



August 28, 2020

NOTICE TO BIDDERS

Sealed Proposals will be received by Traverse City Light & Power (TCLP) up to **2:00 p.m., E.D.T., October 7, 2020**, for furnishing:

Renewable Energy Resources

Proposals must be in full accordance with the enclosed Specifications.

Proposals may be submitted via hard copy. See details below.

Hard copy Proposals - please submit two (2) signed TCLP Proposal Form(s) with attachments and supplemental information. Do not include copies of the other TCLP Request for Proposal ("RFP") documents in your Proposal package. The Proposal package shall be marked on the outside of the cover with:

- 1) The Bidder's name;
- 2) The title of the RFP;
- 3) Attention: Karla Myers-Beman, Controller, Traverse City Light & Power;

By US Mail, send to Traverse City Light & Power, Attn: Karla Myers-Beman, Controller, 1131 Hastings Street, Traverse City, Michigan 49686.

By private carrier (UPS, FedEx, DHL, etc.) submit to: Traverse City Light & Power, Attn: Karla Myers-Beman, Controller, 1131 Hastings Street, Traverse City, Michigan 49686.

In person, deliver to: 1131 Hastings Street, Traverse City, Michigan 49686.

TCLP reserves the right to reject any or all Proposals, waive irregularities or technicalities in any Proposal, and accept any Proposal in whole or in part, which in the opinion of TCLP, is in its best interest. TCLP does not limit the methods or factors to be used for evaluation.

TCLP WILL HOST TWO MANDATORY PRE-BID MEETINGS:

1. The first meeting will be held at 1:00 p.m., E.D.T., September 9, 2020, via Skype to provide an overview of the project and answer any questions. Please send an email to kmyersbe@tclp.org to receive an invite to the Skype meeting.
2. The second meeting will be held at 9:00 a.m. E. D. T.; September 15, 2020 to be held at the property, 4728 Cedar Run Road. There will be signs located along the road to direct participants to the parking and meeting area.

Questions regarding this RFP will be accepted through September 25, 2020. Responses to these questions will be issued to all bidders via addenda to this RFP (reference Section 5 in the enclosed Instruction to Bidders). Direct all questions in writing concerning this RFP via email to kmyersbe@tclp.org.

Sincerely,

Timothy J. Arends, Executive Director
Traverse City Light & Power

INSTRUCTIONS TO BIDDERS Renewable Energy Resources

1. THE RFP CONSISTS OF THE FOLLOWING ("PROPOSAL DOCUMENTS"):

- (a) Notice to Bidders
- (b) Instructions to Bidders;
- (c) Addenda, if issued;
- (d) Request for Proposals; (p1)
- (e) Proposal Form (p11);
- (f) Proposal Submission Form (p13);
- (g) Sworn and Notarized Affidavit of Compliance - Iran Economic Sanctions Act (p17);
- (h) Confidentiality Agreement - During Public Procurement Process - Sign and return the Confidentiality Agreement form to receive information held as confidential (p18);
- (i) Model Purchase Power Agreement (p19); - for informational purposes only
- (j) Exhibit A – Conception Layout (p71)
- (k) Exhibit B – Test Pit Results (p72)
- (l) Exhibit C – EGGLE's Correspondence (p84)
- (m) Exhibit D – Map of Consumers Energy and Cherryland Electric Cooperative utility lines (p86)

2. TERMS AND CONDITIONS

Do not submit BIDDER's standard terms and conditions as a replacement to TCLP model agreement (a sample of a typical purchase power agreement is attached). BIDDER shall submit their Proposal based upon the model agreement as attached. BIDDER may request clarifications, tender exceptions consistent with Section 6 (or provide alternative language that corresponds to a tendered exception as provided in Section 6) to the model agreement. Exceptions to the model agreements must be noted on the Proposal Form in the space provided. Wholesale rejection of the model agreements, as well as replacing with BIDDER'S standard terms and conditions will not receive consideration and result in a rejection of BIDDER'S Proposal in its entirety. Further, Proposals which are submitted and contingent upon BIDDER'S standard terms and conditions will be rejected. Either separate or as part of the purchase power agreement lease terms for the land will have to be agreed upon. The consideration of the land will be at a cost of \$1 annually.

3. BIDDER'S RESPONSIBILITY

It shall be the BIDDER'S responsibility to be familiar with the Proposal Documents and with TCLP, scope of work, and conditions that are likely to be encountered. BIDDER shall visit the site and specific areas on the site wherein the Work will be performed. A viewing of the property will be provided at the second mandatory pre-bid meeting.

Any failure by the successful BIDDER to familiarize itself with conditions likely to be encountered, to acquaint itself with the available information, or to attend any meeting of BIDDERS shall not relieve the BIDDER from responsibility for providing the specified equipment, materials, and service. A failure to comply with this requirement does not constitute grounds for extra compensation over the pricing stated in the BIDDER'S Proposal.

BIDDER shall be prepared to make a presentation at TCLP's request (at a public meeting of its Board of Directors) on its Proposal and to answer questions.

4. AVAILABILITY OF LABOR AND MATERIALS

TCLP will not furnish any labor, facilities, services, utilities, materials, equipment or supplies unless specifically stated in the Proposal Documents.

BIDDER shall assess and determine the availability of necessary labor and the prevailing wages applicable to that workforce. In addition, BIDDER shall assess and determine the availability of materials and equipment necessary to fulfill the contract in a complete and timely manner. TCLP will not honor any claim for additional cost premised

on the unavailability of materials or equipment, shortage of labor, or unexpected wage rates.

5. ADDENDA

TCLP will clarify any questions or correct the RFP by the issuance of an Addendum to all BIDDERS. Each BIDDER shall acknowledge receipt of each Addendum by filling in the blank space provided on the Proposal Form.

6. PREPARATION OF PROPOSAL FORM

The Proposal Form is included in the Proposal Documents. BIDDER shall prepare Proposals and submit them as stated in the Notice to Bidders.

Proposals must be prepared in full accordance with the Proposal Documents. The Proposal price(s) stated on the Proposal Form must include all cost provisions of the complete Scope of Work. If the BIDDER chooses to submit an alternate or take an exception to any provision contained in the Proposal Documents, the alternate or exception must be specifically stated in BIDDER'S Proposal, must reference the objectionable article of the Proposal Documents, and must propose alternate language or alternate Work. Any exception to the Proposal Documents, including any exception to TCLP's Standard Terms and Conditions must be raised in BIDDER'S Proposal as exceptions provided subsequently will not be considered. Once the notification of award has been provided, and the Acknowledgement returned, a binding contract exists between the parties and further negotiation of terms is not permitted.

Proposals received after the time and date for receipt of Proposals will not be accepted. The BIDDER is responsible for timely delivery of the Proposal at the designated location and time for receipt of Proposals.

The Proposal must be signed with the full name and address of the BIDDER. Proposals received without signature will not be accepted. If the BIDDER is a co-partnership, the firm name and signature of all parties are required. If the BIDDER is a corporation, full corporate name and signature of authorized official is required. BIDDER shall certify that the person who signs the Proposal is empowered to do so by the corporation. Such certificate shall be up-to-date and current at time of the Proposal Form submittal.

A Proposal may not be modified, withdrawn or canceled unilaterally by the BIDDER for a period of sixty (60) days following the time and date designated for the receipt of Proposals, and BIDDER so agrees in submitting the Proposal. A Proposal submission is a confirmation by the BIDDER that it is prepared to commence and complete the various stages of the Work as described in the Proposal Documents.

Expenses for developing and presenting Proposals shall be the responsibility of the BIDDER. It is the BIDDER'S responsibility to ensure that no conflict of interest or other ethical concern precludes TCLP from considering BIDDER'S Proposal.

7. SUBSTITUTION

Under certain circumstances, the Proposal Documents may permit substitution of products. Those areas where substitution is permitted will be designated with the qualifying phrase or equal as may be approved by TCLP REPRESENTATIVE. If BIDDER would like to substitute a product, BIDDER must make a Proposal including the products specified in the Proposal Documents AND an alternate Proposal including the proposed substitution, specifically referencing any price change based on the substitution.

BIDDER'S Proposal shall contain data to substantiate that the substitution is, in fact, equal to the products specified. Substantiating data may consist of drawings or other documents necessary or helpful to indicate any modifications resulting from use of proposed substitutions. BIDDER bears the burden of proving that the proposed substitutions meet the quality standards established in the Proposal Documents.

If BIDDER is eventually awarded a contract, the contract will indicate whether the substitution was acceptable or whether the original product must be used.

The acceptance of a substitution does not alleviate BIDDER of any contractual responsibility.

8. INSURANCE

The certificates of insurance required by the Contract Documents must also accompany the Acknowledgment of Award. All these documents should be directed to the attention of TCLP Buyer listed on the Notice to Bidders with a copy to the person designated as "TCLP REPRESENTATIVE". The contract must be indicated on the Acknowledgement, bonds, and certificates of insurance.

9. EVALUATION OF PROPOSALS

All Proposals will be sealed until the time designated on the Notice to Bidders. At the opening, the names of all

BIDDERS will be made public.

To evaluate the Proposals, TCLP will consider such factors as responsiveness of Proposal, price, time of completion, exceptions to the Proposal Documents, financial stability, recent and experience and similar factors in determining which Proposal it deems to be in its best interest. TCLP does not herein limit the methods or factors to be used for evaluation. The intent of the evaluation process is to choose the best-evaluated Proposal.

TCLP reserves the right to enter private negotiations with the selected BIDDER(S), for further scrutiny, even though these negotiations may result in changes to the TCLP specifications or to the BIDDER(S) services, price quotations, etc.

TCLP may reject any Proposal, waive irregularities or technicalities in any Proposal, and accept any Proposal in whole or in part. TCLP may cancel, in whole or in part, the entire RFP at any time prior to full execution of a contract between both parties.

10. QUESTIONS, MEETING OF BIDDERS, AND ADDENDA

BIDDERS are required to attend a meeting of BIDDERS by Skype to present their questions about the Proposal Documents, to receive answers to questions, to receive copies of Addenda and to participate in open discussion of the Project. Following the initial pre-bid meeting the following week there will be a mandatory tour of the site. All recommended CDC guidelines at that time for COVID-19 will be followed.

Changes, revisions, and corrections that may result from the discussions that occur during the Meeting of BIDDERS will be confirmed by the issuance of an Addendum. Suggestions of topics for the Meeting agenda should be directed to the person designated on the Notice to Bidders.

11. CONTRACT PRICE

The contract price shall be equal to the Proposal price adjusted to any price changes as agreed upon in writing by the BIDDER and TCLP.

The contract price may be modified via a change order upon mutual agreement of both parties.

12. EXECUTION OF ACKNOWLEDGMENT OF AWARD

The successful BIDDER shall, within twenty-four hours after notice of award, return the properly executed Acknowledgment of Award to the person designated on the Notice to Bidders. BIDDER shall certify that the person who signs the Acknowledgment is empowered to do so. Upon execution, an agreement will be deemed consummated and the documents, as specified in the list of RFP documents set forth in Section 1 herein, along with any mutually agreed written changes, shall constitute the full and binding agreement between the parties. If the properly executed Acknowledgement, along with any required bonds and insurance certificates, are not returned within five (5) calendar days, TCLP may deem the award rejected and offer to another BIDDER without penalty.

13. CONFIDENTIALITY

All complete, in-process or conceptual work are the sole property of TCLP and may not be used without the consent of TCLP. Any product used, such as, drawings and specifications, photos, campaigns, drafts, etc. are the sole property of TCLP. All TCLP information will be kept confidential at all times. The BIDDER shall not disclose to others, without the written consent of TCLP, any information concerning the service provided, the organization, its personnel, or its activities, which the BIDDER may obtain as a result of, or in connection with the performance of the services.

14. FREEDOM OF INFORMATION ACT (FOIA)

TCLP is subject to the Freedom of Information Act (MCL §15.231 et seq.). TCLP may be required to make available certain information submitted with your bid or Proposal available to the public if requested. This information may include comparative pricing and other data, which the BIDDER may normally consider proprietary or confidential. If the BIDDER submits any information it deems to be exempt from FOIA requirements, the BIDDER shall clearly mark it as such. Before releasing any such marked information, TCLP will inform the BIDDER and allow the BIDDER to challenge the FOIA request at its own expense.

15. SAFETY

While the responsibility for safely performed work and adherence to local, state and federal safety rules lies with the BIDDER, unless accepted in the Proposal, and accepted by TCLP, all BIDDERS will be required to comply with TCLP's Safety Manual. All BIDDERS should read and understand the TCLP Safety Manual before

submitting a Proposal. A copy can be reviewed at the TCLP's service center.

16. SALES TAX

Bidder shall pay all sales, consumer, use and other similar taxes required to be paid by the Bidder in accordance with the Laws and Regulations of the place of the Project, which are applicable during the performance of the work.

17. COMPLIANCE

The Bidder certifies that it is in compliance with the City of Traverse City's Nondiscrimination Policy as set forth in Administrative Order No. 47 and Chapter 605 of the City's Codified Ordinances.

The Bidder certifies that none of the following circumstances have occurred with respect to the Bidder, an officer of the Bidder, or an owner of a 25% or more share in the Bidder's business, within 3 years prior to the bid:

- a) conviction of a criminal offense incident to the application for or performance of a contract;
- b) conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense which currently, seriously and directly reflects on the Bidder's business integrity;
- c) conviction under state or federal antitrust statutes;
- d) attempting to influence a public employee to breach ethical conduct standards; or
- e) conviction of a criminal offense or other violation of other state, local, or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of TCL&P indicates that the bidder is unable to perform responsibility, or which reflects a lack of integrity that could negatively impact or reflect upon TCL&P, including but not limited to, any of the following offense or violations of:
 - 1. The Natural Resources and Environmental Protection Act.
 - 2. A persistent and knowing violation of the Michigan Consumer Protection Act.
 - 3. Willful or persistent violations of the Michigan Occupational Health and Safety Act.
 - 4. A violation of federal, local, or state civil rights, equal rights, or non-discrimination laws, rules or regulations.
 - 5. Repeated or flagrant violations of laws related to the payment of wages and fringe benefits.
- f) the loss of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.

Bidder certifies that as of the date of this bid, Bidder's company or Bidder is not in arrears to TCL&P or the City of Traverse City for debt or contract and is in no way a defaulter as provided in Section 152, Chapter XVI of the Charter of The City of Traverse City.

END OF INSTRUCTIONS TO BIDDERS



**REQUEST FOR PROPOSALS
RENEWABLE ENERGY RESOURCES
TRAVERSE CITY LIGHT & POWER**

**RFP ISSUED 8/28/2020
PRE-BID MEETINGS 9/9/2020
& 9/15/2020
RESPONSES DUE 10/7/2020**

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1. RFP Introduction

1.1. Overview

With this RFP TCLP is soliciting proposals to purchase capacity, energy, and environmental attributes, including but not limited to Renewable Energy Credits (RECs) and carbon offsets, from Renewable Energy Projects to be located at the utility's property located at 4728 Cedar Run Road, Traverse City, MI 49684 with a property tax parcel id #05-005-017-00. In aggregate, TCLP is seeking the maximum MW a developer can provide at the property. Property is described in more detail in Section 3.1.

1.2. Timeline

- RFP Issued: August 28, 2020
- RFP Question and Answer Period: August 31 through September 25, 2020
- Responses to RFP Questions Issued: September 30, 2020
- Pre-Bid Meeting: September 9, 2020 (Skype meeting – overview of the project) & September 15, 2020 (Property viewing)
- RFP Responses Due: October 7, 2020

1.3. Questions and Addenda

Questions concerning interpretation or intent of the Specifications should be directed in writing or e-mail to: kmyersbe@tclp.org.

Alterations, corrections, and revisions to the Specifications will be made by Addenda, which will be issued to each Bidder of record on the date of issuance. Each Bidder shall acknowledge receipt of each Addendum by filling in the blank space provided on the Proposal Form.

1.4. Pre-Bid Meeting

A mandatory pre-bid meeting will be held via Skype on September 9, 2020 at 1:00 p.m. with a mandatory on-site tour of the property the following week on September 15, 2020 at 9:00 a.m. Proposals from Bidders who are not in attendance will not be accepted; additional information may be provided at the pre-bid meetings which may be helpful in preparing proposals. At the initial pre-bid meeting, representatives from TCLP will summarize the basis for this RFP and the RFP process, and will be available to answer questions regarding this RFP. During the pre-bid meeting TCLP will provide a description of the property that has been selected for the Solar Project. An opportunity to tour the site will be provided the following week. TCLP may provide additional information and will make a good faith effort to summarize oral responses to questions and distribute those summarized responses.

1.5. Bidding as Specified

The Bidder shall prepare its bid to be in complete and full accord with the Scope of the RFP, and the Bid Prices as stated on the Proposal Form shall be an "as specified" price for each item. If the Bidder chooses to submit an alternate or take an exception to the

Specifications, they shall, in a separate letter of explanation appended to the Proposal Form, clearly indicate the section, paragraph, and page number of the Specifications to which its exception applies, concisely state its reasons and give the alternate bid price. Conflict notations, which refer to the Bidder's descriptive information as a whole, will not be acceptable.

The submission of a bid hereunder will be construed by TCLP as representative that the Bidder is prepared to furnish capacity, energy and environmental attributes as set forth in the Bid Documents.

1.6. Evaluation of Proposals

TCLP will consider multiple proposal evaluation factors, including but not limited to, bid price, financial stability of the Bidder, ability to meet production schedule, operational requirements, proximity to the TCLP electric system, market and cost risks assigned to TCLP, experience building and operating comparable facilities and locations, qualification of project team, quality of procured equipment, and existing or proposed interconnect agreements, and the Bidder's assurance that it has the ability to guarantee delivery of RECs.

Final award will also be dependent upon successful negotiation, Power Purchase Agreement (PPA), with a potential of a Lease Agreement, which may or may not be incorporated into the PPA or other financial arrangement mutually agreed to by TCLP and Bidder. There is a potential of negotiating a Build Operate and Transfer Agreement with TCLP.

TCLP may reject any or all proposals, waive irregularities or technicalities in any proposals, and accept any proposal in whole or in part which it deems to be in its best interest.

1.7 Assignment

TCLP may assign proposals and ultimate agreements to other governmental entities and/or municipal electrical utility joint action agencies.

2. Background

2.1. History of TCLP

TCLP prides itself on being a responsive and community-friendly utility with a level of programs and services that enhance our quality of life and make Traverse City a better place to live. Our residential, commercial and industrial customers enjoy reliable power at low rates because we are community-owned. In addition to contributing to the city's financial stability, TCLP also is committed to investing in a wide variety of community-related projects that range from environmental programs to education.

Mission Statement

The Mission of Traverse City Light & Power is to provide the Public Power benefits of safety, lower rates, high reliability, local control and exceptional customer service to the City and its residents and all Traverse City Light & Power customers.

Vision Statement

To build the long-term value of Traverse City Light & Power for the benefit of the City and its residents and all Traverse City Light & Power customers.

TCLP is a market participant in the Midwest markets operated by the Midcontinent Independent System Operator (MISO).

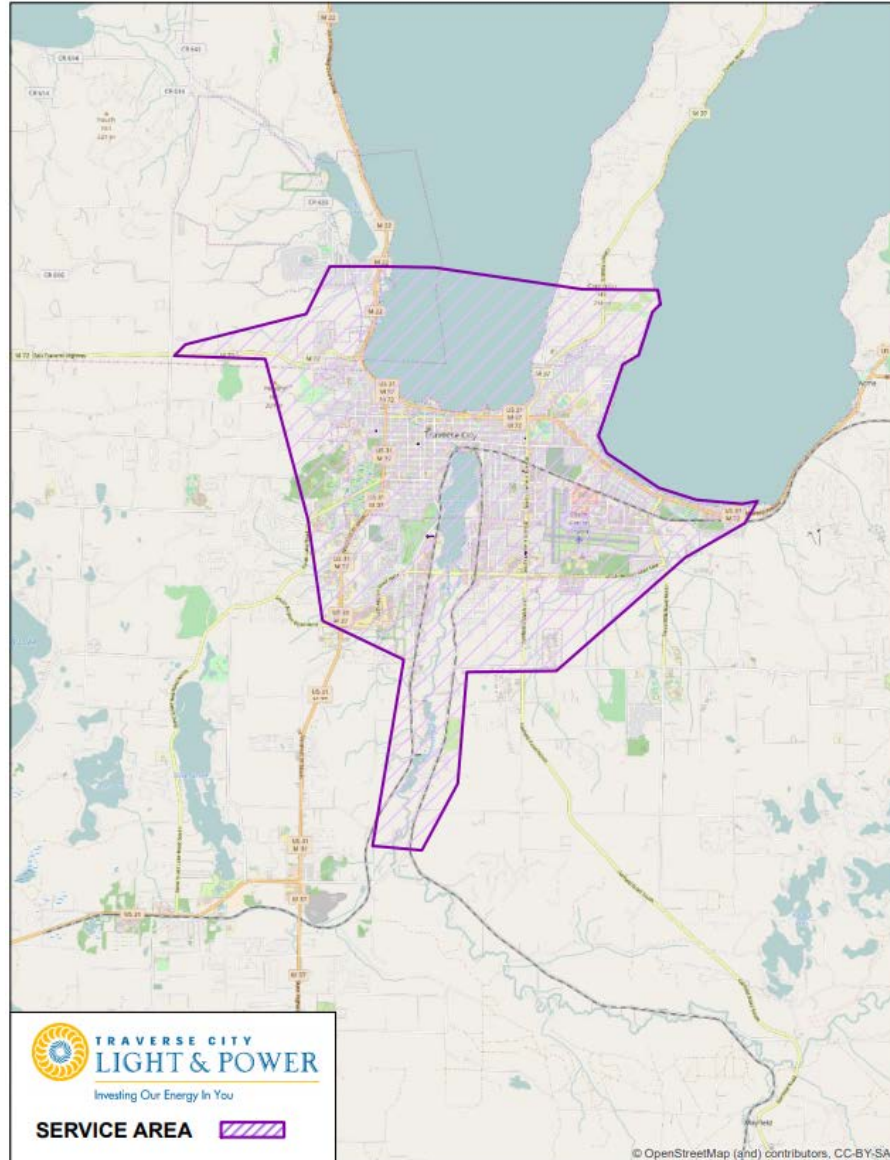
2.2. TCLP Renewable Resources

TCLP renewable energy experience includes the ownership and long-term power purchase agreements listed below:

Renewable Project	Type	Size (MW)
Current		
Landfill Gas – Several Facilities in SW MI	PPA	1.5
Wind – Stoney Corners Wind Farm	PPA	10.2
Wind – M-72 Wind	PPA	0.6
Solar – M-72 Solar	PPA	1
Solar – Community Solar	Leased	0.3
In Development		
Wind – Tuscola County, MI	PPA	3.6
Solar – Calhoun County, MI	PPA	11
Solar – Shiawassee County, MI	PPA	18.6

2.3. TCLP Service Territory

TCLP provides electricity to the City of Traverse City and surrounding cities and townships. Below is a map of the service territory. This project will have to be interconnected with either Consumers Energy or Cherryland Electric Cooperative. Exhibit D is provided to show the location of utility lines on the property for each respective utility.



3. Scope of RFP

3.1. Description of Projects

TCLP is accepting proposals for the following renewable energy project. Projects submitted may be solar or solar plus storage.

3.1.1. Solar Project on TCLP Provided Site

TCLP is seeking a proposal for a small scale utility solar project. Site details will be provided by TCLP at the Pre-Bid Meeting.

Location – Cedar Run Road – 4728 Cedar Run Road, Property Tax Id # 05-005-017-00

- **Proximity to TCLP Electric System:** There is a possibility of interconnection with either Consumers Energy 46KV or Cherryland Electric Cooperative 12.5KV. All costs relating to the interconnection must be incorporated into the proposal.
- Site investigation for constructability has not been completed yet.

PROPERTY INFORMATION

Background

The subject Cedar Run Road property is comprised of 49.5 acres located in Garfield Township, Grand Traverse County. The property was used for disposal of coal ash from the former TCLP power plant. Disposal activities ceased in 1988. In June 1994-95, TCLP permanently closed the ash disposal area by consolidation of waste, installation of a PVC cap, drainage sand, additional on-site soil, topsoil, and seeding. The entire area was graded to facilitate **improved stormwater management** (±5.5 ac.). Closure activities were documented, certified, and submitted to the Michigan Department of Environmental Quality (MDEQ) in November 1995.

As part of the work completed at that time, a **restrictive covenant (RC)** was created for the 39.5 most eastern acres of the TCLP property. The western 10 acres of the property are not subject to the existing RC. The RC states in part that filling, grading, excavation is prohibited until 50 years after completion of all landfill activity unless written authorization is obtained from the Director of Department of Environment, Great Lakes and Energy (EGLE).

Potential Future Activities

TCLP understands this property has higher potential for community use and has been evaluating options over the past year and a half for putting this property into highest and best use. Concepts considered include selling the property and making it available for development as is illustrated on the Conceptual Layout and/or pursuing installation of solar panels, if feasible and practicable, and making the balance of the property outside the cap/buffer area as identified in Conceptual Layout available for possible purchase and development. A third option is to solely pursue a solar development plan.

A **Conceptual Layout** is included as **Exhibit A**. Note that this rendering is conceptual only and not a specific development plan, however was based on interpretation of the Planned Unit Residential Development (PURD) zoning criteria. The drawing does show the approximate location of the capped disposal area plus a 100-foot buffer required in the RC. The total cap area is ± 5.3 acres.

Potential Installation of Solar Panels

Work was conducted in 2019 to collect **soil data** to facilitate a future feasibility analysis regarding installation of solar panels over the cap area. Test pits were dug at 16 locations to verify the amount of soil overlying the cap. A work plan for this activity was reviewed and approved by EGLE-MMD in August 2019. The **test pit results** were provided in a report dated October 9, 2019, **Exhibit B**.

TCLP would like to consider solar panel installation, if feasible, within the eastern 40 acres. The available acreage is roughly divided into **two areas** that are available for potential development of a solar project; **Area A ± 15.0 acres (A) and Area B ± 9.0 acres**. These are identified on the Conceptual Layout. The two areas are bisected by a potential future development/access road. Other considerations include that the integrity of the PVC cap cannot be compromised in any way. Design and type of foundations for the panels should be specified and provided by potential vendors in their bid. Lastly, in the event a vendor is selected, specific construction plans will need to be submitted to EGLE-MMD for review and approval before any proposed solar, residential, or a combined development can proceed. It will be the selected vendor's responsibility to provide the necessary plans to and obtain approval from EGLE-MMD for any solar project.

TCLP has solicited and received feedback from EGLE with the provision of a "Comfort Letter" indicating EGLE's openness to proposed alternate uses for this property including potential solar panel installations and/or housing development based on the Conceptual Plan provided. A copy of EGLE's correspondence is included as **Exhibit C**.

Zoning Considerations:

The property is located in Garfield Township and is zoned Agricultural. It will be the selected vendor's responsibility to obtain necessary zoning approval for any solar project from Garfield Township.

3.2. Acquisition Structure

TCLP will consider proposals that include one or more of the following acquisition structures, or another financial arrangement mutually agreed to by TCLP and Bidder. Bidders may propose multiple acquisition structures and terms for each Project. As a municipal utility, TCLP is seeking innovative proposals that maximize the value of the Federal Investment Tax Credit (ITC) and minimize the cost to TCLP ratepayers.

3.2.1. Build-Operate-Transfer (BOT) Option

TCLP purchases power from the renewable energy resource and has the option to acquire ownership of the project after commissioning and operation of the renewable energy resource, at or after the expiration of the Federal Investment Tax Credit.

3.2.2. Power Purchase Agreement (PPA) Option

TCLP purchases power from the renewable energy resource but does not acquire or otherwise obtain an ownership interest in the project.

3.2.3. Alternative Financing Option

TCLP plans on applying for USDA Financing for the construction costs of this project, which will provide, if awarded, construction funds. The link to the program is as follows:

<https://www.rd.usda.gov/programs-services/distributed-generation-energy-project-financing>

3.3. Required Submittals

The Bidder must submit the following information.

3.3.1. Pricing Details

There are two options for the Bidders. Bidders are requested to provide pricing on Area A and pricing on Area A and B. These areas are shown in Exhibit A.

Bidder shall bid an all-in price for the capacity, energy and environmental attributes, including but not limited to RECs and carbon offsets, per MWh and identify any escalator, and explain how the escalator will be applied. The bidder is also advised to provide a levelized price for the term of the PPA. Prices shall be considered firm.

Bidders may submit multiple levelized and/or escalating prices for the Project. Finally, TCLP will accept alternate pricing for different commercial operation dates if the Bidder is looking to optimize the development timeframe to minimize cost for TCLP ratepayers. Commercial Operation Dates of 2021, 2022, and 2023 will be accepted.

The price must include all capital costs, fixed and variable O&M costs, and any other costs associated with delivering capacity, energy and environmental attributes to the Point of Delivery, including curtailment, congestion and MISO charges, if applicable.

The bidder shall provide a pricing adder for transformations and interconnection at a price per \$50,000.

The bidder shall provide a pricing for property taxes as a separate price per MWh.

The bidder shall also identify any other costs, if any, associated with delivering capacity, energy and environmental attributes to the Point of Delivery, not included in the price provided above.

Commercial Operation Date

The Bidder must provide the commercial operation date of the project. The Commercial Operation Date (COD) means the date that the Project commences commercial operations in accordance with the requirements of the construction contracts, the interconnection agreement and the Purchasing Structure.

Commercial Operation Dates in the years of 2021, 2022, and 2023 will be accepted.

3.3.2. Project Size

The Bidder shall provide the nameplate DC MW and AC MW size of the Projects.

3.3.3. Energy Production Profile

The Bidder shall provide an 8,760-hourly energy production profile for a typical calendar year. Proposals should be adjusted for long-term solar radiation profiles in the Project area(s). This item must be submitted in MS Excel (*.xls or *.xlsx) format. Proposals shall also include the projected annual and monthly energy production totals across a range of analyzed probabilities, including P10, P50, and P90. Finally, the Bidder shall propose the total energy supply amount over the life of the Project.

3.3.4. Term of Agreements

The Bidder shall specify the term of the agreement. TCLP anticipates the acquisition structures proposed by the Bidder may include varying length of agreements up to 25 years but alternative terms will be considered if Bidder is looking to minimize cost for TCLP ratepayers.

3.3.5. Project Description

The Bidder is to provide TCLP a description of the project. This description shall include the following:

- Production schedule in a detailed Gantt chart of project development activities, including major milestones
- Project layout rendering including other noteworthy facilities nearby
- Existing or proposed interconnection agreements
- Environmental review of the site showing agricultural use, wetlands, streams, drains, woodlots, occupied structures, any other items of concern
- Significant Licenses and permits required to construct and operate the Renewable Energy Project
- Process of EGLE granting the project
- Zoning approval from Garfield Township
- Type of equipment to be used at site including panels, inverters, and step-up transformers; include expected service life of equipment along with warranty terms
- Description of metering equipment, description of communication network

- (through TCLP fiber network) of readings both to the BIDDER and TCLP.
- Projected forced outage rate
 - Any programs to engage neighbors of the site to minimize neighborhood concerns
 - Anticipated vegetation management program, bearing in mind site location

3.3.6. Bidder Qualifications

The Bidder shall provide qualifications information, including:

- Experience with projects in Michigan
- Experience with projects in MISO
- Projects completed or in development similar to their proposal
- Resumes and experience of proposed project team

3.3.7. Financial statements

The Bidder shall submit sufficient financial documentation to assure project completion and ongoing maintenance of the project. This should include:

- Complete name and description of bidder and affiliated companies, if part of a larger entity
- Name of officers of the organization or general partner
- Description of the financial structure of the company
- Evidence of ability to obtain financing for the project, including interconnection costs, and general description of financing structure
- Audited financial statements for the bidder for the past two years
- Other information that the bidder may determine appropriate.

4. Other Information

4.1. Michigan Qualified Renewable Energy

The Renewable Energy Resources proposed by the Bidder will be required to qualify as a Renewable Energy System as defined in Public Act 295 of 2008 as amended by Public Act 342 of 2016.

4.2. Location and Delivery

Renewable Energy Resources shall be interconnected to the corresponding utilities mentioned above. Hourly real-time generation should be provided to TCLP and Michigan Public Power Agency at no additional expense.

4.3. Renewable Energy Credit Registration

The Bidder shall include in their Proposal whether the Bidder or TCLP is responsible for registering the Project with Michigan Renewable Energy Credit System (MIRECS). The Bidder shall cooperate with reasonable requests from TCLP to accommodate verification or documentation needs emanating from any TCLP marketing of

environmental attributes. Bidder's cooperation would include documentation to substantiate the percentage of Michigan material and labor used in the Solar Project.

**Proposal Form
Renewable Energy Resources**

Provide the following business and contact information:

Legal Name:		Federal ID or Social Security Number:
Address:		State of Incorporation
City:	State & Zip:	Primary E-Mail:
Type of Organization: <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> LLP <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> S-Corporation <input type="checkbox"/> Other (Explain)		
Office Phone:	Alternate Office Phone:	Office Fax:
Primary Contact:	Contact Phone:	Contact Fax:
Contact Mobile:	Contact E-Mail:	Website URL:

Provide responses to the following questions:

How many years has your firm been in business under the present ownership?	
Have you done business with TCLP? If so, furnish specifics.	
Have you done business with the City of Traverse City? If so, furnish specifics.	
Have you ever defaulted on a contract or been involved in litigation with TCLP or the City of Traverse City? If so, furnish specifics.	
Have you ever defaulted on a contract or been involved in litigation with any other client in the past five years? If so, furnish specifics.	
List any relationships between your firm's staff and any current TCLP employee.	
Specify your background, training, experience, credentials and other factors which qualify you to perform the work described in the Scope of Work included in this Request for Proposal.	
List at least three (3) references for similar work you have performed for other clients. Include Client name, contact name, title and phone number.	
List subcontractors that you plan to use on this project.	
Include any additional information you may deem helpful in evaluating your proposal.	

Indicate any exceptions to the enclosed model agreements	Yes___or No___(✓). If YES, Contractor must provide editing on the TCLP Terms and Conditions document only. Any submission of, or general references to Contractor Terms and Conditions in its entirety anywhere within the proposal will invalidate the proposal.
--	---

Provide pricing:

Complete and sign this Proposal Form. Enter pricing in the “Proposal Submission Form” spreadsheet.

The undersigned bidder hereby acknowledges receipt of the following addenda:

					Enter addenda numbers if applicable
--	--	--	--	--	-------------------------------------

The undersigned bidder states that this proposal is made in conformity with the Proposal Documents and agrees that, in the event of any discrepancies or differences between any conditions of their proposal and the Proposal Documents, the provisions of the latter shall prevail. No verbal or written agreements or understandings considered or entered into prior to signing of a contract in the form of a purchase order, shall be binding after the signing of the contract unless incorporated in the contract.

The undersigned bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons submitting proposals for the work.

Company Name:
Signature:
Name:
Title:
Date:

END OF PROPOSAL FORM

Proposal Submission Form

1. Summary Proposal Information:

- a. Bidder's Company Name: _____
- b. Project Name: _____
- c. Resource Type: _____
- d. Proposed Contract Capacity (MW): _____
- e. Annual Generation, 1st Year (MWh): _____
- f. Proposed Start Date of Energy Deliveries: _____
- g. Proposed Contract Term/Length (Yrs): _____
- h. Interconnection Application Type: _____
- i. Proposed Pricing (\$/MWh)(break out energy/interconnection and property taxes separate) – _____

	COD 2021			COD 2022			COD 2023		
Area A	Energy	Interconnection	Property Taxes	Energy	Interconnection	Property Taxes	Energy	Interconnection	Property Taxes
0% Escalation									
_____% Escalation									
_____% Escalation									
Area A and B									
0% Escalation									
_____% Escalation									
_____% Escalation									

2. Proposer Contact Information:

a. Primary Contact Person:

b. Title:

c. Email Address:

d. Phone Number:

e. Street Address:

f. City, State, ZIP:

3. Project Ownership:

Please describe the project business structure and provide a list of the project owners (and ownership shares).

Also please identify the role(s) each entity will play in the various phases of the project (development/construction/operations).

Please use the space to the right and expand as necessary.

--

4. Proposal Summary:

Please provide a proposal summary of no more than 300 words.

Please use the space to the right and expand as necessary.

--

5. Generation Firmness & Dispatchability:

a. Check one of the following:

System Firm Energy

Firmed Intermittent Energy

Unit Contingent Firm Energy

As Available Energy (Non-Firm)

b. Check one of the following as applicable:

Baseload

Dispatchable

Intermittent

Intermittent with Firming

6. Additional Project Details:

- a. What is the facility's original/expected COD? _____
- b. Describe the delivery point/busbar location, including MISO P Node if project is located outside TCLP's service territory. _____
- c. What is the interconnect voltage? _____
- d. Describe the interconnection path to TCLP's system _____
- e. What is the estimated total cost (\$/MWh) to interconnect project to TCLP's system? (\$/MWh adder year 1) _____
- f. Does the facility have the capability to add a battery storage unit at a later date? Please explain as necessary. _____
- g. Describe the major facility components, including manufacturer name and model information if available (*expand cell at right as necessary*). _____

7. Project Milestones & Viability:

Please respond to the project survey questions in the "Project Viability" tab of this file.

8. Bidder's Legal/Financial Information:

- a. Company's Legal name: _____
- b. Contact Person in Regard to Credit: _____
 Contact Information: _____
- c. Legal Status (check one):

Federal or State Government
Municipality
Joint Action Agency
Independent Power Producer
Not for Profit Cooperative
Investor Owned Utility
Power Marketer
Other (specify)
- d. Web site for publicly available financial data: _____
- e. Credit Ratings _____

(Provide analyst report or web address)

Standard & Poors

Moodys

Fitch

f. Describe the nature & amount of any parent guarantees or other credit support the Bidder will provide.

g. Provide entity's:

1. Federal Tax Identification Number

2. DUNS number

9. Additional Information

a. Will you give TCLP the option to extend the length of the contract term?

b. If yes, for what additional period of time?

c. If yes, what price do you propose for the extension term period?

d. Identify any key contingencies that may affect project pricing, timing, or general viability.

e. Explain assumptions for financing

f. Provide any additional pertinent information that was not expressly requested but may be critical to the TCLP's understanding of the project.

END OF PROPOSAL SUBMISSION FORM

❖ IRAN ECONOMIC SANCTIONS ACT

Sworn and Notarized Affidavit of Compliance
Iran Economic Sanctions Act
Michigan Public Act No. 517 of 2012

All bidders must submit the following certification statement in compliance with Public Act No. 517 of 2012 (the “Iran Economic Sanctions Act”) and attach this form to the bid. **Traverse City Light & Power shall not accept any bid that does not include this sworn and notarized certification of statement.**

The undersigned, the owner or authorized officer of _____ (the Bidder), hereby certifies, represents and warrants that the Bidder (including its officers, directors and employees) is not an “Iran linked business” within the meaning of the Iran Economic Sanctions Act, and that in the event the Bidder is awarded a contract for the Renewable Energy Resources, the Bidder will not become an “Iran linked business” at any time during the course of performing the work or any services under the contract.

The Bidder further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification is made, whichever is greater, the cost of Traverse City Light & Power’s investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a Request for Proposal for 3 years from the date it is determined that the person has submitted the false certification.

BIDDER

By: _____
Its: _____
Date: _____

STATE OF _____)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, _____, by _____.

_____, Notary Public
_____ County, _____
My Commission Expires: _____
Acting in the County of: _____

CONFIDENTIALITY AGREEMENT – DURING PUBLIC PROCUREMENT PROCESS

In consideration of the opportunity to have necessary and relevant information for the purposes of preparing a proposal and competing for a contract award, the sufficiency of which is acknowledged, Recipient, _____, agrees to keep certain information confidential, as follows:

- 1.) Confidential information is all information provided to the Recipient that is noted and clearly labeled confidential or proprietary. Oral or electronic information is also confidential if it is subsequently reduced to writing and marked as such. Information is not confidential if it is (a) publicly disclosed by Traverse City Light & Power (TCLP) through no act of Recipient, (b) received by Recipient from a third party who has the right to provide it, or (c) independently developed or known by Recipient before receipt.
- 2.) Recipient will keep the confidential information in confidence and, except as expressly provided in this or another agreement between the parties, will not disclose it to anyone without TCLP's prior written consent, or as otherwise required by law. Recipient will use its best efforts to avoid disclosure, dissemination, or unauthorized use of the confidential information, including limiting disclosure of the information to those of its employees having a need to know. Recipient will further advise those employees of the obligations of this agreement. Recipient will protect the information with the same degree of care that it uses with its own information of like importance, but in no event with less than a reasonable standard of care.
- 3.) If Recipient becomes legally obligated to disclose confidential information, Recipient will provide TCLP prompt written notice so as to allow TCLP the opportunity to protect against the disclosure. Recipient will only disclose such information as is legally required and will use its reasonable best efforts to obtain confidential treatment for any confidential information so disclosed.
- 4.) Recipient shall promptly return all tangible material embodying confidential information (in any form including, without limitation, all summaries, copies, and excerpts of confidential information) upon the earlier of (a) the completion or termination of the procurement consideration between the parties or (b) TCLP's written request.
- 5.) This confidentiality agreement shall survive the termination of any other agreement between the parties for a period of two years thereafter. To the extent there is no subsequent agreement follows, this confidentiality agreement shall last for approximately 6 years following the date of this agreement.

Dated: _____

By: _____

Name and Title

**MODEL PURCHASE POWER AGREEMENT
(FOR INFORMATIONAL PURPOSES ONLY)**

_____ COUNTY, MICHIGAN
SOLAR ENERGY FACILITY

POWER PURCHASE AGREEMENT

between

as Buyer

and

as Seller

dated as of

_____, 2020

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Exhibit A	Contract Rate
Exhibit B	Description of Delivery Point and One-Line Diagram
Exhibit C	Description of the Solar Project
Exhibit D	Construction Milestones
Exhibit E	Form of Seller Guaranty
Exhibit F	Estimated Annual Production

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “Agreement”) is made as of this _____, 2020 (the “Effective Date”), by and between _____, a _____, formed under the laws of the State of Michigan (“Buyer”), and _____, a _____ limited liability company (“Seller”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Seller is developing a solar electric generation facility (as described in Exhibit C), known as the _____ (“Solar Project”), of approximately (_____) MW aggregate capacity on a site or sites located in Grand Traverse County, Michigan; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase and receive, all of the capacity, electric energy and environmental attributes from the Solar Project on the terms and conditions set forth herein.

WHEREAS, Seller was the successful bidder or proposer under the Request for Proposals Renewable Energy Resources Traverse City Light & Power issued 8/31/2020 (RFP);

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 *Definitions*

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement shall have the meanings specified in this Article 1; (ii) the singular shall include the plural and vice versa; (iii) references to “articles,” “sections,” “schedules,” “annexes,” “appendices” or exhibits” (if any) shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (v) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; and (viii) the masculine shall include the feminine and neuter and vice versa. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

“Affiliate” shall mean, with respect to any Person, (i) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person; (ii) any Person that beneficially owns or holds ten percent (10%) or more of any class of voting securities of such designated Person or ten percent (10%) or more of the equity interest in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds ten percent (10%) or more of the equity interest. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operation and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. The directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers of Buyer shall not be considered Affiliates of Buyer for any purpose under this Agreement.

“After-Tax Basis” shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in Michigan and shall take into account the deductibility (for Federal income tax purposes), if any, of state and local income taxes.

“Agreement” shall have the meaning set forth in the first paragraph hereof.

“Applicable Law” shall mean, with respect to any Person or the Solar Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives and requirements of all Governmental Authorities, in each case applicable to or binding upon such Person or the Solar Project (as the case may be).

“Applicable Program” means a mandatory or voluntary domestic, international or foreign renewable portfolio standard, renewable energy, or other program, scheme or organization, with respect to a market, registry or reporting for Environmental Attributes or RECs in the State of Michigan or that is designated by the Buyer pursuant to **Section 2.11**.

“Back-Up Meter” has the meaning set forth in **Section 4.1(a)**.

“Bankruptcy Event” shall mean, with respect to a Person, that such Person: (a) files a petition or otherwise commences, or authorizes the commencement of, a proceeding or cause under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; (b) has such a petition filed or proceeding commenced against it, which remains undismissed for ninety (90) days; (c) files an answer or pleading admitting or failing to contest the material allegations of any

such petition; (d) takes any action for its winding up, liquidation or dissolution; (e) is otherwise adjudged bankrupt or insolvent under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; or (f) consents to any of the actions described in clauses (a) through (e) of this definition being taken against it.

“Billing Meter” as the meaning set forth in **Section 4.1(a)**.

“Business Day” shall mean every Day other than a Saturday or Sunday or any other day on which banks in the State of Michigan are permitted or required to remain closed.

“Buyer” shall have the meaning set forth in the first paragraph of this Agreement.

“Buyer Condition Satisfaction Date” shall have the meaning set forth in **Section 3.3(a)**.

“Buyer Condition Satisfaction Notice” shall have the meaning set forth in **Section 3.3(a)**.

“Capacity Rights” means any current or future defined characteristic, certificate, benefit, product, tag (but not RECs), credit, attribute, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, or any rights conferred by MISO such as capacity injection rights associated with the electric generation capability and capacity of the Solar Project or the Solar Project’s capability and ability to produce energy, including the kW quantity value accredited to the Solar Project by MISO as a Planning Resource, as that term is defined in the Tariff. Capacity Rights do not include any investment tax credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Solar Project

“Commercial Operation” means that the Solar Project is fully operational at not less than ninety (90%) of Expected Capacity and the Solar Project is fully interconnected, fully integrated, and synchronized with the Transmission System, and which occurs when all of the following events have occurred:

- (i) the Solar Project has been permanently constructed, synchronized with and has delivered electrical output to the Transmission System;
- (ii) the Interconnection Facilities have been completed, and Seller has received a permission to operate letter or similar document from the Transmission Provider;
- (iii) Seller has delivered to Buyer a certificate reflecting the insurance coverage or policies required to be carried by Seller by Section 6.2.

Seller shall provide written notice to Buyer when the Solar Project has achieved Commercial Operation and, if Buyer does not respond or notifies Seller confirming that the Solar Project has achieved Commercial Operation within ten (10) Business Days after receiving such notice, the original date of receipt of Seller’s notice shall be the Commercial Operation Date.

“Commercial Operation Date” or **“COD”** means the Day on which Commercial Operation begins.

“Commercial Operation Milestone Date” means _____ or such later date as provided in this Agreement, including **Section 2.3**.

“Confidential Information” shall have the meaning set forth in **Section 9.1**.

“Construction Milestone” has the meaning given thereto in **Exhibit D**.

“Contract Rate” shall have the meaning set forth in Section 2.2(a).

“Contract Year” means each calendar year during the Term, commencing the calendar year in which the COD occurs.

“CPNode” means a Commercial Pricing Node as such term is defined by the MISO Tariff.

“Curtailed Event” has the meaning set forth in **Section 2.9**.

“DAS” means the data acquisition system or system control and data acquisition (SCADA) system that is incorporated into the Solar Project.

“Day” shall mean a period of twenty-four (24) consecutive hours beginning at 00:00 hours Eastern Time on any calendar day and ending at 24:00 hours Eastern Time on the same calendar day.

“Delay Damages” has the meaning given thereto in Section 2.3.

“Delivery Point” shall mean the point, more specifically described in **Exhibit B**, at which the Seller’s Interconnection Facilities connect to the Transmission Provider’s Interconnection Facilities.

“Development Security” is defined in Section 3.6(a).

“Disclosing Party” shall have the meaning set forth in Section 9.1.

“Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

“Emergency” means, regardless of whether communicated directly to Seller or indirectly to Seller through Buyer or otherwise, (i) any Emergency Condition (or similar successor term), as defined by the Tariff or the Interconnection Agreement, or (ii) a transmission system condition identified by MISO, the Transmission Owner (via its transmission operator) or any Governmental Authority, including a system reliability condition related to endangering life, property or public safety or the ability to maintain safe, adequate, continuous and reliable electric service, and that, in order to achieve the same, a curtailment of the Solar Project or firm transmission service that reduces or precludes delivery of Energy to or from the Delivery Point is required and requested by MISO, the Transmission Owner (via its transmission operator) or any Governmental Authority.

“Energy” shall mean electric energy output of the Solar Project, measured and recorded by the Meters used for settling energy in the MISO market, that shall exclude the electric energy

consumed by the Solar Project and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

“Environmental Attributes” means any and all environmental characteristics, environmental claims, environmental credits, environmental benefits, environmental emissions reductions, environmental offsets, environmental allowances and environmental allocations, existing now or in the future, howsoever characterized, denominated, measured or entitled, attributable to the capacity or generation of the Solar Project. Environmental Attributes include but are not limited to: (i) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO), carbon monoxide (CO), particulate matter and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs; and (iv) all credits, certificates, registrations, recordations or other memorializations of whatever type or sort, representing any of the above, including but not limited to all RECs. Environmental Attributes do not include (a) any energy, capacity, reliability or other power products, such as Capacity Rights, or (b) federal, state or local tax credits, incentives, subsidies or financial grants of any type.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Solar Project site will not be available or usable for the purposes contemplated by this Agreement.

“Estimated Annual Production” means the estimates of the annual production of the Solar Project for each year after COD set forth in **Exhibit F**, which shall reflect, among other things, annual equipment degradation.

“Event of Default” shall have the meaning set forth in Section 3.4(a).

“Expected Capacity” means as of the Effective Date [_____] MW(AC), which capacity will decline over the life of the Solar Project.

“FERC” shall mean the Federal Energy Regulatory Commission and its predecessor and successor agencies.

“Forced Outage” means any condition at the Solar Project that requires immediate removal of the Solar Project, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Solar Project conditions and/or alarms.

“Force Majeure Event” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure Event. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance;

military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, curtailment of Solar Project production (including a Curtailment Event) by any Governmental Authority, MISO or any interconnecting utility, or MISO, outside of the control of the Party claiming Force Majeure Event; and failure of equipment not utilized by or under the control of the Party claiming Force Majeure Event.

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

“Hazardous Materials” means any substance, material, liquid, gas, or particulate matter that is regulated by any local, state or federal Governmental Authority, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, surface water, groundwater, and air, including, but not limited to, any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6901); (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. (7 U.S.C. §136).

“Independent System Operator (ISO)” means an organization which coordinates, controls and monitors the operation of the wholesale electrical power system.

“Interconnection Agreement” shall mean the mutually agreed interconnection agreement among the Transmission Owner, the Transmission Provider and Seller pursuant to which the Transmission Owner Interconnection Facilities will be connected to the Solar Project. For the avoidance of doubt, Interconnection Agreement shall include any “temporary” or “provisional” interconnection agreement, as permitted in the Tariff.

“kW” shall mean a kilowatt of Energy or capacity.

“kWh” shall mean a kilowatt hour of Energy.

“Late Payment Rate” shall have the meaning set forth in Section 2.7(c).

“Lender” or “Lenders” shall mean any and all Persons or successors in interest thereof (A) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing or credit derivative arrangement) to Seller or to an Affiliate of Seller, including but not limited to: (i) for the construction, interim or permanent financing or refinancing of the Solar Project; (ii) for working capital or other ordinary business requirements of the Solar Project (including the maintenance, repair, replacement or improvement of the Solar Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Solar Project; (iv) for any capital improvement or replacement related to the Solar Project; or (v) for the purchase of the Solar Project and the related rights from Seller; and/or (B) participating (directly or indirectly) as an equity investor in the Solar Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Solar Project; and/or (C) participating as lessor under a lease finance arrangement relating to the Solar Project.

“Locational Marginal Price” or “LMP” means the MISO Michigan Hub price of energy for a given hour referred to as the Locational Marginal Price as set forth in the Tariff.

“Market Participant” shall mean Buyer, or any Person authorized by Buyer to act on Buyer’s behalf or as its registered agent in MISO, or its successor entity who meets the definition of “Market Participant” under MISO or its successor entity.

“MDEQ” shall mean the Michigan Department of Environmental Quality and its predecessor and successor agencies.

“MECT” shall have the meaning set forth in Section 2.11(b).

“MISO Michigan Hub” or “MICH Hub” means the aggregated CPNode defined by MISO as the MISO Michigan Hub.

“Meter” shall mean an instrument and associated equipment meeting applicable electric industry standards used to measure and record the quantity and the required delivery characteristics of Energy and Capacity Rights delivered hereunder.

“Metered Energy” means the hourly Energy output of the Solar Project as measured at the Billing Meter and submitted by Buyer to MISO, unless there is a malfunction or inaccuracy of the Billing Meter pursuant to **Section 4.1**, in which event, “Metered Energy” shall be the Energy output of the Solar Project for the measurement period determined in accordance with **Section 4.2**.

“MISO” shall mean the Midcontinent Independent System Operator, its successors or assigns, or any similar entity or power system regional reliability authority that in the future may replace MISO with respect to all or a substantial part of its current responsibilities.

“MW” shall mean a megawatt of Energy or capacity.

“**MWh**” shall mean a megawatt hour of Energy.

“**MPSC**” shall mean the Michigan Public Service Commission and its predecessor and successor agencies.

“**Network Resource Integration Service**” shall have the meaning set forth in the Transmission Provider tariff [and business practices manuals].

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

“**Offer**” shall have the meaning set forth in the Transmission Provider tariff, or similar rules regulating the Energy market, if any.

“**Operating Day**” shall have the meaning ascribed to such term in the Tariff or related documents, as such relevant meaning or relevant term may be modified from time to time.

“**Operating Procedures**” shall have the meaning set forth in Section 2.13.

“**Parties**” shall have the meaning set forth in the first paragraph of this Agreement.

“**Party**” shall have the meaning set forth in the first paragraph of this Agreement.

“**Person**” shall mean an individual, partnership, corporation, business trust, jointstock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

“**Prime Rate**” shall mean the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by JPMorgan Chase Bank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

“**Prudent Operating Practices**” shall mean the practices, methods and standards of professional care, skill and diligence generally recognized by a significant portion of the electric generation industry for operating facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection, and standards of economy and expedition.

“**Renewable Energy Credits**” or “**RECs**” means any and all credits, certificates, renewable energy certificates, allowances, or similar rights, however entitled, that are related to Environmental Attributes of the Solar Project that could or do qualify for application towards compliance with any Applicable Program. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh of electricity.

“Receiving Party” shall have the meaning set forth in Section 9.1.

“Seller” shall have the meaning set forth in the first paragraph of this Agreement.

“Seller Condition” shall have the meaning set forth in **Section 3.3(b)**.

“Seller Condition Satisfaction Date” means March 31, 2020 plus the number of Days by which the Commercial Operation Milestone Date is extended in accordance with this Agreement.

“Seller’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities, supplied by Seller and required to connect the Solar Project with the Transmission Owner Interconnection Facilities to, and on Seller’s side of, the Delivery Point.

“Site” shall mean the real property located in _____ County, Michigan on which the Solar Project is to be located, as specified in **Exhibit C** of this Agreement.

“Solar Project” shall mean Seller’s proposed solar electric generating facility used to generate electricity utilizing renewable solar power from the Modules located at the Site, including Seller’s Interconnection Facilities and any and all additions, replacements or modifications, as more particularly described in **Exhibit C**.

“Tariff” means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for MISO, including the rules, protocols, procedures and standards attached thereto, or any tariff of any successor Independent System Operator, any Independent System Operator or any other wholesale market the Buyer may join, as the same may be amended or modified from time-to-time and approved by FERC.

“Tax Credits” means any and all (i) investment tax credits, including the federal investment tax credit equal to thirty percent (30%) of the Solar Project value as of the Effective Date; (ii) production tax credits, (iii) any property tax or other tax abatement or exemption, (iv) beneficial tax attributes applicable to the Solar Project or the owner of the Solar Project, including 100% expensing of the Solar Project value, and (v) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the Solar Project.

“Term” shall have the meaning set forth in Section 3.1.

“Transmission Owner” shall mean _____, or any successor thereto.

“Transmission Owner Interconnection Facilities” shall mean the interconnection facilities, transmission lines, control and protective devices and metering facilities, supplied by Transmission Owner and required to connect the Solar Project to the Transmission System.

“Transmission Provider” shall mean MISO or any successor in interest with respect to the Transmission System.

“*Transmission System*” shall mean the facilities included in and subject to the MISO open access transmission tariff which transmit Energy from the Transmission Owner Interconnection Facilities into the MISO wholesale electricity market.

ARTICLE 2 SALE AND PURCHASE OF ENERGY

2.1 *Purchase and Sale.*

(a) Purchase and Sale Obligations. In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date and continuing through the remainder of the Term, Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, all of the Energy delivered to the Delivery Point during each hour, transferring such Energy from Seller to Buyer (“*Metered Energy*”) by allowing Buyer, as MISO Market Participant, to submit such Metered Energy to the market and to be compensated by the market accordingly, (ii) sell and deliver to Buyer Environmental Attributes associated with such Metered Energy, in accordance with Section 2.6, and (iii) allocate to Buyer Capacity Rights from the Solar Project in an amount equal to the total Capacity Rights accredited in accordance with rules therefor set forth in the Tariff.

(b) Sole Compensation. The Contract Rate shall be Seller’s sole and exclusive compensation for the Energy, Capacity Rights and Environmental Attributes delivered to Buyer hereunder.

(c) Most Favored Nation. If Seller offers a more favorable deal to a 3rd party, Buyer has the option at its sole discretion to adopt any or all of the terms of that deal.

2.2 *Contract Rate.*

(a) Buyer shall pay Seller for each MWh of Energy after the COD during the Term at the applicable rate set forth in Exhibit A (the “*Contract Rate*”). This Contract Rate includes and already incorporates (i) Energy, (ii) Capacity Rights, (iii) Environmental Attributes and a price premium for which the Seller assumes the risk and responsibility associated with permitting, environmental approvals (including environmental approvals required by the Michigan Department of Environmental Quality), engineering, construction and operation of the facilities. This assumption of risk by the Seller includes the applicability or availability of Tax Credits or any other federal or state tax credits.

(b) Other than the right and obligation to buy Energy, Environmental Attributes, and Capacity Rights from Seller in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any rights in the Solar Project in favor of Buyer, and Buyer hereby disclaims, any other right, title or interest in any part of the Solar Project.

(c) Seller shall pay, or cause to be paid, all taxes on or with respect to the production and delivery of Energy pursuant to this Agreement arising prior to the Delivery Point (including taxes related to the ownership and/or operation of the Solar Project and income derived therefrom). Buyer shall pay, or cause to be paid, all taxes on or with respect to Energy delivered pursuant to this Agreement at and from the Delivery Point (including all sales, use, excise or other similar taxes on the purchase from Seller). Each Party shall use commercially reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize all taxes so long as neither Party is materially adversely affected by such efforts.

2.3 *Construction of the Solar Project.*

(a) Seller shall use commercially reasonable efforts to achieve the Construction Milestones set forth in Exhibit D and cause the Commercial Operation Date to occur no later than the Commercial Operation Milestone Date. Construction and operation shall be in strict compliance with the RFP and proposals submitted by Seller.

(b) In the event that the Commercial Operation Date does not occur on or prior to the Commercial Operation Milestone Date, subject to extension as provided in Section 2.3(b)(iii), Seller shall pay damages to Buyer on account of such delay (“Delay Damages”) as specified below; provided, however, that in no event shall the aggregate amount of Delay Damages payable by Seller exceed \$____.

(i) Seller shall pay Delay Damages in an amount equal to \$____ per Day.

(ii) Delay Damages shall begin to accrue on the day after the Commercial Operation Milestone Date and shall continue to accrue until the Commercial Operation Date is achieved or until this Agreement is terminated pursuant to Section 3.4, subject to the aggregate limitation provided for above. Delay Damages shall be payable in lieu of actual damages accrued for the period during which Delay Damages are assessed. The Parties acknowledge that the Delay Damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the foregoing liquidated damages constitute a reasonable approximation of the harm or loss, and not a penalty. All Delay Damages shall be cumulative.

(iii) The Commercial Operation Milestone Date shall be extended as necessary, up to _____, if Seller has not obtained an executed Interconnection Agreement and all zoning approvals, environmental approvals, permits and other governmental approvals necessary to construct and operate the Solar Project in the manner contemplated by this Agreement notwithstanding Seller’s commercially reasonable efforts. Seller shall keep Buyer apprised of the construction progress. Seller shall notify Buyer as soon as possible of the need to extend the Commercial Operation Milestone Date.

(c) In the event that the Commercial Operation Date does not occur on or prior to the date 30 calendar days after the Commercial Operation Milestone Date, subject to extension as provided in Section 2.3(b)(iii), Buyer shall have the absolute and unconditional right, but not the obligation, to terminate the Agreement upon ten (10) Business Days prior written notice to Seller. Except as otherwise provided in this Section 2.3(c), Buyer’s right to terminate the Agreement pursuant to

this Section 2.3(c) shall not be affected, diminished or modified, by any pre-Commercial Operation Date Force Majeure Events that may affect Seller; provided, Buyer's termination right pursuant to this Section 2.3(c) shall expire on the Commercial Operation Date. If Buyer terminates the Agreement pursuant to this Section 2.3(c) due to Seller's failure to achieve the Commercial Operation Date, then:

(i) Seller shall pay Buyer Delay Damages through the effective date of termination, subject to the limit thereon provided for in Section 2.3(b), to the extent such Delay Damages have not been previously paid by Seller, and

(ii) Such termination and right to the payments described in Section 2.3(b) shall be Buyer's sole and exclusive remedy for Seller's failure to achieve Commercial Operation of the Solar Project for reasons other than Force Majeure.

2.4 ***Buyer's Failure to Accept Delivery of Energy.***

In the event that Buyer fails to submit all of the Metered Energy to MISO tendered at the Delivery Point by Seller that Buyer is obligated to receive and purchase as provided herein for any reason other than a Force Majeure Event that prevents such acceptance pursuant to **Section 8.1** or the proper exercise by Buyer of its suspension rights pursuant to **Section 3.4(c)(ii)**, then Buyer shall pay to Seller as liquidated damages an amount equal to the Contract Price for the Energy tendered, but not received by Buyer.

2.5 ***Seller's Failure to Deliver Energy.***

From and after the COD during the Term, it shall constitute a default by Seller under Section 3.4(a) if Seller delivers Energy, Capacity Rights, or Environmental Attributes produced by or derived with respect to the Solar Project to any Person, other than Buyer pursuant to this Agreement.

2.6 ***Offsets, Allowances and Environmental Attributes.***

(a) Buyer shall be entitled to all Environmental Attributes resulting from the electric generation of Energy actually purchased by Buyer pursuant to this Agreement. Buyer shall not be entitled to any Environmental Attributes resulting from the generation of Energy that Buyer, for any reason, does not accept and purchase under this Agreement.

(b) To the extent necessary, Seller shall assign to Buyer all rights and authority necessary for Buyer to register, hold, and manage such Environmental Attributes in Buyer's own name and to Buyer's account, including any rights associated with any renewable energy information or tracking system that may be established with regard to monitoring, tracking, certifying, or trading such Environmental Attributes. Seller shall execute and deliver to Buyer on a quarterly basis an attestation form verifying the assignment of Environmental Attributes associated with Energy that is actually purchased by Buyer pursuant to this Agreement. To the extent Applicable by Law requires Seller (as opposed to Buyer) to apply for accreditation or verification of Environmental Attributes from the Solar Project, Seller shall make such applications upon Buyer's request and at Buyer's cost and expense. Upon request, Seller shall

provide Buyer with an estimate of the cost and expense of such application prior to making such application. Seller shall cooperate with reasonable requests from Buyer to accommodate verification or documentation needs emanating from any Buyer marketing of Environmental Attributes.

(c) Seller shall be entitled to all (i) Tax Credits and any other federal and state production tax credits, or other tax credits which are or will be generated by the Solar Project, (ii) outright grants of money relating in any way to the Solar Project or the generation of Environmental Attributes, and (iii) Environmental Attributes that the Buyer is not entitled to pursuant to the provisions of Section 2.6(a). Buyer acknowledges that Seller has the right to sell any Environmental Attributes to which it is entitled pursuant to this Section 2.6(c) to any Person other than Buyer at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer shall have no claim, right or interest in such Environmental Attributes or in any amount that Seller realized from the sale of such Environmental Attributes.

2.7 ***Billing and Payment.***

Billing and payment for (i) Energy, (ii) Capacity Rights and (iii) Environmental Attributes sold to and purchased by Buyer under this Agreement will be calculated from the product of (x) Energy received by Buyer during the applicable billing period, and the (y) Contract Rate applicable to such billing period, plus any other amounts due and payable hereunder shall be as follows:

(a) Buyer shall total and deliver to Seller the amount of Metered Energy, pursuant to Article 4, received by Buyer during the previous calendar month and no later than the tenth (10th) Day of each month and by the fifteenth (15th) Day of each month Seller shall deliver to Buyer an invoice showing the amount of Metered Energy delivered to Buyer by Seller during the preceding month (or in the case of the final Contract Year, the last calendar month or portion thereof of the Term), Seller's computation of the amount due Seller in respect thereof and any other amounts owed by one Party to the other Party pursuant to this Agreement. Not more than twenty (20) Days after receipt of each invoice (unless such Day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, irrespective of any unresolved dispute with respect to the amount set forth as due in the invoice.

(b) Not later than (1) year after delivery of any invoice under this Agreement, either Party may provide written notice to the other Party of any alleged error therein and the Parties shall meet, by telephone conference call or otherwise, within ten (10) Days of the other Party's receipt of such notice and shall engage at such meeting in good faith negotiation in an effort to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, then either Party may proceed to seek whatever remedy may be available to such Party at law or in equity.

(c) Except as otherwise provided in this Agreement, all payments hereunder shall be made without set-off or deduction. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and

including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus one and one-half percent (1.5%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law (“**Late Payment Rate**”). If, as a result of a determination or settlement in a dispute proceeding initiated to resolve a payment dispute under this Agreement, a refund is owed to Buyer, then the amount of the overpayment shall bear interest from the date on which such payment was made by Buyer through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(d) Statements or invoices shall be sent to Buyer by mail or facsimile to the address or facsimile number designated in **Section 9.4**, or in an electronic format if mutually agreed to by the Parties. Buyer may change the address or facsimile number by providing written notice to Seller as provided in **Section 9.4**.

2.8 ***Title and Risk of Loss.***

Title to and risk of loss with respect to Energy delivered to Buyer by Seller in accordance with this Agreement, and any Capacity Rights and Environmental Attributes associated with such Energy, shall pass from Seller to Buyer when the Energy is delivered by Seller for the benefit of Buyer at the Delivery Point. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to Energy passes, Buyer shall be deemed in exclusive control of such Energy and shall be responsible for any damage or injury caused thereby.

2.9 ***Curtailement.***

Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Metered Energy if such Metered Energy is not delivered to the Transmission System at the Delivery Point due to any of the following “**Curtailement Events**”: (a) the interconnection between the Solar Project and the Transmission System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Interconnection Agreement, (b) the Transmission Provider directs a general curtailement, reduction, or redispatch of generation in the area, (which would include the Metered Energy) for any reason, (c) the Solar Project's Metered Energy is not received because the Solar Project is not fully integrated or synchronized with the Transmission System, or (d) a Force Majeure Event prevents either Party from delivering or receiving Metered Energy. Seller shall have no obligation to deliver Energy to Buyer if such Energy is not delivered to the Transmission System at the Delivery Point due to any Curtailement Event.

2.10 ***Transmission.***

(a) Seller shall be responsible for interconnecting the Solar Project to the Transmission System under the rules necessary to integrate the Solar Project into the MISO market [as a “**Network Resource**” (“Network Resource Interconnection Service” associated with the delivery of Energy to the Delivery Point)], so that Seller and Buyer can perform their respective obligations hereunder. Buyer shall assist Seller with obtaining such approvals pursuant to **Section 5.4**. Seller shall be solely responsible for and shall bear all costs of negotiating, entering into, and performing under, the Interconnection Agreement, and for the design, installation, ownership, operation, and maintenance of the Seller’s Interconnection Facilities. Seller shall be responsible for all

interconnection, electric losses and ancillary service arrangements and costs required to deliver Energy from the Solar Project to the Delivery Point.

(b) Buyer shall arrange for all transmission services required to effectuate Buyer's purchase of Energy at and from the Delivery Point. Buyer shall be responsible for all electric losses, transmission and ancillary service arrangements and all other costs required to deliver the Energy to points beyond the Delivery Point and be responsible for the payment of any charges related to such transmission and interconnection services hereunder, including, without limitation, charges for transmission or wheeling services, ancillary services, balancing, control area services, congestion charges, locational marginal pricing differentials, transaction charges and line losses (on Buyer's side of the Delivery Point). Subject to **Section 2.16**, the Parties acknowledge that the Contract Rate does not include charges for any such costs, including transmission and interconnection services after Energy is delivered by Seller to the Delivery Point, all of which shall be paid by Buyer.

2.11 *Scheduling.*

(a) Throughout the Term, Buyer shall serve as the Market Participant for the Solar Project and shall be responsible for performing all obligations of a Market Participant under the Tariff. From and after the COD during the Term, Buyer, at Buyer's cost, shall register Capacity Rights in MISO's Module E capacity tracking system, or any successor system ("**MECT**") to electronically assign Capacity Rights to Buyer.

(b) Prior to the COD during the Term, Buyer shall remit to Seller all revenue received by Buyer from the MISO Real Time Energy market for Energy delivered to the Delivery Point.

(c) From and after the COD during the Term of this Agreement, Buyer shall be entitled, with no additional payment, to the Environmental Attributes. Title to the Environmental Attributes shall pass from Seller to Buyer immediately upon the generation of the electric Energy output at the Solar Project that gives rise to such Environmental Attributes. Seller shall be responsible for and take all actions necessary to (i) obtain and maintain the initial and continuing certification and registration of the Solar Project as a renewable energy facility with any Applicable Program designated by Buyer; and (ii) verify the Solar Project's output for generation of RECs. Seller shall be responsible for the payment of all associated costs related to such registration, certification and verification for Applicable Programs in Michigan designated by Buyer; and Buyer shall be responsible for the payment of all associated costs related to such registration, certification and verification for Applicable Programs outside of Michigan designated by Buyer. Upon the request of either Party, the other Party will cooperate and provide reasonable assistance, including the provision of information and records, to support the requesting Party's compliance with any informational and reporting requirements under the Applicable Program designated by the Buyer.

2.12 *Operating Committee and Operating Procedures.*

Seller and Buyer shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance of their respective obligations under this Agreement, which representatives shall constitute the Operating Committee. The Operating Committee will develop a template for written operating procedures ("**Operating Procedures**") before the

Commercial Operation Date, which Operating Procedures shall be finalized as soon as possible after the Commercial Operation Date and shall only be effective if made by mutual written agreement of Seller and Buyer. The Parties agree that the Operating Procedures will establish the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of day-to-day communications; (2) metering, telemetering, telecommunication, and data acquisition procedures; (3) key personnel lists for applicable Seller and Buyer operating centers; (4) reporting of scheduled maintenance, maintenance outages, Curtailment Events, and forced outages of the Solar Project, the Transmission Owner Interconnection Facilities and the Transmission System; (5) delivered energy reports and facility operations log; and (6) such other matters as may be mutually agreed upon by the Parties.

2.13 ***Interconnection Agreements.***

Seller shall be responsible for obtaining the Interconnection Agreement. The Seller agrees to negotiate and work in good faith to finalize and execute within _____ Days after the MISO DPP Phase I Start Date (anticipated to be on or around _____), such interconnection agreements as are required to ensure the connection of the Solar Project and the delivery of Energy, the Capacity Rights, and any Environmental Attributes from the Solar Project to and over the Transmission Owner Interconnection Facilities and the Transmission System. Buyer shall not be responsible for costs associated with the Interconnection Agreement. Seller represents that it will obtain all necessary regulatory approvals or rights, including local, state and federal approvals and environmental assessment approvals required under the MDEQ, as may be necessary for Transmission Owner or Transmission Provider to permit, construct, own, operate and maintain the Transmission Owner Interconnection Facilities and to interconnect the Solar Project to the Transmission System. Seller shall be responsible for and pay all costs incurred or committed to obtain regulatory approvals for the Solar Project, the Transmission Owner Interconnection Facilities and the interconnection with the Transmission Provider. Seller shall be responsible for costs incurred to meet regulatory and environmental requirements to interconnect the Solar Project to the Transmission System.

ARTICLE 3
TERM, TERMINATION AND DEFAULTS

3.1 ***Term.***

(a) The “***Term***” of this Agreement shall commence on the date hereof and continue until midnight on the _____ anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms hereof. Seller will give Buyer copies of certificates of completion or similar documentation from Seller’s contractor and the Interconnection Agreement with respect to the interconnection of the Solar Project to the Transmission System.

(b) The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal. If a Party desires to extend this Agreement beyond the expiry of the Term, then, not more than one hundred twenty (120) and not less than sixty (60) days before the last

day of the Term, as extended, if applicable, such Party will deliver a written extension notice to the other Party, whereupon the Parties will engage in good faith in negotiations about the extension of this Agreement. If neither Party provides a written extension notice to the other Party as required by this provision prior to the 60th day before the end of the then-current Term, this Agreement shall terminate at the end of the Term.

3.2 *Regulatory Approvals.*

(a) Following execution of this Agreement by the Parties, Buyer and Seller shall promptly seek to obtain all licenses, permits and approvals necessary to perform their respective obligations hereunder.

3.3 *Conditions Precedent*

(a) Buyer. Buyer's obligations under this Agreement are conditioned on the satisfaction or waiver by Buyer of each of the following conditions (each a "**Buyer Condition**") on or before the Buyer Condition Satisfaction Date: (i) approval from Buyer's board of commissioners of the terms of this Agreement and authorization, ratification, or confirmation by such board of commissioners of the execution and delivery of this Agreement by Buyer's authorized representatives; (ii) a letter of authorization to enter into this Agreement; and (iii) the agreement to pay, in the aggregate, no less than one hundred percent (100%) of the costs and expenses to be paid by Buyer pursuant to this Agreement. Buyer shall endeavor in good faith to secure satisfaction of each Buyer Condition. When all Buyer Conditions have been satisfied and fulfilled or waived by Buyer, Buyer will provide immediate written notice to Seller ("**Buyer Condition Satisfaction Notice**").

(b) Seller. Seller's obligations under this Agreement are conditioned on the satisfaction or waiver by Seller of each of the following conditions (each a "**Seller Condition**") on or before the Seller Condition Satisfaction Date:

- (i) (If any)

When and if the conditions in Section 3.2(b)(i) through () above have been satisfied and fulfilled or waived by Seller, Seller will provide immediate written notice to Buyer ("**Seller Condition Satisfaction Notice**").

(c) Failure of Conditions Precedent. If a Buyer Condition Satisfaction Notice is not delivered to Seller on or before the Buyer Condition Satisfaction Date, or if a Seller Condition Satisfaction Notice is not delivered to Buyer on or before the Seller Condition Satisfaction Date, then in each instance, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then: (i) if Buyer fails to deliver a Buyer Condition Satisfaction Notice by the Buyer Condition Satisfaction Date, then, during the 60-day period following the Buyer Condition Satisfaction Date, Buyer may terminate this Agreement effective ten (10) Days after delivery of a written termination notice to Seller without liability for costs or damages or triggering a default under this Agreement; (ii) if Seller fails to deliver a Seller Condition Satisfaction Notice by the Seller Condition Satisfaction Date, then, during the 60-day period following the Seller Condition

Satisfaction Date, Seller may terminate this Agreement upon ten (10) days written notice to Buyer without liability for costs or damages or triggering a default under this Agreement. Notwithstanding the first sentence of this subsection (c), Seller shall use commercially reasonable efforts to provide notice to Buyer of the failure to satisfy any Seller Condition by the relevant Estimated Date of Completion listed below:

Seller Condition	Estimated Date of Completion
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3.4 ***Defaults and Remedies.***

(a) Each of the following shall constitute an “***Event of Default***” of Seller hereunder:

(i) A failure by Seller to pay any amount due to Buyer hereunder, where such failure is not cured within thirty (30) Days of the date of written notice thereof from Buyer to Seller and the Lender;

(ii) If Seller delivers Energy, Capacity Rights, or Environmental Attributes produced from the Solar Project to any Person other than Buyer pursuant to this Agreement.

(iii) A Bankruptcy Event occurs with respect to Seller;

(iv) Seller assigns this Agreement, except as permitted in **Section 9.2**;

(v) Any representation or warranty made by Seller in this Agreement or in its proposal(s) pursuant to the RFP shall prove to have been false or misleading in any material respect when made, if Seller has failed to cure such default within ninety (90) days after the date of written notice thereof from Buyer to Seller and the Lender; or

(vi) Any other default of Seller that has a material adverse impact on Buyer if such default has not been cured by Seller within ninety (90) Days after receiving written notice from Buyer setting forth, in reasonable detail, the nature of such default and its impact on Buyer; *provided, however*, that, in the case of any such default that is not reasonably capable of being cured within the 90-Day cure period, Seller shall have additional time as necessary to cure the default if it commences to cure the default within such 90-Day cure period and it diligently and continuously pursues such cure.

(b) Each of the following shall constitute an “***Event of Default***” of Buyer hereunder:

(i) A failure by Buyer to pay any amount due to Seller hereunder, where such failure is not cured within thirty (30) Days of the date of written notice thereof from Seller to Buyer;

(ii) A Bankruptcy Event occurs with respect to Buyer;

(iii) Buyer assigns this Agreement, except as permitted in Section 9.2;

(iv) Any representation or warranty made by Buyer in this Agreement shall prove to have been false or misleading in any material respect when made, if Buyer has failed to cure such default within ninety (90) days after the date of written notice thereof from Seller to Buyer; or

(v) Any other default of Buyer that has a material adverse impact on Seller if such default has not been cured by Buyer within ninety (90) Days after receiving written notice from Seller setting forth, in reasonable detail, the nature of such default and its impact on Seller; *provided, however*, that, in the case of any such default that is not reasonably capable of being cured within the 90-Day cure period, Buyer shall have additional time as necessary to cure the default if it commences to cure the default within such 90-Day cure period and it diligently and continuously pursues such cure.

(c) Subject to the provisions of **Section 3.4(d)**, upon the occurrence of an Event of Default by a Party, the non-defaulting Party shall have the following rights:

(i) Subject to the provisions of **Section 3.4(d)**, to terminate this Agreement by providing at least sixty (60) Days prior written notice to the other Party of its intent to exercise its termination rights, unless such Event of Default is cured prior to the date of termination;

(ii) To suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the defaulting Party of its intent to exercise its suspension rights; and

(iii) To pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise.

(d) Upon the exercise of the non-defaulting Party's right to terminate this Agreement pursuant to **Section 3.4(c)(i)**, the non-defaulting Party shall be entitled to receive from the defaulting Party the following damages (on an After-Tax Basis):

(i) If Seller is the defaulting Party, the net present value (using a discount rate reasonably agreed by Buyer and Seller as of the date of determination, which shall take into account Buyer's cost of capital as of the determination date) of the sum of (X) the cost of replacement energy less the amount that Buyer would have paid hereunder for accepted Energy, (Y) the cost of replacement Capacity Rights, and (Z) the cost of replacement Environmental Attributes for the then remaining Term (each X, Y and Z reasonably determined by the Buyer and using as volume the Estimated Annual Production for the then remaining Term).period

(ii) If Buyer is the defaulting Party, and Seller terminates this Agreement, the Buyer shall pay Seller the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of twenty-one percent (21%), for the loss or recapture of (a) Tax Credits, including the investment tax credit equal to thirty percent (30%) of the Solar Project value and one hundred percent (100%) expensing at the Commercial Operation Date of the Solar Project value, (b) loss of any Tax Credits or environmental incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Buyer with a detailed calculation of such compensation if such a claim is made), (c) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate reasonably agreed by Buyer and Seller as of the date of determination of net present value, which shall take into account Seller's cost of capital as of the determination date) of the projected payments by Buyer to Seller over the Term post-termination, had the Term remained effective for the full Initial Term, and (3) any and all other amounts previously accrued under this Agreement and then owed by Buyer to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of an Event of Default by Buyer would be difficult to ascertain, and the foregoing is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.

3.5 *Specific Performance and Injunctive Relief.*

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including, but not limited to, reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

3.6 *Financial Support Obligations.*

(a) Seller shall provide to Buyer as security for the performance of Seller's obligations hereunder prior to the Commercial Operation Date

3.7 *Environmental Compliance.*

Seller shall obtain and pay for all applicable environmental permits, and other similar costs and expenses, from any Governmental Authority needed for construction, operations, and maintenance of the Solar Project. For the term of this Agreement, Seller shall be responsible for compliance with all Applicable Law in the handling of Hazardous Materials used or produced at the Solar Project. Seller agrees to indemnify Buyer in the event of Buyer becoming liable to any third party, including but not limited to the United States of America, for any claims arising from Environmental Contamination or the handling of Hazardous Materials in violation of Applicable Law at the Solar Project, by any Person that is not under the control of Buyer.

ARTICLE 4 METERING AND MEASUREMENT

4.1 *Metering Equipment.*

(a) The Meters used to measure Energy output of the Solar Project made available to Buyer by Seller under this Agreement (each a “**Billing Meter**”) shall be owned, installed, operated, and maintained in accordance with the Interconnection Agreement and the Tariff at no cost to Buyer under this Agreement. Billing Meters shall be located on the Transmission Provider’s side of the Delivery Point or on Seller’s side of the Delivery Point. In the event that such Billing Meters cannot be installed at the Delivery Point, or it is commercially unreasonable to install such Billing Meters at the Delivery Point, then the Parties shall cooperate and agree upon a methodology and process for calculating Metered Energy, which calculation shall reflect applicable line losses between the Delivery Point and the point at which such Billing Meters are installed. Seller shall provide or arrange with the Interconnection Provider to provide Buyer reasonable access to all Billing Meters as necessary for Buyer to perform its obligations under this Agreement and shall provide Buyer the reasonable opportunity to be present at any time when Billing Meters are to be inspected and tested or adjusted. Seller shall use commercially reasonable efforts to provide the capability for Buyer to remotely acquire real time data from Billing Meters. Seller shall use commercially reasonable efforts to provide Buyer with any necessary authorizations to enable Buyer to have reasonable access to Billing Meters, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access.

(b) Buyer may install a dedicated dial-up, voice-grade circuit for Buyer to access the Billing Meters. Buyer, at its own expense, may install additional check Meters.

(c) Seller, at its own expense, shall inspect and test all Billing Meters that are installed by Seller upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of and permit a representative of Buyer to witness and verify, such inspections and tests, provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller’s safety standards. Upon request by Buyer, Seller shall perform additional inspections or tests of any Billing Meters and shall permit a qualified representative of Buyer to inspect or witness the testing of any Billing Meter, provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller’s safety standards. All costs and expenses related to any such requested additional inspection or testing shall be borne by Buyer, unless upon such inspection or testing, any Billing Meter is found to register inaccurately by more than the allowable limits established in this **Article 4**, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Buyer in writing, Seller shall provide copies of any Billing Meter inspection or testing reports to Buyer.

(d) Either Buyer or Seller may elect to install and maintain, at its own expense, backup Meters (each, a “*Back-Up Meter*”) in addition to the Billing Meters, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Back-Up Meters upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of and permit a representative of the other Party to witness and verify, such Back-Up Meter inspections and tests, provided, however, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The installing Party shall perform additional inspections or tests of any Back-Up Meter upon reasonable written request of the other Party, and shall permit a qualified representative of the requesting Party to inspect or witness the additional testing of such Back-Up Meter, provided, however, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. All costs and expenses related to any such requested additional inspection or testing of any Back-Up Meter shall be borne by the Party requesting the test. If reasonably requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(e) If any Billing Meter or Back-Up Meter, is found to be defective or inaccurate outside the bounds of the applicable Meter’s manufacturer’s performance standards, the applicable Meter shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party’s expense.

4.2 *Adjustment for Inaccurate Meters.*

If a Billing Meter or Back-Up Meter, fails to register, or if the measurement made by a Billing Meter or Back-Up Meter, is found upon testing to not be in compliance with the MISO requirements, an adjustment shall be made to the Metered Energy for the period of the inaccuracy or malfunction to correct all measurements by the inaccurate or defective Billing Meter or Back-Up Meter, for both the amount of the inaccuracy and the period of inaccuracy that is within the MISO meter data submittal timing requirements, in the following manner:

(a) In the event that the Billing Meter is found to be defective or inaccurate, the Parties shall use the Back-Up Meter, if installed, to determine the correct amount of Metered Energy to correct for such inaccuracy, provided, however, that the Back-Up Meter has been tested and maintained in accordance with the provisions of this Article. If a Back-Up Meter is installed on the low side of the Solar Project step-up transformer, the amount of Metered Energy determined by reference to the Back-Up Meter shall be adjusted as mutually agreed by Buyer and Seller so that the Metered Energy determined based on the Back-Up Meter is as near as possible to the Energy output that would have been reflected by the Billing Meter. In the event that a Back-Up Meter is not installed, or a Back-Up Meter is also found to be inaccurate by more than that allowed under the MISO requirements, the Parties shall use the data collected by the Solar Project DAS at each Solar Project inverter to determine the Metered Energy for the period of inaccuracy within the MISO meter data submittal requirements, which DAS inverter data shall be adjusted as mutually agreed so that the Metered Energy determined based on the DAS data is as near as possible to the Energy output that would have been reflected by the Billing Meter. If such inverter DAS data is incomplete or unavailable, the Parties shall estimate the amount of the Metered Energy

for the applicable period on the basis of Metered Energy delivered to the Delivery Point during periods of similar operating conditions when the Billing Meter was registering accurately.

(b) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made by any Billing Meter, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the applicable Billing Meter to the test that found the Billing Meter to be defective or inaccurate, or (ii) the ninety (90) Days immediately preceding the test that found the applicable Billing Meter to be defective or inaccurate. However, corrections for inaccurate measurements will never occur beyond the date allowed by the MISO meter data submittal requirements.

(c) To the extent that the adjustment period covers a period of deliveries for which payment for Metered Energy has already been made by Buyer, Buyer shall use the corrected calculations of Metered Energy as determined in accordance with this **Section 4.2** to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that absolute value of the difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 *Seller's Representations and Warranties*

Seller hereby represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of _____, and is authorized to conduct business in Michigan;

(b) Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement;

(c) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Seller, or to its knowledge threatened against Seller;

(d) To the Seller's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect Seller's ability to perform its obligations under this Agreement; and

(e) Except as provided in **Section 3.3** or **Section 7.1**, the execution and delivery of this Agreement by Seller, and the performance by Seller of its obligations hereunder have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect

(ii) violate any provision of Applicable Law currently in effect having applicability to Seller or violate any provision in any of Seller's organizational documents, including Seller's limited liability company operating agreement, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(iii) result in a breach or constitute a default under any agreement to which Seller is party, including but not limited to any outstanding indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(f) This Agreement is a valid and binding obligation of Seller, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting rights of creditors generally or by general principles of equity.

5.2 ***Buyer's Representations and Warranties.***

Buyer hereby represents and warrants as follows:

(a) Buyer is a public body corporate and politic, duly organized and validly existing under the laws of the State of Michigan and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer;

(b) Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement;

(c) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Buyer, or to its knowledge threatened against Buyer;

(d) To the Buyer's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect Buyer's ability to perform its obligations under this Agreement;

(e) Except as provided in **Section 3.3(a)(i)**, the execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval by any governing body of Buyer, other than that which has been obtained and is in full force and effect;

(ii) violate any Applicable Law or violate any provision in any of Buyer's corporate documents or bylaws, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;

(iii) result in a breach or constitute a default under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(f) This Agreement is a valid and binding obligation of Buyer, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting rights of creditors generally or by general principles of equity; or

(g) Except as provided in **Section 3.3(a)(i)**, all permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority to authorize Buyer's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect; and

(h) Buyer is entitled by virtue of its organizational documents and the laws and agreements that regulate it to revise the rates it charges for electric capacity and energy without obtaining approval from the Michigan Public Service Commission sufficient to satisfy its covenants contained in this Agreement, and Buyer is not aware of any proposed change in such organizational documents, laws or agreements that would vary its ability to so revise its rate.

5.3 *Seller's Covenants*

Seller covenants that (i) it shall comply with all Applicable Law during the Term of this Agreement, (ii) the Solar Project shall be operated and maintained in accordance with this Agreement and Applicable Laws, (iii) Seller shall comply with this Agreement and (iv) it shall use reasonable efforts to cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable Michigan statutes and regulations affecting job safety, *provided* that Seller's failure to comply with the requirements of this **Section 5.3** shall not provide Buyer with the right to terminate this Agreement. Seller covenants not to support, and to cooperate with Buyer, at Buyer's sole cost and expense, in opposing, any action of any regulatory body having jurisdiction over the Buyer that

could result in the vitiation of any of the terms or conditions hereof or have any other material adverse effect on the Buyer or the Buyer's rights and responsibilities this Agreement.

5.4 *Buyer's Covenants.*

Buyer covenants that during the term of this Agreement, (i) Buyer shall comply with this Agreement and Applicable Laws, (ii) Buyer will reasonably cooperate with Seller in connection with Seller securing the Interconnection Agreement and (iii) Buyer will, at Seller's sole cost and expense, reasonably cooperate with Seller in opposing, and will not lend unreasonable support to any action of any regulatory body having jurisdiction over the Seller or the Solar Project that could result in the vitiation of any of the terms or conditions hereof or have any other material adverse effect on Seller, the Solar Project or the Seller's rights and responsibilities under this Agreement.

ARTICLE 6 INDEMNIFICATION AND INSURANCE

6.1 *General Indemnity.*

(a) Subject to the provisions of **Sections 2.4 and 2.5** (with respect to damages for certain activities) and **Section 9.7** (waiver of certain damages), each Party ("**Indemnifying Party**") hereby protects, defends, indemnifies and holds harmless, on an After-Tax Basis, the other Party, its Affiliates, directors, officers, employees and agents (each an "**Indemnified Party**"), from and against all claims, demands, causes of actions, judgments, liability and associated costs and expenses, including reasonable attorney's fees, arising from property damage, bodily injuries or death suffered by any Person (including, without limitation, employees of Buyer) related to, arising from, or connected to the performance by the indemnifying party of its obligations hereunder, or with respect to Energy or Environmental Attributes. The indemnification provisions of this **Section 6.1** shall apply notwithstanding the active or passive negligence of the Indemnified Party, but the Indemnifying Party's liability to the Indemnified Party shall be reduced proportionately to the extent that an act or omission of the Indemnified Party and the Party related thereto, if different, may have contributed to the loss, injury or property damage. Further, no Indemnified Party shall be indemnified hereunder for its loss, liability, injury and damage resulting from its sole negligence or its gross negligence, fraud or willful misconduct.

(b) The Indemnified Party shall give the Indemnifying Party written notice with respect to any liability asserted by a third party and subject to indemnification under this **Section 6.1** (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the

Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this **Section 6.1** unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this **Section 6.1(b)** for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

(c) Limitations on Liability.

(i) No Consequential Damages. Except with respect to indemnification for third party claims pursuant to this Section 6.1 and damages that result from the fraud or willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Buyer, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller owns the any environmental incentives produced by the Solar Project, and a breach of this Agreement by Buyer causes Seller to lose the benefit of sales of such incentives to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

(ii) Actual Damages. Except with respect to indemnification for third party claims pursuant to Section 6.1 and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Buyer under this Agreement. The provisions of this Section shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.

(d) Survival of Claims. Any action against Seller must be brought within one (1) year after the cause of action accrues and, in any event no more than two (2) years after termination of this Agreement for any reason. Subject to such limitation, each indemnity set forth in this Article 6 is a continuing obligation, separate and independent of the other obligations of each Party and survives the expiration or termination hereof.

(e) Limitation as to Buyer. Notwithstanding anything herein to the contrary, the Buyer's obligations under this **Section 6.1** shall be effective if and only to the extent permitted by Applicable Law.

6.2 ***Insurance.***

(a) The Seller, at its own cost and expense, shall maintain and keep in full force and effect from the date hereof through the later of the date of expiration or termination hereof, the following insurance coverage:

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws; and

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with minimum combined single limit liability of ten million dollars (\$10,000,000). The insurance may be evidenced using a combination of primary and excess policies.

(iii) Seller shall maintain or cause to be maintained all-risk property coverages in the full amount of the total insured value of the Solar Project, on a replacement cost basis, including sublimits for earthquake and flood.

(b) Any insurance required by this **Section 6.2** to be maintained by either Party may be maintained in the form of self-insurance. All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof. All insurance coverage, other than self-insurance, required by this Agreement if not self-insurance shall be issued by an insurer with an A.M. Best's rating of not less than "A-" or such other insurer as is reasonably acceptable to both Parties.

(c) The Seller shall notify the Buyer of any non-renewal, non-payment of premium or cancellation of, the insurance required by this **Section 6.2** at least thirty (30) Days prior to the effective date of such non-renewal, non-payment of premium or cancellation. Within fifteen (15) Days after the date hereof, the Seller shall provide to the Buyer and thereafter maintain with the other Party a current certificate of insurance or evidence of self-insurance verifying the existence of the insurance coverage required by this Agreement.

(d) In addition, certificates for the foregoing insurance shall name Buyer and its successors in interest as additional insureds (except workers' compensation insurance).

ARTICLE 7 GOVERNMENT APPROVALS

7.1 *Government Approvals - Seller's Obligation.*

Except with respect to governmental approvals, licenses and permits which may be required to allow Buyer to perform its obligations hereunder or as otherwise specified hereunder (all of which shall be obtained and maintained by Buyer at its sole cost), Seller shall secure and maintain, at no cost to Buyer, all governmental approvals, permits (including environmental permits), licenses, easements, rights-of-way, releases and other approvals necessary for the construction, engineering, operation and maintenance of the Solar Project and the performance by Seller of its obligations hereunder.

7.2 *Assistance.*

At Seller's request, Buyer shall use reasonable efforts to assist Seller in obtaining and retaining such permits, licenses, releases and other approvals as are necessary for the design, construction, engineering, operation and maintenance of the Solar Project and the performance by Seller of its

obligations hereunder. Seller agrees to use reasonable efforts to assist Buyer in obtaining and retaining such permits, licenses, releases and other approvals as are necessary for the performance by Buyer of its obligations hereunder. Each Party shall reimburse the other Party for pre-approved, out-of-pocket costs reasonably incurred by such other Party in rendering assistance under this **Section 7.2**. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the Solar Project to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions. Upon reasonable request from Buyer, and subject to any confidentiality requirements respecting proprietary information, Seller shall provide any real-time information relating to the Solar Project to Buyer necessary for Buyer to fulfill any regulatory reporting requirements, including its reporting obligations to NERC, MISO and RFC.

7.3 *Government Approvals – Buyer’s Obligation.*

Buyer shall secure and maintain, at no cost to Seller, all government approvals, permits, licenses, easements, rights of way, releases and other approvals necessary for the performance by Buyer of its obligations hereunder.

ARTICLE 8 FORCE MAJEURE

8.1 *Applicability of Force Majeure Event.*

Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure Event, that Party shall be excused from the performance affected by the Force Majeure Event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure Event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure Event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure Event; and (iii) the Party affected by such Force Majeure Event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure Event; provided, however, that extension of the Term for more than 365 days under this provision as a result of a single Force Majeure Event shall not be permitted unless mutually agreed by the Parties.

8.2 *Payments and Force Majeure Event.*

Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure Event that solely impacts Buyer’s ability to make payment.

8.3 ***Termination.***

If a Force Majeure Event continues for a period of one hundred eighty (180) or more consecutive days within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure Event, the Party not claiming the Force Majeure Event shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid). In addition, if the total duration of a Party's non-performance due to a single Force Majeure Event exceeds 365 days, the non-performing Party shall have the right to terminate this Agreement effective upon the delivery of a written termination notice delivered after such 365th day and while such nonperformance is continuing without fault or further liability to either Party (except for amounts accrued but unpaid) from and after the effective termination date.

**ARTICLE 9
MISCELLANEOUS**

9.1 ***Confidential Information.***

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Solar Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "***Disclosing Party***") may make such Confidential Information available to the other (each, a "***Receiving Party***") subject to the provisions of this Section 9.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Solar Project and for the purposes of this Agreement who shall be bound by the terms of this **Section 9.1**;

(iii) Use such Confidential Information solely for the purpose of developing the Solar Project and for purposes of this Agreement; and

(iv) Upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this **Section 9.1** do not apply to:

(i) Release of this Agreement to any governmental authority required for obtaining any approval or making any filing pursuant to **Sections 3.2, 7.1 or 7.3**, *provided* that each Party agrees to cooperate in good faith with the other to maintain the

confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, *provided* that the person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Freedom of Information Act request); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Lenders, and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them, as well as any advisors, consultants or rating agency.

(e) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in **Section 9.1(c)(v)**), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Solar Project or as are necessary in order to fulfill such Party's obligations under this Agreement. The Parties may release information relative to the general performance of the Solar Project.

(f) The obligations of the Parties under this **Section 0** shall remain in full force and effect for one (1) year following the expiration or termination of this Agreement.

9.2 ***Successors and Assigns; Assignment.***

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned by the Seller without

prior written consent by TCL&P, which consent shall not be unreasonably withheld, delayed or conditioned. TCL&P reserves the right to assign all or part of this agreement.

(b) Notwithstanding the foregoing, no consent shall be required for:

(i) any assignment of this Agreement by Seller to any Lenders as collateral security for obligations under the financing documents entered into with such Lenders;

(ii) any assignment by the Lenders to a third party after the Lenders have exercised their foreclosure rights with respect to this Agreement or the Solar Project;

(iii) any assignment or transfer of this Agreement by Seller to an Affiliate of Seller; or

(iv) any assignment or transfer of this Agreement by Seller to a Person succeeding to all or substantially all of the assets of Seller, provided that such Person's creditworthiness is equal to or better than that of Seller, as reasonably determined by the non-assigning or non-transferring Party;

provided, however, in each of the cases set forth above (except with respect to clause (i) above), the assignee or transferee (a) shall agree in writing to be bound by the terms and conditions hereof and furnish a copy of the assignment or transfer document to the other Party; (b) in the case of an assignment or transfer by the Seller or Lender to a third party that is not an Affiliate of Seller, shall possess the technical expertise and capability (or shall have retained such technical expertise and capability) to perform Seller's obligations under this Agreement, and (c) shall have complied with the obligations of the assigning Party to provide financial support in accordance with Section 3.6 of this Agreement.

(c) Buyer acknowledges that upon an event of default under any financing documents relating to the Solar Project, any of the Lenders or their designees may (but shall not be obligated to) assume, or cause its designee or a new lessee or buyer of the Solar Project to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement, provided that, regardless of whether any such Lender or its designee assumes all of the interests, rights and obligations of Seller thereafter arising under this Agreement, Buyer's interests, rights and obligations under this Agreement will remain in full force and effect.

(d) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as and upon satisfaction of the conditions set forth in this **Section 9.2** and as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to Buyer arising or accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Buyer shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement; *provided, however*, that if any such Person assumes this Agreement as provided herein, Buyer acknowledges and agrees that such Persons shall not be personally liable for the performance of such obligations hereunder except to the extent of the total interest of the Lenders in the Solar Project. Notwithstanding any such assumption by any of the Lenders or a designee

thereof, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such assumption.

(e) The provisions of this **Section 9.2** are for the benefit of the Lenders as well as the Parties hereto and shall be enforceable by the Lenders as express third-party beneficiaries hereof. Buyer hereby agrees that none of the Lenders, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this **Section 9.2**.

9.3 ***Financing; Liens.***

(a) The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Lenders. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Lenders; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment to a Lender pursuant to **Section 9.2**, Buyer agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Lenders

(b) Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Solar Project and the Seller's Interconnection Facilities.

(c) Promptly after making such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(d) After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

(e) If Seller encumbers its interest under this Agreement as permitted by this **Section 9.3**, the following provisions shall apply:

(i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the Lenders;

(ii) The Lenders or their designees shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller and such act performed by the Lenders or their designees shall be as effective to prevent or cure an Event of Default as if done by Seller, provided that, if any such Lender or its designee elects to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller, Buyer will not be deemed to have waived or relinquished its rights and remedies as provided in this Agreement;

(iii) Buyer shall upon request by Seller execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of Events of Default hereunder by Seller and documents of consent to such assignment to the encumbrance and any assignment to such Lenders; and

(iv) Upon the receipt of a written request from Seller or any Lender, Buyer shall execute, or arrange for the delivery of, such certificates, opinions, representations, information and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Solar Project or any part thereof and will enter into reasonable agreements (including a consent agreement or estoppel certificate in connection with any tax equity financing) with such Lender, which agreements will grant certain rights to the Lenders as more fully developed and described in such documents, including (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Lender, which consent is not to be unreasonably withheld or delayed, (b) Lenders shall be given notice of, and the opportunity to cure as provided in **Section 3.4(d)**, any breach or default of this Agreement by Seller, (c) if the Lender forecloses, take a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, then (i) Buyer shall, at Lender's request, continue to perform all of its obligations hereunder, and Lender or its nominee may perform in the place of Seller, and subject to satisfaction of the conditions set forth in **Section 9.2**, may assign this Agreement to another Person in place of Seller, (ii) Lender shall have no liability under this Agreement except during the period of such Lender's ownership or operation of the Solar Project, and (iii) Buyer shall accept performance in accordance with this Agreement by Lender or its nominee, subject to satisfaction of the conditions set forth in **Section 9.2**, and (d) that Buyer shall make representations and warranties to Lender as Lender may reasonably request with regard to (i) Buyer's existence, (ii) Buyer's authority to execute, deliver and perform this Agreement, (iii) the binding nature of the document evidencing Buyer's consent to assignment to Lender and this Agreement on Buyer and (iv) receipt of regulatory approvals by Buyer with respect to its execution and performance under this Agreement.

9.4 *Notices.*

Each notice, request, demand, statement or routine communication required or permitted under this Agreement, or any notice or communication that either Party may desire to deliver to the other, shall be in writing and shall be considered delivered when received by the other Party by certified U.S. mail or reputable overnight courier addressed to the other Party at its address indicated below or at such other address as either Party may designate for itself in a written notice to the other Party in accordance with this **Section 9.4**.

If to Seller:

Telephone:

Facsimile:

If to Buyer:

9.5 ***Amendments.***

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

9.6 ***Waivers.***

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

9.7 ***Waiver of Certain Damages.***

Notwithstanding any other provision of this Agreement (except to the extent indemnification payments are made pursuant to **Section 6.1** as a result of an indemnified entity's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders or members, including without limitation cooperative members) as a result of actions included in the protection afforded by the indemnification set forth in Section 6.1 and except with respect to the liquidated damages provided for in **Sections 2.4** and **2.5**), neither Buyer nor Seller (nor any of their Affiliates, contractors, consultants, officers, directors, shareholders, members or employees) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

9.8 ***Survival.***

Notwithstanding any provisions herein to the contrary, the obligations set forth in **Section 9.1**, the provisions of **Section 9.7** and the indemnity obligations set forth in **Article 6**, and the limitations on liabilities set forth herein shall survive (in full force) the expiration or termination of this Agreement, subject to the provisions of **Section 6.1(d)** and **Section 9.1(f)**.

9.9 ***Severability.***

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

9.10 ***Governing Law.***

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Michigan without regard its conflicts of laws provisions.

9.11 ***Consent to Jurisdiction.***

(a) Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the United States of America for the State of Michigan having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby:

(i) Accepts the non-exclusive jurisdiction of the aforesaid courts;

(ii) Irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;

(iii) Irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum;

(iv) Agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth below, or at such other address of which the other Parties hereto shall have been notified; and

(v) Agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or limit the right to bring any suit, action or proceeding in any other jurisdiction.

9.12 ***Waiver of Trial by Jury.***

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

9.13 ***No Third-Party Beneficiaries.***

Except as set forth in **Article 6** and in **Sections 9.2** and **9.3**, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

9.14 ***Dispute Resolution.***

(a) In the event of any dispute arising under this Agreement (a “Dispute”), within seven (7) Days following the delivered date of a written request by either Party (a “***Dispute Notice***”), (i) each Party shall appoint a representative (individually, a “***Party Representative***”, together, the “***Parties’ Representatives***”), and (ii) the Parties’ Representatives shall confer and then meet in person within fourteen (14) Days of delivery of the Dispute Notice if the dispute is not settled prior to that time. The Parties’ Representatives shall meet to negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively with the specific goal of reconciling differences and allowing the Parties to continue in this Agreement for the mutual benefit of both Parties. In the event the Parties’ Representatives cannot resolve the Dispute within fourteen (14) Days after delivery of the Dispute Notice, within seven (7) Days following any request by either Party at any time thereafter, each Party Representative (I) shall independently prepare a written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) shall submit a copy of both summaries to a senior officer of the Party Representative with authority to irrevocably bind the Party to a resolution of the Dispute. The senior officers for both Parties shall negotiate in good faith to resolve the Dispute, subject to any required internal approval of any such resolution by the Parties’ respective senior management or Board of Directors. If the Parties have not resolved the Dispute within thirty (30) Days after delivery of the Dispute Notice, either Party may seek legal and equitable remedies.

(b) Notwithstanding any provision in this Agreement to the contrary, if no Dispute Notice has been issued within thirty-six months following the knowledge by the aggrieved Party of an occurrence giving rise to the Dispute, the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

9.15 ***No Agency.***

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such 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 as or be an agent or representative of, or otherwise bind, the other Party. At no time shall Buyer be considered an owner or operator of the Solar Project or the Site.

9.16 ***Cooperation; Change in Law.***

(a) Cooperation. The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. In the event that, at any time during the Term, (i) MISO or MISO’s Tariff is changed or if an applicable regional reliability council issues a directive, rule or regulation that materially adversely affects Seller or Buyer so that the benefits and burdens of this Agreement are no longer as contemplated by the original intentions of the Parties, the Parties shall use their commercially reasonable efforts to reform this Agreement in order to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits and burdens to each Party; provided, however, that no Party is obligated to agree to a change in price and (ii) changes in the operations, facilities or methods

of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

(b) “**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable Permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), (iii) a change in any utility rate schedule or Tariff approved by any Governmental Authority, or (iv) revocation of any Tax Credit, which establishes requirements or revokes beneficial laws or rules affecting owning, supplying, constructing, installing, operating, or maintaining the Solar Project, or other performance of the Seller’s obligations hereunder or which has a material adverse effect on the cost to Seller of performing such obligations.

(c) Effect of Change in Law. Without limiting the Parties’ obligations under **Section 9.16(a)**, if any Change in Law occurs that has a material adverse effect either (i) on the cost to Seller of performing its obligations under this Agreement, or (ii) on the ability of Buyer to purchase or acquire the Energy, Capacity Rights, or Environmental Attributes, then the Parties shall, within thirty (30) days following delivery by one Party to the other Party of a written notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties.

9.17 ***Further Assurances.***

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 9.17.

9.18 ***Captions; Construction.***

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

9.19 ***Entire Agreement.***

Except as otherwise provided herein, this Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

9.20 *Counterparts.*

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Each Party agrees to execute and deliver to the other Party three counterparts of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

EXHIBIT A
CONTRACT RATE

CONTRACT YEAR	CONTRACT RATE (\$/MWh)
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EXHIBIT B

DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM

The electrical collection system will transport the energy from the Modules to the Solar Project collector substation owned by Seller. Within that substation the Delivery Point is the line side terminal pads of the group operated gang switch installed on the incoming ___ kV line, as shown on the attached one-line diagram.

SOLAR PROJECT
ONE LINE DIAGRAM

EXHIBIT C
DESCRIPTION OF SOLAR PROJECT

EXHIBIT D
CONSTRUCTION MILESTONES

EXHIBIT E
FORM OF SELLER GUARANTY
GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, ____ (the “**Effective Date**”), is made by _____ (“**Guarantor**”), in favor of [INSERT COUNTERPARTY’S NAME IN ALL CAPS] (“**Counterparty**”).

RECITALS:

A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [INSERT OBLIGOR’S NAME IN ALL CAPS] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain _____ Agreement dated/made/entered into/effective as of _____, 20__ (the “**Agreement**”); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [spell out the dollar amount] U.S. Dollars (U.S. \$_____) (the “**Maximum Recovery Amount**”).

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly provided in the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty shall present a written demand to Guarantor calling for Guarantor’s payment of such Overdue

Obligation pursuant to this Guaranty (a “**Payment Demand**”). Delay by Counterparty in making a Payment Demand shall in no event affect Guarantor’s obligations under this Guaranty.

- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Day**” shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of _____.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in *Section 2* above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [_____], 20[_]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Guaranteed Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice

provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
	<p>_____</p> <p>_____</p> <p>_____</p> <p><i>Attn:</i> _____</p>
	<i>[Tel: (____) ____-____ -- for use in connection with courier deliveries]</i>

Any Notice given in accordance with this *Section 9* will (i) if delivered during the recipient’s normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient’s normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient’s normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of _____.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term “person” as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such

prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for _____, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of _____ for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20____, but it is effective as of the Effective Date.

By:____
Name:_____
Title:___

Exhibit F
Estimated Annual Production