

DEVELOPMENT ASSET ACQUISITION AGREEMENT

by and among

Consumers Energy Company,

[PROJECT COMPANY NAME],

and

[SELLER PARENT COMPANY NAME]

Dated as of [_____, 202_]

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List of Exhibits

Exhibit A	[Form of New Land Contract] ¹
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Exhibit A-2	[Alternative Provisions for Land Contract]
Exhibit A-3	Form of Land Contract Amendment
Exhibit A-4	Form of Existing Standard
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Exhibit B	{ SOLAR Reserved/ WIND No Facilities Agreement}
Exhibit C	Reserved
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Exhibit E	Project Controls
Exhibit F	Reserved
Exhibit G	{ SOLAR Investment/ WIND Production} Tax Credit Beginning of Construction Certificate
Exhibit H-1	Base Purchase Price Detail
Exhibit H-2	Transmission Expense Detail
Exhibit I	Assignment and Assumption Agreement
Exhibit J	Bill of Sale
Exhibit K	Reserved
Exhibit L	Engineering Requirements
Exhibit M	Generator Interconnection Agreement
Exhibit N	Land Contract Estoppels

¹ **Note to Draft:** Bracketed exhibits may be omitted if existing Land Contracts are acceptable and cover 100% of the Project's necessary land rights. The same applies to Section 2.2.2.

Exhibit O	Land Contracts Assignment Documents
Exhibit P	[Form of Letter of Credit] ²
Exhibit Q	Project Boundary
Exhibit R	[Form of Guaranty]
Exhibit S	Reserved
Exhibit T	Safe Harbor Equipment
Exhibit U	Third-Party Ethics and Compliance Guidelines
Exhibit V	{SOLAR Solar/WIND Wind} Data
Exhibit W	Work Completion Certificate

² **Note to Draft:** Subject to review of applicable financial statements, organizational structure and other relevant information for Seller and the proposed guarantor, and approval from Buyer's credit department, Buyer may be willing to accept a parent guaranty in lieu of a Letter of Credit.

List of Schedules

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Schedule 5.2.3	Buyer Consents
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DEVELOPMENT ASSET ACQUISITION AGREEMENT

This Development Asset Acquisition Agreement, dated as of [_____, 202_] (“*Effective Date*”), is made and entered into by and between Consumers Energy Company, a Michigan corporation (“*Buyer*”) and [PROJECT COMPANY NAME], a [STATE] [TYPE OF LEGAL ENTITY] (“*Seller*”), and [SELLER PARENT COMPANY NAME], a [STATE] [TYPE OF LEGAL ENTITY] (“*Seller Parent*”).

RECITALS

A. Seller is developing a {SOLAR solar photovoltaic /WIND wind} electrical generation project located in [NAME] County, Michigan commonly known as the [PROJECT NAME] Project (“*Project*”, as further defined in Appendix I, in this document) and desires to sell the Project assets to Buyer.

B. Buyer desires to acquire certain Project assets from Seller and construct and operate the Project after the acquisition.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

1. DEFINITIONS, RULES OF INTERPRETATION, AND JOINDER OF SELLER PARENT

1.1 Definitions

Unless, in any particular instance, it is expressly indicated otherwise, when used in this Agreement the terms defined in Appendix I, in this document, have their respective meanings set forth therein.

1.2 Rules of Interpretation

Unless otherwise expressly provided or unless required by the context in which any term appears: (a) the singular includes the plural and the plural includes the singular; references to “Appendices,” “Articles,” “Sections,” “Schedules,” or “Exhibits” will be to appendices, articles, sections, schedules or exhibits of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time; (b) all references to a particular entity include a reference to such entity’s successors and permitted assigns; (c) the words “herein,” “hereof and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (d) all accounting terms not specifically defined herein will be construed in accordance with GAAP; (e) references to this Agreement include a reference to all Schedules and Exhibits hereto as the same may be amended, modified, supplemented or replaced from time to time; (f) references to any agreement, document or instrument mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (g) the use of the word “including” in this Agreement to refer to specific examples will be construed to mean “including, without limitation” or “including, but not limited to” and will not be construed to mean that the examples given are an

exclusive list of the topics covered; (h) relative to the determination of any period of time, “from” means “including and after,” “to” means “to but excluding” and “through” means “through and including;” (i) references to applicable Laws mean a reference to such applicable Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated thereunder; and (j) unless otherwise specified to the contrary, the word “or” is inclusive and has the meaning conveyed by “and/or.” The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.3 Seller Parent Joinder

Seller Parent shall be jointly and severally liable (with Seller) to Buyer for the full and timely payment and performance of all of Seller’s obligations to Buyer pursuant to this Agreement, and agrees to pay Buyer such amounts due hereunder and/or perform such obligations within ten (10) Business Days after the date of written notice from Buyer to Seller Parent that such obligations were not paid and/or performed when due. Seller Parent’s obligations hereunder may not be revoked by Seller Parent. Seller Parent shall be subject to all provisions of this Agreement as may be necessary for the enforcement of such obligations against Seller Parent.

2. PROJECT DEVELOPMENT

2.1 Scope of Work

Seller is responsible for performing and completing the Project development activities as described in this Article 2.

2.2 Real Property Rights

2.2.1 Acquisitions. Seller will use Commercially Reasonable Efforts to acquire Land Contracts within the Project Boundary necessary for the siting, construction and operation of up to a [REDACTED] MWac nominal nameplate capacity Project, including the Interconnection facilities and laydown area, based on the nameplate capacity of the Designated {SOLAR SMGs/WIND WTGs}, as depicted in the Site Plan.

2.2.2 [New Land Contracts]. Schedule 2.2.2 sets forth the Land Contracts in existence as of the Effective Date. Seller will use Commercially Reasonable Efforts to cause each existing Land Owner, plus all Land Owners for Land Contracts acquired after the Effective Date, to enter into a new Land Contract in the form set forth in (i) Exhibit A, with respect to standard Land Contracts, and (ii) Exhibit A-1, with respect to underground facilities only Land Contracts, or in forms otherwise approved in writing by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. Buyer hereby approves the use in any Land Contract of any or all of the alternative provisions to Land Contracts set forth in Exhibit A-2. In addition, Buyer agrees that the insertion of landowner name(s) and addresses, property description(s), depictions and total acreage, payment directives with respect to division of payment among multiple landowners (provided that any such directives simply match each landowner’s percentage ownership in the

property subject to the Land Contract), and/or recording information shall not be deemed to be a variation of Seller's standard forms that would require Buyer's approval.]³

{ **SOLAR** 2.2.3 Reserved

WIND 2.2.3 New No Facilities Agreements. In addition, as Seller reasonably deems appropriate to develop the Project, Seller may, prior to the Closing, identify real property (not otherwise covered by a Land Contract) within one-half (1/2) mile of the planned location of a Designated WTG as shown on the Site Plan and enter into a new agreement regarding such identified real property (each, a "**No Facilities Agreement**"). Each No Facilities Agreement shall be in the form attached hereto as Exhibit B or in forms otherwise approved in writing by Buyer. Buyer agrees that the insertion of landowner name(s) and addresses, property description(s), depictions and total acreage, payment directives with respect to division of payment among multiple landowners (provided that any such directives simply match each landowner's percentage ownership in the property subject to the Land Contract), and/or recording information shall not be deemed to be a variation of Seller's standard forms that would require Buyer's approval. Each No Facilities Agreement may not have payment obligations or increases exceeding those set forth in the form No Facilities Agreement set forth on Exhibit B. If any contemplated No Facilities Agreement will be on a form other than as set forth on Exhibit B (other than the insertion of landowner name(s) and addresses, property description(s), depictions and total acreage, payment directives with respect to division of payment among multiple landowners (provided that any such directives simply match each landowner's percentage ownership in the property subject to the Land Contract), and/or recording information) or contain payment obligations or increases exceeding the limits set forth in the form No Facilities Agreement set forth on Exhibit B, Seller must obtain the prior written approval of Buyer. }

2.2.4 Delivery and Approval. Seller confirms that it has made available to Buyer accurate and complete copies of the Land Contracts identified in Part A of Schedule 2.2.2 prior to the Effective Date. Seller's existing standard form of Land Contract is attached to this Agreement as Exhibit A-4. Within ten (10) days after the Effective Date, Seller will provide to Buyer a detailed spreadsheet or blacklined document specifically identifying all variations in any Land Contract from Seller's standard form of Land Contract previously provided to Buyer. If a new Land Contract or Amendment to Land Contract does not deviate from the approved forms and alternative provisions described in this Agreement and provided in Section 2.2.2, Seller will make available to Buyer an accurate and complete copy within ten (10) Business Days after execution thereof. Before the execution of any other new Land Contract (or amendment, to the extent permitted by Section 2.2.2), Seller will make available to Buyer, an accurate and complete copy thereof; provided that any variations in any Land Contract (or amendment, to the extent permitted by Section 2.2.2) shall be identified by Seller in a detailed spreadsheet or blacklined document and furnished to Buyer for its approval of said spreadsheet or blackline and all variations within ten (10) days after such Land Contract or amendment is presented to Buyer. If any such Land Contract (or amendment, to the extent permitted by Section 2.2.2) does not materially comply with the terms

³ **Note to Draft:** May be deleted if existing Land Contracts are acceptable and cover 100% of the necessary land rights.

of either Exhibit A or Exhibit A-1 and A-2, respectively (or Exhibit A-3 with respect to an amendment permitted by Section 2.2.2) and Buyer disapproves the form of such Land Contract (or amendment, to the extent permitted by Section 2.2.2), then at Buyer's option (after Buyer has considered any Seller proposed solution to resolve such compliance issue), with written notice to Seller, the subject Real Property and related Land Contract will be excluded from the Project Assets.

2.2.5 Title Commitments, Survey and Title Insurance. To the extent not already ordered and/or obtained by Seller as of the Effective Date, upon execution of any new Land Contract, Seller agrees to order within thirty (30) days after such execution (and within thirty (30) days after the Effective Date for any Land Contracts in existence as of the Effective Date) and provide to Buyer within ten (10) Business Days after they are made available to Seller (other than items (c) and (d) below, which will be delivered as contemplated below), at Seller's expense, the following documents relating to the Real Property encumbered by each Land Contract {**WIND** (other than No Facilities Agreements)}:

(a) a Title Commitment issued by the Title Company to insure title to the leasehold or easement estate in the Real Property subject to each applicable Land Contract, naming Buyer as the proposed insured to be compiled with all other Title Commitments for the Project in a title insurance policy in the form of the Proforma Title Policy, including the Title Policy Endorsements. Each Title Commitment will include the Title Company's requirements for issuing the Title Policy as described in this clause (a). With each Title Commitment, Seller shall provide Buyer a detailed spreadsheet in which Seller shall specifically identify: (i) each requirement and exception; (ii) which requirements and exceptions Seller shall satisfy and resolve; and (iii) which exceptions that Seller believes are Permitted Encumbrances;

(b) complete and legible copies of all recorded documents listed as Schedule B matters or exceptions thereunder;

(c) as soon as is reasonably practicable a Site Plan of the Real Property subject to each applicable Land Contract (expressly excluding any entire parcel of Real Property upon which no Project Facilities are planned and which is not required to keep the development, construction, operation and/or maintenance of the Real Property or Project in compliance with applicable Laws) showing the proposed final location of all Project Facilities and satisfying the Site Plan Requirements and the Project Requirements; and

(d) as soon as is reasonably practicable after compilation of the Title Commitments into a Proforma Title Policy and derivation of a Site Plan reflecting a reasonably final design, a survey (a "**Survey**") of the Real Property subject to each applicable Land Contract (expressly excluding any entire parcel of Real Property upon which no Project Facilities are planned, as depicted in the Site Plan and which is not required to keep the development, construction, operation and/or maintenance of the Real Property or Project in compliance with applicable Laws), certified to Buyer and the Title Company and satisfying the survey requirements set forth in Exhibit L, Engineering Requirements.

2.2.6 Title Objections. If any of the following occurs (each, a “*Title Objection*”):

(a) a Title Commitment or other evidence of title or search of the appropriate real estate records discloses that any Person other than the Land Owner has title to the insured Real Property estate covered by the Title Commitment;

(b) a Title Commitment, Site Plan, Survey or other evidence of title or search of the appropriate real property records discloses any Encumbrances other than Permitted Encumbrances; and that in Buyer’s opinion, could reasonably be expected to interfere in a material respect with the ability of Buyer to use the property for its intended purpose in connection with the Project;

Buyer shall, within thirty (30) days after receipt of the detailed spreadsheet, Title Commitment, all recorded documents, Site Plan and Survey showing the final location of all Project Facilities for any specific parcel comprising the Project, provide Seller with a notice identifying any Title Objection with respect to such parcel; provided, however, Buyer and Seller shall have recurring meetings after the Effective Date to coordinate and expedite the title curative process where practicable.

In the event there are any changes in the location of Project Facilities that impacts a parcel or if a change in the location of Project Facilities causes a parcel to change in terms of zoning, setback or regulatory requirements, or in the event any updated Title Commitment or updated Survey discloses any new requirement, exception or issue, Seller shall notify Buyer of such change, requirement, exception or issue and Buyer will have an additional thirty (30) days to provide a supplemental notice of any Title Objection upon receipt of a revised Title Commitment or Survey. Seller will use its Commercially Reasonable Efforts, at Seller’s expense, to cure each Title Objection timely raised in writing by Buyer to Seller, to eliminate each Title Objection as an exception to the Title Commitment or cause the Title Company to insure over such Title Objection (or in the case of a Title Objection arising from a Survey to resolve such Title Objection in a manner reasonably acceptable to Buyer).

Seller shall promptly identify in its title spreadsheet any Crossing Agreement required for the Project. The form of each such Crossing Agreement shall be subject to the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed.

If Seller is unable to cure any Buyer Title Objection or, with respect to any Title Objection that is an exception to title insurance coverage, obtain an Insured Exception with respect to the specific Title Objection on or before the Closing Date, then on Buyer’s request the subject Real Property and related Land Contract will be excluded from the Project Assets. Any Title Objection that the Title Company is willing to insure over on terms acceptable to both Seller and Buyer (for avoidance of doubt, ALTA Endorsement 36.6-06 (Energy Project Leasehold/Easement Owner’s) (04-02-12) shall be deemed acceptable), provided that the matter giving rise to the Title Objection will not be excluded from coverage under such endorsement, is herein referred to as an “*Insured Exception*.” Buyer shall cooperate with Seller’s curative efforts, including, without limitation, providing technical crossing specifications when required in connection with Seller’s pursuit of any encroachment or crossing agreement.

2.2.7 Updates Prior to Closing. After receipt of the initial Title Commitments, Seller shall provide Buyer an updated spreadsheet report every two (2) weeks showing all title and survey information and the status of title curative efforts and provide Buyer with copies of all title curative documents. In addition, Seller shall consult with Buyer to organize Seller's [IDENTIFY DATA-TRANSFER SITE] in a manner that will assist Buyer's review of the information contained therein (e.g. having separate folders for each parcel of Real Property and separate subfolders for each material type of document (e.g. survey, title commitment, zoning information, etc.).

At least thirty (30) days prior to Closing, Seller will furnish to Buyer, at Seller's expense, an updated Proforma Title Policy to identify any new exceptions to title that have occurred since Seller provided the initial Title Commitments or initial Proforma Title Policy to Buyer. The process set forth in Section 2.2.6 will apply to any Title Objections that Buyer may have to any such new exceptions.

2.2.8 Drains. As soon as commercially practicable after drain locations are identified by the surveyor, Seller shall request the Title Company, surveyor, or other third party to search the office of the drain commissioner for the counties in which the Real Property is located and to include any drain easements as part of the Title Commitments and supporting documents to the Title Commitments required to be provided to Buyer under Section 2.2.5. Seller shall also request that the Survey identify the location of any drain easement within the Real Property (regardless of whether it is recorded in the office of the register of deeds for the applicable county or in the office of the drain commissioner for the applicable county) that is not released prior to the Closing Date.

2.2.9 Zoning. As soon as reasonably practicable, Seller will identify and make available to Buyer the specific zoning provision, zoning variance, and/or special use permit(s) and any related stipulations for the Real Property and/or Project under applicable Laws which permits the use of the Real Property for the Project as provided in the applicable Land Contract and which specifically describes each requirement or limitation associated with such zoning, variance or permit.

2.2.10 Land Division. As soon as reasonably practicable, Seller shall identify and make available to Buyer all governmental Consents to the extent required under applicable Laws (e.g. MCL 560.101, *et. seq.*), for any division of Real Property resulting from each Land Contact.

2.2.11 Site Plan Approval. As soon as reasonably possible, Seller shall provide Buyer evidence of each Land Owner's approval of the Site Plan for the Project to the extent such approval is required by the applicable Land Contract.

2.2.12 Program Losses. As soon as reasonably practicable, Seller shall identify to Buyer any anticipated reimbursement obligations or other liability for which Seller or Buyer may be liable arising from the Project and the removal of any property from any Conservation Reserve Program or other program that limits the use of land by the Land Owners ("**Program Losses**").

2.2.13 Environmental. On or before [_____, 202_] with respect to all Land Contracts obtained prior to [_____, 202_], and as soon as reasonably practicable with regard to Land Contracts that are obtained after [_____, 202_], Seller, at Seller's expense, will perform and deliver to Buyer a Phase I environmental site assessment performed on each parcel, tract or

subdivided lot of the Real Property in accordance with ASTM E1527-13 (including preparation in accordance with 40 CFR §312.20(c)(iii)). Each Phase I environmental site assessment performed pursuant to this Section 2.2.13 shall name Buyer as a User. Seller shall assure that each Phase I environmental site assessment is commenced no more than one hundred seventy-nine (179) days prior to the transfer to Buyer of title to the Real Property and shall conduct, at its expense, updates as necessary to achieve such purpose. At Seller's or Buyer's option, either party may exclude from the Project Assets any Real Property upon which a "facility" under Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 *et seq.* ("**Part 201**") is located, unless Seller elects, at Seller's option, to remediate such Real Property that results in the Real Property no longer being categorized as a "facility" under Part 201.

2.2.14 Physical Condition and Inspection.

2.2.14.1 Real Property Requirements. Unless otherwise approved by Buyer in writing, Real Property subject to a Land Contract must abut on and have or at Closing will have direct or indirect (through another Land Contract) vehicular access to a public road or access across real property (including under another Land Contract and whether or not a road exists) to a public road that in each case is, or is reasonably anticipated to be, upon Buyer's negotiation of a road use agreement with the applicable local Authority, and subsequent compliance with the road use agreement, load-bearing suitable for use by trucks carrying the {**SOLAR** Project/**WIND** Designated WTG} components or the main power step-up transformer and with suitable overhead clearance for such transportation, is supplied with public or quasi-public utilities and other services appropriate for the construction and operation of the Project located thereon and has suitable buildable area for the Project equipment and facilities to be located thereon per the Site Plan.

2.2.14.2 Inspection. Upon Buyer's request, Seller will make Commercially Reasonable Efforts to arrange with the Land Owners to permit Buyer or its Representatives to make a physical on-site inspection of the Real Property. If any physical conditions on any Real Property would be reasonably likely to materially and adversely impair Buyer's use and enjoyment of such Real Property for the Project, Buyer will notify Seller of such determination. If Seller is unable or unwilling to correct, mitigate, or remove such physical condition, then at Buyer's option and written notice to Seller, the subject Real Property shall be removed from the related Land Contract and will be excluded from the Project Assets.

2.2.15 Property Boundary Changes. Prior to the Closing Date, Seller may propose to Buyer changes and substitutions in the Project Boundary and Real Property with real property that is contiguous with the Real Property provided that the proposed substitute real property has {**SOLAR** solar/**WIND** wind} resource characteristics as determined in suitable {**SOLAR** solar/**WIND** wind} resource assessments and analysis based on {**SOLAR** Solar/**WIND** Wind} Data for such site that meet the Project Requirements. Should Buyer consent to such proposed changes in its sole discretion, such changes and substitutions shall be included in the Real Property.

2.3 Permits and Other Governmental Authorizations

2.3.1 Acquisition. Seller will use Commercially Reasonable Efforts to obtain all Permits listed on Part A and Part B of Schedule 2.3.1 (the “*Seller Permits*”). Part A of Schedule 2.3.1 sets forth the Seller Permits obtained by Seller as of the Effective Date, Part B of Schedule 2.3.1 sets forth the Seller Permits to be obtained by Seller after the Effective Date and prior to the Closing and Part C of Schedule 2.3.1 sets forth the anticipated Buyer Permits to be obtained by Buyer.

2.3.2 Delivery and Approval. Seller confirms that it has made available to Buyer accurate and complete copies of the Seller Permits identified in Part A of Schedule 2.3.1 prior to the Effective Date. As soon as is reasonably practicable after the acquisition of subsequent Seller Permits, Seller will make available to Buyer, at Seller’s expense, an accurate and complete copy of such subsequent Seller Permits.

{SOLAR} 2.3.3 FAA. Prior to Closing, Seller will file and submit to the FAA information based on the Site Plan, regarding the Designated SMGs and other required Project infrastructure for a Project aeronautical study and will use Commercially Reasonable Efforts to obtain a “Determination of No Hazard to Air Navigation (Part I)” from the FAA. Seller will consult with Buyer regarding the filing and the information included therein and will provide Buyer with an advance copy of the final documents submitted to the FAA and a copy of each such determination as soon as is reasonably practicable after receipt of the same.

WIND 2.3.3 FAA; MDOT. Prior to Closing, Seller will file and submit to the FAA and MDOT information based on the Site Plan, regarding the meteorological towers, the Designated WTGs and other required Project infrastructure for a Project aeronautical study and will use Commercially Reasonable Efforts to obtain a “Determination of No Hazard to Air Navigation (Part I)” from the FAA and one or more “Tall Structure Permits” from MDOT. Seller will consult with Buyer regarding the filing and the information included therein and will provide Buyer with an advance copy of the final documents submitted to the FAA and MDOT and a copy of each such determination or permit as soon as is reasonably practicable after receipt of the same.}

2.3.4 Natural Resource Due Diligence. Seller confirms that it has made available to Buyer copies of all studies, consultants’ reports and correspondence with the relevant Authorities regarding usage requirements, limitations or restrictions relating to the Environment, including avian or other fauna, flora, build environment, wetlands or cultural matters applicable to the Real Property under applicable Laws, including the Reports identified in Schedule 4.12. Buyer has reviewed such studies, consultants’ reports and correspondence provided by Seller to Buyer. Buyer waives any right to object to any usage requirements, limitations and restrictions relating to the Environment that were expressly disclosed or otherwise included or identified in the studies, reports and correspondence identified in Schedule 4.12 or the inclusion of Land Contracts in the Project on the basis of such expressly identified usage requirements, limitations or restrictions.

2.3.5 Cooperation. Buyer will reasonably cooperate with Seller with respect to obtaining the Permits, regulatory approvals and the preparation of the FAA aeronautical study requests. The Parties will collaborate with respect to the landowner/community strategy, Site Plan approval, Land Contract amendment execution, {SOLAR SMG/WIND WTG} suitability and variance

analysis, special use permit, and other pre-Closing issues in a manner compliant with Project Requirements.

2.4 Interconnection

2.4.1 Interconnection Studies and Reports. Seller confirms that it has furnished to Buyer prior to the Effective Date accurate and complete copies of the Interconnection studies, reports, correspondence or other documents, including those relating to required improvements and estimated costs thereof, provided by Transmission Provider, Transmission Owner and other Persons as of the Effective Date. As soon as is reasonably practicable after the receipt of any subsequent such Interconnection studies, reports, correspondence or other documents, Seller has made or will make available to Buyer, an accurate and complete copy of such studies, reports or other documents.

2.4.2 Transmission.

2.4.2.1 Material Modification Study. Seller will conduct or cause to be conducted a material modification study verifying that the Designated {**SOLAR** SMGs/**WIND** WTGs}, and any other changes in the modeling of components, perform equivalent to or better than the {**SOLAR** equipment models/**WIND** turbine model} associated with the transmission request and including transient stability and power factor analyses, if required, to demonstrate that using the Designated {**SOLAR** SMGs/**WIND** WTGs} does not constitute a “material modification” as defined by Transmission Provider. Buyer will provide Seller with the new Designated {**SOLAR** SMG/**WIND** WTG} configuration (along with power transformer or VAR component changes) and numbers for the Project and the related generic stability models, which information will constitute the Confidential Information of Buyer. The Seller will obtain as soon as reasonably practicable after the Effective Date, confirmation from Transmission Provider that utilizing the Designated {**SOLAR** SMGs/**WIND** WTGs} does not constitute a material modification as defined by Transmission Provider.

2.4.2.2 Generator Interconnection Agreement. Seller will (a) consult with Buyer regarding the terms and conditions of any amendments to the Generator Interconnection Agreement and other similar Interconnection related agreements, (b) provide Buyer with copies of any comments or proposed revisions being provided by Seller to proposed drafts of any amendments to the Generator Interconnection Agreement and other similar Interconnection related agreement, and (c) obtain Buyer’s consent to any amendment to the Generator Interconnection Agreement, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Seller shall not be required to obtain the consent of Buyer if such amendment is both (i) necessary to maintain the Generator Interconnection Agreement, and (ii) not a material change to the Generator Interconnection Agreement. If Seller is obligated to make payments of Transmission Expenses to Transmission Provider and/or Transmission Owner under the executed Generator Interconnection Agreement or any other Project interconnection agreement prior to Closing, Buyer will reimburse those Transmission Expenses to Seller or pay those Transmission Expenses directly to Transmission Provider and/or Transmission Owner when such payments are due. Seller will use Commercially

Reasonable Efforts to maintain in that agreement the [_____, 202_] in service date for the Interconnection facilities (“*Back Feed Date*”) or such earlier Back Feed Date as may be requested by Buyer. Seller will keep Buyer informed about the discussions and negotiations with the Transmission Provider and the Transmission Owner.

2.5 {SOLAR Solar/WIND Wind} Resource

Seller confirms that prior to the Effective Date it has made available to Buyer a complete copy of the {SOLARSolar/WINDWind} Data obtained by Seller as of the Effective Date.

2.6 Site Plan

2.6.1 Preparation and Submittal. Seller confirms that prior to the Effective Date it has made available to Buyer a proposed Site Plan. Any modifications to the Site Plan will be submitted to Buyer by Seller for review and comment by Buyer as provided in Section 2.9. Seller shall have the sole right to determine the content of Site Plan and so long as the Site Plan, as may be amended, complies with the Site Plan Requirements, the Siting Requirements, other applicable Project Requirements, such Site Plan will be deemed approved by Buyer. To the extent Seller requests changes to the Site Plan that do not comply with the Site Plan Requirements, the Siting Requirements, or other applicable Project Requirements, such changes are subject to the acceptance by Buyer, which may be withheld in Buyer’s sole discretion.

2.6.2 Geotechnical. Included within Exhibit L (Engineering Requirements) are the geotechnical scope requirements for the Project. {WIND Buyer shall have fifteen (15) Business Days from delivery of geotechnical reports and any estimated incremental mitigation costs from Seller for a respective turbine location to provide Approval or to object to the report for such a turbine location. The provisions of Section 2.9 will apply to such Approval and Deemed Approval process; provided, however, that the standard for Approval of such geotechnical reports will be whether (a) such report demonstrates material compliance with the geotechnical scope requirements of Exhibit L, and (b) whether the estimated incremental cost of construction of such foundation due to the geotechnical conditions at such turbine location exceeds the Baseline Turbine Foundation Amount by more than \$_____.

In the event a report demonstrates material non-compliance with the geotechnical scope requirements of Exhibit L or the estimated incremental cost of construction associated with a turbine foundation due to the geotechnical conditions at such turbine location exceeds the Baseline Turbine Foundation Amount by more than \$_____, Buyer will have the right to exclude such turbine location from the Project. In the event of such an exclusion, an alternate site for such turbine may be used by Seller, provided such site meets the requirements set forth in this Section 2.6.2. The analysis as to the estimated incremental cost of construction of any given foundation shall be performed by an independent engineering contractor that is qualified and available to make such determination and is acceptable to Buyer. }

2.6.3 Pre-Construction Work. Seller will conduct and perform pre-construction work reasonably requested by Buyer, provided that Buyer will provide funds to Seller or directly to the Person performing the pre-construction work when payments to such Person are due.

2.6.4 Conceptual Engineering. Seller shall prepare and deliver to Buyer a conceptual engineering and design package for the Project as described in the Project Requirements.

2.7 Project Contracts

Seller confirms that it has furnished to Buyer accurate and complete copies of the Project Contracts identified in Part A of Schedule 2.7 prior to the Effective Date. As soon as is reasonably practicable after the acquisition of subsequent Project Contracts or the making of an amendment to an existing Project Contract, Seller will furnish to Buyer, at Seller's expense, an accurate and complete copy of such amendment or Project Contract for Buyer's approval pursuant to Section 2.9, which approval will not be unreasonably withheld. New Project Contracts and amendments not approved by Buyer shall be excluded from the Project Assets.

2.8 Compliance with Project Requirements

Seller will use Commercially Reasonable Efforts to perform the Work and all of its obligations hereunder in a workmanlike manner and in compliance with the Project Requirements. If the standards of performance derived from the Project Requirements are inconsistent, Seller will use Commercially Reasonable Efforts to perform its obligations in accordance with the most stringent rule, standard, criteria or guideline. If there are any conflicts between or among the standards of performance derived from the Project Requirements, Seller will promptly notify Buyer of the conflict and the Parties will cooperate and negotiate in good faith such modifications to this Agreement as are necessary to resolve the conflict. Seller will execute and deliver to Buyer any commercially reasonable documents as may be required to effect or to evidence such compliance. Buyer will reasonably cooperate with Seller with respect to Seller's performance of the other Work and local public relations efforts as reasonably requested by Seller from time to time.

2.9 Submittal and Review of Deliverables and Information

2.9.1 Participation. In conducting the Work, Seller will work in good faith to incorporate the reasonable preferences of Buyer and will keep Buyer reasonably informed of the status of such activities and permit Buyer and its representatives to participate or oversee such activities as requested by Buyer from time to time.

2.9.2 Standard Process. Seller will furnish all Deliverables and related Information to Buyer promptly after Seller's acquisition or completion of such Deliverable. For a period of fifteen (15) Business Days after receipt of any Deliverables and Information (or revision thereof), Buyer has the right to approve (an "**Approval**") or object and if Buyer objects, will describe with specificity any deficiencies therein if applicable; provided Buyer shall diligently review and respond to Seller as soon as practicable. If Buyer fails to object and describe with specificity such deficiencies within such fifteen (15) Business Day period, Buyer will be deemed to have accepted and approved such Deliverable (a "**Deemed Approval**"). It is agreed by the Parties that there will be no Deemed Approval of a Deliverable that fails to conform to Project Requirements unless Seller advises Buyer in writing upon delivery that such Deliverable is non-conforming. If Buyer reasonably identifies any deficiencies in the Deliverable or Information submitted for review, then Seller will consider in good faith (acting reasonably in accordance with the Project Requirements)

changes to such Deliverables and Information addressing and remedying such deficiencies identified by Buyer and will resubmit the same to Buyer (in which event the fifteen (15) Business Day Approval/Deemed Approval period will recommence); and such incorporation, if any, of changes to address Buyer's comments will not be considered an Excusable Event. Notwithstanding the foregoing, nothing in this Section 2.9.2 shall limit Buyer's rights under Sections 2.2.6 and 2.2.7, including, without limitation, Buyer's rights to provide Title Objections and/or to exclude Land Contracts from the Project Assets.

2.9.3 Electronic Project Management System. Wherever in this Agreement, Seller is required to submit documents such as Deliverable submittals (excluding invoices), Seller will make such submission using Buyer's Project Wise system. Except for the submission of Deliverables, Seller's submission in Buyer's Project Wise system will not constitute notice as defined in Section 15.12.

2.10 Schedule and Project Controls

2.10.1 Schedule. Seller will use Commercially Reasonable Efforts to complete the Work by the Target Completion Date.

2.10.2 Project Controls. Seller will comply with Buyer's project control procedures to be mutually agreed upon by Buyer and Seller, generally consistent with the project control procedures set forth in Exhibit E, in connection with Seller's performance of the Work.

2.11 Seller's Representative and Personnel

2.11.1 Seller's Representative. Seller will designate in a written notice to Buyer the name of and contact information for the Seller's Representative who will act as the manager and coordinator of this Agreement on Seller's behalf. Seller's Representative will (a) act as the liaison for Seller's communications with Buyer, (b) be responsible for receiving all reports due under this Agreement from Buyer and delivering all reports due hereunder to Buyer, (c) have authority to act in writing on behalf of Seller, and (d) have the experience and authority to make reasonably prompt means and methods decisions on a real time basis. All written communications given to Seller's Representative by Buyer in accordance with this Agreement will be deemed given to Seller; provided, however, that nothing set forth in this Section 2.11.1 is intended to modify the notice provisions or requirements of Section 15.12 or as otherwise expressly provided in this Agreement. Notwithstanding the foregoing, Seller's Representative will not have authority to amend or to modify any of the provisions of this Agreement.

2.11.2 Changes. Seller will notify Buyer in writing, in advance, of any changes in Seller's Representative, and will in good faith consult with Buyer prior to removing or replacing Seller's Representative. Any impacts on the Work associated with the removal or replacement of Seller's Representative will be borne by Seller. Seller's Representative will be fluent in English. If, at any time during the performance of the Work, Seller's Representative becomes unacceptable to Buyer, then, upon notice from Buyer to such effect, Seller and Buyer will discuss such issue and attempt to resolve the problem. If such attempt to resolve such problem is not successful in the reasonable judgment of Buyer, Seller will remove such individual and replace the individual as soon as reasonably practicable and will in good faith consult with Buyer regarding such replacement.

2.11.3 Qualified Personnel. Seller will provide competent and suitable qualified personnel holding licenses and professional certifications required by applicable Laws in connection therewith to perform the Work, and will be solely responsible for all labor and personnel required in connection with the Work. Seller has reviewed and agrees to be bound by, and shall cause all employees, consultants, representatives personnel to review and be bound by, Buyer's Third-Party Ethics and Compliance Guidelines.

2.11.4 Governance. This Section 2.11.4 sets forth a governance structure and procedures that the Parties will use in the management of the Agreement, the Work and in day-to-day communications related to the Agreement or the Work, including the request for and provision of consents and other authorizations (each such task, event, activity or action, a “**Governance Task**”). The Parties shall materially adhere to the following governance structure in dealing with a Governance Task:

(a) Representatives. The Representative(s) designated by each Party pursuant to this Agreement shall manage day to day Governance Tasks in the ordinary course under the Agreement. Buyer’s Representative shall be the sole person authorized to approve any matters hereunder requiring Buyer’s approval.

(b) Project Leadership Team. Each Party shall appoint appropriate individuals to a joint leadership team (the “**Project Leadership Team**”), which shall at all times consist of Buyer’s Representative and the Seller’s Representative and at a minimum one additional senior level employee from each Party involved in the high level oversight of the Work, in the case of Seller, and Buyer responsibilities under the Agreement in the case of Buyer. In the event a Governance Task is escalated beyond the Parties’ Representatives, the Project Leadership Team shall promptly meet and attempt to resolve such Governance Task in good faith. Further, in addition to attending to any Governance Tasks escalated to the Project Leadership Team pursuant to this governance structure, the Project Leadership Team shall meet, telephonically or in person, monthly, at a mutually agreeable date and time, to discuss the overall progress of the Work, and to address and work to resolve any Governance Tasks that have been brought to the Project Leadership Team’s attention at that time.

(c) Other Tasks. Notwithstanding any of the foregoing, the Parties may agree from time to time in a writing executed by both Parties on specific approval authority roles, responsibilities and/ or levels of authority required for resolution of certain Governance Tasks, which shall take precedence over the governance structure set forth herein. Absent any roles, responsibilities and/or required approval levels being identified in a writing executed by both Parties, where this Agreement specifies that the consent of a Party is required, such consent shall be obtained from such Party’s signatory to this Agreement.

2.12 Completion of Work Certificate

2.12.1 Certificate. Seller will provide to Buyer a Work Completion Certificate once Seller believes that the Work has been completed. The Work Completion Certificate will be accompanied by reasonably required supporting documentation. Within fifteen (15) Business Days of receipt of the Work Completion Certificate and accompanying supporting documentation,

Buyer will deliver a notice to Seller accepting or rejecting the Work Completion Certificate; provided, however, with respect to any Deliverables and related Information for which Buyer has previously provided Approval or for which there has been Deemed Approval pursuant to Section 2.9.2, Buyer shall have no further right to reject any such Deliverables and related Information under this Section 2.12, and Buyer shall be deemed to have accepted such Deliverables and related Information as completed for purposes of the Work Completion Certificate; provided further, Buyer shall diligently review and respond as soon as practicable to the submittal of a Work Completion Certificate. If Buyer is entitled to and withholds acceptance of the Work Completion Certificate with respect to any components of the Work (other than to the extent restricted as described above), Buyer will identify with reasonable specificity its detailed reasons for rejection of the Work Completion Certificate. Should Buyer fail to either accept the Work Completion Certificate or provide reasonable, detailed reasons for rejecting the Work Completion Certificate, within the time limits specified above, Buyer will be deemed to have accepted the Work Completion Certificate.

2.12.2 Rejection. If Buyer properly and timely rejects the Work Completion Certificate as provided in Section 2.12.1, Seller will use Commercially Reasonable Efforts to take necessary corrective action and submit a new Work Completion Certificate to Buyer for action in accordance with the procedures set forth in this Section 2.12, unless Seller disputes the validity of such rejection, in which case, Seller or Buyer shall have the right to submit such dispute for resolution as provided in Article 14. Notwithstanding the foregoing, the Parties agree that Buyer will not reject or disapprove the Work except for Seller's failure to comply with Project Requirements.

2.12.3 Work Completion Date. The "***Work Completion Date***" is the date that the Work Completion Certificate is accepted or deemed accepted by Buyer as provided in this Section 2.12.

2.13 Delay Liquidated Damages

If the Work Completion Date does not occur by the Guaranteed Completion Date, Seller will be liable for liquidated damages for each day from the Guaranteed Completion Date until the Work Completion Date, provided Seller will not be liable for such liquidated damages for delay to the extent that such delay was caused by an Excusable Event or, if Seller is the prevailing party in such dispute, for the duration of any proceedings commenced as contemplated in Section 2.12.2 to the extent such dispute proceedings are commenced prior to the Guaranteed Completion Date. Seller will pay Buyer, as liquidated damages for such failure the sum of [_____ Dollars (\$_____)] for each day of such delay, not to exceed [_____ Dollars (\$_____)] in the aggregate. Any and all amounts due from Seller for liquidated damages under this Section 2.13 will be treated as a reduction in the Purchase Price if the Closing occurs. Except for termination of this Agreement pursuant to Section 10.1, in which case Seller's obligation to pay liquidated damages under this Section 2.13 shall cease, the payment by Seller to Buyer of liquidated damages under this Section 2.13 are Buyer's sole and exclusive remedy for Seller's delay in completing the Work and the Project Assets by the Guaranteed Completion Date. The Parties acknowledge and agree that because of the unique nature of the Work and the Project Assets, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Buyer as a result of Seller's failure to timely perform the Work and complete the Project Assets by the Guaranteed Completion Date. It is understood and agreed by the Parties that (a) Buyer will be damaged by the failure of Seller to meet such obligations, (b) it would be impracticable or

extremely difficult to fix the actual damages resulting therefrom, (c) any sums which would be payable under this Section 2.13 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from each such failure.

2.14 Discovery and Correction of Defects

If, at any time after the Closing and within the twenty-four (24) month period after Closing, a Defect is discovered in any Deliverable or Project Asset, Seller, at Seller's expense, will use Commercially Reasonable Efforts to correct or cause to be corrected the Defect as soon as reasonably practicable after learning of the same; provided, however, with respect to any real property title Defects, Seller shall have no responsibility or obligations relating thereto, and Buyer shall look solely to the Title Company coverage under the Title Policy with respect to any such Defects.

2.15 Diverse and Michigan-Based Suppliers

Buyer is committed to the development of diverse businesses including minority-owned, women-owned, veteran-owned, disabled and LGBT business enterprises ("***Diverse Suppliers***") and to returning spend dollars to vendors in the state of Michigan. Buyer's expectation is that Seller will share in these goals and offer Diverse Suppliers and Michigan-based suppliers maximum practicable opportunities to participate in any subcontracts awarded by Seller.

In addition, when Buyer has an annual spend that exceeds Three Million Dollars (\$3,000,000) with a counterparty like Seller, Buyer requires such counterparties to document their spend with Diverse Suppliers and Michigan-based suppliers ("***Tier II Spend***") associated with the execution of work. Buyer shall identify and advise Seller as to the format for such reporting, which Seller agrees to provide. Reporting may be for specific goods and services that directly support the fulfillment of Buyer's work (direct spend) or as a ratio of Seller's total sales and/or revenue to that associated with Buyer (indirect spend).

2.16 {SOLAR Investment/WIND Production} Tax Credit Opinion; Covenants

Attached as Exhibit G is Seller's {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate. Buyer may use the {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate to obtain an opinion from [LAW FIRM NAME] addressing {SOLAR Investment/WIND Production} Tax Credit qualification ("{SOLAR Investment/WIND Production} ***Tax Credit Opinion***"). As a Condition Precedent to Closing, Seller shall provide an updated {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate that certifies that the facts in the {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate have not changed. If the facts change in the updated {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate, such Condition Precedent shall not have been satisfied, unless Seller cooperates with Buyer in obtaining a bring down {SOLAR Investment/WIND Production} Tax Credit Opinion that reaches the same conclusions as any original {SOLAR Investment/WIND Production} Tax Credit Opinion provided by [LAW FIRM NAME] or another similarly qualified law firm selected by Buyer and reasonably acceptable to Seller ("***Bring Down***").

{**SOLAR Investment/WIND Production**}Tax Credit Opinion") or Buyer otherwise consents to such changed facts in the updated {**SOLAR Investment/WIND Production**}Tax Credit Beginning of Construction Certificate. For the avoidance of doubt, the Bring Down {**SOLAR Investment/WIND Production**}Tax Credit Opinion shall address solely the changes in fact reflected in the updated {**SOLAR Investment/WIND Production**}Tax Credit Beginning of Construction Certificate to reach the same conclusions reached in the {**SOLAR Investment/WIND Production**}Tax Credit Opinion and shall not address any change in Applicable Law since the Effective Date.

3. SALE AND TRANSFER OF PROJECT ASSETS; CLOSING

3.1 Project Assets

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller will sell, convey, assign, transfer and deliver to Buyer, and Buyer will purchase and acquire from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in and to any and all Assets, tangible or intangible, relating to the Project, including the following:

- (a) all Land Contracts, including the Land Contracts described in Schedule 2.2.1;
- (b) a payment schedule for all Land Contracts, including at least the following information for each Land Contract: (i) Land Owner name(s); (ii) number of acres covered by the Land Contract; (iii) description and due date of each payment due; and (iv) the date each such payment has been made to date; (v) copies of the required W-9s that are Deliverables; and (vi) an itemized estimate of future payments for the Project under each Land Contract;
- (c) the Title Commitments, Proforma Title Policy, and Title Policy for the Real Property;
- (d) the Surveys;
- (e) all environmental assessments and other reports and studies of the Real Property and the Environment including those items described in Schedule 4.12;
- (f) all Project Contracts listed in Schedule 2.7, and all outstanding offers or solicitations made by or to Seller to enter into any Project Contract;
- (g) all Seller Permits obtained by Seller for the Project and all Permit Applications therefor or renewals thereof, including those listed in Schedule 2.3.1, and the "Determination of No Hazard to Air Navigation (Part I)" from the FAA;
- (h) the Interconnection Rights, including the Generator Interconnection Agreement and queue position number ;
- (i) the final Site Plan as provided in Section 2.6.1;

- (j) all {SOLAR Solar/WIND Wind} Data, including studies and reports supporting the {SOLAR solar/WIND wind} resource evaluation;
- (k) the Project IP Assets, including the [PROJECT NAME] name;
- (l) the geotechnical studies and inspections and associated results obtained by Seller pursuant to Section 2.6.2 and the other studies, reports and agreements prepared or obtained by Seller or its affiliates that are applicable to the acquisition, development, construction, operation or maintenance of the Project including those items described in Schedule 4.12;
- (m) all renewable energy credits and other Environmental Attributes relating to the Project;
- (n) all other Deliverables;
- (o) all claims of Seller against Third Parties relating to the Project Assets, whether choate or inchoate, known or unknown, contingent or noncontingent, including all such claims listed in Schedule 3.1(n);
- (p) Safe Harbor Equipment; and
- (q) all other assets of Seller relating to the Project, other than the Excluded Assets.

All of the Assets to be transferred to Buyer under this Section 3.1 are referred to collectively as the “**Project Assets**.” Notwithstanding the foregoing, the transfer of the Project Assets pursuant to this Agreement does not include the assumption of any Liability of Seller, whether or not related to any Project Asset, unless Buyer expressly assumes that Liability as an Assumed Liability pursuant to Section 3.3.1.

3.2 Excluded Assets

Notwithstanding anything to the contrary contained in Section 3.1 or elsewhere in this Agreement, the following assets of Seller (collectively, the “**Excluded Assets**”) are not part of the sale and purchase contemplated hereunder, are excluded from the Project Assets and will remain the property of Seller after the Closing:

- (a) all cash, cash equivalents and short-term investments;
- (b) assets that are not related to the Project;
- (c) all minute books and equity Records;
- (d) all insurance policies and rights thereunder;
- (e) all Contracts of Seller other than the Project Contracts and Land Contracts;

(f) the Land Contracts and Project Contracts that are excluded from the Project Assets pursuant to this Agreement; the Parties acknowledge that the Project Boundary may change in accordance with Section 2.2.6, and additional Land Contracts may be added, after the Effective Date, to the Excluded Assets;

(g) all claims for refund of Taxes and other Authority charges of whatever nature;

(h) all rights in connection with and assets of any Seller employee plans; and

(i) all rights of Seller under this Agreement, the Bill of Sale and the Assignment and Assumption Agreement.

3.3 Liabilities

3.3.1 Assumed Liabilities. On the Closing, Buyer will assume and agree to discharge only the following Liabilities of Seller (the “*Assumed Liabilities*”):

(a) any Liability under the Land Contracts or Project Contracts included in the Project Assets arising after the Closing (other than any Liability arising out of or relating to a Default that occurred prior to the Closing); and

(b) any Liability of Seller arising after the Closing under any Permit or other Authority authorization or determination with respect to the Project (other than any Liability arising out of or relating to a Default that occurred prior to the Closing).

3.3.2 Excluded Liabilities. The Excluded Liabilities will remain the sole responsibility of and will be retained, paid, performed and discharged solely by Seller. Without limiting the foregoing, Seller will pay prior to Closing any amounts under the Land Contracts or Project Contracts that relate to the period prior to Closing or are due prior to the Closing.

3.4 Closing

The closing of the purchase and sale of the Project Assets under this Agreement (the “*Closing*”) will take place telephonically on a date mutually agreed upon by the Parties within fifteen (15) days after the Work Completion Date and satisfaction or waiver of all conditions precedent set forth in Articles 8 and 9 of this Agreement or at such other place and on such other date and time as may be mutually agreed by Buyer and Seller; provided, however, if the Work Completion Date has not occurred on or before ninety (90) days after the Guaranteed Completion Date, either Party may terminate this Agreement by written notice of termination to the other Party; provided, however, that a Party cannot terminate this Agreement pursuant to this Section 3.4 if such Party is in material Default of this Agreement; and, provided further, that if requested by Buyer (but only to the extent there has been no Work Completion Date dispute submitted for resolution pursuant to Article 14 to which Seller prevailed), Seller cannot terminate this Agreement pursuant to this Section 3.4 for an additional period of ninety (90) days after the initial ninety (90) day period set forth above in which event the delay liquidated damages set forth in Section 2.13 will not continue to accrue during such additional termination extension period; and, provided further, that the Guaranteed Completion Date will be extended on a day for day basis (i) while an

appeal of a decision to grant or deny a special use permit or site plan approval for the Project is pending for a period not to exceed [] () months] from the original determination to grant or not grant such special use permit or site plan approval from which such appeal is made; or (ii) while a dispute is pending after having been submitted for resolution under Section 2.9. Notwithstanding anything to the contrary contained herein, if the Closing has not occurred by [], 202], either Party may terminate this Agreement.

3.5 Closing Deliverables

3.5.1 Seller's Closing Deliverables. In addition to any other documents to be delivered under other provisions of this Agreement, at or before the Closing Seller will deliver to Buyer:

- (a) the Bill of Sale duly executed and delivered by Seller;
- (b) the Assignment and Assumption Agreement duly executed and delivered by Seller;
- (c) Land Contracts Assignment Documents duly executed and delivered by Seller and notarized by a notary public;
- (d) Land Contract Estoppels from Land Owners for ninety-five percent (95%) of all Land Contracts upon which Project Facilities are to be located per the Site Plan as of Closing, duly executed and delivered by the applicable Land Owner; provided, however, that Seller shall use Commercially Reasonable Efforts to obtain Land Contract Estoppels from all Land Owners;
- (e) the Escrow Agreement duly executed and delivered by Seller (or, alternatively, the original Letter of Credit or Guaranty, if applicable);
- (f) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance satisfactory to Buyer and its legal counsel duly executed and delivered by Seller;
- (g) any updated { **SOLAR** Investment/**WIND** Production } Tax Credit Beginning of Construction Certificate in accordance with Sections 2.16 and 8.12;
- (h) a certificate executed by Seller as to the accuracy of its representations and warranties as of the Effective Date and as of the Closing in accordance with Section 8.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing (other than the representation made under Section 4.5.2(e), which shall not be remade at Closing) in accordance with Section 8.2; and
- (i) a certificate of an officer or manager of Seller certifying and attaching all requisite resolutions or actions of Seller's member approving the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement, and the change of name contemplated by Section 6.6 and certifying to the incumbency and

signatures of the officers or managers of Seller executing this Agreement and the Seller's Closing Documents.

3.5.2 Buyer's Closing Deliverables. In addition to any other documents to be delivered under other provisions of this Agreement, at or before the Closing Buyer will deliver to Seller:

(a) the balance of the Base Purchase Price and the Adjustment Amount, as provided in Section 3.10 by check or wire transfer to an account specified by Seller in a writing delivered to Buyer prior to the Closing Date;

(b) the Assignment and Assumption Agreement duly executed and delivered by Buyer;

(c) the Land Contracts Assignment Documents duly executed and delivered by Buyer and notarized by a notary public;

(d) The Escrow Agreement duly executed and delivered by Buyer (if applicable);

(e) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the Effective Date and as of the Closing in accordance with Section 9.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 9.2; and

(f) a certificate of an officer of Buyer certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and Buyer's Closing Documents and the consummation of the transactions contemplated by this Agreement and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and Buyer's Closing Documents.

3.6 Purchase Price

The consideration for the purchase and sale of the Project Assets (the "**Purchase Price**") will be the sum of (a) an amount equal to [REDACTED] Dollars (\$[REDACTED]) per MW of capacity of the Project multiplied by the nameplate capacity of the Designated {**SOLAR** SMGs/**WIND** WTGs} to be located on the Real Property as set forth in the Site Plan as of the Closing, provided that such capacity is between [REDACTED] MW and [REDACTED] MW (such portion of the Purchase Price calculated as a per MW price basis being the "**Developer Fee**"); (b) an amount equal to [REDACTED] Dollars (\$[REDACTED]) per MW multiplied by the nameplate capacity of the Designated {**SOLAR** SMGs/**WIND** WTGs} to be located on the Real Property as set forth in the Site Plan as of the Closing (the "**Expense Payment Amount**," and together with the Developer Fee, the "**Base Purchase Price**") (c) the Adjustment Amount, and (d) the assumption of the Assumed Liabilities. Set forth on Exhibit H-1 to this Agreement is a detailed breakdown of the elements of the Base Purchase Price. The Base Purchase Price and the Adjustment Amount will be paid by Buyer to Seller in accordance with Section 3.10. The Purchase Price constitutes full payment for the Assets and Buyer has no obligation to pay any additional amounts to Seller except for the reimbursements expressly set forth in Sections 3.8 and 3.9, if any.

3.7 Adjustment Amount

The “*Adjustment Amount*” will be equal to the sum of (a) the balance of any verifiable deposits with Third Parties made by Seller in connection with the Project (other than Transmission Expenses, which shall be reimbursed as provided in Section 3.8) to the extent such deposits are properly assigned to Buyer by Seller at Closing, (b) the verifiable additional amount of Safe Harbor Equipment storage and maintenance costs incurred by Seller for periods after [January 1, 202_], in the event Closing has not occurred by such date, at a per diem rate for all [NUMBER AND DESCRIPTION OF SAFE HARBOR EQUIPMENT] of [\$ _____ PER PERIOD], and (c) Buyer’s share of any verifiable rents, prepaid taxes or other items, and other applicable items Seller paid prior to the Closing with respect to the Project Assets or Assumed Liabilities that should reasonably be prorated and allocated to the period after the Closing Date. At least ten (10) days prior to Closing, Seller will provide Buyer with copies of paid invoices and other documentation reasonably requested by Buyer to verify the amounts and Seller’s payment of the Adjustment Amount items.

3.8 Transmission Expenses

At Closing, Buyer will reimburse Seller for any Transmission Expenses incurred by Seller (currently \$ _____) (to the extent that such Transmission Expenses are not included in the Adjustment Amount); provided, however, that notwithstanding the foregoing, Buyer is not obligated to reimburse the Seller for the portions of the [LIST APPLICABLE DPP PHASES] DPP study costs for which Seller has received an invoice from MISO and has been spent by MISO (estimated to be \$ _____). To the extent any Seller incurred Transmission Expenses and associated deposits and payments are reimbursed by MISO and are not included in the Transmission Expenses reimbursed by Buyer, those Transmission Expenses, deposits and payments, once received by Seller or Buyer before or after Closing, belong to Seller and will not be part of the Project Assets; provided, however to the extent that Buyer has reimbursed Seller for any such Transmission Expenses, whether independently or as a part of this Section 3.8, such reimbursements from MISO once received by Seller or Buyer before or after Closing will belong to Buyer and will be part of the Project Assets. Seller will provide Buyer with copies of invoices for Transmission Expenses payable by Seller prior to reimbursement of such expenses. Seller anticipates that \$ _____ of unspent portions of the [SAME DPP PHASES IDENTIFIED ABOVE] study deposits may be refunded by MISO prior to Closing, and to the extent such amount or any other amounts included in the Transmission Expenses are refunded to Seller prior to Closing, the amount of Transmission Expenses to be reimbursed by Buyer as provided above shall be reduced accordingly. Set forth on Exhibit H-2 is a detailed breakdown of the Transmission Expenses as of the Effective Date. Such Exhibit H-2 shall be updated by the Parties as of the Closing Date to reflect any changes or reimbursement of such Transmission Expenses.

3.9 Pre-Construction Work

Buyer will pay Seller or the Third Party performing the work as provided in Section 2.6.3 for all Third-Party costs of Seller for Pre-Construction Work performed by Seller at Buyer’s request. In that regard, Buyer and Seller shall confer before the commencement of such Pre-Construction Work to estimate the cost thereof and Seller shall provide to Buyer, for Buyer’s review and pre-approval, a copy the proposed contract with the vendor for any Pre-Construction

Work. Buyer will pay such estimated amount to Seller or directly to third-party vendors and contractors prior to Buyer’s engaging third parties to perform such Work. If the actual third-party cost of such Pre-Construction Work exceeds the amount paid by Buyer to Seller in advance, Buyer shall pay such excess to Seller within thirty (30) days of Seller’s request. If the actual third-party cost of such Pre-Construction Work is less than the amount paid by Buyer to Seller in advance, Seller shall refund such difference to Buyer (to the extent paid directly to Seller) within thirty (30) days of Buyer’s request. If Buyer and Seller do not agree on the estimated Pre-Construction Work, Seller will not be required to perform such Pre-Construction Work.

3.10 Purchase Price Payment

3.10.1 Base Purchase Price. Seller agrees that it will deliver to Buyer, upon execution of this Agreement and, if necessary, upon request from Buyer, duly completed copies of United States Internal Revenue Service Form W-9, W-8BEN or W-8ECI, or any other form or documentation prescribed by applicable Laws, certifying that Seller is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income Taxes and that it is not subject to United States backup withholding Tax. Subject to the escrow provisions set forth herein, the Base Purchase Price will become due and payable by Buyer to Seller on the following dates and milestones for the Project:

<u>Base Purchase Price</u>	
Milestone	Base Purchase Price Payment Installments
Three (3) Business Days after the Effective Date (the “ <i>Effective Date Payment</i> ”)	\$ _____
[_____, 202_] (the “ <i>Partial Completion Payment</i> ”)	\$ _____
Closing	Balance of the Base Purchase Price

The Parties agree that if this Agreement is terminated by Buyer prior to [_____, 202_] pursuant to Section 10.1(a), then Buyer shall have no obligation to pay the Partial Completion Payment. If Buyer terminates this Agreement for any other reason prior to [_____, 202_], Buyer shall be required to pay the Partial Completion Payment upon such termination.

3.10.2 Adjustment Amount. The Adjustment Amount payable by Buyer pursuant to Section 3.7.1 will become due and payable by Buyer to Seller on the Closing Date.

3.10.3 Transmission Expenses. The unreimbursed Transmission Expenses payable by Buyer pursuant to Section 3.8 will become due and payable in full by Buyer to Seller on the Closing Date.

3.10.4 Pre-Construction Work Expenses. The Pre-Construction Work expenses will be payable by Buyer as provided in Section 3.9.

3.10.5 Invoices. Seller will issue invoices to Buyer for payment due as provided in this Section 3.10 at least (i) fifteen (15) days prior to the scheduled date for such payment (if Seller provides an estimate of such invoice not less than fifteen (15) days, and not more than thirty (30) days, in advance of submitting such invoice) or (ii) the date that is thirty (30) days following the date of receipt of Seller's invoice (if Seller does not provide such estimate), except that the Effective Date Payment may be provided on the Effective Date. All invoices shall be paid by wire transfer of immediately available funds.

3.10.6 Seller Assurance.

(a) At or prior to Closing, Buyer and Seller shall enter into an Escrow Agreement substantially in a form to be determined by and mutually acceptable to Buyer and Seller to be negotiated during the Due Diligence Period (the “*Escrow Agreement*”) with a banking institution or other customary escrow party reasonably acceptable to Buyer and Seller (the “*Escrow Agent*”) to establish an escrow account (“*Escrow*”).

(b) At Closing, and subject to reduction as provided below, that amount necessary to result in the Escrow Agent holding an amount equal to [thirty percent (30%)]⁴ of the total Developer Fee paid to Seller through the Closing shall be paid by Buyer from the Base Purchase Price installment due from Buyer to Seller on the Closing Date directly to the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement.

(c) Twelve (12) months after the Closing (“*First Release Date*”), all amounts in excess of [fifteen percent (15%)] of the Developer Fee paid to Seller (if any) then-held in Escrow which are not subject to a then-pending indemnification claim asserted by Buyer against Seller will be distributed to Seller by the Escrow Agent. Twenty-four (24) months after the Closing (“*Second Release Date*”), all remaining amounts (if any) then-held in Escrow which are not subject to a then-pending indemnification claim asserted by Buyer against Seller will be distributed to Seller by the Escrow Agent. Upon resolution or determination of any such indemnification claim outstanding on the Second Release Date, the balance held in Escrow will be immediately paid to Seller by the Escrow Agent.

(d) As an alternative to the Escrow, at Seller’s election, Seller may satisfy the Escrow obligations in this Section 3.10.6 by providing to Buyer at Closing either: (i) an original Letter of Credit, or (ii) a Guaranty, in either case in the amount of [thirty percent (30%)] of the total Developer Fee paid to Seller on the Closing Date.

(e) Notwithstanding the remainder of this Section 3.10.6, if Seller maintains a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if Seller is rated by both S&P and Moody’s or (b) "A-" by S&P or "A3" by Moody's, if Seller is rated by either S&P or Moody’s but not both, then the provisions of this Section 3.10.6 will not apply to Seller. If Seller no longer meets the acceptable criteria, Seller has five (5) Business Days

⁴ *Note to Draft:* The specific percentages in this section may be increased depending on Seller’s credit profile and other negotiated terms of the Agreement (e.g., indemnity package, limits of liability, etc.).

to provide a replacement form of security that satisfies the requirements of this Section 3.10.6.

3.11 Allocation

Buyer and Seller will allocate the Purchase Price (and any other consideration paid or deemed paid pursuant to this Agreement) among the Project Assets in accordance with an allocation schedule to be prepared pursuant to this Section 3.11 (the “*Purchase Price Allocation Statement*”). The Purchase Price Allocation Statement (including any revision thereof) will be prepared in accordance with Section 1060 of the Code. Buyer will deliver a draft of the Purchase Price Allocation Statement with supporting work papers and documentation to Seller within than thirty (30) days after the Closing Date, which draft will be subject to revision to account for any amounts treated as adjustments to the consideration paid with respect to the transactions contemplated by this Agreement for Tax purposes. Seller has the right, for five (5) Business Days after such delivery or adjustment, as applicable, to review and object to the allocation provided in such draft. Seller and Buyer will seek in good faith to resolve any disagreements between them with respect to such allocation. Any disagreements remaining between Seller and Buyer will be referred to an accounting firm mutually agreed to by the Parties, who will, acting as experts and not as arbitrators, determine the proper allocation under Section 1060 of the Code and will revise the Purchase Price Allocation Statement as it deems appropriate. The Parties will share equally the fees and disbursements of such accounting firm. The Purchase Price Allocation Statement, as so revised, will be binding upon Seller and Buyer. Seller and Buyer will each report the federal, state and local and other Tax consequences of the purchase and sale contemplated hereby (including the filing of Internal Revenue Service Form 8594) in a manner consistent with the Purchase Price Allocation Statement and will not take any inconsistent position with respect to the Purchase Price Allocation Statement unless otherwise required by applicable Laws. In the event that the Purchase Price Allocation Statement is disputed by any Authority, the Party receiving notice of such dispute will promptly notify the other Party hereto concerning the existence and resolution of such dispute.

3.12 Consents

If there are any Seller Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Land Contract or Project Contract as to which such Seller Consents were not obtained (or otherwise are not in full force and effect), Buyer may waive the closing conditions as to any such Seller Consent and either:

- (a) elect to have Seller continue to use Commercially Reasonable Efforts to obtain the Seller Consents; or
- (b) elect to have Seller retain that Land Contract or Project Contract and all Liabilities arising therefrom or relating thereto.

If Buyer elects to have Seller continue its efforts to obtain any Seller Consents and the Closing occurs, neither this Agreement, the Assignment and Assumption Agreement, the Land Contracts Assignment Documents nor any other document related to the consummation of the transactions contemplated by this Agreement will constitute a sale,

assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the such Land Contracts or Project Contracts, and following the Closing, the Parties will use Commercially Reasonable Efforts, and cooperate with each other, to obtain the Seller Consent relating to each such Land Contract or Project Contract as quickly as practicable. Pending the obtaining of such Seller Consents relating to any such Land Contract or Project Contract, the Parties will cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of such Land Contract or Project Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Seller against a third party thereunder). Once a Seller Consent for the sale, assignment, assumption, transfer, conveyance and delivery of such a Land Contract or Project Contract is obtained, Seller will promptly assign, transfer, convey and deliver such Project Contract to Buyer, and Buyer will assume the obligations under such Project Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement or the Land Contracts Assignment Documents, as applicable (which special-purpose agreement the Parties will prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to Buyer).

4. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as of the Effective Date (unless another time is expressly stated in the representation or warranty) as follows:

4.1 Organization and Good Standing

Seller is a [TYPE OF LEGAL ENTITY] duly organized, validly existing and in good standing under the laws of [STATE], with full [LIMITED LIABILITY/CORPORATE/ETC.] power and authority to conduct its business as it is now being conducted, to own or use the properties and Project Assets that it purports to own or use, and to perform all its obligations under the Land Contracts and the Project Contracts. Seller is duly qualified to do business as a [FOREIGN—IF NOT A MICHIGAN ENTITY] [TYPE OF LEGAL ENTITY] and is in good standing under the laws of Michigan and each other state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

4.2 Authority; Enforceability; No Conflict

4.2.1 Authority. The execution, delivery and performance of this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Land Contracts Assignment Documents and each other agreement to be executed or delivered by Seller at the Closing (collectively, the “*Seller’s Closing Documents*”) has been duly authorized by all necessary [LIMITED LIABILITY/CORPORATE/ETC.] action on the part of Seller.

4.2.2 Enforceability. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms except as may be limited by

applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or the availability of equitable remedies (collectively, "**Bankruptcy Qualifications**"). Upon the execution and delivery by Seller, each of Seller's Closing Documents will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as may be limited by the Bankruptcy Qualifications.

4.2.3 No Conflict. Except as set forth in Schedule 4.2.3, neither the execution and delivery of this Agreement or the other Seller's Closing Documents nor the consummation or performance of any of the transactions contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time):

(a) constitute a Default under (i) any provision of any of the Governing Documents of Seller or (ii) any resolution adopted by the managers or the members of Seller;

(b) give any Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under any applicable Laws to which Seller, or any of the Project Assets, may be subject;

(c) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Permit that is held by Seller or that otherwise relates to the Project Assets or to the business of Seller;

(d) cause Buyer to become subject to, or to become liable for the payment of, any Tax;

(e) constitute a Default under any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Project Contract, Land Contract or any other Contract to which Seller is a party or by which Seller may be bound; or

(f) result in the imposition or creation of any Encumbrance upon or with respect to any of the Project Assets.

4.2.4 Notice or Consent. Except as set forth in Schedule 4.2.4, Seller is not required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the other Seller's Closing Documents or the consummation or performance of any of the transactions contemplated by this Agreement, and Buyer is not required to give notice to or obtain any Consent from any Person in connection with any Land Contract.

4.3 Books and Records

The books of account and other financial Records of Seller relating to the Adjustment Amount, the Transmission Expenses and, if applicable, the Pre-Construction Work and the purchase of collector system substation Real Property, all of which have been made available to Buyer, are complete and correct and represent actual, bona fide transactions and have been

maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls.

4.4 Contracts; No Defaults

4.4.1 Project Contracts. Schedule 2.7 contains an accurate and complete list of the Project Contracts including the names of the counterparties to the Project Contracts. Seller has delivered to Buyer accurate and complete copies of each Project Contract.

4.4.2 Land Contracts. Schedule 2.2.2 identifies all Land Contracts. Seller has delivered to Buyer accurate and complete copies of each Land Contract.

4.4.3 Enforceability. Except as set forth in Schedule 4.4.3:

(a) each Land Contract and Project Contract is in full force and effect and is valid and enforceable in accordance with its terms, subject to Bankruptcy Qualifications; and

(b) each Land Contract and Project Contract is assignable by Seller to Buyer without the Consent of the Land Owner or any other Person.

4.4.4 Compliance. Except as set forth in Schedule 4.4.4:

(a) Seller is, and at all times has been, in compliance with all applicable terms and requirements of each Land Contract and Project Contract which is being assigned to Buyer;

(b) each Land Owner and each other Person that has or had any obligation or liability under any Land Contract and Project Contract which is being assigned to Buyer is, and at all times has been, to Seller's Knowledge, in full compliance with all applicable terms and requirements of such Land Contract and Project Contract;

(c) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Default under, or give Seller or, to Seller's Knowledge, the Land Owner or other Person the right to declare a Default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Land Contract or Project Contract that is being assigned to Buyer;

(d) to Seller's Knowledge, no event has occurred or circumstance exists under or by virtue of any Land Contract or Project Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting Seller's right, title and interest in and to any of the Project Assets; and

(e) Seller has not given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Default under any Land Contract or Project Contract which is being assigned to Buyer.

4.4.5 Ordinary Course of Business. Each Land Contract and Project Contract has been entered into in the Ordinary Course of Business of Seller and has been entered into without any consideration having been paid or promised, that is or would be in violation of any applicable Laws.

4.5 Title to Project Assets; Encumbrances; Condition; Real Property Assets

4.5.1 Title; Encumbrances; Condition. Seller owns good and transferable title to all of the Project Assets free and clear of any Encumbrances other than those described in Schedule 4.5, Permitted Encumbrances or Encumbrances relating to Land Contracts that are excluded from the Project Assets. Seller warrants to Buyer that, at the time of Closing and the transfer to Buyer, all Project Assets will be free and clear of all Encumbrances other than the Permitted Encumbrances and that Seller's Affiliates will have no right, title or interest in and to any Land Contracts, Project Contracts, Deliverables or other Assets relating to the Project other than any included in the Excluded Assets. Seller has contracted with the Safe Harbor Equipment manufacturer to undertake storage and maintenance of the Safe Harbor Equipment.

4.5.2 Real Property Assets.

(a) To Seller's Knowledge and except as set forth in Schedule 4.5.2(a), there are no condemnation, zoning or other land-use proceedings by or before any Authority, now pending or threatened with respect to the Project, including the sale, reduction, or use of the MW power or Environmental Attributes therefrom or any portion thereof, that does or would adversely affect, interfere with or alter the Project, including Buyer's use of the Project. Neither Seller nor its Affiliates has received written notice of any pending or threatened special assessment proceedings affecting any portion of the Real Property nor any proposals, plans, studies, or investigations of any Authority regarding the Project, including the Real Property.

(b) To Seller's Knowledge and except as set forth in Schedule 4.5.2(b), there are no plans, studies or efforts by any Governmental Authority to widen, modify or realign, or to impose restrictions on the use of, any street or road providing access to the Real Property, or any portion thereof, which would restrict access, or increase the cost of access, to the Project.

(c) Except as set forth in Schedule 4.5.2(c), there are no commitments or agreements between Seller or any of its Affiliates and any Authority or public or private utility affecting the Real Property, or any portion thereof, or any improvements, the Permits or the Permit Applications that will have a material adverse effect on the Project or Buyer.

(d) To Seller's Knowledge and except as set forth in Schedule 4.5.2(d), there are no existing or continuing claims against the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller or its Affiliates).

(e) As of the Effective Date (it being understood by the Parties that the following representation is being made only as of the Effective Date and not remade at Closing or any time after the Effective Date), except as set forth in Schedule 4.5.2(e), to Seller's Knowledge, (i) no mining, mineral or water extraction or development project is

under construction on or under the Real Property, or any portion thereof, and (ii) nor are there any existing mines, mining operations or water extraction or development projects located on or under the Real Property, or any portion thereof, which would in either case of (i) or (ii) above have a material adverse effect on the use or operation of the Real Property for the development and operation of the Project.

(f) Except as set forth in Schedule 4.5.2(f), no Affiliate of Seller is party to a Land Contract.

4.6 Reserved

4.7 Intellectual Property

4.7.1 Project Intellectual Property Assets. Schedule 4.7.1 contains a complete and accurate list and summary description of any and all Intellectual Property owned or licensed to Seller that relates to the Project (“**Project IP Assets**”). Seller is the owner or licensee of all right, title and interest in and to each of the Project IP Assets, free and clear of all Encumbrances, and has the right to use without payment to a Third Party all of the Project IP Assets.

4.7.2 Trade Secrets. With respect to any material trade secret that is a Project IP Asset, the documentation of Seller relating to such trade secret is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. Seller has taken all reasonable precautions to protect the secrecy, confidentiality and value of all such trade secrets.

4.7.3 Adverse Claim. No Project IP Asset is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person.

4.8 Taxes

4.8.1 Tax Returns. Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Laws. All Tax Returns and reports filed by Seller are true, correct and complete. Seller has paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, except such Taxes, if any, as are listed in Schedule 4.8.1 and are being contested in good faith and as to which adequate reserves exist. Except as provided in Schedule 4.8.1, Seller currently is not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Authority in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Project Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and to Seller’s Knowledge there is no basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

4.8.2 Specific Potential Tax Liabilities and Tax Situations

(a) All Taxes that Seller is or was required by applicable Laws to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper Authority or other Person.

(b) There is no tax sharing agreement, tax allocation agreement, tax indemnity obligation or similar written or unwritten agreement, arrangement, understanding or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other arrangement relating to Taxes) that will require any payment by Seller.

(c) Seller (A) has not been a member of an affiliated group within the meaning of Code Section 1504(a) (or any similar group defined under a similar provision of applicable Laws) and (B) has no liability for Taxes of any Person (other than Seller and its Affiliates) under Treas. Reg. Section 1.1502-6 (or any similar provision of applicable Laws), as a transferee or successor by contract or otherwise.

4.8.3 Facts Underlying {SOLAR Investment/WIND Production} Tax Credit Opinion.

The facts necessary to support any {SOLAR Investment/WIND Production} Tax Credit Opinion and Bring Down {SOLAR Investment/WIND Production} Tax Credit Opinion as set forth in Exhibit G to this Agreement are true and correct at the Effective Date, or to the extent such facts are dependent on actions to be taken by Seller after the Effective Date, shall be true and correct as of the Closing Date, unless the Bring Down {SOLAR Investment/WIND Production} Tax Credit Opinion is supported by an alternative set of facts acceptable to Buyer that are true and correct as of the Closing Date, in which event, Exhibit G shall be updated accordingly prior to the Closing Date.

4.9 Compliance With Applicable Laws; Permits

4.9.1 Applicable Laws. Except as set forth in Schedule 4.9.1:

(a) Seller is, and at all times has been, in full compliance with each applicable Laws that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its Project Assets;

(b) To Seller's Knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) (i) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any applicable Laws or (ii) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(c) Seller has not received any notice or other communication (whether oral or written) from any Authority or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any applicable Laws or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

4.9.2 Permits. The Seller Permits and the Buyer Permits, as set forth in Schedule 2.3.1, are a complete and accurate list of all Permits needed to develop and construct the Project. Each Seller Permit listed or required to be listed in Schedule 2.3.1 is valid and in full force and effect. Except as set forth in Schedule 4.9.2:

(a) Seller is, and has been, in full compliance with all of the terms and requirements of each Seller Permit listed or required to be listed in Schedule 2.3.1;

(b) To Seller's Knowledge, no event has occurred or circumstance exists that may (with or without notice or lapse of time) (i) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Seller Permit listed or required to be listed in Schedule 2.3.1 or (ii) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Seller Permit listed or required to be listed in Schedule 2.3.1;

(c) Seller has not received any notice or other communication (whether oral or written) from any Authority or any other Person regarding (i) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Seller Permit or (ii) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Seller Permit;

(d) all applications required to have been filed for the renewal of the Seller Permits listed or required to be listed in Schedule 2.3.1 have been duly filed on a timely basis with the appropriate Authorities, and all other filings required to have been made with respect to such Permits have been duly made on a timely basis with the appropriate Authorities; and

(e) The Seller Permits and Buyer Permits listed in Schedule 2.3.1 collectively constitute all of the Permits necessary to permit Buyer to develop and construct the Project.

4.10 Legal Actions

Except as set forth in Schedule 4.10, there is no pending or, to Seller's Knowledge, threatened Action:

(a) by or against Seller or that otherwise relates to or may affect the business of, or any of the Project Assets owned or used by, Seller; or

(b) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement.

To Seller's Knowledge, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Action. Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Action listed in Schedule 4.10. There are no Actions listed or required to be listed in Schedule 4.10 that could have a material adverse effect on the business, operations, Project Assets, condition or prospects of Seller or upon the Project Assets.

4.11 Environmental Matters

Except as disclosed in Schedule 4.11:

(a) Seller is, and at all times has been, in material compliance with, and has not been and is not in violation of or to Seller's Knowledge liable under, any Environmental Laws with regard to the Project or the Real Property. Seller has not received, any order, notice or other communication from (i) any Authority or (ii) the current or prior owner or operator of any Real Property, of any actual or potential violation or failure to comply with any Environmental Laws, or of any actual or threatened obligation to undertake or bear the cost of any environmental Liabilities with respect to any Real Property, or with respect to any property or facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials from the Real Property have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or, to the Seller's Knowledge, threatened claims or Encumbrances resulting from any environmental Liabilities or arising under or pursuant to any Environmental Laws with respect to or affecting any Real Property.

(c) Seller has not received any citation, directive, inquiry, notice, order, summons, warning or other communication from any Authority that relates to Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Laws, or of any alleged, actual, or potential obligation to undertake or bear the cost of any environmental Liabilities, with respect to any Real Property, or with respect to any property or facility to which Hazardous Materials from the Real Property generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) To Seller's Knowledge, there are no Hazardous Materials present on any Real Property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in Real Property, water, sumps, or any other part of the Real Property or such adjoining property, or incorporated into any structure therein or thereon. Neither Seller nor any Person for whose conduct it is or may be held responsible, or to the Seller's Knowledge, any other Person, has permitted or conducted, or is aware of, any activity conducted with respect to any Real Property or any Project Assets (whether real, personal or mixed) in which Seller has or had an interest except in material compliance with all applicable Environmental Laws.

(e) To Seller's Knowledge, there has been no Release and there is no reasonable likelihood of a Release of any Hazardous Materials at or from any Real Property or at any other location where any Hazardous Materials were generated, manufactured, refined,

transferred, produced, imported, used, or processed from or by any Real Property, whether by Seller or any other Person.

(f) Seller has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials in, on, or under the Real Property, or concerning compliance with respect to the Real Property, by Seller or any other Person for whose conduct it is or may be held responsible, with Environmental Laws.

(g) To Seller's Knowledge and except as set forth in Schedule 4.11(g), (i) no species listed or proposed for listing as threatened or endangered under any Environmental Laws, or otherwise identified under Environmental Laws as having special status, have been observed on the Real Property, and (ii) no archeological resources (which for purposes of this representation shall be deemed to mean any material remains of past human life or activities which are of archeological interest and at least fifty (50) years of age) or paleontological resources (which for purposes of this representation shall be deemed to refer to "fossils" as such term is commonly used) in either case have been identified on the Real Property.

4.12 Reports

As of the Effective Date and the Closing Date, Seller has delivered to Buyer true, correct and complete copies of all final material reports, studies, analyses and tests (and all amendments and supplements thereto) related to the Project prepared by third parties and delivered to Seller or by Seller itself addressing the following matters: {**SOLAR** Solar/**WIND** Wind} Data, design studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, wildlife studies, the environmental condition of the Real Property, compliance with Environmental Laws, FAA analyses, state department of transportation analyses, zoning studies, all required noise assessments {**WIND**, radio facilities studies}, visual impact or {**SOLAR** flicker/**WIND** glare} studies or wetlands studies related to the Project (collectively, the "**Reports**"). Without limiting the representation in the immediately preceding sentence, as of the Effective Date, Seller has delivered true, correct and complete copies of all Reports and relevant status updates listed on Part A of Schedule 4.12, and, as of the Closing Date, Seller has delivered true, correct and complete copies of all Reports and relevant status updates listed on Part B of Schedule 4.12.

4.13 Sufficiency of Project Assets

To Seller's Knowledge and except as set forth in Schedule 4.13, the Project Assets including those to be acquired after the Effective Date constitute all of the Real Property and intangible Project Assets necessary for Buyer to construct and operate the Project in accordance with Project Requirements.

4.14 Brokers or Finders

Neither Seller nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar

payments in connection with the sale of the Project Assets or the transactions contemplated by this Agreement.

4.15 Disclosure

All of the factual information furnished in writing by or on behalf of the Seller, Seller Parent, or any of their respective Affiliates, to Buyer or any of the consultants or advisors engaged by Buyer when taken as a whole, is (a) true and complete (or, where appropriate, estimated in good faith) in all material respects as of the date made or furnished and (b) not incomplete by omission of any material fact necessary to make such information (taken as a whole and in light of the circumstances when made or provided) not misleading at such time.

4.16 Disclaimer of Other Seller Representations and Warranties

EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR THE OTHER BUYER'S CLOSING DOCUMENTS, THE PROJECT ASSETS ARE BEING SOLD "AS IS, WHERE IS." EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE OTHER BUYER'S CLOSING DOCUMENTS, BUYER ACKNOWLEDGES SELLER IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER WITH REGARD TO THE PROJECT ASSETS; PROVIDED, THAT NOTHING IN THIS SECTION SHALL BE DEEMED TO AFFECT THE RIGHTS AND OBLIGATIONS OF BUYER IN RESPECT OF SELLER'S FRAUD, OR BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT OR THE OTHER BUYER'S CLOSING DOCUMENTS.

5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller of the Effective Date (unless another time is expressly stated in the representation or warranty) as follows:

5.1 Organization and Good Standing

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan, with full corporate power and authority to conduct its business as it is now conducted.

5.2 Authority; No Conflict

5.2.1 Authority. The execution, delivery and performance of this Agreement, the Assignment and Assumption Agreement, the Land Contracts Assignment Documents and each other agreement to be executed or delivered by Buyer at the Closing (collectively, the "**Buyer's Closing Documents**") has been duly authorized by all necessary corporate action on the part of Buyer.

5.2.2 Enforceability. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms except as may be limited by the

Bankruptcy Qualifications. Upon the execution and delivery by Buyer, each of Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as may be limited by the Bankruptcy Qualifications.

5.2.3 No Conflict. Neither the execution nor delivery of this Agreement or the other Buyer's Closing Documents by Buyer nor the consummation or performance of any of the transactions contemplated by this Agreement by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the transactions contemplated by this Agreement pursuant to:

- (a) any provision of Buyer's Governing Documents;
- (b) any resolution adopted by the board of directors or the stockholders of Buyer when, and if obtained, by Buyer after the Effective Date;
- (c) any applicable Laws to which Buyer may be subject; or
- (d) any Contract to which Buyer is a party or by which Buyer may be bound.

Except as set forth in Schedule 5.2.3, Buyer is not and will not be required to obtain any Consent from any Person or Authority in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

5.3 Certain Actions

There is no pending Action that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement. To Buyer's Knowledge, no such Action has been threatened.

5.4 Brokers or Finders

Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the transactions contemplated by this Agreement.

6. COVENANTS OF SELLER PRIOR TO CLOSING

6.1 Access and Investigation

Between the Effective Date and the Closing Date, and upon reasonable advance notice received from Buyer, Seller will (a) afford Buyer and its Representatives reasonable access, during regular business hours, to Seller's personnel, Real Property, Land Contracts, Project Contracts, Permits, books and Records and other Deliverables, documents and data relating to the Project, such rights of access to be exercised in a manner that does not unreasonably interfere with Seller's performance of the Work; (b) furnish Buyer and its Representatives with copies of all such Land Contracts, Project Contracts, Permits, books and Records and other existing Deliverables, documents and data as Buyer may reasonably request; (c) furnish Buyer and its Representatives

with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the Real Property and Project Assets. In addition, Buyer has the right to have the Real Property inspected by Buyer and its Representatives, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property.

6.2 Required Approvals

Seller will make all filings required by applicable Laws to be made by it in order to consummate the transactions contemplated by this Agreement. Seller will cooperate with Buyer with respect to all filings and regulatory requirements that Buyer elects to make or, pursuant to applicable Laws and regulations, is required to make in connection with the transactions contemplated by this Agreement and in obtaining any Consents identified in Schedule 5.2.3.

6.3 Changed Fact or Condition

6.3.1 Notification. Between the Effective Date and the Closing, Seller will promptly notify Buyer in writing if it becomes aware of (a) any fact or condition that causes or constitutes a breach of any of Seller's representations and warranties made as of the Effective Date; (b) the occurrence after the Effective Date of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's discovery of, such fact or condition; or (c) the occurrence of any Default under any covenant of Seller in this Article 6 or of the occurrence of any event that may make the satisfaction of the conditions in Article 8 impossible or unlikely.

6.3.2 Schedule Updates and Changes. The Parties recognize that the Schedules to this Agreement will need to be updated by Seller prior to the Closing to include additional Land Contracts and Project Contracts obtained by Seller after the Effective Date, as well as other changes that may be appropriate. Seller will update its Schedules (other than Schedule 4.5.2(e)) prior to Closing to reflect any such changes thereto and provide written notice thereof and copies of the updated Schedules to Buyer. Buyer will promptly review such Schedules and if the updated Schedules disclose information that was not disclosed on the original Schedules and will or is likely to have a material adverse effect on the Project, the Project Assets or Buyer, Buyer can object to such item. In the event Buyer objects to any such new item, Buyer will provide written notice to Seller of the item(s) to which it objects, and Seller has the right, prior to Closing, to cure any such items objected to in such Schedule(s) (including by excluding a Land Contract or Project Contract from the Project Assets). If Seller fails to cure any such item that Buyer objects to, Buyer shall have the right to terminate this Agreement in accordance with Section 10.1(e). If Buyer does not have the ability to terminate the Agreement in accordance with Section 10.1(e) of this Agreement because such disclosed information would not or is not likely to have a material adverse effect on the Project, such disclosure shall, for the limited purposes of Buyer's right to seek indemnity from Seller under Article 12 of this Agreement, be deemed to be a breach of the applicable representation and warranty. For purposes of greater certainty, the Parties agree Seller shall not have the ability to update any Schedules with respect to information that was actually

known or should have been known as of the Effective Date by any of the individuals set forth in the definition of “Seller’s Knowledge.”

6.4 No Negotiation

Until such time as this Agreement is terminated pursuant to Section 10.1, Seller will not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer) relating to any business combination transaction involving Seller, including the sale of Seller’s membership interests, the merger or consolidation of Seller or the sale of the Project or any of the Project Assets.

6.5 Commercially Reasonable Efforts

Seller will use its Commercially Reasonable Efforts to cause the conditions in Article 7, Article 8 and Article 9 (in each case, to the extent under Seller’s control) to be satisfied.

6.6 Change of Name

On or before the Closing Date, Seller will amend its Governing Documents and take all other actions necessary to change its name to one sufficiently dissimilar to Seller’s present name, in Buyer’s reasonable judgment, to avoid confusion with the Project.

6.7 Payment of Liabilities

Seller will pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations. Buyer and Seller hereby waive compliance with any applicable bulk-transfer provisions of the Uniform Commercial Code (or any similar applicable Laws) in connection with the transactions contemplated by this Agreement.

7. COVENANTS OF BUYER PRIOR TO CLOSING

7.1 Required Approvals

As promptly as practicable after the Effective Date, Buyer will make, or cause to be made, all filings required by applicable Laws to be made by it to consummate the transactions contemplated by this Agreement, including without limitation, the required authorizations set forth in Section 8.10. Buyer will cooperate with Seller (a) with respect to all filings Seller is required to make under applicable Laws and (b) in obtaining all Seller Consents; provided, however, that Buyer will not be required to dispose of or make any change to its business, expend any material funds or incur any other burden in order to comply with this sentence.

7.2 Commercially Reasonable Efforts

Buyer will use its Commercially Reasonable Efforts to perform the Work and cause the conditions in Article 7, Article 8, and Article 9 (in each case, to the extent under Buyer’s control) to be satisfied.

7.3 MPSC Approval

7.3.1 Filing. Buyer shall submit an Application to the MPSC for approval of this Agreement on or before sixty (60) days after the Effective Date.

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

7.3.3 Approval. If a final MPSC order approving this Agreement which has become not subject to rehearing or appeal is not obtained by [REDACTED], or if at any time the MPSC denies approval of this Agreement, Buyer shall notify Seller and Buyer may in its sole discretion terminate this Agreement by providing written notice to Seller within ten (10) Business Days after [REDACTED] or ten (10) Business Days after the MPSC's denial of approval of this Agreement becomes not subject to rehearing or appeal, as applicable. The failure to timely provide such notice will be deemed a waiver of the right of Buyer to terminate.

7.3.4 Conditional Approval. If the MPSC grants conditional approval of this Agreement, including but not limited to denial of any cost recovery associated with this Agreement, and the conditions of such approval are not acceptable to Buyer, Buyer, in its sole discretion, shall have the right to terminate this Agreement by providing written notice to Seller within ten (10) Business Days after the conditional approval becomes not subject to rehearing or appeal. The failure to timely provide such notice will be deemed a waiver of the right of Buyer to terminate.

7.4 Purchase of Title Insurance Policy

At or a reasonable time after the Closing Date, Buyer agrees to purchase a Title Insurance Policy from the Title Company having policy limits no less than the amount commonly used by {SOLAR solar/WIND wind} project owners who do not self-insure title risks.

8. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Project Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

8.1 Accuracy of Representations

All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), will have been accurate in all material respects as of the Effective Date, and will be accurate in all material respects as of

the time of the Closing, giving effect to any supplement to the Schedules, subject to the provisions of Section 6.3.2. Each of the representations and warranties in Sections 4.2 and 4.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, will have been accurate in all respects as of the Effective Date, and are accurate in all respects as of the time of the Closing as if then made, subject to the provisions of Section 6.3.2.

8.2 Seller's Performance

8.2.1 Work Completion. Seller has completed the Work, including delivering all of the Deliverables to Buyer, and the Work Completion Date has occurred.

8.2.2 Covenants. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), has been duly performed and complied with in all material respects.

8.3 Consents and Seller Permits

8.3.1 Seller Consents. Each of the Consents identified in Schedule 8.3 (the "*Seller Consents*") has been obtained and is in full force and effect.

8.3.2 Seller Permits. Each of the Seller Permits identified in Schedule 2.3.1, including the FAA Determinations of No Hazard to Air Navigation (Part I) {**SOLAR** for all Designated SMGs/**WIND** and the MDOT Tall Structures Permit for all WTG and meteorological tower locations} identified in the Site Plan as of Closing and other Permits and Authority authorizations and determinations that Seller is to obtain pursuant to Section 2.3 have been obtained.

8.4 Additional Documents

Seller has caused the documents and instruments required by Section 3.5.1 and the following documents to be delivered (or tendered subject only to Closing) to Buyer:

- (a) Certificates dated as of a date not earlier than ten (10) Business Days prior to the Closing as to the good standing of Seller in the State of Michigan executed by the appropriate officials of the State of Michigan; and
- (b) Such other documents as Buyer may reasonably request for the purpose of:
 - (i) evidencing the accuracy of any of Seller's representations and warranties;
 - (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller;
 - (iii) evidencing the satisfaction of any condition referred to in this Article 8; or
 - (iv) otherwise facilitating the consummation or performance of any of the transactions contemplated by this Agreement.

8.5 Title Insurance; Survey

Buyer has received unconditional and binding Title Commitments to issue the Title Policy, dated the Closing Date, in an aggregate amount equal to the amount of the reasonably estimated costs of the constructed Project, insuring Buyer's interest in each parcel of Real Property, the cost of the premiums and endorsements for such Title Policies to be borne by Buyer. Seller shall also have delivered the updated Survey as required in Section 2.2.6.

8.6 Reports

Seller has delivered true, correct and complete copies of all Reports to Buyer.

8.7 Environmental Report

Buyer has received environmental site assessment reports with respect to each parcel of the Real Property as provided in Section 2.2.13, which reports are reasonably acceptable in form and substance to Buyer.

8.8 Interconnection

The Generator Interconnection Agreement has been executed by Seller, Transmission Provider and Transmission Owner.

8.9 Land Contracts

8.9.1 Land Contracts. Seller has delivered Land Contracts or amendments thereto (to the extent permitted under Section 2.2.2) as contemplated in Section 2.2.2 of this Agreement for all Land Contracts involving Real Property upon which the Designated {**SOLAR SMGs/WIND WTGs**} or other Project Facilities are to be located per the Site Plan as of Closing, and all Land Contracts for Real Property required to keep the development, construction, operation and/or maintenance of the Real Property or Project in compliance with applicable Laws.

8.9.2 Land Contract Estoppels. Seller shall have delivered those executed Land Contract Estoppels, if any, required by the Title Company to issue the Title Policy and otherwise has obtained Land Contract Estoppels from Land Owners for at least ninety-five percent (95%) of all Land Contracts upon which Project Facilities are to be located per the Site Plan as of Closing.

8.10 Required Authorization

The following approvals and authorizations, with satisfactory conditions, shall have been obtained by Buyer, and Buyer shall exercise Commercially Reasonable Efforts to obtain such approvals within the timeframes set forth below:

8.10.1 Board of Directors. Within [sixty (60) days after the Effective Date, or at the next applicable regular meeting date if later], Buyer shall obtain its Board of Directors' approval to proceed with the Project.

8.10.2 MPSC Approval. Buyer has received MPSC's approval either with no conditions or with conditions satisfactory to Buyer as provided in Section 7.3, and which approval or conditions for approval must be final and not subject to being overturned or modified on appeal or further appeal. Any conditions of a conditional MPSC approval pursuant to Section 7.3.4 shall be deemed satisfactory if Buyer's right to terminate has expired or has been waived by Buyer.

8.11 Tax Clearance Certificate

Seller shall have ordered a Tax Clearance Certificate from the State of Michigan taxing Authority ("***Tax Clearance Certificate***") and delivered to Buyer a Tax Status Letter from the State of Michigan taxing Authority (to the extent such certificates are customarily issued by such authority) indicating whether there are any amounts owed to the Authority as of the Closing Date ("***Tax Status Letter***"). If any amounts are owed, Seller shall have paid such amounts, solely at Seller's cost and expense.

8.12 {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate

Seller shall have delivered both the {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate and the updated {SOLAR Investment/WIND Production} Tax Credit Beginning of Construction Certificate, pursuant to Section 2.16, as necessary to support any {SOLAR Investment/WIND Production} Tax Credit Opinion and Bring Down {SOLAR Investment/WIND Production} Tax Credit Opinion to Buyer, and all facts set forth in Exhibit G shall be true and correct as of the Closing Date, unless the Bring Down {SOLAR Investment/WIND Production} Tax Credit Opinion is supported by an alternative set of facts acceptable to Buyer that are true and correct as of the Closing Date, in which event, Exhibit G shall be updated accordingly prior to the Closing Date.

8.13 No Injunction

There is not in effect any applicable Laws or any injunction or order that (a) prohibits the consummation of the transactions contemplated by this Agreement and (b) has been adopted or issued, or has otherwise become effective, since the Effective Date, other than injunctions or orders caused or created by the acts or omissions of Buyer.

9. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

Seller's obligation to sell the Project Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

9.1 Accuracy of Representations

All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), were accurate in all material respects as of the Effective Date and are accurate in all material respects as of the time of the Closing as if then made.

9.2 Buyer's Performance

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), have been performed and complied with in all material respects.

9.3 Consents

Each of the Consents identified in Schedule 5.2.3 have been obtained and are in full force and effect.

9.4 Additional Documents

Buyer has caused the documents and instruments required by Section 3.5.2 and the following documents to be delivered (or tendered subject only to Closing) to Seller:

- (a) Certificates dated as of a date not earlier than ten (10) Business Days prior to the Closing as to the good standing of Buyer in the State of Michigan executed by the appropriate officials of the State of Michigan; and
- (b) such other documents as Seller may reasonably request for the purpose of:
 - (i) evidencing the accuracy of any representation or warranty of Buyer,
 - (ii) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer or
 - (iii) evidencing the satisfaction of any condition referred to in this Article 9.

9.5 No Injunction

There is not in effect any applicable Laws or any injunction or order that (a) prohibits the consummation of the transactions contemplated by this Agreement and (b) has been adopted or issued, or has otherwise become effective, since the Effective Date, other than injunctions or orders caused or created by the acts or omissions of Seller.

10. TERMINATION

10.1 Termination Events

By notice given prior to or at the Closing, this Agreement may be terminated as follows:

- (a) Seller Default; Breach of Seller Representations. Provided that Buyer is not in Default, by Buyer if (i) a Default under this Agreement has been committed by Seller and such Default continues uncured for ten (10) days after Seller's receipt of written notice of such Breach from Buyer; provided, however, that if such Default cannot be cured within

such ten (10) day period despite Seller's diligent efforts, Seller has up to an additional thirty (30) days to effect such cure so long as supported by an updated recovery plan and Seller diligently prosecutes such plan to completion or (ii) any representation or warranty of Seller contained in this Agreement proves to be false or misleading at the time such representation or warranty is made and has a material adverse effect on Buyer, the Project Assets or the Project;

(b) Buyer Default; Breach of Buyer Representations. Provided that Seller is not in Default, by Seller if (i) a Default under this Agreement has been committed by Buyer and such material Default continues uncured for ten (10) days after Buyer's receipt of written notice of such Default from Seller; provided, however, that if such Default cannot be cured within such ten (10) day period despite Buyer's diligent efforts, Buyer has up to an additional thirty (30) days to effect such cure so long as supported by an updated recovery plan and Buyer diligently prosecutes such plan to completion or (ii) any representation or warranty of Buyer contained in this Agreement proves to be false or misleading at the time such representation or warranty is made and has a material adverse effect on Seller or has a material adverse effect on Seller's ability to perform its obligations hereunder;

(c) Bankruptcy. By a Party if there is a Bankruptcy Event involving the other Party;

(d) Mutual Agreement. By mutual consent of Buyer and Seller;

(e) Material Schedule Updates. By Buyer pursuant to Section 6.3.2, but only to the extent any such updated item has a material adverse effect on Buyer, the Project Assets, or the Project; provided, however, Buyer shall have the right to terminate this Agreement with respect to any update to Schedule 4.11 to the extent related to Environmental Laws.

(f) Termination for Convenience. By Buyer for reasons not otherwise expressly permitted by Buyer in this Agreement.

(g) Closing Termination. By either Party pursuant to Section 3.4;

(h) Minimum Project Size. By Buyer if the Project capacity based on the nameplate capacity of the Designated {SOLAR SMGs/WIND WTGs} listed in the final Site Plan proposed by Seller is less than [] MW;

(i) Failure of a Condition Precedent to Buyer's Obligation to Close. By Buyer upon written notice to Seller after the Guaranteed Completion Date, as it may be extended as provided in this Agreement, if any condition precedent set forth in Article 8 is not satisfied on or before such Guaranteed Completion Date; or

(j) Failure of a Condition Precedent to Seller's Obligation to Close. By Seller upon written notice to Buyer after the Guaranteed Completion Date, as it may be extended as provided in this Agreement, if any condition precedent set forth in Article 9 is not satisfied on or before such Guaranteed Completion Date.

10.2 Effect of Termination

10.2.1 Remedies. Except in the case of fraud, in the event of the occurrence of an event giving rise to termination under Section 10.1, the Parties' sole remedy will be to terminate this Agreement and recover any applicable termination payments or other remedies as expressly set forth in Section 10.2.2. Such termination and termination payments (unless otherwise expressly provided herein) are to the exclusion of any other claim, cause of action or remedy. If this Agreement is terminated pursuant to Section 10.1, all obligations of the Parties under this Agreement will terminate, except that the obligations of the Parties in this Section 10.2, and Articles 13, 14 and 15 will survive. Further, the obligations under Section 12 to the extent that they apply to the failure of a Party to comply with the obligations of this Section 10.2 will also survive termination.

10.2.2 Certain Termination Payments.

(a) Seller Default; Bankruptcy; Material Schedule Updates; Closing Termination; Minimum Project Size. In the event Closing has not occurred and this Agreement is terminated by Buyer under Section 10.1(a), (c), (e), (g), or (h), Seller shall return the Effective Date Payment, and if paid by Buyer, the Partial Completion Payment, and any other amounts Buyer has paid to Seller. Except as expressly provided in Section 10.2.1, neither Buyer nor Seller will be entitled to have or pursue any other claim against the other.

(b) Buyer Default. In the event Closing has not occurred and this Agreement is terminated by Seller under Section 10.1(b), or (c), Seller shall be entitled to retain the Effective Date Payment, and if paid by Buyer, the Partial Completion Payment, and Buyer shall promptly reimburse Seller for the actual amount paid to the engineering contractor that completed the geotechnical investigation and estimation in accordance with Section 2.6.2, plus any associated crop damage payments paid to landowners under Land Contracts relating to such geotechnical investigations (collectively, the "**Geotechnical Expenses**") within ten (10) days after such termination. Except as expressly provided in Section 10.2.1, neither Buyer nor Seller will be entitled to have or pursue any other claim against the other.

(c) Reserved

(d) Failure of a Condition Precedent to Buyer's Obligation to Close. In the event Closing has not occurred and this Agreement is terminated by Buyer under Section 10.1(i) for failure of a condition set forth in Sections 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12 or 8.13, Seller shall retain the Effective Date Payment, and if paid by Buyer, the Partial Completion Payment, and Buyer shall promptly reimburse Seller for the Geotechnical Expenses. Except as expressly provided in Section 10.2.1, neither Buyer nor Seller will be entitled to have or pursue any other claim against the other.

(e) Failure of a Condition Precedent to Seller's Obligation to Close. In the event Closing has not occurred and this Agreement is terminated by Seller under Section 10.1(j) for failure of a condition set forth in Sections 9.1, 9.2, 9.3, 9.4, or 9.5 Seller shall retain the Effective Date Payment, and if paid by Buyer, the Partial Completion Payment,

and Buyer shall promptly reimburse Seller for the Geotechnical Expenses. Except as expressly provided in Section 10.2.1, neither Buyer nor Seller will be entitled to have or pursue any other claim against the other.

(f) Termination for Convenience. In the event Closing has not occurred and this Agreement is terminated by Buyer pursuant to Section 10.1(f), Seller shall be entitled to retain the Effective Date Payment, and if paid by Buyer, the Partial Completion Payment, and Buyer shall promptly reimburse Seller for the Geotechnical Expenses, and Buyer will pay the Seller its other actual, reasonable out-of-pocket costs and expenses incurred through the date of termination, to Seller within ten (10) days after such termination. Except as expressly provided in Section 10.2.1, neither Buyer nor Seller will be entitled to have or pursue any other claim against the other.

(g) Closing Termination by Seller. In the event Closing has not occurred and this Agreement is terminated by Seller under Section 10.1(g), Seller shall return the Effective Date Payment, and if paid by Buyer, (i) the Partial Completion Payment, and (ii) the Geotechnical Expenses. Except as expressly provided in Section 10.2.1, neither Buyer nor Seller will be entitled to have or pursue any other claim against the other.

The Parties agree that foregoing amounts and payments required to be paid under this Section 10.2.2 fairly represent the anticipated damages that will result from the occurrences described in Section 10.1 and have been negotiated and agreed upon by the Parties due to the difficulty in calculating actual damages should the events described therein occur.

11. ADDITIONAL COVENANTS

11.1 Payment of All Transfer Taxes Resulting from Sale of Project Assets by Buyer

Seller and Buyer will each pay in a timely manner fifty percent (50%) of all Transfer Taxes resulting from or payable in connection with the sale of the Project Assets pursuant to this Agreement, regardless of the Person on whom such Transfer Taxes are imposed by applicable Laws. The Parties agree to cooperate and make any required filings to qualify from exemptions and in any other way reduce the Transfer Taxes payable under this Agreement.

11.2 Payment of Other Excluded Liabilities

Seller will pay, or make adequate provision for the payment, in full all of the Excluded Liabilities and other Liabilities of Seller under this Agreement. If any such Liabilities are not paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Project Assets or conduct of the business previously conducted by Seller with the Project Assets, Buyer may, at any time after the Closing Date, elect to make all such payments directly (but has no obligation to do so) and set off and deduct the full amount of all such payments from the first maturing installments of the unpaid principal balance of the Purchase Price.

11.3 Reports and Returns

Seller will promptly after the Closing prepare and file all reports and returns required by applicable Laws relating to the business of Seller as conducted using the Project Assets, to and including the Closing.

11.4 Assistance in Actions

Seller will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Action involving or relating to (a) the transactions consummated under this Agreement or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller or its business.

11.5 Business Relationships

After the Closing, Seller will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer after Closing those business relationships of Seller existing prior to the Closing and relating to the Project, including relationships with Land Owners, Authorities, Transmission Owner, Transmission Provider and others, and Seller will satisfy the Excluded Liabilities in a manner that is not detrimental to any of such relationships. Seller will refer to Buyer all post-Closing inquiries relating to the Project. Neither Seller nor any of its officers, employees, agents or members will take any action that would tend to diminish the value of the Project Assets after the Closing or that would interfere with Buyer constructing and operating the Project after the Closing, including disparaging the name or business of Buyer.

11.6 Retention and Access to Records

After the Closing Date, Seller will retain for a minimum of seven (7) years from the Closing Date or the expiration of any period for which Buyer is required to retain records by any Authority, whichever is later, and provide Buyer and its Representatives reasonable access to Records that relate to the Project or Project Assets or, for any reasonable business purpose specified by Buyer in such notice, Records that are Excluded Assets. All such Records must be open to inspection, audit and reproduction by an agreed upon third party auditor during normal working hours throughout the aforesaid period, and if, at the end of the aforesaid period, Seller proposes to dispose of any such Records (other than those that are Excluded Assets), Seller will first offer same to Buyer.

11.7 Further Assurances

The Parties will cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and will (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated by this Agreement.

12. INDEMNIFICATION; LEGAL ACTIONS; ORDERS

12.1 Survival

All representations and warranties in this Agreement, the Schedules, the supplements to the Schedules or in any certificate or document delivered pursuant to this Agreement will survive the Closing for a period of a twenty-four (24) months; provided, however, that Seller's representations and warranties under: (a) Sections 4.1 (Organization and Good Standing), 4.2.1 (Authority), and 4.2.2 (Enforceability), and claims for fraud, will survive until the expiration of the applicable statute of limitations; (b) Section 4.8 (Taxes) will survive until the expiration of the applicable statute of limitations plus ninety (90) days; and (c) Section 4.11 (Environmental Matters) will survive until thirty-six (36) months after the Closing Date. Any and all separate closing documents ancillary to consummate the transactions contemplated in this Agreement executed by Buyer and/or Seller at the Closing (including, without limitation, the Bill of Sale, Assignment and Assumption Agreement, and Land Contracts Assignment Documents) shall, in all respects, be subject to the provisions of this Agreement, including, without limitation, (i) the provisions of Section 12.1 of this Agreement relating to the survival of the representations, warranties, covenants and agreements of Seller and Buyer pursuant to the Agreement, and (ii) the provisions of Sections 12.4, 12.5, 12.6, and 12.9 of the Agreement relating to the limitation of Seller's and Buyer's liability pursuant to the Agreement, and is not intended in any way to supersede, expand, limit or qualify any provision of the Agreement. In the event of any conflict or inconsistency between the terms of the Agreement and the terms of any such ancillary closing document, the terms of the Agreement shall govern.

12.2 Indemnification and Reimbursement by Seller

Subject to the limitations set forth herein, after the Closing (or in the event of termination by Buyer under Section 10.1(a) or 10.1(c)), Seller will indemnify and hold harmless the Buyer Indemnified Persons, and will reimburse the Buyer Indemnified Persons for Damages, whether or not involving a Third-Party Claim, arising from or in connection with:

(a) any breach of any representation or warranty made by Seller in (i) this Agreement, (ii) the Schedules as amended, (iii) the certificates delivered pursuant to Section 3.5.1 (for this purpose, each such certificate will be deemed to have stated that Seller's representations and warranties in this Agreement fulfill the requirements of Section 8.1 as of the Closing Date as if made on the Closing Date), (iv) any transfer instrument or (v) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(b) any Default of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(c) any Liability arising out of the ownership or operation of the Project Assets or the business of Seller prior to the Closing;

(d) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person

with Seller (or any Person acting on its behalf) in connection with any of the transactions contemplated by this Agreement;

(e) any Liabilities arising out of or relating to the Excluded Assets or the Excluded Liabilities; or

(f) any Program Losses.

12.3 Indemnification and Reimbursement by Buyer

Subject to the limitations set forth herein, after the Closing (or in the event of termination by Seller under Section 10.1(b) or 10.1(c)), Buyer will indemnify and hold harmless Seller, and will reimburse Seller, for any Damages, whether or not involving a Third-Party Claim, arising from or in connection with:

(a) any breach of any representation or warranty made by Buyer in: (i) this Agreement, (ii) the Schedules as amended, (iii) the certificates delivered pursuant to Section 3.5.2 (for this purpose, each such certificate will be deemed to have stated that Buyer's representations and warranties in this Agreement fulfill the requirements of Section 9.1 as of the Closing Date as if made on the Closing Date), (v) any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Default of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the transactions contemplated by this Agreement; or

(d) solely to the extent that Closing has occurred, any Liabilities arising out of or related to the Assumed Liabilities.

12.4 Minimum Limits to Indemnification

Any indemnification of a Party by the other Party as provided in Section 12.2(a) or Section 12.3(a) may not be claimed or asserted by a Party until the total amount of all Damages with respect to such matter exceeds two percent (2%) of the Developer Fee (the "**Basket**"), and then only for the amount by which such Damages exceeds the Basket; provided, however, no such Basket shall be applicable to claims for the breach of the representations and warranties set forth in Sections 4.1 (Organization and Good Standing), 4.2.1 (Authority), 4.2.2 (Enforceability) or 4.8.3 ({**SOLAR** Investment/**WIND** Production} Tax Credit Actions).

12.5 Limitations on Liability - Seller

Any obligation of Seller to indemnify Buyer pursuant to this Agreement, except for the inaccuracy, misrepresentation or omission of or in any representation or warranty contained in

Sections 4.1 (Organization and Good Standing), 4.2.1 (Authority), 4.2.2 (Enforceability), 4.8 (Taxes) and 4.10(a) (No Legal Actions) or as provided in Sections 3.3.2, 11.1, 11.2, 12.2(b), (c), (d), or (e), 12.8 and 12.9, which are not limited, will be limited to the amounts set forth below:

12.5.1 If the Closing of the transaction contemplated in this Agreement does not occur and there is a termination pursuant to Section 10.1, Seller's liability will be limited as set forth in Section 10.2.

12.5.2 In the event that the Closing occurs, Seller's indemnification obligation will be limited to: (a) in the case of any inaccuracy, misrepresentation or omission of or in any representation or warranty contained in Section 4.11 (Environmental Matters) [forty percent (40%)] of the total Developer Fee paid by Buyer; and (b) in all other cases, [thirty percent (30%)]⁵ of the total Developer Fee paid by Buyer to Seller; provided, however, such obligation under clause (b) will be solely satisfied from amounts held in Escrow (or draws upon the Letter of Credit or Guaranty, if applicable).

12.6 Limitations on Liability - Buyer

Any obligation of Buyer to indemnify Seller pursuant to this Agreement, except for the inaccuracy, misrepresentation or omission of or in any representation or warranty contained in Sections 5.1 (Organization and Good Standing), 5.2.1 (Authority), and 5.2.2 (Enforceability), Section 12.3(c) or (d), or as provided in Sections 12.8 and 12.9, which are not limited, will be limited to the amounts set forth below:

12.6.1 If the Closing of the transaction contemplated in this Agreement does not occur and there is a termination pursuant to Section 10.1, Buyer's liability will be limited as set forth in Section 10.2.

12.6.2 In the event that the Closing occurs and without limiting or in any way modifying or reducing Buyer's obligation to pay to Seller the remaining balance of the Purchase Price to be paid to Seller at and after Closing as provided in this Agreement, Buyer's indemnification obligation will be limited to thirty percent (30%) of the total Developer Fee paid to Seller or the Escrow Agent. For the avoidance of doubt, it is expressly intended by the Parties that in the event of the Closing, Seller will be paid the Purchase Price and that Buyer is not entitled to use the foregoing limitation of liability as a method to avoid paying Purchase Price that is otherwise owed.

12.7 Right of Setoff

Upon notice to Seller specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may be entitled under this Article 12 against the Purchase Price or any other amounts otherwise payable by Buyer to Seller under this Agreement. Neither the exercise of nor the failure to exercise such right of setoff will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

⁵ *Note to Draft:* Subject to the credit review referenced in Section 3.10.6.

12.8 Third-Party Claims

12.8.1 Notice. Promptly after receipt by an Indemnified Person of notice of the assertion of a Third-Party Claim against it, such Indemnified Person will give notice to the Indemnifying Party of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Party demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

12.8.2 Defense. If an Indemnified Person gives notice to the Indemnifying Party pursuant to Section 12.8.1 of the assertion of a Third-Party Claim, the Indemnifying Party will be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless the Indemnifying Party is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate), to assume the defense of such Third-Party Claim with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Party to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Party will not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Article 12 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Party assumes the defense of a Third-Party Claim, (a) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (b) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Party without the Indemnified Person's consent unless (i) there is no finding or admission of any violation of applicable Laws or any violation of the rights of any Person; (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and (iii) the Indemnified Person has no liability with respect to any compromise or settlement of such Third-Party Claims effected without its consent. If notice is given to an Indemnifying Party of the assertion of any Third-Party Claim and the Indemnifying Party does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Party will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

12.8.3 Non-Monetary Remedy. Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Party will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its consent (which may not be unreasonably withheld, conditioned or delayed).

12.8.4 Jurisdiction. Notwithstanding the provisions of Section 15.4, Seller hereby consents to the nonexclusive jurisdiction of any court in which an Action in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that

a Buyer Indemnified Person may have under this Agreement with respect to such Action or the matters alleged therein and agree that process may be served on Seller with respect to such a claim anywhere in the world.

12.8.5 Information. With respect to any Third-Party Claim subject to indemnification under this Article 12: (i) both the Indemnified Person and the Indemnifying Party, as the case may be, will keep the other Person fully informed of the status of such Third-Party Claim and any related Actions at all stages thereof where such Person is not represented by its own counsel, and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

12.8.6 Confidentiality. With respect to any Third-Party Claim subject to indemnification under this Article 12, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its Commercially Reasonable Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Laws and rules of procedure), and (ii) all communications between the Parties and counsel responsible for or participating in the defense of any Third-Party Claim will, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

12.9 Exclusive Remedy

Except as expressly provided in Section 10.1 and Section 10.2, the Parties agree that their sole and exclusive remedy with respect to any and all claims (other than for claims for fraud, criminal activity, or intentional misrepresentation or willful misconduct on the part of a Party or if Closing occurs, Buyer's obligation to pay the Purchase Price) in connection with the transactions contemplated by this Agreement including for any failure to perform or comply with any representation, warranty, covenant or agreement set forth herein shall be pursuant to the indemnification provisions set forth this Article 12.

12.10 Damages Limitation

EXCEPT AS PROVIDED IN SECTION 12.9 AND EXCEPT IN EACH CASE TO THE EXTENT SUCH DAMAGES ARE PAYABLE TO A THIRD PARTY, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, REMOTE, UNFORESEEABLE, SPECULATIVE, CONSEQUENTIAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT TO THIS AGREEMENT.

12.11 Materiality Qualifiers

For purposes of calculating Damages in connection with a claim for indemnification under this Article 12, each of the representations and warranties that contains any qualifications as to “materiality” or “material adverse effect,” or words or phrases of similar effect, shall be deemed to have been given as though there were no such qualifications, and any such qualifications shall be deemed disregarded for purposes of this Article 12.

13. CONFIDENTIALITY

13.1 Restricted Use of Confidential Information

13.1.1 Confidentiality. Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) will be kept confidential by the Receiving Party; (ii) will not be used for any reason or purpose other than to evaluate and consummate the transactions contemplated by this Agreement; and (iii) without limiting the foregoing, will not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement. Each of Buyer and Seller will disclose the Confidential Information of the other Party only to its Representatives who require such material for the purpose of evaluating the transactions contemplated by this Agreement and are informed by Buyer and Seller, as the case may be, of the obligations of this Article 13 with respect to such information. Each of Buyer and Seller will (iv) enforce the terms of this Article 13 as to its respective Representatives; (v) take such action to the extent necessary to cause its Representatives to comply with the terms and conditions of this Article 13; and (vi) be responsible and liable for any breach of the provisions of this Article 13 by it or its Representatives.

13.1.2 Seller Obligations. After Closing, Seller will maintain as confidential the Confidential Information it possesses relating to the Project Assets or the Assumed Liabilities and shall continue to comply with the Confidentiality Agreement between Buyer and Seller dated [_____, 202_].

13.1.3 Buyer Rights. From and after the Closing, the provisions of Section 13.1.1 above will not apply to or restrict in any manner Buyer’s use of any Confidential Information of Seller relating to any of the Project Assets or the Assumed Liabilities.

13.2 Exceptions

Sections 13.1.1 and 13.1.2 do not apply to that part of the Confidential Information of the Disclosing Party that the Receiving Party demonstrates (a) was, is or becomes generally available to the public other than as a result of a breach of this Article 13 by the Receiving Party or its Representatives; (b) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; (c) was already in the possession of the Disclosing Party prior to disclosure by the Receiving Party (except as provided in Section 13.1.2), or (d) was, is or becomes available to the Receiving Party on a nonconfidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

13.3 Legal Actions

If a Receiving Party becomes compelled in any Action or is requested by a Authority having regulatory jurisdiction over the transactions contemplated by this Agreement to make any disclosure that is prohibited or otherwise constrained by this Article 13, that Receiving Party will provide the Disclosing Party with reasonable notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 13. In the absence of a protective order or other remedy, the Receiving Party may disclose that portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Authority; provided, however, that the Receiving Party will use reasonable efforts to obtain reliable assurance, at Disclosing Party's sole cost and expense, that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed.

14. DISPUTE RESOLUTION

14.1 Good Faith Efforts to Resolve Disputes

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

14.2 Step Negotiations

In the event that either Seller or Buyer concludes, after making a good faith effort to resolve a Dispute in the normal course of business at the Project Leadership Team level, that such Dispute cannot be resolved informally within five (5) Business Days, then the aggrieved Party shall have the right to initiate the processes identified in Section 14.3.

14.3 Senior Executive Negotiations

If a Dispute has not been resolved by the Project Leadership Team under Section 14.2, then either Seller or Buyer shall have the right to give the other written notice of its request to have the Dispute heard by a senior executive of their respective organizations. Within five (5) Business Days of any such notice, each Party shall identify in writing one or more of its senior executives who shall have the responsibility and authority to negotiate on behalf of such Party under this Section 14.3. Once the senior executives have been identified in writing, and unless extended by written agreement between the senior executives, negotiations must begin within five (5) Business Days thereafter and be completed within ten (10) Business Days after they begin.

14.4 Confidentiality

All negotiations pursuant to this Article 14 shall be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable evidentiary requirements, unless a settlement is reached and agreed to in a writing signed by each Party's representative.

14.5 Referral to Litigation

If the Dispute has not been resolved pursuant to the aforesaid procedure within the indicated timeframes, then either Seller or Buyer may submit the dispute to judicial resolution. The joinder of parties under any Land Contracts and Project Contracts shall be permitted and Buyer is a third party beneficiary of all such contracts.

14.6 Consent to Exclusive Jurisdiction.

Each of the Parties irrevocably consents and agrees that any Action arising from or related to any Dispute may only be brought in any of the state or federal courts having jurisdiction over this Agreement and located in the state of Michigan, and that, by execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court and agrees that such final, nonappealable judgment may be enforced by suit on the judgment or in any other manner provided by applicable Laws, (c) irrevocably waives, to the fullest extent permitted by applicable Laws, any objection which it may now or hereafter have to the laying of venue of any Action with respect to this Agreement in any such court, and further irrevocably waives, to the fullest extent permitted by applicable Laws, any claim that any such Action brought in any such court has been brought in an inconvenient forum, (d) agrees that service of process in any such action may be effected by delivering a copy thereof by the means of notice set forth in Section 15.12 hereof, to such Party at its notice address set forth herein, or at such other address of which the other Party hereto shall have been notified, (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by applicable Laws, and (f) agrees that any litigation related to this Agreement shall be brought exclusively in Michigan courts. The Parties further agree to waive any argument opposing transfer to the Michigan venue in case any litigation or claim related to this Agreement is initiated elsewhere. The Parties acknowledge that the foregoing consent to jurisdiction in federal or state courts in the state of Michigan is intended to be exclusive, and that neither Party may bring an action in any other federal or state court having jurisdiction over the matter in dispute and the Parties.

14.7 Waiver of Jury Trial

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

14.8 Continuation of Work

In case of any Dispute which is or may be the subject of dispute resolution under this Article 14, Seller will continue to diligently execute the Work that are not the subject of Dispute, and Buyer will continue to make payments to Seller for those portions of the Work completed that are not the subject of Dispute in accordance with this Agreement.

14.9 Equitable Relief

Notwithstanding anything to the contrary contained in this Article 14, if, due to a material breach or threatened material breach or default or threatened default, a Party is suffering irreparable harm for which monetary damages are inadequate, then such Party may petition a court of competent jurisdiction for injunctive or other equitable relief. The inclusion of this Section 14.9 does not imply that either Party has or has not consented to the appropriateness of the granting of equitable relief under applicable Laws.

15. GENERAL PROVISIONS

15.1 Expenses; Attorneys' Fees

Except as otherwise provided in this Agreement, each Party will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of its Representatives.

15.2 Publicity

Seller will not make any press release or other external announcement or public communication concerning this Agreement, the transactions contemplated by this Agreement or the Work without Buyer's prior written approval.

15.3 Governing Law

This Agreement is governed by, and construed in accordance with, the laws of the State of Michigan, excluding any conflict of laws rules thereof that may cause this Agreement to be governed by or construed in accordance with the law of a different jurisdiction.

15.4 Reserved

15.5 Entire Agreement

This Agreement represents the entire agreement between Buyer and Seller with respect to the subject matter hereof, and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, between the Parties or their representatives with respect to or in any manner connected with such subject matter.

15.6 Amendments

This Agreement may be modified or amended only by a written instrument signed by Buyer and Seller.

15.7 Waiver

Except as expressly provided herein, each Party, in its sole discretion, has the right, but has no obligation, to waive, defer or reduce any of the requirements to which the other Party is subject

under this Agreement at any time. Except as expressly provided herein, no delay or omission by the Parties in exercising any right or remedy provided for herein will constitute a waiver of such right or remedy, nor will it be construed as a bar to or waiver of any such right or remedy on any future occasion. In addition, except as expressly provided herein, neither Party will be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. A Party's exercise of any rights hereunder will apply only to such requirements and on such occasions as such Party may specify and will in no event relieve the other Party of any requirements or other obligations not so specified.

15.8 Severability

The invalidity or unenforceability of any portion or provision of this Agreement will not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision will be deemed severed from this Agreement. The Parties will negotiate an equitable adjustment in any portions or provisions of this Agreement that are determined to be invalid or unenforceable to as closely as possible effect the underlying original purposes and intention thereof while avoiding the cause of the invalidity or unenforceability.

15.9 Third-Party Beneficiaries

Unless and except to the extent that may be otherwise specifically identified herein, the provisions of this Agreement are intended for the sole benefit of Buyer and Seller, and there are no third party beneficiaries.

15.10 Rights Cumulative

Except as otherwise expressly provided for or limited in this Agreement, (a) all rights and remedies available to Seller or Buyer as set forth in this Agreement are cumulative with, and in addition to, and not in limitation of, any other rights or remedies available to such Parties under applicable Laws or in equity and (b) any specific right or remedy conferred upon or reserved to Seller or Buyer in any provision of this Agreement will not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

15.11 Independent Contractor; No Partnership Created

Seller will act as an independent contractor and not as an agent of Buyer in performing this Agreement, maintaining complete control over its employees, representatives and all Subcontractors. Seller will not perform any act or make any representation to any Person to the effect that Seller, or any of its personnel or Subcontractors, is the agent, representative, employee or servant of Buyer. Nothing contained herein will be construed as constituting any relationship with Buyer other than that of Buyer and independent contractor, nor will it be construed as creating any relationship whatsoever including employer/employee, partners or joint venture parties, between Buyer and Seller's employees.

15.12 Notices

Except as otherwise expressly provided herein, any notice or invoice required or authorized to be given hereunder or any other communications between the Parties provided for under the

terms of this Agreement will be in writing (unless otherwise provided) and will be served personally or by reputable next Business Day express courier service or by email transmission addressed to the relevant Party at the address stated below or at any other address notified by that Party to the other as its address for service. Any notice so given personally will be deemed to have been served on delivery; any notice so given by express courier service will be deemed to have been served the next Business Day after the same has been delivered to the relevant courier; and any notice so given by email transmission will be deemed to have been served upon acknowledgement of receipt by the receiving party of such email transmission. As proof of such service it will be sufficient to produce a receipt showing personal service, or the receipt of a reputable courier company showing the correct address of the addressee showing the confirmation of successful transmission, or the return email of the recipient acknowledging receipt of the email transmission. Notwithstanding the foregoing, the submission of Deliverables and Information by Seller to Buyer will be provided as provided in Section 2.9.3. The Parties' addresses for notice and service are:

If to Buyer:

Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
Attention: Steven A. Schneider
E-mail address: steven.schneider@cmsenergy.com

With a copy to (which is mandatory, but which shall not constitute notice):

Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
Attention: Adam C. Smith
E-mail address: adam.smith@cmsenergy.com

If to Seller:

[COMPANY NAME]
[ADDRESS]
Attention: [NAME]
E-mail address: [EMAIL]

with a copy to (which is mandatory, but shall not constitute notice):

[COMPANY NAME]
[ADDRESS]
Attention: [NAME]
E-mail address: [EMAIL]

Either Party may change its above-set forth address or email address for receipt of notices, or the above-set person to whose attention notices to it are to be addressed, by a written notice to the other Party given in accordance with this Section 15.12.

15.13 Assignment

15.13.1 Right to Assign. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned in whole or in part by either Party without the express written consent of the other Party, and any such assignment without such written consent will be null and void; provided, however, that this Agreement may be assigned by Buyer to an Affiliate or to a purchaser of all or substantially all of the Project Assets or all or substantially all of Buyer's assets; provided, however, that Buyer will remain responsible for the assignee's payment of the Purchase Price and other monetary amounts that may be owed to Seller under this Agreement.

15.13.2 Successors and Assigns. Subject to the foregoing, all of the rights, benefits, duties, liabilities and obligations of the Parties hereto will inure to the benefit of and be binding upon their respective permitted successors and permitted assigns.

15.14 Counterparts

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together will constitute one and the same instrument. This Agreement (including any counterpart signature page) may be executed by facsimile signature or any image of the signed Agreement transmitted by electronic mail (such as an unalterable pdf image file) and such facsimile signature or image will be deemed an original.

15.15 Time of Essence

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

15.16 Disclosure

Seller may, at its option, include items on Schedules that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, will not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or define further the meaning of such terms for purposes of this Agreement. Information disclosed in any Schedule will constitute a disclosure for purposes of all other Schedules notwithstanding the lack of specific cross-reference thereto, but only to the extent the applicability of such disclosure to such other Schedule is readily apparent on its face. In no event will the inclusion of any matter in the Schedules be deemed or interpreted to broaden or create a representation, warranty, covenant or agreement of Seller that is in addition to Seller's representations, warranties, covenants or agreements contained in this Agreement. The mere inclusion of an item in the Schedules will not be deemed an admission by Seller that such item represents a material exception or fact, event, or circumstance.

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

Buyer:

CONSUMERS ENERGY COMPANY

By: _____

Name: _____

Title: _____

Seller:

[PROJECT COMPANY NAME]

By: _____

Name: _____

Title: _____

Seller Parent:

[SELLER PARENT COMPANY NAME]

By: _____

Name: _____

Title: _____

APPENDIX I

DEFINITIONS

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Appendix:

“**Action**” means any legal, administrative, arbitral, mediation or other alternative dispute resolution procedure or other action, proceeding, claim, assessment, audit, inquiry or similar investigation before any Authority or arbitrator.

“**Adjustment Amount**” is defined in Section 3.7.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise.

“**Agreement**” means this Development Asset Acquisition Agreement, including this Appendix and all Exhibits and Schedules, as the same may be modified, amended or supplemented from time to time in accordance with Section 15.6.

“**Approval**” is defined in Section 2.9.2.

“**Assets**” of any Person means all assets, rights and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated), including the related goodwill, which assets, rights and properties are operated, owned or leased by such Person.

“**Assignment and Assumption Agreement**” means an assignment and assumption agreement materially in the form set forth in Exhibit I.

“**Assumed Liabilities**” is defined in Section 3.3.1.

“**ASTM**” means American Society for Testing and Materials.

“**Authority**” means any federal, state, local or other governmental, judicial, administrative, public or statutory instrumentality, court, tribunal, arbitrator, agency, commission, authority, official, body or entity, in each case, whether domestic or foreign, or any subdivision thereof, in each case having legal jurisdiction over the matter or Person in question.

“**Back Feed Date**” is defined in Section 2.4.2.2.

“Bankruptcy Event” means, with respect to any Person, (a) such Person commenced any voluntary case under any applicable bankruptcy or similar Laws; (b) such Person consented to the appointment of a receiver, administrator, administrative receiver, liquidator, trustee or other official with similar powers for itself or all or substantially all of its assets; (c) such Person makes a general assignment for the benefit of its creditors; (d) an involuntary case was commenced seeking liquidation or reorganization of such Person under any bankruptcy or similar Laws and (i) such Person consents to the institution of the involuntary case against it, (ii) such involuntary case remains undismissed, unbonded or unstayed for a period of sixty (60) consecutive days or (iii) an order for relief has been issued or entered therein; (e) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, trustee or other official having similar powers, over such Person or all or substantially all of its property has been entered; or (f) such Person is unable to, or admits in writing its inability to, pay its debts generally as they become due.

“Bankruptcy Qualifications” is defined in Section 4.2.2.

“Base Purchase Price” is defined in Section 3.6.

{ **WIND** **“Baseline Turbine Foundation Amount”** means the following: \$ _____ for a buoyant foundation; \$ _____ for a semi-buoyant foundation; and \$ _____ for a non-buoyant foundation. }

“Basket” is defined in Section 12.4.

“Bill of Sale” means a bill of sale materially in the form set forth in Exhibit J.

“Bring Down { **SOLAR Investment/**WIND** Production } Tax Credit Opinion”** has the meaning set forth in Section 2.16.

“Business Day” means any day other than Saturday, Sunday or any day on which banks located in Michigan are authorized or obligated, in each case pursuant to applicable Laws, to close.

“Buyer” is defined in the introductory paragraph of this Agreement.

“Buyer Indemnified Persons” means Buyer and its Representatives, stockholders and Affiliates.

“Buyer Permits” mean the Permits which Buyer may need by nature of Buyer’s identity, jurisdiction of formation, operations, location or regulatory status (including being a public utility, if applicable) or that may be obtained only by Buyer for itself with respect to the construction and operation of the Project after the Closing. The Buyer Permits are identified in Part C of Schedule 2.3.1.

“Buyer’s Closing Documents” is defined in Section 5.2.1.

“Buyer’s Knowledge” means the Knowledge of Steven Schneider.

“Closing” is defined in Section 3.4.

“**Closing Date**” means the date on which the Closing actually takes place.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commercially Reasonable Efforts**” means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as practicable, provided, however, that a Person required to use Commercially Reasonable Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the transactions contemplated by this Agreement or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

“**Confidential Information**” means information, ideas or materials now or hereafter owned by, or otherwise in the possession or control of, or otherwise relating to, the Disclosing Party, including inventions, business or trade secrets, know how, techniques, data, reports, drawings, specifications, blueprints, flow sheets, designs, or engineering, construction, environmental, operations, marketing or other information, together with all copies, summaries, analyses, or extracts thereof, based thereon or derived there from, disclosed by the Disclosing Party to the Receiving Party, in each case which are identified at the time of disclosure as being “confidential,” “proprietary” or related to the Project.

“**Consent**” means any approval, consent, ratification, waiver or other authorization.

“**Contract**” means any legally binding contract, lease, easement, license, evidence of Indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other legally binding arrangement, but excludes Permits.

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

“**Damages**” means any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys’ fees and expenses) or diminution of value.

“**Day**” or “**day**” means a calendar day.

“**Deemed Approval**” is defined in Section 2.9.2.

“**Default**” means, with respect to a Contract, this Agreement or other obligation, any circumstance, event or condition that, with or without notice or the passage of time or both, would constitute a violation, breach or event of default, or give rise to any right of termination, cancellation or acceleration of such Contract, this Agreement or obligations.

“**Defect**” means any material defect, deficiency or nonconformity in the Project Assets or the Work from the Project Requirements.

“**Deliverable**” means each Land Contract (including the related file with respect to such Land Contract) including a completed W-9 listing both Seller and Buyer as the requesting party), Project Contract, Title Commitment, Permit, {**SOLAR** Solar/**WIND** Wind} Data, Seller Consents, the waiver or release by Seller Parent or its Affiliates of the right of first offer, environmental site assessment, studies, reports and other Information that Seller is obligated to acquire or prepare in the performance of the Work.

“**Designated** {**SOLAR** **SMGs**” or “**SMGs/WIND** **WTGs**” or “**WTGs**” means the [**IDENTIFY EQUIPMENT**], whichever model is mutually agreed upon by Seller and Buyer within sixty (60) days after the Effective Date.

“**Developer Fee**” is defined in Section 3.6.

“**Disclosing Party**” means the Party or its Affiliates disclosing Confidential Information to the Receiving Party.

“**Dispute**” is defined in Section 14.1 and means a Claim, dispute or other controversy between the Parties arising out of, or relating to, this Agreement.

“**Diverse Suppliers**” shall have the meaning given to it in Section 2.15.

“**Due Diligence Period**” shall be the period beginning on the Effective Date and ending at 5:00 p.m. EST on the day that is the ninetieth (90th) day after the Effective Date.

“**Effective Date**” is defined in the introductory paragraph of this Agreement.

“**Encumbrances**” means any encumbrance, mortgage, pledge, deed of trust, easement, hypothecation, security interest, charge, claim, lease, interest, mineral reservations, covenant, lien, option, equitable interest, purchase right, third party right, encroachment, right-of-way, license, restriction, right of first option or refusal, the interest of a vendor, lessor or other similar party under any conditional sale, capital lease or other title retention agreement, or similar restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, or other agreement or arrangement that has the same or a similar effect as the granting of security or any legal obligation to create any of the foregoing.

“**Engineering Requirements**” means those requirements set forth on Exhibit L to this Agreement.

“**Environment**” shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, cultural and historic resources.

“**Environmental Attributes**” means all environmental air quality credits, green credits, carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil gas, chemical, or other substance; and (b) attributable to the generation, purchase, sale or use of

renewable energy generated or use of renewable generation technologies by the Project, or otherwise attributable to the Project.

“Environmental Laws” means all applicable local, State and/or Federal Laws relating to the Environment, human health, safety, natural resources, plant and animal species, cultural and archaeological resources, or the use or Release into the environment of any Hazardous Materials, including but not limited to the Clean Air Act (42 U.S.C. §7401 et seq.), the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Safe Drinking Water Act (42 U.S.C. §300f et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. §668 et seq.), the Migratory Bird Treaty Act (16 U.S.C. §703 et seq.) and the Michigan Natural Resources and Environmental Protection Act (MCL. 324.101, et seq.) (including any future change in judicial or administrative decisions and rules and regulations interpreting, implementing, or applying any such Environmental Laws).

“Escrow” is defined in Section 3.10.6(a).

“Escrow Agent” is defined in Section 3.10.6(a).

“Escrow Agreement” is defined in Section 3.10.6(a).

“Excluded Assets” is defined in Section 3.2.

“Excluded Liabilities” means every Liability of Seller other than the Assumed Liabilities, including:

(a) any Liability of Seller or its Affiliates for Taxes with respect to any taxable period, or portion thereof, prior to the Closing Date;

(b) any Liability under the Land Contracts, Project Contracts, Permits, Permit Applications or other Project Assets to the extent such Liability, but for a Default by Seller or any of its Affiliates or a waiver or extension given to or by Seller or any of its Affiliates, would have been paid, performed or otherwise discharged on or prior to the Closing Date;

(c) any Liabilities associated with the Excluded Assets, including any Liability under any Contract of Seller that is not a Land Contract or Project Contract included in the Project Assets;

(d) any Liabilities identified as Excluded Liabilities in the Schedules;

(e) any Liability under the employee plans or relating to payroll, vacation, sick leave, workers’ compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for the employees or former employees or both of Seller or its Affiliates or any employment, severance, retention or termination agreement with any employee of Seller or its Affiliates; and

(f) any Liability of Seller based upon Seller’s acts or omissions occurring after the Closing.

“**Excusable Event**” means a delay in Seller’s performance and completion of the Work due to Force Majeure or Default by Buyer under this Agreement; provided Seller: (a) gives Buyer written notice describing the particulars of the Force Majeure event or Default as soon as reasonably practicable, but in no event later than seven (7) days after Seller’s first knowledge of the occurrence of such event; (b) suspends performance of the Work only to the extent and for the duration that is reasonably required by the event; (c) is not excused as a result of such event from any obligations of Seller which arose before the event causing the suspension of performance; (d) uses Commercially Reasonable Efforts to overcome or mitigate the effects of such event; and (e) promptly resumes performance hereunder when Seller is able to resume performance of its obligations under this Agreement (Seller will give Buyer written notice to that effect).

“**Exhibits**” means the exhibits attached to, and expressly contemplated in, this Agreement.

“**Expense Payment Amount**” is defined in Section 3.6.

“**FAA**” means the Federal Aviation Administration.

“**First Release Date**” is defined in Section 3.10.6(c).

“**Force Majeure**” means any condition, event, or circumstance, including by way of example, war, sabotage, civil strife, strikes of a national or organized labor union (except as excluded below in (v)) earthquake, quarantine, acts of God, extreme weather, acts of terrorism, and Interconnection delays, but only if, and to the extent: (a) such condition, event, or circumstance is not within the reasonable control of Seller; (b) such condition, event or circumstance, despite the exercise of reasonable diligence, could not be prevented, avoided or removed by Seller; (c) such condition, event, or circumstance has a material adverse effect on the ability of Seller to fulfill its obligations under this Agreement; (d) Seller has taken commercially reasonable precautions to mitigate the consequences thereof; and (e) such condition, event, or circumstance is not the result of any failure of Seller to perform any of its obligations under this Agreement. Furthermore, in no event will Force Majeure include the following events, conditions or circumstances: (i) late performance as a consequence of any violation of applicable Laws or decisions of a Authority related to the conduct of Seller’s business, including insolvency or any delay related to the economic, commercial or labor circumstances of Seller, or other business conducted by Seller; (ii) failure of Seller to pay amounts due and owing under this Agreement; (iii) increased costs of the Work, (iv) general economic or industry conditions; or (v) strikes or labor disturbances specifically directed at Seller.

“**Generator Interconnection Agreement**” means that certain Generator Interconnection Agreement entered into by and among Seller, Transmission Provider and Transmission Owner with respect to the Interconnection in the form of Exhibit M to this Agreement, as the same may be amended as provided herein.

“**Geotechnical Expenses**” is defined in Section 10.2.2(a).

“**Governance Task**” is defined in Section 2.11.4.

“**Governing Documents**” means the articles or certificate of incorporation and bylaws of a corporation or the equivalent constitutive documents of a limited liability company, partnership, limited partnership or other entity, including (a) any shareholder, voting trust or similar Contract and (b) any documents that are required to be registered or kept in the place of incorporation, organization or formation of such Person and that establish the legal personality or governance of such Person.

“**Guaranteed Completion Date**” means [REDACTED].

“**Guaranty**” shall mean a guaranty in substantially the form of Exhibit R, issued by a parent company to Seller or other entity, in either case that is acceptable to Buyer and has a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such parent or entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such parent or entity is rated by either S&P or Moody's but not both. If a credit rating drops below the acceptable criteria, Seller has five (5) Business Days to provide a replacement Guaranty from a guarantor who meets such criteria. The Guaranty shall include corresponding reductions that correspond to the First Release Date and Second Release Date in Section 3.10.6(c).

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

“**Indemnified Person**” means a Person entitled to indemnity under Section 12.2 or 12.3.

“**Indemnifying Party**” means the Party obligated to indemnify under Section 12.2 or 12.3.

“**Information**” means calculations, studies, documents, drawings, manuals and other data and information, whether paper or electronic media, to be supplied by Seller to Buyer in performance of the Work as provided in this Agreement.

“**Insured Exception**” is defined in Section 2.2.6.

“**Intellectual Property**” means all intellectual property, including: (a) patents, inventions, discoveries, processes, designs, techniques, developments, technology, and related improvements and know-how, whether or not patented or patentable; (b) copyrights and works of authorship in any media, including computer hardware, software, firmware, applications, files, systems, networks, databases and compilations, documentation and related textual works, graphics, advertising, marketing and promotional materials, photographs, artwork, drawings, specifications, plans, articles, textual works and Internet site content; (c) trademarks, service marks, trade dress, logos, Internet domain names, any and all common law rights thereto and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions and all reissues, extensions and renewals of any of the foregoing; and (d) trade secrets and confidential information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

“**Interconnection**” means the connection of the Project to Transmission Owner’s or Transmission Provider’s electrical transmission system as coordinated by Seller with the Transmission Owner or Transmission Provider.

“**Interconnection Rights**” means any and all of Seller’s rights and interests in the Interconnection, including Seller’s rights and interests under the Generator Interconnection Agreement, and any subsequent studies, reports or other documents provided by Transmission Provider and/ or Transmission Owner.

{**SOLAR** “**Investment Tax Credit Beginning of Construction Certificate**” shall mean the certificate attached hereto as Exhibit G, delivered by Seller to Buyer on or before the Effective Date and at other such times contemplated herein, updated as necessary to reflect true and accurate facts as of the date it is delivered as provided in this Agreement.

“**Investment Tax Credit Opinion**” is defined in Section 2.16.

“**Investment Tax Credits**” shall mean the maximum amount of credits provided for in Section 48 of the Internal Revenue Code allowable for a project that starts construction in calendar year [REDACTED]. }

“**Knowledge**” means actual awareness of the applicable fact or matter by the applicable Person after reasonable inquiry by such Person of those employees, agents or representatives of such Party and any of its Affiliates, who could reasonably be expected to have knowledge or information with respect to the matter in question. For purposes of this definition, “reasonable inquiry” (a) shall take into account the scope of the individual’s duties and includes reasonable inquiry of the employees of such Party and any of its Affiliates who are responsible for the subject matter of the representation and warranty or other matter involved and (b) shall not require that any Person make any inquiry of persons who are not employed by such Party or its Affiliates, or check any records not within the possession or control of such Party or its Affiliates.

“**Land Contract**” means each easement agreement, lease agreement, Crossing Agreement{**WIND**, No Facilities Agreement} or other agreements granting rights with respect to the occupancy or use of any portion of the Real Property or uses of adjacent property, including all options for real property interests (including options to acquire real property in fee, leasehold or easement estates) and all easements and licenses in real property, but excluding any Contract excluded from the Project Assets as provided in this Agreement. Land Contracts shall provide that the Contract is assignable by Seller to enable Seller to assign the Land Contract to Buyer at Closing.

“**Land Contract Estoppels**” means the estoppel certificates from the Land Owners in substantially the form attached hereto as Exhibit N.

“**Land Contracts Assignment Documents**” means the assignment documents and memoranda, materially in the form set forth in Exhibit O, in recordable form in the applicable county.

“**Land Owner**” means the landlord or grantor that is the party to the applicable Land Contract or the Person obtaining title to the insured Real Property from Land Owner subsequent to the execution and recording of a memorandum of the applicable Land Contract.

“**Laws**” means any law, statute, rule, regulation, ordinance, standard, code, order, judgment, binding decision, writ, injunction or decree issued or enforced by any Authority, and for purposes of greater certainty, shall include the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended, and any zoning ordinance, zoning variance, special land use permit, setback, noise, {**SOLAR** glare/**WIND** shadow flicker} or other requirements applicable to the Real Property or the Project.

“**Letter of Credit**” shall mean a letter of credit in substantially the form of Exhibit P, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both. If a credit rating drops below the acceptable criteria, Seller has five (5) Business Days to provide a replacement Letter of Credit. The Letter of Credit shall include corresponding reductions that correspond to the First Release Date and Second Release Date in Section 3.10.6(c).

“**Liabilities**” means any and all direct or indirect liabilities, Indebtedness, obligations, commitments, losses, damages, expenses, claims, deficiencies, or guaranties of any type, whether accrued or unaccrued, asserted or unasserted, fixed absolute or contingent, matured or unmatured, liquidated or unliquidated, incurred, due or to become due, known or unknown, whenever or however arising (including whether arising out of any Contract or tort based on negligence, strict or joint and several liability, or otherwise).

“**Loss**” means any and all judgments, losses, liabilities, amounts paid in settlement, damages, fines, monetary penalties, costs, charges, Taxes, fees, interest and expenses (including court costs, cost of investigation and reasonable fees of attorneys, accountants and other experts in connection with any third-party claim).

“**MDOT**” means the Michigan Department of Transportation.

“**MPSC**” means the Michigan Public Service Commission.

“**MWac**” means megawatt.

{**WIND** *No Facilities Agreement*} is defined in Section 2.2.3.

“**Ordinary Course of Business**” means an action taken by a Person that is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person.

“**Part 201**” is defined in Section 2.2.13.

“**Partial Completion Payment**” is defined in Section 3.10.1.

“**Party**” means Buyer or Seller individually; and “**Parties**” means Buyer and Seller collectively.

“**Permit**” means (a) any license, consent, certificate (including permanent unconditional certificate of occupancy), approval, permit, variance, authorization, franchise and similar written consents and orders of any sort whatsoever by or from any Authority, for the development, construction, ownership, operation or transfer of the Project and (b) any required notice to, or declaration, filing or registration with, any Authority, in each case in connection with the development, construction, testing, ownership, operation, maintenance, repair or use of the Project or transfer of the Project Assets, including zoning and Environmental permits.

“**Permit Application**” means any application, petition or written request made by Seller or any other of its Affiliates to any Authority on or before the Closing Date in order to obtain a Permit.

“**Permitted Encumbrances**” With respect to Land Contracts for sites upon which the Designated {**SOLAR** SMGs/**WIND** WTGs} or other Project Facilities are to be located per the Site Plan, Permitted Encumbrances means, collectively: (a) Encumbrances for property taxes not yet delinquent, (b) Encumbrances that, in Buyer’s opinion, would not reasonably be expected to interfere in any material respect with the ability of Buyer to use the property encumbered thereby for its intended purpose in connection with the Project, (c) Encumbrances granted to lenders under the financing in respect of the development or construction of the Project (so long as such Encumbrances are released at or prior to the Closing), (d) any Encumbrances created or permitted by Buyer, including, without limitation, any Encumbrances granted by a landowner or pursuant to condemnation proceedings currently to or for the benefit of Buyer or any of its Affiliates, such as electric transmission or distribution easements currently in favor of or held by Buyer, (e) Insured Exceptions, (f) Encumbrances consisting of mortgages or similar instruments affecting an interest in Real Property superior to the interest of Seller in the Land Contracts, but only if such Encumbrance is the subject of a non-disturbance agreement reasonably satisfactory in substance and form to Buyer, (g) Encumbrances affecting an interest in Real Property that were recorded against the Real Property subsequent to Seller’s recording of the memorandum of the applicable Land Contract against the Real Property where the holder of such Encumbrance did not have any possession, control or overt use of the Real Property prior to Seller’s recording of the memorandum of the applicable Land Contract against the Real Property and Seller did not and should not have known of such pre-existing holder’s prior rights at the time of Seller’s recording of the applicable Land Contract, (h) Encumbrances in the nature of easements, rights-of-way, leases, or similar rights where the improvements constructed (or could be constructed) pursuant to such easements, rights-of-way, leases, or similar rights are not (or will not be) physically crossed and rights under such Encumbrances will not be materially adversely impaired by planned Project Facilities (as depicted on the final Site Plan), (i) any gaps, strips, gores, or other parcels of Real Property owned in fee title by Buyer or any of Buyer’s Affiliates (it being understood by the Parties that Seller will not be required to obtain any lease or easement rights with respect to any such Real Property), and (j) any other additional items the Parties agree in writing are Permitted Encumbrances; provided, however, Buyer shall consider applicable Law and the land title standards of the State Bar of Michigan and consult with Seller in determining if there are any such additional Permitted Encumbrances within thirty (30) days after: (i) a Title Commitment and Survey for the applicable Real Property; (ii) complete and legible copies of all recorded documents listed in Schedule B of each Title Commitment; and (iii) Seller’s detailed spreadsheet in which Seller shall identify (a)

each requirement and exception; (b) which requirements and exceptions Seller shall satisfy and resolve; and (c) which exceptions that Seller believes are Permitted Encumbrances, have been provided to Buyer.

In addition to the foregoing, with respect to Land Contracts {WIND or No Facilities Agreements} for sites upon which the Designated {SOLAR SMGs/WIND WTGs} or other Project Facilities shall not be located per the Site Plan but are required to keep the development, construction, operation and/or maintenance of the Real Property or Project in compliance with applicable Laws, Permitted Encumbrances will also include any Encumbrance that: (i) cannot result in the termination of the applicable Land Contract; (ii) cannot result in a violation of any Laws or any legal, zoning, variance, special land use permit, setback, noise, {SOLAR glare/WIND shadow flicker} or other applicable Laws; or (iii) is not reasonably likely to result in a material financial or other obligation upon Buyer other than as specifically set forth in the applicable Land Contract.

“*Person*” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, decedent’s estate, organization, entity, or unincorporated organization or any Authority.

{WIND} “*Production Tax Credit Beginning of Construction Certificate*” shall mean the certificate attached hereto as Exhibit G, delivered by Seller to Buyer on or before the Effective Date and at other such times contemplated herein, updated as necessary to reflect true and accurate facts as of the date it is delivered as provided in this Agreement.

“*Production Tax Credit Opinion*” is defined in Section 2.16.

“*Production Tax Credits*” shall mean the maximum amount of credits provided for in Section 45 of the Internal Revenue Code allowable for a project that starts construction in calendar year _____. }

“*Proforma Title Policy*” means the proforma form of ALTA owner’s title insurance policy that, with the payment of the required premium, will insure the title to the leasehold or easement estate in the Real Property without standard printed exceptions and subject to the applicable Land Contract (expressly excluding any Real Property upon which no Project Facilities are planned, as depicted in the Site Plan).

“*Program Losses*” is defined in Section 2.2.12.

“*Project*” is defined in the Recitals to this Agreement.

“*Project Assets*” is defined in Section 3.1.

“*Project Boundary*” means the Project boundary set forth on Exhibit Q to this Agreement, as such boundary may change pursuant to Section 2.2.15.

“*Project Contract*” means any Contract (other than a Land Contract) relating to the Project (a) under which Seller has or may acquire any rights or benefits; (b) under which Seller has or may become subject to any obligation or liability; or (c) by which Seller or any of the Project Assets is or may become bound, but excluding any Contract excluded from the Project Assets as provided

in this Agreement and excluding any Contract that Buyer has notified Seller that Buyer does not desire to have assigned to Buyer. Project Contracts shall provide that the Contract is assignable by Seller to enable Seller to assign the Project Contract to Buyer at Closing.

“**Project Facilities**” means all improvements, equipment and personal property associated with the development, construction, operation and/or maintenance of the Project, including, without limitation, the Designated {**SOLAR** SMGs/**WIND** WTGs}, roads, and collector system.

“**Project IP Assets**” is defined in Section 4.7.1.

“**Project Leadership Team**” is defined in Section 2.11.4(b).

“**Project Requirements**” means (a) the Site Plan Requirements, (b) the Siting Requirements, (c) the Engineering Requirements, (d) the other requirements set forth in this Agreement, (e) applicable Laws and (f) Prudent Industry Practices.

“**Prudent Industry Practices**” means those practices, methods, standards, and acts (recognized by those engaged in the {**SOLAR** solar-photovoltaic/**WIND** wind} generated electric power industry for similar {**SOLAR** solar-photovoltaic/**WIND** wind} electric generation facilities in the United States) that at a particular time in the exercise of good and proper judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish the intended result in a manner consistent with applicable Law, equipment manufacturer recommendations, safety, environmental protection, economy and expedition. Prudent Industry Practices are not intended to be defined as the optimal standard practice, method, or act to the exclusion of others but rather refer to a range of actions that are good, proper, and reasonable.

“**Purchase Price**” is defined in Section 3.6.

“**Purchase Price Allocation Statement**” is defined in Section 3.11.

“**Real Property**” means the real property within the Project Boundary that is the subject of the applicable Land Contract.

“**Receiving Party**” means the Party or any of its Affiliates or any of their respective directors, employees or agents receiving Confidential Information disclosed by the Disclosing Party.

“**Records**” means the complete and accurate books and records relating to Seller’s obligations with respect to the Project Assets, the Project and the Work.

“**Release**” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, depositing, injecting, escaping, leaching, dumping or disposing into the environment.

“**Reports**” is defined in Section 4.12.

“**Representative**” means, with respect to any Person, any officer, director, member, manager, employee, principal, attorney-in-fact, agent, professional advisor, consultant or other representative of such Person.

“**Safe Harbor Equipment**” means those [IDENTIFY EQUIPMENT] set forth in Exhibit T to this Agreement.

“**Schedules**” means all schedules expressly contemplated in this Agreement, including those to be delivered as of the Effective Date or at the Closing Date.

“**Second Release Date**” is defined in Section 3.10.6(c).

“**Seller**” is defined in the introductory paragraph to this Agreement.

“**Seller Consents**” is defined in Section 8.3.1.

“**Seller Parent**” is defined in the introductory paragraph of this Agreement.

“**Seller Permits**” is defined in Section 2.3.1.

“**Seller’s Closing Documents**” is defined in Section 4.2.1.

“**Seller’s Knowledge**” means the Knowledge of [KEY PROJECT PERSONNEL NAMES].

“**Seller’s Representative**” means the individual that Seller designates to be the Seller’s Representative pursuant to Section 2.11.1.

“**Site Plan**” means the full conceptual design of the Project in accordance with the Project Requirements, including any calculations performed to inform the design and the GIS data, and the Site layout for the Project, including the intended location of each of the Designated {SOLAR SMGs/WIND WTGs} to achieve a minimum Project MW capacity of [] MW, and in accordance with the Project Requirements any additional alternative locations within the Project Boundary that are suitable for the siting of Designated {SOLAR SMGs/WIND WTGs, the intended location of the permanent meteorological towers }, the access roads, the electrical collector system, the substation, the communication lines and set-backs of any Project Facilities from roads and other structures, which such layout will overlay the Real Property and show the location of existing roads, buildings, other structures, all wetlands (if any) and areas of concern (if any) as identified in the then-current Phase I environmental site assessment for the Project.

“**Site Plan Requirements**” means the site plan requirements set forth in Exhibit L.

“**Siting Requirements**” means the siting requirements set forth in Exhibit L.

“**Survey**” is defined in Section 2.2.5(d).

“**Target Completion Date**” means [] .

“**Tax**” means all federal, state, local, foreign and other net income, gross income, estimated, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, easement, service, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, levied and pending assessments, windfall profits, value added, customs duties, capital gain, capital stock, social security, royalty, documentary or other taxes, fees, assessments, duties or charges of any kind whatever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, and the term “Tax” means any one of the foregoing Taxes.

“**Tax Return**” means any report, form, claim for refund, return, statement or other information (including any amendments) required to be supplied to any Tax Authority with respect to Taxes, including information returns, any amendments thereof or schedule or attachment thereto, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

“**Third Party**” means a Person that is not a Party or an Affiliate of that Party.

“**Third-Party Claim**” means any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

“**Third-Party Ethics and Compliance Guidelines**” means those guidelines set forth in Exhibit U to this Agreement.

“**Tier II Spend**” shall have the meaning given to it in Section 2.15.

“**Title Commitments**” means preliminary title commitments prepared by the Title Company with respect to the Real Property and made available by Seller to Buyer pursuant to Section 2.2.5. Individually, each title commitment comprising the Title Commitments shall be referred to as “**Title Commitment**.”

“**Title Company**” means [TITLE COMPANY NAME] or such other nationally recognized and duly licensed title insurance company reasonably approved by Buyer.

“**Title Objection**” is defined in Section 2.2.6.

“**Title Policy**” means a title insurance policy in the form of the Proforma Title Policy, including the Title Policy Endorsements.

“**Title Policy Endorsements**” means the Title Policy endorsements required by Buyer to ensure provision of all coverage required pursuant to Section 2.2.5, including deleting or providing Insured Exceptions over Title Objections as required pursuant to Section 2.2.6. The Title Policy Endorsements shall also include the following endorsements for each Land Contract site: (i) either ALTA 17-06 (Access and Entry) or ALTA 17.1-06 (Indirect Access and Entry); (ii) either ALTA 18-06 (Single Tax Parcel) or ALTA 18.1-06 (Multiple Tax Parcel); (iii) ALTA 22-06 (Location); (iv) ALTA 9.8-06 (Covenants, Conditions and Restrictions-Owner's Policy-Land Under Development); (v) ALTA 25-06 (Same as Survey); (vi) ALTA 19-06 (Contiguity-Multiple Parcels)(if applicable); (vii) Zoning 3.2-06 (Zoning-Land Under Development); (viii) Arbitration (if applicable); (ix) Additional Insurance; (x) ALTA 36.2-06 (Energy Project-Leasehold Owner's);

(xi) ALTA Form 36.4-06 (Energy Project-Covenants, Conditions and Restrictions-Land Under Development-Owner's); and (xii) ALTA Form 36.6-06 (Energy Project-Encroachment).

“Transfer Taxes” means all transfer, sales, use, goods and services, value added, documentary, stamp duty, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges related to the transfer of the Project Assets and Work to Buyer in connection with this Agreement.

“Transmission Expenses” means the verifiable Third Party expenses reasonably incurred by Seller in connection with transmission for the Project, including, without limitation, amounts paid under the Generator Interconnection Agreement or other transmission or interconnection related agreements for transmission network upgrades or with respect to Transmission Owner Interconnection facilities costs for the Project.

“Transmission Owner” means Michigan Electric Transmission Company, LLC, or such other transmission owner or operator that is a party to the Generator Interconnection Agreement or any other interconnection related agreement, or an Affiliate of any of the foregoing.

“Transmission Provider” means Midcontinent Independent System Operator, Inc.

“{SOLAR Solar/WIND Wind} Data” means all data actually generated for the Project {WIND, including by meteorological towers on the Site Plan,} and all final third-party reports and studies regarding such data that are relevant to the use of any of the {SOLAR SMGs/WIND WTGs}, in each case as amended, supplemented, or updated, {WIND and installation documents for the Project's meteorological towers (e.g., commissioning sheets/logs, instrument calibration sheets, and site photos, maintenance history)}.

“Work” means all of the Project development activities and obligations to be performed by Seller pursuant to Article 2 (including the Project Requirements), including the acquisition, development, and delivery of the Project Assets and the furnishing of all Deliverables and Information to be provided by Seller hereunder, all in accordance with the Project Requirements and this Agreement.

“Work Completion Certificate” means the certificate in the form of Exhibit W delivered by Seller to Buyer.

“Work Completion Date” is defined in Section 2.12.3.