_\_/day for penalties imposed on Buyer by MISO. Such compensation for penalties will be included in the Statement, defined in Subsection 9.1, Billing Procedures, of the first Billing Month following the Commercial Operation Date. If Seller fails to cure such an Event of Default within the time period specified in Section 8, Buyer shall have the right to terminate this Agreement upon written notice to Seller, provided that such notice is given by Buyer prior to the Commercial Operation Date, to be effective as of the date specified in such notice.

3.3 Emission Allowances/Environmental Attributes

All emission allowances and Environmental Attributes, including any greenhouse gas emission reductions, at any time allocated to Seller’s Plant and associated with Delivered Energy, shall be the property of Buyer. Seller shall, at no cost to Seller, assign and/or execute any documents necessary to either (i) transfer ownership (to the extent owned by Seller; provided, however, that Seller shall take no action to circumvent Buyer’s acquisition of such allowances pursuant to this Subsection 3.3), or (ii) designate Buyer as Seller’s agent to acquire ownership, of any and all emission allowances and/or Environmental Attributes (such as renewable energy credits) associated with Seller’s Plant for Buyer up to the amount specified in this Subsection 3.3. Notwithstanding the foregoing, all Federal Tax Benefits and other state and local tax benefits shall remain the property of the Seller. The foregoing emission allowances and Environmental Attributes may be used by Buyer to satisfy the requirements of Act 295 and any other applicable ordinances, laws, orders, rules or regulations pertaining to emission allowances and Environmental Attributes (including, but not limited to, requirements for renewable energy production) made by any governmental authority or public regulatory body.

3.4 Renewable Energy Registration

 Seller represents and warrants as of the date of this Agreement that the Plant from which Delivered RECs are to be purchased by Buyer hereunder will qualify as a “renewable energy resource” or “renewable energy system,” as applicable, pursuant to Act 295 and Act 342, and Seller shall, prior to the Commercial Operation Date, register the Plant as such “renewable energy resource” or “renewable energy system” and maintain such registration for the duration of this Agreement.

 Seller shall cooperate with Buyer, at Buyer’s expense, to certify the Plant as a renewable energy resource under any other renewable energy standard for which the Plant may qualify in order that Buyer may sell Delivered RECs which Buyer deems to be surplus to its requirements under Act 295 and Act 342. Seller shall cooperate with Buyer, at Buyer’s expense, to enable Buyer to obtain the benefits associated with Environmental Attributes for purposes other than renewable energy standards, including, but not limited to, new classes or types of Environmental Attributes created following the Effective Date.

3.5 Test Energy

 Seller shall provide Buyer with the information necessary to have the Plant registered in the MISO network model, sufficiently in advance to allow the Plant to be registered in such model prior to generating any Test Energy or Delivered Energy. Seller shall coordinate the production and delivery of Test Energy with Buyer in accordance with the MISO Rules, with not less than seven (7) Days’ advance notice of the expected Energy output of the Plant during a test period. Both twenty-four (24) hours and one (1) hour prior to the start of a test period, Seller shall provide Buyer with verbal confirmation of the Plant’s expected Energy output during such test period. During each test period, Seller shall verbally notify Buyer of any unanticipated changes to the Plant’s expected Energy output. If testing shall occur in winter months, test energy shall be estimated using assumptions for snow load in forecast. Buyer shall purchase all Test Energy delivered to the Point of Delivery in accordance with Subsection 7.2.

 4. METERING

 All Energy associated with Delivered Energy and Delivered RECs that is delivered by Seller to the applicable electric transmission or electric distribution system shall be metered at the billing meter installation(s) provided pursuant to the Interconnection Agreement and shall be separately metered from Energy generated by generating facilities other than the Plant. In the event that Buyer requires Seller’s reasonable assistance to obtain the metered data for purposes of data submittal to MISO and/or Section 9, Billing, Seller shall provide such assistance. To determine the amount of Delivered Energy, the metered values shall be the values used by MISO for financial settlement at the Generation Resource CPNode for the Plant. Seller shall provide all real-time and integrated hourly meter data associated with the Plant to Buyer in such formats and through such methods so that Buyer can comply with the MISO Rules as they apply to Energy deliveries from Generation Resources.

 5. CONSTRUCTION OF PLANT

 5.1 Seller’s Responsibility

 Seller shall have sole responsibility for the planning, design, procurement, construction, start-up, testing, and licensing of the Plant subject to: (1) meeting all appropriate civil, environmental, electrical and other applicable codes and regulations required by federal, state, municipal, or any other governmental agencies; and (2) obtaining all necessary authorizations and permits.

 5.2 Seller’s Obligation to Acquire Plant Site

 As between the Parties, Seller shall have sole responsibility for the acquisition of sufficient real property interests in the Plant Site to permit the construction and operation of the Plant for the expected duration of the Plant’s operation at the Plant Site.

 6. OPERATION OF PLANT

 6.1 Seller’s Operating Obligations

 Seller shall operate and maintain the Plant in accordance with MISO (or any successor thereto) standards and MISO Rules which apply to generating units and Prudent Utility Practices.

 Seller shall, on a continuous basis, inform Buyer as to material changes in the operating status of the Plant, including, but not limited to, Plant outages pursuant to Subsection 6.2, Outages of Generating Equipment.

 6.2 Outages of Generating Equipment

 Seller shall provide to Buyer all material information relating to Plant outages and significant derates of Plant generating Capacity which would materially affect Seller’s ability to deliver Energy to the Point of Delivery. Such material information shall be sufficient for Buyer to reasonably determine and verify the severity and extent of such outages and derates.

 Seller shall provide to Buyer, as soon as reasonably possible thereafter, an oral report of any outages of Plant electric generating Capacity as a result of (1) Seller’s compliance with the provisions of Subsection 3.1, Permits and Laws, (2) interruptions or other transmission limitations from the Plant to the Point of Delivery which would materially restrict the flow of Energy from the Plant to the Point of Delivery, or (3) any other circumstance or event that would prevent Energy from the Plant from being delivered to the Point of Delivery, and their anticipated duration.

 Seller shall plan and implement scheduled outages and/or planned outages of generating Capacity in accordance with the requirements of the MISO Rules. Seller shall coordinate its compliance with the preceding sentence with Buyer so that Buyer can provide the required information to MISO. In addition, Seller shall confirm with Buyer in writing its schedule of generating capacity outages planned by Seller for a Calendar Year by August 1st of the prior Calendar Year. At least one (1) week prior to any scheduled outage and/or planned outage, Seller shall confirm with Buyer the expected start date of such outage and the expected completion date of such outage. Seller shall notify Buyer of any subsequent changes to the outage. As soon as practicable, any oral notifications shall be confirmed in writing.

 6.3 Resource Adequacy

 Seller shall use its commercially reasonable best efforts to maximize the amount of Resource Adequacy Capacity available from the Plant, including (i) ensuring that the Interconnection Agreement provides for a minimum of Network Resource Interconnection Service (defined in the MISO Rules) equal to the nameplate Capacity of all generating facilities covered by such agreement, and (ii) minimizing the amount of scheduled maintenance during such times as are applicable for the determination of the Plant’s Resource Adequacy Capacity to the extent consistent with Prudent Utility Practices.

6.4 Obligations to MISO

 Seller shall be responsible for registering the Plant’s Commercial Pricing Node (as such term is defined by MISO) with MISO. All MISO charges and payments associated with such Commercial Pricing Node are the responsibility and property, as applicable, of Seller. Throughout the term of this Agreement, Seller shall either be a member of MISO and be qualified as market seller under MISO Rules, or shall have entered into an agreement, at Seller’s cost, with a market participant that will perform all of Seller’s MISO-related obligations in connection with the Plant and this Agreement.

 Buyer shall submit offers relating to the Plant’s output into the MISO energy market and be responsible for all coordination and communication with MISO with regard to Plant dispatch. Such offers by Buyer shall be based on a commercially reasonable day-ahead energy forecast. Buyer will promptly forward to Seller setpoint instructions received from MISO for the Plant. Buyer will also advise Seller of any limiting conditions that impact Plant Energy production and Seller will adjust Plant Energy production to comply with such limiting conditions.

 Seller shall be responsible, directly or indirectly, for any charges and fees assessed to Consumers due to Seller’s failure using Plant control and ramp rate capability to follow the dispatch given by Buyer to Seller in accordance with Subsection 6.6.

6.5 Communications

 Seller shall cooperate with Buyer to enable Buyer to monitor, in real time, all Energy generated by the Plant. If any real-time meter and related communications equipment is required to enable such monitoring by Buyer, Buyer shall pay for such equipment. If the applicable transmission or distribution system owner or operator requires a release by Seller or permission from Seller to disclose such real-time information or to install real-time meter and related communications equipment, Seller shall provide such release or grant such permission.

6.6 Plant Generation Offers; Curtailment

 Each Business Day during the term of this Agreement, Seller will provide Buyer by 8:00 a.m. EST an hourly non-binding forecast for the next Business Day and any Days that may precede the next Business Day. Such forecast shall include hourly available Plant Capacity and hourly energy forecast for the Plant. The actual operating outputs will be determined by actual ambient conditions and Plant availability.

 Buyer shall offer the Plant into the MISO day-ahead and real-time energy markets so as to maximize the amount of Energy that MISO schedules the Plant to deliver in those markets. Notwithstanding the above, Buyer may notify Seller to curtail the delivery of Energy to Buyer from the Plant and to the Point of Delivery, for any reason and in its sole discretion and Seller shall comply with such notification. Buyer shall compensate Seller as set forth below for any such Curtailment Energy.

 The Parties shall determine the quantity of Energy that would have been produced by the Plant and that would have been available for delivery had its generation not been so curtailed, excluding therefrom any curtailment ordered by any Reliability Authority as a result of an Emergency (and not economic purposes) (“Curtailment Energy”). The calculation of Curtailment Energy shall be the number of MWh represented by the Potential Energy less: (a) the Potential Energy associated with any curtailment ordered by any Reliability Authority as a result of an Emergency (and not economic purposes), and (b) Delivered Energy as measured by the metering devices pursuant to Section 4 above during the period of curtailment.

 Buyer shall pay to Seller, in accordance with Section 9 Billing Procedures, for such Curtailment Energy an amount equal to the sum of (i) all amounts that Seller would have received from Buyer under this Agreement had such Curtailment Energy actually been delivered plus (ii) subject to Seller’s provision to Buyer of written evidence, reasonably satisfactory to Buyer and subject to appropriate confidentiality restrictions required by Seller (or its owners), that the Plant has qualified for PTCs, and that Seller (or its owners) has claimed PTCs on its first post-Commercial Operation Date tax return, the amount of any Tax Benefits that Seller would have been entitled to receive, but did not receive, for production of Energy had such production not been so curtailed.

 For purposes of determining Curtailment Energy, the amount of Potential Energy for any given time period shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Energy Seller could have delivered to the Point of Delivery during a curtailment. To the extent available, Buyer agrees to use the Plant’s real time Plant Potential as the proxy for Potential Energy, except to the extent that Plant Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus 2% over a period of one month). During those periods of time when the Plant Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through commercially reasonable methods to determine the Potential Energy.

 Notwithstanding anything in this Section to the contrary, curtailments or reductions of delivery due to an Emergency shall be excluded from “Curtailment Energy” and no payment shall be due Seller under this Section above for curtailments of delivery of Energy resulting therefrom.

6.7 Contract Termination Requirements

 On or before October 31 of the Year prior to the Year in which this Agreement is scheduled to expire or within twenty (20) Days of any notice provided in accordance with Section 10, Early Termination, Seller shall inform Buyer if Seller plans, upon expiration of this Agreement, to (i) register the Plant with MISO or (ii) mothball or retire the Plant. The Parties shall cooperate with each other to undertake the activities necessary to register, mothball or retire the Plant in accordance with the MISO Rules. Seller shall indemnify Buyer against any costs, charges or penalties imposed on Buyer as a result of Seller’s failure to comply or cooperate with Buyer to comply with the MISO Rules as described in this Subsection 6.7.

 7. COMPENSATION

 7.1 Product Payment

 Commencing with the Commercial Operation Date and continuing for the term of this Agreement, Buyer shall pay Seller the Product Purchase Price on Delivered Energy delivered by Seller for the applicable Billing Month. Such payments shall be made on a Monthly basis.

 Beginning in the fourth full Planning Year after the Commercial Operation Date, and in each Planning Year thereafter, if the previous three-year average of Delivered Energy is less than ninety percent (90%) of Contract Energy over the same period, then the Product Purchase Price to be applied to Delivered Energy during the Planning Year following such three-year period shall be equal to the ratio of the three-year average of Delivered Energy to Contract Energy over the same period times the Product Purchase Price, rounded to the nearest cent.

 Beginning in the fourth full Planning Year after the Commercial Operation Date, and in each Planning Year thereafter, if the previous three-year average of Resource Adequacy Capacity is less than forty-five percent (45%) of Contract Capacity over the same period, then the Product Purchase Price to be applied to Delivered Energy during the Planning Year following such three-year period shall be equal to the ratio of the three-year average of Resource Adequacy Capacity to Contract Capacity over the same period times the Product Purchase Price, rounded to the nearest cent.

 7.2 Test Energy Payment

 Commencing with the Initial Operation Date and continuing until, but excluding, the Commercial Operation Date, Buyer shall pay Seller for Test Energy delivered to the Point of Delivery at a price equal to the real-time LMP for the Plant Generation Resource CP Node. Such payments shall be made on a Monthly basis.

 7.3 Incidental Energy Payment

 Commencing with the Commercial Operation Date and continuing for the term of this Agreement, Buyer shall pay Seller, or Seller shall pay Buyer, as applicable, the Incidental Energy Rate for Incidental Energy delivered to the Point of Delivery. Such payments shall be included in the monthly settlement for the Billing.

 7.4 Curtailment Energy Payment

 Commencing with the Commercial Operation Date and continuing for the term of this Agreement, Buyer shall pay Seller for any Curtailment Energy determined in accordance with Subsection 6.6 for the applicable Billing Month. Such payments shall be made on a Monthly basis.

 8. EVENTS OF DEFAULT

 An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

 (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

 (b) such Party becomes Bankrupt;

 (c) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

 (d) the failure by Seller to meet the Termination Deadline COD.

 With respect to subpart (d) above only, the Seller shall be entitled to a period of seventy-five (75) Days from the occurrence of such an Event of Default to cure such Event of Default.

 9. BILLING

 9.1 Billing Procedure

 After the end of each Billing Month, Buyer shall submit to Seller a statement (“Statement”) which shall identify any amounts owed by Buyer or Seller pursuant to Sections, 6.6, Plant Generation Offers and 7, Compensation, during such Billing Month. Such Statement shall use data obtained from metering equipment pursuant to Section 4, Metering. At least three (3) Days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Buyer shall submit a revised Statement to Seller.

 The net amount due shall be paid by the owing Party via electronic funds transfer of said amount by the last Joint Banking Day of the Calendar Month following the Billing Month. Any amounts not paid when due shall bear interest until paid at the lesser of (a) the per annum rate of interest equal to the prime lending rate as may be from time to time 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 two (2%) percent or (b) the maximum rate permitted by applicable law (the “Late Payment Interest Rate”). Notwithstanding the previous sentence, in no event will either Party be required to pay interest on any amounts owed to the other Party as a result of adjustments made pursuant to the following paragraph.

 In the unlikely event that metering equipment data is unavailable or MISO and Buyer’s financial settlement for the Plant is performed using data estimated by MISO, Buyer may render a Statement based on its best estimate (using MISO estimated data, if applicable) of the amount owed by Buyer or Seller in order to meet the payment deadline in Paragraph 2 of this Section 9. If such an estimate is used, an adjustment will be made to the Billing Month Statement following the Billing Month in which actual data is determined to correct the prior Billing Month estimate.

 9.2 Disputes

 Seller may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and Buyer may adjust any Statement for any arithmetic or computational error within twelve (12) Months of the date the Statement, or adjustment to a Statement, was rendered. Any Statement dispute or Statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Late Payment Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned within two (2) Business Days upon request or deducted by Buyer, with interest accrued at the Late Payment Interest Rate from and including the date of such overpayment to but excluding the date repaid. Any dispute with respect to a Statement is waived unless the other Party is notified in accordance with this Subsection 9.2 within twelve (12) Months after the Statement is rendered or any specific adjustment to the Statement is made.

 10. EARLY TERMINATION

 Upon termination by Buyer pursuant to Subsections 10.1 or 10.2 below (except for Events of Default associated with Subsection 8(d)), Seller shall owe Buyer the amount determined in accordance with Exhibit A, which payment shall represent Seller’s total aggregate liability to Buyer for damages and losses related to such termination. As applicable, the Letter of Credit provided pursuant to Subsection 2.2 hereof or any funds in the interest bearing account established pursuant to Subsection 2.2 shall be applied toward satisfying such amount and any other amounts due Buyer under this Agreement which Seller has not yet paid at time of termination. Any remaining balance due to Buyer shall be paid or caused to be paid to Buyer by Seller within twenty (20) Days after Buyer has provided notice of termination to Seller pursuant to this Section 10. The provisions of this Section 10 regarding payments shall survive any termination of this Agreement by Buyer pursuant to this Section 10.

 The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor’s liability shall be limited to direct, actual damages and such other remedies as are available at law or in equity.

 10.1 Failure to Deliver

 If, after the Year in which the Commercial Operation Date occurs, Seller fails to supply any Delivered Energy to Buyer hereunder for any period of 730 consecutive Days, Buyer shall have the right to terminate this Agreement by giving at least ninety (90) Days’ written notice of such termination to Seller and, if applicable, Seller’s lender(s).

 10.2 Event of Default

 If an Event of Default with respect to a Defaulting Party shall have occurred and not be cured pursuant to Section 8 (if applicable), among other remedies, the other Party (the “Non-Defaulting Party”) shall have the right to terminate this Agreement upon thirty (30) Business Days’ written notice to the Defaulting Party.

 10.3 Duty to Mitigate

 Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of the Agreement.

 11. ADMINISTRATIVE COMMITTEE

 11.1 Purpose

 From time to time various administrative and technical matters may arise in connection with the terms and conditions of this Agreement which will require the cooperation and consultation of the Parties and the exchange of information. As a means of providing for such cooperation, consultation and exchange, an Administrative Committee is hereby established with the functions described in Subsections 11.1 through 11.4 hereof. However, the Administrative Committee shall not (1) have the authority to amend this Agreement or (2) diminish in any manner the authority or responsibility of either Party as set forth in the various sections of this Agreement.

 11.2 Membership

 The Administrative Committee shall have two (2) members. Within sixty (60) Days after execution of this Agreement, each Party shall designate its representative on the Administrative Committee and shall promptly give written notice thereof to the other Party. Thereafter, each Party shall promptly give written notice to the other Party of any change in the designa­tion of its representative on the Administrative Committee. The Chairman of the Adminis­trative Committee shall be the Buyer’s representative. All actions taken by the Adminis­trative Committee must be approved by both members.

 11.3 Meetings

 The Administrative Committee shall meet on dates and at loca­tions (or by conference call) to be mutually agreed upon by the representatives. Meetings may be attended by individuals other than the representatives of the Parties.

 11.4 Functions

 The Administrative Committee shall have the following functions:

 (a) Provide liaison between the Parties at the management level and exchange information with respect to significant matters of design, construc­­tion, operation, and maintenance of the Plant.

 (b) Appoint ad hoc committees, the members of which need not be members of the Administrative Committee, as necessary to perform detailed work and conduct studies regarding matters requiring investigation.

 (c) Review, discuss and attempt to resolve disputes arising under this Agreement.

 11.5 Expenses

 Each Party shall be responsible for the salary and out-of-pocket expenses of its representative and its other attendees. All other expenses incurred in connection with the performance by the Administrative Committee of its functions shall be allocated and paid as determined by the Administrative Committee.

 12. FORCE MAJEURE

 12.1 Definition

 Except as provided below in this Subsection 12.1, the term “Force Majeure” means acts or actions beyond the reasonable control of the affected Party, including without limitation, acts of God; flood; earthquake; storm or other natural calamity; war; insurrection; riot; curtailment (including any curtailment ordered by any Reliability Authority), order, regulation or restriction imposed by governmental authority; fire or explosion not caused by criminal acts by the Party claiming Force Majeure; transportation accidents or perils at sea; or other similar cause beyond the reasonable control but not due to negligence of the Party affected. Notwithstanding the foregoing, for purposes of this Agreement, the term “Force Majeure” shall not include: (1) shortages of supplies and shortage of fuel, other than shortages of fuel occurring in time of calamity which is preventing major users in the United States, including the Seller, from obtaining fuel for their operations; 2) mechanical breakdown of equipment; and (3) strikes or labor disturbances of employees of the Party affected. The term “fuel” as used in this Subsection 12.1 shall be interpreted to include solar irradiance.

 12.2 Obligations Under Force Majeure

 Force Majeure shall apply to the following situations:

 (a) If Seller is rendered wholly or partially unable by the occurrence of a Force Majeure event to generate and deliver Energy to the Point of Delivery, then, for the duration of the Force Majeure event, subject to the conditions below, Seller’s obligations to supply Product to Buyer, and Buyer’s obligation to pay for Product pursuant to Section 7, Compensation, shall be limited to the amount of Product that Seller supplies and delivers.

 (b) If Buyer is rendered unable by the occurrence of a Force Majeure event to receive Product that is supplied or produced by Seller, then, for the duration of the Force Majeure event, subject to the conditions below, Buyer’s obligation to pay Seller for Product pursuant to Section 7, Compensation, and Seller’s obligations to supply and deliver Product to Buyer shall be limited to the amount of Product that Buyer receives. Notwithstanding the above, the inability to pay for any Product shall not be deemed to be an event of Force Majeure hereunder.

 The Party rendered wholly or partially unable to perform because of a Force Majeure event shall promptly give written notice thereof to the other Party, including an estimate of the anticipated duration of such Force Majeure event and the effect of the Force Majeure event on the Party’s performance obligation. Unless performance has already resumed, the Party rendered wholly or partially unable to perform because of a Force Majeure event shall, within thirty (30) Days of the date upon which such notice of Force Majeure was provided, and at Monthly intervals thereafter, submit to the other Party an analysis/update of the Force Majeure event including activities or modifications necessary for the Party to resume performance. Upon the conclusion of the Force Majeure event, the Party heretofore unable to perform shall resume performance of the obligation previously suspended.

 Notwithstanding any of the foregoing provisions, neither Party shall claim Force Majeure for more than a total of seven hundred thirty (730) Days during the term of this Agreement.

 12.3 Continued Payment Obligation

 Any Party’s obligation to make payments already due under this Agreement shall not be suspended by Force Majeure.

 13. INDEMNITY

 The Seller 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 installation, construction, maintenance, possession or operation of the Plant, except those caused solely by the negligence or willful misconduct of Buyer. Without limiting the foregoing, the Seller shall at Buyer’s request, defend at Seller’s expense any suit or proceeding brought against Buyer for any of the above-named reasons; provided that Buyer promptly notifies Seller in writing of any such claim and promptly tenders to Seller the sole control and defense of any such claim at Seller’s expense and with Seller’s choice of counsel. Buyer shall cooperate with Seller, at Seller’s expense, in defending or settling 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 Seller’s prior written consent. Seller’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 is/are caused by the sole negligence of the Seller.

 Buyer shall indemnify, defend and hold the Seller, 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, unless the damage or injuries on Buyer’s system is/are caused by the sole negligence or willful misconduct of the Seller.

 14. DISAGREEMENTS

 14.1 Administrative Committee Procedure

 If any disagreement arises on major matters pertaining to this Agreement, either Party may bring the disagreement to the Administrative Committee, which shall attempt to resolve the disagreement in a timely manner. If the Administrative Committee can resolve the disagreement, such resolution shall be reported in writing to and shall be binding upon the Parties provided such resolution shall not alter or amend this Agreement. If the Administrative Committee cannot resolve the disagreement within a reasonable time, the President of Buyer or the senior officer of Seller can, by written notice to the members of the Administrative Committee, withdraw the matter from consideration by the Administrative Committee and submit the same for resolution to the President of Buyer and the senior officer of Seller. If these representatives of the Parties agree to a resolution of the matter, such resolution shall be reported in writing to, and shall be binding upon, the Parties; but if said representatives fail to resolve the matter within seven (7) Days after its submission to them, then the matter shall proceed to arbitration as provided in Subsection 14.2.

 14.2 Arbitration

 If pursuant to Subsection 14.1, the Parties are unable to resolve a disagreement arising on a major matter pertaining to this Agreement, such disagreement shall be settled by arbitration and any award issued pursuant to such arbitration may be enforced in any court of competent jurisdiction. Either Party may commence arbitration by serving written notice thereof on the other Party designating the issue(s) to be arbitrated and the specific provisions of this Agreement under which such issues arose. Representatives from Buyer and Seller shall meet for the purpose of jointly selecting a single arbitrator within ten (10) Days after the date of such notice. If no arbitrator has been selected within twenty (20) Days of the date of such notice, then a single arbitrator shall be selected in accordance with the procedures of the American Arbitration Association. The decision of the arbitrator shall be final and binding upon both Parties. Any such arbitration shall be conducted in accordance with commercial arbitration rules of the American Arbitration Association in effect on the date of such notice other than as specifically modified herein. The arbitrator shall be bound by the provisions of this Agreement, where applicable, and shall have no authority to modify such provisions in any manner. The arbitrator may grant any remedy or relief he or she deems just and equitable within the scope of this Agreement, including interest on any award, but shall have no authority to award any remedy or relief inconsistent with this Agreement.

 14.3 Obligations to Continue

 At all times, pending the resolution of any disagreement, the Parties shall continue to perform their obligations pursuant to this Agreement.

15. CHANGES CONCERNING APPLICABLE LAW

 In the event that there is a change in applicable law or regulation, including but not limited to laws or regulations of the State of Michigan, the FERC or MISO, or in the event MISO ceases or modifies its operations or rules such that such modifications have a material effect on this Agreement or either Party’s obligations hereunder, then Seller and Buyer shall amend this Agreement or enter into other agreements reasonably necessary to preserve and maintain the business agreement between the Parties described herein as of the Effective Date and the material terms and provisions of such relationship contemplated herein.

 16. SUCCESSORS AND ASSIGNS; OPTION

 16.1 Successors and Assigns

 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties hereto. This Agreement shall not be assigned by a Party without the other Party’s prior written consent, which consent shall not be unreasonably withheld, but provided that (i) any assignee shall expressly assume assignor’s obligations hereunder; and (ii) no such assignment shall impair any security given by Seller hereunder. Notwithstanding the foregoing, and provided that Seller is not relieved of liability hereunder, Seller shall not require Buyer’s consent for assignment of this Agreement to an Affiliate of Seller provided that such Affiliate’s creditworthiness (as determined by Buyer in Buyer’s sole discretion) is equal to or higher than that of Seller. Any attempted assignment or transfer without such consent shall be void and not merely voidable.

 If it is necessary for Seller to assign this Agreement in connection with any loan, lease or other financing arrangement for the Plant, Buyer shall enter into a collateral assignment of this Agreement with Seller and its lenders substantially in the form of Exhibit C hereto. Buyer shall also promptly execute and deliver to Seller and its potential lenders, potential assignees and potential equity investors reasonable estoppel certificates attesting to the existence and force and effect of this Agreement, in a form substantially as set forth in Exhibit D or otherwise reasonably acceptable to Seller and such potential lenders, assignees or equity investors.

 17. GOVERNING LAW

 This Agreement shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of Michigan, without regard to principles of conflicts of law.

 18. HEADINGS

 The various headings set forth in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

 19. NOTICE TO PARTIES

 Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be effective if it is in writing and delivered personally or by certified mail (postage prepaid and return receipt requested), reputable overnight delivery service, or telecopy or other confirmable form of electronic delivery to the address set forth below or to such other address as the receiving Party may designate in writing:

 Buyer: Attention: David F. Ronk, Jr.

 Consumers Energy Company

 Executive Director, Electric Transactions and Wholesale Settlements

 1945 W. Parnall Road

 Jackson, Michigan 49201

 Fax: (\_\_\_)\_\_\_-\_\_\_\_

 Email: David.Ronk@cmsenergy.com

 Seller: Attention: \_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Fax: (\_\_\_) \_\_\_-\_\_\_\_

 Email: \_\_\_\_@\_\_\_\_\_\_\_.\_\_\_

 20. WAIVER

 No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether express or implied, shall not constitute a continuing waiver of, or consent to, or excuse any subsequent or different breach, nor in any way affect the validity of this Agreement or any part hereof, or the right of any Party to thereafter enforce each and every provision hereof.

 21. CONFIDENTIALITY

 Neither Party shall disclose the pricing terms under this Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any applicable law, regulation, or any exchange (including any securities exchange), control area or independent system operator rule or in connection with any court or regulatory proceeding; (b) as reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between the Parties, or the defense of any litigation or dispute; or (c) to an institution providing or considering providing equity (including tax equity) or construction or permanent debt financing or refinancing in connection with the Plant or electric energy produced therefrom or to any advisor providing expert advice to Seller in connection with such activities; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Notwithstanding the foregoing, however, Buyer shall not be limited by the provisions of this Section 21 when seeking full recovery of amounts paid to Seller in the manner prescribed by law or MPSC order provided, however, that Buyer shall use its efforts in its sole discretion to obtain confidential treatment or a protective order from the MPSC with respect to the pricing terms of this Agreement. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

 22. NONSEVERABILITY

 If any essential provision of this Agreement is declared invalid in whole or in part by any court or other tribunal of competent jurisdiction, then unless otherwise agreed by the Parties hereto, the entire Agreement shall be deemed void and inoperative. If any other 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 provided, however, that Seller and Buyer shall negotiate in good faith to amend this Agreement to give effect to the original intent of Seller and Buyer to replace such invalid or unenforceable provision.

 23. MISCELLANEOUS

 23.1 No Third Party Beneficiaries

 This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

 23.2 Disclaimer of Joint Venture, Partnership and Agency

 This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

 23.3 Variable Interest Entity

 Seller shall supply Buyer with any information necessary for the Buyer to determine if the Seller is a variable interest entity as defined by Financial Accounting Standards Board Accounting Standards Codification Topic 810, Consolidations, and to determine if this Agreement is a capital lease in accordance with Accounting Standards Codification Topic 840, Leases.

 If it is determined that the Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements or required to make certain disclosures, or that this Agreement is a capital lease, Buyer shall so notify Seller in writing. Within a time frame mutually agreed to by Buyer and Seller, Seller shall provide to Buyer written quarterly reports containing any and all financial data associated with the Seller and the Plant associated with this Agreement or any other information that the Buyer determines in its sole discretion is required to comply with the accounting treatment associated with these accounting standards or future applicable accounting standards. Such information may include, but shall not be limited to, nameplate capacity of the Plant, megawatt-hours of electricity produced and used by the Plant, data supporting the economic life (both initial and remaining) of the Plant, the fair market value of the Plant, and any and all other costs (including costs of debt specific to the Plant) associated with the Seller.

 Further, if it is determined that the Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements, Seller shall also provide the following on a quarterly basis:

 (i) Quarterly financial statements prepared in accordance with generally accepted accounting principles;

 (ii) Descriptions of the following obligations of Seller for the immediately preceding calendar quarter:

 (A) On-balance sheet obligations;

 (B) Purchase obligations;

 (C) Lease obligations and commitments;

 (D) Off-balance sheet commitments; and

 (E) Contingent obligations;

 (F) Total generating capacity;

 (iii) All material contracts (or summaries if the original contracts are not immediately available) of Seller then in effect, together with any related agreements, if any, including, but not limited to:

 (A) Equity-related agreements;

 (B) Debt and other borrowings;

 (C) Material asset or stock acquisitions or dispositions;

 (D) Documents under which guarantees or indemnities have been provided;

 (E) Material supplier and customer contracts;

 (F) Related-party contracts;

 (G) Documents related to material hedging activities;

 (H) Contingent obligations and financial commitments;

 (I) Leasing arrangements and off-balance sheet obligations; and

 (J) Management and outsourcing contracts.

 (iv) Business plans and financial projections.

 24. ENTIRE AGREEMENT AND AMENDMENTS

 With respect to the subject matter hereof, this Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties hereto or their representatives and constitutes the entire agreement of the Parties. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

 25. ELIGIBLE CONTRACT PARTICIPANT

 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is a “forward merchant” within the meaning of the United States Bankruptcy Code. In the event that this transaction is deemed to be a financial hedge or similar arrangement with respect to Buyer’s obligation to pay Seller the Product Purchase Price for Delivered Energy as provided in Sections 3 and 7, each Party represents to the other that it is, or at the Commercial Operation Date will be, an “Eligible Contract Participant” as defined in the Commodity Exchange Act, as amended, 7 U.S.C. Section 1(a)(12); provided, however, it is not the intent of the Parties that this Agreement be subject to such Act.

 26. COUNTERPARTS AND ELECTRONIC DOCUMENTS

 This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

 27. LIMITATION OF LIABILITY .

 EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. EXCEPT FOR A PARTY’S INDEMNITY OBLIGATIONS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

 28. REPRESENTATIONS .

 Each Party represents to the other Party that (a) it has taken all appropriate and necessary internal actions to authorize the execution, delivery and performance of this Agreement, (b) this Agreement has been duly executed by such Party, (c) except for MPSC approval of this Agreement as provided for in Subsection 2.1 and for other permits and authorizations to be obtained in the ordinary course by Seller, its Affiliates and/or contractors in the development, construction, commissioning and operation of the Plant (which shall be obtained in due course), it has obtained all consents, approvals and authorizations necessary for the valid execution, delivery and performance of this Agreement, and (d) this Agreement has been duly executed by and constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy and insolvency laws and the availability of equitable remedies. Buyer represents that it is a Network Customer under the MISO Rules and that Buyer will designate the Plant as a Network Resource under the MISO Rules.

*[Signature page follows]*

 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CONSUMERS ENERGY COMPANY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: By:

Name: Name:

Title: Title:



Payment Security Amount Schedule

|  |  |
| --- | --- |
| Planning Year | Amount |
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|  |  |
| 2020 | $\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2021 | $\_\_\_\_\_\_\_\_\_\_\_\_ |
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| 2039 | $\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2040 | $\_\_\_\_\_\_\_\_\_\_\_\_ |

Form of Guaranty

GUARANTY

GUARANTY, dated as of \_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_, made by \_\_\_\_\_\_\_\_\_\_\_\_, a , corporation whose principal offices are located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Guarantor”) to Consumers Energy Company, a Michigan corporation, whose principal offices are located at One Energy Plaza, Jackson, Michigan 49201, (“Counterparty”).

WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose principal offices are located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Obligor”), has entered, or may enter, into a certain agreement(s) with Counterparty regarding \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Agreement”) (capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Agreement);

WHEREAS, as a condition precedent to Counterparty’s obligations to effect the transactions contemplated in the Agreement, Counterparty is requiring Guarantor to execute and deliver this Guaranty in favor of Counterparty;

WHEREAS, Guarantor is the indirect parent company of Obligor and Guarantor is willing to guarantee certain of Obligor’s obligations under the Agreement as set forth below;

NOW, THEREFORE, in consideration of the premises and in order to induce Counterparty to enter into the Agreement, Guarantor hereby agrees as follows:

1. Guaranty.

(a) Guarantor hereby absolutely, irrevocably and unconditionally guarantees the punctual payment and performance when due of all obligations of Obligor now or hereafter existing under the Agreement (collectively, the "Guaranteed Obligations"), and agrees to pay any and all costs incurred by Counterparty in enforcing or attempting to enforce any rights under this Guaranty. This is a guaranty of payment and performance, not of collection. For purposes hereof, the phrase “when due” shall include when any such obligations of Obligor under the Agreement would be due or are required to be performed, whether at maturity, upon demand, by acceleration or otherwise, in accordance with the Agreement without giving effect to any stay, injunction or similar action resulting from a bankruptcy or similar proceeding or any order of any event or governmental entity affecting Obligor, such maturity, demand or acceleration being deemed to have occurred upon, the taking effect of such stay, injunction or similar action.

(b) In the event Obligor shall fail to pay any amount owed to the Counterparty under the Agreement, Guarantor shall, upon written demand from Counterparty of such failure, pay or cause to be paid the amount owed within ten (10) business days of receipt of such notice. In the event payment is not made in accordance with the foregoing sentence, the amount owed shall bear interest from the date of such demand until receipt of such payment at a rate per annum equal to the Prime Rate, accruing monthly.

(c) Guarantor guarantees that the obligations of Guarantor under this Guaranty are independent of the obligations of Obligor under the Agreement, and a separate action or actions may be brought against Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Obligor or whether Obligor is joined in any such action or actions. Subject to the above notice requirement, Counterparty shall have the right to proceed first and directly against Guarantor under this Guaranty without first proceeding against Obligor or exhausting any other remedies which it may have.

(d) If any amount paid by Obligor in respect of the Guaranteed Obligations is required to be repaid by Counterparty pursuant to a court order in any bankruptcy or similar Legal Proceeding, Guarantor’s Obligations hereunder shall be restored as if such payment by Obligor had never been made, and Guarantor, to the extent permitted by applicable law or order, waives the benefit of any statute of limitations affecting the enforceability of this provision of the Guaranty.

(e) This Guaranty shall terminate upon the date that all of the Guaranteed Obligations are indefeasibly discharged. It is understood and agreed, however, that notwithstanding any such termination, this Guaranty shall continue in full force and effect with respect to all Guaranteed Obligations arising prior to such termination.

2. Obligations Unconditional. The obligations of Guarantor hereunder shall be absolute, irrevocable and unconditional and shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of applicable law or order or by Counterparty, of (i) the performance or observance by Obligor of any express or implied agreement, covenant, term or condition relating to the Agreement to be performed or observed by Obligor, (ii) any other guarantor or obligor or any of the Guaranteed Obligations or (iii) any security for any Guaranteed Obligations;

(b) the extension of time for the payment or performance by Obligor of all or any portion of the Guaranteed Obligations or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Agreement;

(c) any failure, omission, delay or lack of diligence on the part of the Counterparty to enforce, assert or exercise any right, privilege, power or remedy conferred on the Counterparty pursuant to the terms hereof or of the Agreement, respectively, or any action on the part of Obligor granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, Obligor or any of the assets of Obligor;

(e) any invalidity or unenforceability of, or defect or deficiency in, the Agreement or any of the Guaranteed Obligations;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 2 that the obligations of Guarantor with respect to the Guaranteed Obligations shall be absolute, irrevocable, unconditional and continuing under any and all circumstances.

3. Waivers Guarantor hereby waives notice of acceptance of this Guaranty and of any liability to which it applies or may apply, presentment, demand for payment (except as provided in Section 1 hereunder), any right to require a proceeding first against Obligor or any other person before proceeding against Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands (except as provided in Section 1 hereunder), and hereby consents to any extension of time of payment of the obligations under the Agreement. Guarantor waives any defenses that it may have as a result of its failure to establish adequate means of obtaining from Obligor on a continuing basis financial and other information pertaining to Obligor’s business and financial condition, or Guarantor’s failure to be and now and hereinafter continue to be completely familiar with the business, operation and financial condition of Obligor and its assets. Guarantor hereby waives and relinquishes any duty on the part of Counterparty to disclose to Guarantor any matter, fact or thing relating to the business, operation or financial condition of Obligor and its assets now known or hereafter known by Counterparty during the term of this Agreement. Guarantor further waives notice of, and hereby consents to, any change in, amendment to, waiver of or consent to a deviation from, any of the terms and provisions of the Agreement or any renewal, extension, increase, acceleration or other alteration of any of the Guaranteed Obligations or the taking of any security for the Guaranteed Obligations or any release thereof.

4. Subrogation. Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guaranty, provided that Guarantor will not exercise any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, until all of the Guaranteed Obligations shall have been paid in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of Counterparty and shall forthwith be paid to Counterparty to be applied to the Guaranteed Obligations. If (a) Guarantor shall perform and shall make payment to Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, Counterparty shall, at Guarantor’s request, execute and deliver to Guarantor appropriate documents necessary to evidence the transfer by subrogation to Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.

5. Representations and Warranties. Guarantor hereby represents and warrants as follows:

(a) Guarantor is a company duly organized, validly existing and in good standing under the laws of \_\_\_\_\_ and is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or the nature of property owned or used by it make such qualification necessary.

(b) The execution and delivery by Guarantor of this Guaranty, and the performance by Guarantor of its obligations hereunder (i) are within Guarantor’s company powers, (ii) have been duly authorized by all necessary company action and (iii) do not and will not (A) violate any provision of the charter or by-laws or other organizational documents of Guarantor, (B) violate any applicable law or order binding on or affecting Guarantor, or (C) result in a breach of, or constitute a default under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Guarantor is a party or by which it or its properties may be bound or affected.

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, debtor relief or similar laws affecting the rights of creditors generally and the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law).

6. Amendments. No amendment or waiver of any provision of this Guaranty, and no consent to any departure by Guarantor herefrom, shall in any event be effective unless the same shall be in writing and signed by both Guarantor and Counterparty.

7. Assignment. Neither Guarantor nor the Counterparty may assign its rights, interests or obligations hereunder to any other person without the prior written consent of Guarantor or Counterparty, as the case may be; provided that Counterparty may transfer all or any portion of its rights, interests or obligations under this Guaranty without the consent of Guarantor to any transferee of the Agreement.

8. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Michigan without regard to its principles of conflicts of laws.

9. Notices. Any notice required or permitted to be given hereunder shall be in writing and mailed via a nationally recognized overnight delivery service to the address as set forth in the first paragraph hereof. Notices shall be deemed effective one (1) business day after being mailed.

10. Severability. The invalidity or unenforceability of any provision of this Guaranty shall not affect the remaining provisions that shall be liberally construed in order to carry out the intentions of Guarantor and Counterparty in respect of and including any provision which is invalid or unenforceable as nearly as possible.

11. Entire Agreement. This Guaranty constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

12. Miscellaneous. The provisions of this Guaranty will bind and benefit the successors and permitted assigns of Guarantor and Counterparty. The term “Obligor” means both Obligor and its successors and permitted assigns pursuant to the Agreement and the term “Counterparty” means Counterparty and its successors and permitted assigns.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed by its duly authorized officer as of the day first above written.

**[GUARANTOR COMPANY NAME]**

By:

Name:

 Title:

Form of Collateral Assignment

# COLLATERAL ASSIGNMENT OF

 RENEWABLE ENERGY PURCHASE AGREEMENT

This ASSIGNMENT OF RENEWABLE ENERGY PURCHASE AGREEMENT (“Assignment Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, among [Counterparty], a Michigan [Legal Entity Type] (the “Borrower”), Consumers Energy Company, a Michigan corporation (“Consumers”), and [Lender Name], a [Legal Entity Type], (the “Bank”). Borrower, Consumers and Bank are herein sometimes referred to individually as “Party” and collectively as “Parties” where appropriate.

WHEREAS, Consumers and Borrower entered into a Renewable Energy Purchase Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “REPA”), pursuant to which Consumers agreed to annually purchase electric capacity, electric energy and renewable energy credits to be supplied by a [Technology Type] facility called the [Plant Name] (the “Facility”); and

WHEREAS, it is a condition precedent to the making of loans pursuant to the Credit Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and among the Borrower and the Bank (the “Credit Agreement”), that the Borrower assign its rights under the REPA to the Bank; and

WHEREAS, such assignment requires the prior written consent of Consumers.

NOW, THEREFORE, the parties hereby agree as follows:

1. Assignment.

(a) As security for the due and punctual performance and payment of all of the Borrower’s obligations under the Credit Agreement, the Borrower hereby assigns to the Bank all of the Borrower’s right, title and interest in, to and under the REPA. Unless expressly provided otherwise in this Assignment Agreement, nothing in the Credit Agreement shall in any way amend, alter or otherwise affect any rights of Consumers under the REPA.

(b) The Bank may, with Consumers’ prior written consent, further assign the Borrower’s rights, title and interests under the REPA to another party who, pursuant to such assignment, shall obtain all of the Bank’s rights, title and interest under the REPA. Notwithstanding any such further assignment and assumption of the obligations of the Borrower under the REPA by such party, the Bank shall remain liable for the obligations of the Borrower under the REPA which arose during the period in which the Bank assumed the Borrower’s obligations under the REPA.

(c) Upon receipt of written notice from the Bank setting forth that (i) there exists a default under the Credit Agreement, (ii) the Bank desires to exercise its rights under this Assignment Agreement, and (iii) the Bank is assuming the obligations of Borrower under the REPA and requests Consumers to continue to perform its obligations under the REPA, Consumers shall continue to perform its obligations under such REPA and the Bank shall (a) pay Consumers for work performed or services or material provided after such request in accordance with the provisions of such REPA and (b) perform all other obligations of the Borrower under such REPA. Consumers and the Bank hereby agree that upon receipt of such written notice by Consumers the Bank may directly enforce the terms of such REPA against Consumers and that any action or proceeding to enforce the terms of the REPA may be taken by or against the Bank in its own name or in the name of the Borrower. Consumers and the Borrower each agree that unless and until Consumers receives such written notice from the Bank, the Bank shall not be deemed by virtue of the execution and delivery of this Assignment Agreement to have assumed any of the obligations of the Borrower under the REPA.

This Assignment Agreement shall not be deemed to release or to affect in any way the obligations of the Borrower or Consumers under any provisions of the REPA. No assumption of Borrower’s obligations under the REPA by the Bank or any further assignee shall release Borrower from its obligations to Consumers under the REPA.

2. Delivery of Notices

Consumers agrees that it will promptly notify the Bank of any termination or default pursuant to Sections 3.2, 8 and 10 of the REPA.

3. Default and Cure

 There shall be no cure period allowed the Bank in the event of termination of the REPA by Consumers pursuant to Sections 3.2 and 10.1 thereof.

4. Payment.

Consumers and the Borrower agree that until receipt of written notice from the Bank that all obligations under the Credit Agreement have been fully satisfied, Consumers will make all payments due to the Borrower under the REPA directly to the following account at the Bank:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Successor and Assigns.

This Assignment Agreement shall bind and inure to the benefit of the parties to this Assignment Agreement and their respective successors and assigns.

6. Applicable Law.

The construction, performance and validity of this Assignment Agreement shall be governed by the laws of the State of Michigan (excluding the laws applicable to conflicts or choice of law). Each of the Bank, Consumers and the Borrower hereby submits to the non-exclusive jurisdiction of the United States District Court for the Eastern District, Southern Division of Michigan and of any Michigan State Court sitting in Jackson, Michigan for the purpose of all legal proceedings arising out of or relating to this Assignment Agreement or the transactions contemplated hereby. As of the date hereof, Consumers represents that the REPA is a legal, valid and binding obligation of Consumers.

7. Waiver.

Unless otherwise specifically provided by the terms of this Assignment Agreement, no delay or failure to exercise a right resulting from any breach of this Assignment Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Assignment Agreement is breached by any Party and thereafter waived by the other Parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Assignment Agreement.

8. Counterparts.

This Assignment Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in multiple counterparts (including by facsimile transmission), each of which will be deemed an original and all of which shall constitute one and the same instrument. Any document generated by the Parties with respect to this Assignment Agreement, including this Assignment Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. None of the Parties hereto will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

9. Notices.

All written notices provided for in this Assignment Agreement shall be mailed by registered or certified mail, return receipt requested, or delivered by hand to the Borrower, Consumers and the Bank at the following addresses or such other address as may be designated in a written notice by the addressee:

If to the Borrower:

[Borrower Name]

[Borrower Street Address]

[City, State, Zip Code]

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to Consumers:

Consumers Energy Company

1945 West Parnall Road

Jackson, MI 49201

Attention: David F. Ronk, Jr., Executive Director

 Transactions and Wholesale Settlements Department

If to the Bank:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

All such notices shall be effective when delivered.

10. Entire Agreement

This Assignment Agreement shall completely and fully supersede all prior undertakings or agreements, both written and oral, between the Parties with respect to the assignment of the REPA in so far as the obligations and rights of the Borrower and Consumers are concerned.

IN WITNESS WHEREOF, this Assignment Agreement has been executed on behalf of the undersigned Parties by their respective representatives thereunto duly authorized as of the date first above written.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Borrower Name)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name)

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Title)

CONSUMERS ENERGY COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name)

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Bank Name)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name)

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Title)

Form of Estoppel Certificate

ESTOPPEL CERTIFICATE

Pursuant to that certain Renewable Energy Purchase Agreement, dated as of **[*Date*]**, entered into between Consumers Energy Company, a Michigan corporation (together with its successors and assigns, the “Contracting Party”), and \_\_\_\_\_\_\_\_\_, a Michigan company (the “Project Company”), the Contracting Party hereby delivers this Estoppel Certificate to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Project Company”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Secured Parties”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Equity Investor”) and hereby confirms to the Project Company, the Secured Parties and Equity Investor that:

(a) no default, or event that with notice and passage of time will become a default, by the Contracting Party nor, to its actual knowledge, the Project Company exists under that certain Renewable Energy Purchase Agreement, dated as of **[*Date*]**, between the Contracting Party and the Project Company (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “PPA”);

(b) Contracting Party hereby consents to the transfer of the membership interests in Project Company to Equity Investor. Furthermore, Contracting Party hereby agrees that such transfer of the membership interests to Equity Investor shall not constitute a default by Project Company; and

(c) as of the date hereof, (i) the PPA is in full force and effect and has not been amended, supplemented or modified, (ii) there are no disputes or legal proceedings between the Contracting Party and the Project Company and there are no proceedings pending or, to its actual knowledge, threatened against or affecting the Contracting Party in any court or by or before any governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of the Contracting Party to perform its obligations under the PPA, (iii) to the Contracting Party’s actual knowledge the Contracting Party is not aware of any event, act, circumstance or condition constituting an event of force majeure under the PPA, (iv) to the Contracting Party’s actual knowledge the Project Company does not owe any indemnity payments to the Contracting Party and the Contracting Party has no existing counterclaims, offsets or defenses against the Project Company under the PPA and (v) the Contracting Party has not made any payments to the Project Company in respect of liquidated damage, warranty or indemnity claims.

**IN WITNESS WHEREOF**, the Contracting Party has caused this certificate to be executed by its undersigned authorized officer as of **[*Month*]** \_, 2018.

**CONSUMERS ENERGY COMPANY**,
a Michigan corporation

By:
Name:
Title:

Product Purchasing Price Schedule

|  |  |
| --- | --- |
| Planning Year | $ Amount/MWh |
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| 2020 | $\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2021 | $\_\_\_\_\_\_\_\_\_\_\_\_ |
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