**BUILD TRANSFER AGREEMENT**

**by and between**

**("Seller")**

**and**

**CONSUMERS ENERGY COMPANY ("Buyer")**

**Dated as of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**

**TABLE OF CONTENTS**

Page

ARTICLE I DOCUMENTS INCLUDED, DEFINITIONS AND CONSTRUCTION 1

1.1 Specific Definitions. 1

1.2 Documents Included. 26

1.3 Entire Agreement. 27

1.4 Conflicting Provisions. 27

1.5 Construction. 27

ARTICLE II RESPONSIBILITIES OF SELLER 29

2.1 Seller's Obligation to Provide the Project. 29

2.2 Standards of Performance. 29

2.3 Production Tax Credit Opinion. 30

2.4 Provision of Materials, Supplies, and Services. 30

2.5 Information Assistance to Buyer in Dealings with Governmental Authorities. 33

2.6 Hazardous Chemicals and Hazardous Materials. 33

2.7 Labor and Personnel. 34

2.8 Compliance with Applicable Laws. 36

2.9 Storage. 36

2.10 Cooperation Regarding Commercial Operation. 36

2.11 No Shop. 36

ARTICLE III PROPERTY 37

3.1 Real Property Documents. 37

3.2 UCC Search of Personal Property Interests. 42

3.3 Project Layout. 42

3.4 Environmental Assessment. 43

3.5 Project Contracts. 43

3.6 Liens Arising from Work. 43

ARTICLE IV RESPONSIBILITIES OF BUYER 44

4.1 Buyer's General Obligation. 44

4.2 Buyer's Specific Obligations. 44

4.3 FERC Regulatory Filing. 46

4.4 MPSC Regulatory Filing. 46

ARTICLE V NOTICE TO PROCEED 47

5.1 Buyer's Conditions Precedent to the NTP. 47

5.2 Seller’s Conditions Precedent to the NTP. 49

5.3 Issuance of the NTP or Termination. 49

5.4 Use of Seller's Affiliates. 50

5.5 Contractors. 50

5.6 Construction Contracts. 50

ARTICLE VI DELIVERABLES 51

6.1 Transfer of Project Assets. 51

6.2 Engineering & Design. 54

6.3 Applicable Permits. 55

6.4 Spare Parts. 55

6.5 O&M Manual. 56

6.6 SCADA Manual. 56

6.7 SPG Job Book. 56

6.8 Other Job Book. 56

6.9 Record Drawings (As-Built Drawings). 57

6.10 Books and Records, Tax Accounting. 57

6.11 Warranties. 57

6.12 Test and Commissioning Results. 57

6.13 Insurance Information. 57

6.14 Other Documents. 57

6.15 Buyer Comment and Approval. 58

6.16 Ownership of Documents. 58

6.17 Parent Guaranty. 58

ARTICLE VII PROJECT PLANNING, SCHEDULING AND CONTROL 59

7.1 Project Schedule. 59

7.2 Submittal Schedule. 59

7.3 Changes to the Project Schedule. 60

7.4 Acceleration of Work. 60

7.5 Concurrent Delays. 60

7.6 Acceleration Where Work Is Not Delayed. 60

7.7 Delay Liquidated Damages (Delay LDs) for Project Schedule Delays. 61

7.8 Termination Remedy. 62

7.9 Progress Reports and Meetings. 62

7.10 Visits; Observation at Engineering/Construction Meetings with Third Parties. 62

ARTICLE VIII INSPECTION AND CORRECTION OF WORK 63

8.1 Periodic Inspections. 63

8.2 Observance of Tests. 63

8.3 Correction of Work. 63

ARTICLE IX PURCHASE AND SALE, PURCHASE PRICE AND PAYMENT 63

9.1 Purchase and Sale. 63

9.2 Purchase Price. 64

9.3 Terms of Payment. 65

9.4 Limitations on Payments to Seller. 67

9.5 Withholding of Payment. 68

9.6 Payments to Buyer. 68

9.7 Adjustments to Purchase Price. 68

9.8 Manner of Payment. 69

9.9 Purchase Price Allocation. 69

9.10 Fees and Costs. 70

9.11 Intended Tax Treatment. 70

ARTICLE X CHANGE ORDERS 70

10.1 Basis for Change Orders. 70

10.2 Buyer's Rights to Request Change Orders. 70

10.3 Seller's Right to Propose Change Orders. 71

10.4 No Damage for Delay. 72

10.5 Disagreements. 72

10.6 Price Changes. 72

10.7 Audit Rights. 72

ARTICLE XI COMPLETION OF MILESTONES 72

11.1 Achievement of Milestones. 72

11.2 SPG Manufacturing Completion. 73

11.3 Access Road Completion. 73

11.4 SPG Foundation Completion. 74

11.5 SPG Delivery Completion. 75

11.6 SPG Staging, Erection and Assembly Completion. 75

11.7 Collection System Circuit Completion. 75

11.8 Substation Completion. 76

11.9 Generator Radial Line Completion. 77

11.10 SPG Mechanical Completion. 78

11.11 SPG Commissioning Completion. 78

11.12 Substantial Completion. 79

11.13 Performance Acceptance Tests Completion. 80

11.14 Final Completion. 81

ARTICLE XII REPRESENTATIONS AND WARRANTIES OF SELLER 82

12.1 Organization. 82

12.2 Authority. 82

12.3 Binding Effect. 82

12.4 No Violations. 83

12.5 Project Assets. 83

12.6 Taxes. 85

12.7 Consents and Approvals. 87

12.8 Compliance with Law. 87

12.9 Litigation. 87

12.10 Project Contracts. 87

12.11 Environmental Attributes. 88

12.12 Environmental Matters. 88

12.13 Permits. 89

12.14 Work. 89

12.15 Project Schedule. 89

12.16 Brokers or Finders. 89

12.17 Absence of Regulation. 89

12.18 Intellectual Property. 90

12.19 Default. 90

12.20 Solvency. 90

12.21 Parent Guaranty. 90

12.22 Insurance. 90

12.23 FAA Determinations. 91

12.24 Solar Data. 91

ARTICLE XIII REPRESENTATIONS AND WARRANTIES OF BUYER 91

13.1 Organization. 91

13.2 Authority. 91

13.3 Binding Effect. 91

13.4 No Violations. 92

13.5 Consents and Approvals. 92

13.6 Brokers or Finders. 92

13.7 Solvency. 92

13.8 Compliance with Law. 92

ARTICLE XIV INSURANCE AND BONDS 93

14.1 Insurance Requirements. 93

14.2 Bond Requirements. 93

ARTICLE XV INDEMNIFICATION 94

15.1 Seller's General Indemnity. 94

15.2 Patent Infringement and Other Indemnification Rights. 96

15.3 Buyer's Indemnity. 96

15.4 Survival of Indemnities. 97

ARTICLE XVI TITLE; RISK OF LOSS 97

16.1 Clear Title. 97

16.2 Title. 97

16.3 Risk of Loss. 97

ARTICLE XVII WARRANTIES 98

17.1 Warranty. 98

17.2 Defect Warranty Period. 98

17.3 Correction of Defects. 98

17.4 Time for Warranty Work. 99

17.5 Warranty Work; Acceptance Tests. 99

17.6 Failure to Perform the Warranty Work. 100

17.7 Risk of Loss or Damage. 100

ARTICLE XVIII DEFAULT; TERMINATION 100

18.1 Events of Default by Seller. 100

18.2 Buyer's Rights and Remedies. 101

18.3 Consequences of Termination by Buyer. 103

18.4 Buyer Event of Default. 103

18.5 Seller's Remedies. 104

18.6 Termination for Changes to Production Tax Credits. 104

18.7 Termination Prior to NTP. 105

18.8 Effect of Termination. 105

ARTICLE XIX FORCE MAJEURE 105

19.1 Excuse. 105

19.2 Definition of Force Majeure. 105

19.3 Exclusions. 106

19.4 Conditions. 107

19.5 Determination. 107

19.6 Termination for Extended Force Majeure. 107

ARTICLE XX SURVIVAL 108

ARTICLE XXI NOTICES 108

21.1 Address. 108

21.2 Delivery and Receipt. 108

ARTICLE XXII CAP ON LIABILITY 109

22.1 Limitations on Seller’s Liability. 109

22.2 Limitations on Buyer’s Liability. 110

ARTICLE XXIII DISPUTES 111

23.1 Good Faith Efforts to Resolve Disputes. 111

23.2 Step Negotiations. 111

23.3 Senior Executive Negotiations. 111

23.4 Confidentiality. 111

23.5 Referral to Litigation. 111

23.6 Lien Proceedings. 112

23.7 Continuation of Performance. 112

23.8 Consent to Sole and Exclusive Jurisdiction. 112

23.9 Waiver of Jury Trial. 112

ARTICLE XXIV MISCELLANEOUS 113

24.1 Expenses. 113

24.2 No Stockholder or Member Liability. 113

24.3 Confidentiality. 113

24.4 Public Announcements. 113

24.5 Governing Law. 114

24.6 Successors and Assigns; Collateral Assignment; Binding Effect. 114

24.7 Severability. 114

24.8 Section Headings. 114

24.9 Counterparts; Electronic Versions. 114

24.10 No Third-Party Beneficiaries. 115

24.11 Time of Essence. 115

24.12 Waiver. 115

24.13 No Partnership or Joint Venture. 115

24.14 Entire Agreement; Interpretation; Amendment 115

**EXHIBITS**

[**NTD**: *The exhibits are set up as place holders. These exhibits will be completed and updated for each project.*]

Exhibit A1 Build Transfer Scope of Work

* + - 1. -General
			2. -Civil/Structural
			3. -Collection System
			4. -Collection System Substation Addition
			5. -SCADA and Communications
			6. -Panel Procurement, Panel Installation, & Performance Testing
			7. -MET Tower
			8. -Substation Equipment Procurement (Generator Step-up Transformer)
			9. -Property Rights

Exhibit A1-Appendix A Solar Panel Technical Specifications

Exhibit A1-Appendix B Consumers Energy Design Document Standards

Exhibit A1-Appendix C Electrical Switchboards

Exhibit A1-Appendix D Underground Collection Cable Specification

Exhibit A1-Appendix E Preliminary Construction Details

Exhibit A1-Appendix F Oil-Water Separator

Exhibit A1-Appendix G Lead Acid Battery Standard

Exhibit A1-Appendix H Circuit Breaker Specification

Exhibit B Preferred Panel Componentry

Exhibit C Selected Portions of Substation Transformer Specifications

Exhibit D Milestone Payment Schedule

Exhibit E Solar Energy Easement Form

Exhibit F Form of SPG Foundation Completion Certificate

Exhibit G Form of SPG Mechanical Completion Certificate

Exhibit H Form of Generator Radial Line Completion Certificate

Exhibit I Seller's Officer's and Secretary's Certificate

Exhibit J Form of Substation Completion Certificate

Exhibit K Form of Collection System Circuit Completion Certificate

Exhibit L Form of Substantial Completion Certificate

Exhibit M Form of Performance Acceptance Tests Completion Certificate

Exhibit N Insurance and Bond Requirements

Exhibit O Seller's Exceptions to Representations and Warranties

Exhibit P Assignment of Memorandum of Solar Energy Easements

Exhibit Q Records Format-Retirements Unit Format Example

Exhibit R Form of Job Book

Exhibit S Partial Unconditional Waiver

Exhibit T Full Unconditional Waiver

Exhibit U Sworn Statement

Exhibit V Vendor Payment-Financial EDI Transactions

Exhibit W Third-Party Ethics and Compliance Guidelines

Exhibit X Contractors (Subcontractors and Major Suppliers)

Exhibit Y Preferred Manufacturers

Exhibit Z Project Contracts

Exhibit AA Submittals/Deliverables List

Exhibit BB Investment Tax Credit Project-Specific Facts and Actions

Exhibit CC List of Certain Permitted Encumbrances

Exhibit DD Special Land Use Permit

Exhibit EE Agreements Regarding Real Estate Property

Exhibit FF Consents and Approvals

Exhibit GG Confidentiality Agreement

Exhibit HH Form of Final Completion Certificate

Exhibit II Transformer Supply Agreement and the certificate and report

Exhibit JJ Contractor Form of Subcontract[s]

Exhibit KK Form of Tax Clearance Certificate

Exhibit LL Performance Acceptance Tests

Exhibit MM Investment Tax Credit Opinion

Exhibit NN Solar Labor Agreement

Exhibit OO Commissioning Plan

Exhibit PP Form of Full Conditional Waiver

Exhibit QQ Form of Notice to Proceed

Exhibit RR Project Schedule

Exhibit SS Project Site

Exhibit TT Quality Assurance Plan

Exhibit UU Key Personnel

Exhibit VV Solar Panel Supply Agreement

Exhibit WW Form of Solar Energy Easement Amendment

Exhibit XX Project Layout

Exhibit YY Estoppel Certificate

Exhibit ZZ Assignment of Solar Energy Easements

Exhibit AAA Memorandum of Solar Energy Easement

Exhibit BBB Assignment of Crossing Agreements

Exhibit CCC Memorandum of Crossing Agreement

Exhibit DDD Warranty Deed

Exhibit EEE Bill of Sale

Exhibit FFF Engineering, Procurement and Construction Agreement

Exhibit GGG Applicable Permits

Exhibit HHH Spare Parts

Exhibit III Purchase Price Breakdown/Purchase Price Allocation

Exhibit JJJ [Parent Guaranty or Letter of Credit]

Exhibit KKK Weekly Progress Report

Exhibit LLL Seller's Invoice

Exhibit MMM Seller's Safety Program

Exhibit NNN Seller's Organizational Documents

Exhibit OOO Seller's Real Property Spreadsheet

Exhibit PPP Solar Data

Exhibit QQQ Form of Access Road Completion Certificate

Exhibit RRR Form of SPG Delivery Completion Certificate

Exhibit SSS Form of SPG Manufacturing Completion Certificate

Exhibit TTT Form of SPG Commissioning Completion Certificate

Exhibit UUU Form of SPG Staging, Erection and Assembly Completion Certificate

Exhibit VVV Assignment of Drain Agreements

Exhibit WWW Memorandum of Drain Agreement

Exhibit XXX Solar Energy Easement Amendment Form

**BUILD TRANSFER AGREEMENT**

This BUILD TRANSFER AGREEMENT (together with all exhibits appended hereto, this "Agreement"), is made and entered into as of [\_\_\_\_\_\_\_\_\_\_\_] ("Effective Date"), by and between Consumers Energy Company, a Michigan Corporation ("Buyer"), and [ ] ("Seller"). Buyer and Seller shall each individually be referred to herein as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, Seller has secured real property rights for and is developing a [\_\_\_\_\_\_\_\_\_\_\_\_] MW solar-powered electric generating facility consisting of [ ] Solar Panel Generators (individually and collectively, "SPG), located in \_[ ], that is commonly referred to as the [ ]Solar Project (the "Project");

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

**WHEREAS**, subject to the Parties' respective obligations hereunder, Buyer desires that Seller, and Seller agrees to, (i) procure SPGs, (ii) design and install foundations, and (iii) construct, start-up and test the SPGs and certain ancillary equipment and materials, including the Collection System Circuits and Substation to deliver all of the electrical energy generated by the SPGs to the Interconnection Point for the Project; and

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

**AGREEMENT**

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

#  DOCUMENTS INCLUDED, DEFINITIONS AND CONSTRUCTION

## Specific Definitions.

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

"Access Road" or "Access Roads" shall have the meaning given to it in Section 11.3.1.

"Access Road Completion" shall have the meaning given to it in Section 11.3.

"Access Road Completion Certificate" shall mean a Milestone Completion Certificate for Access Road Completion that has been completed as designed which shall be executed by Buyer and Seller using the form attached as Exhibit QQQ to establish agreement that Access Road Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"Acquisition Proposal" shall mean any offer, proposal, inquiry or indication of interest from any third party relating to any transaction involving (a) any acquisition or purchase by any Person (other than Buyer or an Affiliate of Buyer) of any interest in Seller or the Project Assets; (b) any merger, consolidation, business combination, or other similar transaction involving Seller or the Project Assets; (c) any sale, lease, exchange, transfer, acquisition, assignment, option right, or disposition of the assets of Seller or the Project Assets; or (d) any liquidation, dissolution, recapitalization or other significant corporate reorganization of Seller.

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

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

"ALTA Survey" shall mean an ALTA/ACSM survey, together with Items 1, 2, 3, 4, 5 (2 foot controls), 6(a), 8, 11, 13, 15, 16, 17, and 18 of the Table A requirements, of the Project Site sufficient to issue the ALTA Title Policy, prepared in accordance with the 2016 ALTA/ACSM survey requirements including (i) showing all exceptions to title listed in the Title Commitments, Pro Forma Title Policy, and ALTA Title Policy (as applicable based on the various stages of the title review process for the Project prior to NTP) or referencing such exception as not applicable; (ii) depicting the means of ingress and egress from the applicable Access Roads, (iii) showing all Drain Agreements and Crossing Agreements for the Project, (iii) certified by a Michigan licensed surveyor to Buyer and the Title Insurer, and (iv) dated as of a date satisfactory to Buyer and the Title Insurer.

"ALTA Title Policy" shall mean the title insurance policy issued by the Title Insurer in the condition required and approved by Buyer in the Final Pro Forma Title Policy, prepared in accordance with all standards and industry practice, and without any exceptions, including any of the standard title policy exceptions, other than the Permitted Encumbrances, together with affirmative insurance for the Access Roads, Crossing Agreements and Drain Agreements benefitting the Project.

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

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

"As Built Survey" shall mean the Final ALTA Survey updated to show any changes to the Project Site which shall only be those approved by Buyer (such as Project Layout and Permitted Encumbrances) and all improvements as they are constructed or installed on the Project Site and dated by the surveyor on a date that is within thirty (30) days prior to Substantial Completion.

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

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

"Assignment of Memorandum of Crossing Agreement" shall have the meaning given to it in Section 6.1.1.1(4).

"Assignment of Memorandum of Drain Agreement" shall have the meaning given to it in Section 6.1.1.1(4).

"Assignment of Memorandum of Solar Energy Easements" shall have the meaning given to it in Section 6.1.1.1(2)

"Assignment of Remaining Project Assets" shall have the meaning given to it in Section 6.1.3.

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

"ASTM" shall mean the American Society for Testing and Materials.

"Bill of Sale" shall have the meaning given to it in Section 6.1.2.1.

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

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

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

"BOP/EPC Contractor" shall mean the Contractor who contracted with Seller pursuant to the Engineering, Procurement and Construction Agreement to perform the Scope of Work of this Project, except [***NTD****: Seller may specify any contracts for which it will be directly contracting such as the Solar Panel Supply Agreement*].

"Bring Down Investment Tax Credit Opinion" shall have the meaning given to it in Section 2.3.

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

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

"Buyer Change or Delay" shall mean any change in the Work requested or approved (including the cost of such change) by Buyer or its Affiliates or any change or delay in the Work caused by Buyer or its Affiliates, or their respective employees or agents; provided that no exercise of Buyer's rights hereunder, any exercise of Buyer's rights of inspection or observation or any exercise or use of Dispute resolution rights or procedures, in each case in accordance with the terms of this Agreement, shall be deemed on its own to be a Buyer Change or Delay.

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

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

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

"Buyer's Representative" has the meaning given to it in Section 4.2.4.

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

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

"Collection System Circuit" shall mean the permanent electrical and communications infrastructure required to transmit energy and SCADA data between each SPG and the Substation or to the SCADA control panel as appropriate, in accordance with the Scope of Work and the Solar Panel Specifications. A Collection System Circuit includes for each SPG, underground (and/or overhead if expressly specified in this Agreement) collection system cables, splices, grounding transformers, junction boxes, disconnect switches, breakers and other Equipment and Materials as necessary between the SPG and the medium voltage bus in the Substation. For communications infrastructure purposes, each Collection System Circuit shall include fiber optic cable and all other associated Equipment and Materials necessary to transmit performance and operating data from each SPG to the SCADA control panel. Each Collection System Circuit, including each SPG associated therewith, is further described in the Scope of Work.

"Collection System Circuit Completion" shall have the meaning given to it in Section 11.7.

"Collection System Circuit Completion Certificate" shall mean a Milestone Completion Certificate for Collection System Circuit Completion that has been completed as designed which shall be executed by Buyer and Seller using the form attached as Exhibit K to establish that Collection System Circuit Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"Commercial Operation Date" is the date by when the Project must be operating at full capacity no later than the earlier of (i) the Investment Tax Credits Qualifying Date established for the Investment Tax Credits, or (ii) the deadline for commercial operations in the Interconnection Agreement, which date shall not be extended for Force Majeure, Buyer Change or Delay, or any other reason.

"Commissioning Plan" shall mean the plan for commissioning and testing each SPG and of the Project as a whole in accordance with Exhibit OO.

"Conditions Precedent" shall mean the conditions which must be satisfied or waived by a Party before such Party shall have the legal obligation to perform the next activities such as for Buyer to issue the NTP or achieve another Milestone.

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

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

“Continuity Requirements” shall mean requirements set forth in IRS Notice 2013-29, (and any subsequent IRS guidance modifying those requirements), to show either: 1) that the “continuous program of construction” test has been met for a project that used the “physical work of a significant nature” method to show start of construction or 2) that the “continuous efforts to advance towards completion of the facility” test has been met for a project that used the “5% financial safe harbor” method to show start of construction.

"Contractors" shall mean, collectively, the BOP/EPC Contractor and Subcontractors at all tiers that are party to any Construction Contracts and/or responsible for performing any Scope of Work, including the Transformer Vendor and Solar Panel Supplier.

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

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

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

"Date Down Title Policy" shall mean the ALTA Title Policy updated to a date within thirty (30) days of Substantial Completion that insures Buyer as of such date that the title condition of the Project Site has not changed since the date the ALTA Title Policy was issued on the date of the NTP Closing except as otherwise permitted by this Agreement such as the addition of Crossing Agreements and Drain Agreements approved by Buyer in accordance with the process in Section 3.1 but on a more expedited time basis when needed.

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

"Defects or Deficiencies" shall have the meaning given to it in Section 8.1.

"Defect Warranty Period" shall have the meaning given to it in Section 17.2.

"Delay LDs" shall have the meaning given to it in Section 7.7.

"Delayed SPG" shall have the meaning given to it in Section 9.3.4.

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

"Design Documents" shall mean all drawings and specifications for the Work, including comprehensive drawings, manuals, warranties, and specifications setting forth in detail the requirements for the construction of the Project, further including those listed in Exhibit A1-Appendix B, provided or created by Seller (or its Contractors) using a licensed engineer/design professional.

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

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

"Drain Agreements" shall mean all drain agreements, easements and other approvals and consents to the extent that any portion of the Project's water must enter into or otherwise utilize drainage facilities.

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

"EGLE" shall have the meaning given to it in Section 3.4.

"Engineering Alternatives" shall have the meaning given to it in Section 6.2.2.

"Engineering, Procurement and Construction Agreement" shall mean the agreement between Seller and the BOP/EPC Contractor to engineer, procure and construct the improvements required by this Agreement, which agreement shall be substantially in the form attached hereto as Exhibit FFF.

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

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

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

"Environmental Event" shall mean the Release or Threat of Release or the presence or suspected presence any Hazardous Materials.

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

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

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

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

"Estoppel Certificate" shall have the meaning given to it in Section 5.1.2.1.

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

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

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

"FERC Regulatory Filing" shall have the meaning given to it in Section 4.3.1.

"Final ALTA Survey" shall have the meaning given to it in Section 3.1.4.4.

"Final Completion" shall have the meaning given to it in Section 11.13.

"Final Completion Certificate" shall mean a Milestone Completion Certificate for Final Completion that has been completed as required by this Agreement and which shall be executed by Buyer and Seller using the form attached as Exhibit HH to establish Final Completion.

"Final Payment" shall have the meaning given to it in Section 9.3.4.

"Final Pro Forma Title Policy" shall have the meaning given to it in Section 3.1.4.4.

"Final Seller's Invoice" shall have the meaning given to it in Section 9.3.5.1.

"Financing Party" shall mean any Person providing debt financing for the development, construction, operation, maintenance, ownership or use of the Project.

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

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

"Full Conditional Waiver" shall mean the written statement in compliance with the statutory requirements of Applicable Laws and substantially in the form attached as Exhibit PP, pursuant to which a Person (including Seller and each of the Contractors) conditionally waives and releases all Seller Liens with respect to the Work provided the payment set forth in the written statement is received by Seller.

"Full Unconditional Waiver" shall mean the written statement in compliance with the statutory requirements of Applicable Laws and substantially in the form attached as Exhibit T, pursuant to which a Person (including Seller and each of the Contractors) unconditionally waives and releases all Seller Liens with respect to the Work.

"Generator Radial Line" shall mean the [insert kV number] kV overhead transmission line that connects the Substation to the Interconnection Point.

"Generator Radial Line Completion" shall have the meaning given to it in Section 11.9.

"Generator Radial Line Completion Certificate" shall mean a Milestone Completion Certificate for Generator Radial Line Completion which shall be executed by Buyer and Seller using the form attached as Exhibit H to establish Generator Radial Line Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"Generator Radial Line Corridor" shall mean that portion of the Project Site where the Generator Radial Line will be constructed or over which the Generator Radial Line will run.

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

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

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

"Infrastructure Facilities" shall mean the Collection System Circuit, foundations, Access Roads, grounding grid, Substation, Generator Radial Line and other plant facilities described in the Technical Specifications.

"Initial Cure Period" shall have the meaning given to it in Section 3.1.4.2(2).

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

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

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

"Interconnection Agreement" shall mean the interconnection agreement to be entered into by and between Seller and the Transmission Provider that is assignable to Buyer by its terms and assigned to Buyer as part of the Project Assets.

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

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

"Job Book" means a manual prepared by Seller and approved by Buyer containing all Contractors (including the BOP/EPC Contractor and Subcontractors), engineering, design, purchasing and other information relating to the Work, including the Job Book for the SPG and other Work and the other information described in Exhibit R.

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

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

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

"Letter of Credit" shall mean the irrevocable commitment from [insert lender] that conforms to the applicable requirements in Section 6.17 and that is substantially in the form attached hereto as Exhibit JJJ. [**NTD**: *A Parent Guaranty may be provided in lieu of a Letter of Credit as an option if the Parent Guarantor has sufficient assets unless Seller's balance sheet/financial statement is strong enough to stand alone as determined by Consumers.]*

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

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

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

"Memorandum of Crossing Agreement" shall have the meaning given to it in Section 6.1.1.1(4).

"Memorandum of Drain Agreement" shall have the meaning given to it in Section 6.1.1.1(6).

"Memorandum of Solar Energy Easement" shall have the meaning given to it in Section 6.1.1.1(2).

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

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

"Michigan Equipment, Materials, and Labor Information" shall have the meaning given to it in Section 9.3.2.3.

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

"Milestone" shall mean each of the following: (i) NTP, (ii) SPG Manufacturing Completion, (iii) Access Road Completion, (iv) SPG Foundation Completion, (v) SPG Delivery Completion, (vi) SPG Staging, Erection and Assembly, (vii) Collection System Circuit Completion, (viii) Substation Completion, (ix) Generator Radial Line Completion, (x) SPG Mechanical Completion, (xi) SPG Commissioning Completion, (xii) Substantial Completion, (xiii) Performance Acceptance Tests Completion, and (xiv) Final Completion.

"Milestone Completion Certificate" shall mean a certificate setting forth the Milestone to which the Milestone Completion Certificate relates, and setting forth in reasonable detail the basis on which Seller believes that Milestone Completion for such Milestone has been achieved, and including any supporting materials, documents and calculations, and the results of all testing, in each case to the extent reasonably necessary to support that Milestone Completion for such Milestone has been achieved, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

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

"Milestone Payment" shall mean the payment to be made by Buyer to Seller (or to Seller's Contractors if there is a Seller Lien threatened or in existence) pursuant to the Milestone Payment Schedule for payments set forth in Exhibit D when a Milestone designated for payment is achieved, which in the aggregate shall not exceed the Purchase Price, as such amount may only be increased by Change Order or an amendment to the Body of this Agreement.

"Milestone Payment Schedule" shall have the meaning given to it in Section 9.3.1.

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

"MPSC" shall mean the Michigan Public Service Commission.

"MW" shall mean megawatts.

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

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

"NTP Deadline" shall mean [insert date], subject only to extension by Change Order for voluntary extensions granted by mutual agreement of Seller and Buyer, Force Majeure events, and Buyer Change or Delay.

"O&M Manual" shall mean the complete bill of materials and system instructions and procedures for the operation and maintenance of the Project, which shall comply with the requirements of this Agreement including the Vendor Manual, the Technical Specifications, Seller's and the Contractors' recommended list of Spare Parts, all safety information and any precautionary measures therefor. The O&M Manual will also include bills of materials and a list of recommended and priced Spare Parts, all Contractors' operating and maintenance procedures, specifications, and requirements for the Equipment and Materials and will include all safety information and any precautionary measures therefor and all other material procedures, specifications, and requirements to start up, operate, shut down, and maintain the Project and its components.

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

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

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

"Parent Guaranty" shall mean a guaranty from a Parent Guarantor in favor of Buyer, guaranteeing the obligations of Seller under this Agreement, substantially in the form attached hereto as Exhibit JJJ. [**NTD**: *A Parent Guaranty may be provided in lieu of a Letter of Credit as an option if the Parent Guarantor has sufficient assets unless Seller's balance sheet/financial statement is strong enough to stand alone as determined by Consumers.*]

"Part 201" shall have the meaning given to it in Section 3.4.

"Partial Unconditional Waiver" shall mean the written statement in compliance with the statutory requirements of Applicable Laws and substantially in the form attached as Exhibit S, pursuant to which a Person (including Seller and each of the Contractors) unconditionally waives and releases all Seller Liens with respect to the Work for which it has been paid.

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

"Performance Acceptance Tests" shall mean the tests described in Exhibit LL.

"Performance Acceptance Tests Completion" shall have the meaning given to it in Section 11.13.

"Performance Acceptance Tests Completion Certificate" shall mean a Milestone Completion Certificate for Performance Acceptance Tests Completion which shall be executed by Buyer and Seller using the form attached as Exhibit M to establish Performance Acceptance Tests Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

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

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

"Permitted Encumbrances" shall mean (i) Liens for Taxes arising after Substantial Completion is achieved; (ii) easements, rights-of-way, reservations, restrictions, Liens and other similar encumbrances and exceptions, each as listed on the Title Commitments, Pro Forma Title Policy, or ALTA Survey that have not been objected to by Buyer pursuant to the provisions of Section 3.1.4, unless such objection has subsequently been waived in writing by Buyer; and (iii) Liens created by the act or omission of Buyer not caused by Seller's acts or omissions, or permitted by Buyer with its written consent.

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

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

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

"Investment Tax Credit Continuity Requirements Documentation" shall mean the documentation furnished by Seller to Buyer as a Condition Precedent to achieving Substantial Completion that evidences a finding that Seller met the Continuity Requirements. [**NTD**: *This documentation may not be needed depending on how Seller is qualifying the Project for Investment Tax Credits.*]

"Investment Tax Credit Opinion" shall have the meaning given to it in Section 2.3.

"Investment Tax Credits" shall mean the full amount of the credits provided for in 26 USC §48 (i.e., a 30% Investment Tax Credit). [**NTD**: *the provision shall be changed if Investment Tax Credit qualifications are based on a 26% Investment Tax Credits*]

"Investment Tax Credit Qualified Law Firm" shall have the meaning given to it in Section 2.3.

"Investment Tax Credits Qualifying Date" means the date by which construction of a facility using solar rays to produce electricity must begin commercial operation in order to be considered a "qualified facility" eligible for the full amount of the Investment Tax Credits (i.e., a 30% Investment Tax Credit); that date currently being December 31, 2023 [**NTD**: *the provision shall be changed if Investment Tax Credit qualifications are based on a 26% Investment Tax Credit by December 31, 2023*].

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

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

1. The Project Site;
2. Project Documents;
3. All of the tangible and intangible rights and property relating to the Project, including such rights and property pertaining to ownership, construction, repair or maintenance of the Project and any and all rights to the Environmental Attributes attributable to the Project or the electricity generated therefrom;
4. All insurance benefits, including claims, rights and proceeds, arising from or relating to the Project Assets;
5. All rights or claims against third parties relating to the Project Assets, whether choate or inchoate, known or unknown, contingent or non-contingent;
6. All rights relating to transmission credits, tax credits, warranty and/or damage payments related to the Project Assets, deposits and prepaid expenses, claims for refunds of utility charges and rights to offset in respect thereof; and
7. Equipment and Materials.

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

"Project Documents" shall mean the following:

1. Project Contracts;
2. Investment Tax Credit Opinion(s), Bring Down Investment Tax Credit Opinion, and the Investment Tax Credit Continuity Requirements Documents;
3. Title and Survey Documents;
4. Design Documents and Record Drawings together with other Seller-supplied documentation (including Seller-supplied engineering calculations and installation or operating manuals or procedures) that are, or to the extent that same are, prepared or revised by Seller for or in connection with the performance of the Work;
5. All Applicable Permits and all Permit Applications or renewals thereof pertaining to the Project and Consents, including all Environmental Permits and Special Land Use Permits;
6. All Insurance policies that name or benefit Buyer or its Affiliates;
7. The Job Book;
8. Michigan Equipment, Materials, and Labor Information;
9. The O&M Manual (including all manuals expressly identified in this Agreement and Vendor Manuals) and the SCADA Manual;
10. Sworn Statements, Full Unconditional Waivers, Full Conditional Waivers, and Partial Unconditional Waivers;
11. All Milestone Completion Certificates and supporting, related and ancillary documents for the Project;
12. All Crossing Agreements;
13. All Drain Agreements;
14. Easements, as applicable, for Access Roads to allow ingress and egress to public roads;
15. All Real Property Documents Governmental Approvals;
16. [Parent Guaranty or Letter of Credit] [***NTD****: RFP requires adequate security to secure Seller's obligations and Buyer's payments under the Milestone Payments*];
17. Seller's Real Property Spreadsheet;
18. Seller's Safety Program, including all safety data, books, and manuals;
19. All Books and Records; and
20. All other documents necessary or customary for Buyer to use the Project for its intended purpose including all other documents referenced in any of the foregoing documents or this Agreement.

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

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

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

"Project Site" shall mean the real property located in [ ] upon which the Project, including its SPGs, Interconnection Facilities, Substation, Generator Radial Line to the Interconnection Point, other facilities and its access rights will be located, and any additional real property encumbered by interests necessary for the Project including all Access Roads, Crossing Agreements and Drain Agreements, as more particularly described in Exhibit SS.

"Prudent Industry Standards" shall mean those practices, methods, standards, and acts engaged in or approved by a significant portion of the industry for utility scale solar-powered electrical facilities in the United States that at a particular time in the exercise of good judgment by experienced solar energy developers and/or professional engineering construction firms in connection with the design, engineering, construction, maintenance, repair and use of electrical and other equipment, facilities improvements of such facilities and commensurate with the standards of safety, performance, dependability, efficiency and economy, would reasonably have been expected to accomplish the desired result in a manner consistent with other utility scale solar-powered facilities and all Applicable Laws and Applicable Permits; and provided further that if any portion of such Prudent Industry Standards set forth in this Agreement conflict with or is less stringent than any Applicable Laws or Applicable Permits, the Applicable Laws and Applicable Permits shall supersede the less stringent or conflicting provisions. Reference to a standard, code or specification of any society, organization, or association shall (unless expressly stated otherwise herein) mean the latest standard, code or specification standard adopted and published at the time of Seller's performance of the Work. Where these methods, standards, manuals or codes differ from technical requirements otherwise specified in this Agreement, the provisions that impose the most stringent requirements upon Seller will, unless expressly provided otherwise in this Agreement, take precedence. Further "Prudent Industry Standards" shall mean project management practices that shall likewise be performed in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to utility scale solar-powered electrical projects.

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

"Punch List Holdback" shall mean an amount equal to one hundred fifty percent (150%) of the aggregate value of the Punch List Items as of Substantial Completion.

"Punch List Items" or "Punch List" shall mean the Buyer-approved written list of items provided by Seller in connection with the achievement of Final Completion, identifying those minor items of Work not to exceed five percent (5%) of the Purchase Price in the aggregate that remain to be completed or are Defects or Deficiencies, but that neither interfere with Buyer's intended use of the Project nor cannot reasonably be expected to impact negatively on the operation, availability for generation or safety of the Project, together with the value of each such item as of Substantial Completion.

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

"Purchase Price" shall mean the sum of [insert amount]Dollars ($[insert amount]) which includes all Taxes for the Project, and may only be adjusted by a Change Order or an amendment to the Body of this Agreement.

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

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

"Real Property Documents" shall mean the Solar Energy Easements, Memorandum of Solar Energy Easements, Assignment of Solar Energy Easements, Assignment of Memorandum of Solar Energy Easements, Crossing Agreements, Memorandum of Crossing Agreements, Assignment of Crossing Agreements, Assignment of Memorandum of Crossing Agreements, Drain Agreements, Memorandum of Drain Agreements, Assignment of Drain Agreements, Assignment of Memorandum of Drain Agreements, Warranty Deed, and other deeds and each additional or other agreement, including any restrictive covenants, leases, licenses, easements, instruments, or documents that provide Seller with real property interests in or to the Project Site or that otherwise provide Seller with real property rights, interests or permissions in furtherance of the Project as well as ingress and egress to and from a public road, and all of which will be assigned to Buyer as provided in this Agreement. The Real Property Documents are more particularly identified on Exhibit EE. Notwithstanding the foregoing, once Substantial Completion is achieved, the Real Property Documents shall not include any temporary agreements held by Seller or its Contractors that were only necessary for the initial construction activities of the Project.

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

"Record Drawings" means the complete set of as-built drawings (provided in six (6) hard copies and one (1) electronic copy) prepared by Seller or its Contractors in accordance with Buyer's formatting and software requirements (including adding the appropriate border) as further required by Exhibit A1-Appendix B, and which accurately and completely represents in detail the physical placement of Work including all Equipment and Materials, SPGs, Substations, the Collection System Circuit, and Generator Radial Line, as constructed, assembled, erected, and installed. Record Drawings shall also include elementary diagrams, one line diagrams, wiring diagrams, and physical drawings showing the precise location of all underground power and communication cables.

"Recovery Plan" shall have the meaning given to it in Section 7.4.

"Regulatory Approval" shall mean a final, non-appealable decision or Order from each of the MSPC and FERC, which approves Buyer's acquisition of the Project and is otherwise acceptable to Buyer.

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

"Required Authorizations" shall have the meaning given to it in Section 5.1.1, which are Conditions Precedent to Buyer's obligation to issue an NTP.

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

"S&P" shall mean Standard and Poor's Rating Group.

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

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

"Scope of Work" shall mean all of Seller's obligations, duties and responsibilities assigned to be undertaken by Seller pursuant to this Agreement, including those working by or through Seller, including the Contractors, for proper performance and completion of the Project, and further including all Work and requirements described in Exhibit A1, Exhibit B, and Exhibit C and the appendices.

"Secondary Cure Period" shall have the meaning given to it in Section 3.1.4.3.

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

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

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

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

"Seller's Fee Payment" is the portion of the Purchase Price paid by Buyer to Seller for Seller's overhead and profit as itemized in the Milestone Payment Schedule when a particular Milestone is achieved.

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

"Seller's Real Property Spreadsheet" shall have the meaning given to it in Section 3.1.3.

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

"SPG" has the meaning given in the Recitals to this Agreement and shall include each of the [insert number] solar panel generators ([insert W] W per SPG) to be installed on the Project Site as part of the Project, as further described in the Solar Panel Supply Agreement.

"SPG Commissioning Completion" shall have the meaning given to it in Section 11.11.

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

"SPG Delivery Completion Certificate" shall mean a Milestone Completion Certificate for SPG Delivery Completion that has been completed as designed which shall be executed by Buyer and Seller using the form attached as Exhibit RRR to establish SPG Delivery Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"SPG Manufacturing Completion" shall have the meaning given to it in Section 11.2.

"SPG Manufacturing Completion Certificate" shall mean a Milestone Completion Certificate for SPG Manufacturing Completion that has been completed as designed which shall be executed by Buyer and Seller using the form attached as Exhibit SSS to establish SPG Manufacturing Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"SPG Mechanical Completion Certificate" shall mean a Milestone Completion Certificate for SPG Mechanical Completion which shall be executed by Buyer and Seller using the form attached as Exhibit G to establish SPG Mechanical Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"SPG Milestone" and collectively "SPG Milestones" shall have the meaning given to it in Section 11.1.1.

"SPG Partial Milestone" shall have the meaning given to it in Section 11.1.1.

"SPG Staging, Erection and Assembly Completion" shall have the meaning given to it in Section 11.6.

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

"Solar Energy Easement Amendment" is the amendment document to the Solar Energy Easement substantially in the Solar Energy Easement Amendment Form, as may only be modified as mutually to by the Parties.

"Solar Energy Easement Amendment Form" shall have the meaning given to it in Section 3.1.3.

"Solar Energy Easement Form" shall have the meaning given to it in Section 3.1.3.

"Solar Energy Easements" are the leases or easements granted by each landowner listed in Exhibit A1-Section 9, pursuant to the Easement Agreement form attached as Exhibit E, and copies of which are attached as Exhibit EE, as may only be modified as mutually agreed to by the Parties. Unless the context expressly requires otherwise, each Solar Energy Easement also includes the Solar Energy Easement Amendment and any other amendments approved by Buyer.

"Solar Panel Supplier" shall mean [insert name], who is the Contractor that shall provide the Equipment and Materials for the SPG.

"Solar Panel Supply Agreement" shall mean the Construction Contract by and between Seller and the Solar Panel Supplier for the supply of SPGs for the Project, substantially in the form attached hereto as Exhibit VV.

"Spare Parts" shall mean the spare parts listed in Exhibit HHH together with any additional recommended spare parts necessary to operate and maintain the Project after the date of Substantial Completion as provided in Section 6.4.

"Special Land Use Permit" shall mean an Obtained Permit as of the Effective Date that has been issued by each and every applicable Governmental Authority to allow the Project to be fully constructed on the Project Site under Applicable Laws pertaining to land use.

"Subcontract" or "Subcontracts" shall mean individually and collectively the agreements, as the context requires, between BOP/EPC Contractor and Subcontractors and between Subcontractors of all tiers that incorporate the terms of the Engineering, Procurement and Construction Agreement, governs the applicable portion of the Subcontractors' Scope of Work, and is substantially in the forms attached hereto as Exhibit JJ, unless Purchaser agrees in writing to a change in an applicable Subcontractor's Subcontract.

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

"Submittal Schedule" shall have the meaning given to it in Section 7.2.

"Substantial Completion" shall have the meaning given to it in Section 11.11.

"Substantial Completion Certificate" shall mean a Milestone Completion Certificate for Substantial Completion which shall be executed by Buyer and Seller using the form attached as Exhibit L to establish that Substantial Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"Substantial Completion Deadline" shall mean [insert date], subject to extension by Change Order or amendment to the Body of this Agreement, but in all events, irrespective of cause, must occur prior to the Commercial Operation Date.

"Substation" shall mean collectively and individually the foundations, underground and overhead electrical interconnection lines, step-up transformers, metering devices, switchgear and protective devices, together with all other associated Equipment and Materials and improvements, which are necessary to convert the [insert kV] kV output voltage of the Collection System Circuit to the interconnection voltage of [insert kV] kV and to provide electrical protection for the Project and the Generator Radial Line.

"Substation Completion" shall have the meaning given to it in Section 11.8.

"Substation Completion Certificate" shall mean a Milestone Completion Certificate for Substation Completion which shall be executed by Buyer and Seller using the form attached as Exhibit J to establish Substation Completion has occurred, notwithstanding that any Defects or Deficiencies may later be discovered and shall be corrected as permitted by this Agreement.

"Sworn Statement" shall mean a written statement substantially in the form attached as Exhibit U and otherwise in compliance with all Applicable Law pursuant to which Seller and any Contractor who performs more than Five Hundred Thousand Dollars ($500,000) of Work (such as the BOP/EPC Contractor, Transformer Vendor, and Solar Panel Supplier) under its applicable Construction Contract swears under oath as to the Work performed, by whom and the amount which has been performed, amount which is due, and amount yet to be paid.

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

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

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

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

"Technical Specifications" shall mean the technical specifications set forth on Exhibit A1-Appendix A.

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

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

"Title Commitments" shall mean the ALTA/ACSM title commitments issued by the Title Insurer showing fee, leasehold or easement title to the Project Site is vested with Seller, subject to only Permitted Encumbrances, together with all documents referenced in the title commitments including all vesting deeds for the interest(s) of Seller and the underlying landowner, and that commit the Title Insurer to issue policies in the same condition at the time set forth in this Agreement.

"Title Insurer" shall mean [insert name].

"Title Objection Notice" shall have the meaning given to it to Section 3.1.4.2.

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

"Transformer" shall mean the design, fabrication, and manufacture of one custom-designed [\_\_\_\_\_\_\_\_\_\_\_] kV transformer.

"Transformer Supply Agreement" shall mean that certain Equipment and Service Purchase Agreement dated as of [insert date] with the "Transformer Vendor" for the Transformer.

"Transmission Owner" shall mean [insert name], or its successors or assigns under the Interconnection Agreement.

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

"UCC" shall have the meaning given to it Section 3.2.

"UCC Search" shall have the meaning given to it in Section 3.2.

"Vendor Manual" means each operations manual and data sheets with respect to the Work to be provided by Contractors including the Solar Panel Supplier, each of which shall be attached as part of the O&M Manual and which manuals shall include among other things the general operating characteristics and requirements as well as all operations and maintenance procedures for all components and/or systems included in the Work, as typically provided by each Contractor in accordance with Prudent Industry Standards, the terms of this Agreement and all Requirements, but expressly excluding only the SCADA Manual. For the avoidance of doubt, the inclusion of the Vendor Manual in the O&M Manual shall not relieve Seller of any obligation to ensure that such Vendor Manual conforms to the requirements of this Agreement, including the Scope of Work.

"Warranty" shall have the meaning given to it in Section 17.1.

"Warranty Deed" shall have the meaning given to it in Section 6.1.1.1(5).

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

"Weekly Progress Report" shall have the meaning given to it in Section 7.9.1.

"Work" shall mean all work and services for the management of the Project, the design, engineering, procurement, construction, start-up and turnover of the Project and the procurement, delivery, assembly, erection, installation, commissioning, start-up and turnover of the SPGs, which work and services shall include all aspects of the work and services described in the Construction Contracts, the Solar Panel Supply Agreement and the Technical Specifications, and the provision of all Equipment and Materials, machinery, tools, labor, transportation, administration and other services and items required to achieve Final Completion, all in accordance with this Agreement including the Project Contracts.

## Documents Included.

### Exhibits.

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

### Online Document Sharing.

### When a Party has an obligation to deliver a document (but expressly excluding communications, consents and approvals that are governed by notice provisions of Section 21.1) to the other Party prior to Final Completion, each Party shall fulfill its obligation by delivering the document using a secured file-transfer website that automatically generates notices of a Party's upload of a document to the other Party. Seller has established the following file sharing website for such twenty-four (24) hour, seven (7) day a week access: [insert website address]. Seller shall maintain the foregoing file sharing website at Seller's cost and expense until sixty (60) days after notice to Buyer that the file sharing website will be closed, which may not occur until the earlier of any of the following events: (i) termination of this Agreement, or (ii) Seller achieving Final Completion.

## Entire Agreement.

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

## Conflicting Provisions.

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

## Construction.

### Terminology.

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

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

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

#### References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or Exhibits of this Agreement, and references to paragraphs, sections, or clauses shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

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

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

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

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

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

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

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

### Headings.

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

### Interpretation or Approvals.

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

#  RESPONSIBILITIES OF SELLER

## Seller's Obligation to Provide the Project.

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

## Standards of Performance.

Seller, subject to the terms and conditions of this Agreement, represents and agrees that it shall be responsible for the timely performance and prosecution of the Work in accordance with (i) the specific standards set forth in this Agreement, including the Scope of Work and the Technical Specifications, (ii) procurement of and compliance with all Applicable Permits, (iii) Applicable Laws, (iv) Prudent Industry Standards; and (v) the requirements, terms and obligations of all Project Contracts including all Real Property Documents and Construction Contracts (collectively the "Requirements").

## Investment Tax Credit Opinion.

Attached as Exhibit MM is a tax opinion from a nationally recognized law firm who regularly counsels and issues opinions on Investment Tax Credit qualifications and is acceptable to Buyer ("Investment Tax Credit Qualified Law Firm") that opines and certifies to Buyer that the Project qualifies for the full amount of Investment Tax Credits (i.e., 30% Investment Tax Credit) [**NTD**: *the provision shall be changed if Investment Tax Credit qualifications are based on a 26% Investment Tax Credit*] available as of the Effective Date ("Investment Tax Credit Opinion"). As a Condition Precedent to both NTP and Substantial Completion, Seller shall provide an updated Investment Tax Credit Opinion that concludes the Project still qualifies for Investment Tax Credits, and that the Investment Tax Credit Opinion is still true and correct in all material respects, issued by either the same Investment Tax Credit Qualified Law Firm who issued the Investment Tax Credit Opinion or another Investment Tax Credit Qualified Law Firm and subject only to changes in facts or circumstances that are reasonably acceptable to Buyer ("Bring Down Investment Tax Credit Opinion"). All actions necessary to support the Investment Tax Credit Opinion taken by Seller as of the Effective Date, and all actions necessary to support the Bring Down Investment Tax Credit Opinion at each NTP and Substantial Completion to be taken by Seller after the Effective Date, but prior to Substantial Completion, shall be set forth in Exhibit BB.

## Provision of Materials, Supplies, and Services.

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

### Handling of Equipment and Materials.

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

### Quality of Equipment and Materials.

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

### Construction Means and Methods.

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

### Construction Utilities and Other Facilities.

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

### Maintenance of Project Site.

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

### Project Site Safety.

Establish and memorialize in writing the safety and security precautions and programs as set forth in Exhibit MMM, including address and comply with the requirements set forth in the Buyer's Safety/Fire Protection Program, in the Michigan Occupational Safety and Health Act (Act 154 of the Michigan Public acts of 1974) as amended, in OSHA, and in all other Applicable Laws (including all Environmental Laws) and Prudent Industry Standards, Insurance requirements and all other Requirements, and shall likewise comply with (and cause its Contractors to comply with) all other safety measures and procedures reasonably required to be implemented by Buyer at the Project Site (collectively, and as any one or more of them may be subsequently amended, the "Seller's Safety Program"). Seller shall provide appropriate notice of the requirements of, and the obligation to comply with, this Section 2.4.6 to all Persons entering the Project Site, including all of Seller's employees and Contractors, to abide by such rules and regulations and all safety and security laws applicable at the Project Site. Seller shall erect and maintain or cause to be erected and maintained, as required by existing conditions and the progress of the Work, all safeguards for safety and security, including lights, barriers, fences and railings. Seller shall be responsible for placing high priority on safety and health during performance of the Work. Seller shall be responsible for safety related to and during the performance of the Work at the Project Site and shall take reasonable measures to ensure that it and all of its Contractors (including all working by or through Seller) provide and maintain a safe working environment and properly protect (i) all Persons in proximity of the Project Site, employed or otherwise, from risk of injury and danger to health, and (ii) all property, including property of Buyer and third parties, from damage or loss. Before commencing Work, Seller shall inspect the Project Site and become familiar with the safety and health conditions there, and shall effectively communicate to all of its Contractors all safety, fire and health regulations in force at the Project Site. Notwithstanding anything to the contrary, neither the provision, review, or approval by Buyer of Seller's Safety Program, nor Buyer's or its consultants' entry onto the Project Site, constitutes an assumption by Buyer of any responsibility for the safety and security of Persons or property and shall not relieve Seller and its Contractors of any liability for injury to Persons or damage to property or impose on Buyer any such liability.

### Quality Assurance.

Comply with the quality assurance plan attached as Exhibit TT in performing the Work, which plan shall be in accordance with all Requirements including Prudent Industry Standards and Applicable Laws (the "Quality Assurance Plan"). Any changes to the Quality Assurance Plan shall be reviewed in advance by Buyer with Buyer having an opportunity to provide comments; however, Buyer's review and comments shall in no manner act as a transfer of responsibility or liability for the quality of the Work or compliance with the Quality Assurance Plan as such responsibility shall in all respects remain with Seller and its Contractors.

### Emergencies.

In the event of any emergency on the Project Site relating to the Work endangering Persons or property, take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as practicable (but in no event later than eight (8) hours after receiving notice of the event), report any such incidents, including Seller's response thereto, to Buyer. Buyer's taking or not taking any emergency action shall not limit Seller's obligations or liability hereunder irrespective of whether before or after Final Completion.

### Roads.

Be responsible for all damage it and its Affiliates, Contractors or Persons working by or through such parties cause to public roads and highways on or off the Project Site, including all Access Roads. To the extent a Crossing Agreement, Drain Agreement, agreement for Access Roads or other use agreement associated with the Work, such as temporary use agreement only needed for Seller's construction activities (e.g., staging, access, etc.), that may or may not be a Project Contract requires that activities be taken during and/or to complete the obligations of Buyer or Seller in connection with such agreement, Contractor's Scope of Work shall automatically include such obligations.

### Utilities and Drainage Infrastructure.

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

### Interconnection to the Transmission Owner's Transmission System.

Coordinate activities with and provide access to the Transmission Owner to enable installation and commissioning of all associated equipment provided and installed by the Transmission Owner and its agents and allow the Project to interconnect at the Interconnection Point.

### Commissioning.

Conduct all commissioning, start up, synchronization, operation, and testing, including as contemplated in the Commissioning Plan attached as Exhibit A1, Section 6 and the Performance Acceptance Tests in accordance with this Agreement. Buyer and its agents and invitees shall have the right to be present during the commissioning, start up, synchronization, operation, and testing of the Work pursuant to this Agreement.

## Information Assistance to Buyer in Dealings with Governmental Authorities.

Seller shall provide or cause to be provided to Buyer information reasonably requested by Buyer to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by Buyer in dealing with any Governmental Authority in matters relating to the Work and the Project.

## Hazardous Chemicals and Hazardous Materials.

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

### Information Concerning Hazardous Chemicals.

As required by Applicable Laws, Seller shall provide material safety data sheets, warning labels, or other documentation covering all Hazardous Chemicals, as defined under MIOSHA, furnished under or otherwise associated with the Work. Seller shall provide to Buyer either copies of the applicable safety data sheets or copies of a document certifying that no safety data sheets are required under any Applicable Laws prior to the commencement of such Work or at such time as any such substance enter the Project Site.

### Action Upon Encountering Hazardous Materials.

If Seller encounters any Hazardous Materials (or materials or substances which Seller reasonably believes to be Hazardous Materials) in or on the Project Site in a location or otherwise under circumstances which would create a safety or health hazard for Seller, any Contractor or any employee, agent or representative of either Party or which would create a health hazard for the general public or the surrounding environment or liability to Buyer under any Environmental Law, Seller shall immediately stop any Work affecting the area to the extent required to avoid any such safety or health hazard or liability and until action sufficient to protect employees of Buyer, Seller, and Contractors, or avoid such safety or health hazard or liability as may be required by Environmental Laws has been taken by Seller. Seller shall notify Buyer promptly upon encountering any Hazardous Materials (or materials or substances which Seller believes to be Hazardous Materials) at, in, on, under, or emanating from the Project Site.

## Labor and Personnel.

 Seller shall provide, or cause to be provided, all management services necessary for the Work and provide, or cause to be provided, all labor and personnel (collectively, "Labor") required to timely perform the Work, including management services and personnel, in accordance with the Requirements.

### Seller's Representative.

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

### Staffing; Key Personnel.

Seller shall provide and maintain staff sufficient for the completion of the Work in accordance with the Project Schedule who have the technical and managerial experience, qualifications, certifications, and licenses necessary to perform the Work in accordance with the Requirements. Seller shall provide and maintain a qualified and competent organization at the Project Site with adequate capacity and numbers of construction and startup personnel, equipment, and facilities to execute the Work in a safe, efficient, environmentally sound, and professional manner at a rate of progress in accordance with the Project Schedule. In establishing the Purchase Price and Project Schedule, Seller has investigated the Labor conditions and availability of Labor. Buyer shall be informed and have approval of all key personnel, including the Project Manager, construction manager, engineering manager, and start-up manager, as each are identified in Exhibit UU ("Key Personnel"). Key Personnel shall not be removed or replaced without written notification to and approval of Buyer, *provided, however*, if any Key Personnel is no longer employed by Seller or must be on a medical leave that will adversely affect the Project, Buyer will not unreasonably withhold approval.

### Licensed Personnel.

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

### Personnel Documents and Language.

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

### Code of Ethics.

Seller represents that it has reviewed and agreed to be bound by, and shall cause all Contractors and all employees, consultants, Affiliates, and representatives, to review and be bound by, Buyer's Third-Party Ethics and Compliance Guidelines which are attached as Exhibit W. Without limiting the other provisions in Buyer's Third-Party Ethics and Compliance Guidelines, Seller further represents that it and Persons working on the Project Site cannot possess alcohol, drugs, guns and ammunition at the Project Site as provided in the Buyer's Third-Party Ethics and Compliance Guidelines. Buyer and/or its authorized security representatives shall have the right to conduct searches at any time of Seller, Contractors, their employees, consultants, Affiliates, and other Persons and/or the property controlled by them.

### Labor Relations.

#### Seller shall comply with any project, national, or local labor agreements that are applicable to the Work or the Project Site, including that Seller represents that it has its Contractors bound by the Solar Labor Agreement attached to this Agreement as Exhibit NN, and agrees to perform its work and services in accordance with such agreements. When the Work is performed by building and construction trades Labor, a pre-job conference shall be held with local labor representatives prior to starting Work. Buyer shall be afforded the opportunity to attend and participate in pre-job conferences. Seller shall promptly inform and cooperate with Buyer on labor relations matters. Seller shall consult with Buyer prior to rendering its decision(s) on labor relations matters that may impact the timely, efficient, and productive performance of the Work. Seller shall exercise its management rights contained in applicable labor agreements to establish, maintain, and enforce work rules conducive to timely, efficient, productive, and harmonious work operation. Seller shall take the necessary steps available to resolve grievances, jurisdictional disputes, or alleged or actual violations of collective bargaining agreements. Subject to the foregoing, Seller shall be solely responsible for management of Labor and labor relations with respect to the Work.

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

### Prevailing Wage and Similar Requirements.

Seller shall comply with any prevailing wage and similar requirements that are imposed on the Work by any Governmental Authority, if applicable.

## Compliance with Applicable Laws.

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

## Storage.

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

## Cooperation Regarding Commercial Operation.

Seller and Buyer recognize that after a SPG has been commissioned and placed into commercial operation by Buyer, Seller may be continuing with completion of the Work. Until Substantial Completion has been achieved, Buyer shall not unreasonably interfere with Seller's prosecution of the Work. After Substantial Completion has been achieved, Seller shall not unreasonably interfere with Buyer's commercial operations and use of the Project Site.

## No Shop.

From and after the date of this Agreement and until and unless this Agreement is terminated, neither Seller nor any of its Affiliates (or its or their agents or representatives) shall, directly or indirectly: (i) solicit, initiate, facilitate, or continue any prior occurring or ongoing discussions pertaining to the making, submission or announcement of any Acquisition Proposal to any Person other than Buyer or an Affiliate of Buyer; (ii) furnish any Confidential Information, including regarding Seller, the Project, the Project Assets or the terms of or transactions contemplated by this Agreement, to any Person other than Buyer or an Affiliate of Buyer in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; or (ii) engage (including continuing to engage) in discussions or negotiations with any Person other than Buyer or an Affiliate of Buyer with respect to any Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal.

#  PROPERTY

## Real Property Documents.

### Generally.

Commencing on the Effective Date, Buyer may conduct due diligence of the type and scope customary for transactions of the nature as set forth in this Agreement, and Seller shall make available to Buyer by means of a secured file-transfer website (which acts as a virtual data room), as described in Section 1.2.2, all Project Documents, including all Real Property Documents and such due diligence materials as Buyer may reasonably request. Curative documents shall be made available on the secure file-transfer site as soon as practicable after their full execution and no later than as set forth below.

### Seller's Real Property Spreadsheet.

### Seller shall also make available on the secured-file transfer website and update it as provided herein and at other reasonable times a detailed spreadsheet in the form attached as Exhibit OOO that provides a comprehensive status summary of the Real Property Documents ("Seller's Real Property Spreadsheet"). [**NTD**: *This Spreadsheet form can be Seller's form as approved by Buyer prior to execution of this Agreement so as to allow Seller's software to generate the report.*]. As Seller updates the Seller's Real Property Spreadsheet from a prior delivery to Buyer in accordance with the scheduled reporting set forth in this Agreement, Seller's shall redline or otherwise identify the changes made since the last Seller's Real Property Spreadsheet.

### Solar Energy Easement Form.

The Parties agree that the form of Solar Energy Easement attached as Exhibit E ("Solar Energy Easement Form") together with the form of SPG Energy Easement Amendment attached as Exhibit WW ("Solar Energy Easement Amendment Form") for the SPGs to be constructed, owned and operated at the Project Site shall together be considered an acceptable document when properly and validly executed by all landowners within the Project Site. [**NTD**: *This Section is drafted on the basis that the Seller's easement form submitted with its bid proposal is acceptable to Buyer with some changes to be made in the form of a mutually agreeable amendment. If the Buyer's form is acceptable as is or it is determined by the parties that new easements should be obtained, this provision will need to be changed*.] Within fifteen (15) days after the Effective Date, Seller shall deliver to Buyer copies of all existing executed Solar Energy Easements and any executed Solar Energy Easement Amendments along with the Seller's Real Property Spreadsheet identifying any variations in such documents to the Solar Energy Easement Form and Solar Energy Easement Amendment Form. For all Solar Energy Easements and Solar Energy Easement Amendments and any Buyer-approved variations thereto executed after the Effective Date, Seller shall deliver copies of all newly executed Solar Energy Easements and any executed Solar Energy Easement Amendments along with the Seller's Real Property Spreadsheet identifying any variations in such documents to the Solar Energy Easement Form and Solar Energy Easement Amendment Form within fifteen (15) days after execution. To the extent reasonably requested by Buyer, Seller shall furnish redlining/markings the documents identifying all changes to the approved Solar Energy Easement and Solar Energy Easement Amendment Forms within fifteen (15) days after Buyer's request. Within the later of one hundred eighty (180) days after the Effective Date or thirty (30) days of receipt of the Seller's Real Property Spreadsheet and copies the applicable Solar Energy Easement (including the Solar Energy Easement Amendments and Buyer-approved variations), Buyer shall notify Seller if Buyer does not approve a Solar Energy Easement. Seller shall then obtain an appropriate amendment to the Solar Energy Easement and/or Solar Energy Easement Amendment, applicable, to address Buyer's concerns to its satisfaction as one of the Conditions Precedent to Buyer's obligation to issue the NTP. With respect to portions of the Project Site that will be governed, but are not yet governed, by a Solar Energy Easement, Seller's Real Property Spreadsheet shall so specify the location and expected date of receipt of the Solar Energy Easement and the Solar Energy Easement Amendment [***NTD****: A third form can be used for new easements*]. Seller shall work in good faith and diligently to obtain any Solar Energy Easements and Solar Energy Easement Amendments required for the Project Site at least sixty (60) days before the NTP Closing to allow sufficient time for Buyer to conduct its review of and grant approvals or objections to the Solar Energy Easements and Solar Energy Easement Amendments and title, survey or environmental matters related thereto.

### Title and Survey of Real Property Interests.

#### Seller's Title and Survey Period. Within ten (10) days after the Effective Date, Seller shall order the Title Commitments on all parcels on the Project Site and require the Title Insurer to respond within seven (7) days thereafter with a schedule by when the Title Insurer will deliver Title Commitments and how many will be delivered by such dates. Seller shall concurrently furnish to Buyer a copy of such order to the Title Insurer. Seller shall also order the ALTA Survey from a properly Michigan licensed and experience professional surveyor and concurrently provide a copy of Seller's survey order to Buyer. Thereafter every two (2) weeks on the first (1st) and fifteenth (15th) of each month, Seller shall deliver the Seller's Real Property Spreadsheet to Buyer identifying the number of Title Commitments received and describing generally the curative efforts underway.

#### Buyer's Initial Cure Period.

##### Within one hundred eighty (180) days after the Effective Date, Seller shall deliver to Buyer (a) the Title Commitments updated from the original version of the Title Commitments previously received by Seller set forth in the preceding Section covering all parcels within the Project Site including all Crossing Agreements, Drain Agreements, Access Roads, Solar Energy Easements (including the Solar Energy Easement Amendments); (b) legible copies of all other supporting title documents; (c) a preliminary ALTA Survey(s); and (d) an updated Seller's Real Property Spreadsheet organized by parcel (as reflected by the Solar Energy Easements and Solar Energy Easement Amendments) and Title Commitment reflecting the curative efforts presently underway by Seller pursuant to Section 3.1.4.1 and the expected date of cure. [**NTD**: *If Seller would like to expedite this process and provide Title Commitments and the ALTA Survey earlier or in phases, Buyer is willing to change this provision*.] If cure is not possible, the Seller's Real Property Spreadsheet shall provide a detailed explanation of why cure is not possible. Thereafter, if the Project Site is changed to the extent permitted in Section 3.1.4.5, Seller shall concurrent with the change deliver to Buyer: (i) new or updated Title Commitments and preliminary ALTA Survey(s), as applicable; (ii) legible copies of the supporting documents referred to above for any parcels added to, removed from (so long as there is still a portion of the Title Commitment's property remaining within the Project Site), or otherwise modified within the Project Site as a result of such approved changes; (iii) a copy of the Solar Energy Easement and, if applicable, Solar Energy Easement Amendment; and (vi) an updated Sellers' Real Property Spreadsheet identifying any curative efforts needed for such parcel(s) and identifying the Solar Energy Easement and Solar Energy Easement Amendment for the parcel(s). Seller shall promptly notify Buyer concurrently with providing new or updated Title Commitments, as applicable, if any Title Commitment(s) is terminated. Buyer shall provide Seller with notice of Buyer's objections to any conditions, requirements, and exceptions in the Title Commitments and preliminary ALTA Survey within ninety (90) days after receipt of all of the foregoing documents in items (a) through (c) and within thirty (30) days after receipt of the forgoing documents in items (i) through (iv) (the "Title Objection Notice"). [**NTD**: *If Seller would like to expedite this process and provide Title Commitments and the ALTA Survey earlier or in phases, Buyer is willing to change this provision*.] The Title Objection Notice shall be in the form of the Seller's Real Property Spreadsheet and may also include a listing of information Buyer reasonably requires in addition to the Title Commitments and supporting title documents to determine whether Buyer has any additional objections to title and/or survey. Hereinafter, Buyer's Title Objection Notice and Seller's Real Property Spreadsheet shall be one and the same document, irrespective of the term used.

##### Within fifteen (15) days after the date of Buyer's Title Objection Notice, Seller shall notify Buyer how Seller will address each objection or request for information in the Title Objection Notice and the expected date it will do so. Seller shall furnish all information that Buyer requires pursuant to the Title Objection Notice and Seller shall use commercially reasonable efforts to cure all objections made by Buyer in the Title Objection Notice by curative actions including utilizing curative documents on forms approved by Buyer and the Title Insurer no later than thirty (30) days after the date of Buyer's Title Objection Notice ("Initial Cure Period"). Upon Seller's receipt of Buyer's Title Objection Notice, Seller shall commence furnishing Buyer on a weekly basis written status updates using the Title Objection Notice to address Buyer's concerns with respect to the curative efforts required pursuant to this Section 3.1.4.2(2). Status updates shall show a percentage completion by category of the curative task (e.g., SNDA, joinders, amendments releases) as well as a detailed breakdown of curative actions and resolutions per objection in the Title Objection Notice. For curative actions requiring an agreement to be signed by a landowner or third party, Seller's status updates shall include the date such document was drafted, the date it was delivered to the landowner or third party, the date of full execution, and the date such document was delivered to the Title Insurer for recording with the applicable county register of deeds office (with a copy delivered to Buyer), and when recorded the recording information.

#### Secondary Title and ALTA Survey Cure Period.

##### Within thirty (30) days of the expiration of the Initial Cure Period, Seller shall deliver to Buyer a (a) preliminary Pro Forma Title Policy (updated to reflect curative efforts undertaken to date), (b) updated ALTA Survey, (c) curative documents obtained to such date, and (d) a written summary updating the status of Seller's curative efforts from the immediately preceding status update provided for in Section 3.1.4.2 using the same Title Objection Notice chart or spreadsheet that the Parties have been using during the Initial Cure Period. The Pro Forma Title Policy shall be "blacklined" in a manner that clearly and directly identifies the revisions from/to the Title Commitments. Within thirty (30) days after Buyer's receipt of the foregoing, Buyer shall provide Seller with notice of Buyer's objections thereto including any additional information or documents required by Buyer using either the same or a similar Title Objection Notice that is incorporated into the Seller's Real Property Spreadsheet (the "Pro Forma Objection Notice"). Following Seller's receipt of the Pro Forma Objection Notice, but no later than fifteen (15) days after the date of Buyer's Pro Forma Objection Notice (the "Secondary Cure Period"), Seller shall use commercially reasonable efforts to furnish all information and documents requested and cure all objections made by Buyer in the Pro Forma Objection Notice by curative actions including utilizing curative documents on forms approved by Buyer and the Title Insurer and updating Buyer's Title Objection Notice in the same manner as done above.

##### Seller and Buyer shall work together cooperatively and in good faith towards revising the preliminary Pro Forma Title Policy, ALTA Survey, and curative documents in the manner and condition required hereunder. Further, Seller shall continue to provide the weekly updates described in Section 3.1.4.2(2).

#### Final Pro Forma Policy and ALTA Survey. Within fifteen (15) days following the expiration of the Secondary Cure Period and as a Condition Precedent to NTP, Seller shall deliver to Buyer a revised preliminary Pro Forma Title Policy, revised ALTA Survey, all curative documents fully-recorded when customary, and the updated comprehensive chart or spreadsheet addressing each of the objections made by Buyer in the Pro Forma Objection Notice. The revised ALTA Survey and all iterative revisions of the ALTA Survey between the preliminary ALTA Survey delivered pursuant to Section 3.1.4.3(1) above, and the updated ALTA Survey shall be "clouded" or "blacklined" in a manner that clearly and directly identifies all revisions. The Pro Forma Title Policy shall be "blacklined" in a manner that clearly and directly identifies the revisions from/to the preliminary Pro Forma Title Policy furnished pursuant to Section 3.1.4.3(1). Upon Buyer's approval of the revised Pro Forma Title Policy and ALTA Survey in the condition required by the Pro Forma Objection Notice as modified by any written waivers of Buyer, Buyer shall deliver written notice thereof to Seller, and the final, Buyer-approved Pro Forma Title Policy shall be referred to as the "Final Pro Forma Title Policy" and the final, Buyer-approved ALTA Survey shall be referred to as the "Final ALTA Survey." If Seller shall fail to address all matters raised by Buyer in the Pro Forma Objection Notice to Buyer's satisfaction, Buyer may terminate this Agreement upon notice to Seller as provided in Section 5.3 and Section 18.7 of this Agreement.

#### Changes to Project Site. Without limiting the specific requirements in Section 3.1.4.2, in the event that the final Project Site is at any time changed through the mutual agreement of the Parties to include one or more parcels that are not covered by the existing Title Commitments, Final Pro Forma Title Policy, ALTA Survey, and Final ALTA Survey, Seller shall thereafter promptly order Title Commitments and the updated ALTA Survey covering such new parcels and cause the Title Insurer to add such new parcels to the Final Pro Forma Title Policy and surveyor to updated the ALTA Survey. Following Buyer's receipt of any such new Title Commitments, including supporting title documents (and updated Pro Forma Title Policy, as applicable), and the updated ALTA Survey (and updated Final ALTA Survey, if applicable), Buyer shall have the right to provide Seller with an updated Title Objection Notice and/or Pro Forma Objection Notice covering such parcels, in which case the same process set forth in this Section 3.1.4 shall start anew for only those parcels but the Parties agree to each reduce their response time on a pro rata basis to allow the Parties to agree upon the Final Pro Forma Title Policy and Final ALTA Survey by one (1) year from the Effective Date. For any changes to parcels after one (1) year, the Parties shall work in good faith to establish an expedited schedule using the same process set forth in this Section 3.1.4 and adjusting each time period on an equally proportionate basis.

#### Drains. Seller shall require the Title Insurer to search the office of the drain commissioner for the counties in which the Project Site is located and to include any Drain Agreements as part of the Title Commitments and supporting documents to the Title Commitments required to be provided to Buyer under this Section 3.1. Seller shall also ensure that any preliminary and updated ALTA Survey and the Final ALTA Survey identify the location of any Drain Agreements within the Project Site (regardless of whether it is recorded in the office of the register of deeds for the applicable county or in the office of the drain commissioner for the applicable county) that is not released during any cure period provided for in this Section 3.1. Buyer's Title Objection Notice and/or Buyer's Pro Forma Objection Notices may include objections to the Drain Agreements and Seller shall follow the same process for curative efforts to assure that the Title and Survey Documents at Substantial Completion only include or reflect Drain Agreements that are deemed Permitted Encumbrances by Buyer.

#### Crossing Agreements. Seller shall require the Title Insurer to search and include Crossing Agreements as part of the Title Commitments and supporting documents to the Title Commitments required to be provided to Buyer under this Section 3.1. Seller shall also ensure that any preliminary and updated ALTA Survey and the Final ALTA Survey identify the location of any Crossing Agreements within the Project Site (regardless of whether it is recorded in the office of the register of deeds for the applicable county or in the office of the drain commissioner for the applicable county) that is not released during any cure period provided for in this Section 3.1. Buyer's Title Objection Notice and/or Buyer's Pro Forma Objection Notices may include objections to the Crossing Agreements and Seller shall follow the same process for curative efforts to assure that the Title and Survey Documents at Substantial Completion only include or reflect Crossing Agreements that are deemed Permitted Encumbrances by Buyer.

## UCC Search of Personal Property Interests.

As part of the applicable Milestone Deliverables for personal property and fixtures, including the SPGs, and as one of the Conditions Precedent to Buyer's obligation to pay for the applicable Work, Seller shall furnish to Buyer searches of the Uniform Commercial Code ("UCC") records of the Michigan Secretary of State or of any other applicable jurisdiction, against Seller, evidencing that no UCC financing statements or other Liens are filed against Seller in respect of the Project Assets including the Equipment and Materials ("UCC Search").

## Project Layout.

Attached as Exhibit XX is the Project Layout of the Project that sets out in schematic format the location of all improvements of the Project ("Project Layout"). Seller shall not make any changes to the Project Layout without the prior written consent of Buyer, which consent shall be effectuated by a Change Order. Notwithstanding that Buyer's consent for a change is required during the Project, Buyer and Seller agree that Seller 's Work includes the obligation to provide Engineering Alternatives as defined in Section 6.2.2 to increase the efficiency of the Project which may require changes to the Project Layout. All changes to the Project Layout will be conditioned upon Buyer's ability to conduct the due diligence investigations of new property to be added in accordance with this ARTICLE III.

## Environmental Assessment.

Without limiting Seller's responsibilities for Hazardous Materials and compliance with Environmental Laws, within ninety (90) days after the Effective Date, Seller shall conduct, at its expense, and deliver to Buyer for Buyer's review and approval, environmental assessments of the Project Site, in one (1) or more phases, including for each parcel or portion of the Project Site a Phase I Environmental Site Assessment in conformance with ASTM E1527-13 and/or ASTM E2247-16 and to the extent necessary, in Buyer’s reasonable opinion, to evaluate conditions disclosed on the Phase I Site Assessment, a Phase II Environmental Assessment in conformance with ASTM E1903-11 that will include sampling and testing of appropriate environmental media or building materials located at, on, in, or under the Project Site. Buyer shall have the right to approve, in its reasonable discretion, the person chosen to perform the Phase I Site Assessment and the Phase II Environmental Assessment, if applicable. The purpose of the environmental assessments is to establish, for the benefit and protection of Buyer and its interests, all available defenses to environmental liability under Applicable Laws. All environmental reports prepared pursuant to this Section 3.4 shall be issued in the name of Seller and Buyer (except a baseline environmental assessment shall only be issued in Buyer's name). If the Project Site or any one (1) or more parcels or portions of the Project Site is determined to be a "facility" as that term is defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq. ("Part 201"), Seller shall prepare, at its expense, for Buyer’s review and approval a baseline environmental assessment pursuant to Section 26(1)(c) of Part 201, including required submittal materials prepared for Buyer’s execution and disclosure to the Michigan Department of Environment, Great Lakes and Energy (f/k/a the Michigan Departement of Environmental Quality) ("EGLE").  Seller shall assure that all Phase I Environmental Site Assessments of the Project Site are commenced no more than one hundred seventy-nine (179) days prior to the transfer of the Real Property Documents and shall conduct, at its expense, updates as necessary to achieve such purpose. Seller shall also, at its expense, prepare and deliver to Buyer for its review and approval all documentation of due care, pursuant to Section 7a of Part 201, with respect to any identified "facility" comprising part or all of the Project Site, and if Buyer directs, shall submit the documentation to EGLE for review and approval pursuant to Section 14g of Part 201 as a Condition Precedent to the NTP. All reports and documents referenced in this Section are collectively referred to as "Environmental Reports and Studies."

## Project Contracts.

Seller shall not enter into any Project Contract that differs from the forms of Project Contracts set forth in this Agreement without the prior written consent of Buyer, except for site-specific changes such as the names of the parties, addresses, location, and dates.

## Liens Arising from Work.

Except to the extent of Buyer Event of Default with respect to Buyer's payment obligations hereunder: (i) Seller shall not directly or indirectly create, incur, assume, or suffer to be created by it or any Contractor (including any employee, laborer, materialman, or other supplier of goods or services) any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, mechanic's lien, construction lien, charge, or encumbrance on the Work, the Project Site, Project Assets, or any part thereof or interest therein (each a "Seller Lien" and collectively, "Seller Liens"); (ii) Seller shall keep the Project Site, Project Assets, and the Work (including all Equipment and Materials, Contractor equipment and materials), free of Seller Liens; and (iii) Seller shall promptly pay or discharge and discharge of record (including by recording a bond to the extent permitted by and in accordance with Applicable Law) any such Seller Lien or other charges which, if unpaid, might be or become a Seller Lien. Seller shall notify Buyer as soon as practicable after (but in any event within ten (10) days after Seller knows or discovers) the assertion of any Seller Lien. Upon the failure of Seller to promptly discharge or cause to be released any Seller Lien as required by this Section 3.6 within the earlier of thirty (30) days after Seller's notice or the Substantial Completion Deadline, Buyer may, but shall not be obligated to, at Seller's expense (a) pay the lien claimant to discharge the Seller Lien or (b) obtain a surety bond for such Seller Lien. Upon such payment therefor, Buyer shall be entitled to immediately recover from Seller the amount and costs thereof together with all expenses incurred by Buyer (expressly including all actual attorneys' fees) in connection with such payment or set off and deduct all such amounts against any sums owed by Buyer to Seller.

#  RESPONSIBILITIES OF BUYER

## Buyer's General Obligation.

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

## Buyer's Specific Obligations.

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

### Builder's Risk Insurance.

Within ten (10) days of the NTP Closing, Buyer shall furnish evidence of Buyer's purchase of a Builder's Risk of insurance covering the Work in progress for portion of the Purchase Price allocated for the on-Site construction activities. The Builder's Risk policy shall be prepared and issued in accordance with Buyer's standard practices. [**NTD**: *If Seller desires to commence construction activities prior to NTP at its risk, Buyer and Seller can discuss the timing of Buyer's purchase of Builder's Risk.*]

### Post-NTP Access to Project Site.

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

### Post-Substantial Completion Access to Project Site.

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

### Buyer's Representative.

Upon the Effective Date and during the term of this Agreement, Buyer shall designate by written notice to Seller a Buyer's Representative who shall be authorized to act on behalf of Buyer, with whom Seller may consult at all reasonable times, and whose written instructions, requests, and decisions will be binding upon Buyer as to all matters pertaining to this Agreement and the performance of Buyer hereunder ("Buyer's Representative"). If the Buyer's Representative does not have authority to approve Change Orders, Buyer shall deliver a notice to Seller identifying such persons within Buyer's organization that do have such authority. Buyer may, at any time by written notice to Seller, change the Buyer's Representative or, if applicable, the persons designated as having authority to approve Change Orders. Buyer's Representative is Steven A. Schneider (Telephone: 517-788-0064; Email: Steven.Schneider@cmsenergy.com). The Buyer's Representative may be changed by Buyer upon notice to Seller from Buyer's Authorized Officer.

### Operating Personnel.

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

### Payment Obligations to Seller.

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

### Compliance with Applicable Laws.

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

### Compliance with Site Rules and Regulations.

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

## FERC Regulatory Filing.

### Buyer and Seller shall work together with respect to the preparation and joint filing of the regulatory filing to be made to FERC requesting approval under Section 203 and Section 205 of the Federal Power Act, as applicable, with respect to the transactions contemplated by this Agreement that require such approval (the "FERC Regulatory Filing").

### Buyer and Seller shall use reasonable efforts to file as soon as practicable but no later than six (6) months from the Effective Date, the FERC Regulatory Filing, and execute all agreements and documents, in each case, to obtain as promptly as practicable approval under Section 203 and Section 205 of the Federal Power Act, as required, for the transactions contemplated by this Agreement. Buyer and Seller shall act diligently, and shall coordinate in completing and submitting the FERC Regulatory Filing. Buyer and Seller shall each have the right to review and approve (which such approval shall not be unreasonably delayed or withheld) in advance all of the information relating to the transactions contemplated by this Agreement which appears in the FERC Regulatory Filing.

### If the Governmental Authority fails to grant FERC approval, this Agreement shall terminate and cease to be of any force or effect, except those obligations that expressly survive termination of this Agreement.

### If the Governmental Authority grants conditional FERC approval and the conditions of such approval are not acceptable to Buyer in its sole discretion, Buyer shall have the right to terminate this Agreement by written notice to Seller and this Agreement shall terminate and cease to be of any force or effect, except those obligations that expressly survive termination of this Agreement.

## MPSC Regulatory Filing.

### Buyer shall submit an Application to the MPSC for approval of this Agreement no later than sixty (60) days after the Effective Date.

### Seller hereby consents to the disclosure of confidential information regarding the Project and its current status in public filings, discovery, and communications with the MPSC, the MPSC Staff and parties to MPSC proceedings to be made by Buyer in connection with seeking approval of this Agreement or in developing the Project; and hereby waives any confidentiality provisions relating thereto currently in effect; provided that Buyer shall use reasonable efforts to seek confidential treatment pertaining to this Agreement and any other confidential information about the transactions contemplated in this Agreement that Buyer has a need to disclose for purposes of MPSC proceedings. Notwithstanding the foregoing, Buyer shall have the right to publicly disclose the levelized cost of the Project associated with the transactions contemplated in this Agreement.

### If a final MPSC order, not subject to rehearing or appeal, approving this Agreement is not obtained by [insert Date], or if at any time the MPSC denies approval of this Agreement, Buyer shall notify Seller and Buyer may in its sole discretion terminate this Agreement by providing written notice to Seller no later than ten (10) business days after [insert Date] or ten (10) business days after the MPSC’s denial of approval of this Agreement becomes not subject to rehearing or appeal, as applicable.

### If the MPSC grants conditional approval of this Agreement, including denial of any cost recovery associated with this Agreement, and the conditions of such approval are not acceptable to Buyer, Buyer, in its sole discretion, shall have the right to terminate this Agreement by providing written notice to Seller no later than ten (10) business days after the conditional approval becomes not subject to rehearing or appeal.

#  NOTICE TO PROCEED

## Buyer's Conditions Precedent to the NTP.

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

### Required Authorizations. The following approvals and authorizations shall have been obtained by Buyer (collectively, "Required Authorizations").

#### Board of Directors. Buyer shall obtain its Board of Directors' approval to proceed with the Project.

#### FERC Approval. Buyer has received FERC approval either with no conditions or with conditions satisfactory to Buyer as provided in Section 4.3, and which approval or conditions for approval must be final and not subject to being overturned or modified on appeal or further appeal.

#### MPSC Approval. Buyer has received MPSC's approval either with no conditions or with conditions satisfactory to Buyer as provided in Section 4.4, and which approval or conditions for approval must be final and not subject to being overturned or modified on appeal or further appeal.

### Estoppel Certificates.

#### Seller shall have delivered to Buyer an executed estoppel certificate for each Project Contract (expressly excluding portions of the Project Site which are owned by Seller), substantially in the form attached hereto as Exhibit YY (with any changes thereto only as approved by Buyer) ("Estoppel Certificate"), and Buyer has approved each Estoppel Certificate. Such Estoppel Certificates shall be executed no earlier than thirty (30) days prior to NTP. Notwithstanding the foregoing requirement, Buyer agrees to cooperate in good faith with Seller by agreeing that if (i) Seller can furnish executed Estoppel Certificates for (a) the Solar Energy Easements granting rights to real property on which ninety-five percent (95%) of SPGs are located based on the Project Layout, and (b) ninety percent (90%) of the Solar Energy Easements granting rights to real property (other than SPGs) are located based on the Project Layout (expressly excluding portions of the Project Site which are owned by Seller) are furnished, Buyer will accept the foregoing percentages of Estoppel Certificates as meeting Seller's obligations.

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

### Interconnection Agreement. Seller shall have entered into the Interconnection Agreement on terms and conditions with the Transmission Owner satisfactory to Buyer, and that (i) supports a date for the back feed of power of no later than ninety (90) days prior to the Commercial Operation Date, (ii) does not allocate to Buyer directly or indirectly any costs in connection with the Interconnection Facilities for the Project, (iii) is freely assignable from Seller to Buyer, and (iv) allows Buyer to deliver all energy generated to the Commercial Energy Market as such term is customarily used in the industry.

### Governmental Authority Consents. Seller must have received and delivered to Buyer the Consents, including the required height, environmental, and special land use, site plan, and any other zoning approvals, variances and permits, as well as the Tax Status Letter described in Section 12.6.7, from applicable Governmental Authorities, in a form and content satisfactory to Buyer, for Seller's performance of its obligations under this Agreement including the construction and operations of the Project in a manner satisfactory to Buyer; which approvals, variances and permits must be final and not subject to being overturned or modified on appeal or further appeal. If there has been any change to the Special Land Use Permit (or its equivalent as required by the Governmental Authorities), Seller has notified Buyer of the change and whether it adversely affects the Project for Buyer's determination regarding Seller's conclusion. With respect to Consents that cannot be obtained prior to NTP, Buyer and Seller have agreed on the remaining Consents to be obtained by the earlier of Substantial Completion or the date required by the Governmental Authorities necessary for Seller's timely performance under this Agreement.

### Bonds. Seller has delivered the Bonds to Buyer in form and substance consistent with Section 14.2.

### Job Book. Seller shall present the preliminary Job Book as provided in Section 6.7.

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

### Bring Down Investment Tax Credit Opinion. Seller shall have delivered the Bring Down Investment Tax Credit Opinion to Buyer, and all facts set forth in Exhibit BB shall be true and correct as of NTP, unless the Bring Down Investment Tax Credit Opinion is supported by an alternative set of facts that are true and correct as of NTP, in which event, Exhibit BB shall be updated accordingly prior to NTP;

### Seller's Performance. Seller shall have performed and otherwise complied with this Agreement and all Project Contracts to be performed and/or complied with by Seller, including there is no Seller Event of Default;

### Final Documents for the Project Site. Seller has delivered to Buyer (i) the Final ALTA Survey, (ii) the Final Pro Forma Title Policy evidencing it will be issued at NTP, (iii) all necessary Project Contracts have been executed and are binding (except for those that Buyer agrees to be completed after NTP and as a condition of Substantial Completion) together with an updated Exhibit Z (with such updates marked by redlining or other appropriate mechanism reflecting the changes since Exhibit Z was attached to this Agreement), (iv) certification that Seller has performed all activities pertaining to the Environment (including delivering the Environmental Reports and Studies in the condition required and preparing any necessary filings) required of Seller, each as described in ARTICLE III and approved by Buyer.

### Seller's Invoice. Seller has delivered Seller's Invoice for the Milestone Payment for the NTP together with all supporting documentation and requirements established in Section 9.3.2, as Condition Precedent for the Milestone Payment at NTP, so that Buyer has Seller's Invoice if Buyer issues the NTP.

## Seller’s Conditions Precedent to the NTP.

###  The following are Seller’s Conditions Precedent to issuance of NTP:

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

### Buyer's Performance. Buyer shall have performed and complied in all respects with this Agreement to be performed and/or complied with by Buyer, including there is no Buyer Event of Default

## Issuance of the NTP or Termination.

### When Seller believes that each of the Conditions Precedent to NTP as set forth in Section 5.1 and Section 5.2 are satisfied, it shall so notify Buyer in writing. Buyer shall respond to Seller's notice within ten (10) Business Days as follows:

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

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

## Use of Seller's Affiliates.

Seller shall obtain the prior written consent of Buyer, which consent shall not be unreasonably withheld so long as such engagement does not violate the Solar Labor Agreement, prior to engaging any Affiliate of Seller as a Contractor hereunder for the Work or when an Affiliate of Seller is a Contractor for Work authorized by a Change Order.

## Contractors.

As of the Effective Date, Seller has selected the Contractors to perform portions of the Work, each as identified on Exhibit X. While not yet selected, Buyer and Seller agree that there are certain Contractors who are considered preferred providers of Equipment and Materials as identified on Exhibit Y. Seller understands and agrees that the Solar Labor Agreement's terms must be complied with in connection with the Project.

## Construction Contracts.

### Seller shall not allow a Contractor to commence performance of any Work prior to executing a Construction Contract that complies with this Agreement, with copies delivered to Buyer. The forms of Construction Contract are attached as Exhibit FFF, Exhibit II, and Exhibit JJ. If Seller desires to use other forms of Construction Contracts, they must include: (a) terms within them that all terms and conditions are subordinate to this Agreement and incorporate by reference the terms and conditions of this Agreement (except to the extent they are expressly inconsistent with this Agreement such as providing engineering services for a construction Laborer), including the insurance, indemnifications, assignment, dispute resolution and ownership of documents provisions; (b) identify Buyer as a third-party beneficiary and entitle Buyer to assignment of the Construction Contract as provided in this Agreement; and (c) require payment and performance bonds for the Work when the Work is of a nature that can be secured by such surety bonds. If Seller desires to vary from the required terms of the Construction Contract, it shall so notify Buyer of the variation and if Buyer does not object in writing within seven (7) Business Days, Seller shall be free to contract using the identified different terms. Notwithstanding any variations in the Construction Contract, Seller shall remain responsible for the Work, including the Work that Seller is contracting to be done with Contractors, and for the acts and omissions of Contractors as provided in this Agreement.

### No Construction Contract shall bind or purport to bind Buyer, but each Construction Contract shall provide for assignment of such Construction Contract to Buyer upon notice to, and without requiring the consent of, such Contractor. Seller hereby collaterally assigns to Buyer all its interest in all Construction Contracts and the road use and staging agreements necessary during Seller's construction activities now existing or hereafter entered into by Seller for performance of any part of the Work, which assignment will be effective only upon a Seller Event of Default or termination of this Agreement prior to Final Completion and only as to those Construction Contracts and the road use and staging agreements necessary during Seller's construction activities that Buyer designates in writing. Such assignment cannot be withdrawn by Seller, and Buyer may accept or reject said assignment at any time by notice to Seller. Upon the effective date of such assignment of the Construction Contract and the road use and staging agreements necessary during Seller's construction activities to Buyer: (i) Seller shall promptly furnish to Buyer the originals of the designated Construction Contracts and the road use and staging agreements requested by Buyer, notwithstanding the delivery of copies was previously required of Seller; (ii) Buyer shall only assume Liabilities occurring and arising on after Buyer takes the assignment of the Construction Contracts and road use and staging agreements; and (iii) Buyer shall only be required to compensate a designated Contractor for compensation accruing to it for Work done or materials delivered from and after the date Buyer takes the assignment of the involved Construction Contract, road use, or staging agreement in writing. All Liabilities arising before and all sums due and owing by Seller to a designated Contractor for Work performed or material supplied prior to the effective date of assignment of such Construction Contract, road use or staging agreement, and all other obligations of Seller accruing prior to such assignment's effective date, shall constitute and remain an obligation solely between such Contractor and Seller, and Buyer shall have no Liability with respect to such sums or any other obligations of Seller.

#  DELIVERABLES

## Transfer of Project Assets.

### Within ten (10) days of Buyer's issuance of the NTP ("NTP Closing"), Seller shall:

#### Transfer the following Project Assets to Buyer and deliver the same to Buyer:

1. The assignment document substantially in the form of Exhibit ZZ ("Assignment of Solar Energy Easements"), for the Solar Energy Easements to Buyer, in accordance with Buyer's satisfaction as set forth in Section 3.1.4.2, and free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the applicable Solar Energy Easement duly executed by the landowner, assigning to Buyer all of Seller's right, title and interest in, to and under the Solar Energy Easement;
2. The Memorandum of Solar Energy Easement for each of the Solar Energy Easements in substantially the form of Exhibit AAA ("Memorandum of Solar Energy Easement") duly executed by Seller and the landowner, and the assignment document in the form of Exhibit P ("Assignment of Memorandum of Solar Energy Easements") duly executed by Seller and when required by the Solar Energy Easement duly executed by the landowner, each recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Buyer's rights in and to the applicable Solar Energy Easement;
3. To the extent any Crossing Agreements are finalized at NTP, the assignment document for such Crossing Agreements substantially in the form of Exhibit BBB ("Assignment of Crossing Agreements"), to Buyer, in accordance with Buyer's satisfaction as set forth in Section 3.1.4 and free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the Crossing Agreements duly executed by the landowner and/or Governmental Authority having such rights, assigning to Buyer all of Seller's right, title and interest in, to and under the Crossing Agreements;
4. If required by Buyer and to the extent any Crossing Agreements are finalized at NTP, the Memorandum of Crossing Agreement for each of the Crossing Agreements in substantially the form of Exhibit CCC ("Memorandum of Crossing Agreement") duly executed by Seller and the landowner and/or Governmental Authority having such rights of the applicable Crossing Agreement, and the assignment document in the form to be agreed upon with Buyer as a Condition Precedent to NTP ("Assignment of Memorandum of Crossing Agreement") and duly executed by Seller and other necessary Persons, with each being recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Buyer's rights in and to the Crossing Agreements;
5. To the extent any Drain Agreements are finalized at NTP, the assignment document for such Drain Agreements substantially in the form of Exhibit VVV ("Assignment of Drain Agreements"), to Buyer, in accordance with Buyer's satisfaction as set forth in Section 3.1.4 and free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the Drain Agreements duly executed by the landowner and/or Governmental Authority having such rights, assigning to Buyer all of Seller's right, title and interest in, to and under the Drain Agreements;
6. If required by Buyer and to the extent any Drain Agreements are finalized at NTP, the Memorandum of Drain Agreement for each of the Drain Agreements in substantially the form of Exhibit WWW "Memorandum of Drain Agreement") duly executed by Seller and the landowner and/or Governmental Authority having such rights of the applicable Drain Agreement, and the assignment document in the form to be agreed upon with Buyer as a Condition Precedent to NTP ("Assignment of Memorandum of Drain Agreement") and duly executed by Seller and other necessary Persons, with each being recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Buyer's rights in and to the Drain Agreements;
7. The Warranty Deed substantially in the form of Exhibit DDD ("Warranty Deed"), duly executed by Seller and recorded in the applicable county register of deeds office where the Project Site is located, transferring to Buyer marketable title free of Liens (other than Permitted Encumbrances) in the real estate required to be owned by Seller in the Project Site pursuant to Exhibit A1 and all of Seller's right, title and interest therein, such as by way of example, the Substation, or as otherwise provided in this Agreement; and
8. The Real Property Documents Governmental Approvals.

#### Deliver to Buyer:

1. The ALTA Title Policy dated the time and date of recording of the Warranty Deed in the same condition as the Final Pro Forma Title Policy for all Real Property Documents;
2. The other customary closing documents reasonably required by Buyer or Title Insurer or required by Applicable Laws for the transfer of real property interests in the Project and issuance of the Title Policy, including, to the extent applicable, an Owner's Affidavit, Notice to the Assessor (for unplatted property), 1099-S, Non-Foreign Property Transfer Affidavit (FIRPTA), and closing statement; and
3. The Real Property Documents Governmental Approvals.

#### The following items shall be delivered by Buyer to Seller at NTP Closing:

* + - * 1. Buyer’s countersignature pages for the assignments of Real Property Documents to Buyer other than the Warranty Deed ;
				2. The NTP Milestone Payment established in the Milestone Payment Schedule and as further provided in Section 9.3;
				3. Buyer’s closing statement; and
				4. Any other customary closing documents reasonably required by Title Insurer or required by Applicable Laws for the transfer of real property interests in the Project to Buyer.

### Upon achieving the applicable Milestone, the following documents shall be delivered to Buyer:

#### A bill of sale, substantially in the form of Exhibit EEE ("Bill of Sale"), duly executed by Seller, transferring to Buyer marketable title free of Liens (other than Permitted Encumbrances) in the personal property owned or required to be owned by Seller in the Project Site and all of Seller's right, title and interest therein that is required to be completed to achieve the applicable Milestone. By way of example, a Bill of Sale for the SPGs shall be delivered to Buyer upon it achieving the SPG Mechanical Completion; and

#### The UCC Search as described in Section 3.2 showing there are no Liens on property being transferred by the Bill of Sale.

### Seller shall execute and deliver, and/or cause the appropriate third party to execute and deliver, to Buyer any remaining instrument or instruments of assignment or transfer in form mutually agreeable to Buyer and Seller for any other Project Assets, other than Project Assets transferred by the Assignment of Solar Energy Easements, Assignment of Memorandum of Solar Energy Easements, Assignment of Crossing Agreements, Assignment of Memorandum of Crossing Agreements, Assignment of Drain Agreements, Assignment of Memorandum of Drain Agreements, Warranty Deed and Bill of Sale set forth above ("Assignment of Remaining Project Assets"), duly executed by Seller and/or any applicable Seller Affiliate and when required by a Project Document to be assigned duly executed by the other party to the Project Contract and, to the extent customary, recorded with the applicable county register of deeds or other Governmental Authority, assigning to Buyer all of Seller's right, title and interest in, to and under the remaining Project Assets including any Project Documents unless otherwise specified in this Agreement, within the time specified in this Agreement, but in any event no later than and as a Condition Precedent to achieving Substantial Completion.

## Engineering & Design.

### Performance. Seller shall perform (or arrange for performance pursuant to a Construction Contract executed in accordance with this Agreement) all engineering and design services for completion of the Project and performance of the Work in conformity with the requirements of this Agreement. Seller shall design the Project and the Work, using qualified, properly insured, and experienced design and engineering professionals either as employees or as Contractors, in compliance with the Requirements and so as to enable the operation, performance, useful life, repair, and maintenance of the Work to comply with the Project Contracts, including the Equipment and Materials in accordance with their design and requirements, and the Contractor's performance guarantees, requirements and other specifications. Seller shall prepare and submit to Buyer for its review and comment all Design Documents in accordance with the Project Schedule and Section 6.15. The Design Documents shall include copies of the Construction Contracts (with the cost of the Work redacted if Seller desires except for Work governed by Change Orders) between Seller and each Contractor, all technical submittals from Contractors, and Seller's technical calculations reasonably required to conduct a proper evaluation and review. All engineering and design Work shall be certified by licensed professionals, and all Design Documents requiring sealing shall be sealed by the Engineer of Record as that term is customarily used in Michigan.

### Value Engineering. As an integral part of Seller's Scope of Work in preparing the Design Documents, Seller and its Contractors shall review and propose to Buyer alternative Equipment and Materials for the SPGs that might improve efficiency of the Project to allow fewer SPGs or other Equipment and Materials that will result in reducing the cost of the Work ("Engineering Alternatives"). Before the Design Documents are completed and submitted to Buyer for review and approval, Seller shall submit the Engineering Alternatives along with a proposal to reduce the Purchase Price by the cost savings in the Work. If Buyer approves the Engineering Alternatives and the reduction in the Purchase Price, such changes to the Work and Purchase Price shall be memorialized by a Change Order.

## Applicable Permits.

Seller shall obtain or cause to be obtained all Applicable Permits required for it and its Contractors, Laborers, and their personnel to do business and to perform Work of the type contemplated herein, including those identified in Exhibit GGG and further including the Special Land Use Permits in Exhibit DD, as all are Seller's responsibility and expense. The cost of the Applicable Permits is included in the Purchase Price. Seller shall be responsible for meeting all requirements of Applicable Permits, up to and including final termination or closure of such permits. Exhibit GGG shall be updated by Seller to comply with all Requirements during the Project and delivered to Buyer, and upon Buyer's receipt and acknowledgment in writing such updated Exhibit GGG shall be deemed attached hereto. No Work that requires an Applicable Permit shall commence before such Applicable Permit is issued and copies are delivered to Buyer. Copies of all Applicable Permits not delivered as a Condition Precedent to NTP as part of the Consents or as set forth in the preceding sentence shall be delivered as a Condition Precedent to achieving Substantial Completion. Buyer shall cooperate and respond to any reasonable requests from Seller for input or information with respect to Permit Applications.

## Spare Parts.

### Inventory. Seller shall supply as part of the Purchase Price the Spare Parts listed in Exhibit HHH, which will allow the Project to operate without interruption for a period of six (6) months after Substantial Completion. All Spare Parts shall be stored at location designated by Buyer within no more than [insert number] miles of the Project Site in compliance with all Equipment and Material Contractors' recommendations and in such a manner to assure the applicable Warranty is preserved for Buyer's benefit. Seller shall only be entitled to use Spare Parts from Buyer's inventory in connection with commissioning activities for the Project if Buyer consents to such use and if such Spare Parts are available in inventory. If such use occurs, Seller shall promptly replace or cause to be replaced each Spare Part so used with an identical, new Spare Part at no additional cost to Buyer and in a timely manner no later than Substantial Completion.

### Recommended List. As part of the O&M Manual Deliverable described in Section 6.5, Seller shall provide a general list of additional recommended Spare Parts necessary to operate and maintain the Project for a period of five (5) years after Substantial Completion Date. The recommended list shall be delivered in advance of the O&M Manual if necessary to assure Buyer can purchase, assemble and store the same at or prior to Substantial Completion of the Project. For each of the Spare Parts, the list shall indicate the expected price and delivery lead time. Upon the request of Buyer, Seller shall cooperate to permit Buyer to purchase any such additional Spare Parts and to handle (if purchased through Seller), store and maintain all Spare Parts at the location agreed upon above in Section 6.4.1. Such additional cost if required to be paid for by Seller shall be added to the Purchase Price by Change Order.

## O&M Manual.

As a Condition Precedent to achieving SPG Mechanical Completion, the preliminary draft of the O&M Manual shall be delivered to Buyer for Buyer's review and comment, including, each of the following: (i) the Vendor Manuals including the installation manuals and the Solar Panel Supplier manuals, assembled and compiled in binders, containing all such materials organized by the categories; (ii) the list of recommended Spare Parts, specifications, and vendor information; and (iii) other documents that Buyer may reasonably request. After following the review and comment procedure set forth below in Section 11.10.5 for Deliverables and as a condition to achieving Substantial Completion, Seller shall furnish to Buyer six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to Buyer) of the final O&M Manual. Seller agrees to send or cause to be sent to Buyer any updates to the O&M Manual issued by the Solar Panel Supplier in a timely manner until Substantial Completion.

## SCADA Manual.

As a Condition Precedent to achieving SPG Mechanical Completion, the preliminary draft of SCADA Manual shall be delivered to Buyer for Buyer's review and comment. After following the review and comment procedure set forth below in Section 11.10.5 for Deliverables and as a Condition Precedent to achieving Substantial Completion, Seller shall furnish to Buyer six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to Buyer) of the final SCADA.

## SPG Job Book.

As a Condition Precedent to the NTP, the preliminary Job Book shall be furnished for Buyer's review and comment and which Job Book shall be updated on a timely basis from time to time and delivered to Buyer for review and comment as the Work progresses. As a Condition Precedent to achieving Substantial Completion, Seller shall furnish to Buyer six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to Buyer) of the final SPG Job Book as part of the Job Book.

## Other Job Book.

As a Condition Precedent to commencing construction activities on the Project Site for all Work other than the SPGs, the preliminary Job Book for all such other Work shall be delivered to Buyer for Buyer's review and comment. After following the review and comment procedure set forth below in Section 11.10.5 for Deliverables and as a condition to achieving Substantial Completion, Seller shall furnish to Buyer six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to Buyer) of the final Job Book.

## Record Drawings (As-Built Drawings).

As a Condition Precedent to achieving Substantial Completion, the preliminary Record Drawings shall be delivered to Buyer for Buyer's review and comment. After following the review and comment procedure set forth below in Section 11.12.5 for Deliverables and as a Condition Precedent to achieving Final Completion, Seller shall furnish to Buyer six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to Buyer including as provided in Exhibit A1-Appendix B)of the final Record Drawings.

## Books and Records, Tax Accounting.

As a Condition Precedent to achieving Substantial Completion, a breakdown of the Purchase Price in accordance with the property retirement unit categories and other systems of accounts and in a records format in accordance with Exhibit III together with all Books and Records substantiating the Purchase Price breakdown shall be delivered to Buyer. Overhead and profit shall not be listed as separate items. For physical Project Assets, the Seller will provide the following: retirement unit, quantity, cost, ID number, make, model, serial number, and unit number. For land, the Seller will provide the parcel and deed information.

## Warranties.

As a Condition Precedent to achieving Substantial Completion, six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to Buyer) of the final Warranty described in ARTICLE XVII shall be delivered to Buyer.

## Test and Commissioning Results.

As a Condition Precedent to achieving the applicable Milestone, the applicable commissioning tests as required by the Commissioning Plan and the Performance Acceptance Tests.

## Insurance Information.

The certificates of insurance and endorsements required pursuant to ARTICLE XIV shall be delivered to Buyer.

## Other Documents.

All other Deliverables, including those set forth in this Agreement as a document or information to be provided to Buyer or those listed in Exhibit AA by the date specified in the Project Schedule attached as Exhibit RR, shall be delivered to Buyer; *provided, however*, if there is no date specified, then no later than and as a Condition Precedent to achieving Substantial Completion.

## Buyer Comment and Approval.

Provided that Seller has furnished the necessary information and documents for Buyer's review, comment or approval in accordance with the requirements of this Agreement, including the Project Schedule or Submittal Schedule, as applicable, Buyer shall notify Seller of any resulting comments or queries, or shall approve or reject the same in writing. Buyer's approval of a Design Document does not make any Design Document ISSUED FOR CONSTRUCTION as this is a Seller obligation. Buyer's review and/or approval of the Design Documents, or any portion thereof, shall not in any way relieve Seller of any of its obligations, representations, or warranties set forth in this Agreement, including with respect to the accuracy of the dimensions, details, integrity, and quality of the Design Documents or the ability of the Project to meet all of the requirements under this Agreement. Buyer's review and approval shall be not as a licensed or qualified engineer, designer, or contractor irrespective of whether Buyer has such qualified persons as employees or agents, but rather to review and approve in accordance with the general intent of Buyer and such approval shall in no way reduce or eliminate Seller's responsibilities under this Agreement. Buyer's inability to complete its review as a result of Seller's failure to comply with its obligations, including the obligation provide Deliverables or other documents and information required by this Agreement or reasonably requested, shall not constitute a Buyer Change or Delay or a Buyer Event of Default.

## Ownership of Documents.

Buyer shall be the exclusive owner of, including all copyrights to, the Design Documents and Record Drawings. Seller agrees that no legend, notice or other marking claiming any such Design Documents or Record Drawings as being confidential or proprietary to Seller or to any Contractor shall be included on the same, and should any such Design Documents or Record Drawings include a legend, notice or other marking in violation of the foregoing, Buyer shall be free to disregard same. Buyer shall indemnify Seller and any Contractor, and hold Seller and such Contractor who prepared the Design Documents and Record Drawings harmless from and against any use of the Design Documents and Record Drawings on any project, other than the Project, and any modification to the Design Documents or Record Drawings performed without Seller's participation.

## Parent Guaranty.

On the Effective Date and concurrent with Seller's execution of this Agreement, Seller shall deliver to Buyer the Parent Guaranty guaranteeing and securing all of Seller's obligations under this Agreement, including (i) re-payment of all amounts paid by Buyer if Buyer is entitled to reimbursement under this Agreement, (ii) due from Seller to any Person, and (iii) to pay or reimburse Buyer for costs associated with Seller's failure to perform or faulty performance of any covenants and obligations to be performed by it pursuant to this Agreement and any other Project Documents. The Parent Guaranty shall be issued in the form of Exhibit JJJ attached hereto. The cost of the Parent Guaranty is included in the Purchase Price. The Parent Guaranty shall not terminate until the expiration of the Defect Warranty Period.

OR

Letter of Credit.

On the Effective Date and concurrent with Seller's execution of this Agreement, Seller shall deliver to Buyer the original executed [insert amount]Dollars ($[insert amount]) Letter of Credit guaranteeing and securing (i) re-payment of all amounts paid by Buyer if Buyer is entitled to reimbursement under this Agreement, (ii) due from Seller to any Person, and (iii) to pay or reimburse Buyer for costs associated with Seller's failure to perform or faulty performance of any covenants and obligations to be performed by it pursuant to this Agreement and any other Project Documents. The Letter of Credit shall be issued in the form of Exhibit JJJ attached hereto. The cost of the Letter of Credit is included in the Purchase Price. The Letter of Credit shall not terminate until the expiration of the Defect Warranty Period. The Letter of Credit must be by issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case,  a Credit Rating of at least (a) "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.  If a Credit Rating drops below the acceptable criteria, Seller has five (5) Business Days to provide to Buyer a replacement Letter of Credit meeting all of the requirements set forth in this Agreement.

#  PROJECT PLANNING, SCHEDULING AND CONTROL

## Project Schedule.

Seller shall perform the Work in accordance with the Project Schedule, including completing the applicable Work required on or before the Milestone Dates as shall always be included, as such Project Schedule may only be adjusted pursuant to the terms hereof.

## Submittal Schedule.

Before any Buyer reviews, decisions or approvals are required, Seller shall provide Buyer with a schedule of dates when reviews, comments, decisions or approvals of Buyer will be required in order to keep the Project on schedule with the Project Schedule ("Submittal Schedule"). Buyer will then be required to make decisions and grant or deny approvals to allow the Work to progress in a timely fashion. Buyer will review submittals from Seller and will provide comments within ten (10) Business Days after receipt from Seller of a request for review and supporting information reasonably required or necessary for Buyer to make timely comments and/or grant conformance or non-conformance to Project Documents. If Seller needs to furnish documents or other information that are reasonably required or necessary for Buyer to make timely decisions and/or grant approvals or denials, such documents and information must be furnished at least ten (10) Business Days in advance of the date required for Buyer's action. If Seller shall fail to furnish such documents or information, Buyer's failure to act shall not be considered a Force Majeure event or Buyer Change or Delay. If Seller needs to modify the Submittal Schedule, it shall give Buyer at least ten (10) Business Days' notice of the changes to the Submittal Schedule before the new Submittal Schedule shall take effect. Notwithstanding the foregoing, if Buyer raises any reasonable objection(s) to the Submittal Schedule, Seller shall cooperate with Buyer to address such objection(s).

## Changes to the Project Schedule.

No changes to any Milestone Dates are permitted unless approved by Buyer in a Change Order. Buyer agrees that it shall authorize extensions or modifications to Milestone Dates if and to the extent that Seller has an express right under this Agreement as a Force Majeure event or Buyer Change or Delay to additional time.

## Acceleration of Work.

If at any time Seller is or believes that it is likely to be delayed in meeting any of the Milestone Dates, Seller will immediately notify Buyer and after prompt consultation with Buyer, Seller shall promptly submit for approval to Buyer a written recovery plan ("Recovery Plan") to restore the progress of critical path Work to adherence to achieving the Milestone Dates. Buyer may also require Seller to furnish a Recovery Plan any time a Milestone Date is missed within two (2) Business Days of Buyer's notice. The Recovery Plan shall include acceleration of the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work. Submission and execution of the Recovery Plan shall be at Seller's sole cost and expense.

## Concurrent Delays.

Notwithstanding anything to the contrary in this Agreement, including as set forth in ARTICLE XIX, Seller shall not be entitled to a Change Order with respect to any Force Majeure event or Buyer Change or Delay to the extent the Work experienced any mutually occurring or concurrent delays, disruptions, interferences, and/or accelerations resulting from causes, events, conditions, and/or circumstances caused by Seller's failure to meet its other obligations under this Agreement or otherwise for reasons not constituting a Force Majeure or Buyer Change or Delay.

## Acceleration Where Work Is Not Delayed.

Buyer shall also have the right to issue a notice to Seller directing that the Work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work notwithstanding that the Work is progressing without delay in accordance with the Project Schedule. If reasonably practicable, Seller shall accelerate the Work on the basis of: (I) reimbursement of direct cost (i.e., premium portion of overtime pay to the extent required by Applicable Laws, additional crews, shifts, or Equipment and Material costs, and such other items of cost requested in advance by Seller and approved by Buyer, which approval will not be unreasonably withheld) plus (ii) a reasonable allowance for profit, overhead, and contingency mutually agreed by the Parties not to exceed the percentage set forth in Section 10.7, but with respect to clauses (i) and (ii), there shall be a not-to-exceed amount. Any acceleration of the Work not specifically requested and approved by Buyer pursuant to this Section in writing by a Change Order shall be at Seller's sole cost and expense. Buyer shall have the right to reasonably audit Seller's calculated direct costs and savings or costs not incurred associated with any acceleration. In the event of any acceleration requested pursuant to this Section, Seller shall, at no cost to Buyer, promptly provide a plan for such acceleration, including Seller's recommendations for the most effective and economical acceleration.

## Delay Liquidated Damages (Delay LDs) for Project Schedule Delays.

Seller acknowledges and recognizes that Buyer is entitled to full and beneficial occupancy and use of the completed Work no later than the Substantial Completion Deadline, and Seller acknowledges that Buyer has made important business commitments based upon Seller achieving the Substantial Completion Deadline and the Project becoming fully operational by the Commercial Operation Date. Seller further acknowledges and agrees that if Seller fails to achieve the applicable Work by the following Milestone Dates, even if Buyer agrees to a Recovery Plan, Buyer will sustain extensive damages and serious loss as a result of such failure and Buyer shall be entitled to collect the amounts as follows ("Delay LDs") [**NTD**: *The following amounts are based on 2.2 MW SPGS scope of Work*]:

### If Seller fails to achieve Collection System Circuit Completion by the date established in the Project Schedule, Seller shall pay Buyer Ten Thousand Dollars ($10,000) per day for each day after the date required in the Project Schedule until Collection System Circuit Completion occurs.

### If Seller fails to achieve Substation Completion by the date established in the Project Schedule, Seller shall pay Buyer Fifty Thousand Dollars ($50,000) per day for each day after the date required in the Project Schedule until Substation Completion occurs.

### If Seller fails to achieve SPG Mechanical Completion by the date established in the Project Schedule, Seller shall pay Buyer Two ThousandDollars ($2,000) per day for each day after the date required in the Project Schedule until the SPG Mechanical Completion occurs.

### If Delay LD amounts are owing to Seller, Buyer may elect by notice to Seller to withhold the amounts owed for Delay LDs and set such amount off against the Purchase Price in lieu of receiving payment from Seller or require Seller to pay the Delay LD amounts within ten (10) days of Buyer's notice (which shall also serve as an invoice). Notwithstanding the foregoing, if (i) Seller shall meet the next occurring Milestone on time in accordance with the required Milestone Date for such Work or (ii) Seller shall achieve Substantial Completion by the Commercial Operation Date, Buyer shall waive the Delay LDs charged for Seller's failure to timely achieve the prior Milestone in subsection (i) or all missed Milestones in subsection (ii) above, as applicable, and return to or otherwise pay over such amounts withheld or setoff by Buyer or paid by Seller to Buyer; *provided, however,* such waiver and repayment shall not apply to Substantial Completion if Seller fails to achieve Substantial Completion by the Commercial Operation Date, even if Seller timely achieves Performance Acceptance Tests Completion or Final Completion.

## Termination Remedy.

Once the NTP Closing has occurred and Seller then fails to meet the SPG Staging, Erection and Assembly Milestone, except as a result of a Force Majeure event or Buyer Change or Delay, such failure shall be a Seller Event of Default and shall entitle Buyer, among other remedies, to terminate this Agreement effective upon delivery of a notice of termination without further notice and without first giving Seller the right to furnish and meet any Recovery Plan or exercise any other cure right. For all other failures of Seller to meet a Milestone after the NTP Closing, Seller shall first be given the right to proceed with the submission and approval process of the Recovery Plan within the required time period for the same before Buyer can declare a notice of Seller Event of Default that if not cured within the earlier of (i) the thirty (30) day cure period in Section 18.1.11 or (ii) ten (10) Business Days before the Commercial Operation Deadline, Buyer can terminate this Agreement and exercise all other Buyer's rights for a Seller Event of Default.

## Progress Reports and Meetings.

### Following the delivery of the NTP, Seller shall provide Buyer the Weekly Progress Report as required by the Technical Specifications which shall be substantially in the form of and contain the information indicated in Exhibit KKK ("Weekly Progress Report"). Seller shall update the Project Schedule (without adjustment to Milestone Dates except as approved by Buyer as a Change Order) on a bi-weekly basis during engineering and procurement phases and on a weekly basis during construction and commissioning phases as the Work progresses, to indicate the status of each element of the Project Schedule in reasonable detail or as Buyer may specifically request.

### Seller and Buyer shall conduct meetings at the Project Site or other location if mutually agreeable to the Parties, and according to a mutually agreed meeting schedule throughout construction of the Project, to thoroughly discuss the progress and status of construction. Such meetings shall be attended by Seller's Project Manager (or his or her duly authorized representative) and the Buyer's Representative (or his or her duly authorized representative), and by such additional representatives of each Party as such Party may desire. Buyer's Representative may elect to attend meetings by telephone or video conference.

## Visits; Observation at Engineering/Construction Meetings with Third Parties.

### In addition to attendance at the meetings and reports as set forth in Section  7.9, Buyer, through its employees, agents, experts or representatives, shall have the right to (i) observe or cause to be observed the performance of the Work wherever performed, (ii) visit the Project and Project Site, and (iii) observe or cause to be observed the manufacture of the Equipment and Materials; *provided, however*, that Buyer shall provide Seller with reasonable advance notice of any visits (other than for routine observation by Buyer's personnel who are regularly on the Project Site). Buyer's observations and visits shall not unreasonably interfere with the performance of the Work or otherwise with Seller's performance of its obligations under this Agreement, and any Persons observing the Work shall abide by any and all safety rules and procedures applicable to the Project and the Project Site.

### For purposes of this Section 7.10, Seller shall give Buyer reasonable advance notice of all engineering and construction meetings that are not part of the regularly scheduled progress meetings in Section 7.9 in order to permit Buyer to send a representative, if it so desires.

#  INSPECTION AND CORRECTION OF WORK

## Periodic Inspections.

In addition to Buyer's rights to visit the Work wherever located as provided above in Section 7.10, Buyer shall have the right to inspect any aspect of the Work. Buyer shall inform Seller promptly of any defects or deficiencies in the Work not in conformance with this Agreement, including the Project Documents ("Defects or Deficiencies"), it discovers during any inspection of the Work; *provided, however*, that Buyer's failure to so notify will not constitute a breach of this Agreement. Any inspection by Buyer or any of its representatives of any part of the Work, or any failure to inspect, shall in no way affect Seller's obligations to perform the Work in accordance with this Agreement. All such inspections shall be conducted in a manner that does not unreasonably interfere with the normal performance and progress of the Work.

## Observance of Tests.

Buyer and its agents and representatives shall have the right to observe all tests of the Project and tests of the Work including at the Solar Panel Supplier's facilities, in each case at reasonable times during normal business hours and upon reasonable advance notice. Seller shall give at least five (5) Business Days' prior notice, unless another time period is otherwise specified in the Scope of Work, to Buyer of any Project tests including the time and location of the tests.

## Correction of Work.

Prior to Substantial Completion, Seller shall promptly correct or cause to be corrected, at no additional cost to Buyer, any Defects or Deficiencies in any part of the Work, regardless of the stage of its completion or the time, place or means of discovery of such Defects or Deficiencies. After Substantial Completion, any remaining Defects or Deficiencies that qualify as Punch List Items shall be corrected as part of the Punch List Items, and new Defects or Deficiencies arising after the Punch List Items have been memorialized and/or completed, shall be addressed pursuant to the Warranty provisions in ARTICLE XVII.

#  PURCHASE AND SALE, PURCHASE PRICE AND PAYMENT

## Purchase and Sale.

In accordance with the Milestone Payment Schedule, including the amount to be paid at the NTP Closing, and subject to and upon the terms and conditions of this Agreement, Seller shall irrevocably, unconditionally sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, the Project, which includes all the Project Assets, free and clear of all Liens (other than Permitted Encumbrances for the Real Property Documents) and rights of others, with all Work completed (the "Purchase and Sale").

## Purchase Price.

### General.

Buyer agrees to pay, and Seller agrees to accept, an amount in U.S. Dollars equal to the Purchase Price. The Purchase Price shall not be changed and Seller shall not be entitled to any other compensation and reimbursement of expenses in each case without the prior written authorization of Buyer by a Change Order or an amendment to this Agreement. Payments of the Purchase Price shall be made at the times and in the manner provided in this Section 9.2.

### Taxes.

The Purchase Price includes any and all Taxes (including any increase of such Taxes that may occur during the term of this Agreement) arising out of Seller's or any Contractor's performance of the Work or otherwise imposed on Seller or its Contractors, including: (i) with respect to any Equipment and Materials, Labor, or services provided under this Agreement, any Tax imposed on the Project Assets related to the Work, import duties, customs duties, and harbor and other taxes for imported items; (ii) sales and use taxes on all materials and Labor provided by Seller under this Agreement or otherwise on the Work; (iii) Taxes imposed on Seller as a result of Seller's connection with any taxing jurisdiction; and (iv) franchise, income, corporate, doing business, or similar taxes imposed upon Seller or measured by its income or receipts. No amount in addition to the Purchase Price will be due to Seller on account of any such Taxes. For purposes of employment taxes, Buyer shall not be deemed the employer of any individuals performing services under the Agreement on the behalf of Seller or any Contractors, regardless of whether or not such individuals are employed by Seller or by any such Contractors of any tier; and, without limitation, as between Buyer and Seller, Seller shall be liable for any payroll taxes due with respect to any such individual performing services under the Agreement on behalf of Seller or Contractors. Notwithstanding anything to the contrary in this Agreement and further notwithstanding the transfer of title to the Project Assets to Buyer, Seller shall remain responsible for paying all Taxes levied on the real and personal property of Buyer that constitutes a Project Asset until Substantial Completion. Seller shall timely pay all Taxes, other than those for which Buyer is responsible under this Agreement. If Buyer is required by Applicable Law to pay or collect any Taxes for which Seller is responsible under this Section 9.2, then such Taxes paid by Buyer shall be reimbursed by Seller to Buyer by deducting such amount paid from the next Milestone Payment owed, if any amounts are still owed to Seller, or within thirty (30) days of Seller's receipt of Buyer's invoice for such reimbursement, as Buyer elects by notice to Seller.

### Nature of a Fixed Purchase Price Contract.

Seller and Buyer acknowledge that cost risks are inherent in the execution of a fixed price contract for acquisition and construction for a facility of this type. Seller acknowledges that it may have miscalculated its costs, and may result in Seller (or its Contractors) expending more resources than it estimated or planned and which it did not account for or otherwise intend to expend based on the Purchase Price. Similarly, Buyer acknowledges that Seller may have been conservative in its assumptions regarding the overall cost of the Project, and that the actual cost to Seller for the Project may in fact be significantly less than the Purchase Price. The fact that either Party may have so miscalculated the costs to perform hereunder, or that either Party expended extra resources that it did not intend to spend as a result of such miscalculation, shall not form the basis for any Change Order or other claim of relief hereunder.

## Terms of Payment.

Payments of the Purchase Price to Seller shall be made as follows:

### Milestone Payment Schedule.

Subject to the provisions of this Section 9.3 and Seller's compliance herein, Buyer shall make Milestone Payments to Seller in accordance with the provisions herein on account of the Purchase Price in an amount equal to the Milestone Payment for those Milestones that Seller has completed in accordance with this Agreement and for which Seller has not previously been paid. Each Milestone Payment is included in the Milestone Payment Schedule attached as Exhibit D ("Milestone Payment Schedule") and the Milestone Payment corresponding to a Milestone Payment shall be due and payable only to the extent it is supported by the completion of that corresponding Work for the Milestone Payment.

### Seller's Invoices.

As a Condition Precedent to Buyer's obligation: (i) to issue the NTP and make the Milestone Payment for the NTP at NTP and (ii) ,for the remaining Milestones or any SPG Partial Milestones as they occur, to make the Milestone Payment within thirty (30) days following the completion of the Work corresponding to a Milestone Payment, Seller shall submit an invoice in accordance with the Project invoice requirements set forth in Exhibit LLL (a "Seller's Invoice") for such applicable Milestone Payment. Seller specifically agrees that it shall not request in any Seller's Invoice the payment of any sum attributable to Work: (a) for which Seller has already been paid; (b) which has been rejected by Buyer or Seller as permitted by this Agreement; or (c) before the Work has achieved all applicable Conditions Precedent to Milestone completion. With respect to the Seller's Invoice for the Milestone Payment upon Substantial Completion, such Seller's Invoice shall reduce the Seller's Invoice by the Punch List Holdback. Each Seller's Invoice for all Milestone Payments requested must include all of the following or it shall not be deemed a complete Seller's Invoice and Buyer shall have no obligation to make the payment:

#### The fully-executed Milestone Completion Certificate by Buyer and Seller for the applicable Milestone;

#### A document identifying: (i) the Milestone Payment Schedule (Exhibit D); (ii) the related Milestone Payments set forth on the Milestone Payment Schedule that are then payable; (iii) any other amounts then payable by Buyer to Seller under any other provision hereof if any (without limiting Buyer's or Seller's right to dispute any amounts requested for payment); (iv) a summary of all Milestones previously invoiced by Seller, including the identification number and date of each such invoice; (v) a summary of any unresolved Disputes; (vi) a summary of all Milestone Payments previously paid by Buyer and the date such payment was received; and (vii) any Taxes that either Buyer or Seller is required to reimburse the other Party under this Agreement, together with supporting documentation of the same;

####  A list or spreadsheet identifying all Michigan Content, the percentage of Michigan Content, and furnished by whom for the period covered by Seller's Invoice together with a cumulative amount through the date of Seller's Invoice ("Michigan Equipment, Materials, and Labor");

#### A Sworn Statement from Seller and any Contractor who is performing in the aggregate more than Five Hundred Thousand Dollars ($500,000) of Work (such as the BOP/EPC Contractor, Transformer Vendor, and Solar Panel Supplier) under its applicable Construction Contract for any Work performed prior to and included in the Seller's Invoice for the Milestone Payment;

#### From each Contractor who performed any Work that is covered by such invoice a Partial Unconditional Waiver for amounts previously paid to Seller, unless the applicable Contractor has completed all its Work under the applicable Construction Contract, in which case Seller shall submit a Full Unconditional Waiver for such Contractor(s); and

#### With respect to Equipment and Materials, to the extent they constitute personal property or may constitute personal property under Applicable Laws, (i) an updated UCC Search of the applicable Work evidencing that no UCC financing statements or other Liens are filed against Seller in respect of such Equipment and Materials, (ii) a Bill of Sale for the applicable Equipment and Materials; and (iii) evidence that the Equipment and Materials have been delivered and installed on the Project Site to the extent required as part of a Milestone and, if stored in a location other than the Property Site with Buyer's consent, properly labeled and identified as Buyer's property and otherwise in compliance with Buyer's requirements given with its consent to protect Buyer's ownership against third parties.

### Milestone Payments.

Buyer shall (i) concurrent with the transfer of the Project Assets set forth in Section 6.2, and (ii) thereafter for the remaining Milestones, within thirty (30) days following the Seller's Invoice and the completion of the Work corresponding to a Milestone Payment (including all accompanying documentation required by this Section 9.3.3 to make the Seller's Invoice complete), either pay Seller or notify Seller of any disagreements with Seller's Invoice pertaining to the amount owed and pay the undisputed amount of any Seller's Invoice. The determinations made as contemplated by this Section 9.3.3 shall be made for purposes of payment only and shall not in any way (a) affect, relieve, or reduce Seller's obligations to perform and complete the Work in accordance with the provisions of this Agreement, or (b) be deemed to be a warranty or acceptance by Buyer with respect thereto. Buyer shall pay to Seller the amount that remains after deduction from the amount requested in the Seller's Invoice of the following amounts: (x) any portion thereof that Buyer disputes in good faith as not being due and owing, (y) any overpayment by Buyer for any previous period, and (z) any amounts payable by Seller to Buyer hereunder, such amount thereby becoming the full Milestone Payment for the applicable Milestone, subject to Seller's right to Dispute any reduced amounts it disputes in good faith in accordance with ARTICLE XXII.

### Investment Tax Credit Holdback.

If any SPG does not achieve Substantial Completion by the Commercial Operation Date and qualify for the Investment Tax Credit ("Delayed SPG"), Buyer will hold back for each Delayed SPG Nine Hundred Twenty Thousand Dollars ($920,000) from the Purchase Price. These amounts held back for each Delayed SPG shall act as an automatic deduction in the Purchase Price until and unless the applicable Delayed SPG qualifies for the Investment Tax Credit. If the applicable Delayed SPG receives the Investment Tax Credit, Buyer shall pay Seller the amount set forth held back for the applicable Delayed SPG within thirty (30) days thereafter. If the outstanding balance of the Purchase Price is not sufficient to allow Buyer to deduct the full hold back amounts, Seller shall pay Buyer the difference within thirty (30) days of Buyer's notice of the deficiency.

### Final Payment.

On or after the date on which Final Acceptance is achieved, Seller shall submit to Buyer:

#### A final Seller's Invoice (the "Final Seller's Invoice") which invoice shall set forth all amounts due to Seller that remain unpaid in connection with the Work not to exceed the Purchase Price;

#### With respect to each Contractor, a Full Unconditional Waiver for all amounts owed to each Contractor; and

#### With respect to Seller, a Full Conditional Waiver for the outstanding amount owed for the Milestone Payment for the Final Seller's Invoice and Partial Unconditional Waiver for all amounts previously paid to Seller.

Within thirty (30) days after delivery of the foregoing, no dispute by Buyer of the amounts owed, and Seller's completion of all obligations stated herein, Buyer shall pay to Seller the amount due under such Final Seller's Invoice (such payment, the "Final Payment"). Buyer shall have the right to conduct an audit at any time pursuant to Section 10.7. At the time of Final Payment, a Full Unconditional Waiver shall be executed by Seller and delivered to Buyer.

## Limitations on Payments to Seller.

### Unless otherwise agreed to by the Parties, no payment shall be made for any partially completed Milestone Payment or for Work that constitutes Defects or Deficiencies or that remains subject to Buyer's review and approval in accordance with this Agreement.

### No payment shall be made if Buyer is the subject of a claim with a third party for which Seller is responsible pursuant to this Agreement and, in Buyer's judgment, there is not sufficient insurance of Seller and its Contractors to pay for any such costs and expenses.

### Any other costs or expenses owed by Seller to Buyer and past due may be deducted from payments owed to Seller.

### Any amounts paid to any of the Contractors to eliminate a Seller Lien or avoid the placement of a Seller Lien on the Project or Project Site for Work performed.

## Withholding of Payment.

### Buyer shall have no obligation to make any payment to Seller at any time when a Seller Event of Default has occurred and is continuing. Such right to withhold payments due Seller shall be limited to amounts reasonably necessary to cure every Seller Event of Default.

### Failure by Buyer to pay any amount disputed in good faith shall not alleviate, diminish, modify, nor excuse Seller's obligations to perform hereunder. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Seller of any of its obligations hereunder.

## Payments to Buyer.

Except to the extent otherwise expressly provided herein, any amounts payable by Seller to Buyer under this Agreement shall be due within thirty (30) days of Seller's receipt of Buyer's invoice for such payment.

## Adjustments to Purchase Price.

The Purchase Price may only otherwise be adjusted (i) by increasing the Purchase Price by Change Order or amendment to the Body of this Agreement signed by Buyer for additional Work, or (ii) by reduction as a result of Delay LDs or by Buyer's acceptance of one of the Engineering Alternatives, but in all cases other than for the Delay LDs by Change Order. Any increase in the Purchase Price shall be applied to the Milestone Payment described in the Change Order and reduction to the Purchase Price shall be applied to the next payments owed by Buyer unless there is not sufficient amounts owed, in which case, Seller shall reimburse Buyer within thirty (30) days thereafter.

## Manner of Payment.

All payments to be made to either Party under this Agreement shall be paid in U.S. Dollars and shall be paid electronically (by means of wire) in immediately available funds on the date due or, if such date is not a Business Day, on the immediately succeeding Business Day, to such account as may be designated by such Party from time to time by notice to the other Party in accordance with ARTICLE XXI. Buyer shall pay all amounts payable to Seller hereunder by wiring the applicable amounts in immediately available funds to an account designated by Seller as stipulated in Exhibit V ("Vendor Payment-Financial EDI Transactions"). Except in the case of an assignment of the Construction Contracts as permitted by this Agreement for Work performed after the assignment, Seller shall be responsible for paying all Contractors in connection with the Work performed by such Contractors. Buyer shall not otherwise have any obligation to pay any Contractor with respect to the Work performed by such Contractors; however Buyer may elect to do so if there is or threatened Seller Liens arising from Seller's failure to pay the Contractor for its portion of the Work.

## Purchase Price Allocation.

### Calculation.

### Attached as Exhibit III is a schedule allocating the Purchase Price (and all other capitalized costs) among the Project Assets grouped by the seven (7) asset classes referred to in Treasury Regulations Section 1.1060‑1(c) (the "Purchase Price Allocation Schedule"). The Purchase Price Allocation Schedule shall be revised to take into account subsequent adjustments to the Purchase Price, including any adjustments and any indemnification payments (which shall be treated for Tax purposes as adjustments to the Purchase Price), as mutually agreed by the Parties and in accordance with the provisions of Section 1060 of the Code and the Treasury Regulations thereunder.

### Reporting.

The Parties shall report the transaction for federal and, where applicable, state income tax purposes on IRS Form 8594 in accordance with the Purchase Price Allocation Schedule described in Section 9.9.1. Seller and Buyer each agrees to provide the other promptly with any other information required to complete Form 8594.

### Disputes.

If the Parties are unable to agree on the Purchase Price Allocation Schedule pursuant to Section 9.9.1 or any subsequent adjustment to the Purchase Price Allocation Schedule, the Parties shall refer such dispute to an Independent Accountant, which firm shall make a final and binding determination as to all matters in dispute with respect to this Section 9.9.3 (and only such matters) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountant shall not have the power to modify or amend any term or provision of this Agreement. Each Party shall bear and pay one-half (1/2) of the fees and other costs charged by the Independent Accountant. "Independent Accountant" means a public accounting firm jointly selected by the Buyer and Seller that neither has an existing or prior relationship nor a conflict of interest with Buyer, Seller, or either of their Affiliates.

## Fees and Costs.

Seller shall timely pay all Taxes, rent and other amounts due under the Solar Energy Easements and other Real Property Documents until Substantial Completion, and the costs other Project Contracts, the Title and Survey Documents, environmental reports and studies, UCC Searches, curative documents, and filing fees associated with the Purchase and Sale as each of these costs are included in the Purchase Price. To the extent Seller does not timely pay any such amounts, Buyer may pay such amounts directly to the applicable Person, and Seller agrees to promptly reimburse Buyer for any such amounts paid by Buyer, which Buyer may by notice to Seller elect to deduct from amounts owed to Seller or require payment within thirty (30) days thereafter.

## Intended Tax Treatment.

Buyer and Seller intend for each SPG comprising part of the Project to be treated as originally placed in service by Buyer for all federal, state and local income tax purposes and each agree to file all federal, state and local income tax returns in a manner consistent with such intention, unless required by a final determination, within the meaning of Section 1313 of the Internal Revenue Service Code, to the contrary.

#  CHANGE ORDERS

## Basis for Change Orders.

The Parties may from time to time enter into written Change Orders executed by Buyer and Seller in accordance with this ARTICLE X. Change Orders are only binding upon Buyer when signed by Buyer's Authorized Officer. In addition, all approvals, consents and authorizations of Buyer shall be effectuated only by a Change Order, except a Change Order will not be necessary when particular notices are required by this Agreement. Such notices shall comply with ARTICLE XXI. All Change Orders shall be originated, considered, and made effective only in accordance with this Section 10.1, and must be utilized notwithstanding that a reference to a Change Order may not be in other applicable sections of this Agreement pertaining to the same. Notwithstanding the foregoing, the Parties may also make changes by amending the Body of this Agreement using a written amendment to this Agreement as provided in Section 24.14.

## Buyer's Rights to Request Change Orders.

Buyer may, at any time prior to the completion of the Project, request changes to the Work, including the Technical Specifications or the Project Schedule, and within five (5) Business Days of receipt of any such request, Seller shall propose a draft Change Order reflecting the changes pursuant to such request. Once such draft Change Order is finalized, and executed and delivered by Buyer, Seller shall proceed to perform in accordance with such Change Order and this Agreement. Any appropriate increase or decrease in the Purchase Price, change in the Project Schedule, or change to the Work shall be described in detail in the applicable Change Order.

## Seller's Right to Propose Change Orders.

### Seller may, at any time prior to the completion of all Work, propose changes to the applicable Work in addition to the Engineering Alternatives. Buyer shall timely consider such changes but shall have no obligation to make any such changes. Seller will not be relieved of any obligation under this Agreement while such a proposed Change Order is under consideration.

### If a Force Majeure event occurs that directly results in an actual, material delay in Seller's performance of the Work and achievement of any Milestone Dates of the Project Schedule that is not concurrent with other delays of Seller in its Work for which Buyer is not responsible, and provided that Seller shall have complied with the requirements provided in this Section 10.3.2, Seller shall be entitled to propose a Change Order to adjust the Project Schedule to the extent of the actual, material delay; *provided, however*, no Milestone can be extended beyond the Commercial Operation Date and the Commercial Operation Date cannot be extended. Seller shall notify Buyer of the impending Change Order within ten (10) days after Seller first becomes aware or reasonably should have been aware of the commencement of the Force Majeure event and furnish the Change Order no later than thirty (30) days after the commencement of the Force Majeure event, and the Parties shall endeavor in good faith to negotiate, execute, and deliver a Change Order after delivery to Buyer of such Seller Change Order request. If Seller shall fail to furnish Buyer the Change Order within thirty (30) days after Seller first becomes aware or reasonably should have been aware of the commencement of the Force Majeure event, Seller's right to extension of the Project Schedule shall be deemed waived by Seller and Seller shall not be entitled to a change in the Project Schedule.

### In the case of a Buyer Change or Delay that directly results in an actual and material delay in Seller's performance of the Work or achievement of any element of the Milestone Dates of the Project Schedule that is not concurrent with the other delays incurred by Seller for which Buyer is not responsible, Seller shall be entitled to a Change Order to adjust the Milestone Dates of the Project Schedule to the extent of the actual delay; *provided, however*, no Milestone can be extended beyond the Commercial Operation Date and the Commercial Operation Date cannot be extended. Seller shall deliver a proposed Change Order within ten (10) days after Seller first becomes aware or reasonably should have become aware of the commencement of the Buyer Change or Delay, and the Parties shall endeavor in good faith to negotiate and execute the Change Order after delivery to Buyer of such Seller Change Order request within thirty (30) days of the delivery of the request. If Seller shall fail to deliver the proposed Change Order to Buyer in accordance with the requirements herein within thirty (30) days Business Days after Seller first becomes aware or reasonably should have become aware of the commencement of the Buyer Change or Delay, Seller's right to extension of the Project Schedule shall be deemed waived by Seller and Seller shall not be entitled to a change in the Project Schedule.

## No Damage for Delay.

Notwithstanding anything to the contrary this Agreement, an extension in certain Milestone Dates to the extent permitted by this ARTICLE X shall be the sole remedy of Seller for any Force Majeure events or Buyer Change or Delay. In no event shall Seller be entitled to an increase in the Purchase Price or any compensation or recovery of any damages, in connection with any Force Majeure events or Buyer Change Orders or Delay, including consequential damages, lost opportunity costs, impact damages or other similar remuneration.

## Disagreements.

In the event of a dispute concerning the need for or the substance of a proposed Change Order, such dispute shall be referred to dispute resolution as a Dispute.

## Price Changes.

Change Orders resulting in an increase in the Purchase Price shall be priced according to the time and material rate mutually agreed to by the Parties, which shall include an allowance for Seller's overhead and profit mutually agreed by the Parties not to exceed the maximum percentage permitted by Section 10.7 with a total not-to-exceed price, or, if the Parties so agree, at a fixed price. If the Parties agree upon a fixed price for the changes in the Change Order, the Purchase Price shall be adjusted to reflect the same, and the adjusted Purchase Price will be set forth in the Change Order. Labor costs included in any increase to the Purchase Price will not reflect any premium based on productivity loss or otherwise on diminished efficiency or productivity in the performance of the Work.

## Audit Rights.

Seller shall maintain at all times accurate records, books, logs and documentation that will adequately substantiate in detail Seller's actual out of pocket costs associated with Work authorized and performed under Change Orders on a time and material basis plus an aggregate fee for Seller and all Contractors for profit and overhead not to exceed fifteen percent (15%) of the cost of the time and the new Work. Seller shall, at its option, either deliver to Buyer a true copy of, or shall make available for inspection and copying by Buyer or its representatives at Buyer's cost, all such Books and Records that may be necessary to adequately substantiate such Work for review and audit by Buyer or its representatives upon Buyer's request during the term of this Agreement and for a period of three (3) years after final payment under this Agreement. All such information shall be subject to the provisions of Section 23.4.

#  COMPLETION OF MILESTONES

## Achievement of Milestones.

### When Seller believes that a Milestone has been achieved, it shall deliver to Buyer a corresponding Milestone Completion Certificate. Such Milestone Completion Certificate shall include (i) the results of all testing relevant to achievement of such Construction Milestone, (ii) the date on which such Milestone was achieved, and (iii) sufficient detail to enable Buyer to determine that the relevant Milestone has been achieved. With respect to Milestones pertaining to SPGs, those being the SPG Manufacturing Completion, SPG Delivery Completion, and SPG Mechanical Completion (individually a "SPG Milestone" and collectively "SPG Milestones"), Seller may establish a partial SPG Milestone Completion in complete, fixed increments of twenty-five percent (25%) of SPGs commensurate with and as described in the Milestone Payment Schedule ("SPG Partial Milestone").

### It is understood and agreed that acceptance of Milestone Completion Certificates is solely for the purpose of (i) confirming that Buyer agrees (or does not disagree) that the Project has achieved a stage of completion in conformance with the Agreement's requirements but without prejudice to Seller's obligation hereunder to deliver to Buyer in conformance with this Agreement's requirements, and (ii) affording the Parties the opportunity to identify and resolve any issues regarding conformance prior to Substantial Completion. Notwithstanding any disagreements or Disputes with regard to achievement of a Milestone, Seller shall continue to prosecute completion of the Work substantially in accordance with the Project Schedule unless otherwise directed by Buyer.

## SPG Manufacturing Completion.

Seller shall achieve or cause to be achieved SPG Manufacturing Completion with respect to each SPG in accordance with the requirements of this Agreement and no later than the date set forth in the Project Schedule for the SPG manufacturing process to be completed with the Solar Panel Supplier. "SPG Manufacturing Completion" shall have occurred when the following requirements are met:

### Each SPG is fully and completely manufactured by the Solar Panel Supplier, including all Equipment and Materials necessary for the Solar Panel Supplier to manufacture the SPG, except only to the extent of any assembly activities contemplated within or required by the Technical Specifications, and is ready for loading and transportation from the Solar Panel Supplier's manufacturing facility to the Project Site;

### Seller has submitted to Buyer notice(s) and other communications from the Solar Panel Supplier and any other Contractors responsible for transportation of the SPG evidencing that the SPGs have achieved the requirements in Section 11.2.1; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the SPG Manufacturing Completion Certificate pursuant to Exhibit SSS.

## Access Road Completion.

Seller shall achieve or cause to be achieved Access Road Completion with respect to each Access Road in accordance with the requirements of this Agreement and no later than the Milestone Date set forth in the Project Schedule for the Access Roads to be completed. "Access Road Completion" shall have occurred when the following requirements are met:

### Each public and private road, street, highway, driveway, right of way or other means of ingress and egress for vehicles and pedestrians within the Project Site or providing the same to and from the Project Site, including to each SPG and other Infrastructure Facilities, are installed and constructed in accordance with this Agreement (including the Technical Specifications) and provides full unimpeded ingress and egress to all parts of the Project, any other Work locations and public roads (individually "Access Road" and collectively "Access Roads");

### Seller has submitted to Buyer all quality control documents required for the scope of Work, including a certificate from the engineer of record indicating that all Access Roads meets the standards and requirements set forth above in Section 11.3.1; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the Access Road Completion Certificate pursuant to Exhibit QQQ.

## SPG Foundation Completion.

Seller shall achieve or cause to be achieved SPG Foundation Completion with respect to each individual SPG foundation and associated Infrastructure Facilities in accordance with the requirements of this Agreement and no later than the date set forth in the Project Schedule for the Foundation to be completed. "SPG Foundation Completion" shall have occurred when the following requirements are met:

### Each foundation described above is electrically and mechanically completed and installed in accordance with this Agreement;

### Each foundation is structurally complete and contains all necessary embedded inserts;

### With respect to each SPG, the concrete portion of such foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the SPG thereon;

### Backfilling of the area surrounding such foundation has been completed in accordance with the foundation design (but excluding activities related to reclamation or revegetation);

### Seller has documented any changes to each foundation and the associated Infrastructure Facilities (both above-ground and below-ground in the immediately surrounding area);

### Seller has submitted to Buyer all quality control documents associated with placing mass concrete for the SPG foundations in accordance with the ACI Code described in the Technical Specifications including temperature monitoring results of the cure period; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the SPG Foundation Completion Certificate pursuant to Exhibit F.

## SPG Delivery Completion.

Seller shall achieve or cause to be achieved SPG Delivery Completion with respect to each SPG, including all components of a complete SPG that is capable of constructing the SPG to achieved SPG Mechanical Completion, has been delivered by the Solar Panel Supplier to the agreed upon delivery point in accordance with the requirements of this Agreement and no later than the date set forth in the Project Schedule for the SPG delivery to the Project Site. "SPG Delivery Completion" shall have occurred when the following requirements are met:

### Each SPG has been delivered to the Project Site with all parts necessary received by Seller, offloaded onto the Project Site, and ready to commence the installation of the SPG;

### Seller has submitted to Buyer the notice(s) and other communications from the Solar Panel Supplier and any other Contractors responsible for transportation of the SPG evidencing that the SPGs have achieved the requirements in Section 11.5.1 and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the SPG Delivery Completion Certificate pursuant to Exhibit RRR.

## SPG Staging, Erection and Assembly Completion.

Seller shall achieve or cause to be achieved SPG Staging, Erection and Assembly Completion with respect to each SPG in accordance with the requirements of this Agreement and no later than the date set forth in the Project Schedule for the SPG delivery to the Project Site. "SPG Staging, Erection and Assembly Completion" shall have occurred when the following requirements are met:

### Each SPG is fully and completely received by and assembled and erected in the location required by the Project Layout at and on the applicable SPG foundation;

### Seller has submitted to Buyer the notices or other communications from the Contractor under the Engineering Procurement and Construction Agreement who either performed or supervised the Work to establish that the SPGs have achieved the requirements in Section 11.6.1; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the SPG Staging, Erection and Assembly Completion Certificate pursuant to Exhibit UUU.

## Collection System Circuit Completion.

Seller shall achieve or cause to be achieved Collection System Circuit Completion with respect to each individual Collection System Circuit and associated SPGs' electrical works in accordance with the requirements of this Agreement and no later than the date set forth in the Project Schedule for the Collection System Circuit to be completed. "Collection System Circuit Completion," with respect to each Collection System Circuit, shall have occurred when the following requirements are met:

### The padmount transformers and padmount transformer foundations have been completed in accordance with this Agreement;

### All of the electrical Work necessary to achieve connection of such padmount transformers to the Substation in accordance with this Agreement have been installed, insulated, protected and tested, including synchronization with such system;

### The fiber optic cable has been installed and tested and meets the specifications of the Solar Panel Supplier;

### All of the electrical Work, including the installation of all power cable and grounding, necessary to energize the SPGs (excluding phase rotation and voltage checks) on the circuit are completed in accordance with the requirements of this Agreement;

### All Equipment and Materials associated with such electrical Work have been installed in accordance with the requirements of this Agreement and checked for adjustment;

### Such electrical Work necessary to achieve connection of the SPGs to Transmission Owner's Interconnection Facilities are either (i) energized or (ii) immediately capable of being energized upon completion of the Interconnection Facilities by Buyer;

### All electrical Work has been properly constructed, installed, insulated and protected where required for such operation, correctly adjusted, tested and commissioned, are mechanically, electrically and structurally sound in accordance with the requirements of this Agreement, and can be used safely in accordance with this Agreement, including all Requirements; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the Collection System Circuit Completion Certificate pursuant to Exhibit K.

## Substation Completion.

Seller shall achieve or cause to be achieved Substation Completion in accordance with this Agreement and no later than the date set forth in the Project Schedule for the Substation to be completed. "Substation Completion" shall have occurred when the following requirements are met:

### All Equipment and Materials necessary for the Substation have been installed in accordance with the requirements of this Agreement and can be used safely in accordance with this Agreement including all Requirements;

### All Equipment and Materials necessary to achieve connection of the Substation to the Interconnection Point have been installed, and the Substation is either (i) energized, or (ii) immediately capable of being energized upon completion of the Interconnection Facilities by Buyer;

### All Spare Parts required in Section 6.4 that are included in the Purchase Price or purchased directly by Buyer in advance of Substantial Completion have been properly stored by Seller and available for Buyer's use;

### All tests and inspections associated with such Substation Equipment and Equipment and Materials have been completed according to the Requirements and documented (except to the extent the fiber optic cable or the SCADA System cannot be tested because of the status of the Solar Panel Supplier's Work); and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the Substation Completion Certificate pursuant to Exhibit J.

## Generator Radial Line Completion.

Seller shall achieve or cause to be achieved Generator Radial Line Completion in accordance with this Agreement and no later than the date set forth in the Project Schedule for the Generator Radial Line to be completed. "Generator Radial Line Completion" shall have occurred when the following requirements are met, except with regard to items included on the Punch List for Generator Radial Line Completion:

### All Equipment and Materials necessary for the Generator Radial Line have been installed in accordance with the requirements of this Agreement including that it can be used safely in accordance with this Agreement, Applicable Law and Prudent Industry Standards;

### All Equipment and Materials necessary to achieve connection of the Generator Radial Line to the Substation and to the Transmission Owner's electrical transmission system have been installed, and the Generator Radial Line is either (i) energized, or (ii) immediately capable of being energized upon provision of the Interconnection Facilities by Buyer;

### All tests and inspections associated with such Generator Radial Line Equipment and Materials have been completed according to Prudent Industry Standards and documented (except to the extent the fiber optic cable or the SCADA System cannot be tested because of the status of the Solar Panel Supplier's work);

### All unused or unnecessary materials and equipment have been removed from the Generator Radial Line Corridor and the Generator Radial Line Corridor has been restored to a customary condition, excluding reclamation.

### Seller has prepared and submitted a Punch List with respect to the Generator Radial Line; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the Generator Radial Line Completion Certificate pursuant to Exhibit H.

## SPG Mechanical Completion.

For each individual SPG, Seller shall achieve or cause to be achieved SPG Mechanical Completion with respect to such individual SPG in accordance with the requirements of this Agreement and by the date(s) established in the Project Schedule for each SPG to be completed. "SPG Mechanical Completion," with respect to an individual SPG, shall have occurred when the following requirements are met, except with regard to items included on the Punch List for SPG Mechanical Completion:

### The SPG has been installed in accordance with the manufacturer's installation specifications included in the Solar Panel Supply Agreement, including checking the voltage and phase rotation included in the Solar Panel Supply Agreement and performing generator alignment;

### The circuit on the Collection System Circuit for the SPG has been installed and tested and meets the Solar Panel Supplier's specifications;

### The SPG is mechanically and electrically sound and has been tested and is capable of being electrically connected to the grid and operated without damage to the Project or other property and without injury to any Person;

### The SPG has been commissioned by the Solar Panel Supplier in accordance with the Commissioning Plan attached as Exhibit OO;

### Seller has submitted for Buyer's review and comment a draft of the O&M Manual and SCADA Manual;

### Buyer has prepared and submitted a Punch List with respect to such SPG; and

### Seller has signed and delivered to Buyer, and Buyer has accepted the SPG Mechanical Completion Certificate pursuant to Exhibit G.

## SPG Commissioning Completion.

Seller shall achieve or cause to be achieved SPG Commissioning Completion with respect to each SPG in accordance with the requirements of this Agreement and no later than the date set forth in the Project Schedule for the SPG commission at the Project Site. "SPG Commissioning Completion" shall have occurred when the following requirements are met:

### Each SPG is fully and completely operating in accordance with this Agreement, including the Technical Specifications, on the applicable SPG foundation;

### Seller has submitted to Buyer the notices or other communications from the Contractor under the Engineering Procurement and Construction Agreement who either performed or supervised the Work to establish that the SPGs have achieved the requirements in Section 11.11.1; and

### Seller has signed and delivered to Buyer, and Buyer has accepted, the SPG Commissioning Completion Certificate pursuant to Exhibit TTT.

## Substantial Completion.

Seller shall achieve or cause to be achieved Substantial Completion not later than the Substantial Completion Deadline, notwithstanding anything to the contrary in this Agreement. "Substantial Completion" shall have occurred when the following requirements are met and those requirements set forth in Exhibit J, as applicable:

### All prior Milestones have been fully achieved, except for Work that qualifies as Punchlist Items to be completed prior to Completion as provided below in Section 11.12.7 and Section 11.12.12;

### All tie-ins required by this Agreement have been made by and among the Work, including to all SPGs;

### The balance of the Project is capable of delivering electric power up to the full rated capacity of the SPGs to the Interconnection Point;

### The SCADA System is fully operational and otherwise in compliance with this Agreement;

### The Contractor has delivered all Project Documents and Deliverables, including the preliminary Record Drawings (with the final Record Drawings to be delivered at Final Completion), O&M Manual, SCADA Manual, Job Book, Books and Records, Warranties, the Assignment of Remaining Project Assets including assignment of all Real Property Documents required to be assigned to Buyer but not available at NTP (such as any outstanding Crossing Agreements and Drain Agreement using the same form of documents required for such agreements at NTP as provided in Section 6.1.1.1), the Date Down ALTA Title Policy and As Built Survey;

### The Project Contracts information in Exhibit Z has been updated, with such updates marked by redlining or other appropriate mechanism reflecting the changes since Exhibit Z was delivered to Buyer at NTP.

### Any issues relating to the Quality Assurance Plan have been resolved to Buyer's satisfaction;

### The Work in all respects has been properly constructed, installed, adjusted, successfully tested, and is complete, in a mechanically, electrically, and structurally sound manner and in accordance with the criteria set forth in Exhibit A1 except for the agreed Punch List Items; and is operating to meet the commercial operations and other requirements for Buyer to claim the Investment Tax Credit before the Investment Tax Credit Qualifying Date;

### Seller shall have obtained and licensed, granted, or assigned to Buyer, in accordance with this Agreement, all Intellectual Property rights necessary for ownership and the ongoing operation, repair, maintenance, financing, disposition, renovation, expansion and demolition of the Project;

### Seller and each Contractor shall have delivered the applicable waivers and other documents necessary for a Milestone Payment;

### Seller shall have obtained, and Buyer shall have received copies of, all Consents, including all Applicable Permits, necessary for the commencement and ongoing operation of the Project in a safe, efficient, and reliable manner and otherwise in accordance with the Requirements, and as otherwise required to be obtained by Seller hereunder as of such time;

### The Project Site has been cleaned-up in accordance with all Requirements including the removal of waste materials and rubbish caused by Seller's Work related activities;

### Seller and Buyer shall have agreed on the Punch List Items;

### Seller shall have delivered the Bring Down Investment Tax Credit Opinion to Buyer, and all facts set forth in Exhibit BB shall be true and correct as of NTP, unless the Bring Down Investment Tax Credit Opinion is supported by an alternative set of facts that are true and correct as of the Closing Date, in which event, Exhibit BB shall be updated accordingly prior to the Closing Date;

### If Substantial Completion is not achieved by December 31, 2020, Seller has delivered to Buyer satisfactory Investment Tax Credit Continuity Requirement Documents [**NTD**: *This documentation may not be needed depending on how Seller is qualifying the Project for Investment Tax Credits.*];

### Seller has paid all Delay LDs to Buyer previously invoiced pursuant to Section 7.7 that were not waived; and

### Seller has issued the Substantial Completion Certificate in accordance with Exhibit J, and Buyer has accepted and countersigned the Substantial Completion Certificate.

## Performance Acceptance Tests Completion.

Seller shall achieve or cause to be achieved the Performance Acceptance Tests Completion in accordance with the requirements of this Agreement and not later than the date set forth in the Project Schedule for the Performance Acceptance Tests Completion to be completed. "Performance Acceptance Tests Completion" shall have occurred when the following requirements are met:

### Substantial Completion has occurred;

### The Performance Acceptance Tests were completed in accordance with the procedures, conditions, and requirements for the proper performance of such test as specified in Exhibit LL;

### The results from such Performance Acceptance Tests demonstrates that the Project has successfully achieved the results, conditions, and requirements of each such test also as stated in Exhibit LL;

### There are no Seller Events of Default; and

### Seller has issued the Performance Acceptance Tests Certificate in accordance with Exhibit LL, and Buyer has accepted and countersigned the Performance Acceptance Tests Certificate.

## Final Completion.

Seller shall achieve or cause to be achieved Final Completion in accordance with the requirements of this Agreement and by date established in the Project Schedule for Final Completion. "Final Completion" shall have occurred when the following requirements are met:

### Seller shall have achieved Substantial Completion and Performance Acceptance Completion;

### All Punch List Items have been completed;

### All quality assurance documentation has been provided to and received by Buyer in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Assurance Plan;

### Buyer has received the final Record Drawings in hard and electronic formats as required in Section 6.9;

### The Project Site has been cleaned-up in accordance with all Requirements, including the removal of waste materials and rubbish caused by Seller's Work related activities;

### Seller has restored or repaired, as required by the Real Property Documents or otherwise required by this Agreement including Requirements, all property of landowners that has been physically impacted by performance of the Work;

### All other items necessary to complete the Work have been completed except the Performance Acceptance Tests;

### All Delay LDs and any other payments owing to Buyer by Seller have been paid in full;

### There are no uncured Seller Events of Default; and

### Seller has issued the Final Completion Certificate in accordance with Exhibit M, and Buyer has accepted and countersigned the Final Completion Certificate.

#  REPRESENTATIONS AND WARRANTIES OF SELLER

As of the Effective Date and then again reaffirmed as of the NTP Closing and the date Seller achieves Substantial Completion, and Final Completion, Seller hereby represents and warrants to Buyer all of the following set forth in this ARTICLE XII; *provided, however*, that to the extent any representation and warranty is specified as being given as of a specific date, such representation and warranty shall be deemed to be made only as of such date:

## Organization.

Seller is duly formed, validly existing and in good standing under its jurisdiction of formation and is duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) require such qualification, including in the State of Michigan. All of Seller's Organizational Documents are in full force and effect, and true, correct and complete copies are attached as Exhibit NNN to this Agreement.

## Authority.

Seller has the requisite power and authority to (i) conduct its business as now conducted, to own, lease and operate its other assets (including the Project Assets); (ii) to execute and deliver this Agreement and the Project Documents; (iii) and to perform fully its obligations hereunder and thereunder, including to acquire, develop, engineer, design, construct, commission, warrant, own and operate the Project and to enter into all Project Contracts contemplated hereunder to be entered into by Seller and otherwise do all things necessary to effect the transactions contemplated hereby and transferring, or causing the transfer of, the Project and Project Assets to Buyer. Seller is not in violation of any of its Organizational Documents and attached as Exhibit I is Seller's Officer's and Secretary's Certificate.

## Binding Effect.

Seller has taken all necessary limited liability company action [**NTD**: *To be changed if Seller is not an LLC.*] to authorize, effect and approve the transactions set forth in this Agreement and all Project Documents. This Agreement has been duly executed and delivered by Seller. Assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity). Upon the execution and delivery by Seller of the Project Documents to which it is a party, assuming the due authorization, execution and delivery of each such Project Document, each such Project Document will constitute the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

## No Violations.

Seller's execution and delivery of this Agreement and the execution and delivery by Seller of the Project Documents, together with the consummation and performance of their obligations hereunder and thereunder do not (i) conflict with or violate the Organizational Documents of Seller; (ii) conflict with, violate, constitute a default under, trigger any "change of control" rights or remedies under, impose or create any Lien under, or impose, result in or create any right of any Person related to acceleration of remedies, buy-out rights, rights of first offer or refusal or rights of termination under, any Project Contract; (iii) conflict with or violate any Applicable Law or any Order applicable to Seller, or any of its properties or assets, including the Project Assets; or (iv) require the consent or approval of any Person which has not already been obtained or will be obtained prior to the applicable Milestone Date and shall be delivered to Buyer prior to Substantial Completion.

## Project Assets.

### At NTP Closing and thereafter as balance of the Project Assets are transferred, Seller has good, marketable and indefeasible title or easement rights, as applicable under this Agreement, to all the Project Assets free and clear of any and all Liens (other than Permitted Encumbrances), including those in Exhibit CC that identifies the Project Site and Exhibit EE that identifies all Real Property Documents, that are intended or necessary for Buyer's ownership or use of the Project Site. There are no unrecorded easements or claims or encroachments or prescriptive easements affecting any portion of the Project Site other than the Permitted Encumbrances. Seller has no legal obligation, contingent or otherwise, or any nonbinding understanding to sell, lease, dispose of, or otherwise transfer or subject to Lien (other than Permitted Encumbrances) any Project Assets.

### There are no condemnation, zoning or other land-use proceedings by or before any Governmental Authority, now pending or threatened, with respect to the Project, including the sale, reduction, or use of the MW power or Environmental Attributes therefrom or any portion thereof, that does or would adversely affect, interfere with or alter the Project, including Buyer's use of the Project Site or the use of the Project. Neither Seller nor its Affiliates has received written notice of any pending or threatened special assessment proceedings affecting any portion of the Project Site nor any proposals, plans, studies, or investigations of any Governmental Authority regarding the Project, including the Project Site.

### With respect to the Real Property Documents, when title or assignment of rights to the Project Site is transferred to Buyer as set forth in Section 9.2.2:

#### Each of the Real Property Documents is legal, valid, binding, and enforceable against Seller and, to Seller's knowledge, each other party thereto, in accordance with its terms;

#### Each of the Real Property Documents is in full force and effect and no defaults have occurred and are continuing thereunder, and no event has occurred which, with or without notice or lapse of time or both, would constitute a breach or default thereunder or permit termination, modification or acceleration by any party under any such Real Property Documents, and Seller has not received from, or given to, any counterparty thereto any written notification that any event has occurred which (whether with or without notice, lapse of time or both) would constitute a breach or default thereunder, in any case, which has resulted in or could reasonably be expected to result in any adverse effect;

#### True, correct and complete copies of all Real Property Documents and all amendments to any of the Real Property Documents have been delivered to Buyer and are attached as Exhibit EE; and

#### There are no disputes, oral agreements or forbearance programs as to any of the Real Property Documents involving Seller or any of its Affiliates or, to Seller's knowledge, any other Person.

### None of Seller or any of its Affiliates, and, to Seller's knowledge, no counterparty to any Real Property Documents, is in violation of any Applicable Laws with respect to the Project Site, nor has Seller or any of its Affiliates received any written notification that any Person is in violation of any Applicable Laws with respect to the Project Site.

### To Seller's knowledge, there are no plans, studies or efforts by any Governmental Authority to widen, modify or realign, or to impose restrictions on the use of any Access Roads providing access to or within the Project Site, or any portion thereof, which would restrict access, or increase the cost of access, to the Project.

### As of the NTP Closing and thereafter through Final Completion, there are no defects or conditions of the soil or land, including any wetlands, which has or could reasonably be expected to have an adverse effect on the Project.

### There are no commitments or agreements between Seller or any of its Affiliates and any Governmental Authority or public or private utility adversely affecting the Project Site, or any portion thereof, or any improvements, the Obtained Permits or the Permit Applications that will have an adverse effect on the Project or Buyer.

### There are no other facts or conditions relating to the Project, including the Project Site, taken as a whole that have or could reasonably be expected to have an adverse effect on the Project.

### No mining, mineral or water extraction or development project is under construction or for which permits are currently being obtained, located or planned to be located on or under the Project Site, or any portion thereof, which would have an adverse effect on the use and operation of the Project Site for the development and operation of the Project.

### There are no existing or continuing claims against the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller or its Affiliates).

### All utility services necessary for the construction and operation of the Project for Buyer's intended purpose are available at the Project Site or will be so available as and when required upon commercially reasonable terms.

### The Project Assets comprise all of Seller's right, title and interest in respect of the Project. The Project Assets shall include all of the assets, rights, privileges, consents, approvals and permits necessary for Buyer to own and operate the Project and in compliance with the Requirements, including Applicable Laws.

### No Affiliate of Seller is party to a Project Contract. [**NTD**: *If there will be an Affiliate who is a party to a Project Contract, Consumers must first approve the terms and Consumers may require such Affiliate of Seller to assume certain additional obligations reflecting that such Affiliate has specified co-developer responsibilities.*]

## Taxes.

### All Tax Returns required to have been filed by or with respect to Seller with respect to the Project and the Project Assets have been duly and timely filed, and each such Tax Return was true correct and complete. All Taxes required to be paid by Seller with respect to the Project or any of the Project Assets (whether or not shown or required to be shown on any Tax Return) have been timely paid.

### There is no action or audit now pending, threatened, or to Seller's knowledge, proposed action or audit against, or with respect to Seller with respect to the Project or any of the Project Assets in respect of any Taxes. There are no Liens for Taxes on any of the Project Assets (except for Permitted Encumbrances).

### There is no dispute or claim concerning any liability for Taxes with respect to Seller regarding the Project Assets for which notice has been provided, threatened or asserted, or which is otherwise known to Seller. No issues have been raised in any examination by any Governmental Authority with respect to Seller that, by application of similar principles, reasonably could be expected to result in a proposed deficiency for any other Tax period of such Person not so examined for which the statute of limitations has not closed. Seller has not waived (and is not subject to a waiver of) any statute of limitations in respect of Taxes or agreed to (and is not subject to) any extension of time with respect to a Tax assessment or deficiency.

### Seller has not received (or is subject to) any ruling from any Governmental Authority or entered into (or is subject to) any agreement with a Governmental Authority with respect to Taxes (other than with respect to property Taxes unrelated to the Project Site).

### Seller, with respect to the Project and Project Assets, has no liability for the Taxes of any Person, (i) as a transferee or successor, (ii) by contract, or (iii) otherwise.

### For purposes of Section 1445(b)(2) of the Code, Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Code.

### Seller shall order a Tax Clearance Certificate from the Governmental Authority in the form attached as Exhibit KK ("Tax Clearance Certificate") and obtain and deliver to Buyer a Tax Status Letter from the Governmental Authority indicating whether there are any amounts owed to the Governmental Authority as of NTP (or another date to be mutually agreed) ("Tax Status Letter"). If any amounts are owed, Seller represents and warrants that it shall make timely payment of such amounts, and such amounts paid or to be paid are solely at Seller's cost and expense.

### Seller shall have delivered both the Investment Tax Credit Opinion and the Bring Down Investment Tax Credit Opinion to Buyer, and all facts set forth in Exhibit BB shall be true and correct as of the Effective Date, NTP Closing, and the date of Substantial Completion , respectively, unless the Bring Down Investment Tax Credit Opinion is supported by an alternative set of facts that are true and correct as of NTP Closing or the date of Substantial Completion, in which event, Exhibit BB shall be updated accordingly and delivered to Buyer prior to the NTP Closing or date of Substantial Completion.

### As of the Execution Date, NTP Closing, and the date of Substantial Completion:

#### Construction of the Project did not commence prior to January 1, 2016;

#### No grants have been provided by any governmental body for use in connection with the Project or with respect to which Seller or any of Seller’s Affiliates is the beneficiary and which would require a reduction in Investment Tax Credits;

#### No proceeds of any issue of state or local government obligations have been used to provide financing for the Project on which the interest is exempt from tax under Section 103 of the Internal Revenue Code within the meaning of Section 45(b)(3) of the Internal Revenue Code; and

#### No subsidized energy financing has been provided (directly or indirectly) under a federal, state or local program in connection with the Project within the meaning of Section 45(b)(3) of the Internal Revenue Code.

## Consents and Approvals.

Except as set forth on Exhibit FF, Seller is not required to give any notice to or obtain any consent, approval, order or authorization of or registration, declaration or filing with or exemption (collectively, the "Consents") from any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Project Documents, including the Real Property Documents Governmental Approvals. Copies of Consents shall be delivered to Buyer in a timely manner and (i) with respect to any Work for which a Consent is required, prior to Seller's commencement of the applicable Work; and (ii) with respect to the balance of the Project, on or prior to date required by the nature of the Consent, but in any event not later than the Substantial Completion Deadline.

## Compliance with Law.

Seller has complied and will continue to comply, and caused each of Seller's Affiliates and Contractors to comply, with all Applicable Laws and Orders applicable to each such Party, the Project Assets, and the Project, and has not received any notice of any non-compliance.

## Litigation.

Except at set forth in Exhibit O, Seller and any of their Affiliates has not received written notice of any Proceeding, and there is no pending or threatened Proceeding against Seller or that relates to the Project, this Agreement, the Project Documents or any Project Assets. Seller shall notify Buyer of any Proceeding it discovers relating to the foregoing within five (5) Business days, including Proceeding involving Affiliates, Contractors, or other Persons.

## Project Contracts.

### Exhibit Z is a true, correct and complete list of all of the Project Contracts that either have been obtained or will be obtained by NTP, Substantial Completion, or Final Completion, as specified in Exhibit Z.

### Each Project Contract is (i) duly authorized, executed and delivered by Seller; (ii) constitutes a legal, valid, binding and enforceable agreement of each Person who is a party to the applicable Project Contract; (iii) assignable to Buyer without further action of approvals of any Person other than Seller; and (iv) will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement, the Project and the Project Documents.

### Neither Seller nor any other Person is in breach of or in default under any Project Contract to which such Person is a party, and no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of rights or permit termination or acceleration under, or result in the creation of any Lien.

### No Project Contract has been (i) mortgaged, pledged, hypothecated, deeded in trust or otherwise subjected to any security interest or Lien other than Permitted Encumbrances or (ii) except as indicated in Exhibit Z, amended, modified or supplemented.

## Environmental Attributes.

Seller is not party to any agreement to sell electric power from the Project or Environmental Attributes related to the electric power to be generated by the Project.

## Environmental Matters.

### Seller and the Project Site are and during all applicable limitation periods have been in compliance with all Environmental Laws except as disclosed to Buyer in the Project Documents. Seller is not subject to any binding and enforceable Orders relating to protection of the Environment and related to the Project nor is Seller, by operation of any Environmental Law required to take any action relating to the protection of the Environment by reason of any Hazardous Materials related to the Project or related to the Project Site. For purposes of this Agreement, "Hazardous Materials" shall not include customary and necessary quantities of commercial products required for completion of the Work, including motor vehicle fuel, when used, stored, and managed in compliance with applicable Environmental Laws.

### There are no pending or threatened Environmental Claims related to the Project or the Project Site and there is no legal or factual basis for the assertion of any Environmental Claim.

### Neither Seller nor their Affiliates has and, to Seller's knowledge, no other Person has made, caused or allowed any (a) Releases of Hazardous Materials which have occurred on the Project Site, or (b) Releases of Hazardous Materials which have occurred immediately adjacent to the Project Site, in each case which are or were required to be investigated or reported by Seller, or their Affiliates, or with respect to the Project or any Project Assets, under any Environmental Law.

### To Seller's knowledge, (a) no species listed or proposed for listing as threatened or endangered under any Environmental Law, or otherwise identified under Environmental Laws as having special status have been observed on the land to be occupied by the Project, (b) no burial grounds and no archeological resources (which for purposes of this representation shall be deemed to mean any material remains of past human life or activities which are of archeological interest and at least fifty (50) years of age) or paleontological resources (which for purposes of this representation shall be deemed to refer to "fossils" as such term is commonly used) in either case have been identified on the Project Site, and (c) no cultural or historical sites are located on the Project Site.

## Permits.

### Exhibit GGG sets forth a true, correct and complete list of all (i) Applicable Permits required for the development, construction, operation, ownership and use of the Project, (ii) Obtained Permits as of the Effective Date, and (iii) Permit Applications as of the Effective Date. With respect to the Permit Applications, each such Permit Application has been or will be validly filed as specified in Exhibit GGG, in compliance with Applicable Laws, and has not been terminated, revoked or modified. Neither Seller, nor an Affiliate of Seller has received (a) a written notice from any Governmental Authority revoking any Obtained Permit or rejecting any Permit Application or (b) a written notice from any Governmental Authority modifying the requirements pertaining to any Obtained Permit or Permit Application. Seller shall cause all Permit Applications to become Obtained Permits and cure any issues to reinstate revoked Obtained Permits in accordance with Applicable Laws in a timely manner to avoid delays in the progress of the Work and ongoing operation of the Project.

## Work.

All Work, including the Equipment and Materials, furnished, installed or otherwise performed by, Seller or any Contractors hereunder shall be new and undamaged and in compliance with all Requirements and all Project Documents. The Project Document delivered to Buyer, including the Design Documents and Record Drawings, are authentic, accurate, and complete.

## Project Schedule.

### Seller has conducted all necessary due diligence and investigation of the Project Site, its conditions, Applicable Laws, Applicable Permits, Labor skill and availability, and other conditions necessary for Seller to determine that the Milestone Dates as proposed by Seller in this Agreement are reasonable and achievable by Seller, and that Seller is not relying on any information, assurances or other promises of Buyer outside of the terms of this Agreement to establish the Milestone Dates, including the Substantial Completion Deadline.

## Brokers or Finders.

Neither Seller or any of their Affiliates has engaged any broker, finder or other agent with respect to the Purchase and Sale contemplated by this Agreement and the Project Documents, any sale or financing of the Project, or any Investment Tax Credits or other items or attributes that may be generated by the Project upon operation, including Tax credits or benefits or Environmental Attributes or other pollution or emission credits or benefits, for which Buyer or the Project could become, or are, liable or obligated.

## Absence of Regulation.

### Seller is in compliance with PUHCA and the FPA. Seller is not an entity subject to regulation under Section 204 of the FPA. Seller is not subject to regulation as (i) a "public-utility company," (ii) a "holding company" of any "public-utility company," or (iii) a "subsidiary company" of a "holding company" or any "public-utility company" under PUHCA.

### Seller is not subject to regulation as a "public utility", an "electrical corporation", an "electric utility" or any equivalent entity under Applicable Law.

### The Project is in compliance with all applicable requirements of FERC.

## Intellectual Property.

### Seller has rights to all Intellectual Property necessary for the development or use of the Project including all Work. Seller has not (i) infringed upon or misappropriated any Intellectual Property rights of any Person or (ii) received any written charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that a Person must license or refrain from using any Intellectual Property rights of any such Person in connection with the Project).

## Default.

Seller is not in default under this Agreement or any of the Project Documents.

## Solvency.

No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller or any Affiliate of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller or any Affiliate of Seller; nor does Seller have any plan or intention and has not received any notice that any other Person has any plan or intention of filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder. Assuming the payment by Buyer of its obligations for Milestone Payments under this Agreement, Seller will continuously have sufficient funds available to meet its payment obligations in respect of the Work and the development and construction of the Project pursuant to this Agreement including the Project Contracts.

## Parent Guaranty.

Seller has no outstanding letters of credit, guarantees, or other credit assurances that have been issued for the account of Seller other than the [Parent Guaranty or Letter of Credit].

## Insurance.

All Insurance policies required hereunder are in full force and effect, no payment of premiums with respect thereto is past due, and no notice of cancellation or termination has been received by the owner or holder of such policy, except for cancellations or terminations of policies that were replaced with substantially similar coverage and terms prior to the effectiveness of such cancellation or termination and delivered to Buyer. No pending claims exist under any such policies with respect to the Project or the Project Assets.

## FAA Determinations.

Seller has obtained and continues to hold true, correct and complete copies of a FAA determination of No Hazard to Air Navigation for each location where Seller intends to erect a SPG as part of the Project. Seller has not received any communication from the FAA that it objects to the construction of the Project or any portion thereof except as disclosed to Buyer and cured prior to Seller achieving Substantial Completion.

## Solar Data.

Seller has delivered to Buyer true, correct and complete copies of all relevant Solar Data or characteristics with respect to the Project Site and the Project, copies of which are included in Exhibit PPP.

#  REPRESENTATIONS AND WARRANTIES OF BUYER

As of the Effective Date and then again reaffirmed as of the NTP Closing and the date Seller achieves Substantial Completion and Final Completion, Buyer hereby represents and warrants to Seller all of the following set forth in this ARTICLE XIII; *provided, however*, that to the extent any representation and warranty is specified as being given as of a specific date, such representation and warranty shall be deemed to be made only as of such date:

## Organization.

Buyer (i) has been duly incorporated, is validly existing and is in good standing under its jurisdiction of formation and (ii) has been duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) requires such qualification, including the State of Michigan.

## Authority.

Buyer has the requisite power and authority to execute and deliver this Agreement and, subject to receipt of the Required Authorities' approvals, to perform fully its obligations hereunder.

## Binding Effect.

Buyer has taken all necessary corporate action to authorize, effect and approve the transactions set forth herein except as otherwise provided in this Agreement. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

## No Violations.

Buyer's execution and delivery of this Agreement, together with the performance of its obligations hereunder do not (i) violate Buyer's organizational documents, (ii) violate or constitute a default under any agreement or instrument to which Buyer is a party or by which Buyer may be bound, (iii) violate any Applicable Law, order, writ, injunction, decree, statute, rule or regulation applicable to Buyer, or its properties or assets, or (iv) except as otherwise provided in this Agreement, require the consent or approval of any Person, which has not already been obtained.

## Consents and Approvals.

Other than the Regulatory Approval, Buyer is not, nor will Buyer be, required to give any notice to or obtain any Consent from any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Project Documents or the consummation of the transfer of the Project Assets to Buyer.

## Brokers or Finders.

Buyer has not engaged any broker, finder or other agent with respect to the transactions contemplated by this Agreement, any purchase or financing of the Project, or any purchase or transfer of any investment credits or other items or attributes that may be generated by the Project upon operation, including Tax credits or benefits or Environmental Attributes or other pollution or emission credits or benefits, for which Seller could become, or is, liable or obligated.

## Solvency.

No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Buyer. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Buyer or the income of Buyer; nor does Buyer have any plan or intention of and has not received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Buyer is solvent and has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder.

## Compliance with Law.

Seller has complied and will continue to comply, and caused each of Seller's Affiliates to comply, with all Applicable Laws and Orders applicable to each such Party, and has not received any notice of any non-compliance.

#  INSURANCE AND BONDS

## Insurance Requirements.

Seller shall, at its sole expense, procure and maintain, and shall cause its Contractors to procure and maintain, throughout the term of this Agreement the types of insurance with the minimum limits as set forth on Exhibit N ("Insurance").

### Insurance Deliverables. On the Effective Date, Seller has delivered to Buyer Seller's certificates of insurance and additional insured endorsements for all Insurance, except for the Builder's Risk Insurance policy, which are attached as Exhibit N. Within sixty (60) days after the Effective Date, Seller shall deliver to Buyer the proposed Pro Forma Builder's Risk Insurance for Buyer's review and approval. Buyer's approval of the Pro Forma Builder's Risk Insurance and Seller's delivery of the Builder's Risk Insurance policy consistent with the Pro Forma Builder's Risk Insurance is a Condition Precedent to the NTP.

### Limits. The limits of Insurance indicated above are minimum requirements that shall not be interpreted or permitted to limit Seller's liability. Buyer's receipt of certificates and endorsements that do not comply with the Insurance requirements or Seller's failure to provide certificates shall not limit or relieve Seller of the duties and responsibilities of maintaining insurance in compliance with these Insurance requirements and shall not constitute a waiver of requirements.

## Bond Requirements.

Seller shall at its sole expense, procure and maintain, or shall cause its Contractors to procure and maintain, throughout the term of this Agreement payment and performance bonds in the amount of the Purchase Price [**NTD**: *This amount and terms may be adjusted depending on information regarding Seller and Contractors.*] as further provided in Exhibit N ("Bonds")

### Bonds Deliverables. Within sixty (60) days after the Effective Date, Seller shall deliver to Buyer the proposed Bonds for Buyer's review and approval. Buyer's approval of the Bonds and Seller's delivery of the Bonds consistent with this Agreement is a Condition Precedent to the NTP.

### Limits. The Bond requirements indicated above are minimum requirements that shall not be interpreted or permitted to limit Seller's liability. Buyer's receipt of Bonds that do not comply with this Agreement or Seller's failure to provide Bonds shall not limit or relieve Seller of the duties and responsibilities of maintaining Bonds in compliance with these Bond requirements and shall not constitute a waiver of requirements.

#  INDEMNIFICATION

## Seller's General Indemnity.

Subject to ARTICLE XXII, Seller shall defend and indemnify Buyer, its Affiliates, and their respective employees, agents, partners, shareholders, officers, directors, members, managers, successors, and permitted assigns (each, a "Buyer Indemnitee" and collectively "Buyer Indemnitees"), from and against the following:

### All Losses arising from claims for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious act or omission (including strict liability) during Seller’s, and those working by or through Seller on the Project, performance of this Agreement, including the Work, or from performing or failing to perform any of its obligations under this Agreement, or any curative action under any of the Warranties following performance, in each case, of Seller, any Contractor, any of their Affiliates, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

### All Losses that arise out of or result from the following:

#### Except to the extent directly caused by a Buyer Event of Default to pay amounts as and when required under this Agreement, (i) any Seller Lien on any of the Equipment and Materials, the Work, Project Site, or other Project Assets or any fixtures or personal property included in the Work or forming a part of the Project (whether or not such Seller Lien is valid or enforceable), and (ii) all claims for payment or compensation for Work performed hereunder, whether or not reduced to a Seller Lien, filed by any Contractors (including all Persons performing any portion of the Work;

#### Employers' liability or workers' compensation claims filed by any employees or agents of Seller or any of its Contractors;

#### All Losses arising from third-party claims, including claims by Contractors and employees of Seller and Contractors, and claims directly from Buyer and Buyer Indemnitees that arise out of or result from (i) the failure of Seller or any of its Contractors to comply with the terms and conditions of this Agreement, including any inaccuracy in or breach of any representation or warranty made by Seller or breach of or failure to perform any covenant of Seller in this Agreement, further including under Applicable Laws and Permits; and (ii) premises liability;

#### All Losses that arise out of or result from the failure of Seller, any Contractor or the Work (including any Warranty Work), including the Project, as designed, constructed and completed by Seller or any Contractor, to comply with, or be capable of operating in compliance with, all Requirements, including all Applicable Laws or the conditions or provisions of all Applicable Permits;

#### Any and all fines, penalties, or assessments issued by any Governmental Authority that Buyer may incur as a result of executing any applications at Seller's request;

#### All Losses arising from claims by any Governmental Authority that arise out of or result from the failure of Seller to pay, as and when due, all Taxes (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority which Seller is obligated to pay pursuant to the terms of this Agreement;

#### All Losses arising from claims by any Governmental Authority claiming Taxes based on gross receipts or on income of Seller, any of its Contractors, or any of their respective agents or employees with respect to any payment made to or earned by Seller, any of its Contractors, or any of their respective agents or employees under this Agreement;

#### All Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the Project or Project Site, that arise out of or result from:

##### The use of Hazardous Materials by Seller or any Contractor in connection with the performance of the Work which use includes the storage, transportation, processing, or disposal of Hazardous Materials;

##### Any Release or Threat of Release of Hazardous Materials in connection with the performance of the Work by Seller or any Contractor; or

##### Any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened, or actual violation of any Applicable Laws or Applicable Permits by Seller or Contractor with respect to Hazardous Materials in connection with the performance of the Work;

#### Any vitiation, voiding, or cancelation of any Insurance policy;

#### Claims, actions, or suits filed against Buyer or by any Contractor for additional costs incurred or for additional compensation, in each case, arising out of Contractor's performance of the Work or other participation in the Project;

#### Claims, liens, obligations, liabilities, expenses, and causes of action of whatever kind arising out of any employment decision or action made or taken by Seller or its Contractors with respect to its or their employees;

#### Any fraud, gross negligence, intentional misrepresentation or willful misconduct by Seller, including its Affiliates and Contractors, in connection with this Agreement; and

#### In each case under this Agreement, including this Section 15.1 and Section15.2 below, actual attorneys' fees and expenses incurred by any Buyer Indemnitees.

WITH RESPECT TO CLAIMS AGAINST BUYER BY SELLER'S EMPLOYEES, SELLER UNDERSTANDS AND AGREES THAT THE INDEMNIFICATION OBLIGATION HEREIN SHALL NOT BE LIMITED IN ANY WAY BY THESE PROVISIONS, AND SELLER EXPRESSLY WAIVES ITS IMMUNITY AS A COMPLYING EMPLOYER UNDER ANY APPLICABLE WORKERS' COMPENSATION LAW, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION.

## Patent Infringement and Other Indemnification Rights.

Subject to ARTICLE XXII, Seller shall defend, indemnify, and hold harmless the Buyer Indemnitee against all Losses arising from any Intellectual Property Claim. If Buyer provides notice to Seller of the receipt of any such claim, Seller shall promptly, but in no event later than thirty (30) days from the date of such notice from Buyer (or earlier, if required to preserve the rights of Buyer with respect to such claim), at its own expense, settle, or defend any such Intellectual Property Claim and Seller shall promptly pay all Losses awarded against or incurred by Buyer and, subject to the next sentence, at Buyer's election: (i) procure for Buyer, or reimburse Buyer for procuring, the right to continue using the infringing service, Equipment and Materials, or other Work; (ii) modify the infringing service, Equipment and Materials, or other Work so that the same becomes non-infringing; or (iii) replace the infringing service, Equipment and Materials, or other Work with non-infringing service, Equipment and Materials, or other Work, as the case may be, in each case without adverse impact on the capacity, reliability, utility, operability, value, or useful life of the Project or on its maintenance or repair. If Buyer is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Seller shall take one or more of the actions under the preceding clauses (i), (ii), or (ii) as directed by Buyer and shall promptly use its commercially reasonable efforts to have such injunction removed; *provided, however*, that in no case shall Seller take any action which adversely affects Buyer's continued use and enjoyment of the applicable service, Equipment and Materials, or other Work without the prior written consent of Buyer. Buyer's acceptance of the Deliverables, Equipment and Materials, Spare Parts, or other component of the Work shall not be construed to relieve Seller of any obligation under this Section 15.2.

## Buyer's Indemnity.

### Subject to ARTICLE XXII, Buyer shall defend and indemnify Seller, its Affiliates, and their respective employees, agents, partners, shareholders, officers, directors, members, managers, successors, and permitted assigns (each, a "Seller Indemnitee"), from and against any Losses incurred or suffered by any Seller Indemnitee to the extent resulting from:

### Any inaccuracy in or breach of any representation or warranty made by Buyer in ARTICLE XIII of this Agreement;

### Any breach of, or failure to perform or fulfill, any covenant, agreement or obligation of Buyer contained in this Agreement;

### Any and all liability for Taxes to which the Project Assets or the Work may be subject, assessed or otherwise encumbered with respect to any period for which Buyer is responsible;

### Any and all Losses arising on or after, or relating to periods or portions thereof ending on or after, completion of the Project and Seller's obligations hereunder with respect to the Project Assets; and

### Any fraud, gross negligence, intentional misrepresentation or willful misconduct by Buyer in connection with this Agreement.

## Survival of Indemnities.

The indemnities of Seller and Buyer set forth in this Agreement, wherever located, shall survive the termination or expiration of this Agreement for the applicable statute of limitations.

#  TITLE; RISK OF LOSS

## Clear Title.

Seller warrants and guarantees that legal title to and ownership of the Project shall be free and clear of any and all Liens when title thereto passes to Buyer other than Permitted Encumbrances and those created by Buyer; *provided, however*, that nothing in this Section 16.1 shall diminish Seller's obligation to provide Partial Unconditional Waivers and Full Unconditional Waivers as and when required under this Agreement.

## Title.

Title to the Project Assets, other than the Work, shall transfer to Buyer as set forth in Section 6.1. With respect to the engineering, procurement, installation and construction Work, title to such Work shall transfer upon the earlier of (i) payment by Buyer for such Work, or (ii) incorporation of such Work, including Equipment and Materials, into the Project.

## Risk of Loss.

Notwithstanding the foregoing, Seller shall bear the risk of loss and damage with respect to the Project and the Work until Seller achieves Substantial Completion. Any Work that is damaged or lost while Seller retains risk of loss with respect thereto shall be rebuilt, restored or replaced by Seller. Seller shall also be responsible for any damage or loss falling within the deductible under such Seller's Insurance. Without limiting the generality of any of the foregoing, Seller shall be fully responsible for any loss, theft or damage to the Work including all Equipment and Materials intended to be incorporated into the Work, due to theft, pilferage, rust, weathering, and the elements. With respect to the foregoing events, Seller shall forthwith repair or replace the Work including the Equipment and Materials so damaged or destroyed, at its own expense and to the satisfaction of Buyer.

#  WARRANTIES

## Warranty.

Seller warrants and guarantees to Buyer that all Work conforms to the Work specifications included in the ISSUED FOR CONSTRUCTION Design Documents and Record Drawings and conforms to all Requirements. Without limiting the preceding, all Equipment and Materials shall be new and undamaged and installed in accordance with all Contractors' specifications for their warranties, including all Solar Panel Supplier's and Transformer Vendor's specifications; and all Project Documents provided to Buyer, including the Design Documents and Record Drawings, are authentic, accurate, and complete. Seller's warranty pursuant to this Section is the "Warranty". Notwithstanding the foregoing, the Seller's Warranty for the Solar Panel Supply Agreement and Transformer Supply Agreement will not expire upon expiration of the Defect Warranty Period if such Solar Panel Supply Agreement's and Transformer Supply Agreement's manufacturer's warranties are not assignable and assigned to Buyer but rather shall extend and cover these manufacturer's warranty periods required by the Scope of the Work.

## Defect Warranty Period.

The Warranty shall be effective during the period ("Defect Warranty Period") commencing on the date Substantial Completion is achieved and ending on the second (2nd) anniversary of the Substantial Completion date; *provided, however,* (i) that the Defect Warranty Period for any Work, including Equipment and Materials, required to be re-performed, repaired, corrected, or replaced following discovery of any Defects or Deficiency or other noncompliance with the Warranty during the Defect Warranty Period shall re-start the Defect Warranty Period for such corrected or repaired Work; and (ii) this two (2) year period supplements, and does not reduce, the warranties of Contractors, including the Solar Panel Supplier and Transformer Vendor, for manufactured Equipment and Materials, goods and products, including all manufacturer warranties. Seller shall perform all Warranty Work so that the respective repair or replacement parts are complete and perform satisfactorily for the expected service life of the item repaired or replaced. This Defect Warranty Period does not apply to any other representations or warranties given by Seller, other than the Warranty.

## Correction of Defects.

If the Work is found to contain Defects or Deficiencies or Seller is otherwise in breach of the Equipment and Materials' manufacturer warranties during the warranty period for the Equipment and Materials or the Warranty during the Defect Warranty Period, Seller shall have a reasonable opportunity to inspect such Defects or Deficiencies and, at Seller's own cost and expense (including the cost of labor and equipment) Seller shall uncover, correct, refinish, redesign, repurchase, repair, or replace such Defects or Deficiencies (and any equipment or facility that is disturbed or damaged in the course of such Warranty Work) and otherwise remedy such breach with materials of new and good quality, and re-perform all such defective components of the Work in accordance with the same requirements for the Work of this Agreement within the time period required below in Section 17.4 ("Warranty Work"). Seller shall bear all costs and expenses associated with correcting any Defects or Deficiencies, including necessary disassembly, transportation, reassembly, and retesting, as well as re-performing, reworking, repair, replacement, commissioning, and testing such part of the Work as shall be necessary to cause the applicable portion of the Work to conform to the applicable requirements of the Work. If, as part of the Warranty Work, Seller is obligated to repair, replace, or rework any Equipment and Materials, item, or other portion of the Work hereunder, Seller shall undertake a technical analysis of the problem and correct the "root cause" as appropriate based on the nature of the Defects or Deficiencies or other breach unless Seller can demonstrate to Buyer's satisfaction, in its sole discretion, that there is not a reasonable risk of reoccurrence of such problem.

## Time for Warranty Work.

Seller shall commence performance of the Warranty Work within five (5) days (or such longer period as Buyer may approve in writing) after receipt by Seller of a notice from Buyer delivered in accordance with this Section 17.4 specifying a failure of any of the Work to satisfy the Warranty, and requesting Seller to correct the failure, and shall diligently pursue such Warranty Work without interruption or suspension until completion, except that if such Warranty Work constitutes an emergency defined as one that (i) materially and adversely affects the business operations of the Project or (ii) causes or threatens to cause death or substantial injury to any Person or damage or destruction of property, Seller shall commence performance of Warranty Work within one (1) Business Day after notice sent by electronic mail to Seller's Project Manager. The Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Project. In all cases, Warranty Work shall be diligently pursued from commencement required thereof and corrected within ten (10) Business Days of notice except and unless the Warranty Work is of a nature that it cannot be completed within such time period, in which event Seller shall have a mutually agreeable number of days, not to exceed sixty (60) days without Buyer's written consent.

## Warranty Work; Acceptance Tests.

Seller warrants in favor of Buyer that all of the Warranty Work, including all materials incorporated into the Work as part of the Warranty Work or otherwise undertaken pursuant to the Warranties set forth in this ARTICLE XVII shall (i) comply with the Warranty (ii) not modify or otherwise limit the performance of the Work including Equipment and Materials, (iii) not increase operating costs, (iv) conform to and shall not invalidate the provisions of any applicable manufacturer warranty or any other Warranty provided by a Contractor, and (v) not increase the wear and tear on or degradation of the Project. Seller and Buyer shall mutually agree on how to demonstrate to Buyer, taking into consideration Buyer's reasonable requirements, that such Warranty Work undertaken pursuant to this ARTICLE XVII and the components changed, repaired, or replaced are and remain in compliance with the Warranty and do not modify or otherwise limit the performance of the Project including the Equipment and Materials. Buyer may, in its reasonable discretion, require the performance and completion of any Performance Acceptance Tests to be re-run by Seller, at Seller's expense, with respect to the affected Equipment and Materials to evidence the Warranty Work has been completed in accordance with this Agreement.

## Failure to Perform the Warranty Work.

If Seller does not proceed to complete the Warranty Work, or cause any relevant Contractor to proceed to complete the Warranty Work, required to satisfy any Warranty claim within the time periods for correction required by this ARTICLE XVII, Buyer may elect to perform the necessary Warranty Work to remedy the Defects or Deficiencies pursuant to the Warranty claim, or have third parties perform the necessary Warranty Work, and Seller shall, within ten (10) Business Days of receiving Buyer's request for payment of the costs of Buyer performing or causing to be performed such Warranty Work, reimburse Buyer for all documented costs and expenses reasonably incurred by Buyer (including costs of Buyer's personnel and actual attorneys' fees) and its Affiliates with respect to such Warranty Work. In the event any of the Warranty Work fails to satisfy the Warranty during the Defect Warranty Period, and any such failure occurs under circumstances where there is an immediate need for repairs, Buyer may perform such Warranty Work for Seller's account without giving the prior notice otherwise required hereunder; provided, that Buyer provides reasonably prompt notice to Seller of such immediate need prior to performing such Warranty Work.

## Risk of Loss or Damage.

Whenever Warranty Work is required pursuant to this ARTICLE XVII or Seller otherwise performs work on the Project pursuant to the Warranties, Seller shall bear the risk of physical loss or damage to the Project to the extent resulting from Seller's activities performing such Work.

#  DEFAULT; TERMINATION

## Events of Default by Seller.

Seller shall be in default under this Agreement upon the occurrence of any of the following events (each a "Seller Event of Default"):

### Seller fails to achieve or cause to be achieved the following Milestones for the Project by the applicable date specified in this Agreement: (i) SPG Staging, Erection and Assembly or (ii) Substantial Completion by the Substantial Completion Deadline;

### Seller fails to diligently proceed with implementing the Recovery Schedule or fails to timely provide Buyer the Recovery Schedule;

### Seller contravenes any Applicable Law or Applicable Permit such that the ability of Seller or any Contractor to perform the Work in accordance with this Agreement is hindered or the Project is adversely affected, except to the extent such violation is directly and solely caused by a Buyer Event of Default;

### Seller fails to make any payment of any amount when due (other than amounts disputed in good faith) as required to be made by Seller to Buyer hereunder, which failure continues for fifteen (15) days after notice of such non-payment, including fails to make prompt payments (which is defined as within fifteen (15) Business Days of receipt from Buyer) of undisputed amounts when due to Contractors for Labor, materials, or equipment;

### Seller suspends performance of the Work, or any part thereof, or abandons the Project and in any such case Seller does not cure its noncompliance therewith within three (3) days after notice from Buyer thereof;

### Seller fails to maintain the Insurance or indemnify a Buyer Indemnitee as required by this Agreement;

### Seller assigns or transfers this Agreement or any right or interest herein except as expressly permitted otherwise in this Agreement;

### Seller becomes insolvent, or generally does not pay its Debts as they become due, or admits in writing its inability to pay its Debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization or bankruptcy proceedings are commenced by Seller; and such proceedings are not terminated, stayed or dismissed within sixty (60) days after the commencement thereof;

### If any representation or warranty made by Seller in this Agreement is untrue or misleading when made, deemed made or repeated;

### Seller fails to perform any other provision of this Agreement such that it would not be able to deliver to Buyer the Project conforming in all respects with the requirements of this Agreement; or

### Seller fails to perform any other obligation not otherwise set forth above, if not cured within thirty (30) days' notice from Buyer to Seller.

## Buyer's Rights and Remedies.

In the event of a Seller Event of Default, Buyer (or its successor in interest) shall have the following rights and remedies and may elect to pursue any or all of them as a result of such Seller Event of Default, and Seller shall have the following obligations:

### Buyer may terminate this Agreement by giving notice of such termination to Seller and shall have the further rights and remedies set forth in ARTICLE XVIII; provided, that in the event of a Seller Event of Default pursuant to Section 18.1.1 or Section 18.1.7, Buyer shall be deemed to have given notice of termination to Seller immediately upon the occurrence of such a Seller Event of Default, and all amounts owing by Seller to Buyer hereunder shall immediately become due and payable. In the event Buyer terminates this Agreement in accordance with the provisions hereof, Seller (i) shall withdraw from the Project Site, (ii) without limiting Seller's obligations or Buyer's rights, shall assign to Buyer such agreements, including warranties from Seller's Contractors and the remaining unassigned Project Contracts, including Construction Contracts, as Buyer may request, and shall deliver and make available to Buyer all Intellectual Property Rights of Seller related to the Work reasonably necessary to permit Buyer to complete or cause the completion of the Work and to own, operate, repair, maintain, finance, dispose of, demolish, or otherwise use the Project, and in connection therewith Seller authorizes Buyer and its respective agents and successors and assigns to use such information for such purposes, and (iii) shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Seller in the performance of the Work as Buyer may direct; and Buyer may take possession of any or all Project Assets including Seller's Deliverables, and equipment and materials of Seller related to the Work necessary for completion of the Work and the ownership, operation, repair, maintenance, financing, disposition, demolition, or otherwise use the Project (whether or not such is a Project Asset and Project is complete)

### Buyer may proceed against any security given by Seller or for the benefit of Buyer for Seller's performance under this Agreement, including the [Parent Guaranty or Letter of Credit];

### Buyer shall have the right (i) to self-perform or employ any other Person to complete the Work by whatever method that Buyer may deem necessary in Buyer's judgment, including by enforcing any security given by or for the benefit of Seller for its performance under this Agreement or otherwise, and (ii) to make such expenditures as in Buyer's judgment will accomplish the timely completion of the Work in accordance with the terms of this Agreement, regardless of whether the sum of those expenditures plus all amounts previously paid to Seller under this Agreement exceeds the Purchase Price;

### Buyer may seek equitable relief to cause Seller to take action, or to refrain from taking action, or otherwise enforce Seller's obligations or Buyer's rights by specific performance, injunctive and/or other equitable relief (without posting of bond or other security), or to make restitution of amounts improperly received under this Agreement. In the event an action for specific performance is brought, Seller waives any right to challenge the request for specific performance as a remedy as Seller acknowledges that the goods and services being provided under this contract are unique.

### Buyer may make such payments or perform such obligations as in Buyer's sole judgment are required to cure any Seller Event of Default and invoice Seller for the cost of such payment or performance or offset such costs against payments otherwise due to Seller under this Agreement;

### Irrespective of whether Buyer terminates this Agreement, Buyer may seek damages subject to the terms of ARTICLE XXII for a Seller Event of Default; or

### Buyer may suspend the Work by giving notice of such suspension to Seller, and no additional amounts will be paid by Buyer for extra costs arising from the suspension and no additional time shall be granted for Milestones to be completed, except as Buyer shall agree.

## Consequences of Termination by Buyer.

### Upon termination of this Agreement by Buyer, including upon a Seller Event of Default described in Section 18.1, the following provisions shall apply:

### Seller shall remove its personnel and any personal property belonging to Seller or its personnel from the Project Site (or other location where the field construction office for the Project may be located) unless otherwise required by Buyer as permitted by this Agreement, and shall refrain and cause its personnel to refrain from taking from the Project Site or the field construction office any Project Assets including any Project Documents and other documents constituting Confidential Information of Buyer;

### Buyer shall be entitled to all legal and equitable remedies that are not expressly prohibited or limited by the terms of this Agreement (including reimbursement of any advance payment of the Purchase Price or any other amounts to the extent applicable)

### In the event of a Buyer termination for a Seller Event of Default on or before the NTP Closing, Seller shall within ten (10) days after such termination refund all payments made by Buyer to Seller. This provision does not apply if Seller fails to achieve NTP by the NTP Deadline so long as Seller acted in good faith to achieve the Conditions Precedent to NTP.

## Buyer Event of Default.

The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (each, a "Buyer Event of Default"):

### Buyer becomes insolvent, or generally does not pay its Debts as they become due, or admits in writing its inability to pay its Debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization or bankruptcy proceedings are commenced by Buyer; and such proceedings are not terminated, stayed or dismissed within sixty (60) days after the commencement thereof;

### Buyer fails to make payment of any amount when due (other than amounts disputed in good faith) as required to be made by Buyer to Seller, which failure continues for sixty (60) days after notice of such non-payment is given by Seller to Buyer;

### Any representation or warranty made by Buyer herein was false or misleading when made and such false or misleading representation by Buyer has or with lapse of time will have a material and adverse effect on Seller's ability to perform its obligations under this Agreement, including Seller's ability to perform the Work; or

### Buyer fails to perform or observe any of its obligations under this Agreement not otherwise specifically addressed in this Section 18.4, and such failure continues for thirty (30) days after notice is given by Seller to Buyer, except that such thirty (30) day cure period shall be extended if (i) curing such failure reasonably requires more than thirty (30) days; (ii) Buyer commences such cure within such thirty (30) day period and diligently prosecutes such cure; and (iii) such cure is accomplished within sixty (60) days after the date on which Buyer first receives a notice from Seller with respect thereto.

## Seller's Remedies.

In the event of a Buyer Event of Default, Seller (or its successor in interest) shall have the following rights and remedies and may elect to pursue any or all of them, as a result of such Buyer Event of Default, and Buyer shall have the following obligations:

### Seller may seek equitable relief to enforce the provisions of this Agreement;

### Seller may seek damages for Seller's costs not to exceed the limits on Buyer's liability set forth in Section 22.2; or

### In the case of an Buyer Event of Default pursuant to Section 18.4.2 that exceeds fifty percent (50%) of the Purchase Price and which is not the subject of a good faith disagreement or Dispute between Buyer and Seller, Seller may only then suspend the Work until such Buyer Event of Default has been cured and, upon the resumption of the Work, as full compensation for any suspension under this Section 18.5.3, the Purchase Price shall be adjusted to reflect any additional increased costs of Seller directly resulting from any such suspension, as demonstrated by Seller to Buyer's reasonable satisfaction and shall be set forth in a Change Order, *provided; however*, that (i) Seller continues to protect and maintain the Work performed, including those portions on which Work has suspended, and (ii) Seller resumes performance of the Work upon the cure of (which includes a settlement in lieu of cure of) such Buyer Event of Default. In all other circumstances, Seller may neither suspend the Work nor terminate this Agreement as a remedy for a Buyer Event of Default.

## Termination for Changes to Investment Tax Credits.

If Applicable Laws pertaining to the Investment Tax Credits changes in a manner that reduces the Investment Tax Credits that Buyer will receive, Buyer may terminate this Agreement, in which case (i) if Buyer terminates at or prior to the NTP Closing, Seller may retain the Effective Date Milestone Payment in full satisfaction and release of Buyer's obligations; or (ii) if Buyer terminate after the NTP Closing, Buyer shall pay Seller for all Work properly performed to the date of termination based on actual and documented costs, Seller's reasonable and documented out of pocket expenses of demobilization, and a fee of one percent (1.0 %) of the Purchase Price (amounts previously paid to Seller will be credited against such amounts).

## Termination Prior to NTP.

If any Conditions Precedent to NTP are not satisfied for any reason, Buyer may terminate this Agreement, in which case neither Party shall have any further liability to the other except (i) any obligation that expressly survives termination of this Agreement and (ii) Seller may retain the Milestone Payment made on the Effective Date so long as Seller has diligently and in good faith been pursuing achieving the Conditions Precedent for NTP

## Effect of Termination.

If this Agreement is terminated as permitted under this Agreement, all rights and obligations of the Parties hereunder shall terminate and no Party shall have any liability to the other Party, except for the rights and obligations of the Parties that survive the termination of this Agreement, including those obligations of the Parties that by their specific nature must survive termination such as the obligation to indemnify a Party. Notwithstanding anything to the contrary contained herein, termination of this Agreement shall not release any Party from any liability for any breach by such Party of the terms and provisions of this Agreement prior to such termination.

#  FORCE MAJEURE

## Excuse.

Neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations and shall be excused in the performance of its obligations if such delay or failure under this Agreement is due to an event of Force Majeure to the extent provided in this Agreement.

## Definition of Force Majeure.

"Force Majeure" means any event or circumstance of the following enumerated events, that occur following the Effective Date and before the termination of this Agreement and that delays or prevents a Party's timely performance of its obligations under this Agreement, but only to the extent that such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (ii) such event of Force Majeure is caused by factors beyond that Party's reasonable control, and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to foresee, prevent, avoid, mitigate or overcome such event or consequences:

### Acts of God such as hurricanes, floods, lightning, earthquakes and storms that are abnormally severe and not reasonably foreseeable for the period of time when and the area where such storms occur, based on, in the case of the Project Site, the most recent ten (10) year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for the vicinity of the Project;

### Sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

### National labor strike which was neither known to Seller or its Contractors nor generally known in the industry prior to the time the Party would have had to hire Labor or place an order for Equipment and Materials to meet the Milestones; and

### War, riot, acts of a public enemy, terrorism, or other civil disturbance.

## Exclusions.

None of the following shall constitute an event of Force Majeure:

### Economic hardship of either Party;

### The non-availability of solar irradiation to generate electricity from the Project;

### A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority except as otherwise provided in this Agreement such as Buyer's failure to obtain Regulatory Approvals;

### Equipment and Materials failure, unless caused by a Force Majeure event;

### Climatic and weather conditions, other than those particular climatic or weather conditions specifically identified in Section 19.2.1 above;

### Frost laws or other seasonal restrictions on traffic weight limits or speeds;

### Any delay, default or failure (direct or indirect) in obtaining materials or Labor by Seller or any Contractor performing any Work or any other delay, default or failure (financial or otherwise) of Seller or any Contractor unless such delay, default or failure is itself caused by a Force Majeure event;

### Any change in market conditions that causes a change in price of any Labor or Equipment and Materials required for the Work;

### Any condition at the Project Site or event arising therefrom except as expressly permitted by this Agreement; and/or

### Any delay or failure by Buyer or of third parties to cooperate with Seller in the cure of title and survey objections whether with respect to curative actions including receipt of curative documents, and/or to obtain Estoppel Certificates.

## Conditions.

A Party may rely on a claim of Force Majeure to excuse its performance only if such Party complies with all of the following:

### Provides prompt notice, not to exceed ten (10) days, of such Force Majeure event to the other Party (i) identifying the specific nature of the Force Majeure event, (ii) documenting the commencement date of the Force Majeure event, and (iii) giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement.

### Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

### Takes action to correct or cure the event or condition excusing performance so that the necessary suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being corrected or cured using commercially reasonable efforts; *provided, however*, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute;

### Exercises all commercially reasonable efforts to mitigate or limit Damages to the other Party; and

### Provides prompt notice to the other Party of the cessation of the event or condition giving rise to the Force Majeure event that interfered with the Party's performance.

## Determination.

If Buyer agrees that a Force Majeure Event has occurred (including that all conditions required in Section 19.4 were fully performed, then an extension of the Project Schedule as to the specific activity or activities affected, limited to one (1) day for each day of Force Majeure Event delay, may be granted, subject to the limitation that no extension shall be granted to extend the Substantial Completion Deadline passed the Commercial Operation Date. If granted, such extension shall be Seller’s sole recourse for the delay caused by the Force Majeure event, shall not be a basis for any claim for additional compensation by Seller except as otherwise provided in this Agreement, and shall not operate to release Seller or any surety from any of their obligations. Buyer and Seller shall then execute a Change Order reflecting the extension granted for the Force Majeure event.

## Termination for Extended Force Majeure.

Notwithstanding anything contained in this ARTICLE XIX to the contrary, if either Party is rendered unable to perform its obligations hereunder, in whole or in substantial part, after the Effective Date because of an event of Force Majeure by notice to the other Party, at any time after such event of Force Majeure has continued for a period of one hundred eighty (180) consecutive days and prior to the performance or resumption of performance by the Party claiming Force Majeure, the non-affected Party may terminate this Agreement. In the case of a termination based on an event of Force Majeure, each of the Parties shall be relieved of its obligations under this Agreement except those that expressly survive termination.

#  SURVIVAL

The terms of the Confidentiality Agreement; all representations, warranties, covenants of each Party; the indemnification obligations of each Party; and financial obligations arising and accruing between the Effective Date and termination of this Agreement shall each survive indefinitely notwithstanding that this Agreement may terminate early. In the event that the obligation of either Party to consummate the Purchase and Sale is terminated, the provisions of this ARTICLE XX shall survive and continue to apply notwithstanding anything to the contrary herein.

#  NOTICES

## Address.

Any notice or other communication required, permitted or contemplated hereunder shall be in writing, and shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Buyer: To Seller:

Consumers Energy Company [

One Energy Plaza

Jackson, Michigan 49201

Attn: Steven A. Schneider

Telephone: 517-788-0064 Attn:

Email: saschneider@cmsenergy.com Telephone: Email: ]

And (which is mandatory)

Consumers Energy Company

One Energy Plaza

Jackson, Michigan 49201

Attn: Kelly M. Hall

Telephone: 517-788-2910

Email: kelly.hall@cmsenergy.com

## Delivery and Receipt.

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if sent by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, upon receipt by the receiving Party; (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier; (iii) if sent by electronic mail, at the time such electronic mail is transmitted by the sending Party as shown by the electronic mail transmittal confirmation of the sending Party; or (iv) if delivered in person, upon receipt by the receiving Party.

#  CAP ON LIABILITY

## Limitations on Seller’s Liability.

### Except as provided in Section 22.1.2 below, Seller’s total liability for claims by Buyer arising out of or relating to the performance or non-performance of Seller’s obligations under this Agreement shall in no event exceed: (i)  one hundred percent (100%) of the Purchase Price (as the same may be adjusted from time to time) for any damages awarded pursuant to a claim asserted at any time from the Effective Date through the date Substantial Completion is achieved; (ii) thirty-three percent (33%) of the Purchase Price (as the same may be adjusted from time to time) for any damages awarded pursuant to a claim asserted at any time after Substantial Completion is achieved through the second (2nd) anniversary of the date Substantial Completion is achieved; or (iii) ten percent (10%) of the Purchase Price (as the same may be adjusted from time to time) for any damages awarded pursuant to a claim asserted at any time after the second (2nd) anniversary of the date Substantial Completion is achieved.

### The Seller's total limit of liability with respect to any claim shall not apply, whatsoever:

#### To any (i) amounts paid by Seller to or on behalf of Buyer or Buyer Indemnitee arising out of the willful misconduct, gross negligence or fraud of Seller, any Contractor or any Person for whom at law or under this Agreement Seller is responsible; (ii) Seller’s indemnification obligations hereunder to the extent occurring with respect to third parties, including any intellectual property claims and any claims by Governmental Authorities; or (iii) any Governmental Authority imposes fines, penalties or other enforcement fees, except to the extent that any such fine, penalty, or other enforcement fee arises solely from the tortious or criminal conduct or contractual breach of Buyer;

#### To any Delay LDs in Section 7.7 and any hold back amounts for Delayed SPGs in Section 9.3.4.

#### With respect to any claim for which Seller, including any Contractor or other Person for which Seller is responsible under this Agreement, that is either covered by Seller's insurance or bonds or required by this Agreement to be covered by Seller's Insurance or Bonds. In such case, Seller's total limit of liability for the claim covered by Seller's insurance or bonds or required by this Agreement to be covered by Insurance or Bonds shall be the greater of (i) the limits of liability for the applicable Insurance policy(ies) or Bonds; (ii) the limits of liability for the applicable insurance policy(ies) or bonds carried by Seller; or (iii) the cap or no cap on liability as set forth in this ARTICLE XXII depending on the basis of the liability   It is the intent of the Parties that the limitation of liability hereunder shall not relieve the insurers’ and surety's' obligations for any insured or bonded risks.

## Limitations on Buyer’s Liability.

### Except as provided in Section 22.2.2 below, Buyer’s total liability for claims by Seller and/or Seller Indemnitees arising out of or relating to the performance or non-performance of Buyer’s obligations under this Agreement (including Buyer’s obligation to pay the Purchase Price as the same may increase from time to time in accordance with the terms of this Agreement) shall in no event no event exceed: (i)  one hundred percent (100%) of the Purchase Price (as the same may be adjusted from time to time) for any damages awarded pursuant to a claim asserted at any time from the Effective Date through the date Substantial Completion is achieved; (ii) thirty-three percent (33%) of the Purchase Price (as the same may be adjusted from time to time) for any damages awarded pursuant to a claim asserted at any time after Substantial Completion is achieved through the second (2nd) anniversary of the date Substantial Completion is achieved; or (iii) ten percent (10%)of the Purchase Price (as the same may be adjusted from time to time) for any damages awarded pursuant to a claim asserted at any time after the second (2nd) anniversary of the date Substantial Completion is achieved. Seller’s sole recourse for any damages or liabilities due to Seller by Buyer pursuant to this Agreement shall be limited to the assets of Buyer without recourse individually or collectively to the Affiliates of Buyer or the respective officers, managers, directors, employees or agents of Buyer.

### The Buyer's total limit of liability with respect to any claim shall not apply:

#### Whatsoever, to any (i) amounts paid by Buyer to or on behalf of Seller or a Seller Indemnitee arising out of the willful misconduct, gross negligence or fraud of Buyer or any Person for whom at law or under this Agreement Buyer is responsible; (ii) Buyer's indemnification obligations hereunder to the extent occurring with respect to third parties; or (iii) Governmental Authority's fines, penalties or other enforcement fees caused solely by the tortious or criminal conduct or contractual breach of Buyer; and

#### With respect to any claim for which Buyer is responsible under this Agreement that is either covered or required by this Agreement to be covered by Buyer's insurance. In such case, Buyer's total limit of liability for the claim covered by Buyer's insurance or required by this Agreement to be covered by Buyer's insurance shall be the greater of (i) the limits of liability for the applicable insurance policy(ies) of Buyer required by this Agreement; (ii) the limits of liability for the applicable insurance policy(ies) carried by Buyer, or (iii) the cap or no cap on liability as set forth in this ARTICLE XXII.  It is the intent of the Parties that the limitation of liability hereunder shall not relieve the insurers’ obligations for any insured risks.

#### To the obligation to pay the Purchase Price so long as Seller has properly performed its obligations as provided in this Agreement which are Conditions Precedent to Buyer's obligation to make payment to Seller.

#  DISPUTES

## Good Faith Efforts to Resolve Disputes.

The Parties shall make good faith efforts to resolve any claim, dispute, or controversy arising out of or relating to this Agreement, including those arising out of or related to the breach, termination, or invalidity of this Agreement, and those arising in tort or contract (each a "Dispute").

## Step Negotiations.

In the event that either Seller or Buyer concludes, after making a good faith effort to resolve a Dispute in the normal course of business at the Buyer's Representative and Seller's Project Manager level, that such Dispute cannot be resolved informally within twenty (20) days, then the aggrieved Party shall have the right to initiate the processes identified in this ARTICLE XXIII.

## Senior Executive Negotiations.

If the Dispute has not been resolved by the Buyer's Representative and Seller's Project Manager within twenty (20) days, then either Seller or Buyer shall have the right to give the other written notice of its request to have the Dispute heard by a senior executive of their respective organizations. Each Party shall identify in writing a senior executive(s) who shall have the responsibility and authority to negotiate on behalf of the Parties under this Section. Unless extended by written agreement between the senior executives, this process must occur within fifteen (15) days after the written notice requesting negotiations under this subsection.

## Confidentiality.

All negotiations pursuant to Section 23.2 and Section 23.3  shall be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable judicial evidentiary requirements, unless a settlement is reached and agreed to in a writing signed by each Party's representative.

## Referral to Litigation.

If the Dispute has not been resolved pursuant to the aforesaid procedure within the indicated timeframe, then either Seller or Buyer may, by notice to the other, submit the Dispute to judicial resolution. The joinder of Contractors and other Persons for whom Seller is responsible or has contracted with regard to this Project shall be permitted and Buyer is a third-party beneficiary of all Contracts; however, Seller shall remain responsible for such Contracts and the Contractors and other Persons under this Agreement.

## Lien Proceedings.

It shall not be deemed a violation of this Section 23.6 for Seller to make any filing or commence any action to assert or perfect a Seller Lien required by Applicable Law to secure the payment by Buyer of amounts overdue to Seller hereunder, but any such filing or proceeding shall be initiated only in the case of Buyer's failure to make undisputed payments due to Seller. If it shall be determined that no payment is owed by Buyer, or the Parties shall reach a settlement on the payment Dispute, or Buyer makes payment which is the subject of the Seller Lien, Seller shall promptly discharge the Seller Lien, and if it shall fail to do so, Seller hereby designates Buyer as Seller's attorney-in-fact to discharge the Seller Lien from the public record so long as such discharge is accompanied by the court order, settlement agreement or evidence of payment of the amount which is the subject of the Seller Lien.

## Continuation of Performance.

Unless (i) this Agreement is terminated by Buyer, (ii) otherwise agreed in writing by the Parties in advance, or (iii) permitted by and in strict compliance with Section 18.4.2, the Parties shall continue to perform their respective obligations under this Agreement during any Dispute or Proceeding by the Parties in accordance with this ARTICLE XXIII.

## Consent to Sole and Exclusive Jurisdiction.

Each of the Parties irrevocably consents and agrees that any Proceeding arising from or related to any Dispute may only be brought in any of the state courts having jurisdiction over this Agreement in the state of Michigan, and that, by execution and delivery of this Agreement, each Party (i) accepts the sole and exclusive jurisdiction of the aforesaid state courts, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court and agrees that such final, nonappealable judgment may be enforced by suit on the judgment or in any other manner provided by Applicable Law, (iii) irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of any Proceeding with respect to this Agreement in any such state court, and further irrevocably waives, to the fullest extent permitted by Applicable Law, any claim that any such Proceeding brought in any such court has been brought in an inconvenient forum, (iv) agrees that service of process in any such action may be effected by delivering a copy thereof by the means of notice set forth in ARTICLE XXI hereof, to such Party at its notice address set forth herein, or at such other address of which the other Party hereto shall have been notified, and (v) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law. The Parties acknowledge that the foregoing consent to jurisdiction in state courts in the state of Michigan is intended to be exclusive, and that neither Party may bring an action in any other federal or state court having jurisdiction over the matter in dispute and the Parties.

## Waiver of Jury Trial.

Should any Dispute result in a judicial proceeding, each of the Parties knowingly, voluntarily, and intentionally waives, to the extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any such proceeding. Furthermore, each of the Parties waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. This provision is a material inducement for the Parties to enter into this Agreement.

#  MISCELLANEOUS

## Expenses.

Except as otherwise expressly set forth in this Agreement, all fees, costs and expenses incurred by a Party in connection with this Agreement and the transactions contemplated hereby, shall be the obligation of the Party incurring such fees, costs or expenses.

## No Stockholder or Member Liability.

The Parties acknowledge and agree that the officers, directors, stockholders, members, managers, other security holders, employees and consultants of Buyer, Seller, and their respective Affiliates are not parties to this Agreement and that the representations, warranties, covenants and agreements made in this Agreement are provided only by Buyer and Seller and Seller's Persons performing Work, as the case may be. The Parties agree that neither Party shall have recourse against any officer, director, stockholder, member, manager, other security holder, employee or consultant of Buyer, Seller or their respective Affiliates under or in connection with this Agreement, whether for any representation, warranty, covenant, agreement (including any indemnification) or otherwise.

## Confidentiality.

The terms of the Confidentiality Agreement dated **[**insert date**]**, between or among Buyer or its Affiliate and Seller or its Affiliate, and attached as Exhibit GG, are hereby incorporated by reference into this Agreement. Seller hereby affirms and ratifies the Confidentiality Agreement and agrees to be bound to the terms hereof. Regardless of any termination of the Confidentiality Agreement pursuant to Paragraph 5 thereof, the remaining terms of the Confidentiality Agreement is hereby extended and shall remain applicable under this Agreement for two (2) years after the Warranty Period expires.

## Public Announcements.

No public announcement (whether in the form of a press release or otherwise) shall be made by or on behalf of either Party or its representatives with respect to the subject matter of this Agreement unless: (i) the other Party has agreed in writing to permit such public announcement to be made, which permission shall not be unreasonably withheld, or (ii) such public announcement is required by Applicable Law and the Party required to make such announcement has given prior written notice in accordance with ARTICLE XXI to the other Party as promptly as practicable prior to such announcement. Any public announcement made as permitted under this Section 24.4 shall be made only in accordance with a text mutually agreed upon by the Parties, such agreement not to be unreasonably withheld or delayed.

## Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD APPLY ANY OTHER LAW.

## Successors and Assigns; Collateral Assignment; Binding Effect.

Other than in accordance with this Section 24.6, neither Party may assign its rights or obligations under this Agreement without the prior consent of the other Party, which consent will not be unreasonably withheld. Any assignment in contravention of this Section shall be null and void. Seller may collaterally assign this Agreement to any Financing Party, and such Financing Party shall have the right to, directly or indirectly, step into the rights and obligations of Seller hereunder in accordance with any consent to collateral assignment between Buyer and such Financing Party. In such instance, Buyer will negotiate in good faith with the Financing Party but Buyer shall have no obligation to subordinate its interest in the Project Assets or agree to terms that are not commercially reasonable or not consistent with the terms and conditions of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

## Severability.

Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

## Section Headings.

The section headings are for the convenience of the Parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties.

## Counterparts; Electronic Versions.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement and any amendments hereto, to the extent executed and delivered by means of a facsimile machine or e-mail of a PDF file containing a copy of an executed agreement (or signature page thereto), shall be treated in all respects and for all purposes as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof.

## No Third-Party Beneficiaries.

This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided in this Agreement (such as Buyer Indemnitee), no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

## Time of Essence.

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

## Waiver.

Neither the failure of nor any delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Applicable Law, except as otherwise expressly provided in this Agreement: (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party, (ii) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

## No Partnership or Joint Venture.

The Parties hereto do not intend to create a partnership or joint venture by virtue of this Agreement. No Party shall owe any fiduciary duty to any other Party by virtue of this Agreement or otherwise.

## Entire Agreement; Interpretation; Amendment

This Agreement represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral and written understandings and all contemporaneous oral negotiations, commitments and understandings between the Parties. This Agreement represents the result of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and none of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, this Agreement shall be interpreted and construed in accordance with its usual and customary meaning, and the Parties hereby waive the application, in connection with the interpretation and construction of this Agreement, of any Applicable Law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. Buyer and Seller may only amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by the Parties and with respect to Buyer, signed by Buyer's Authorized Officer.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the Parties as of the date first above written.

**BUYER**: **SELLER**:

CONSUMERS ENERGY COMPANY

By: By:

 Name: Name:

 Title: Title:

16494861-27

**EXHIBITS**[[1]](#footnote-1)

 Build Transfer Scope of Work

Section 1-General

Section 2-Civil/Structural

Section 3-Collection System

Section 4-Collection System Substation Addition

Section 5-SCADA and Communications

Section 6-Solar Panel Procurement, Solar Panel Installation, & Performance Testing

Section 7-MET Tower

Section 8-Substation Equipment Procurement (GSU)

Section 9-Property Rights

Solar Panel Generator Technical Specifications

Consumers Energy Design Document Standards

Electrical Switchboards

Underground Collection Cable Specification

Preliminary Construction Details

Oil-Water Separator

Lead Acid Battery Standard

Circuit Breaker Specification

Preferred Solar Panel Componentry

Selected Portions of Substation Transformer Specifications

Progress Milestone Schedule/Payment Schedule

Solar Energy Easement Form

Form of SPG Foundation Completion Certificate

Form of SPG Mechanical Completion Certificate

Form of Generator Radial Line Completion Certificate

 Seller's Officer's and Secretary's Certificate

Form of Substation Completion Certificate

Form of Collection System Circuit Completion Certificate

Form of Substantial Completion Certificate

Form of Completion Certificate

Insurance and Bond Requirements

**SECTION 007316 – CONTRACT INSURANCE SUPPLEMENT**

* 1. **Insurance Summary**
		1. The provisions of this Exhibit N ("Supplement") shall in no way be interpreted as limiting or relieving Seller or any Contractor of any responsibilities, obligations or liabilities under this Agreement or any Construction Contract and are solely intended to establish the insurance coverages required by this Agreement. Such provisions are solely intended to identify the insurance coverages required by Contractor and Seller and are not intended (and shall not be construed) to constitute directions as to the means, methods, construction techniques, safety measures or other procedures to be employed by Seller or any Contractor in connection with the performance of the Work.
		2. Seller shall (i) procure and maintain at its own expense the insurance coverages set forth in this Supplement with carriers that have an A.M. Best Company rating of at least "A-" and a financial size category of Class IX or better and (ii) ensure that its Contractors maintain the insurance coverages set forth herein. It shall also be the responsibility of Seller to assure that Seller is adequately insured at all times.
		3. Seller shall notify Buyer in writing immediately upon Seller’s receipt of notice of cancellation of any of the insurance coverages required by this Supplement.
		4. Seller may carry, at its own expense, any additional insurance that it deems necessary or desirable.
		5. Failure of Seller to procure, maintain or provide acceptable evidence of any insurance required to be procured and maintained by Seller hereunder or failure of Seller to perform any other obligation under this Supplement, shall be a material breach of this Agreement.
	2. **Seller Required Insurance**

Seller shall, at a minimum, provide the insurance coverages specified below through primary insurance policies or a combination of both primary and excess or umbrella liability policies. Without limiting Seller's liabilities under or arising from this Agreement, all deductibles or self-insured retentions for such policies shall: (i) be disclosed to Buyer in writing; (ii) be the responsibility of and for the account of Seller; and (iii) not be reimbursable by Buyer.

1. Workers’ Compensation and Employer’s Liability. Commencing on the earlier of the Effective Date of this Agreement or commencement of any Work and continuing through the Defect Warranty Period, Workers’ Compensation insurance in full compliance with the workers’ compensation and occupational disease laws of all Governmental Authorities (both State and Federal) having jurisdiction in the State of Michigan and all other locations in which Work is performed, with Coverage A in accordance with statutory limits and Coverage B Employer’s Liability limits of not less than Ten Million Dollars ($10,000,000) each Accident for Bodily Injury by Accident, Ten Million Dollars ($10,000,000) Policy Limit for Bodily Injury by Disease, and Ten Million Dollars ($10,000,000) each Employee for Bodily Injury by Disease.
2. Commercial General Liability. Commencing on the earlier of the Effective Date of this Agreement or commencement of any Work and continuing through the Defect Warranty Period, Commercial General Liability insurance on an "occurrence" form with limits of not less than Ten Million Dollars ($10,000,000) for Each Occurrence, Personal Injury and Advertising Limits and Products, and Completed Operations. Such policy shall include coverage for bodily injury, property damage and personal injury for all Work performed under this Agreement, and shall include products and completed operations; premises and operations; contractual liability; independent contractor’s exposure; and explosion, collapse and underground property damage hazards. The Commercial General Liability coverage shall be a project-specific policy, or project-dedicated limits, or not be subjected to general aggregate limits to avoid erosion of limit by the addition of any other entity or project that is not directly related to the performance of Seller's obligations under this Agreement.
3. Automobile Liability Insurance. Commencing on the earlier of the Effective Date of this Agreement or commencement of any Work and continuing through the Defect Warranty Period, Business Automobile Liability insurance covering all owned, hired and non-owned automobiles, trucks and trailers of Seller with limits not less than Five Million Dollars ($5,000,000) any one accident and combined single limit each occurrence for bodily injury and property damage.
4. Seller Property and Equipment. Seller shall be responsible for insuring, to whatever extent Seller deems necessary or desirable, or self-insuring, all of Seller’s tools and equipment, including temporary plants, scaffolding, false works, and all owned, leased, rented or borrowed tools and equipment.
5. Aircraft and/or Watercraft Liability. With respect to any aircraft and/or watercraft owned by, operated by, rented to, or loaned to Seller in connection with the performance of the Work, Seller shall maintain aircraft and/or watercraft liability insurance, including bodily injury, property damage and passenger liability, with limits of not less than Ten Million Dollars ($10,000,000) combined single limit for bodily injury and property damage in any one occurrence.
6. Architecture, Engineering & Design Professional Liability. With respect to all professional services in architecture and/or professional engineering performed by Seller and/or any Contractors in connection with the performance of the Work, Seller shall, or with Buyer's approval cause only Contractor to, maintain professional liability insurance covering claims alleging an act, error, or omission in the providing of architecture, engineering and/or design services including, but not limited to, bodily injury and property damage if not part of the commercial general liability policy, and other types of losses with limits of not less than Five Million Dollars ($5,000,000) each claim. If written on a claims-made form, the policy shall be maintained for two (2) years following Final Completion or through the Defect Warranty Period, whichever is longer. If Buyer approves Seller not carrying the foregoing insurance for itself, Seller must still carry Contractor's Professional Liability Insurance (CPrL) for professional architecture and engineering services.
7. Pollution Legal Liability. Liability insurance covering liability for collecting, handling, storing, removing, and properly disposing of any hazardous material, pollutants, etc. involved in the Work by Seller or any Contractor. Limits shall be no less than Ten Million Dollars ($10,000,000) each occurrence and if written on a claims-made form, the policy shall be maintained for two (2) years following Final Completion or through the Defect Warranty Period, whichever is longer.
	1. **Additional Provisions**

Each policy of insurance required by this Supplement, unless expressly otherwise noted herein, shall contain the following provisions:

1. Waiver of Subrogation. Each policy shall contain a waiver of subrogation in favor of:
2. Buyer;
3. such other Persons including entities as Buyer may specify in writing; and
4. each of Buyer's and each of such other specified Persons' respective engineers, officers, directors, employees, agents, representatives, partners, affiliates, successors and assigns.
5. Additional Insureds. Each of:
6. the Commercial General Liability insurance policy;
7. the Automobile Liability insurance policy;
8. the Aircraft and/or Watercraft Liability insurance policy; and
9. the Pollution Legal Liability insurance policy;

shall insure as additional insureds the following:

1. Buyer;
2. such other Persons including entities as Buyer may specify in writing; and
3. each of Buyer's and each of such other specified Persons' respective officers, directors, employees, agents, representatives, partners, affiliates, successors and assigns;

for their respective liability, including any vicarious liability, arising out of the Work under this Agreement.

The additional insured coverage under the Commercial General Liability policy shall be at least as broad as the Insurance Service Offices (ISO) endorsement CG 20 10 for operations and CG 20 37 for products/completed operations and shall be provided to Buyer on the Effective Date.

1. Primary Insurance. Each of:
2. the Commercial General Liability insurance policies;
3. the Automobile Liability insurance policy;
4. the Aircraft and/or Watercraft Liability insurance policy; and
5. the Pollution Legal Liability insurance policy

shall expressly provide that the insurance coverage of such policy shall be primary with respect to the interests of each of the following persons or entities, and that any insurance that may be procured or maintained by or on behalf of any of the following persons or entities shall be in excess and not contributory to such policy:

1. Buyer;
2. such other Persons including entities as Buyer may specify in writing; and
3. each of Buyer's and each of such other specified Persons' respective officers, directors, employees, representatives, partners, affiliates, successors and assigns.
4. Separation of Insureds. Each of:
5. the Commercial General Liability insurance policy;
6. The Automobile Liability insurance policy; and
7. the Aircraft and/or Watercraft and Pollution Legal Liability insurance policy

shall expressly provide that the insurance afforded by such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to dollar limits of insurance.

* 1. **Certificates of Insurance; Policies**
1. Seller shall provide or cause to be provided to Buyer (and to any other Persons including entities that Buyer may designate in a written notice to Seller) certificates of insurance for all insurance required to be procured and maintained by Seller under this Supplement, in form and substance acceptable to Buyer, evidencing the insurance along with copies of all endorsements required hereunder. Such certificates of insurance and endorsements shall be provided: (i) as a Condition Precedent to the Effective Date, and (ii) on or before each insurance policy expiration date for so long as such insurance is required by the terms of this Supplement to be maintained in effect.

Such certificates of insurance shall be sent to Buyer at:

Consumers Energy Company

Attn: Insurance Risk Management Department, EP10-243

One Energy Plaza

Jackson, MI 49201-2276

FAX: 517-788-1693

EMAIL: DARLENE.SMITH@cmsenergy.com

1. Seller shall provide, or cause to be provided, to Buyer (and to any other Persons including entities that Buyer may designate in a written notice to Seller) conformed copies or originals of all policies of Insurance within three (3) days of Buyer's request if Buyer believes in good faith that it may need to file an Insurance claim. In addition, the Pro Forma Builders' Risk Insurance shall be provided to buyer for review and approval in accordance with Section 14.2 of this Agreement.
	1. **Contractor Insurance**
2. It shall be the responsibility of Seller to ensure that its Contractors are adequately insured at all times, including but not limited to the maintenance of:
3. workers’ compensation insurance in accordance with all applicable State and Federal laws; and
4. maintaining the coverages set forth in this Supplement.
5. It shall be the responsibility of Seller to ensure that its Contractors' Insurance policies contain a waiver of the insurers' rights of subrogation against the following:
6. Buyer;
7. such other Persons including entities as Buyer may specify in writing; and
8. each of Buyer's and each of such other specified Persons' respective officers, directors, employees, agents, representatives, partners, affiliates, successors and assigns.
9. It shall be the responsibility of Seller to ensure that its Contractors' commercial general and umbrella liability, aircraft and/or watercraft liability, and pollution legal liability insurance policies insure as additional insured the following:
10. Buyer;
11. such other Persons including entities as Buyer may specify in writing, and
12. each of Buyer's and each of such other specified Persons' respective officers, directors, employees, agents, representatives, partners, affiliates, successors and assigns;

for their respective liability, including any vicarious liability, arising out of the Work under this Agreement.

* 1. **Providing Information**

Seller shall ensure that full disclosure of the following is made both to Buyer and to the insurers providing the insurance coverages that are required to be carried pursuant to the provisions of this Supplement:

1. all information that any of such insurers specifically request to be disclosed;
2. all information which any insurance broker that may be involved advises in writing should be disclosed to the applicable insurer(s); and
3. all other information that Buyer, acting in accordance with prudent industry practices, reasonably considers to be significant to the relevant insurance coverage(s) and requests in writing to be disclosed. Such other information may include where relevant shipping information.

**BOND REQUIREMENTS**

[**NTD**: *The terms of the payment and performance bonds to be agreed upon. There will need to be an Owner-approved credit worthy surety selected and the form of each bond to be agreed upon by Owner.*]

Seller's Exceptions to Representations and Warranties

Assignment of Memorandum of Solar Energy Easements

Records Format-Retirements Unit Format Example

Form of Job Book

Partial Unconditional Waiver

Full Unconditional Waiver

Sworn Statement

Vendor Payment-Financial EDI Transactions

Third-Party Ethics and Compliance Guidelines

Contractors (Subcontractors and Major Suppliers)

Preferred Manufacturers

Project Contracts

Submittals/Deliverables List

Investment Tax Credit Project-Specific Facts and Actions

List of Certain Permitted Encumbrances

Special Land Use Permit

The Special Land Use Permit is an Applicable Permit.

Agreements Regarding Real Estate Property

Consents and Approvals

Confidentiality Agreement

Performance Acceptance Tests Certificate

Transformer Supply Agreement and the certificate and report

Contractor Form of Subcontract[s]

[**NTD***: if professional services are to be subcontracted,*

*also attach the form of professional services agreement*]

Form of Tax Clearance Certificate

Performance Acceptance Tests

Investment Tax Credit Opinion

Solar Labor Agreement

Commissioning Plan

Form of Full Conditional Waiver

Form of Notice to Proceed

Project Schedule

Project Site

Quality Assurance Plan

Key Personnel

Solar Panel Supply Agreement

Form of Solar Energy Easement Amendment

Project Layout

Estoppel Certificate

Assignment of Solar Energy Easements

Memorandum of Solar Energy Easement

Assignment of Crossing Agreements

Memorandum of Crossing Agreement

Warranty Deed

Bill of Sale

Engineering, Procurement and Construction Agreement

Applicable Permits

Special Land Use Permit

Environmental Permits

Spare Parts

Purchase Price Breakdown/Purchase Price Allocation

[Parent Guaranty or Letter of Credit]

Weekly Progress Report

Seller's Invoice

Seller's Safety Program

Seller's Organizational Documents

Seller's Real Property Spreadsheet

Solar Data

Form of Access Road Completion Certificate

Form of SPG Delivery Completion Certificate

Form of SPG Manufacturing Completion Certificate

Form of SPG Commissioning Completion Certificate

Form of SPG Staging, Erection and Assembly Completion Certificate

Assignment of Drain Agreements

Memorandum of Drain Agreement

Solar Energy Easement Amendment Form

1. Note to draft: Exhibits list to be updated as necessary. [↑](#footnote-ref-1)