

Interconnection Agreement

This Interconnection Agreement (together with all exhibits and attachments hereto, the "**Agreement**") is made and entered into as of this ___ day of _____, 202_ (the "**Effective Date**"), by the City of St. Louis, ("**Utility**"), a Michigan municipal corporation organized under the laws of Michigan, and St. Louis Affordable Solar, LLC, a limited liability company organized under the laws of the State of Delaware ("**DG Owner/Operator**"), each hereinafter sometimes referred to individually as "**Party**" or both referred to collectively as the "**Parties**".

WITNESSETH:

WHEREAS, Utility is a Michigan municipal corporation formed for the purpose of providing retail electric services to the the citizens of the City of St. Louis and surrounding areas; and

WHEREAS, DG Owner/Operator intends to construct, own (together with any applicable financing party(ies)), and operate a ground-mounted solar installation project (as further described in Exhibit A and inclusive of DG Owner/Operator's Interconnection Facilities (the "**Project**" or "**Solar Project**")) that will generate and deliver up to approximately 1.2 MW of alternating current to the facilities owned and operated by Utility for the distribution of electricity to its retail customers (the "**Distribution System**"); and

WHEREAS, Utility and DG Owner/Operator are entering into a power purchase agreement for the purchase and sale of the Project's electrical output (the "**PPA**") concurrent with the execution and delivery of this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to provide for the safe and orderly operation of the electrical facilities interconnecting the Project and the Distribution System.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged Utility and DG Owner/Operator, each intending to be legally bound, agree as follows:

- 1. Definitions.** The definitions set forth in the introduction and recitals to this Agreement are hereby incorporated by reference as though set forth in full herein. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms will have the following meanings.
 - a. "**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).
 - b. "**Billing Meter**" shall mean the metering and data processing equipment used to measure, record, or transmit data relating to the energy generated by the Project and to determine the amount of such energy delivered to the Delivery Point.
 - c. "**Delivery Point**" shall mean the Solar Project's point of interconnection between the Solar Project's interconnection facilities, including the Utility's Interconnection Facilities, and the Distribution System, more specifically described in Exhibit A.

- d. **“DG Owner/Operator’s Interconnection Facilities”** shall mean the interconnection facilities, control and protective devices and metering facilities, supplied by DG Owner/Operator and required to connect the Solar Project with the Utility’s Interconnection Facilities, as detailed in Exhibit A. For clarity, in relation to DG Owner/Operator, any reference to its “respective portion of the Interconnection Facilities” shall mean Owner/Operator’s Interconnection Facilities.
- e. **“Distribution System Upgrades”** shall mean the upgrades and new facilities to be added to the Distribution System to allow the Solar Project to inject energy onto the Distribution System, as detailed in Exhibit A.
- f. **“Emergency Condition”** shall mean a condition or situation that, pursuant to Prudent Industry Practices, (i) is imminently likely to endanger, or is contributing to the imminent endangerment of, life, property, or public health and safety, (ii) is imminently likely to cause, or is causing, a material adverse effect on the security of, or damage to the Solar Project, the Interconnection Facilities, or the Distribution System.
- g. **“Financing Party”** means any Persons, or their respective trustees, agents, or successors in interest thereof (i) lending money, extending credit, or providing loan guarantees (whether directly to DG Owner/Operator or to an affiliate of DG Owner/Operator) as follows: (A) for the construction, interim, or permanent financing or refinancing of the Project, (B) for working capital or other ordinary business requirement of the Project (including the maintenance, repair, replacement, or improvement of the Project, (C) for any development financing, bridge financing, credit support, credit enhancement, or interest rate protection in connection with the Project, (D) for any capital improvement or replacement related to the Project, or (E) for the purchase of the Project and the related rights from DG Owner/Operator; or (ii) participating (directly or indirectly) as an equity investor (including a tax equity investor) in the Project; or (iii) any lessor under a lease financing arrangement relating to the Project.
- h. **“Force Majeure Event”** shall mean any event or circumstance that wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement, and (iii) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.
- i. **“Governmental Approval”** shall mean an authorization, consent, approval, waiver, exception, variance, permit, license, or exemption of a Governmental Authority.
- j. **“Governmental Authority”** shall mean applicable national, federal, state, county, municipal and local governments and all agencies, authorities, departments, instrumentalities, courts, or other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having a regulatory interest in or jurisdiction over a Party, the Interconnection Facilities, the Distribution System, or the Project, as applicable. For clarity, “Governmental Authority” excludes Utility.

- k. **“Interconnection Facilities”** shall mean, collectively, the Utility’s Interconnection Facilities and the DG Owner/Operator’s Interconnection Facilities, all as detailed in Exhibit A.
- l. **“Utility’s Interconnection Facilities”** shall mean Utility’s backup metering (if any) and the interconnection facilities, distribution and/or transmission lines, control and protective devices and metering facilities, supplied by Utility and required to connect the Solar Project to the Distribution System that are located on Utility’s side of the Delivery Point, as detailed in Exhibit A attached hereto. For clarity, in relation to Utility, any reference to its “respective portion of the Interconnection Facilities” shall mean Utility’s Interconnection Facilities.
- m. **“MW”** shall mean megawatt (alternating current).
- n. **“Operator in Charge”** shall mean, with respect to each Party, the Person identified (whether by name or job title) by such Party as responsible for the daily operation of such Party’s portion of the Interconnection Facilities. This individual must be familiar with this Agreement. Each Party may update its Operator in Charge by written notice to the other.

The Operator in Charge for the DG Owner/Operator as of the Effective Date is:

[Name]
[Title]
[Name of Interconnection Customer]
c/o SolAmerica Energy, LLC
190 Ottley Dr. NE
Studio H
Atlanta, GA 30324
404.351.8175, ext. ____
____@solamericaenergy.com

The Operator in Charge for Utility as of the Effective Date is:

[Name]
[Title]
[Name of Interconnection Customer]
[address]
[phone number]
[phone number]

- o. **“Person”** shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.
- p. **“Prudent Industry Practices”** shall mean the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric generation industry for solar facilities of similar size, type, and design, that during the relevant time period, in the exercise of commercially reasonable judgment, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with Applicable Law, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practices is not intended to be the optimum practice, method, or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in such industry.

- q. “**Transformer**” shall mean the generator step-up transformer for the Project, as more particularly depicted in Exhibit A.
2. **Governmental Approvals.** Each Party shall be responsible for obtaining and maintaining all Governmental Approvals (if any) necessary to construct, install, test, and operate its respective portion of the Interconnection Facilities, and otherwise to perform its obligations under this Agreement. DG Owner/Operator’s construction, operation and maintenance of the Solar Project shall comply with Applicable Law and all necessary Governmental Approvals, including any easement or similar agreement governing DG Owner/Operator’s right to utilize the property where the Solar Project is to be located.
3. **Maintenance.** Each Party shall be responsible for maintaining its respective portion of the Interconnection Facilities in accordance with Prudent Industry Practices. Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Exhibits to this Agreement and shall do so in a manner as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the other party.
4. **Curtailments/Suspensions of Interconnection by Utility.** Without limiting DG Owner/Operator’s rights as “Seller” with respect to any “Compensated Curtailment” under the PPA, Utility may from time to time and, in any event, on a non-discriminatory basis, temporarily disconnect the DG Owner/Operator’s Interconnection Facilities from the Distribution System as described in this Section 4.
- a. **For Cause:** If the operation of the DG Owner/Operator’s Project or quality of electric energy supplied to the Delivery Point, in the case of power export, does not meet the applicable standards specified in Exhibit A, then Utility will notify the DG Owner/Operator to take reasonable and appropriate corrective action. If DG Owner/Operator’s failure to meet such standards is causing an Emergency Condition, then Utility shall have the right to immediately disconnect the DG Owner/Operator’s Project from the Distribution System using the disconnect switch described in Section 7 (Disconnecting Means) until such compliance is reasonably demonstrated so as to cease or prevent any such Emergency Condition. To the extent practicable, Utility shall give prior notice to DG Owner/Operator of any disconnections effected by Utility pursuant to this Section 4; provided, that, DG Owner/Operator acknowledges and agrees that Utility may immediately disconnect the DG Owner/Operator’s Interconnection Facilities from Utility’s Interconnection Facilities without notice if the operation of the Project imposes an imminent threat to life, property, or human safety.
- b. **For Maintenance.** Although maintenance outages will occasionally be required on the Utility’s Interconnection Facilities and/or the Distribution System, Utility shall use commercially reasonable efforts to perform any such maintenance without requiring or effecting any disconnection of the Project. If, notwithstanding such commercially reasonable efforts, such disconnection is required, Utility shall provide reasonable advance notice of such disconnection to DG Owner/Operator. In the event that, as of the date of such outage, (a) the PPA has expired or been terminated and (b) outages caused by such maintenance disconnections exceed an aggregate of three (3) days in any rolling three hundred sixty-five (365)-day period, Utility agrees to compensate DG Owner/Operator for the revenue lost as a result of the outage exceeding such three (3) day period.

- c. **Forced System Outages.** In the event of (i) a mandatory direction or order by a Governmental Authority to meet an Emergency Condition or a reliability need of the applicable transmission system or (ii) a power outage on the portion of the Distribution System serving the Project, Utility shall have the right to disconnect DG Owner/Operator's Interconnection Facilities (with notice of such disconnection provided as soon as reasonably practicable, which may be after effecting such disconnection), or to direct DG Owner/Operator to effect such disconnection as soon as reasonable practicable. Utility shall restore any such power outage as soon as possible, and DG Owner/Operator shall not reconnect its portion of the Interconnection Facilities until power has been restored.
- 5. **Power Sales to Utility.** Without limiting either Party's rights or obligations under the PPA, the Parties acknowledge that this Agreement does not, by its terms, constitute an agreement by Utility to purchase or wheel excess power.
- 6. **Access:** Utility, and its agents and employees, will have access to the Project for Delivery Point maintenance, operation, inspection and meter reading. Utility reserves the right, but not the obligation, to inspect the DG Owner/Operator's Interconnection Facilities and to verify DG Owner/Operator's equipment ratings. In undertaking any access permitted by this Section 6, Utility will comply with all applicable Project site rules and will observe the safety precautions of Prudent Industry Standards and Applicable Law.
- 7. **Disconnecting Means.**
 - a. If a direct-transfer-trip (DTT) is not required, the DG Owner/Operator shall install a gang-operated load-break disconnect switch at or near the Delivery Point, that will be owned and operated by the DG Owner/Operator. The disconnect switch must meet the Utility's standards for manufacturer and model. The disconnect switch will be marked "DG Disconnect". Utility's employees or its contractors may open the disconnect switch in accordance with Section 4 (*Curtailments/Suspensions of Interconnection by Utility*). Such disconnect switch must be capable of being locked in the "Open" position by Utility. The disconnect switch shall be a type that provides a visible air gap when in the "Open" position.
 - b. If a DTT is required, in addition to the disconnect switch described in Section 7a, the Utility will install a three-phase vacuum recloser and recloser control that will be owned and operated by the Utility. The recloser and recloser controller must meet the Utility's standards for manufacturer and model. Utility's employees or its contractors may open the recloser in accordance with Section 4 (*Curtailments/Suspensions of Interconnection by Utility*).
- 8. **Generator Operation:** Project installation, operation, and maintenance shall meet the applicable provisions of the following, each as in effect as of the Effective Date: IEEE 1547-2018 standards, International Standard IEC 62446 (Photovoltaic Systems – Requirements for testing, documenting, and maintenance), National Electric Safety Code, Underwriters Laboratories, and National Electrical Code, including with respect to synchronization, the maintenance of voltage stability, and regulation, and protection from short circuits. DG Owner/Operator is responsible for the ability of DG Owner/Operator's Interconnection Facilities to synchronize, as well as for the protection functions necessary within DG Owner/Operator's Interconnection Facilities to operate in parallel with the Distribution System, all as specified in the applicable standards identified in this Section 8.

9. **Interconnection Facilities:** Utility does not assume any duty of inspecting the DG Owner/Operator's lines, wires, switches, or other equipment or property constituting the Project for proper installation and/or operation and will not be responsible therefor. Each Party assumes all responsibility for its respective portion of the Interconnection Facilities, as detailed in Exhibit A attached hereto.

10. **Term:** Unless earlier terminated in accordance with the terms and conditions set forth herein, this Agreement shall continue in effect until the Project permanently ceases commercial operation; with the understanding that if the energy from the Generating Facility is sold or delivered to a party other than Utility, Utility may require DG Owner/Operator to execute a wheeling agreement with Utility on terms and conditions acceptable to the Utility in its commercially reasonable discretion.

11. Installation and Functional Testing Prior to Interconnection.

- a. Prior to interconnection, each Party shall design, procure, construct, install, and perform functional or other tests of its respective portion of the Interconnection Facilities in accordance with Prudent Industry Practices, Applicable Law, and any applicable Governmental Approvals, as well as the standards set forth for such activities in the applicable provisions of the following (each as in effect as of the Effective Date): IEEE 1547, IEC 62446, National Electric Safety Code, Underwriters Laboratories, National Electrical Code.
- b. Each Party shall use commercially reasonable efforts to cooperate and coordinate any parallel construction, installation, and testing activities so as to minimize any delay that the other Party may experience in performing its obligations hereunder.

12. Interconnection Testing; Test Energy.

- a. The DG Owner/Operator shall notify the Utility in writing when the Interconnection Facilities are mechanically complete and ready for interconnection testing in accordance with the requirements of IEEE 1547-2018 ("**Interconnection Testing**").
- b. DG Owner/Operator shall notify the Utility at least seventy-two (72) hours in advance of initial energization and synchronization of the generator with the Distribution System.
- c. During each testing period, DG Owner/Operator shall have personnel on-site that can be contacted immediately by Utility or their agents. At least seventy-two (72) hours prior to testing, DG Owner/Operator shall provide telephone numbers or radio frequencies through which on-site personnel can be contacted. Immediately prior to testing, DG Owner/Operator's on-site personnel will take commercially reasonable steps to confirm communications with Utility and their agents. (For purposes of this Section, DG Owner/Operator's "personnel" may include personnel of DG Owner/Operator's designated contractors on the Project.)
- d. DG Owner/Operator's on-site personnel will keep Utility or their agents informed of the status of testing operations and inform Utility or their agents when such tests are concluded each day.

- e. The capacity test for the Project shall be deemed to have been satisfactorily completed once the Project successfully (i) produces energy in compliance with the terms of this Agreement for a required minimum number of intervals of operation during a two (2) day test period and (ii) delivers energy to the Delivery Point, as measured by the installed Billing Meter.

13. Testing Records; Equipment Settings – The DG Owner/Operator shall provide to Utility all records of testing in accordance of IEEE 1547 and IEC 62446. These records shall include testing at the start of commercial operation and periodic testing thereafter. Factory testing, if available to DG Owner/Operator, of pre-packaged Interconnection Facilities (if any) and the protective systems of small units shall be acceptable. In the case of a factory test, the DG Owner/Operator needs to provide a written description and certification by the factory of the test, the test results, and the qualification of any independent testing laboratory, to the extent reasonably available.

14. Distribution System Upgrades. DG Owner/Operator shall be obligated to pay, or reimburse Utility for the reasonable, documented, out-of-pocket costs incurred by Utility in the design, procurement, construction, installation of Utility's Interconnection Facilities, as well as any required Distribution System Upgrades, all as set forth in Exhibit A,

- a. **Deposit.** Prior to construction, DG Owner/Operator shall pay eighty percent (80%) of the initial estimate for Distribution System Upgrades. If during construction, Utility determines that the cost of the Interconnection Facilities varies significantly from the original estimate for Distribution System Upgrades, Utility will notify the DG Owner/Operator in writing. Utility shall have the right to delay or suspend all construction of its Interconnection Facilities until DG Owner/Operator responds to the notice. If the DG Owner/Operator's response and acceptance of this new cost estimate is not received within five (5) business days, Utility may terminate this Agreement by written notice to the DG Owner/Operator. Upon such termination, Utility will refund, without interest, the DG Owner/Operator's payment, less any expenses incurred to provide interconnection service to the location described in this Agreement.

- b. **Payment Schedule.**

Payment	Amount Due	Milestone Description	Due Date
1	80% or (\$259,200)	Execution of Interconnection Agreement	Prior to construction
2	20% or (\$64,800)	Construction Complete	Within thirty (30) days after completion of construction
	\$324,000	Initial Estimate for Distribution System Upgrades Total	
	True-up (Invoice or Refund)	Four weeks after Construction Complete	Within thirty (30) days after completion of true-up

All payments shall be made payable to Utility and shall be sent to [____],
Attention: [____], [____], [____], [____],

MI [____], or by wire transfer to a Utility' bank account or such other manner or at such place as Utility shall, from time to time, designate by notice to DG Owner/Operator. Payments made by wire transfer shall reference the appropriate invoice number for which payment is being made. When Utility has determined that all costs and expenses are accounted for on its books, Utility will issue a final invoice or credit to reconcile the initial estimate with the final work order cost of the interconnection. The final work order cost will be reviewed and reconciled to the initial estimate for each portion of the interconnection covered under this Agreement. If Utility's final work order cost is less than the initial estimate for Distribution System Upgrades, Utility shall refund the incremental amount to DG Owner/Operator. If Utility's final work order cost is greater than the initial estimate for Distribution System Upgrades, Utility shall issue a final invoice to the DG Owner/Operator for the incremental amount. Any payment not made on or before the due date listed in the above table shall bear interest, from the date due until the date upon which payment is made, at an annual percentage rate of interest equal to the lesser of (a) the prime rate published by the Wall Street Journal (which represents the base rate on corporate loans posted by at least 75% of the nation's banks) on the date due, plus 2%, or (b) the highest rate permitted by law.

15. Financing Accommodations.

- a. Throughout the duration of this Agreement, DG Owner/Operator or DG Owner/Operator's Financing Party shall be the legal and beneficial owner of the Project at all times, and the Project shall remain the personal property of DG Owner/Operator or DG Owner/Operator's Financing Party.
- b. DG Owner/Operator may, upon ten (10) days' prior written notice, but without the consent of Utility, assign this Agreement to a Financing Party for collateral security purposes in connection with any financing of the Project. In connection therewith, Utility agrees to execute a written consent in such form as DG Owner/Operator reasonably requests. The Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to DG Owner/Operator's interests in this Agreement.

16. Insurance. DG Owner/Operator shall maintain commercial general liability insurance from an insurance company with a minimum A.M. BEST rating of "A" with coverage in the minimum amount of \$2,000,000 with contractual liability broad form liability endorsement, in a form approved by Utility, which approval shall not be unreasonably withheld or delayed, insuring DG Owner/Operator, and naming Utility as additional insured, against any and all liability, for injury to or death of a person or persons and for damage to property occasioned by or arising out of the operations of DG Owner/Operator. The policy of insurance shall carry a provision giving Utility a sixty (60) day written notice provision before the policy may be cancelled.

17. Force Majeure.

- a. Subject to the criteria of a Force Majeure Event identified in the definition thereof, events that could qualify as a Force Majeure Event include the following:
 1. acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic (including the existence of the global pandemic named "COVID-19" to the extent of changed circumstances arising

after the Effective Date), quarantine, storm, hurricane, tornado, volcano, other natural disaster, or unusual or extreme adverse weather-related events;

2. war (declared or undeclared), riot, or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation, or confiscation;
3. except as set forth in Section 17(b)(2) below, strikes, work stoppage, or other labor disputes (in which case the affected Party will have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
4. environmental and other contamination at or affecting the Project;
5. accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals, or other assistances to or adjuncts of shipping or navigation, or quarantine;
6. nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials;
7. air crash, shipwreck, train wrecks, or other failures or delays of transportation;
8. vandalism beyond that which could be reasonably prevented by DG Owner/Operator;
9. the discovery of burial grounds;
10. actions or inactions by a Governmental Authority taken after the Effective Date, but only if such actions or inactions are not the result of the affected Party's failure to comply with Applicable Law;
11. the discovery of threatened or endangered species, as defined by Applicable Law;
12. with respect to DG Owner/Operator as the affected Party, a failure preventing delivery of energy to the Delivery Point, which such failure relates to all or part of a transformer, circuit breakers, or any other switchgear, line, or associated equipment constituting any portion of Utility's Interconnection Facilities, excluding in all cases, any failure caused by DG Owner/Operator's breach of this Agreement.

b. Notwithstanding anything herein to the contrary, a Force Majeure Event may not be based on:

1. lack of money or changes in economic or market conditions;
2. a strike, work stoppage, or labor dispute to any one or more of a Party or its affiliates;

3. with respect to Utility as the affected Party: (i) Utility's inability to economically use or resell the Product; (ii) the inability of Utility to obtain transmission or distribution service or the unavailability or interruption of transmission or distribution service; (iii) any inability by Utility to achieve "Interconnection Readiness" on or before the "Interconnection Readiness Deadline", as each such term is defined in the PPA; (iv) any inability of Utility to receive energy at the Delivery Point as a result of (A) breach of any interconnection agreement between Utility and a local electric utility or transmission provider, unless caused by the occurrence of an event that would otherwise constitute a Force Majeure Event hereunder, or (B) any other cause or event that does not physically prevent Utility from receiving energy at the Delivery Point; or
 4. with respect to DG Owner/Operator as the affected Party: (i) DG Owner/Operator's ability to sell energy at a price greater than that provided in the PPA, (ii) DG Owner/Operator's inability to obtain sufficient labor to build or operate the Project, except to the extent caused by an event that would otherwise constitute a Force Majeure Event hereunder, or (iii) DG Owner/Operator's failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Utility pursuant to the PPA.
- c. To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or in part, its obligations under this Agreement, and such Party gives written notice and details of the Force Majeure Event to the other Party as detailed below, then the Party impacted by the Force Majeure Event will be excused from the performance of its obligations to the extent impacted. As soon as practicable after learning of the commencement of a Force Majeure Event, the non-performing Party will provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks after learning of the commencement of a Force Majeure Event, the non-performing Party will provide the other Party with written notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim.
 - d. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

18. Events of Default; Remedies.

- a. An "Event of Default" means, with respect to the Party that commits the Event of Default (the "Defaulting Party"), the occurrence of any of the following:
 - i. The failure by such Party to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within ten (10) business days after written notice thereof from the other Party (with respect to any Event of Default, the "Non-Defaulting Party");
 - ii. Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and the effect of such default is not remedied within thirty (30) days after written notice thereof from the Non-Defaulting Party;

- iii. The failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after written notice thereof from the Non-Defaulting Party; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party will have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy; or
 - iv. Such Party or its guarantor (if applicable) becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days).
 - v. An Event of Default under this Agreement shall constitute an event of default under the PPA. The Utility shall have the right to exercise all remedies under the PPA, the remedies being deemed to be cumulative.
- b. If an Event of Default is not cured as provided in this Section 18, the Non-Defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this agreement, to recover from the Defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity, subject to Section 21(k) (*No Consequential Damages*). The provisions of this Section 18 will survive termination of this Agreement.

19. Termination: This Agreement may be terminated at any time upon the mutual written agreement of the Parties. In addition, DG Owner/Operator may terminate this agreement at any time by giving Utility thirty (30) days' written notice. To the extent applicable, any indemnification provisions in the PPA shall survive termination.

20. Retirement: Upon termination of this Agreement pursuant to Section 19 or at such time after any of the DG Owner/Operator's Interconnection Facilities described herein are no longer required, the Parties will take all appropriate steps to disconnect the Solar Project from the Distribution System. With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, DG Owner/Operator shall be responsible for all costs associated with the removal, relocation, or other disposition or retirement of such materials, equipment, or facilities. The provisions of this Section 20 will survive termination of this Agreement.

21. Indemnification: The DG Owner/Operator agrees to indemnify and hold harmless Utility from any claims, demands, costs, losses, injury, causes of action, damages or liability of whatsoever kind or nature, to the extent arising out of or resulting from DG Owner/Operator's negligence, willful misconduct, or breach of this Agreement; and to the extent permitted by law, Utility agrees to indemnify and hold harmless the DG Owner/Operator from any claims, demands, costs, losses, injury, causes of action, damage or liability of whatsoever kind or nature, to the

extent arising out of or resulting from Utility's negligence, willful misconduct, breach of this Agreement, or Utility's exercise of its access rights under Section 7 (Access).

22. Environmental Releases. Each Party shall notify the other Party of the release any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Interconnection Facilities, which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

23. Miscellaneous:

- a. **Applicable Law; Venue:** This Agreement shall be construed under the laws of the state of Michigan, without regard to the conflicts of law rules of such state. Each of the Parties hereto irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement will be brought in or removed to the Federal District Court for the Eastern District of Michigan, or, if such court lacks or declines jurisdiction, the courts of the State of Michigan in Gratiot County, to the exclusion of all other courts. 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 appeals) of any such court with respect to this Agreement, (iii) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION, OR PROCEEDING 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 has been notified, and (v) agrees that nothing herein will 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.
- b. **Entire Agreement:** Without limiting either Party's rights or remedies under the PPA, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of the Agreement.
- c. **Amendments:** Any provision of this Agreement may be amended or waived, but only if such amendment or waiver is in writing and is signed, in the case of an amendment, by all parties to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective. Except as expressly provided herein, no failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

- d. **Captions:** Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Agreement and shall be disregarded in the construction hereof.
- e. **Invalidity:** If any provision of this Agreement or parts of a provision contained herein shall, for any reason, be held invalid, illegal, or unenforceable under the laws of the state referenced in Section 21(a) (*Applicable Law; Venue*), such determination of invalidity, illegality, or unenforceability shall not affect any other provision or part of a provision, but this Agreement shall be reformed and construed as if such invalid, illegal or unenforceable provision or part of a provision had never been contained herein and shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted under Applicable Law.
- f. **Successors and Assigns:** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- g. **Third Party Beneficiaries:** No provision of this Agreement is intended to or shall confer any rights, benefits, remedies, obligations, or liabilities upon any person or entity other than the parties hereto and their respective successors and permitted assigns.
- h. **Assignment:** This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors and assigns. Subject to the next sentence, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, unless required under the PPA, no consent will be required for:
 - i. The delegation of duties by a Party to one or more subcontractors; provided, that such delegating Party shall remain fully responsible for the performance of all such duties hereunder;
 - ii. any assignment of this Agreement by DG Owner/Operator to any Financing Party as collateral security for obligations under the financing documents entered into with such Financing Party;
 - iii. any assignment by a Financing Party to a third party after the Financing Party has exercised its foreclosure rights with respect to this assignment or the Project;
 - iv. Any assignment or transfer of this Agreement by DG Owner/Operator to an affiliate of DG Owner/Operator, including through merger and by operation of law, consolidation, or sale of all or substantially all of DG Owner/Operator's stock, interests, or assets to or with such affiliate;
 - v. Any assignment or transfer of this Agreement by DG Owner/Operator to a Person that has, or whose affiliates collectively have, (i) comparable experience to DG Owner/Operator in operating and maintaining solar photovoltaic generation assets comparable to the Project, and (ii) the financial capability to maintain the Project and perform hereunder; or

- vi. Any assignment or transfer of this Agreement by DG Owner/Operator to a Person succeeding to all or substantially all of the assets of DG Owner/Operator.
- i. **Survival of Obligations.** In addition to the survival of contract terms that are specifically provided for in this Agreement or that may be provided in accordance with ordinary legal principles, the Parties expressly agree that to the extent necessary to enforce or resolve matters or claims that arise prior to the termination or expiration of this Agreement, the provisions of this Section 21 will survive the termination or expiration of this Agreement and the performance by the Parties of their obligations hereunder.
- j. **Notices.** Whenever this Agreement requires or permits delivery of a notice, unless otherwise specified in this Agreement, the Party with such right or obligation will provide a written communication in the manner specified herein and to the addresses set forth below. Subject to the last paragraph of this section, any notice made pursuant to the terms and conditions of this Agreement must be in writing and be: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight courier service, with delivery receipt requested; or (iv) sent by electronic mail transmission, provided that any notices of default, termination, or dispute must also be sent by one of the mechanisms described in clauses (i) through (iii):

To: [Utility]
[address]
Attn: [____]
Email: [____]

To: [Interconnection Customer]
c/o SolAmerica Energy, LLC
[Name]
[Title]
[Name of Interconnection Customer]
190 Ottley Dr. NE
Studio H
Atlanta, GA 30324
404.351.8175, ext. ____
____@solamericaenergy.com

With a copy to:

[same address]
Attn: General Counsel
Email: sae-legal@solamericaenergy.com

A notice will be deemed to have been delivered as follows: (A) any notice given personally, through overnight mail or through certified letter will be deemed to have been received on delivery, (B) any notice given by express overnight courier service will be deemed to have been received the next business day after the same has been delivered to the relevant courier, provided the delivery to such courier

occurred prior to such courier's deadline for next-day delivery, and (C) any notice given by electronic mail transmission (other than notices of default, termination, or dispute) will be deemed to have been received (I) on the business day sent, if sent on a business day before 5pm Eastern Time, or (II) on the first business day following the date sent, if not sent on a business day or if sent after 5pm Eastern Time on a business day.

- k. **No Consequential Damages.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND WITHOUT LIMITING ANY REMEDIES AVAILABLE UNDER THE PPA, (I) THE SOLE AND EXCLUSIVE REMEDY FOR ANY MONETARY DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, AND (II) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES UNDER, ARISING OUT OF, DUE TO OR IN CONNECTION WITH ITS PERFORMANCE OR NONPERFORMANCE OF THE AGREEMENT OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY OR OTHERWISE.
- l. **Interpretation.** All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and do not affect in any way the meaning or interpretation of this Agreement. A reference to either Party to this Agreement or in any other agreement or document includes such Party's predecessors, successors and permitted assigns. The word "or" will have the inclusive meaning represented by the phrase "and/or", unless the context clearly indicates that an exclusive meaning is intended. The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against either Party by virtue of the authorship of this Agreement does not apply to the construction and interpretation hereof. The terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole.
- m. **Counterparts and Electronic Documents.** An electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.
- n. **No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- o. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date: Such Party is duly organized,

validly existing and in the case of DG Owner/Operator is, in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary municipal or corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms.

[Remainder of Page Intentionally Blank. Signatures Follow.]

IT IS SO AGREED, the day and year first above written:

DG Owner/Operator

Utility

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
LIST OF INTERCONNECTION FACILITIES SCHEDULES AND DELIVERY POINT

Project Description:

Installation of a 1.2MW solar photovoltaic (PV) distributed energy resource (DER) including the following:

- 3,000 520W solar panels
- 5 inverters at 250kW, 600VAC output
- 1,250kVA 12.5kV:600V step-down transformer
- 100kVA, 12.5kV:600V grounding transformer

Delivery Point: See Attachment 1 to this Exhibit A.

Interconnection Facilities Location: East side of property at 6838 State Road with interconnection off E. Jackson Road.

Transformer(s): See Attachment 1 to this Exhibit A.

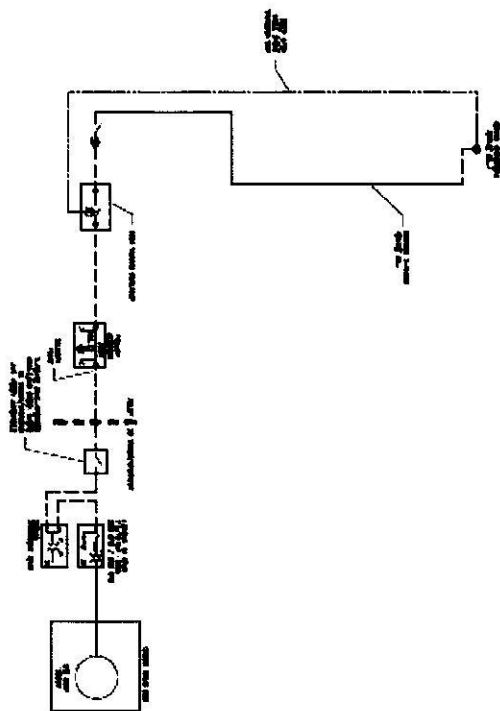
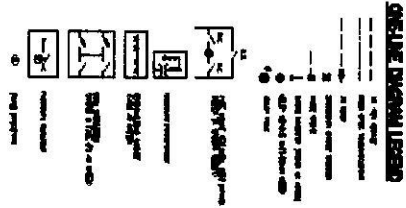
Delivery voltage: 7.2/12.47kV

Maximum Power Output Limit (kW/kVA): 1,250kW / 1,250 kVA

Generator Power Factor: Power factor exported will be fixed 100% (unity)

1. Metering (voltage, location, and other): Primary metering will be connected at 7.2/12.5kV and located at the delivery point.
2. One line diagram attached (check one): X Yes / No
3. Utility's Interconnection Facilities:
 - a. Approximately 500' three-phase #4/0 15kV AL underground cable.
 - b. Padmount 600A vacuum recloser with direct-transfer trip (DTT) scheme.
 - c. Padmount 600A primary metering enclosure
 - d. Fiber optic communication between the City of St. Louis' Gibson Substation Circuit GB-1 recloser controller and generation site recloser for the DTT scheme.
4. DG Owner/Operator's Interconnection Facilities:
 - a. Padmount, three-phase 600A gang-operated load-break switch.
 - b. 1,250kVA padmount 7.2/12.5kV:600V step-down transformer
 - c. 100kVA, 12.5kV:600V grounding transformer
 - d. 3,000 520W solar panels
 - e. 5 inverters at 250kW, 600VAC output
5. Other applicable standards (if any): IEEE 1547

Attachment 1 **ONE-LINE DIAGRAM**



PRELIMINARY DRAWING



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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GRP
Engineering, Inc.
1000 N. 1st St., Suite 100
St. Louis, MO 63102
Phone: (314) 426-1234
Fax: (314) 426-1235
www.grp-engineering.com

ST. LOUIS MUNICIPAL ELECTRIC UTILITY
ST. LOUIS, MISSOURI
PROPOSED SOLAR DCM CONNECTION DIAGRAM

PROJECT
ST. LOUIS
NOV 2009

PROJECT
ST. LOUIS
E101

St. Louis Affordable Solar

SOLAR ENERGY FACILITY

POWER PURCHASE AGREEMENT

between

**CITY OF ST. LOUIS
as Buyer**

and

**ST. LOUIS MI AFFORDABLE SOLAR, LLC
as Seller**

dated as of

(MONTH) (DAY), (YEAR)

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POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “*Agreement*”) is made as of this (MONTH) (DAY), 202X (the “*Effective Date*”), by and between the **City of St. Louis**, a Michigan municipal corporation (“*Buyer*”), and **ST. LOUIS MI AFFORDABLE SOLAR, LLC**, a Delaware 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 herein and in Exhibit C), known as the St. Louis MI Affordable Solar Project (the “*Solar Project*”), of approximately 1.2 MW_{AC} of expected aggregate capacity on a site located in Gratiot County, Michigan; and

WHEREAS, Seller desires to sell and deliver, and Buyer desires to purchase and receive, the Products (as such term is defined below) generated from the Solar Project on the terms and conditions set forth herein.

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 or, if not otherwise defined in this Agreement, the MISO Tariff; (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, each Person that directly or indirectly controls or is controlled by or is under common control with such designated Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operation and policies of such Person, whether through the ownership of voting securities or by contract or otherwise, but, with respect to Seller, this definition shall not include AllianceBernstein L.P., AB CarVal, or any of their respective subsidiaries or affiliates other than SolAmerica Energy Holdings, LLC and its direct and indirect subsidiaries.

“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” has the meaning set forth in the first paragraph hereof.

“Ancillary Services” shall mean those services that are necessary to support capacity and the transmission of Energy from resources to loads while maintaining reliable operation of the Distribution System and Transmission System. Ancillary Services include only those identified by MISO.

“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” shall mean (i) MIRECS, or (ii) such other 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 that is designated by the Buyer pursuant to Section 2.7, provided that Seller’s costs to be Eligible to participate in such alternative applicable program designated by Buyer pursuant to Section 2.7 shall be no more than the costs of the Applicable Program as of the Effective Date.

“Appraiser” has the meaning set forth in Section 3.1(b).

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

“Bankruptcy Event” shall mean, with respect to a Person, that such Person: (i) 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; (ii) has such a petition filed or proceeding commenced against it, which remains undismissed for ninety (90) Days; (iii) files an answer or pleading admitting or failing to contest the material allegations of any such petition; (iv) takes any action for its winding up, liquidation or dissolution; (v) is otherwise adjudged bankrupt or insolvent under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; or (vi) consents to any of the actions described in clauses (i) through (v) of this definition being taken against it.

“Billing Meter” has 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” has the meaning set forth in the first paragraph of this Agreement.

“Capacity Rights” shall mean 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. Capacity Rights do not include any Tax Credits, 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.

“Claim” has the meaning set forth in Section 6.1(b).

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

(i) the Solar Project has been permanently constructed, synchronized with and has proven it is capable of delivering electrical energy to the Distribution System;

(ii) the Seller’s Interconnection Facilities have been completed, and Seller has received a permission to operate letter or similar document from the Distribution 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 setting forth the date the Solar Project has achieved Commercial Operation, together with any necessary supporting documentation evidencing such achievement.

“Commercial Operation Date” or “COD” shall mean the date the Solar Project has achieved Commercial Operation as set forth in Seller’s notice delivered in accordance with the Commercial Operation definition set forth above.

“Commercial Operation Milestone Date” shall mean December 31, 2025, as depicted in Exhibit D, or such later date as provided in this Agreement, including Section 2.4.

“Compensated Curtailment” has the meaning set forth in Section 2.10(b).

“Conditional Loan Approval” shall mean the receipt by Seller of the conditional loan commitment for a partially forgivable loan under the PACE Program from the Rural Utility Service within the U.S. Department of Energy.

“Confidential Information” has the meaning set forth in Section 9.1.

“Contract Capacity” shall mean approximately 1.2 MW_{AC}, as may be adjusted hereunder by a shortfall in actual installed capacity, rounded to the nearest tenth of MW.

“Contract Rate” has the meaning set forth in Section 2.3(a).

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

“Curtailment Event” has the meaning set forth in Section 2.10(a).

“DAS” shall mean 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.

“Deemed Delivered Energy” shall mean, with respect to a period of time, the quantity of Energy expressed in MWh, as calculated by Seller in accordance with Exhibit F, that would have been produced by the Solar Project and delivered to the Delivery Point during such period but was not so produced and delivered as a result of a Compensated Curtailment.

“Delay Damages” has the meaning given thereto in Section 2.4(b).

“Delivered Energy” shall mean all Metered Energy in MWh, as adjusted for any Electric Losses in accordance with **Section 4.1**, if any, generated by the Solar Project and delivered to the Delivery Point.

“Delivery Point” shall mean the Solar Project’s point of interconnection between the Solar Project’s interconnection facilities, including the Distribution Provider Interconnection Facilities, and the Distribution System, more specifically described in **Exhibit B**.

“Development Milestones” shall mean the milestones depicted in **Exhibit D** to be achieved by Seller in developing the Solar Project.

“Development Security” has the meaning set forth in **Section 3.7(a)**.

“Disclosing Party” has the meaning set forth in **Section 9.1**.

“Discretionary Permit” shall mean a license, consent, certificate, approval, permit, or authorizations of any kind obtained from, or issued by, **Bethany Township** in connection with development, design, engineering, procurement, construction, installation, or operation that is discretionary in nature.

“Distribution Provider Interconnection Facilities” shall mean the interconnection facilities, distribution and/or transmission lines, control and protective devices and metering facilities, supplied by Distribution Provider and required to connect the Solar Project to the Distribution System.

“Distribution Provider” shall mean the City of St. Louis, or any successor in interest with respect to the Distribution System.

“Distribution System” shall mean the facilities owned and operated by Buyer through the Distribution Provider for the distribution of electricity to its retail customers.

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

“Electric Loss(es)” or “Electrical Loss(es)” shall mean all applicable losses defined as any line losses or transformation losses between the Meter and the Delivery Point; if applicable.

“Emergency” shall mean, 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 in the Interconnection Agreement, or (ii) a Distribution System condition identified by the Distribution Provider, 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 from the Solar Project to or from the Delivery Point is required and requested by the Distribution Provider or any Governmental Authority.

“Energy” shall mean electric energy output in the form of three (3)-phase, sixty (60) Hertz, alternating current.

“Environmental Attributes” shall mean 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 Metered Energy 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 (Sox), nitrogen oxides (Nox), 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, including Michigan incentive RECs. Environmental Attributes do not include (a) any energy, capacity, reliability or other power products, such as Capacity Rights or Ancillary Services, or (b) Tax Credits, federal, state or local tax credits, incentives, subsidies or financial grants of any type.

“Environmental Contamination” shall mean 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 Site will not be available or usable for the purposes contemplated by this Agreement caused by Seller.

“EST” shall mean Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.

“Estimated Annual Energy Production” shall mean the non-binding estimates of the annual energy production of the Solar Project for each Contract Year set forth in Exhibit F, which shall reflect, among other things, annual equipment degradation.

“Event of Default” has the meaning set forth in Section 3.5(a) or 3.5(b), as applicable.

“Excused Delay” shall mean a delay in achieving the Commercial Operation Milestone Date due to (i) a Force Majeure Event, (ii) a delay by the Distribution Provider in entering into or performing its obligations under the Interconnection Agreement or any other agreement, (iii) a breach by Buyer of this Agreement (including Seller’s exercise of any remedies for such breach), (iv) any other action or inaction of Buyer or the Distribution Provider that prevents Seller from performing its obligations under this Agreement in a timely manner where such events are beyond Seller’s reasonable control, (v) provided that Seller has executed a purchase order for the transformer to be utilized in the Solar Project no later than ten (10) Business Days after satisfaction of the Transformer Purchase Condition with a supplier who has represented in writing to Seller its intention to deliver the transformer within three hundred sixty-five (365) Days, but delivery to

Seller of such transformer takes more than three hundred sixty-five (365) Days after execution of the purchase order with respect thereto, and (vi) Conditional Loan Approval occurring at any time after the latter of June 1, 2024 or the Effective Date.

“Extended Term” has the meaning set forth in Section 3.1(b).

“Fair Market Value” has the meaning set forth in Section 3.3(a).

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

“Forced Outage” shall mean 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” shall mean any event or circumstances which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such event, despite the exercise of reasonable diligence, cannot be prevented, avoided or overcome by such Party, (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof, and (iv) such event is not the direct or indirect result of a Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement or to comply with Applicable Law. It may include, without limitation: 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); and unavailability of electricity from the utility grid.

“Governmental Authority” shall mean, 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 but shall specifically exclude Buyer.

“Hazardous Materials” shall mean 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).

“Indemnified Party” has the meaning set forth in Section 6.1(a).

“Indemnifying Party” has the meaning set forth in Section 6.1(a).

“Interconnection Agreement” shall mean the mutually agreed interconnection agreement to be entered into between the Distribution Provider and Seller pursuant to which the Solar Project will interconnect with the Distribution System.

“Interconnection Cost Estimate” has the meaning set forth in Section 2.13.

“Investment Grade Credit Rating” shall mean that the applicable entity has a long-term credit rating (corporate or long-term senior unsecured debt) from at least one of S&P, Moody’s, or Fitch and is rated “BBB” or better, in the case of S&P and Fitch, or “Baa2” or better, in the case of Moody’s; provided, however, such entity shall be deemed not to have an “Investment Grade Credit Rating” if either (i) such entity’s long-term credit rating is lower than “BBB” by either S&P or Fitch or lower than “Baa2” by Moody’s or (ii) (a) such entity’s long-term credit rating is “BBB” by S&P or Fitch or “Baa2” by Moody’s and (b) a “credit watch,” “negative outlook” or other rating decline alert has been issued by S&P, Fitch, and/or Moody’s with respect to such entity.

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

“Late Payment Rate” has the meaning set forth in Section 2.8(c).

“Lender” or “Lenders” shall mean any and all Persons or successors in interest thereof (i) 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: (a) for the construction, interim or permanent financing or refinancing of the Solar Project; (b) for working capital or other ordinary business requirements of the Solar Project (including the maintenance, repair, replacement or improvement of the Solar Project); (c) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Solar Project; (d) for any capital improvement or replacement related to the Solar Project; or (e) for the purchase of the Solar Project and the related rights from Seller; and/or (ii) participating (directly or indirectly) as an equity investor in the Solar Project primarily in connection with the utilization of applicable Tax Credits, federal tax credits or tax depreciation benefits associated with holding a direct or indirect ownership interest in the

Solar Project; and/or (iii) participating as lessor under a lease finance arrangement relating to the Solar Project.

“Letter of Credit” shall mean an irrevocable standby letter of credit in a form reasonably acceptable to Buyer, naming Buyer as the party entitled to demand payment and present draw requests thereunder that is issued by a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least \$10 billion and a senior unsecured long term credit rating (unenhanced by third party support) equivalent to “A-” or better as determined by Standard & Poor’s or “A3” or better as determined by Moody’s.

“Meter” shall mean an instrument and associated equipment meeting applicable electric industry standards including American National Standards Institute (ANSI) Standard C12.20-2010 Class 0.2 (e.g., “revenue class accuracy”) used to measure and record the quantity and the required delivery characteristics of Energy output of the Solar Project.

“Metered Energy” shall mean all of the hourly, as-generated Energy output of the Solar Project as measured at the Billing Meter and submitted by Buyer, 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.

“MIRECS” shall mean the Michigan Renewable Energy Certification System.

“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 which coordinates, controls and monitors the operation of the wholesale electrical power system, and any entity that succeeds to such duties.

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

“MWh” shall mean a megawatt hour of Energy.

“NERC” shall mean the North American Electric Reliability Corporation or any successor entity.

“NEPA” shall mean the National Environmental Policy Act into law on January 1, 1970, as amended, and as set forth in 42 U.S.C. 4331(a).

“No Fault Event” shall mean any of the following circumstances: (i) despite its commercially reasonable efforts, Seller is not able to obtain all Discretionary Permit required for Seller to perform under this Agreement, (ii) any requirements placed on Seller by the Rural Utility Service during the course of its diligence process in connection with the PACE program that materially impairs, restrains, prohibits, adversely impacts, or otherwise prevents Seller’s performance of its obligations and responsibilities under this Agreement to the point that renders installation or construction of the Solar Project nonviable or uneconomical, (iii) despite its use of commercially reasonable efforts, Seller is unable to secure a conditional loan commitment to finance the Solar Project through a partially forgivable loan under the PACE program from the Rural Utility Service

within the U.S. Department of Energy on terms acceptable to Seller in its commercially reasonable discretion, (iv) subsurface conditions at the Site that could not reasonably be discovered prior to commencement of construction that render installation or construction of the Solar Project nonviable or uneconomical, or (v) noncompliance by Distribution Provider with the Interconnection Agreement materially hinders Seller's ability to satisfy its obligations under this Agreement.

"Operating Procedures" has the meaning set forth in Section 2.12.

"Option Confirmation Notice" has the meaning set forth in Section 3.3(e).

"Option Floor Price" means a price equal to the damages calculation under Section 3.5(d)(ii).

"Parties" has the meaning set forth in the first paragraph of this Agreement.

"Party" has the meaning set forth in the first paragraph of this Agreement.

"Performance Security" has the meaning set forth in Section 3.7(a).

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

"Preliminary Interest Notice" has the meaning set forth in Section 3.3(b).

"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 Electrical Generator Practice" shall mean any of the practices, methods and acts employed by constructors, owners, operators or maintainers of solar electric generating facilities similar in size and operational characteristics to the Solar Project which, in the exercise of reasonable judgment in the light of the facts known at the time that a decision was made, could reasonably have been expected to accomplish the desired result at the lowest reasonable cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety, protection of lives and property, expedition, the technical specifications and manufacturer's maintenance requirements for the Solar Project, and the applicable requirements of any Governmental Authority. Prudent Electrical Generator Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts employed by constructors, owners, operators and/or maintainers of photovoltaic electric generating facilities similar in size and operational characteristics to the Solar Project.

“Purchase Option” has the meaning set forth in Section 3.3(a).

“Products” shall mean Delivered Energy, the Environmental Attributes associated with the Delivered Energy, any benefits from the Ancillary Services associated with the Solar Project, and the Capacity Rights in an amount equal to the total capacity accredited to the Solar Project.

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

“Residual Test” has the meaning set forth in Section 3.1(b).

“Renewable Energy Credits” or ***“RECs”*** shall mean any and all credits, certificates, renewable energy certificates, allowances, or similar rights, however entitled, that are related to the Environmental Attributes associated with the Delivered Energy that could or do qualify for application towards compliance with the Applicable Program or an alternative program that is designated by Buyer pursuant to Section 2.7. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh of electricity.

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

“Seller Guaranty” has the meaning set forth in Section 3.7(a).

“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 Distribution Provider Interconnection Facilities.

“Site” shall mean the real property located in Gratiot 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.

“Special Land Use Permit” shall mean the Special Land Use Permit issued to Buyer by Seller.

“Tax Credits” shall mean any and all (i) investment tax credits, including the federal investment tax credit established under Section 48 of Internal Revenue Code of 1986, as amended, and as expanded by the Inflation Reduction Act (IRA); (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” has the meaning set forth in Section 3.1(a).

“Transformer Purchase Condition” shall mean the latest to occur of (i) receipt by Seller of all Discretionary Permits required for the construction and operation of the Solar Project, (ii) completion of the NEPA review process with respect to the Solar Project, and (iii) Conditional Loan Approval.

“Uncompensated Maintenance” shall mean maintenance of the Distribution System (including testing, repair and replacement) which such maintenance (i) is limited to thirty-six (36) hours in any three hundred sixty-five (365)-day period, (ii) is performed on or after November 1 and on or before April 1, and (iii) is notified by Buyer to Seller with as much advance notice as is reasonably practicable.

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, (i) sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, the Delivered Energy during each hour, transferring such Delivered Energy from Seller to Buyer (ii) sell and deliver to Buyer the Environmental Attributes associated with such Delivered Energy, in accordance with **Section 2.8**; (iii) allocate to Buyer any and all Capacity Rights available from the Solar Project; (iv) allocate to Buyer any and all Ancillary Services available from the Solar Project.

(b) Sole Compensation. The Contract Rate shall be Seller’s sole and exclusive compensation for the Products.

2.2 *Pre Commercial Operation Date Generation.*

All Energy, Capacity Rights, Environmental Attributes and Ancillary Services generated prior to the Commercial Operation Date shall be owned and sold by Seller. Buyer shall accept all Energy generated prior to the Commercial Operation Date during the testing/commissioning of the Solar Project into its own system and compensate Seller at a rate equal to the rate set forth in Exhibit A for Year 1.

2.3 *Contract Rate.*

(a) Buyer shall pay Seller for each MWh of Delivered Energy after the COD during the Term at the applicable rate set forth in Exhibit A (the ***“Contract Rate”***). The Contract Rate includes and already incorporates the compensation for the Products. Seller assumes the risk and responsibility associated with permitting, environmental approvals (including environmental approvals required by the Michigan Department of Environment, Great Lakes, and Energy, engineering, construction and operation of the Solar Project. 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 the Products from Seller in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any ownership 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 and any associated Tax Credits or any other federal or state tax credits.

(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 is a public body corporate and thereby exempt from certain taxes, but to the extent it may be taxable pursuant to law, Buyer shall pay, or cause to be paid, all taxes on or with respect to Delivered 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.

2.4 *Construction of the Solar Project.*

(a) Seller shall use commercially reasonable efforts to achieve the Development Milestones set forth in Exhibit D and cause the Commercial Operation Date to occur no later than the Commercial Operation Milestone Date, as such date is extended pursuant to this Agreement.

(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 2.4(b)(iii), Seller shall pay damages to Buyer on account of such delay ("**Delay Damages**") as specified below. Any Delay Damages owed by Seller pursuant to this Section 2.4(b) shall apply towards the limitations of liability for Seller set forth in Section 6.3(b). For the avoidance of doubt, if an Excused Delay occurs while Seller owes Delay Damages, Seller's obligation to pay Delay Damages shall be suspended as necessary, day for day, during the continuation of such Excused Delay.

(i) Subject to the limitations set forth in Section 6.3(b), Seller shall pay Delay Damages in an amount equal to Five Hundred Dollars (\$500.00) per MW per Day multiplied by the Contract Capacity for each Day of such delay that occurs.

(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 3.1(c). Delay Damages shall be Buyer's sole and exclusive remedy payable by Seller in lieu of actual damages accrued by Buyer for Seller's failure to achieve the Commercial Operation Date of the Solar Project. 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, day for day, if the completion of the Solar Project is delayed due to an Excused Delay.

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

In the event that Buyer or the Distribution Provider fails to accept all of the Delivered Energy tendered at the Delivery Point by Seller that Buyer is obligated to receive and purchase as provided herein for any reason, except as such failure is excused due to a (i) Force Majeure Event that prevents such acceptance pursuant to Section 8.1 or (ii) the proper exercise by Buyer of its suspension rights pursuant to Section 3.5(c)(ii), then Buyer shall pay to Seller, as liquidated damages, an amount equal to the sum of the aggregate amount of the Delivered Energy and Deemed Delivered Energy, multiplied by the Contract Rate during each applicable billing cycle that Buyer failed to accept.

2.6 *Seller's Failure to Deliver Energy.*

From and after the COD during the Term, other than upon the occurrence and during the continuance of an Event of Default of Buyer, it shall constitute a default by Seller under Section 3.5(a) if Seller delivers the Products to any Person, other than Buyer pursuant to this Agreement.

2.7 *Offsets, Allowances, Environmental Attributes and Ancillary Services.*

(a) Buyer shall be entitled to all of the Environmental Attributes and Ancillary Services resulting from the electric generation of Delivered Energy actually purchased by Buyer pursuant to this Agreement. Buyer shall not be entitled to any Environmental Attributes or Ancillary Services resulting from the generation of Delivered 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 the Environmental Attributes and Ancillary Services associated with the Delivered Energy 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 Delivered Energy that is purchased by Buyer pursuant to this Agreement. To the extent Applicable Law requires Seller (as opposed to Buyer) to apply for accreditation or verification of such Environmental Attributes or Ancillary Services 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 such Environmental Attributes or Ancillary Services. Seller's cooperation would include documentation to substantiate the percentage of Michigan material and labor used in the Solar Project.

(c) 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 associated with Delivered Energy purchased by Buyer hereunder. At Seller's sole cost and expense, 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 the Applicable Program or an alternative program that is designated by Buyer pursuant to this Section 2.7; and (ii) verify the Solar Project's output for generation of RECs including Michigan incentive RECs. At Buyer's sole cost and expense, Seller shall take any action reasonably necessary to register or cause the Solar Project to qualify for, or generate, obtain and/or transfer to Buyer any Environmental Attributes associated with the Delivered Energy under an alternative program for the registry or reporting for Environmental Attributes or RECs other than the Applicable Program, which is designated by Buyer after the Effective Date provided that (i) the Solar Project is eligible therefore pursuant to Applicable Law and based on its then-existing design and other characteristics (including equipment and interconnection), without the need to take any action that would reduce the generation from the Solar Project, (ii) Buyer has given Seller sufficient prior written notice specifically identifying the desired Environmental Attributes (including, if applicable, the corresponding renewable energy program and tracking system therefore) and actions requested to be taken by Seller with respect thereto, and (iii) such registration, qualification, generation, obtainment or transfer will not cause Seller or the Solar Project to violate Applicable Laws. 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.

(d) If, after the Effective Date, there is a change in Applicable Law with regard to Seller's provision of Environmental Attributes associated with the Delivered Energy, or other Governmental Authority changes the applicable provisions for providing such Environmental Attributes, and in order for Seller to maintain or obtain eligibility of the Solar Project for Environmental Attributes (or any renewable energy program and/or tracking system therefor) thereafter, Seller shall to (i) make changes to the design or other characteristics of the Solar Project or the operation of the Solar Project, (ii) pay for or undertake any interconnection or transmission upgrades or make any capital improvements or other modifications (other than such interconnection or transmission upgrades or modifications as may be required to comply with the requirements of the Interconnection Agreement), if any, (iii) incur any other cost (other than de minimis administrative costs, including in reasonably cooperating with Buyer in providing any documentation to assist Buyer in seeking to have the Solar Project determined to be a source of eligible Environmental Attributes), (iv) reduce the generation from the Solar Project, or (v) otherwise take any action that is other than administrative in nature or that would be materially burdensome to Seller or that is not permitted by (and capable of being implemented pursuant to) Applicable Laws and any applicable voluntary rules, guidelines or programs, then, if Buyer requests such modification or improvement to be made or Seller to incur such additional costs, Seller shall, if Seller approves such modification or improvement or additional costs in writing (which approval shall not be unreasonably withheld), undertake such modification or improvement or cost at Buyer's sole reasonable cost and expense. Buyer shall reimburse Seller for any costs or expenses paid by Seller pursuant to the immediately

preceding sentence promptly (and no more than ten (10) Business Days after) Buyer receives from Seller a statement of the amounts to be reimbursed, accompanied by reasonable supporting documentation. To the extent Seller complies in all material respects with the provisions of this **Section 2.7(c)**, Seller shall have no liability to Buyer if Buyer does not obtain any or obtains only some of its desired Environmental Attributes.

(e) Seller shall be entitled to all 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.

2.8 *Billing and Payment.*

Billing and payment for: (i) the Products sold to and purchased by Buyer under this Agreement shall be calculated as the product of (A) Delivered Energy received by Buyer during the applicable billing period, and (B) the Contract Rate applicable to such billing period; (ii) any Deemed Delivered Energy shall be calculated as the product of (A) the Deemed Delivered Energy for such billing period and (B) the Contract Rate applicable to such billing period; and (iii) any other amounts due and payable hereunder shall be as follows:

(a) Buyer shall total and deliver to Seller the amount of Delivered Energy, pursuant to **Article 4**, received from Seller during the previous calendar month by no later than the tenth (10th) Day of each month. In the event that Seller does not receive such a statement from the Buyer by the tenth (10th) Day of a month with respect to the previous calendar month, Seller shall be entitled to prepare and send to Buyer an invoice for the Delivered Energy during such period regardless of receipt of the Buyer's statement. By the fifteenth (15th) Day of each month, Seller shall deliver to Buyer an invoice showing the amount of Delivered Energy delivered by Seller and the amount of Deemed Delivered Energy, if any, 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, Buyer shall pay to Seller, by electronic funds 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 one (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 via the Dispute Resolution referenced in **Section 9.13**. Any dispute with respect to an invoice must be made in writing and state the basis for such dispute. If a Party provides written notice of a dispute with respect to an invoice prior to the applicable due date for such invoice, such Party shall pay the undisputed amount of such invoice when due, but may if not already paid, withhold payment of the disputed portion until such dispute is resolved. If 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 percent (1.0%), 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 for any reason other than an overpayment by 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**.

2.9 ***Title and Risk of Loss.***

Title to and risk of loss with respect to the Products shall pass from Seller to Buyer when the Delivered 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 Delivered Energy passes, Buyer shall be deemed in exclusive control of such Delivered Energy and shall be responsible for any damage or injury caused thereby. Seller shall deliver all Products free and clear of all liens or encumbrances created by any person other than Buyer.

2.10 ***Curtailment.***

(a) Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with Energy if such Energy is not delivered to the Distribution System at the Delivery Point due to any of the following ("**Curtailment Event(s)**"): (i) the interconnection between the Solar Project and the Distribution System is disconnected, suspended or interrupted, in whole or in part, for either (A) Seller's breach of its obligations under the Interconnection Agreement after "permission to operate" is received thereunder or (B) performance of Uncompensated Maintenance on the Distribution System, (ii) the Distribution Provider directs a general curtailment, reduction, or redispatch of generation in the area (which would include the Metered Energy) as a result of an Emergency, provided, however, that such Emergency was not directly caused by the Distribution Provider, (iii) the Solar Project's Metered Energy is not received because the Solar Project is not fully integrated or synchronized with the Distribution System, or (iv) a Force Majeure Event prevents either Party from delivering or receiving Metered Energy. Seller shall have no obligation to deliver Energy to Buyer, and Buyer shall have no obligation to pay for such Energy not produced or not delivered, if such Energy is not delivered to the Distribution System at the Delivery Point due to any Curtailment Event.

(b) Seller shall be compensated in the event and to the extent production and delivery of Energy of the Solar Project is curtailed by the Distribution System for any reason other than a Curtailment Event (all of such curtailments other than Curtailment Events, "***Compensated Curtailment(s)***"). Seller is entitled to compensation and Buyer shall compensate Seller for the Deemed Delivered Energy during a Compensated Curtailment by paying the Contract Price for all such Deemed Delivered Energy. Seller shall include an invoice for payment for such Deemed Delivered Energy with its regular monthly invoice to Buyer, along with the information evidencing its calculation of amounts due for Deemed Delivered Energy curtailed by any Compensated Curtailment.

2.11 ***Interconnection.***

(a) Buyer shall assist Seller with obtaining such approvals as are required to interconnect the Solar Project to the Distribution System 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 Metered Energy from the Solar Project to the Delivery Point.

(b) Buyer shall be responsible for all electric losses, transmission and ancillary service arrangements and all other costs required to deliver the Delivered Energy to points beyond the Delivery Point. The Parties acknowledge that the Contract Rate does not include charges for any such costs, including transmission and interconnection services after Delivered Energy is delivered by Seller to the Delivery Point, all of which shall be paid by 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 Distribution Provider Interconnection Facilities and the Distribution 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 Agreement.***

Seller shall be responsible for obtaining the Interconnection Agreement. The Seller agrees to negotiate and work in good faith to finalize and execute such interconnection agreements as are required to ensure the connection of the Solar Project and the delivery of the Products from the Solar Project to and over the Distribution Provider Interconnection Facilities. Buyer shall not be responsible for costs associated with the Interconnection Agreement, which are estimated to be \$324,000 (the “**Interconnection Cost Estimate**”). If the actual costs associated with the Interconnection Agreement differ from the Interconnection Cost Estimate, the Parties agree to increase the Contract Rate by \$0.094/MWh for each incremental cost increase of Ten Thousand Dollars (\$10,000) above the Interconnection Costs Estimate, or to decrease the Contract Rate by \$0.094/MWh for each incremental cost decrease of Ten Thousand Dollars (\$10,000) below the Interconnection Costs Estimate. Seller shall be responsible for costs incurred to meet regulatory and environmental requirements to interconnect the Solar Project to the Distribution System.

2.14 ***Operation and Maintenance Requirements.***

(a) Seller shall, at all times:

(i) At its sole expense, operate and maintain (directly or through its subcontractors or other third party providers) the Solar Project (A) in accordance with the Applicable Law and the Interconnection Agreement, and (B) in a manner that is reasonably likely to optimize the output of Energy from the Solar Project and result in a useful life for the Solar Project of not less than twenty-five (25) years subject to the terms and conditions otherwise set forth in this Agreement;

(ii) Employ (directly or through its subcontractors or other third party providers) qualified and trained personnel for managing, operating and maintaining the Solar Project and for coordinating with Buyer and Buyer’s agent, and ensuring that necessary personnel are available on-site or on-call twenty-four (24) hours per Day during the Delivery Term;

(iii) Operate and maintain (directly or through its subcontractors or other third party providers) the Solar Project with due regard for the safety, security and reliability of the interconnected facilities and Distribution System; and

(iv) Comply (directly or through its subcontractors or other third party providers) with operating and maintenance standards recommended or required by the Solar Project's equipment suppliers or, to the extent inconsistent, comply with Prudent Electrical Generator Practice.

ARTICLE 3 TERM, TERMINATION AND DEFAULTS

3.1 *Term; Early Termination.*

(a) The “**Term**” of this Agreement shall commence on the Effective Date hereof and continue until midnight on the last Day of the month in which the twenty-fifth (25th) anniversary of the Commercial Operation Date occurs, 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 Distribution 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 (“**Extended Term**”). If a Party desires to extend this Agreement beyond the expiry of the Term, then, not more than one hundred eighty (180) and not less than ninety (90) 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; provided that Seller shall have no obligation to agree to any extension or renewal unless an independent, licensed appraisal and valuation consultant that is mutually agreed upon by Buyer and Seller (the “**Appraiser**”) has determined that (i) the Extended Term shall not extend for more than eighty percent (80%) of the estimated useful life of the Solar Project, and (ii) the estimated remaining residual value of the Solar Project at the conclusion of the Extended Term shall be equal to at least twenty percent (20%) of the original cost of the Solar Project ((i) and (ii) together, the “**Residual Test**”). If neither Party provides a written extension notice to the other Party as required by this provision prior to the 90th Day before the end of the then-current Term, this Agreement shall terminate at the end of the Term.

(c) Notwithstanding the foregoing, prior to the Commercial Operation Date, Seller may immediately terminate this Agreement either (i) fifteen (15) Days following Seller’s written notice of its desire to terminate this Agreement as a result of any No Fault Event, if during such period the Parties are unable, using good faith efforts, to negotiate an equitable and mutually agreeable solution in lieu of termination, or (ii) following Seller’s written notice of its desire to terminate this Agreement because Seller’s Delay Damage payments to Buyer have exceeded the value of the Development Security; for the avoidance of doubt, Seller may provide this written notice at any time after Seller’s Delay Damage payments to Buyer have exceeded the value of the Development Security. Buyer waives any other claims that may arise as a result of termination pursuant to this Section 3.1(c); provided, however, that such termination will not discharge or relieve either Party from any obligation (including Delay Damages, any indemnity or confidentiality obligation) that has accrued prior to such termination.

3.2 *Regulatory Approvals.*

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

Purchase Option.

(a) (i) On the sixth (6th) anniversary of the Commercial Operation Date, and (ii) on the last day of the Term, Buyer will have the option (the "***Purchase Option***") to purchase the Solar Project for the greater of (x) the Option Floor Price, or (y) the fair market value of the Solar Project as of the purchase date (the "***Fair Market Value***").

(b) Potential Interest to Exercise Purchase Option. Interest to potentially exercise the Purchase Option may be provided by Buyer to Seller no more than twelve (12) months and no less than six (6) months prior to (i) the sixth (6th) anniversary of the Commercial Operation Date, or (ii) the last day of the Term, as applicable (the "***Preliminary Interest Notice***").

(c) Determination of Fair Market Value. Promptly following delivery of the Preliminary Interest Notice, Buyer and Seller will mutually agree to the Fair Market Value of the Solar Project. If Buyer and Seller cannot mutually agree to a Fair Market Value of the Solar Project within one (1) month of delivery of the Preliminary Interest Notice, then Buyer and Seller will each select and retain, at their own cost and expense, a nationally recognized independent appraiser with experience and expertise in appraising power generation facilities to determine separately the value of the Solar Project. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in a form reasonably acceptable to Seller, Seller will provide both appraisers access to the Solar Project and its books and records during business hours and upon prior written notice. The appraisers will act reasonably and in good faith to determine the Fair Market Value of the Solar Project and the Parties will use their commercially reasonable efforts to cause the appraisers to complete such determination no later than two (2) months following delivery of the Preliminary Interest Notice. Buyer and Seller may provide to both appraisers a list of factors which they suggest be taken into consideration when the appraisers generate their appraisals, consistent with industry standards prevailing at such time for appraising solar power generation facilities. Information will be provided to appraisers at the same time. If for any reason (other than failure by Seller to provide access hereunder to Buyer's appraiser), one of the appraisals is not completed within three (3) months following delivery of the Preliminary Interest Notice, the results of the other completed appraisal will be deemed the Fair Market Value of the Solar Project. Buyer and Seller will deliver the results of their respective appraisal to the other when completed. If so requested by either Buyer or Seller, the appraisals will be exchanged simultaneously. After both appraisals are completed and exchanged, the parties and their appraisers promptly will confer and attempt to agree upon the Fair Market Value of the Solar Project.

(d) Disagreement as to Value. If, within one (1) month after completion of both appraisals, Buyer and Seller cannot agree on the Fair Market Value of the Solar Project, and the values of the appraisals are within ten percent (10%) of each other, the Fair Market Value of the Solar Project shall be the simple average of the two appraisals. If the values of the two appraisals differ by ten percent (10%) or more, the first two appraisers shall choose a third independent appraiser experienced in appraising solar power generation assets. The third appraiser shall have access to the same information as was available to the two other appraisers. Buyer and Seller shall direct the third appraiser to determine the Fair Market Value of the Solar Project within two (2) months following his retention. The costs and expenses of such third

appraiser shall be shared equally by Buyer and Seller. Upon completion of the Fair Market Value appraisal of the Solar Project by such appraiser, the Fair Market Value of the Solar Project will be the simple average of the three (3) appraisal values completed in accordance with this **Section 3.3.**

(e) **Exercise of Purchase Option.** Within thirty (30) Days following the determination of the Fair Market Value of the Solar Project, but in no event later than three (3) months prior to (i) the sixth (6th) anniversary of the Commercial Operation Date, or (ii) the last day of the Term, as applicable, Buyer must notify Seller if Buyer elects to exercise the Purchase Option (the "***Option Confirmation Notice***").

(f) **Seller Covenants.** Seller covenants that, in the event it is provided such Option Confirmation Notice, Seller will sell, transfer, assign and convey to Buyer all of the Solar Project and all rights of Seller therein or relating thereto that are assignable in accordance with their terms, free and clear of all liens, claims, encumbrances, or rights of others arising through Seller on the purchase date, including good and valid title to the Solar Project, the spare parts stored at the Solar Project, and all of Seller's ownership, leasehold or other rights in the Site. In connection with such sale, transfer, assignment and conveyance, Seller will (a) assign or otherwise make available, to the extent permitted by Applicable Law and not already assigned or otherwise transferred to Buyer, Seller's interest in all licenses, permits, approvals and consents of any Governmental Authorities or other persons that are or will be required to be obtained by Buyer in connection with the use, occupancy, operation or maintenance of the Solar Project or Site in compliance with Applicable Law, and (b) subject to any applicable confidentiality obligations, provide Buyer copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Solar Project, as are in Seller's possession and reasonably appropriate or necessary for the continued operation of the Solar Project. Except as provided in this **Section 3.3(f)**, any such purchase by Buyer will be on an as-is, where-is basis, and Seller will not provide any warranty, guarantee or other undertaking regarding the Solar Project.

3.4 ***Right of First Refusal***

(a) If, at any time, Seller receives a bona fide written offer from any party to purchase all or part of the Solar Project, Seller shall send Buyer a copy of the offer and notify Buyer of its intent to accept it. Buyer shall have the right for ninety (90) Days to match the terms of the offer, in writing. If Buyer does not elect to match the offer in writing within ninety (90) Days, Seller may then sell the Solar Project to the first offeror, provided the sale is on the conditions specified in the contract sent to Buyer.

(b) Seller warrants that it has good and marketable title to the Solar Project and the premises upon which it is located ("Premises") and the right to grant this right of first refusal.

(c) If Seller enters into an assignment, a sale, a transfer, a conveyance, or a lease in conflict with this right of first refusal, Buyer may have a court of competent jurisdiction declare this Agreement breached and order that the assignment, sale, transfer, conveyance, or lease be

voided. This provision shall not be construed to prevent specific performance of this right of first refusal or of any of its conditions by either party.

(d) This right of first refusal shall not restrict or prohibit (i) Seller's right to mortgage the Premises, collaterally assign the Solar Project or sell direct or indirect membership interests in the Seller to a Lender or Lenders, or the exercise of any foreclosure remedies thereunder by such Lender or Lenders, (ii) Seller's right to otherwise mortgage the Premises, (iii) Seller's right to grant easements to the Premises, or (iv) transfers by operation of law or transfers between Seller and Buyer.

(e) This right of first refusal shall terminate on the consummation of the assignment, sale, transfer, or conveyance in fee simple to a third party of the Premises after full compliance with the conditions of this right of first refusal. However, if such a conveyance is not consummated by the end of the Term of this Agreement, this right of first refusal shall terminate. After the right of first refusal terminates, Buyer shall, at Seller's request, sign any documents stating that it releases all Buyer's rights and obligations under this right of first refusal.

3.5 ***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) Other than upon the occurrence, and during the continuance, of an Event of Default of Buyer, if Seller delivers the Products 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 shall prove to have been false or misleading in any material respect when made, if Seller has failed to cure such default within sixty (60) Days after the date of written notice thereof from Buyer to Seller and the Lender; or

(vi) Seller breaches or fails to observe or perform any of its obligations under this Agreement not specified in **Section 3.5(a)(i)** through **3.5(a)(vi)** (except where a separate remedy is otherwise provided) that has a material adverse impact on Buyer if such default has not been cured by Seller within forty-five (45) 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 45-Day cure period, Seller shall have up to an additional ninety (90) Days as necessary to cure the default if it commences to cure the

default within such 45-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 sixty (60) Days after the date of written notice thereof from Seller to Buyer; or

(v) Buyer breaches or fails to observe or perform any of its obligations under this Agreement not specified in Section 3.5(b)(i) through 3.5(a)(iv) (except where a separate remedy is otherwise provided) that has a material adverse impact on Seller if such default has not been cured by Buyer within forty-five (45) 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 45-Day cure period, Buyer shall have up to an additional ninety (90) Days as necessary to cure the default if it commences to cure the default within such 45-Day cure period and it diligently and continuously pursues such cure; or

(vi) Except as a result of a violation by Seller that is not cured after written notice thereof within the applicable cure period, Buyer revokes or modifies the Special Land Use Permit in any manner that is materially adverse to Seller.

(c) Subject to the provisions of Section 3.5(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 3.5(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 3.5(c)(i)**, the non-defaulting Party shall be entitled to receive from the defaulting Party the following damages:

(i) If Seller is the defaulting Party, and Buyer terminates this Agreement, the sum of (1) 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 (X) the sum of (I) the cost of replacement energy, (II) the cost of replacement Capacity Rights, (III) the cost of replacement Environmental Attributes plus (IV) the cost of replacement Ancillary Services for the then remaining Term, minus (Y) the amount that Buyer would have paid hereunder for accepted Delivered Energy for the then-remainder of the Term (each of (X.I, II, III, IV and Y) reasonably determined by the Buyer and using as volume the Estimated Annual Energy Production for the then remaining Term); provided that if the result of the foregoing calculation is a negative number, then the amount shall be deemed to be zero (0) dollars, and (2) any and all other amounts previously accrued under this Agreement and then owed by Seller to Buyer.

(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, for the loss or recapture of (a) Tax Credits, including the federal investment tax credit established under Section 48 of Internal Revenue Code of 1986, associated with the Solar Project, (b) loss of any remaining Tax Credits associated with the Solar Project, if any, 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 clauses (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, minus (Y) the sum of (I) the revenue of received (or that could have been received by Seller) for energy, (II) the revenue of received (or that could have been received by Seller) for Capacity Rights, (III) the revenue of received (or that could have been received by Seller) for Environmental Attributes, plus (IV) the revenue of received (or that could have been received by Seller) for Ancillary Services for the then remaining Term (each of (X.I, II, III, IV and Y) reasonably determined by the Seller and using the Estimated Annual Energy Production for the then remaining Term as depicted in Exhibit F 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.

3.6 *Specific Performance and Injunctive Relief.*

Except where another remedy is explicitly provided (including, for the avoidance of doubt, Seller's obligations prior to achieving the Commercial Operation Date for which Delay Damages are the sole and exclusive remedy of Buyer and instances of a casualty event which are subject to Section 8.4), 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.

3.7 *Financial Support Obligations.*

(a) Not later than the fifteenth (15th) Day following the Effective Date of this Agreement, Seller shall provide to Buyer security for the performance of Seller's obligations hereunder prior to the Commercial Operation Date in an amount equal to Fifty Thousand Dollars (\$50,000.00) per MW of the Solar Project capacity (the "*Development Security*"). No later than fifteen (15) Business Days following the Commercial Operation Date, Seller shall post "*Performance Security*" to secure Seller's obligations hereunder in the amount of Fifty Thousand Dollars (\$50,000.00) per MW of the Solar Project capacity. Development Security and Performance Security shall be provided in the form of a Letter of Credit, a guaranty from an entity with an Investment Grade Credit Rating in the form attached hereto as Exhibit E ("*Seller Guaranty*"), or cash to be posted to an escrow account. All fees and expenses associated with arranging and maintaining the Development Security and Performance Security shall be the responsibility of Seller. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may change the form of Development Security and/or Performance Security at any time and from time to time to another form of Development Security and/or Performance Security acceptable hereunder, upon reasonable prior written notice to Buyer, provided that a change in the form of Development Security and/or Performance Security shall not result in the change of the total amount of such posted Development Security and/or Performance Security.

(b) Any Letter of Credit provided by Seller shall have a term of at least one (1) year, and any such outstanding Letter of Credit shall be renewed or replaced by Seller prior to its expiration by a replacement Letter of Credit meeting the requirements of this Section 3.7.

(c) In the event that Seller has any payment obligation to Buyer and has failed to pay such amounts within the time required herein, Buyer may draw against or make a payment demand on the Development Security or Performance Security, as applicable, in an amount equal to the due, undisputed and unpaid obligations, which draw or payment shall satisfy Seller's payment obligation.

(d) Seller shall maintain the Development Security on and after its posting until the Commercial Operation Date. If, after the Commercial Operation Date, no damages are due and owing to Buyer under this Agreement, then Buyer shall return the Development Security, less

any amount drawn for Delay Damages, if any, to Seller no later than five (5) Business Days after the Commercial Operation Date. Notwithstanding anything to the contrary herein, Seller's aggregate liability to Buyer prior to the Commercial Operation Date, including for Delay Damages, shall not exceed the amount of the Development Security.

(e) Buyer shall return the Performance Security to Seller no later than five (5) Business Days after the end of the Term unless there are, at such time, undisputed amounts due and owing from Seller to Buyer, or an outstanding dispute regarding any amount claimed to be due and owing from Seller to Buyer, in which case Buyer shall return the Performance Security to Seller no later than five (5) Days after the resolution of any such dispute and the payment of all outstanding amounts due from Seller to Buyer. At any time that Performance Security is posted in replacement of previously posted Performance Security, the previously posted Performance Security shall be returned to Seller simultaneously with the occurrence of the effective date of the replacement Performance Security.

3.8 *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 Meter used to measure Energy delivered to the Delivery Point (the "**Billing Meter**") shall be owned, installed, operated, and maintained in accordance with the Interconnection Agreement at no cost to Buyer under this Agreement. In the event that the Billing Meter cannot be installed at the Delivery Point, or it is commercially unreasonable to install the Billing Meter at the Delivery Point, then the Parties shall cooperate and agree upon a methodology and process for calculating Delivered Energy, which calculation shall reflect applicable Electric Losses between the Delivery Point and the point at which such Billing Meter are installed. Regardless of the location of the Billing Meter or any Electrical Loss adjustments used in calculating Delivered Energy, the volume of Energy used by Seller in invoicing Buyer shall not exceed the amount of Delivered Energy plus Deemed Delivered Energy, if any, subject to **Section 2.8**. Seller shall provide or arrange with the Distribution Provider to provide Buyer reasonable access to the Billing Meter 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 the Billing Meter is to be inspected and tested or adjusted. Seller shall provide the capability for Buyer to remotely acquire [near] real-time data from the Billing Meter. Seller

shall use commercially reasonable efforts to provide Buyer with any necessary authorizations to enable Buyer to have reasonable access to the Billing Meter's revenue quality register data, including obtaining any consent or other agreement from the Distribution Provider necessary to allow Buyer such access.

(b) Buyer may install a dedicated dial-up, voice-grade circuit, or use an existing fiber connection for Buyer to access the Billing Meter. Buyer, at its own expense, may install additional Back-Up Meters.

(c) Seller, at its own expense, shall inspect and test the Billing Meters that is installed by Seller upon installation and at least annually thereafter in a manner not in violation of the Interconnection Agreement. 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 in a manner not in violation of the Interconnection Agreement 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 applicable American National Standard Institute (ANSI) 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 Meter, which installation and maintenance shall be performed in a manner not in violation of the Interconnection Agreement and 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 any 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.*

(a) If the Billing Meter or a Back-Up Meter, fails to register, or if the measurement made by the Billing Meter or a Back-Up Meter, is found upon testing to not be in compliance with the requirements of the Interconnection Agreement, 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 in the following manner:

(b) 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 Metered 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, 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, 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 Metered 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.

(c) 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 (1/2) 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 Meter to be defective or inaccurate.

(d) 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, as a material inducement to Buyer entering into this Agreement, hereby represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Michigan, and is authorized to conduct business in Michigan and each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller;

(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 or with respect to Seller, or to its knowledge threatened against Seller;

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

(e) Except as provided in **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, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(iii) conflict or result in a breach or constitute a default under any Permit or 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

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, at Seller's sole cost and expense, and (iii) Buyer will, at Seller's sole cost and expense, reasonably cooperate with Seller in opposing, and will not support, 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; INSURANCE; LIMITATIONS ON LIABILITY; SURVIVAL

General Indemnity.

(a) Subject to the provisions of Sections 2.3 and 2.4 (with respect to damages for certain activities) and Section 6.3(a) (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 an Indemnified Party) related to, arising from, or connected to a breach by the Indemnifying Party of its obligations hereunder or to the extent arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party. 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 as to Buyer. Notwithstanding anything herein to the contrary, Buyer's indemnity obligations under Sections 6.1(a) and 6.1(b) 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, if applicable; 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 one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. 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 provided that Buyer acknowledges that Seller will be required to maintain a single set of insurance policies to comply with the requirements of Section 6.2(a)(i), (ii) and (iii) for this Agreement.

(b) 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 required by this Agreement shall be issued by an insurer with an A.M. Best's rating of not less than "A-VII" 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 any non-renewal or cancellation, and at least ten (10) Days prior to the effective date for any non-payment of premium. 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 verifying the existence of the insurance coverage required by this Agreement.

(d) In addition, certificates for the foregoing insurance shall provide Buyer and its successors in interest with additional insured status (except workers' compensation insurance).

6.3

Limitations on Liability.

(a) Waiver of Certain Damages. Notwithstanding any other provision of this Agreement (except (i) to the extent indemnification payments are made pursuant to Section 6.1 as a result of an Indemnifying Party's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders) as a result of actions included in the protection afforded by the indemnification set forth in Section 6.1, (ii) with respect to the liquidated damages provided for in Sections 2.3 and 2.4 and (iii) except for damages payable in accordance with Section 3.5(d) following a termination due to a Party's default), 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. The Parties agree that (i) in the event that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) loses or 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; (ii) in the event that Seller owns any Environmental Attributes 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.

(b) 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 (i) for liability incurred prior to the Commercial Operation Date, the total amount of Development Security unless Seller allows Delay Damages to exceed that amount before electing to terminate pursuant to Section 3.1(c) or (ii) for liability incurred after the Commercial Operation Date, the total amount of Performance Security, each of which security the Seller is obligated to provide to Buyer pursuant to the terms of Section 3.7(a). The provisions of this Section 6.3 shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.

6.4

Survival of Claims.

Any action against a Party 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.

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, easement, option, 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 Seller, the Solar Project, or the ability of Seller to perform its obligations under this Agreement; and

(f) This Agreement is a legal, 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;

(g) OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 *Buyer's Representations and Warranties.*

Buyer, as a material inducement to Seller entering into this Agreement, 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 or with respect to Buyer, or to its knowledge threatened against Buyer;

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

(e) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate or governmental action and do not and will not:

(i) require any consent or approval by any governing body of Buyer or any consent or approval by any Member 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) conflict or result in a breach or constitute a default under any Permit or 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, easement, option, 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 Buyer or the ability of Buyer to perform its obligations under this Agreement;

(f) This Agreement is a legal, 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;

(g) 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, regulations and agreements that regulate it to revise the rates it charges for electric capacity and energy furnished to its retail customers sufficient to satisfy its covenants contained in this Agreement, and Buyer is not aware of any proposed change in such organizational documents, laws, regulations 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 under this Agreement.

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 written 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, subject to the confidentiality provisions of **Section 9.1**, as applicable, 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 solely 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. Subject to Buyer's right to terminate, 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 three hundred sixty-five (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.*

Subject to **Section 8.4** below, if a Force Majeure Event continues for a period of twelve (12) or more consecutive months and prevents a material part of the performance by a Party hereunder, then, at any time during the continuation of such Force Majeure Event, the Party not claiming the Force Majeure Event shall have the right to terminate this Agreement, effective upon the delivery of a written termination notice delivered after such twelfth (12th) month while such nonperformance is continuing, without fault or further liability to either Party (except for amounts accrued but unpaid or as otherwise set forth in this Agreement). In addition, if the total duration of a Party's non-performance due to a single Force Majeure Event exceeds eighteen (18) months in the aggregate, then, at any time during the continuation of such Force Majeure Event, the Party not claiming the Force Majeure Event shall have the right to terminate this Agreement, effective upon the delivery of a written termination notice delivered after such eighteenth (18th) month while such nonperformance is continuing, without fault or further liability to either Party (except for amounts accrued but unpaid).

8.4 *Casualty Event.*

Notwithstanding anything to the contrary in this **Article 8**, if at any time after the Commercial Operation Date the Solar Project is so severely damaged by fire or other casualty that substantial alteration, reconstruction, or restoration is required, then Seller shall promptly repair and restore the Solar Project to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the Solar Project is destroyed during the last five (5) years of the Term or during any Extended Term, Buyer and Seller agree to enter good-faith negotiations regarding termination of the Agreement in lieu of repair and reasonable compensation to Buyer for such termination. If such a termination is agreed upon, then any payment made to Buyer pursuant to such termination agreement shall be the sole and exclusive remedy of Buyer and Buyer waives any other claims that may arise as a result of termination pursuant to this **Section 8.4**; provided, however, that such termination will not discharge or relieve either Party from any obligation (including any indemnity or confidentiality obligation) that has accrued prior to such termination. If such a termination is not agreed upon, Seller shall promptly repair and restore the Solar Project to its pre-existing condition.

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 or as permitted hereunder, 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 and who shall be bound by confidentiality obligations substantially similar to 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;

(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; and

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Lenders, and any other Person 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, contractors, service providers, 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 9.1 shall remain in full force and effect for two (2) years 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. Except as provided in Section 9.2(b), this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party. For the avoidance of doubt, no direct or indirect change of control of the ownership interests of Seller, or any other sale of direct or indirect ownership interests in the Seller (including any tax equity investment or passive investment) shall constitute an assignment requiring the consent of Buyer under 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;

(v) 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, which document will be in a form reasonably acceptable to such 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, such third party (through itself or an Affiliate) shall have at least three (3) years' experience owning and operating solar projects similar to the Solar Project, and (c) shall have complied with the obligations of the assigning Party to provide financial support in accordance with Section 3.7 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. (i) In connection with an assignment to a Lender pursuant to **Section 9.2** or encumbrance of Seller's interest under this Agreement as permitted by this **Section 9.3**, Buyer agrees to execute a consent in substantially the form set forth in Exhibit G, and (ii) as may be required by a Lender in connection with a tax equity financing, Buyer agrees to execute an estoppel in substantially the form set forth in Exhibit H, or in the case of either (i) or (ii), Buyer agrees to execute any other 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) Within five (5) Business Days of 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 will be 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) In connection with any assignment to a Lender pursuant to Section 9.2, if Seller encumbers its interest under this Agreement as permitted by this Section 9.3, or Seller enters into any tax equity financing with respect to the Solar Project, the following provisions shall apply to the extent not inconsistent with the terms of Exhibit G or Exhibit H, respectively:

(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 reasonable request by Seller, and at Seller's sole cost and expense, execute statements confirming 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, at Seller's sole cost and expense, or arrange for the delivery of, such certificates, opinions, representations, information and other documents (in each case, in a form reasonably acceptable to Buyer) as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Solar Project or any part thereof (including a tax equity financing) 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 3.5, any breach or default of this Agreement by Seller, (c) if the Lender forecloses, takes 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: 190 Ottley Dr. NE, Studio H; Atlanta, GA 30324

Attn: Sarah Hogsed
Telephone: (404) 351-8175
Facsimile: (877) 200-7015

If to Buyer:

Attn:
Telephone:
Facsimile:

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 ***Survival.***

Notwithstanding any provisions herein to the contrary, the obligations set forth in **Section 9.1**, the provisions of **Section 6.3** 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 6.4** and **Section 9.1(f)**.

9.8 ***Severability.***

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of this Agreement shall remain in effect; *provided* that the Parties shall enter into good faith 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.

9.9 ***Governing Law.***

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

9.10 ***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 County of Gratiot, Michigan or 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.

9.11 ***Waiver of Trial by Jury.***

EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES 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.

9.12 ***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.

9.13 ***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.

9.14 ***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.

9.15 ***Non-Dedication of Facilities.***

Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any state or local level Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility for purposes of state or local level jurisdiction by virtue of such other Party's performance under this Agreement.

9.16 ***Contract Status.***

The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Buyer will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the Solar Project. Further, the transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

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 9.18.**

9.18 ***Captions.***

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.***

This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and 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.

St. Louis MI Affordable Solar, LLC

City of St. Louis, Michigan

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
CONTRACT RATE

CONTRACT YEAR	CONTRACT RATE (\$/MWh)
1 -25	\$62.35 /MWh

EXHIBIT B
DESCRIPTION OF DELIVERY POINT, ONE-LINE DIAGRAM AND METERING
LAYOUT

The electrical collection system will transport the energy from the modules, inverters, and transformers to the Solar Project collector substation owned by Seller. The Delivery Point is the City of St. Louis's Distribution System, as shown on the attached one-line diagram. The Parties acknowledge that this One-Line Diagram and Metering Layout will be updated with the As-Built drawings within 90 days of the Commercial Operation Date.

AC ONE LINE DIAGRAM

LEGEND:

- 138KV BUS
- 138KV LINE
- 13.8KV BUS
- 13.8KV LINE
- 1.38KV BUS
- 1.38KV LINE
- 0.48KV BUS
- 0.48KV LINE
- 0.24KV BUS
- 0.24KV LINE
- TRANSFORMER
- BREAKER
- REACTOR
- CAPACITOR
- INDUCTOR
- RESISTOR
- DIODE
- TRIODE
- QUAD
- SEXTODE
- NONODE
- UNODE
- DUODE
- TRIDODE
- TETRADODE
- HEXADODE
- OCTODE
- NONODE
- UNODE
- DUODE
- TRIDODE
- TETRADODE
- HEXADODE
- OCTODE

COMPONENTS:

- 138KV BUS
- 138KV LINE
- 13.8KV BUS
- 13.8KV LINE
- 1.38KV BUS
- 1.38KV LINE
- 0.48KV BUS
- 0.48KV LINE
- 0.24KV BUS
- 0.24KV LINE
- TRANSFORMER
- BREAKER
- REACTOR
- CAPACITOR
- INDUCTOR
- RESISTOR
- DIODE
- TRIODE
- QUAD
- SEXTODE
- NONODE
- UNODE
- DUODE
- TRIDODE
- TETRADODE
- HEXADODE
- OCTODE

EXHIBIT C
DESCRIPTION OF SOLAR PROJECT

1. Solar Project: St. Louis MI Affordable Solar
2. Location: Gratiot County, Michigan
3. Owner: St. Louis MI Affordable Solar, LLC
4. Expected Solar Project Nameplate Capacity: 1.2 MW_{AC}
5. Expected Contract Capacity (Solar Project): 1.2 MW_{AC}
6. Narrative Describing Major Equipment: The project will consist of the following major equipment: solar panels made of photovoltaic cells; inverters; a racking/mounting system that will secure the project in place; a transformer; a performance monitoring system and other electrical wiring and components.
7. Delivery Point:

The Delivery Point is the Solar Project's point of interconnection with the Distribution System as identified in the Interconnection Agreement.
8. Map of Site showing anticipated locations of major equipment, Meters, and Delivery Point:

To be provided by Seller on or prior to issuance of full notice to proceed.
9. As built site drawing signed by a professional engineer licensed by the State of Michigan that shows the locations of major equipment, Meters, and Delivery Point:

To be attached within 90 days of the achievement of Commercial Operation.

EXHIBIT D
SOLAR PROJECT DEVELOPMENT MILESTONES

Any of the milestones below (each, a “*Development Milestone*”, collectively, the “*Development Milestones*”) may be completed on a date other than the estimate dates shown below, which are provided for informational purposes only, at the sole option of Seller.

<u>Milestone</u>	<u>Estimated Date</u>
Seller shall have entered into final and binding agreements with solar equipment providers for the Solar Project	November 15, 2024
Seller shall provide Buyer with documentation that all governmental permits have been obtained or will be obtained by the time needed to commence construction to meet all Development Milestones.	March 14, 2025
Seller’s major equipment shall be delivered to Solar Project’s construction site.	July 18, 2025
Seller shall have executed the Interconnection Agreement and Seller shall have the rights to interconnect not less than 1.2 MW at the Delivery Point.	March 8, 2024
Seller shall have received conditional loan approval from USDA for a forgivable loan associated with this project.	March 31, 2024
Seller shall have constructed Seller’s Interconnection Facilities and such facilities are capable of being energized.	August 15, 2025
Seller shall have installed panels at the Site with a capacity of no less than ninety percent (90%) the Contract Capacity.	August 8, 2025
Seller certifies to Buyer in writing that the Commercial Operation Date has occurred.	December 31, 2025
Commercial Operation Milestone Date.	December 31, 2025

EXHIBIT E
FORM OF SELLER 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 until the date Development Security (as defined in the Agreement) is no longer required pursuant to the Agreement (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 Michigan.

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

- (a) it is a _____ 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):

TO GUARANTOR: *	TO COUNTERPARTY:

	<i>Attn:</i> _____
	[Tel: () - -- for use in connection with courier deliveries]

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 Michigan.
- (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 non-exclusive jurisdiction of any of the courts of the County of Kent, Michigan or United States of America for the State of Michigan having subject matter jurisdiction 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 ENERGY PRODUCTION AND CALCULATION OF DEEMED
DELIVERED ENERGY

Part 1 - Estimated Annual Energy Production

Contract Year	MWh
1	2,241.37
2	2,231.28
3	2,221.24
4	2,211.24
5	2,201.29
6	2,191.39
7	2,181.52
8	2,171.71
9	2,161.94
10	2,152.21
11	2,142.52
12	2,132.88
13	2,123.28
14	2,113.73
15	2,104.22
16	2,094.75
17	2,085.32
18	2,075.94
19	2,066.59
20	2,057.30
21	2,048.04
22	2,038.82
23	2,029.65
24	2,020.51
25	2,011.42

Part 2 - Calculation of Deemed Delivered Energy

Seller shall calculate the Deemed Delivered Energy in accordance with the following formula:

$$DDE_i = PCCO_i - DE_i$$

DDE_i = Deemed Delivered Energy with respect to the interval i ;
 $PCCO_i$ = the possible Contract Capacity output with respect to the interval i ; and

DE_i = Delivered Energy with respect to the interval i .

For purposes of the foregoing equation:

$$PCCO_i = SIrr_i \times Area \times Eff_{Array} \times Loss_{Inv} \times Eff_{Inv} \times Loss_{DP}$$

Where:

- $SIrr_i$ = The measured solar irradiation for the interval i , expressed as MWh/m²;
- $Area$ = The available solar panel area for the Contract Capacity, as specified in the as-built site drawing, expressed in m²;
- Eff_{Array} = The conversion efficiency of the solar panels used in the Solar Project, as provided by the manufacturer, expressed as a percentage and adjusted based on an annual degradation factor;
- $Loss_{Inv}$ = The adjustment factor necessary to account for Electrical Losses to the inverters, the calculation of which will be provided by Seller;
- Eff_{Inv} = The inverter efficiency provided by the manufacturer of the Solar Project inverters, adjusted to account for Seller inverter settings, expressed as a percentage; and
- $Loss_{DP}$ = The adjustment factor necessary to account for Electrical Losses to the Delivery Point, expressed as a percentage, will be provided by Seller.

Except that if the calculation of PCCO for an interval results in a value exceeding the Contract Capacity, the PCCO for that interval will be equal to the Contract Capacity.

Exhibit G
Form of Consent and Agreement to Collateral Assignment

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20__, is entered into by and among [_____] an [_____] (together with its successors and permitted assigns "Buyer"), _____ (together with its successors, designees and assigns in its capacity, "Lender"), and [_____] a [_____] limited liability company (together with its successors and permitted assigns, "Seller"). Unless otherwise defined, all capitalized terms have the meaning given in the Power Purchase Agreement (as hereinafter defined).

- A. Seller intends to develop, construct, install, test, own, operate and use an approximately [] MW_{ac} photovoltaic electric generating facility within [] (the "Facility").
- B. Buyer and Seller have entered into that certain Power Purchase Agreement, dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Power Purchase Agreement").
- C. In order to partially finance the development, construction, installation, testing, operation and use of the Facility, Seller and/or one or more of its Affiliates has entered into that certain [Financing Agreement], dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), among Seller and/or one or more of its Affiliates, the financial institutions from time to time parties thereto as lenders and/or issuing banks, and Lender as agent on behalf of such financial institution, pursuant to which, among other things, such financial institutions have extended commitments to make loans and other financial accommodations to, and for the benefit of, Seller.
- D. Pursuant to a [Security Agreement] between Seller and Lender, dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), Seller has agreed, among other things, to assign, as collateral security for the obligations of Seller and/or one or more of its Affiliates under the Financing Agreement and related documents (collectively, the "Financing Documents"), all of its right, title and interest in, to and under the Power Purchase Agreement to Lender for the benefit of Lender and each other entity or person providing loans and/or other financial accommodations to, and for the benefit of, Seller and/or such Affiliates under the Financing Documents.
- E. It is a condition to Lender's obligations under the Financing Agreement that Buyer and the other parties hereto execute this Consent.

AGREEMENT

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

1. CONSENT TO ASSIGNMENT. Subject to the terms and conditions below, Buyer consents to an assignment of all of Seller's rights and obligations under the Power Purchase Agreement by Seller to Lender as collateral pursuant to the Financing Documents.

2. LIMITATIONS ON ASSIGNMENT.

(a) Lender shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Seller under the Power Purchase Agreement, subject to applicable notice and cure periods provided in the Power Purchase Agreement and as set forth herein. Upon receipt of notice from Lender, Buyer agrees to accept such exercise and cure by Lender if timely made by Lender under the Power Purchase Agreement and this Consent. Upon receipt of Lender's written instructions and to the extent allowed by law, Buyer agrees to make directly to such account as Lender may direct Buyer in writing from time to time, all payments to be made by Buyer to Seller under the Power Purchase Agreement from and after Buyer's receipt of such instructions, and Seller consents to any such action. Buyer shall have no liability to Seller under the Power Purchase Agreement or this Consent for directing such payments to Lender in accordance with this clause (a).

(b) Buyer agrees to deliver duplicates or copies of all notices of default delivered by Buyer under or pursuant to the Power Purchase Agreement to Lender in accordance with the notice provisions of this Consent. Buyer shall deliver any such notices concurrently with delivery of the notice to Seller under the Power Purchase Agreement. In the event of a default or breach by Seller in the performance of any of its obligations under the Power Purchase Agreement, or upon the occurrence or non-occurrence of any event or condition under the Power Purchase Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Buyer to terminate the Power Purchase Agreement or to suspend performance of its obligations thereunder (hereinafter, a "Default"), Buyer shall not terminate the Power Purchase Agreement or suspend performance of its obligations thereunder until it first gives written notice of such Default to Lender and affords Lender (i) if such Default is the failure to pay amounts to Buyer which are due and payable under the Power Purchase Agreement, a period of twenty (20) Days from the later to occur of (A) the expiration of the Seller's cure period under the Power Purchase Agreement, if any, or (B) receipt of such notice, in each such case, to cure such Default or (ii) with respect to any other Default, forty-five (45) Days from the later to occur of (A) the expiration of the Seller's cure period under the Power Purchase Agreement, if any, or (B) receipt of such notice, in each such case, to cure such non-payment Default; provided that during the applicable cure period Lender or Seller continues to perform each of Seller's other obligations under the Power Purchase Agreement). If (x) possession of the Facility is necessary to cure such Default or (y) if the Default can only be cured by the Seller and is not curable by Lender, such as the insolvency, bankruptcy, general assignment for the benefit of the secured parties under the Financing Agreement, or appointment of a receiver, trustee, custodian or liquidator of the Seller or its properties, and, in each such case, Lender or its successor(s), assignee(s) and/or designee(s) declares an "Event of Default" under the Financing Agreement and Lender commences foreclosure

proceedings or any other proceedings necessary to take possession of the Facility, Lender or its successors(s), assignee(s) and/or designee(s) will be allowed a reasonable period to both commence (not to exceed sixty (60) Days) and complete (not to exceed one hundred eighty (180) Days) such proceedings, provided that, once commenced, Lender, or its successor(s), assignee(s) and/or designee(s) shall pursue such proceedings with due dispatch and provided, further, that if the Default can only be cured by the Seller and is not curable by Lender, such as the insolvency, bankruptcy, general assignment for the benefit of the secured parties under the Financing Agreement, or appointment of a receiver, trustee, custodian or liquidator of the Seller or its properties, Lender shall be entitled to assume the rights and obligations of Seller under the Power Purchase Agreement and provided such assumption occurs, Buyer shall not be entitled to terminate the Power Purchase Agreement or suspend its performance thereunder as a result of such Default. If either the Lender or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of Seller from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, provided that Lender or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch. Buyer shall recognize the Lenders or their designee(s) or assignee(s) as the applicable party under the Power Purchase Agreement provided that such Lender or their designee(s) or assignee(s) assume the obligations of Seller under the Power Purchase Agreement, including, without limitation, satisfaction and compliance with all credit provisions of the Power Purchase Agreement and provided further that such Lender or their designee(s) or assignee(s) has a creditworthiness or total credit support at least equal to that of Seller as of the date hereof.

(c) In the event that the Power Purchase Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within forty-five (45) Days after such rejection, the Lender shall so request, Buyer will execute and deliver to Lender a new power purchase agreement, which shall be on the same terms and conditions as the original Power Purchase Agreement for the remaining term of the original Power Purchase Agreement before giving effect to such rejection, and which shall require Lender to cure any defaults then existing under the original Power Purchase Agreement, except any performance defaults of Seller itself, which by their nature are not susceptible of being cured. Notwithstanding the foregoing, any new power purchase agreement will be subject to all regulatory approvals required by law, including those associated with any renewable energy or environmental objectives met by, or required of, the original Power Purchase Agreement. Buyer will use good faith efforts to promptly obtain any necessary regulatory approvals.

(d) In the event Lender or its designee(s) or assignee(s) elect(s) to perform Seller's obligations under the Power Purchase Agreement, succeed to Seller's interest under the Power Purchase Agreement, or enter into a new power purchase agreement as provided in Section 2(c) above, the recourse of Buyer against Lender or its designee(s) and assignee(s) shall be limited to such party or parties' interests in the Facility, the credit support required under the Power Purchase Agreement, any currently existing guaranties made to the benefit of Buyer by Seller, Seller's Affiliates or Seller's insurers to the extent such guaranties have not been exhausted at the time of assignment and any remedies available to the new power purchase agreement if entered into between Buyer and Lender or its designee(s) or assignee(s) as provided in Section 2(c) above.

(e) In the event Lender or its designee(s) or assignee(s) succeed to Seller's interest under the Power Purchase Agreement, Lender or its designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Power Purchase Agreement, except any performance defaults of Seller itself, which by their nature are not susceptible of being cured. Lender and its designee(s) or assignee(s) shall have the right to assign their interest in the Power Purchase Agreement to a person or entity to whom Seller's interest in the Facility is transferred, provided such transferee assumes the obligations of Seller under the Power Purchase Agreement and has a creditworthiness or total credit support at least equal to that of Seller as of the date hereof. Upon such assignment, Lender and its designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

3. REPRESENTATIONS AND WARRANTIES. Buyer hereby represents and warrants that as of the date of this Consent:

(a) It (i) is duly formed and validly existing under the laws of the State of [____], and (ii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Power Purchase Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance of this Consent and the Power Purchase Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) this Consent and the Power Purchase Agreement are in full force and effect;

(d) this Consent and the Power Purchase Agreement have been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(e) there is no litigation, arbitration, investigation or other proceeding pending for which Buyer has received service of process or, to Buyer's actual knowledge, threatened against Buyer relating solely to this Consent, the Power Purchase Agreement and the transactions contemplated hereby and thereby;

(f) the execution, delivery and performance by it of this Consent, the Power Purchase Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(g) neither Buyer nor, to Buyer's actual knowledge, any other party to the Power Purchase Agreement, is in default of any of its obligations thereunder, and no disputes exist between Buyer and Seller thereunder; and

(h) to Buyer's actual knowledge, (i) no Force Majeure exists under the Power Purchase Agreement and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the Power Purchase Agreement.

4. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile, (c) upon confirmation of receipt if sent by email and (d) if otherwise delivered, upon the earlier of receipt or five (5) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Buyer:

[Name]
[Address]
Attention: [____]
Facsimile: [____]
Email: [____]

If to Lender:

[Name]
[Address]
Attention: [____]
Facsimile: [____]
Email: [____]

If to Seller:

[Name]
[Address]
Attention: [____]
Facsimile: [____]
Email: [____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving written notice to the other parties in the manner set forth above.

5. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and their respective successors,

transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). Buyer agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Seller, Lender or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to Buyer with respect to its interest in the Power Purchase Agreement to assume, in writing in form and substance reasonably satisfactory to Lender, the obligations of Buyer hereunder. Any purported assignment or transfer of the Power Purchase Agreement not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder.

6. **GOVERNING LAW.** This Consent shall be governed by the laws of the State of New York applicable to contracts made and to be performed in such State. THE FEDERAL AND STATE COURTS SITUATED IN MICHIGAN AND THE STATE COURTS LOCATED IN Kent, MICHIGAN, SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS CONSENT AND AGREEMENT WITH BUYER, SELLER, AND LENDER IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT.

7. **COUNTERPARTS.** This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

8. **SEVERABILITY.** In case any provision of this Consent or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

9. **ACKNOWLEDGMENTS BY SELLER.** Seller, by its execution hereof, acknowledges and agrees that neither the execution of this Consent, the performance by Buyer of any of the obligations of Buyer hereunder, the exercise of any of the rights of Buyer hereunder, or the acceptance by Buyer of performance of the Power Purchase Agreement by any party other than Seller shall (a) release Seller from any obligation of Seller under the Power Purchase Agreement, (b) constitute a consent by Buyer to, or impute knowledge to Buyer of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (c) except as expressly set forth in this Consent, constitute a waiver by Buyer of any of its rights under the Power Purchase Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized,
have duly executed this Consent as of the date first set forth above.

[_____,
as Buyer

By: _____
Name: _____
Title: _____

[_____,
as Seller

By: _____
Name: _____
Title: _____

[NAME OF LENDER],
as Lender

By: _____
Name: _____
Title: _____

Exhibit H
Form of Estoppel

Addressees:

[Borrower and/or Seller]

[Tax Equity Investor]

[Collateral Agent]

[Others as required]

RE: Status of Solar Power Purchase Agreement

Ladies and Gentlemen,

This letter is being delivered at the request of [] (the “Seller”) in connection with that certain Solar Power Purchase Agreement, dated as of [], 202[X] (the “Agreement”), by and between [] (the “Buyer”) and the Seller. This letter is also being delivered in connection with (i) [Financing Agreement description to be added] and (ii) [Tax Equity Investment Agreement description to be added]. Capitalized terms not defined herein shall have the meanings set forth in the Agreement.

The Buyer hereby confirms and agrees as follows:

1. The copy of the Agreement, attached hereto as Exhibit A, constitutes a true, correct and complete copy of the Agreement.
2. The Agreement is in full force and effect and has not been modified, supplemented or amended in any way, except as set forth on Exhibit A hereto, and constitutes the entire agreement between the Buyer and the Seller relating to the matters set forth therein.
3. The Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the State of [] and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the Agreement and this letter.
4. The execution, delivery and performance by the Buyer of the Agreement and this letter have been duly authorized by all necessary company action on the part of the Buyer and do not require any approvals, filings with or consents of any entity or person which have not previously been obtained or made.
5. The Buyer has not transferred, pledged or assigned, in whole or in part, any of its right, title, interest in, to and under the Agreement.

6. The Buyer is not and, to the knowledge of the Buyer, the Seller is not, in default under the Agreement, and no facts or circumstances are currently known to exist which, with the passage of time or the giving of notice or both, would constitute a default by either such party under the Agreement.
7. There are no actions pending against the Buyer under the bankruptcy or any similar laws of the United States or any state.
8. To the Buyer's knowledge, there is currently no event, act, circumstance or condition constituting a Force Majeure Event for the Buyer under the Agreement, as defined therein, and the Buyer has not received any notice from the Seller that the Seller is unable to perform its obligations to the Buyer under the Agreement due to a Force Majeure.
9. The Seller has not received or, to the Buyer's knowledge, claimed any amounts under the indemnification obligations of the Buyer set forth in the Agreement.
10. No payments have been due under the Agreement to the Buyer through the period ending on the date hereof.
11. To the Buyer's knowledge, the obligations of the Seller under the Agreement required to be performed on or before the date hereof (including the payment of any amounts) have been properly performed or expressly waived in writing.
12. To the Buyer's knowledge, there are no disputes or proceedings between the Buyer on the one hand and the Seller on the other hand.
13. This letter may be executed and delivered by facsimile or other electronic means (e.g., e-mail transmission of version in .pdf format) and shall be legally binding on the party so executing and delivering such counterpart, provided that an original signature is delivered thereafter.

Sincerely,

[_____]

By: _____

Name:

Title: