**RENEWABLE ENERGY PURCHASE AGREEMENT**

**BETWEEN**

**CONSUMERS ENERGY COMPANY**

**AND**

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CONSUMERS ENERGY COMPANY

AND

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**EXHIBIT F – Monthly Escrow Payment**

RENEWABLE ENERGY PURCHASE AGREEMENT

BETWEEN

CONSUMERS ENERGY COMPANY

AND

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

 This RENEWABLE ENERGY PURCHASE AGREEMENT, herein called “Agreement,” made as of \_\_\_\_\_, 2019, is by and between Consumers Energy Company, a Michigan corporation, One Energy Plaza, Jackson, Michigan, herein called “Buyer,” and \_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ company with offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_herein called “Seller.” Buyer and Seller are herein sometimes referred to individually as “Party” and collectively as “Parties” where appropriate.

WITNESSETH:

 WHEREAS, this Agreement has been prepared pursuant to MCLA 460.1 and all other applicable law; and

 WHEREAS, Buyer anticipates that the electric energy, electric capacity, and Renewable Energy Credits (“RECs”) (defined below) sold by Seller to Buyer under this Agreement pursuant to the Buyer’s Integrated Resource Plan as approved in MPSC Case No. U-20165; and

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

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

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

1. DEFINITIONS

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

 “Act 295” – Means Michigan Public Act 295 of 2008 (as amended and as in effect on the date of this Agreement).

 “Act 304” – Means Michigan Public Act 304 of 1982 (as amended and as in effect on the date of this Agreement).

 “Act 341” – Means Michigan Public Act 341 of 2016 (as amended and as in effect on the date of this Agreement).

 “Act 342” – Means Michigan Public Act 342 of 2016 (as amended and as in effect on the date of this Agreement).

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

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

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

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

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

 “Buyer” – Means the party so specified in the first paragraph of this Agreement.

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

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

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

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

 “Capacity Performance” – Means the historical average of the hourly sum of Delivered Energy plus Curtailment Energy for hours ending 15, 16, and 17 EST for the most recent summer months (June, July, and August).

 “Capacity Purchase Price” – Means the price shown in $/ZRC-month, for the applicable Planning Year, on the Purchase Price Schedule set forth in Exhibit E.

 “Commercial Operation Date” – Means the date established pursuant to Subsection 5.3., Commercial Operation Date.

 “Compensated Curtailment” – Means a curtailment of energy from Seller’s Plant for which Seller is entitled to payment for Lost Production, and which excludes Uncompensated Curtailments.

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

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

 “Contract Capacity” – \_\_.\_ MW, which is the nameplate Capacity of the Plant in MW.

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

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

 “Curtailment Energy” - energy that would have been delivered from Seller to the Point of Delivery, but was not delivered due to (i) a breach by Buyer of this Agreement, (ii) a Force Majeure event, and (iii) any other curtailment ordered by MISO.

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

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

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

 “Earnest Money Deposit” – Defined in Subsection 5.3, Commercial Operation Date.

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

 “Emergencies” – A condition or conditions on the transmission system which the transmission owner and/or operator determined either has, or is likely to, result in significant imminent disruption of service to Seller, or imminent endangerment to life or property.

 “Energy Performance” – Means the sum of Delivered Energy plus Curtailment Energy for a Planning Year.

 “Energy Purchase Price” – Means the price shown in $/MWh, for the applicable Planning Year, on the Purchase Price Schedule set forth in Exhibit E.

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

 “Escrow Account” – Means an account used to retain the monthly or one-time payment as described in Subsection 2.2, Payment Security.

 “Exempt Operational Periods” – Those periods described in 18 CFR § 292.304(f) as in effect as of the date of this Agreement, wherein Buyer has notified Seller in a timely manner to cease delivery of electric energy hereunder during a specified period in which Seller would otherwise have electric energy available for delivery but, due to operational circumstances, purchases from Seller would in Buyer’s reasonable judgment result in costs greater than those that would result if Buyer generated an equivalent amount of energy through its own facilities.

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

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

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

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

 “Incidental Energy” – Means any electric energy delivered hourly in excess of Delivered Energy as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 4, Metering.

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

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

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

 “Late Payment Interest Rate” – Means the lesser of (a) the per annum rate of interest equal to the prime lending rate as may be from time to time published in The Wall Street Journal under Money Rates on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two (2%) percent or (b) the maximum rate permitted by applicable law.

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

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

 "LMP Payment" - Means the Monthly payment paid by Seller to Buyer in accordance with Subsection 7.1, Energy Payment, which is equal to the sum of the products of (i) hourly Delivered Energy for the applicable Billing Month and (ii) the hourly day-ahead LMP for the CPNode associated with Seller's Plant for the applicable Billing Month.

 “Lost Production” means for any applicable period the quantity, if any, of Delivered Energy Seller could have produced and delivered at the Point of Delivery during such period but that was not produced and delivered as a result of a Compensated Curtailment.

 “Lost Production Damages” means the amount of compensation, if any, Seller is entitled to receive as a result of a Compensated Curtailment, calculated as follows:

 LPD = LP \* EPP

Where “LPD" means the Lost Production Damages in respect to any applicable Calendar Month (expressed in dollars);

"LP" means the aggregate quantity of Lost Production during such Month (expressed in MWh) and

"EPP" means the Energy Purchase Price applicable during such Month (expressed in $/MWh).

“Market Participant” - Has the meaning ascribed to such term in the MISO Rules.

 “MDMA” – Means the MISO Meter Data Management Agent, as such term is defined by MISO.

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

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

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

 “MPSC” – Means the Michigan Public Service Commission.

 “MW” – Means a megawatt of electrical Capacity.

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

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

 “Planning Year” – Means the 12 Month period beginning June 1 of a Year and ending on May 31 of the immediately following Year.

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

 “Plant Site” – Means the site upon which the Plant will be located in\_\_\_\_\_\_\_\_ Township, \_\_\_\_\_\_\_\_\_\_ County, Michigan. Such site shall be located in an electric service area of the state of Michigan serviced by MISO and be of sufficient area to include the Plant and shall comply with all laws, regulations and/or requirements imposed by any law, governmental agency or authority. The Plant Site may include additional solar generation facilities that are not associated with either the Plant or this Agreement.

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

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

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

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

 “Renewable Energy Credit(s)” or “REC(s)” – Has the meaning specified in MCL 460.1033, and as may be amended in the future.

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

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

 “Surety Bond” – means a bond that is issued by a surety or insurance company 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 either by both S&P or Moody’s or (b) “A-“ by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s but not both, in a form reasonably acceptable to Buyer.

 “Termination Deadline COD” – Is defined in Subsection 5.3, Commercial Operation Date.

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

 “Uncompensated Curtailment” – Defined in Section 6.7, Emergencies and Exempt Operational Periods.

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

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

1. GENERAL PROVISIONS
	1. Effective Date and Term

 This Agreement shall be submitted by Buyer to the MPSC for approval of the payments set out herein for the purposes of Act 304, Act 295, Act 341, Act 342 and all other applicable law. The foregoing submission shall specifically request MPSC approval of cost recovery of all payments set forth in this Agreement, as well as approval of the portion of such payments that is recovered as a booked cost of purchased and net interchanged power pursuant to Act 304, and any financial recovery available to Buyer under MCL 460.6s or MCL 460.6t. Buyer shall use good faith, commercially reasonable efforts to (i) make such requests and file this Agreement with the MPSC as soon as reasonably practicable (but in no event later than sixty (60) Days following the date this Agreement is executed by both Parties), and (ii) obtain the approvals described above, and Seller shall cooperate reasonably with Buyer’s efforts to make such requests and seek such approvals.

 This Agreement shall be effective upon execution by both Parties and approval of the MPSC as described herein (the first date upon which all of the foregoing conditions have been satisfied is called the “Effective Date”). In the event that the MPSC does not approve this Agreement as described herein within three-hundred sixty-five (365) Days following the date this Agreement is submitted to the MPSC for approval, then this Agreement shall be rendered *void ab initio*. After the Effective Date, unless terminated as provided in this Agreement, this Agreement shall commence on the Commercial Operation Date and continue in effect for twenty-five (25) years, plus any additional days that may be necessary to complete a Planning Period (such number of years and days is herein called the “Contract Term”).

* 1. Security for Performance

 Seller shall provide and maintain, as described herein, the Early Termination Security Amount specified in Exhibit A, Early Termination Security Amount Schedule for compliance with its payment obligations, for the term of the Agreement. Within five (5) Days after the Commercial Operation Date, Seller shall notify Buyer of the form of payment security that Seller has elected to use for performance of its contractual obligations under this Agreement. Such payment security shall be provided via one of the forms and consistent with the timing provided for in this Subsection 2.2. Any portion of the Early Termination Security Amount, including accumulated interest above the Early Termination Security Amount, remaining upon expiration or termination of this Agreement, after deduction for any payment obligations still owing to Buyer, shall be returned to Seller by Buyer within sixty (60) Days of such expiration or termination. Seller may change the form of such security at any time and from time to time upon reasonable prior notice to Buyer provided that (i) such security is at all times consistent with this Subsection 2.2 and (ii) Seller provides the replacement security instrument prior to terminating or withdrawing the then existing security instrument. The Early Termination Security Amount is intended to safeguard Buyer against undue financial risk associated with loss of Seller provided Product during the term of this Agreement. Notwithstanding the aforementioned referenced safeguard for financial risk associated with loss of Product provided by Seller, Seller shall also be responsible for other damages it may cause to Buyer unrelated to financial risk associated with loss of Product provided by Seller.

* + 1. Letters of Credit

 If Seller selects the Letter of Credit form of providing security, Seller shall provide and maintain a Letter of Credit to Buyer in the amount set forth in Exhibit A within thirty (30) Days after the Commercial Operation Date. All Letters of Credit provided in accordance with this Agreement shall be subject to the following provisions:

 Unless otherwise agreed in writing by the Parties, each Letter of Credit shall be maintained for the benefit of the Buyer. The Seller shall (i) if necessary to maintain a Letter of Credit throughout the term of this Agreement, renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or a different form of security in accordance with Subsection 2.2, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a bank issuing a Letter of Credit shall fail to honor the Buyer’s properly documented request to draw on an outstanding Letter of Credit, provide cash within two (2) Business Days after such refusal.

* + 1. Interest Bearing Account

 If Seller selects the one-time escrow payment form of payment security, Seller shall provide a cash payment to Buyer in the amount set forth in Exhibit A within thirty (30) days after the Commercial Operation Date. Buyer shall establish an interest bearing account with the administrative costs incurred by that account to be borne by the account with the cash payment provided by Seller. Interest on cash provided in accordance with this Subsection 2.2.2 shall accrue at a rate per annum equal to the Interest Rate.

* + 1. Monthly Escrow Payment

 If Seller selects the monthly escrow payment form of payment security, Buyer will retain during each Billing Month a portion of the energy payment equal to the monthly escrow payment determined in Exhibit F. Buyer shall establish an interest bearing account with the administrative costs incurred by that account to be borne by the account with the monthly escrow payments provided by Seller. Interest on cash provided in accordance with this Subsection 2.2.3 shall accrue at a rate per annum equal to the Interest Rate.

* + 1. Guaranty

 If Seller selects the guaranty form of payment security, such guaranty shall be substantially in the form of Exhibit B hereto, from a guarantor, of sufficient financial size that is acceptable to Buyer in its sole reasonable discretion and with a credit rating of at least BBB+/Baa1. If Seller selects the guaranty form of Payment Security, Seller shall provide such guaranty within thirty (30) days after the Commercial Operation Date. If the credit rating of the guarantor is downgraded below BBB+ by S&P or below Baa1 by Moody’s or there has been a material adverse change in the creditworthiness of the guarantor, then Seller shall be required to convert the guarantee provided to an alternative form of security instrument meeting the criteria set forth in Subsection 2.2 no later than thirty (30) Days after receiving notice from Buyer that such conversion is required pursuant to this paragraph.

* + 1. Surety Bond

 If Seller selects the Surety Bond form of payment security, Seller shall provide a Surety Bond to Buyer in the amount set forth in Exhibit A by the date that is thirty (30) Days after the Commercial Operation Date. All Surety Bonds provided in accordance with this Agreement shall be subject to the following provisions:

 Unless otherwise agreed to in writing by the Parties, each Surety Bond shall be maintained for the benefit of Buyer. Seller shall (i) if necessary to maintain a Surety Bond throughout the term of this Agreement, renew or cause the renewal of each outstanding Surety Bond on a timely basis as provided in the relevant Surety Bond, ii) if the institution that issued an outstanding Surety Bond has indicated its intent not to renew such Surety Bond, provide a substitute Surety Bond or another form of security in accordance with Subsection 2.2 at least twenty (20) Business Days prior to the expiration of the outstanding Surety Bond, and (iv) if an institution issuing a Surety Bond shall fail to honor Buyer’s properly documented request to draw on an outstanding Surety Bond, provide cash within two (2) Business Days after such refusal.

1. PRODUCT TO BE SUPPLIED

 Subject to the terms and conditions of this Agreement, beginning on the Commercial Operation Date, and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller, all Product that Seller supplies and/or delivers to Buyer under this Agreement. Compensation for such Product shall be paid in accordance with Section 7, Compensation.

 Seller shall accomplish delivery of Delivered Energy hereunder by performing the obligations and responsibilities in accordance with Section 4, Metering. Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver energy from the Plant to the Point of Delivery.

Subject to the terms and conditions of this Agreement, beginning on the Commercial Operation Date and continuing until the termination of this Agreement, Buyer agrees to provide fixed energy pricing to Seller for all Delivered Energy that Seller supplies from the Plant to MISO on a Monthly basis. The provision of such fixed energy pricing shall be accomplished in accordance with Section 7, Compensation. Notwithstanding the foregoing, Buyer shall not be entitled to any Incidental Energy or Test Energy delivered to MISO, and Seller may sell such Incidental or Test Energy to any third party through any means Seller deems appropriate.

Seller shall accomplish delivery of Resource Adequacy Capacity hereunder by submitting the appropriate transactions in MISO's Module E Capacity Tracking tool, or any successor system ("MECT") to electronically assign such Resource Adequacy Capacity to Buyer. Buyer shall accomplish receipt of Resource Adequacy Capacity by confirming the appropriate transaction(s) submitted by Seller in the MECT. Seller and Buyer shall accomplish delivery and receipt of Resource Adequacy Capacity by submitting and confirming the appropriate transaction(s) in the MECT ten (10) Business Days prior to the annual Fixed Resource Adequacy Plan deadline, as such term is defined by MISO. The submitting and confirming of the appropriate transaction(s) in the MECT shall be conducted by the Parties in accordance with the requirements of MISO Rules and other applicable rules adopted by the MISO regarding the MECT. Failure by Buyer to receive Resource Adequacy Capacity after Seller's delivery of such Resource Adequacy Capacity has been completed shall not excuse Buyer's obligation to pay for such Resource Adequacy Capacity.

 Seller shall use its commercially reasonable best efforts to ensure the receipt of Delivered RECs by Buyer within one hundred twenty (120) Days after the end of each applicable Billing Month. Seller shall register the Plant with MIRECS as soon as practical following the Commercial Operation Date. Within thirty (30) Days following the Commercial Operation Date, Buyer shall register, establish and maintain an account with MIRECS and provide information regarding such account to Seller, such that Seller may utilize a forward transfer or transfer-redirect process to allow Delivered RECs to be directly deposited into Buyer’s MIRECS account.

* 1. Permits and Laws

 Seller shall secure all licenses and permits required by law, regulation or ordinance, including, but not limited to, those pertaining to the generation of electric energy and the sale of electric capacity and maintain all such licenses and permits throughout the term of this Agreement. In addition, Seller shall comply with all applicable ordinances, laws, orders, rules and regulations, including, but not limited to, those pertaining to the above licenses and permits made by any governmental authority or public regulatory body. At any time during the term of this Agreement, Buyer may request that Seller provide copies of any such licenses and permits, and Seller shall so provide them within five (5) Business Days.

* 1. Emission Allowances/Environmental Attributes

All emission allowances and Environmental Attributes, including any greenhouse gas emission reductions, at any time allocated to Seller’s Plant and associated with Delivered Energy, shall be the property of Buyer. Seller shall, at no cost to Seller, assign and/or execute any documents necessary to either (i) transfer ownership (to the extent owned by Seller; provided, however, that Seller shall take no action to circumvent Buyer’s acquisition of such allowances pursuant to this Subsection 3.2), or (ii) designate Buyer as Seller’s agent to acquire ownership, of any and all emission allowances and/or Environmental Attributes (such as Renewable Energy Credits) associated with Seller’s Plant for Buyer up to the amount specified in this Subsection 3.2. Notwithstanding the foregoing, all Federal Tax Benefits and other state and local tax benefits shall remain the property of the Seller. The foregoing emission allowances and Environmental Attributes may be used by Buyer to satisfy the requirements of Act 295 and any other applicable ordinances, laws, orders, rules or regulations pertaining to emission allowances and Environmental Attributes (including, but not limited to, requirements for renewable energy production) made by any governmental authority or public regulatory body.

* 1. Renewable Energy Registration

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

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

1. METERING

 All Delivered Energy that is delivered by Seller to the Point of Delivery shall be metered at the billing meter installation(s) provided pursuant to the Interconnection Agreement and shall be separately metered from energy generated by generating facilities other than those located at the Plant Site. To determine the amount of Delivered Energy, the metered values shall be the values used by MISO for financial settlement at the CPNode, as defined by MISO, for the Plant. Seller shall be responsible for providing meter data associated with the Plant to MISO and shall also provide all such meter data (in the same format and at the same time) to Buyer.

 In the event that additional solar generation facilities are located at the Plant Site and share metering equipment with the Plant, the Delivered Energy shall be determined on a *pro rata* basis as the Contract Capacity divided by that total Capacity in operation at the site. Seller shall provide Buyer thirty (30) days’ written notice prior to the initial operation of any additional solar generation facilities at the Plant Site.

1. CONSTRUCTION OF PLANT
	1. Seller’s Responsibility

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

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

* 1. Seller's Obligation With Respect to Construction Start

Seller shall provide Buyer with written confirmation of the construction start date and written confirmation from the contractor that work on the Plant construction has begun. After the construction start date and until the Commercial Operation Date, Seller shall submit to Buyer, prior to the tenth (10th) Business Day of each Month, construction progress reports in a form satisfactory to Buyer. If the construction start date fails to occur on or before December 31, 2021, Buyer may, at its option, terminate this Agreement by giving Seller written notice within thirty (30) Business Days after such Date, unless Seller has commenced construction prior to the issuance by Buyer of such notice.

* 1. Commercial Operation Date

 The Commercial Operation Date will be the first date on or after March 31, 2022 upon which all of the following conditions precedent have been satisfied:

1. Seller shall have provided to Buyer an officer’s certificate from an officer of Seller stating that Seller has obtained all necessary licenses, permits, certificates and approvals in accordance with Subsection 3.1, Permits and Laws ;
2. Seller shall have provided proof to Buyer that it has an executed Interconnection Agreement for the Plant and that it has been authorized under the terms of such agreement to begin parallel operation.
3. Seller shall have provided proof via commissioning reports of the solar array manufacturer that at least 85% of Plant nameplate Capacity has been Commissioned.

 Seller shall request Buyer to confirm the Commercial Operation Date by providing Buyer with a written notice indicating that Seller believes the Plant has satisfied the above conditions as of a date specified in such notice. Buyer shall provide written notice to Seller within ten (10) Business Days of Seller’s notice stating that either Seller has satisfied all of the above conditions precedent.

 To ensure that the Seller will perform all of its obligations under this Agreement and that the Plant will be complete and ready to operate by May 31, 2022, Seller shall provide Buyer either (i) an earnest money cash deposit, or (ii) an unconditional and irrevocable direct pay Letter of Credit in Buyer’s name, in an amount equal to ten thousand dollars ($10,000.00) per MW times the Contract Capacity (the ‘Earnest Money Deposit’), on or before the date that is thirty (30) Days after the Effective Date. Seller shall earn interest on the cash Earnest Money Deposit it provides to Buyer from and including the date of deposit to but excluding the date such cash is returned at a rate per annum equal to the Interest Rate. If the Seller fails to provide such Earnest Money Deposit by the date specified herein, Buyer shall have the right to terminate this Agreement by providing written notice to Seller of its election to terminate within sixty (60) Days following the Effective Date.

 If the Commercial Operation Date fails to occur on or before May 31, 2022 (subject to extension (i) by Force Majeure pursuant to Section 12, Force Majeure, but in no event shall such extension exceed one hundred eighty (180) Days from the aforesaid date) (such later date the “Termination Deadline COD”) it shall be an Event of Default in accordance with Section 8, Events of Default. For each Day that Seller fails to reach a Commercial Operation Date after May 31, 2021 (subject to extensions in accordance with the preceding sentence), Seller shall pay Buyer an amount equal to the product of $125.00 per MW times the Contract Capacity as liquidated damages. Buyer shall obtain such liquidated damages by withdrawing cash or drawing on the Letter of Credit provided by Seller as the Earnest Money Deposit. If Seller fails to cure such an Event of Default within the time period specified in Section 8, Events of Default, Buyer shall have the right to terminate this Agreement upon written notice to Seller, provided that such notice is given by Buyer prior to the Commercial Operation Date, to be effective as of the date specified in such notice.

 Seller shall be entitled to receive from Buyer the balance from the cash Earnest Money Deposit, including any accumulated interest, less any liquidated damages as described in the preceding paragraph. If a Letter of Credit is used as the Earnest Money Deposit, Buyer will not draw against the Letter of Credit to recover liquidated damages for any Day that is on or after the Commercial Operation Date. Any remaining balance in the cash Earnest Money Deposit, or on the Letter of Credit, will be returned or released to Seller, as applicable, by Buyer within sixty (60) Days of the Commercial Operation Date. Seller may also in its sole discretion apply any balance remaining in the Earnest Money Deposit towards the Early Termination Security Amount then required under this Agreement, by providing Buyer with at least 10 days’ notice prior to the Commercial Operation Date.

1. OPERATION OF PLANT
	1. Seller’s Operating Obligations

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

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

* 1. Outages of Generating Equipment

 Seller shall promptly provide to Buyer all material information relating to Plant outages and significant derates of Plant generating Capacity which would materially affect Seller’s ability to deliver electric energy from the Plant to the Point of Delivery. Such material information shall be sufficient for Buyer to reasonably determine and verify the severity and extent of such outages and derates, including at a minimum, the date and time when the outage or derate began, the cause of the outage or derate, and the anticipated date and time the outage or derate will end.

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

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

* 1. Capacity Data

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

 Seller shall comply with all requirements established by (a) any regulatory agency and/or (b) any electric power reliability organization (including, but not limited to, MISO, ReliabilityFirst Corporation, or NERC), that has jurisdiction over Buyer to enable the Buyer to receive the Plant’s Resource Adequacy Capacity from Seller in the MECT. Seller shall submit, if necessary, applicable data to Buyer by the dates established by the Parties, but in no event shall any such dates be later than one (1) week prior to the deadlines established by MISO for such data.

* 1. Obligations to MISO

 Seller shall be responsible for registering the Plant’s CPNode (as such term is defined by MISO) with MISO. All MISO charges and payments associated with such CPNode are the responsibility and property, as applicable, of Seller. Throughout the term of this Agreement, Seller shall either be a member of MISO and be qualified as a Market Participant under MISO Rules, or shall have entered into an agreement(s), at Seller’s cost, with a Market Participant(s) that will perform all of Seller’s MISO-related obligations, including MDMA responsibilities, in connection with the Plant and this Agreement. For the avoidance of doubt, Seller or its subcontractor as Market Participant for the Plant, will, at its sole discretion control the operation of the Facility, including any and all scheduling, dispatch and bidding into the relevant MISO markets, and any revenues derived from such activities.

* 1. Communications

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

* 1. Emergencies and Exempt Operational Periods

 Buyer shall not be obligated to purchase electric energy or make payments based on electric energy delivered pursuant to Section 7, Compensation, for any electric energy which Seller may have available at the Plant during any of the following events which in each case shall be deemed to constitute an Uncompensated Curtailment: (i) Emergencies, (ii) events of Force Majeure, (iii) Exempt Operational Periods, (iv) transmission system outages that limit Seller’s ability to deliver energy to the Point of Delivery, (v) outages of the Plant, or (vi) any other curtailment ordered by a Reliability Authority. Notwithstanding the above, should Buyer fail to receive verification of its determination of an Exempt Operational Period from the MPSC as described in 18 CFR § 292.304(f)(4), if applicable, then such determination shall be deemed to be a Compensated Curtailment and Buyer shall be obligated to make such payments for all electric energy which Seller had available at the Plant, whether or not delivery of such electric energy was suspended due to Buyer’s notification to Seller under 18 CFR § 292.304(f)(4).

* 1. Contract Termination Requirements

If required by the MISO Rules or the Interconnection Agreement, Seller shall inform Buyer via written notice if Seller plans, upon expiration of this Agreement, to (i) register the Plant with MISO or (ii) mothball or retire the Plant. Such notice shall be provided by Seller to Buyer on or before the end of October in the year prior to the termination of this Agreement, or within twenty (20) Days of any notice provided in accordance with Section 10, Early Termination After Start Date. The Parties shall cooperate with each other to undertake the activities necessary to register, mothball, or retire the Plant in accordance with the MISO Rules. Seller shall indemnify Buyer against any costs, charges or penalties imposed on Buyer as a result of Seller’s failure to comply or cooperate with Buyer to comply with the MISO Rules as described in this Subsection 6.5.

* 1. New Regulations

In the event that the United States government, including, but not limited to the Environmental Protection Agency, and/or any other governmental entity, implements regulations during the term of this Agreement and such regulations make continued operation of the Plant materially and substantially uneconomical such that continued operation is no longer feasible, prudent and/or sustainable, Seller shall provide twelve (12) months’ written notice to Buyer of such fact, and provide sufficient supporting information to evaluate this claim (unless twelve (12) months’ notice is not commercially and/or legally feasible under the circumstances, in which case Seller shall provide such notice as is commercially and/or legally feasible under the circumstances). This Agreement will terminate at the time specified in such notice and neither Party shall have any further obligations hereunder except for those obligations which survive such termination, including, but not limited to, the indemnity provided in Subsection 6.5.

1. COMPENSATION
	1. Energy Payment

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

 Beginning in the fourth full Planning Year after the Commercial Operation Date, and in each Planning Year thereafter, if the previous three-year average of Energy Performance is less than ninety percent (90%) of Contract Energy over the same period, then the Energy Purchase Price to be applied to Delivered Energy during the Planning Year following such three-year period shall be equal to the ratio of the three-year average of Energy Performance to Contract Energy over the same period times the Energy Purchase Price, rounded to the nearest cent. In any Planning Year following a Planning Year in which the Energy Purchase Price has been adjusted pursuant to this Subsection 7.1, if the previous three-year average of Energy Performance is more than ninety percent (90%) of Contract Energy over the same period, then the Energy Purchase Price shall be re-adjusted to the value set forth in Exhibit E to this agreement for such Planning Year.

In the event the delivery of energy is curtailed due to a reason that qualifies as a Compensated Curtailment, and such curtailment results in Lost Production, Seller shall be entitled to Lost Production Damages on a monthly basis as its sole and exclusive remedy and Buyer’s sole and exclusive liability. Seller shall provide to Buyer relevant data and supporting documentation so that Buyer can verify the calculation of Lost Production. Lost Production must be calculated using data from the SCADA System and based on actual measurements during the applicable time as recorded by the Plant’s measurement instrumentation. Buyer is not obligated to arrange alternative transmission services during any such event. Seller is not entitled to compensation for Lost Production if Energy is curtailed due to any reason that qualifies as an Uncompensated Curtailment.

* 1. Capacity Payment

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

 Beginning in the fourth full Planning Year after the Commercial Operation Date, and in each Planning Year thereafter, if the previous three-year average of Capacity Performance is less than forty-five percent (45%) of Contract Capacity over the same period, then the Capacity Purchase Price to be applied to Resource Adequacy Capacity during the Planning Year following such three-year period shall be equal to the ratio of the three-year average of Capacity Performance to Contract Capacity over the same period times the Capacity Purchase Price, rounded to the nearest cent. In any Planning Year following a Planning Year in which the Capacity Purchase Price has been adjusted pursuant to this Subsection 7.2, if the previous three-year average of Capacity Performance is more than forty-five percent (45%) of Contract Energy over the same period, then the Capacity Purchase Price shall be re-adjusted to the value set forth in Exhibit E to this agreement for such Planning Year.

* 1. Regulatory Disallowance

 If the MPSC has ruled in an order that Buyer will not be permitted complete recovery from its customers of the capacity and energy charges to be paid pursuant to Section 7, Compensation, (a “Disallowance Order”) then Buyer shall have the right to require that the charges to be paid by Buyer under Section 7 be adjusted to the charges which the MPSC allows Buyer to recover from its customers. Any such adjustment shall be effective no earlier than the date of such Disallowance Order. Pending appellate review of such order and final determination of the charges that may be recovered by Buyer pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer’s customers pursuant to such final appellate determination.

 Seller shall refund to Buyer any portions of the capacity and energy charges paid by Buyer to Seller under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer’s sole option, Buyer shall offset said amounts against amounts owed Seller by Buyer as provided in Section 9, Billing.

 Buyer shall not seek a Disallowance Order and shall use good faith, commercially reasonable efforts to oppose any proposal to disallow costs included in the Agreement. Nothing in the Agreement shall constitute a waiver of any rights Seller may have to appeal or collaterally challenge a Disallowance Order as a violation of Seller’s rights or as otherwise unlawful, including any rights or benefits under MCL 460.6j(13)(b).

 Notwithstanding the foregoing, Seller shall have the right to terminate this Agreement without further liability at any time following a Disallowance Order up to sixty (60) Days following final resolution of any appeal of or collateral challenge to such order by giving Buyer thirty (30) days’ notice of such termination.

 The provisions of this Subsection 7.3 shall govern over any conflicting provisions of this Agreement.

1. EVENTS OF DEFAULT

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

 (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

 (b) such Party becomes Bankrupt (whether voluntarily or involuntarily);

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

 (d) The failure of Seller, after the year in which the Start Date occurs, to supply any Delivered Energy to the Buyer hereunder for any period of seven hundred thirty (730) consecutive Days;

 (e) The making of a representation or warranty that is false or misleading in any material respect when made or when deemed or repeated that is not cured within the cure period identified by the affected Party, such period to be not less than ten (10) Business Days;

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

 (g) The failure of a Party to perform or observe any material term or condition of the Agreement or the applicable tariffs which is not cured within thirty (30) Calendar Days of written notification thereof by the other Party, including, but not limited to:

(i) Failure of either Party to comply with the terms and conditions of this Agreement;

(ii) An attempted assignment of the Agreement by Seller without Buyer’s consent;

(iii) Failure of Seller to provide Buyer commercially reasonable access rights to the Plant, or Seller’s attempt to revoke or terminate such access rights;

(iv) Failure of either Party to provide information or data to the other Party as required under this agreement;

(v) Delivered Energy exceeding the Plant nameplate capacity MWAC;

(vi) Material modification of the Plant equipment which changes the Plant’s maximum electric output after the Start Date, without the prior written consent of Buyer, such consent not be unreasonably withheld

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

1. BILLING
	1. Billing Procedure

 As soon as practicable after the end of each Billing Month, but in no event later than the twenty-eighth (28th) Day of the Month following the Billing Month, Seller shall submit to Buyer a statement (“Statement”) which shall identify any amounts owed by Buyer or Seller pursuant to Section 7, Compensation, during such Billing Month. Such Statement shall use data obtained in accordance with Section 4, Metering. At least three (3) Days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Seller shall submit a revised Statement to Buyer.

 The net amount due shall be paid by the owing Party via electronic funds transfer of said amount by the last Joint Banking Day of the Calendar Month following the Billing Month. Any amounts not paid when due shall bear interest until paid at the Late Payment Interest Rate. Notwithstanding the previous sentence, in no event will either Party be required to pay interest on any amounts owed to the other Party as a result of adjustments made pursuant to the following paragraph.

 In the unlikely event that metering equipment data is unavailable or MISO and Seller’s financial settlement for the Plant is performed using data estimated by MISO, Seller may render a Statement based on its best estimate (using MISO estimated data, if applicable) of the amount owed by Buyer or Seller in order to meet the payment deadline in the second paragraph of this Subsection 9.1. Such a Statement shall indicate that it represents a best estimate of the amount owed. Such an estimate may utilize Buyer’s metered data, if available. If such an estimate is used, an adjustment shall be made if necessary to the next Billing Month Statement issued after the date upon which actual data is determined to correct the prior Billing Month estimate.

* 1. Disputes

 Buyer may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and Seller may adjust any Statement for any arithmetic or computational error within three hundred sixty-five (365) Days of the date the Statement, or adjustment to a Statement, was rendered. Any Statement dispute or Statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is fully resolved, including any associated appeals. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Late Payment Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments where Buyer pays Seller an amount greater than the Statement amount shall be returned within two (2) Business Days upon request or deducted by Buyer. Any dispute with respect to a Statement is waived unless the other Party is notified in accordance with this Subsection 9.2 within three hundred sixty-five (365) Days after the Statement is rendered or any specific adjustment to the Statement is made.

1. EARLY TERMINATION
	1. Early Termination

 If an Event of Default with respect to a Party (the "Defaulting Party” shall have occurred, the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon thirty (30) Business Days' written notice to the Defaulting Party, as provided herein. In the event of the failure by the Defaulting Party to make timely payment due under this Agreement, the Non-Defaulting Party shall have the right, as an alternative or in addition to early termination, to recover from the Defaulting Party all amounts due, plus interest.

* 1. Early Termination Payment

 Upon termination by Buyer pursuant to Subsection 2.3 or this Section 10, Seller shall owe Buyer the Early Termination Security Amount. As applicable, the Letter of Credit, Surety Bond and/or funds in the Escrow Account established in accordance with Subsection 2.2, Payment Security, shall be applied toward satisfying such amount. Within twenty (20) Days after Buyer has provided notice of termination to Seller pursuant to this Section 10, Buyer shall draw upon the Letter of Credit or Surety Bond or withdraw the funds in the Escrow Account and apply such funds toward the satisfaction of Seller’s obligation to pay the Early Termination Security Amount. The provisions of this Section 10 regarding payments shall survive any termination of this Agreement by Buyer pursuant to this Section 10.

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

Buyer shall have no obligation to enter into any subsequent Power Purchase Agreement(s) with Seller until such time that any and all amounts owed to Buyer, including any applicable early termination payment, are paid. In any such subsequent Power Purchase Agreement, Seller shall not be entitled to a more favorable Capacity Purchase Price or Energy Purchase Price than would have been in effect during any remaining term of this Agreement, Either Party’s obligation to make payments already due associated with deliveries received prior to the date of termination of the Agreement will survive any termination initiated under Section 10, Early Termination .

* 1. Duty to Mitigate

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

1. ADMINISTRATIVE COMMITTEE
	1. Purpose

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

* 1. Membership

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

* 1. Meetings

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

* 1. Functions

 The Administrative Committee shall have the following functions:

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

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

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

* 1. Expenses

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

1. FORCE MAJEURE
	1. Definition

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

* 1. Obligations Under Force Majeure

 Force Majeure shall apply to the following situations:

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

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

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

 Notwithstanding any of the foregoing provisions, neither Party shall claim Force Majeure for more than a total of one hundred eighty (180) Days during any consecutive five (5) year period during the term of this Agreement; provided, however, that Seller may claim up to an additional one hundred eighty (180) Days of Force Majeure, during said five (5) year period, in the event of significant damage to Seller’s Plant resulting from an event of Force Majeure. If a Force Majeure event extends beyond the limit established in the preceding sentence, the non-affected Party shall have a right to terminate this Agreement upon written notice to the affected Party, to be effective as of the date specified in such notice without any further liability of the non-affected Party.

* 1. Continued Payment Obligation

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

1. INDEMNITY

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

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

1. DISAGREEMENTS
	1. Administrative Committee Procedure

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

* 1. Arbitration

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

* 1. Obligations to Continue

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

1. CHANGES CONCERNING APPLICABLE LAW

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

1. SUCCESSORS AND ASSIGNS

 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties hereto. This Agreement shall not be assigned by a Party without the other Party’s prior written consent, which consent shall not be unreasonably withheld, but provided that (i) except as stated under any collateral assignment by Seller, any assignee shall expressly assume assignor’s obligations hereunder; and (ii) no such assignment shall impair any security given by Seller hereunder. Any attempted assignment or transfer without such consent shall be void and not merely voidable.

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

1. GOVERNING LAW

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

1. HEADINGS

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

1. NOTICE TO PARTIES

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

 Buyer: Consumers Energy Company

 Attention: Keith G. Troyer

 Manager of Supply Contracts, Transactions and Wholesale Settlements

 1945 W. Parnall Road

 Jackson, Michigan 49201

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

 Email: Keith.Troyer@cmsenergy.com

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

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

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

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

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

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

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

1. WAIVER

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

1. NONSEVERABILITY

 If any essential provision of this Agreement is declared invalid in whole or in material part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then a Party adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party thirty (30) days’ notice of such termination. Concurrently with, and as a condition of, any such termination of this Agreement, the Parties shall promptly enter into good faith negotiations to amend this Agreement to remedy the invalidated provision(s) or enter into a new agreement, in each case in a manner that reasonably preserves the rights, obligations and economic positions of the parties under this Agreement as if such provision(s) had not been invalidated. Notwithstanding the remainder of this Section 21, the Parties agree that Buyer retains the right to determine, in its sole discretion, whether to accept any proposed or potential amendment that would affect in any way Subsection 7.3. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right of termination.

1. MISCELLANEOUS
	1. No Third Party Beneficiaries

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

* 1. Disclaimer of Joint Venture, Partnership and Agency

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

* 1. Variable Interest Entity

 Seller shall supply Buyer with any information necessary for the Buyer to determine (acting reasonably and in consultation with Seller) if the Seller is a variable interest entity as defined by Financial Accounting Standards Board Accounting Standards Codification Topic 810, Consolidations, and to determine (acting reasonably and in consultation with Seller) if this Agreement is a lease in accordance with Accounting Standards Codification Topic 842, Leases.

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

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

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

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

 (A) On-balance sheet obligations;

 (B) Purchase obligations;

 (C) Lease obligations and commitments;

 (D) Off-balance sheet commitments; and

 (E) Contingent obligations;

 (F) Total generating Capacity;

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

 (A) Equity-related agreements;

 (B) Debt and other borrowings;

 (C) Material asset or stock acquisitions or dispositions;

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

 (E) Material supplier and customer contracts;

 (F) Related-party contracts;

 (G) Documents related to material hedging activities;

 (H) Contingent obligations and financial commitments;

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

 (J) Management and outsourcing contracts.

 (iv) Business plans and financial projections.

1. ENTIRE AGREEMENT AND AMENDMENTS

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

1. ELIGIBLE CONTRACT PARTICIPANT

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

1. COUNTERPARTS AND ELECTRONIC DOCUMENTS

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

1. LIMITATION OF LIABILITY

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

1. REPRESENTATIONS

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

*[Signature page follows]*

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

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

By: By:

Name: Name:

Title: Title:



Early Termination Security Amount Schedule

|  |  |
| --- | --- |
| Planning Year | Amount |
| (Commencing on June 1 of the Stated Year) |  |
|  |  |
|  |  |
| 2021 | $\_\_\_\_\_\_\_ |
| 2022 | $\_\_\_\_\_\_\_ |
| 2023 | $\_\_\_\_\_\_\_ |
| 2024 | $\_\_\_\_\_\_\_ |
| 2025 | $\_\_\_\_\_\_\_ |
| 2026 | $\_\_\_\_\_\_\_ |
| 2027 | $\_\_\_\_\_\_\_ |
| 2028 | $\_\_\_\_\_\_\_ |
| 2029 | $\_\_\_\_\_\_\_ |
| 2030 | $\_\_\_\_\_\_\_ |
| 2031 | $\_\_\_\_\_\_\_ |
| 2032 | $\_\_\_\_\_\_\_ |
| 2033 | $\_\_\_\_\_\_\_ |
| 2034 | $\_\_\_\_\_\_\_ |
| 2035 | $\_\_\_\_\_\_\_ |
| 2036 | $\_\_\_\_\_\_\_ |
| 2037 | $\_\_\_\_\_\_\_ |
| 2038 | $\_\_\_\_\_\_\_ |
| 2039 | $\_\_\_\_\_\_\_ |
| 2040 | $\_\_\_\_\_\_\_ |
| 2041 | $\_\_\_\_\_\_\_ |
| 2042 | $\_\_\_\_\_\_\_ |
| 2043 | $\_\_\_\_\_\_\_ |
| 2044 | $\_\_\_\_\_\_\_ |
| 2045 | $\_\_\_\_\_\_\_ |
| 2046 | $\_\_\_\_\_\_\_ |

Form of Guaranty

GUARANTY

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

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

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

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

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

1. Guaranty.

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

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

(c) Notwithstanding anything to the contrary herein, Guarantor’s aggregate obligation to Counterparty hereunder is limited to [\_\_\_\_\_\_\_\_] U.S Dollars ($\_\_\_) (the “Maximum Guaranteed Amount”) (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to Counterparty, pursuant to a demand made upon Guarantor by Counterparty or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis), plus costs and expenses incurred by Guaranteed party in enforcing this Guaranty. EXCEPT AS EXPRESSLY PAYABLE BY OBLIGOR PURSUANT TO THE AGREEMENT, IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS PUNITIVE OR TORT DAMAGES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[GUARANTOR COMPANY NAME]**

By:

Name:

 Title:

Form of Collateral Assignment

COLLATERAL ASSIGNMENT OF

 RENEWABLE ENERGY PURCHASE AGREEMENT

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

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

WHEREAS, Borrower and/or one or more of its affiliates has entered into that certain [Financing Agreement], dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”) with the financial institutions from time to time parties thereto as lenders and/or issuing banks, and the Bank as agent on behalf of such financial institutions, pursuant to which, among other things, such financial institutions have extended commitments to make loans and other financial accommodations to, and for the benefit of, the Borrower;

WHEREAS, pursuant to a [Security Agreement] between the Borrower and the Bank, dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), the Borrower has agreed, among other things, to assign, as collateral security for the obligations of the Borrower and/or one or more of its affiliates under the Credit Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the REPA to the Bank; and

WHEREAS, it is a condition precedent to the making of loans pursuant to the Credit Agreement that the Borrower and the other parties hereto execute this Assignment Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Assignment.

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

(b) The Bank shall be entitled (but not obligated) to exercise all rights and to cure all defaults of the Borrower under the REPA, subject to applicable notice and cure periods provided in the REPA and as set forth herein. Upon receipt of written notice from the Bank, Consumers agrees to accept such exercise and cure by the Bank if timely made by the Bank under the REPA and this Assignment Agreement. In the event the Bank or its designee(s) or assignee(s) succeed to the Borrower’s interest under the REPA, the Bank or its designee(s) or assignee(s) shall cure all then-existing payment or other performance defaults under the REPA. The Bank and its designee(s) or assignee(s) shall then have the right to assign its interest in the REPA to a person or entity to whom the Borrower’s interest in the Facility is transferred, provided that (i) such transferee assumes and can perform all of the then-outstanding obligations of the Borrower under the REPA, (ii) the transferee provides the credit support required under the REPA, and (iii) such transferee has at least three (3) years’ experience operating facilities similar to the Facility or has contracted with an operations and maintenance provider having such experience. Upon such assignment, the Bank and its designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned. Notwithstanding any such further assignment and assumption of the obligations of the Borrower under the REPA by such party, the Bank shall remain liable for the obligations of the Borrower under the REPA which arose during the period in which the Bank assumed the Borrower’s obligations under the REPA.

(c) Upon an event of default or breach by the Borrower in the performance of any of its obligations under the REPA, or upon the occurrence or non-occurrence of any event or condition under the REPA which would immediately or with the passage of any applicable grace period or the giving of notice enable Consumers to terminate the REPA (hereinafter, a “Default”), Consumers shall not terminate the REPA until it first gives written notice of such Default to the Bank and affords the Bank (i) ten (10) days, in the case of a Default for failure to pay amounts to Consumers which are due and payable under the REPA and (ii) thirty (30) days, in the case of any Default not included in clause (i), the opportunity cure such Default. Each of the periods in the foregoing clauses (i) and (ii) shall begin on the later of (A) the expiration of the Borrower’s cure period under the REPA (if any) and (B) the date of the Bank’s receipt of notice of such Default from Consumers. Consumers and the Borrower each agree that unless and until Consumers receives written notice from the Bank as set forth in Section 1(b) above, the Bank shall not be deemed by virtue of the execution and delivery of this Assignment Agreement to have assumed any of the obligations of the Borrower under the REPA.

(d) If (i) possession of the Facility is necessary to cure such Default or (y) if the Default can only be cured by the Borrower and is not curable by the Bank, such as the bankruptcy of the Borrower or the consolidation, amalgamation or merger of the Borrower into, or transfer of all or substantially all of its assets to, another entity which fails to assume the obligations of the Borrower under the REPA, and, in each such case, the Bank or its successor(s), assignee(s) and/or designee(s) declares an “Event of Default” under the Credit Agreement and notifies Consumers in writing that the Bank has commenced foreclosure or other legal proceedings necessary to take possession of the Facility, the Bank will be allowed a reasonable period to both commence (not to exceed thirty (30) days) and complete (not to exceed one hundred fifty (150) additional days) such proceedings, provided that, if the Default can only be cured by the Borrower and is not curable by the Bank as described above, the Bank shall be entitled to assume the rights and obligations of the Borrower under the REPA and provided such assumption occurs, and if the Bank cures any other pending defaults by the Borrower, Consumers shall not be entitled to terminate the REPA as a result of such Default. If the Bank or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of the Borrower from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, provided that the Bank or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch. Consumers shall recognize the Bank or its designee(s) or assignee(s) as the applicable party under the REPA provided that the Bank or its designee(s) or assignee(s) assume the obligations of the Borrower under the REPA; and provided further that the Bank or its designee(s) or assignee(s) has a creditworthiness or total credit support at least equal to that of the Borrower as of the date hereof.

(e) In the event that the REPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within thirty (30) days after such rejection, the Bank shall so request, Consumers will negotiate with the Bank in good faith in an effort to execute and deliver to Bank a new power purchase agreement reasonably agreeable to Consumers and the Bank, which shall be on as reasonably similar terms and conditions as the original REPA for the remaining term of the original REPA before giving effect to such rejection, and which shall require the Bank to cure any defaults then existing under the original REPA.

(f) In the event the Bank or its designee(s) or assignee(s) elect(s) to succeed to the Borrower’s interest under the REPA, or enter into a new power purchase agreement as provided in Section 1(e) above, the recourse of Consumers against the Bank or its designee(s) and assignee(s) shall be limited to such party or parties’ interests in the Facility, the credit support provided or required under the REPA, and any remedies available to Consumers under the new power purchase agreement if entered into between Consumers and the Bank or its designee(s) or assignee(s) as provided in Section 1(e) above.

(g) This Assignment Agreement shall not be deemed to release or to affect in any way the obligations of the Borrower or Consumers under any provisions of the REPA, except as expressly set forth in this Assignment Agreement. No assumption of the Borrower’s obligations under the REPA by the Bank or any further designee or assignee shall release the Borrower from its obligations to Consumers under the REPA.

2. Delivery of Notices

Consumers agrees that it will promptly notify the Bank of any termination or default under the REPA concurrently with providing such notice to the Borrower, or as soon as reasonably practicable thereafter.

3. Default and Cure

 Notwithstanding the remainder of this Assignment Agreement, there shall be no cure period allowed the Bank in the event of termination of the REPA by Consumers pursuant to Sections 5.3 and 10.1 thereof.

4. Payment.

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

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

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

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

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

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

5. Successor and Assigns.

This Assignment Agreement shall bind and inure to the benefit of the Parties to this Assignment Agreement and their respective successors, transferees and assigns. No termination, amendment, or variation of any provisions of this Assignment Agreement shall be effective unless in writing and signed by the Parties hereto. No waiver of any provisions of this Assignment Agreement shall be effective unless in writing and signed by the Party waiving any of its rights hereunder. All rights of the Parties hereto shall terminate without the requirement for any writing upon the “[Discharge Date]”[[1]](#footnote-2) under the Credit Agreement, which the Borrower agrees to provide to each other Party promptly after the occurrence thereof.

6. Applicable Law.

The construction, performance and validity of this Assignment Agreement shall be governed by the laws of the State of Michigan (excluding the laws applicable to conflicts or choice of law). Each of the Bank, Consumers and the Borrower hereby submits to the non-exclusive jurisdiction of the United States District Court for the Eastern District, Southern Division of Michigan and of any Michigan State Court sitting in Jackson, Michigan for the purpose of all legal proceedings arising out of or relating to this Assignment Agreement or the transactions contemplated hereby. As of the date hereof, Consumers represents that the REPA is a legal, valid and binding obligation of Consumers. In the event any provision of this Assignment Agreement or the obligations of any of the Parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other Parties hereto, shall not in any way be affected or impaired thereby.

7. Waiver.

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

8. Counterparts.

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

9. Notices.

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

If to the Borrower:

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

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

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

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

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

If to Consumers:

Consumers Energy Company

Attention: Keith G. Troyer, Manager of Supply Contracts

 Transactions and Wholesale Settlements Department

1945 West Parnall Road

Jackson, MI 49201

If to the Bank:

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

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

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

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

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

All such notices shall be effective when delivered.

10. Entire Agreement

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

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

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

 (Borrower Name)

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

 (Name)

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

 (Title)

CONSUMERS ENERGY COMPANY

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

 (Name)

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

 (Title)

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

 (Bank Name)

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

 (Name)

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

 (Title)

Form of Estoppel Certificate

ESTOPPEL CERTIFICATE

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

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

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

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

(d) The Contracting Party is a Michigan corporation which is duly incorporated, validly existing and in good standing under the laws of Michigan and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the PPA and this certificate, and the execution, delivery and performance by the Contracting Party of the PPA and this certificate have been duly authorized by all necessary company action on the part of the Contracting Party and do not require any approvals, filings with or consents of any entity or person which have not previously been obtained or made. There are no actions pending against the Contracting Party under the bankruptcy or any similar laws of the United States or any state.

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

**CONSUMERS ENERGY COMPANY**,
a Michigan corporation

By:
Name:
Title:

Product Purchase Price Schedule

 The Energy Purchase Price for Delivered Energy and Capacity Purchase Price for Resource Adequacy Capacity shall be the rates as determined in the table below.

|  |  |  |
| --- | --- | --- |
| Planning Year(Commencing on June 1 of the Stated Year) | Energy Purchase Price$/MWh | Capacity Purchase Price$/ZRC-month |
|  |  |  |
| 2021 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2022 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2023 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2024 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2025 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2026 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2027 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2028 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2029 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2030 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2031 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2032 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2033 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2034 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2035 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2036 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2037 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2038 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2039 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2040 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2041 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2042 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2043 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2044 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2045 | $\_\_\_\_.\_\_ | $5,551.92 |
| 2046 | $\_\_\_\_.\_\_ | $5,551.92 |

EXHIBIT F

Monthly Escrow Payment

Beginning with the Billing Month in which the Commercial Operation Date occurs, Buyer will retain during each Billing Month a portion of the energy compensation until the interest bearing account equals or exceeds the Early Termination Security Amount identified in Exhibit A. Interest on the monthly escrow payments shall accrue at the Interest Rate. Buyer will continue to retain such funds to achieve and maintain a security for continued performance. The amount retained each month shall be determined in accordance with the following formula:

Monthly Escrow Payment ($) = $3.50/MWh x Delivered Energy

All monthly escrow payments and accumulated interest shall be retained in the interest bearing account until the Early Termination Security Amount is reached (the "Full Funding"). Once the interest bearing account has Full Funding, Buyer will not retain any portion of the monthly energy compensation; however, accumulated interest will continue to be held in the interest bearing account.

Monthly escrow payments will be held by Buyer from Commercial Operation Date through the first Billing Month of the Planning Year that begins one year after 60% of the Contract Term has been completed (the “Refund Period”), at which point Seller will no longer be obligated to continue making monthly escrow payments. The balance in the interest bearing account will be disbursed to the Seller over the remaining term of the Agreement. Beginning with the first Billing Month of the Refund Period, Buyer will pay Seller the monthly escrow payment in each successive Billing Month using the formula above. Any amounts, including accumulated interest, remaining in the interest bearing account after termination of this Agreement shall be paid by Buyer to Seller on the final Billing Month settlement of the Agreement.

Upon termination pursuant to Section 10 of the Agreement after the Commercial Operation Date, Buyer shall retain all remaining funds in the interest bearing account to the extent necessary to satisfy Seller’s obligation to pay the Early Termination Security Amount.

1. To be on or about date of commercial operation under REPA. [↑](#footnote-ref-2)