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PAUL M. COLLINS  
TEL (517) 483-4908  
FAX (517) 374-6304  
E-MAIL [collinsp@millercanfield.com](mailto:collinsp@millercanfield.com)

**Miller, Canfield, Paddock and Stone, P.L.C.**  
One Michigan Avenue, Suite 900  
Lansing, Michigan 48933  
TEL (517) 487-2070  
FAX (517) 374-6304  
[www.millercanfield.com](http://www.millercanfield.com)

June 21, 2024

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 West Saginaw Hwy  
Lansing, MI 48909

Re: Integrated Resource Plan  
Case No: U-20350

Dear Ms. Felice:

Enclosed for electronic filing is Upper Peninsula Power Company's Application for Approval of the Groveland Solar PPA and a Proof of Service.

Should you have any questions, please kindly advise.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: \_\_\_\_\_  
Paul M. Collins

PMC/vs  
Enclosure  
cc w/enc: Parties of Record  
Gradon Haehnel  
Eric Stocking

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

\* \* \* \*

In the matter of the application of	)	
<b>UPPER PENINSULA POWER COMPANY</b>	)	Case No. U-20350
for approval of its integrated resource plan	)	
<u>pursuant to MCL 460.6t and for other relief.</u>	)	

**APPLICATION**

Upper Peninsula Power Company (“UPPCO” or the “Company”) respectfully requests the Michigan Public Service Commission (“MPSC” or the “Commission”) to grant approval, pursuant to Section 6j of 1982 Public Act (“PA”) 304; MCL 460.6j, and other applicable law, of its Power Purchase Agreement (“PPA”) with Copper Country Power I, LLC (“CCPI”) for all of the generation output and associated capacity of CCPI’s Groveland Mine Solar Project to be located in Dickinson County in Michigan’s Upper Peninsula (hereafter the “Groveland Solar PPA”). In support of this Application, UPPCO respectfully represents to the Commission as follows:

1. UPPCO is a Michigan corporation with principal offices located in Marquette, Michigan, and is engaged as a public utility in the generation, purchase, distribution, and sale of electric energy in its service territory in the Upper Peninsula of Michigan (“UP”).
2. UPPCO serves cities, villages, and townships located in the counties of Alger, Baraga, Delta, Houghton, Iron, Keweenaw, Marquette, Ontonagon, and Schoolcraft.
3. UPPCO’s retail electric business is subject to the jurisdiction of the Commission pursuant to various provisions of 1909 PA 106, as amended, MCL 460.551 et seq., 1919 PA 419, as amended, MCL 460.54 et seq., and 1939 PA 3, as amended, MCL 460.1, et seq.

4. On February 12, 2019, the Company filed an Application in Case No.U-20350, requesting approval of the Company’s Integrated Resource Plan (“IRP”) pursuant to Section 6t of 2016 PA 341; MCL 460.6t, and all other applicable orders and law. The preferred course of action in the IRP included, among other things, adding 125 megawatt (“MW”) of both capacity and energy by entering a long-term PPA for the capacity and energy from a new solar generation facility that will be constructed and located in the UP, hereafter the (“Solar PPA”). On January 21, 2020, UPPCO filed a settlement agreement in Case No. U-20350 (“Settlement Agreement”). In its February 6, 2020 Order, the Commission approved the Settlement Agreement, which resolved all matters at issue in the Company’s IRP.

5. As part of the approved Settlement Agreement, the parties agreed that UPPCO should move forward with effectuating the terms of the Solar PPA. Paragraph 19(c) of the Settlement Agreement also set forth a process to be followed in the event that the Solar PPA was cancelled, modified, or reduced due to any reason:

- a. Any new capacity and associated energy that the Company intends to procure through the PCA to replace any of the 125 MW Solar PPA that is cancelled, modified or reduced shall be: (i) acquired through a competitive bidding process consistent with the guidelines in Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800; and (ii) 50% will be from PPAs and 50% will be owned by the Company, as acquired through a competitive bidding process. The Company, at its sole discretion, may choose to acquire more than 50% of its new capacity from PPAs.
- b. For new renewable energy and capacity that the Company intends to procure through PPAs, the capacity shall be acquired through a competitive bidding process for one

or more, technology-neutral RFPs for up to 125 MWs of nameplate capacity. For renewable PPAs greater than 18 MW in size, the Company shall be authorized to implement an FCM using the same methodology described above with the following FCM values dependent on the tenure of the PPA: a. 10 to 15-year PPA: FCM = 5.15% b. 15 to 20-year PPA: FCM = 5.65% c. Greater than 20-year PPA: FCM = 5.88%.

- c. These FCM values are applicable to qualifying PPAs executed during this current IRP period until approval of the Company's next IRP.

6. On August 21, 2021, UPPCO filed its annual report in Case No. U-20350 stating that the developer of the 125 MW solar facility failed to achieve the necessary permits in accordance with the milestones established by the executed Solar PPA, and, as such, UPPCO and the developer agreed that the Solar PPA terminated pursuant to its own terms. The Company further stated that it had implemented the process provided in Paragraph 19(c) of the Settlement Agreement to replace the 125 MW capacity need resulting from the failure of the Solar PPA.

7. As detailed in the Affidavit of Eric W. Stocking and supporting attachments, which have been filed in support of this Application, UPPCO initiated a two-stage procurement process with the assistance of an independent third-party administrator. In order to identify a list of qualified potential bidders, a Request for Qualifications ("RFQ"), was issued on April 24, 2020, seeking pertinent information on the prospective bidders. Responses from potential bidders were due on July 1, 2020. On July 27, 2020, in consultation with Commission Staff, UPPCO provided an update on its competitive bidding processes pursuant to the IRP order. Following review of the RFQ documents, UPPCO issued two separate Request for Proposals ("RFPs") on October 5, 2020, for 62.5 MW of Solar to be procured through an Engineer, Procure, Construct ("EPC") contract,

and for 22.5 MW of renewable resource to be procured pursuant to the terms of a negotiated PPA.<sup>1</sup> Included in each RFP issuance was a description of the project being sought by UPPCO, a detailed RFP process schedule, and an outline of the required list of bid components that would be evaluated through the review process. All requests for clarification and discussion of the RFP itself were managed through the independent third-party administrator that was retained by UPPCO to facilitate this bid process. In 2022, due to the failure of the two wind projects for which UPPCO had previously contracted, UPPCO sought updated PPA bids from all respondents to the October 5, 2020 RFP for renewable energy PPAs totaling up to 62.5 MW.

8. Following receipt of the updated bids, UPPCO identified CCPI as the preferred bidder and engaged in negotiations with CCPI that resulted in the Groveland Solar PPA. Pursuant to the terms of the Commission-approved IRP Settlement Agreement, the Company represents that approval of the Groveland Solar PPA satisfies UPPCO's requirement to secure 50% of the replacement for the 125 MW solar PPA (i.e., 62.5 MW) through a competitively bid PPA.

9. The Groveland Solar PPA concerns the Groveland Mine Solar Project, which will be located on a former mining site in Dickinson County, Michigan. The Groveland Mine Solar Project will require approximately 972 acres, for which land rights have already been secured and will be interconnected with American Transmission Company's 138 kV transmission system in accordance with the terms and conditions outlined in the expected Midcontinent Independent System Operator, Inc. ("MISO") Generator Interconnection Agreement ("GIA"), a portion of which was already executed in February 2024.

10. The Groveland Solar PPA provides for energy, capacity and ancillary services from CCPI's 62.5 MWac Groveland Mine Solar Project, will be provided to the Company in exchange

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<sup>1</sup> The RFP sought proposals for renewable energy PPAs totaling 22.5 MW in capacity because, at that time, UPPCO had entered into two, ten-year, 20 MW wind PPAs pursuant to paragraph 19.d of the settlement agreement.

for an energy payment of [REDACTED] per MWhr plus a capacity payment equal to [REDACTED] [REDACTED] for each monthly billing period. There is no additional cost for the environmental attributes, including renewable energy credits, and any ancillary services resulting from the Groveland Mine Solar Project. The term of the Groveland Solar PPA is 15 years with deliveries expected to commence December 31, 2028, with an expected PPA termination date of December 31, 2043. UPPCO will have an option to purchase the Groveland Mine Solar Project after 10 years, at the Company's discretion. Although not a provision of the Groveland Solar PPA, the Groveland Solar PPA is subject to the Financial Compensation Mechanism ("FCM") approved as part of the Settlement Agreement.

11. Beyond the above, the Groveland Solar PPA is expected to provide the following additional benefits to UPPCO, the Company's customers, and surrounding communities: (i) the Groveland Solar PPA supports desired additional capacity needed in accordance with the Company's IRP, (ii) the Groveland Solar PPA was competitively bid ensuring low cost, economic pricing in accordance with the Settlement Agreement, (iii) the Groveland Solar PPA will provide an additional generation source within the heart of UPPCO's service territory and Michigan's UP, (iv) the Groveland Solar PPA will help the Company meet Michigan Renewable Portfolio Standards, and (v) the Groveland Mine Solar Project will be located on the former site of the Groveland Mine – a brownfield site that has been under-utilized since the mine was decommissioned over 40 years ago.

12. In conjunction with this Application, UPPCO is filing the supporting Affidavit of Eric W. Stocking with attachments, including the recently executed Groveland Solar PPA (Attachment 1) and an economic analysis demonstrating the expected cost of the Groveland Solar PPA over the 15-year term in comparison to the expected cost of replacement renewable capacity

(Attachment 2). The accompanying Affidavit, and supporting attachments, are an integral part of this Application and incorporated by reference in this Application as if fully set forth herein. UPPCO is requesting approval of the Groveland Solar PPA for the output of the Groveland Mine Solar Project pursuant to Section 6j of 1982 PA 304; MCL 460.6j, and all other applicable law.

13. As explained above, and in the Affidavit and supporting attachments, the Groveland Solar PPA was entered in a manner consistent with the requirements set forth in in the Settlement Agreement in Case No. U-20350. Therefore, UPPCO respectfully requests that the Commission approve the relief requested in this Application on an *ex parte* basis without the time and expense of a public hearing.

**WHEREFORE,** UPPER PENINSULA POWER COMPANY respectfully requests that the Michigan Public Service Commission grant the following relief:

A. Grant approval of the Power Purchase Agreement between Upper Peninsula Power Company and Copper Country Power I, LLC for the output of the Groveland Mine Solar Project as provided in Attachment 1 to the Affidavit of Eric W. Stocking, and specifically indicate that the Commission approves the recovery by Upper Peninsula Power Company of all payments under the Power Purchase Agreement for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, and all other applicable law;

B. Determine that the relief requested herein should be granted *ex parte* without the time and expense of a public hearing; and

C. Grant such other and further relief and authorizations as may be lawful and proper.

Respectfully submitted,

UPPER PENINSULA POWER COMPANY

Dated: June 21, 2024

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

One of Its Attorneys  
Paul M. Collins (P69719)  
Miller Canfield Paddock and Stone P.L.C.  
One Michigan Avenue, Suite 900  
Lansing, MI 48933  
(517) 487-2070



Michigan. The developer of this project notified UPPCO that it had failed to achieve the necessary siting and land-use permits from the local townships in accordance with the milestones established by the executed PPA. As a result, the parties agreed that this PPA was negated by its own terms.

4. Paragraph 19(c) of the IRP Settlement Agreement states that in the event that the 125 MW solar PPA is cancelled, modified, or reduced due to any reason, the Company shall acquire the intended replacement capacity and associated energy through a competitive bidding process, whereby 50% of the 125MW capacity will be acquired through the execution of a PPA, and the remaining 50% of the 125MW capacity will be sourced from a Company-owned renewable resource.
5. Following the Commission's approval of the IRP Settlement Agreement, UPPCO and Circle Power engaged in extensive negotiations related to the terms and conditions of the PPAs for the Scotia and Norton wind projects. As a result of these productive discussions the parties executed agreements for both projects on August 10, 2020 representing approximately 40 MW of renewable wind PPAs. By the terms of these agreements, UPPCO was slated to be the sole purchaser of all energy, capacity, and renewable attributes associated with the output of these facilities, subject to pricing terms that are consistent with those described by the IRP Order.
6. Consistent with the IRP Settlement Agreement, UPPCO issued two separate Request For Proposals ("RFP"), the first for a 62.5 MW company-owned renewable generation resource, and the second for 22.5 MW of renewable generation resource to be sourced via a PPA. UPPCO received six responses to its RFP for renewable PPA resources. The preferred project identified by the RFP for 22.5 MW of PPA renewable resources was a

third wind project under development by Circle Power, named Aspen Wind, as represented by the lowest-cost bid received. Aspen Wind was located directly adjacent to the Scotia and Norton wind projects for which UPPCO had already executed PPA's, as described in the previous paragraph. Following negotiation, UPPCO signed a PPA for the Aspen Wind project on December 10, 2021. On April 6, 2022, Circle Power notified UPPCO of its intent to terminate the three executed PPAs for the Scotia, Norton, and Aspen wind projects. It is UPPCO's understanding that the projects failed to achieve necessary township permitting approvals.

7. On July 6, 2022, UPPCO solicited bidder interest to acquire the replacement capacity that resulted from the termination of the 62.5 MW of wind PPA's. Consistent with the terms of the approved IRP Settlement agreement, UPPCO again sought bids to fulfill the 50% of the original 125MW replacement capacity amount sourced through a PPA, and the remaining 50% of the 125MW replacement capacity to be sourced by a Company-owned renewable facility, from each party who had previously submitted a bid in response to the Company's October 2020 RFP issuance.
8. UPPCO received two bids in response to its July 6, 2022 bid solicitation for 62.5MW of renewable capacity and energy to be acquired through a PPA. Following review of the bid documentation, UPPCO identified Copper Country Solar 1, LLC as the lowest-cost and preferred bidder, and began negotiating the terms of a PPA for 62.5 MW of output from the Groveland Mine Solar project that Copper Country Solar 1, LLC is developing.
9. The Groveland Mine Solar Project will be located in Dickinson County, Michigan. The total Groveland Mine Solar Project will require approximately 972 acres, for which land rights have already been secured. The Groveland Mine Solar Project is an economic

development opportunity that will provide new revenue to local governments and schools and create construction jobs. Ground-mounted solar arrays will be sited on public and private portions of the former Groveland Mine, a brownfield site that has been underutilized since it was decommissioned over 40 years ago. The Groveland Mine Solar Project will be interconnected with American Transmission Company's 138 kV transmission system in accordance with the terms and conditions outlined in the expected Midcontinent Independent System Operator, Inc. ("MISO") Generator Interconnection Agreement ("GIA"), a portion of which was executed on February 26, 2024.

10. Pursuant to the terms of the Commission-approved IRP Settlement Agreement, the Company represents that approval of the Groveland Solar PPA satisfies UPPCO's requirement to secure 50% of the replacement for the 125 MW solar PPA (i.e., 62.5 MW) through a competitively bid renewable PPA.
11. The Groveland Mine Solar Project is scheduled to have a Commercial Operation Date ("COD") by Q4, 2028, which is within the MISO Capacity Planning Year 2028/29. See Attachment 1 hereto for pertinent milestone schedules. The developer is planning to execute significant equipment supply contracts for long lead-time components throughout the remainder of 2024.
12. The term of the Groveland Solar PPA is 15 years from commercial operations date. The contract price for all energy delivered to the buyer throughout the contract term is [REDACTED]. The contract price for all capacity accredited to the project throughout the contract term is equal to the [REDACTED] in each applicable billing period.

13. The Groveland Solar PPA will support the Company's future renewable portfolio standard ("RPS") requirements while also providing customers with additional price stability, energy reliability, and further reducing the Company's greenhouse gas emissions, consistent with the goals of Michigan statute and the IRP Settlement Agreement.
14. The selection of the Groveland Mine Solar project was a direct result of evaluating all respondents to UPPCO's July 6, 2022 bidder solicitation. Specifically, as agreed upon by all parties to the IRP Settlement Agreement, the Groveland Solar PPA is the result of a competitive bidding process consistent with the guidelines in Attachment D to the December 4, 2008 Temporary Order in Case No. U-15800. The Company identified the Groveland Solar PPA as the resource that meets its customers' identified need and is the most economical of the responsive projects.
15. UPPCO evaluated each response to its bidder solicitation based upon the project developers' representations regarding: technical solution and compliance with minimum function specifications, time to delivery, permitting plan, land control and interconnection agreement, project development track record and qualifications, project execution plan, project risks, and commercial compliance. Once a list of projects that were proposed by developers with projects possessing the above capabilities was identified, UPPCO contacted each developer soliciting specific information related to each project. The information sought included all of the information that would be required to assess which project would meet its targeted delivery date and be capable of providing the best possible value to UPPCO's customers.

16. After UPPCO applied its review criteria and performed sufficient due diligence to assess each viable project, it determined that the Groveland Mine Solar project would (a) provide the identified need of 62.5 MW of solar generating capacity, as well as the associated energy and renewable attributes, and (b) provide this renewable resource to UPPCO's customers through the application of an economic PPA.
17. The Groveland Solar PPA has a projected energy, capacity, and Renewable Energy Credit ("REC") total lifetime cost of approximately \$151.5 million, and a total lifetime market value of approximately \$163.6 million. See Attachment 2 hereto for the market value of Groveland Solar project.
18. The Groveland Solar PPA will provide benefits to UPPCO, its customers, and the surrounding communities where the Groveland Mine Solar Project will be located. The Groveland Mine Solar Project will provide additional energy to UPPCO's generation portfolio, allowing for a significant hedge against elevated wholesale market energy pricing, and fuel related volatility impacts. The new solar generation will also help UPPCO to meet the Michigan RPS requirements, as defined by Michigan statute. As noted above, the Groveland Mine Solar Project will be sited on the former Groveland Mine, a brownfield site that has been under-utilized since it was decommissioned over 40 years ago. Additionally, local governments will realize benefits through incremental tax revenues and school funding, among other benefits.
19. As reflected by paragraph 19(c)(2) in the IRP Settlement Agreement, for any renewable PPA greater than 18 MW in size, the Company shall be authorized to implement a Financial Compensation Mechanism ("FCM"), with the applicable FCM values being dependent upon the term of the PPA. For the purposes of the Groveland Mine Solar PPA,

in a future ratemaking proceeding, UPPCO will propose to collect an FCM of 5.15% on all payments that are a direct result of the contract, for the duration of the contract term.

20. In summary,

- The Groveland Solar PPA will help the Company meet the need for 125 MW of additional capacity that was identified in UPPCO's Integrated Resource Plan.
- The Groveland Solar PPA will also support the Company fulfilling its future RPS requirements, while also providing customers with additional price stability, energy reliability, and reducing the Company's reliance on market energy price volatility.
- The Groveland Solar PPA was selected after a comprehensive analysis of multiple responses to a multi-stage UPPCO bidder solicitation, executed in direct compliance with the Commission-approved IRP Settlement Agreement.
- The Company will receive Michigan-sourced RECs produced by the Groveland Mine Solar Project to support its RPS requirements at no incremental cost to customers.

21. As set forth in the Application, UPPCO is seeking Commission approval of the Groveland Solar PPA, as prescribed by the IRP Settlement Agreement.

FURTHER AFFIANT SAYETH NOT.

Dated this 21th day of June, 2024.

Eric W. Stocking

Eric W. Stocking

Subscribed and sworn to before me, a Notary Public, this 21th day of June, 2024.



Katherine Kern  
Katherine Kern, Notary Public

Marquette County, Michigan

My Commission Expires: August 28, 2029

**Case No. U-20530**

**Attachment 1  
to Affidavit of Eric W. Stocking**

**June 21, 2025**

**FELCH TOWNSHIP, SAGOLA TOWNSHIP AND NORWAY TOWNSHIP  
DICKINSON COUNTY, MICHIGAN**

**SOLAR ENERGY FACILITY**

**POWER PURCHASE AGREEMENT**

**between**

**UPPER PENINSULA POWER COMPANY**

**AS BUYER**

**and**

**AND COPPER COUNTRY POWER I, LLC**

**AS SELLER**

**dated as of**

**May 21, 2024**

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**EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
A	Detailed Description of Seller's Project
B	Form of Annual Operating Plan
C-1	Generation Interconnection Agreement (22.5 MW <sub>AC</sub> )
C-2	Revised Generation Interconnection Agreement for 100 MW <sub>AC</sub> (Project Capacity) (To be provided by Seller, upon execution by all parties to such agreement)
D	Form of Letter of Credit
E	Form of Acceptable Guaranty
F	Form of Scheduling Coordinator Services Agreement

## PREAMBLE

This Power Purchase Agreement (“**Agreement**”) is entered into effective as of May 21, 2024 (“**Effective Date**”), between Copper Country Power I, LLC, a Delaware limited liability company (“**Seller**”) and Upper Peninsula Power Company, a Michigan corporation (“**Buyer**”). Seller and Buyer are collectively referred to as “**Parties**” or individually as a “**Party**” herein.

## RECITALS

WHEREAS, Seller intends to develop a 62.5 MW<sub>AC</sub> solar electric generating facility, known as the Groveland Mine Solar Project, which is located on a site located in Dickinson County, Michigan, and currently contemplated to be within Felch Township, Sagola Township and Norway Township (“**Seller’s Project**”);

WHEREAS, Seller desires to sell and deliver, and Buyer desires to purchase and receive the Generation Output and Associated Capacity from Seller’s Project pursuant to the terms of this Agreement; and

WHEREAS, Seller intends to submit an application for benefits pursuant to the PACE Program, and, if that application is granted and the quantitative benefits to Seller are known, the Parties have agreed to adjust the pricing of the Generation Output and Associated Capacity.

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

## ARTICLE 1 DEFINITION

As used in this Agreement and attached Exhibits, the following terms, whether in the singular or plural shall mean:

“**Abandon**” means the permanent relinquishment of all possession and control of Seller’s Project by Seller and, after the Commercial Operation Date, a failure of Seller’s Project to produce Energy for a period of twelve (12) consecutive months that is not a result of an assignment, a change of control permitted under this Agreement, a request or action by Buyer or Transmission Provider, or a Force Majeure Event.

“**Acceptable Guarantor**” means any Person having a credit rating of at least Baa2 from Moody’s or BBB from S&P.

“**Acceptable Guaranty**” has the meaning set forth in Section 7.3.1.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, creates, owns, controls, or is controlled by, or is under common control with, such Person.

“**Agreement**” has the meaning set forth in the Preamble.

“**Ancillary Services**” means everything of value from Seller’s Project whether known or arising in the future including but not limited to those services that are necessary to support Capacity and the transmission of the Energy output from Seller’s Project to Buyer’s electrical system while maintaining reliable operation of the Buyer’s electrical system in accordance with Good Utility Practices and all those that Seller’s Project is capable of producing or becomes capable of producing in the future.

“**Applicable Law**” means all laws, statutes, treaties, codes, ordinances, regulations, tariffs, certificates, orders, licenses and permits of any Governmental Agency that are applicable to a Party, the business of a Party or Seller’s Project or the Site, now in effect or hereafter enacted, including amendments to or interpretations of any of the foregoing by a Governmental Agency having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards, and/or like actions.

“**Array**” means a collection of photovoltaic panels connected to a single collection line and inverter.

“**As-Built Supplement**” shall be a supplement to Exhibit A, delivered to Buyer by Seller within sixty (60) days upon completion of construction of Seller’s Project, evidencing that Seller’s Project has been constructed in accordance with the applicable specifications and describing Seller’s Project as actually built, including all original equipment manufacturer and balance of plant contractor commissioning certificates and reports.

“**Bankrupt**” means with respect to any Person, such Person (i) files a petition for, or otherwise commences, authorizes or acquiesces in the commencement of, or becomes subject to, a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, which petition is not dismissed within sixty (60) days of its filing, or (ii) is insolvent or otherwise makes an assignment or any general arrangement for the benefit of creditors, or (iii) on a voluntary or involuntary basis, has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets.

“**Billing Period**” means the period of time from one meter reading to the next, which shall occur on the first (1st) day of every calendar month for the period commencing on (and including) the In-Service Date through (and including) the last day of the Term; provided, a meter reading shall occur on the In-Service Date, Commercial Operation Date, and the last day of the Term.

“**Business Day**” means any day except a Saturday, Sunday, or any federal holiday recognized by the Federal Reserve Bank of Chicago on the day such holiday is observed by the Federal Reserve Bank of Chicago.

“**Buyer**” has the meaning set forth in the Preamble.

“**Buyer Dispatch Failure**” has the meaning set forth in the Scheduling Coordinator Service Agreement.

“**Buyer Event of Default**” has the meaning set forth in Section 8.2.

“**Buyer System**” means all distribution facilities owned by Buyer.

“**Buyer’s SCADA System**” means the Buyer’s supervisory control and data acquisition system monitoring and controlling the performance of the Buyer’s System.

“**Capacity**” means any one or more of the following: a current characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of Seller’s Project intended to value any aspect of the generating capacity of Seller’s Project to produce Energy or Ancillary Services, including but not limited to any accounting construct so that the capacity of Seller’s Project may be counted toward a Resource Adequacy (as defined by MISO) obligation or similar measure in respect to the capacity of Seller’s Project to generate Energy by the MPSC, the MISO, the FERC, or any other entity vested with the authority under federal or state law, to require Buyer to procure, or to produce at Buyer’s expense, Resource Adequacy or other similar products.

“**Capacity Resource**” has the meaning given the term in the MISO Business Practice Manual, BPM-011-r29 (effective October 1, 2023).

“**Cash Security**” means Default Security provided by Seller to Buyer in cash and held by Buyer in accordance with Section 7.3.2.

“**Claims First Made Basis**” means the type of an insurance policy that pays only those claims that occur and are filed/reported during the period covered by the policy.

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

“**Commercial Operation**” means: (i) an Installed Capacity of at least ninety (90%) of the Expected Nameplate Capacity of Seller’s Project is installed and each Array that is part of the Installed Capacity is tested and commissioned, in accordance with Section 4.2; (ii) all equipment and facilities necessary to connect Seller’s Project are installed, tested, and commissioned in accordance with the requirements of the Generator Interconnection Agreement; (iii) Seller has satisfied all conditions precedent set forth in Article 4 of this Agreement; and (iv) Seller’s Project is capable of providing Energy to the Point of Interconnection and the associated Capacity consistent with Good Utility Practices.

“**Commercial Operation Date**” means the date of delivery to Buyer (including by electronic communication) of the certificate contemplated by Section 4.2 if Buyer confirms (or is deemed to have confirmed) its acceptance of such certificate in accordance with Section 4.2, or such other date as otherwise provided in Section 4.2.

“**Commercially Reasonable**” means or “**Commercially Reasonable Efforts**” means, with respect to any action to be taken or attempted by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

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

**“Compensated Curtailment”** means a curtailment (1) caused by the action or inaction of Buyer, including in Buyer’s capacity as Scheduling Coordinator or (2) arising out of or resulting from (i) a Buyer-ordered curtailment of Energy; (ii) a Buyer Event of Default; (iii) a Forced Outage of Seller’s Project, or any part thereof, if such Forced Outage is caused by the default or negligence of Buyer; (iv) an Emergency Condition or Force Majeure Event on the Buyer System, Seller’s Project or the Transmission Provider’s System if (a) such Emergency Condition is caused by the default or negligence of Buyer or (b) such curtailment arising from such Emergency Condition or Force Majeure Event is not applied on a nondiscriminatory basis to Seller; (v) an order of a Governmental Agency if such order is the result of any negligence on the part of Buyer; (vi) a Buyer Dispatch Failure; or (vii) a Buyer economic bid. A “Compensated Curtailment” does not include any event that was caused by the default or negligence of the Seller.

**“Confidential Information”** has the meaning set forth in Section 15.1.

**“Consultation Period”** has the meaning set forth in Section 5.5.

**“Contest”** means, with respect to either Party, a challenge of (i) any Governmental Approval or any act or omission by a Governmental Agency or (ii) the amount or validity of any claim pursued by or against such Party in good faith and by appropriate legal, administrative, or other proceedings.

**“Contract Price”** has the meaning set forth in Section 5.4.

**“Contract Year”** means the period commencing at 12:00 a.m. prevailing Eastern Time on the first day of the first month immediately following the Commercial Operation Date and ending at 11:59 p.m. prevailing Eastern Time on the day prior to the same date of each subsequent year during the Term of this Agreement.

**“Day-Ahead Forecast”** has the meaning set forth in Section 6.8.2.

**“DBRS”** means DBRS Morningstar, or its successor.

**“Default Security”** means the Cash Security or Letter of Credit Security in the amount of the Development Period Security or Cash Security, Acceptable Guaranty or Letter of Credit Security in the amount of the Delivery Term Security, at the times set forth in Section 7.1, provided by Seller to Buyer in accordance with Section 7.1.

**“Defined Tasks”** means the defined tasks listed in Section 5.2.

**“Delay Damages”** has the meaning set forth in Section 7.4.0.

**“Delay Damages Limit”** has the meaning set forth in Section 7.4.0.

**“Delayed Capacity”** means an amount equal to the positive difference between the Expected Nameplate Capacity and the Installed Capacity. Delayed Capacity shall be expressed in megawatts (MW).



pollutants, water pollutants or process wastewater, or otherwise relating to the environment, avian or protected species or hazardous substances, as amended from time to time.

[REDACTED]

“**Expected Nameplate Capacity**” means 62.5 MW<sub>AC</sub>.

“**Fair Market Value**” has the meaning set forth in Section 12.7.2.

“**FCA**” means a Facilities Construction Agreement.

“**Federal Reserve Statistical Release**” means the Federal Reserve of the United States gathering and publishing of certain economic data and releases.

“**FERC**” means the Federal Energy Regulatory Commission or any successor Governmental Agency.

“**Financing Documents**” means the loan and credit agreements, notes, bonds, indentures, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, and other documents relating to the development, bridge, construction, or permanent debt financing for Seller’s Project (including, if applicable, any portfolio or back-levered financing in which Seller’s Project is included), including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation, or maintenance of Seller’s Project, in each case as may be secured by the Senior Security Documents.

“**Financing Party**” means any Senior Secured Lender.

“**First Appraiser**” has the meaning set forth in Section 12.7.1.

[REDACTED]

“**Force Majeure**” has the meaning set forth in Section 14.1.

“**Force Majeure Event**” has the meaning set forth in Section 14.1.

“**Forced Outage**” means any condition at Seller’s Project requiring immediate removal of ten percent (10%) or more of the Installed Capacity from service, resulting from immediate mechanical, electrical, or hydraulic control system trips and operator initiated trips in response to Seller’s Project conditions.

“**Forecast**” has the meaning set forth in Section 6.8.

**“Generation Output and Associated Capacity”** means the Energy, Capacity, Ancillary Services, and Environmental Attributes generated from and associated with Seller’s Project.

**“Generation Verification Test Capacity”** has the meaning given that term in MISO’s Business Practice Manual BPM-01-r29 (effective October 1, 2023).

**“Generator Interconnection Agreement”** or **“GIA”** means (i) as of the Effective Date, that certain Generator Interconnection Agreement, dated as of February 26, 2024, attached as Exhibit C-1 hereto or (ii) upon completion of ongoing studies and analysis by MISO, the generator interconnection agreement by and among Seller and each Transmission Provider for 100 MW<sub>AC</sub> of interconnection capacity.

**“Generator Owner”**, **“Generator Operator”**, **“Registered Entity”**, and **“Reliability Standards”** have the meanings given those terms in Appendix 2 of the NERC Rules of Procedure.

**“Good Utility Practices”** means those practices, methods, standards, and acts engaged in or approved by a significant portion of the applicable segment of the wind electric power generation industry pertaining to facilities of the type, similar size, and location to Seller’s Project that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result at a reasonable cost in a manner consistent with good business practices reliability, safety, and expedition. Good Utility Practices shall include, at a minimum, those professionally responsible practices, methods, and acts described in the preceding sentence that comply with manufacturers’ warranties, and the requirements of Governmental Agencies, MRO standards, MISO, and Applicable Law. Good Utility Practices is not limited to the optimum practice, method, standard, or act to the exclusion of all others, but rather to those practices, methods, standards, and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

**“Governmental Agency”** means any court, tribunal, arbitrator, authority, agency, commission, official, or other instrumentality of the United States or of any foreign country or of any state, county, city, or other political subdivision thereof, in each case having legal jurisdiction over the matter or Person in question or Seller’s Project.

**“Governmental Approvals”** means all permits, authorizations, licenses, orders, consents, waivers, exceptions, exemptions, variances, or other approvals required by Applicable Law or a Governmental Agency for the development, construction, operation, and maintenance of Seller’s Project.

**“Guaranteed Commercial Operation Date”** means the date that is twenty-four (24) months after the Expected Completion Date. The Guaranteed Commercial Operation Date may be extended in accordance with Section 5.2.

**“Indemnified Parties”** has the meaning set forth in Section 9.1.

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

**“Independent Engineer”** means an independent engineer reasonably acceptable to Buyer and mutually agreed by the Parties who is licensed to practice in the State of Michigan, who has no material economic relationship with Seller and who is not a representative of Seller’s Project design engineer or the manufacturer of any equipment installed at Seller’s Project.

**“In-Service Conditions Precedent”** has the meaning set forth in Section 4.1.

**“In-Service Date”** means the date on which Seller’s Project first delivers Energy to the Transmission Provider.

**“Installed Capacity”** means the aggregate then current nameplate capacity of Seller’s Project following installation, that has completed commissioning activities identified in the contractor’s commission completion checklist and is capable of delivering Energy to the Point of Interconnection. Unless otherwise stated herein, Installed Capacity shall be measured in MW<sub>AC</sub>.

**“Interest Rate”** means for any date the rate per annum equal to the commercial paper (AA, non-financial, 90 days) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on commercial paper (AA, non-financial, 90 days) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

**“Inverter”** means a power electronics device that converts DC voltage into AC voltage.

**“IRA”** means the Inflation Reduction Act, Public Law 117–169.

**“ITC”** or **“Investment Tax Credit”** means investment tax credits under 26 U.S.C §48 as in effect on the date of this Agreement.

**“Lender Consent”** has the meaning set forth in Section 12.2.

**“Letter of Credit”** means one or more irrevocable, transferable standby letters of credit issued by a Qualified Custodian in the amount set forth in Section 7.1 and in the form of Exhibit D or otherwise reasonably acceptable to Buyer and otherwise satisfying the requirements of Section 7.3.

**“Letter of Credit Security”** means Letter(s) of Credit posted and maintained by Seller and drawable on by Buyer in an amount of the Default Security during the applicable period under this Agreement.

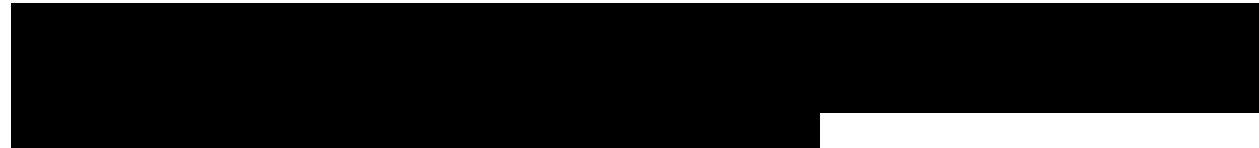
**“Lost Production”** means for any applicable period the quantity, if any, of Energy that Seller could have produced and delivered to Buyer at the Point of Interconnection during such period calculated using data from Seller’s SCADA System and based on actual measurements during the applicable time as recorded by Seller’s Project’s measurement instrumentation, but that was not produced and delivered to Buyer as a result of a Compensated Curtailment, Buyer Dispatch Failure, or a Buyer Event of Default.

“**Lost Production Damages**” means the amount of compensation, if any, that Seller is entitled to receive as a result of Compensated Curtailment as calculated in Section 6.6.2.

“**Market Participant**” has the meaning set forth in the MISO Tariff.

“**MISO**” means Midcontinent Independent System Operator, Inc.

“**MISO’s Business Practice Manual**” means the Business Practice Manuals prepared by MISO as they are amended from time to time.



“**MISO Resource Control Mode I**” has the meaning set forth in on page 245 of MISO’s Business Practice Manual BPM-002-r19 (effective October 15, 2018), or as the term is defined in subsequent versions of MISO’s Business Practice Manual.

“**MISO Rules**” means, collectively, the MISO Tariff and MISO’s Business Practice Manuals.

“**MISO Tariff**” means MISO’s Open Access Transmission Tariff.

“**Monthly Service Fee**” has the meaning set forth in the Scheduling Coordinator Services Agreement.

“**Moody’s**” means Moody’s Investor Services, Inc., or its successor.

“**MPFCA**” means a Multi-Party Facilities Construction Agreement.

“**MRO**” means Midwest Reliability Organization.

“**MW**” means megawatt(s).

“**MW<sub>AC</sub>**” means megawatts, alternating current, which shall be measured at the AC side of the inverters installed at Seller’s Project.

“**MW<sub>DC</sub>**” means megawatts, direct current, which shall be measured by the capacity rating of the panels installed at Seller’s Project.

“**MWh**” means megawatt hours.

“**Nameplate Capacity**” means the rated generating output of Seller’s Project under specific conditions designated by the original equipment manufacturer and for the purposes of this Agreement. Unless otherwise expressly stated herein, Nameplate Capacity shall be measured in in MW<sub>AC</sub>.

“**NERC**” means the North American Electric Reliability Corporation.

“**Network Resource**” has the meaning set forth in the MISO Tariff.

“**Network Resource Integration Service**” or “**NRIS**” means interconnection service under the MISO Tariff that allows the interconnection customer to integrate its generating facility with the transmission system in the same manner as for any generating facility being designated as a network resource. NRIS includes any network resource interconnection service established under an agreement with, or the tariff of, a Transmission Provider prior to the integration into MISO that is determined to be deliverable through the integration deliverability study process.

“**Option**” has the meaning set forth in Section 12.7.1.

“**Option Conditions**” has the meaning set forth in Section 12.7.1(ii).

“**Option Notice**” has the meaning set forth in Section 12.7.1(i).

“**Other Party Group**” has the meaning set forth in Section 10.2.

“**PACE Adjustment**” has the meaning set forth in Section 5.5.

“**PACE Program**” means the USDA Powering Affordable Clean Energy PACE authorized under Section 22001 of the IRA.

“**Party/Parties**” has the meaning set forth in the Preamble.

“**Person**” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Agency, or other entity.

“**Physical Inspection**” has the meaning set forth in Section 12.7.3(1).

“**Planning Resource Auction**” has the meaning set forth in the MISO Tariff and is the process used by MISO for the procurement and valuation of Capacity within the MISO system (as currently described in MISO’s Resource Adequacy Business Practice Manual BPM-011-r28, effective May 31, 2023), any changes, modifications, or amendments to that process, and any replacement mechanisms or other processes that value the Seller’s Project’s Capacity.

“**Point of Interconnection**” has the meaning provided in the Generator Interconnection Agreement.

“**PPA Submittal**” has the meaning set forth in Section 5.5.



“**PTCs**” or “**Production Tax Credits**” means production tax credits under Code section 45 as in effect on the date of this Agreement.

“**Purchase Agreement**” has the meaning set forth in Section 12.7.1(ii).

“**Purchase Price**” has the meaning set forth in Section 12.7.1.

“**Qualified Appraiser**” has the meaning set forth in Section 12.7.1.

“**Qualified Custodian**” means a U.S. commercial bank or a foreign bank with a U.S. branch, with United States based assets of at least ten billion dollars (\$10,000,000,000) and such bank having a credit rating on its senior unsecured debt of (a)(i) “A3” or higher from Moody’s or (ii) “A-” or higher from S&P or (iii) “A(low)” from DBRS; or (b) if rated by all of Moody’s and S&P and DBRS, each of (a)(i) and (a)(ii) and (a)(iii).

“**Qualified Operator**” means (a) a person that has at least three (3) years’ experience with operating at least 200 MW of renewable generation, or (b) any other person reasonably acceptable to Buyer.

“**Receiving Party**” has the meaning set forth in Section 15.1.

“**Regulatory Approvals**” means the approvals by the MPSC set forth in Section 3.3.0, and upon exercise of the Option, any approvals required by one or more of the MPSC or FERC.

“**Remedial Action Plan**” has the meaning set forth in Section 5.2.

“**Required Upgrades**” means the

- (i) ERIS Network Upgrades, the NRIS Network Upgrades, Transmission Owner Network Upgrades Interconnection Facilities, Transmission Owner-Owned Direct Assigned Interconnection Facilities, and Shared Network Upgrades (all as defined by MISO), and
- (ii) any other upgrades identified in any GIA, FCA (or FCAs, if there are multiple FCAs), and MPFCA (or MPFCAs, if there are more than one MPFCA), and any amendments or restatements of these agreements,

that are required for Seller’s Project to be interconnected to the Transmission Provider’s System and receive Network Resource Interconnection Service.

“**S&P**” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“**Scheduled Date**” has the meaning set forth in Section 5.2.

“**Scheduling Coordinator**” means Buyer, unless replaced by Seller, in which case, Scheduling Coordinator means, an entity certified by MISO as qualifying as a scheduling coordinator or Market Participant pursuant to the MISO Tariff, for the purposes of undertaking the functions specified as set forth in the MISO Tariff, as amended from time to time.

“**Scheduling Coordinator Service Agreement**” means that certain Scheduling Coordinator Service Agreement, between Buyer, as Scheduling Coordinator, and Seller, as customer, the form of which is attached to this Agreement as Exhibit F.



“**Seller**” has the meaning set forth in the Preamble.

“**Seller Event of Default**” has the meaning set forth in Section 8.1.

“**Seller’s Project**” has the meaning set forth in the Recitals, as more fully described in Exhibit A and subject to adjustment to the Expected Nameplate Capacity pursuant to Section 7.4.2.

“**Seller’s SCADA System**” means the Seller’s supervisory control and data acquisition system monitoring and controlling the performance of Seller’s Project.

“**Senior Secured Lender**” means a Person, not an Affiliate of Seller, who provides construction, working capital, term, or permanent debt financing for Seller’s Project (and the trustees or agents thereof) under the Financing Documents and who holds first-priority security interests in the collateral pursuant to the Senior Security Documents, or any refinancing thereof, whether the financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

“**Senior Security Documents**” means, collectively, all documents granting the Senior Secured Lenders a security interest in any property or assets of Seller or Seller’s Project to secure the obligations of Seller (or its Affiliates) to the Senior Secured Lenders under any senior loan documents, including a mortgage or security agreement.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from Seller’s Project (which is excluded from Shared Facilities) to the Point of Interconnection, including the rights provided by the GIA, FCA and MPFCA, that are used in common by other projects that may be owned by Seller, an Affiliate of Seller, Buyer or third parties.

“**Shared Facilities Agreement**” has the meaning set forth in Section 3.9.

“**Site**” means the real property on which Seller’s Project will be located, as described generally in Exhibit A.

“**Target**” has the meaning set forth in Section 12.7.1.

“*Tax Equity Investor Consent*” has the meaning set forth in Section 12.2.

“*Tax Equity Transaction*” means, with respect to Seller or any upstream Affiliate, any transaction or series of transactions in which one or more tax equity investors (each, a “*Tax Equity Investor*”) buys an equity interest in Seller, or any upstream Affiliate acting as a special purpose entity holding company for Seller or a transaction or transactions in which the Tax Equity Investor is transferred the tax benefits produced by Seller’s Project.

“*Taxes*” has the meaning set forth in Section 13.1.

“*Term*” has the meaning set forth in Section 5.1.


“*Test Energy*” means any Energy produced and delivered by Seller to Buyer on and after the In-Service Date and prior to the Commercial Operation Date.

“*Third Appraiser*” has the meaning set forth in Section 12.7.1.

“*Third Appraiser Costs*” has the meaning set forth in Section 12.7.1.

“*Transmission Provider(s)*” means MISO, American Transmission Company LLC, or any other entity or entities transmitting or transporting Energy on behalf of Buyer.

“*Transmission Provider Default*” means a default by Transmission Provider of its obligations under the any of the GIA, FCA (or FCAs, if there are multiple FCAs), and MPFCA (or MPFCAs, if there are more than one MPFCA), or any amendments or restatements of these agreements.

  
“*Transmission Provider’s System*” means the facilities owned, controlled, or operated by the Transmission Provider by which the Transmission Provider provides transmission service for the Energy and associated Capacity at and from the Point of Interconnection.

“*USDA*” has the meaning set forth in the Recitals.

## ARTICLE 2 RULES OF INTERPRETATION

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

- (i) Capitalized terms used in this Agreement shall have the meanings specified in Article 1 and the text of applicable Sections;
- (ii) The singular shall include the plural and vice versa;
- (iii) References to “articles,” “sections,” “schedules,” or “exhibits” shall be to Articles, Sections, Schedules, or Exhibits hereof;

- (iv) All references to a particular Person shall include a reference to such Person's successors and permitted assigns;
- (v) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;
- (vi) References to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time;
- (vii) The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
- (viii) The masculine shall include the feminine and neuter and vice versa;
- (ix) Any reference in this Agreement to time of day shall mean such time of day in Eastern Prevailing Time;
- (x) The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof; and
- (xi) Any reference in this Agreement to a rule shall mean such rule as then amended and in effect.

**ARTICLE 3**  
**SELLER'S REPRESENTATIONS AND WARRANTIES**

- 3.1 No Warranty by Buyer. Seller represents that in entering into this Agreement and in undertaking the obligations set forth herein (i) Seller has investigated and determined that it is capable of performing hereunder and has not relied on the advice, experience, or expertise of Buyer; and (ii) all professionals or experts, including but not limited to, engineers, attorneys, or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller. Any review, acceptance, or failure to review Seller's design, specifications, equipment, or facilities shall not be an endorsement or a confirmation by Buyer and Buyer makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment, or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy, or economic feasibility.
- 3.2 Organization. Seller represents it is a limited liability company duly organized and validly existing under the laws of Delaware and authorized to conduct business in the State of Michigan; Seller has the requisite power and authority to enter into this Agreement, including all Governmental Approvals; and Seller has taken all action required to authorize the execution and performance of this Agreement.

- 3.3 MPSC Approval: Each Party shall take any reasonable action requested by the other Party to support this Agreement before the MPSC as needed, including support of an application by Buyer seeking MPSC approval of this Agreement. Each Party shall refrain from taking any action in contravention of support for this Agreement before the MPSC.
- 3.3.0 MPSC Approval. This Agreement shall be effective on the Effective Date; provided, however that the Parties' rights and obligations under this Agreement shall be contingent upon the approval of this Agreement by the MPSC. The approval must be final and not subject to being overturned or modified on appeal or further appeal, under regulatory and statutory deadlines. Within thirty (30) days after the Effective Date, Buyer shall submit this Agreement to the MPSC seeking all necessary approvals, including approval of the payments set out herein for the purposes of Michigan Public Act 304 of 1982, as amended ("Act 304"), Michigan Public Act 81 of 1987, as amended ("Act 81"), and all other applicable law. In the event the MPSC denies Buyer's request to approve this Agreement or grants conditional approval of this Agreement, including denial of any cost recovery associated with this Agreement; then if the conditions of such approval are not acceptable to Buyer, Buyer shall have the exclusive right to terminate this Agreement and, if terminated, Buyer shall return any Development Period Security to Seller within ten (10) Business Days of the date of termination.
- 3.4 Good Faith and Fair Dealing. The Parties will act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (a) when this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.
- 3.5 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.
- 3.6 Construction of Seller's Project.
- 3.6.0 Seller shall construct Seller's Project in conformance with Good Utility Practices, Applicable Law and the requirements of this Agreement, including Section B of Exhibit A. No later than the date on which Seller issues a notice to proceed to its primary contractor, Seller shall provide Buyer with an amendment to Section C of Exhibit A, identifying Seller's Project's photovoltaic panels, Inverters, and main power transformer, model numbers of those components and the number of units of each component. Seller may modify Exhibit A, upon notice to Buyer; provided, that any increase or decrease in the Expected Nameplate Capacity shall not be made without the prior written consent of Buyer. Notwithstanding the

provisions of this Section 3.6, Buyer's consent shall not be required for, and Seller shall not be in default under this Agreement, if any change in capacity is a result of a change implemented on a fleet-wide basis by the original equipment manufacturer of the photovoltaic panels. Within sixty (60) days of completion of Seller's Project, Seller shall deliver to Buyer the As-Built Supplement as an amendment to Exhibit A.

- 3.6.1 Seller shall design, construct, operate, and maintain Seller's Project according to the GIA. Seller's Project shall include all equipment necessary to successfully interconnect with the Transmission Provider's System for the delivery of Seller's Project's output to the Point of Interconnection. Seller's Project shall include all equipment and telecommunications capabilities necessary to allow communication with Buyer's SCADA System. The Parties acknowledge that certain of the equipment and capabilities required of Seller under this Agreement may be Shared Facilities and shared premises subject to the terms of a Shared Facilities Agreement.
- 3.7 Changes to Seller's Project. Seller shall have the right to modify Seller's Project, from time to time (including by adding energy storage and/or batteries to optimize the output of Seller's Project), and Exhibit A shall be revised as appropriate, provided that (a) the Delivery Point is not changed, and (b) the Parties mutually agree, in writing, to any modification and any adjustments to the Contract Price or other economic terms of this Agreement arising out of such modification.
- 3.8 Operation of Seller's Project. Seller shall maintain and operate Seller's Project in accordance with the terms and conditions of this Agreement, Good Utility Practices, the GIA and Applicable Law, and in a manner intended to maintain the Installed Capacity that has been tested and commissioned, in accordance with Section 4.2. Seller shall register with NERC as a Generator Owner and/or Generator Operator of an inverter-based resource subject to the applicable NERC Reliability Standards. Seller shall maintain records of all NERC compliance documentation and make them available to Buyer upon request.
- 3.9 Shared Facilities. The Parties acknowledge that ownership and use of the Shared Facilities (including the GIA, FCA and MPFCA) and shared real property may be subject to a co-tenancy, joint ownership, limited liability company operating agreement, or similar sharing agreement (collectively, "***Shared Facilities Agreement(s)***"), under which Seller, or an Affiliate of Seller, may act as a manager on behalf of Seller and the parties to the Shared Facilities Agreement. The Shared Facilities Agreement(s) shall provide that:
- 3.9.0 the other parties to the Shared Facilities Agreement and the manager (if different from Seller) shall fully indemnify Seller for any liability arising out of its respective acts or omissions in regard to its respective performance obligations under the GIA, the FCA and MPFCA, and any Shared Facilities Agreement in which such party is a counterparty with Seller;

- 3.9.1 Seller shall have the right to correct, remedy, mitigate, or otherwise cure any omission, failure, breach or default by the other parties and the manager (if different from the Seller) that would negatively affect Seller's obligations under this Agreement, the GIA, FCA and MPFCA, or under any Shared Facilities Agreement(s) to which Seller is a counterparty;
- 3.9.2 any instruction from Transmission Provider to curtail energy deliveries shall be allocated between the Seller's Project and any projects owned by third parties, on a pro rata basis based upon installed capacity of each project, except if such pro rata allocation would be in violation of the applicable curtailment instruction or can be directly allocated to Seller's Project or the projects owned by the other parties, as applicable;
- 3.9.3 Seller shall apply, or shall cause the application, for and expeditiously seek FERC's acceptance of any Shared Facilities Agreement(s), if required;
- 3.9.4 Seller's right to assign or transfer Seller's rights or obligations under the Shared Facilities Agreement(s) to any Person shall be subject to the provisions of Article 12;
- 3.9.5 the costs and charges associated with the construction, operation and maintenance of the Shared Facilities and shared real property shall be allocated to the parties to the relevant Shared Facilities Agreement(s) on a pro rata basis based upon installed capacity of Seller's Project and the projects owned by any third parties; and
- 3.9.6 the rights under the GIA and the allocation of the costs of any Required Upgrades and any other costs and expenses imposed by the GIA, FCA, and MPFCA, as relevant, shall be allocated to the parties to the relevant Shared Facilities Agreement(s) on a pro rata basis based upon installed capacity of Seller's Project and the projects owned by any third parties.

#### **ARTICLE 4 CONDITIONS PRECEDENT**

- 4.1 In-Service Conditions Precedent. Buyer's acceptance of Test Energy from Seller and Buyer's obligation to pay for Test Energy are only subject to the satisfaction, prior to or on the In-Service Date, of each and all of the following conditions (any of which may be waived in whole or in part by Buyer in writing) (such conditions, the "***In-Service Conditions Precedent***"):
  - 4.1.0 Seller's Performance. The covenants and obligations that Seller is required to perform or to comply with at or prior to the In-Service Date will have been duly performed and complied with by Seller.
  - 4.1.1 Governmental Approvals. Seller shall submit copies of approvals to Buyer that Governmental Approvals necessary for the construction and operation have been obtained from each applicable Governmental Agency.

- 4.1.2 Seller Certificate. Seller shall provide Buyer a certificate, executed by an officer of Seller, confirming that: (i) Seller's Project is capable of commencing Test Energy production; (ii) the transmission and interconnection facilities necessary to deliver and transform such Test Energy for delivery to Buyer at the Point of Interconnection are installed and operational; (iii) all Governmental Approvals necessary for Seller to produce and deliver Test Energy to Buyer have been received and are valid; (iv) Seller has duly performed and complied with all covenants and obligations to be performed or complied with by Seller on or before the In-Service Date; and (v) Seller has a valid leasehold or real property interest in the Site for a term that is equal to or greater than the Delivery Term without regard to any amendment or modification thereto.
- 4.1.3 Insurance. Seller shall submit written proof to Buyer of all insurance required by Article 10, which written proof shall be reasonably satisfactory to Buyer.
- 4.1.4 Security Requirements. Seller shall have provided Default Security in the amount and at the time and in the manner set forth in Section 7.1 below.
- 4.1.5 GIA. Seller or Seller's Affiliate shall have entered into the GIA in accordance with Section 6.2 of this Agreement.
- 4.1.6 Written Confirmation of Acceptance of Test Energy. Buyer shall have confirmed to Seller in writing that, in Buyer's reasonable opinion, all conditions precedent to Buyer's acceptance of Test Energy have been fulfilled. Within five (5) Business Days of receipt of the certificates required hereunder, Buyer shall confirm satisfaction of the In-Service Conditions Precedent or identify in writing Buyer's refusal to confirm satisfaction and the specific reasons for such refusal. Buyer's failure to provide such written confirmation within such five (5) Business Day period provided by this Section 4.1.6, shall be deemed acceptance that all conditions precedent to acceptance of Test Energy have been fulfilled and this Section 4.1.6 shall be deemed satisfied. In the event Buyer and Seller are unable to agree whether such conditions have been achieved, such matter will be referred to the Independent Engineer, who shall either confirm that such conditions have been achieved or set forth in detail what needs to occur for such conditions to be achieved, and upon Seller's completion of such activities, such conditions shall be deemed achieved.

#### 4.2 Commercial Operation Conditions Precedent.

- 4.2.0 To establish that Seller's Project has achieved Commercial Operation, Seller shall provide a certificate, executed by an officer of Seller, to Buyer, certifying (i) the Installed Capacity for which the conditions to Commercial Operation set forth in the definition of "**Commercial Operation**" herein have been satisfied, and (ii) that Seller has duly performed and complied with all covenants and obligations to be performed or complied with by Seller on or before the achievement of Commercial Operation. Within five (5) Business Days of Seller's request to Buyer to confirm all conditions of Commercial Operation are satisfied, Buyer

shall confirm satisfaction of all conditions of Commercial Operation or identify in writing Buyer’s refusal to confirm satisfaction and the specific reasons for such refusal. Buyer’s failure to provide such written confirmation within such five (5) Business Day period provided by this Section 4.2 shall be deemed acceptance that all conditions to Commercial Operation have been satisfied. In the event Buyer and Seller are unable to agree whether Commercial Operation has been achieved, such matter will be referred to the Independent Engineer, who shall either confirm that Commercial Operation has been achieved or set forth in detail what needs to occur for Commercial Operation to be achieved, and upon Seller’s completion of such activities, Commercial Operation shall be deemed achieved. During any such dispute as to whether Commercial Operation has been achieved, the Guaranteed Commercial Operation Date shall be stayed for one (1) Business Day for each day until resolution of such dispute. Following resolution of any such dispute, the date of Commercial Operation shall be the date the certificate certifying that the conditions to Commercial Operation set forth in the definition of “Commercial Operation” herein have been satisfied was delivered by Seller, or if additional activities were performed following the delivery of such certificate, the date such activities were completed.

- 4.2.1 For clarity: (a) Seller may elect to provide the certificate required by Section 4.2.0 to establish Commercial Operation at any time following the In-Service Date; and (b) a delay in the construction of Required Upgrades shall not preclude Seller from electing to provide a certificate of Commercial Operation.

**ARTICLE 5  
PURCHASE AND SALE OF ENERGY, CAPACITY,  
AND ENVIRONMENTAL ATTRIBUTES**

5.1 Term. This Agreement shall be effective at 12:01 a.m. prevailing Eastern Time on the Effective Date and shall remain in effect for a term of fifteen (15) years after the first day of the first month immediately following the Commercial Operation Date, unless earlier terminated pursuant to Article 8 (“**Term**”). Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments, and adjustments, (ii) enforce or complete the duties, obligations, or responsibilities of the Parties, and (iii) address any remedies or indemnifications, arising prior to termination.

5.2 Defined Tasks.

5.2.0 In order to meet the Guaranteed Commercial Operation Date, Seller shall use Commercially Reasonable efforts to accomplish certain tasks (“**Defined Tasks**”) by the identified dates (“**Scheduled Date**”) as follows:


[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Seller shall provide Buyer with written notice within five (5) Business Days of completing each Defined Task listed above. Seller shall use Commercially Reasonable efforts to develop Seller’s Project in accordance with the schedule set forth above for the completion of the Defined Tasks. Upon Buyer’s request, which shall be on no more than a monthly basis, Seller shall provide Buyer with reports describing its activities and progress toward completion of the described Defined Tasks and completion of Seller’s Project. The dates set forth above and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis for each day that a Scheduled Date (including the Guaranteed Commercial Operation Date) is delayed due to any one or more of the following: (a) a Force Majeure Event; (b) a Buyer Event of Default; (c) a Transmission Provider Default [REDACTED]

Seller agrees that it is the intent of the Defined Tasks to ensure that Seller’s Project begins delivery of Energy to Buyer by the Guaranteed Commercial Operation Date. If, Seller fails to achieve any Defined Task by the applicable schedule date, Seller shall submit to Buyer, within ten (10) Business Days of such missed Defined Task Scheduled Date, a remedial action plan (“**Remedial Action Plan**”) that sets forth a detailed description of Seller’s proposed course of action to promptly (as Commercially Reasonable) achieve the missed Defined Task and, if possible, all subsequent Defined Tasks by the Guaranteed Commercial Operation Date. Buyer shall have five (5) Business Days after receipt to provide Seller with Buyer’s comments to the Remedial Action Plan. Seller’s failure to accomplish any Defined Task by the date identified in this Section 5.2 or in the approved (or deemed approved) Remedial Action Plan shall not constitute a Seller Event of Default.

5.3 Purchase and Sale of Generation Output and Associated Capacity. Subject to the terms and conditions of this Agreement, on and after the In-Service Date and for the remaining Term of this Agreement, Seller shall deliver to the Point of Interconnection and sell to Buyer, and Buyer shall receive at the Point of Interconnection and purchase from Seller, all Generation Output and Associated Capacity of Seller’s Project.

5.4 Contract Price.

5.4.0 Test Energy. On and after the In-Service Date and prior to the Commercial Operation Date, Buyer shall pay Seller for Test Energy delivered at a rate equal to eighty-five percent (85%) of the Contract Price.

5.4.1 Contract Price. Beginning on the Commercial Operation Date and throughout the Term, Buyer shall pay seller the sum of

[REDACTED]

[REDACTED]

5.4.2 Lost Production. Buyer shall compensate Seller for Lost Production in accordance with Section 6.6.2 of this Agreement.

5.5 Benefits of PACE Program.

5.5.0 Consistent with the requirements of the PACE Program, Seller submitted a Letter of Interest to the USDA stating Seller's intent to seek a PACE Program loan from the USDA. Subsequent to Seller's submittal of its Letter of Interest, the USDA informed Seller that the PACE Program's funding would not be available and that a loan for the Seller's Project would not be forthcoming.

5.5.1 If, and to the extent, that additional funding is made available for which Seller and the Seller's Project qualify, upon notification by Buyer, Seller shall use Commercially Reasonable efforts to make such additional submittals for funding benefits with respect to Seller's Project under the PACE Program. Seller shall keep Buyer reasonably informed of the USDA's consideration of Seller's submittal for funding benefits.

(1) Buyer acknowledges (i) Seller will be required to show how, if awarded funding benefits under the PACE Program, those benefits will be passed through to consumers, and (ii) as part of its submittal, Seller will be required to provide USDA with a copy of this Agreement and the rate reduction that Seller proposes as the means for providing Buyer's consumers the benefits of the PACE Program (collectively, the "**PPA Submittal**"). Seller will provide Buyer with a copy of its submittal to the USDA pursuant to the PACE Program and a copy of the PPA Submittal.

(2) Upon Seller's reasonable request, Buyer, at its sole cost and expense, shall cooperate with Seller in seeking approval for Seller's application, including the PPA Submittal.

5.5.2 Seller shall promptly notify Buyer upon Seller's receipt of a final confirmation from USDA that Seller's Project has been awarded funding benefits under the PACE Program from the USDA.

- (1) If Seller's submittal, including the PPA Submittal, have been approved by the USDA without condition or modification, then this Agreement shall be amended to reflect the rate reduction included in the PPA Submittal and that rate reduction shall be sole and exclusive means by which the funding benefits provided to Seller under the PACE Program will be passed through to Buyer's consumers.
- (2) If Seller's submittal, including the PPA Submittal, were approved but with conditions or modifications, upon Buyer's request, the Parties shall discuss, for a period not exceeding thirty (30) days (the "**Consultation Period**"), whether the Contract Price can be equitably reduced or whether other economic benefits can be provided to Buyer's consumers (a "**PACE Adjustment**"), while maintaining the allocation, and value of, the risks and benefits assumed by both Parties on the Effective Date.

If following the Consultation Period, the Parties reach agreement on a PACE Adjustment, then this Agreement shall be modified in an amendment prepared by Seller. The amendment shall only reflect changes to this Agreement that are necessary to reflect the agreed upon PACE Adjustment to the Contract Price. If the Parties are unable to reach agreement on whether a PACE Adjustment is equitable, and if so, the level of the PACE Adjustment, the Contract Price shall remain as set forth in Section 5.4 and this Section 5.5 shall have no further force and effect.

5.5.3 Seller shall promptly notify Buyer upon Seller's receipt of a final confirmation from USDA that Seller has not been awarded funding benefits under the PACE Program from the USDA. Upon receipt of this confirmation, the Contract Price shall remain as set forth in Section 5.4 and this Section 5.5 shall have no further force and effect.

5.6 Payment Due Date. Buyer shall transmit payment and a payment statement to Seller for all undisputed amounts within thirty (30) days following the Billing Period meter readings. Buyer's payment statement shall include the:

[REDACTED]

[REDACTED]

5.6.2 Lost Production Damages accrued, pursuant to Section 6.6.2, during such Billing Period;

5.6.3 any amounts (other than the Monthly Service Fee (as defined in the Scheduling Coordinator Services Agreement)) owed to Buyer or Seller, as applicable, pursuant to the Scheduling Coordinator Services Agreement; and

5.6.4 any other amount owed by Buyer to Seller accruing during such Billing Period.

Payments due hereunder shall be made in immediately available funds by wire transfer or ACH transfer. Any payment disputes between the Parties shall be governed by Section 16.1 of this Agreement.

In the event that either Party to this Agreement discovers an error in billings or payments under this Agreement due to billing or other errors (including correction of data by MISO), each Party shall be entitled to an adjustment of the amount payable hereunder to reflect such revised price, error discovery, or the availability of actual (as opposed to estimated) invoicing information. A Party that seeks an adjustment to invoices as described in this Section 5.5 must provide the other Party with written notice and a description of the desired adjustment within fifteen (15) months of the date the invoice that is to be adjusted was received by Buyer. Such notice shall include a calculation of the payment necessary to correct the prior invoice. Any undisputed portion of such payment shall be incorporated into the next invoice issued pursuant to this Section 5.5 or, if no such invoice will be issued within forty (40) days of such notice, such undisputed payment shall be made within sixty (60) days after issuance of such notice. Any billing inaccuracy shall be corrected in accordance with Section 6.4. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, any such payment disputes between the Parties shall be governed by Section 16.1 of this Agreement.

Upon resolution of the dispute, any required payment shall be made within twenty (20) Business Days after such resolution. Any invoice that has not been challenged pursuant to this Section 5.5 within fifteen (15) months of the date it was received by Buyer shall be deemed final and not subject to adjustment under this Section 5.5.

5.7 Payment Default. Should either Party fail to pay the other Party any undisputed amounts when due, the unpaid Party may either: (i) deduct like amounts, adjusted for interest, from future payments to the other Party hereunder or (ii) demand payment of unpaid balances, adjusted for interest, in future statements. Interest shall be based on the Interest Rate and assessed monthly on the average of the beginning and ending monthly-unpaid undisputed balances.

5.8 Title and Risk of Loss. Title to, control, and risk of loss with respect to Energy delivered to Buyer by Seller in accordance with this Agreement shall pass from Seller to Buyer when the same is delivered by Seller at the Point of Interconnection. Until title passes, Seller shall be in exclusive control of the Energy and shall be responsible for any damage or injury caused thereby. After title to Energy transfers, Buyer shall be in exclusive control of such Energy and shall be responsible for any damage or injury caused thereby.

5.9 Buyer Caused Delay. Buyer shall not and shall not permit any of its Affiliates to, directly or indirectly (through complaint, investigation, or otherwise) seek to obtain any order or

oppose or impede any Governmental Approval that would prevent, impede or delay the development, construction, operation, or maintenance of Seller's Project.

- 5.10 Environmental Attributes. Unless otherwise mutually agreed by the Parties during the Term of this Agreement, Buyer shall retain all right, title, and interest in the Environmental Attributes. The value of Environmental Attributes is specifically included in the Contract Price. Buyer is entitled to use or sell all such Environmental Attributes in its sole discretion. If requested by Buyer, Seller will confirm Buyer's rights in the Environmental Attributes. Buyer may agree to sell, and Seller may buy, any quantity of Environmental Attributes on mutually acceptable terms pursuant to a separate contract at any time.
- 5.11 Ancillary Services. Buyer shall retain all right, title and interest to Ancillary Services associated with Seller's Project.

## **ARTICLE 6 OPERATIONS**

- 6.1 Annual Operating Plan. Seller shall provide Buyer with a non-binding annual operating plan, substantially in the form of Exhibit B, identifying the timing and duration of proposed Seller's Project maintenance and all other material activities that could impact the reliability or Energy output of Seller's Project pursuant to this Section 6.1. Seller shall provide updates to the annual operating plan whenever the maintenance or outage schedule is revised within ten (10) days of such revision. For the first annual operating plan, Seller shall provide the annual operating plan no later than thirty (30) days before the Commercial Operation Date. Beginning with the first February after the Commercial Operation Date, by February 15 of each year, Seller shall provide Buyer with a non-binding annual operating plan for the upcoming generation year of May through April until such generation year falls entirely after the end of the Term. Such operating plan shall include processes and procedures for providing Buyer with monthly and quarterly projected Energy output, as well as mutually agreeable processes and procedures for scheduling Energy delivery on an hourly basis. Seller shall use Commercially Reasonable efforts to accommodate any Buyer request to defer or reschedule maintenance to the extent such request is consistent with Good Utility Practices.
- 6.2 GIA, FCA and MPFCA. Subject to the terms of the Shared Facilities Agreement, if any, Seller shall be responsible for all costs to deliver the Energy to the Point of Interconnection. Seller or Seller's Affiliate shall execute a GIA with respect to any Capacity not previously accounted for in a GIA with the Transmission Provider. Such GIA, upon execution, shall be appended to this Agreement as Exhibit C-2.
- 6.3 Transmission Service.
- 6.3.0 Seller shall use Commercially Reasonable Efforts to interconnect Seller's Project to the Transmission Provider's System under the rules necessary to integrate Seller's Project into the MISO market as a "***Network Resource***" ("***Network Resource Interconnection Service***") associated with the delivery of Energy to the

Point of Interconnection), so that Seller and Buyer can perform their respective obligations hereunder. Buyer shall assist Seller with obtaining such approvals. Subject to the terms of the Shared Facilities Agreements, Seller shall be solely responsible for and shall bear all costs of negotiating, entering into, and performing under, the Generator Interconnection Agreement, and for the design, installation, ownership, operation, and maintenance of the Seller's interconnection facilities. Subject to the terms of a Shared Facilities Agreement, if any, Seller shall be responsible for all costs required to deliver Delivered Energy from Seller's Project to the Point of Interconnection, including interconnection, electric losses and Ancillary Service arrangements (if any).

- 6.3.1 In the event that Seller has been unable to integrate Seller's Project as a Network Resource, then Seller shall use Commercially Reasonable efforts to demonstrate that Seller's Installed Capacity is a Capacity Resource, including pursuant to the Generation Verification Test Capacity, or will otherwise contribute to Buyer's resource adequacy requirements, in each case pursuant to MISO's Rules.
- 6.4 Metering. Metering of Seller's Project shall occur in the manner described in the GIA. The meters and associated measuring and recording equipment installed pursuant to the GIA shall permit an accurate determination of the quantities of the hourly Energy delivered under this Agreement and shall be used for all quantity measurements under this Agreement, subject to any adjustments pursuant to Section 5.5 and this Section 6.4. If any meters are found upon testing to be inaccurate by more than the allowance identified in the GIA, applicable tariff or otherwise outside the parameters of the selected device manufacturer's performance standards, the meter will be adjusted, repaired, replaced, or recalibrated at Seller's expense. If the meter fails to register or if the measurement is found upon testing to be inaccurate by more than the allowance identified in the GIA or applicable tariff or otherwise outside the parameters of the selected device manufacturer's performance standards, the Seller will work with the Transmission Provider to re-compute any amount due for the period of the inaccuracy.
- 6.5 Telemetry and Anemometer Equipment. Seller shall install, operate, and maintain a commercially standard supervisory control and data acquisition system that allows Buyer to reasonably access power production and meteorological data from Seller's Project on a real-time basis as it becomes available through Seller's SCADA System. Any provided inputs from Seller's SCADA System will be provided to Buyer, at Seller's expense, at the Point of Interconnection or as the Parties may otherwise agree.
- 6.6 Curtailments.
  - 6.6.0 Curtailment Right. Buyer may curtail the receipt of Energy from Seller's Project at any time and for any reason deemed sufficient by Buyer in its sole discretion; provided that any curtailment of Seller's Project or instruction not to dispatch to

Buyer that is a Compensated Curtailment, shall be compensated subject to Section 6.6.2.

- 6.6.1 Curtailment Procedure. To curtail Energy, Buyer shall give Seller reasonable prior notice, including the maximum allowable Energy to be delivered to the Buyer during any period of curtailment (which may, in Buyer's discretion, be zero MWh) and when such curtailment will begin and end. If the duration is not known, the curtailment will terminate upon notice from Buyer to Seller; provided, Buyer shall notify Seller as soon as reasonably possible when such curtailment will end. Notice of a curtailment may be given in writing or via phone and promptly confirmed in writing. Upon receipt of notice of the curtailment, Seller shall operate Seller's Project so as to ensure that the amount of Energy delivered to the Buyer during the curtailment period will not exceed the maximum allowable Energy specified by Buyer in the notice. Buyer may change the maximum amount of Energy allowed and the duration of any curtailment by providing reasonable prior notice to Seller.
- 6.6.2 Lost Production Payment. In the event the delivery of Energy is curtailed due to a reason that qualifies as a Compensated Curtailment, Seller shall be entitled to Lost Production Damages on a monthly basis as its sole and exclusive remedy and Buyer's sole and exclusive liability with respect to any Lost Production. Lost Production must be calculated using data from Seller's SCADA System and based on actual measurements during the applicable time as recorded by Seller's Project's measurement instrumentation; provided that if such data and measurements are not available for any reason for the period during which the curtailment occurred, the Parties shall use the best available data obtained through Commercially Reasonable methods to determine the Lost Production, including forecasts provided by Seller. Seller shall provide to Buyer relevant data and supporting documentation so that Buyer can verify the calculation of Lost Production.

Seller is entitled to compensation for Lost Production to the extent Energy is curtailed due to any reason that qualifies as Compensated Curtailment. Lost Production Damages shall be calculated as follows:

$$LPD = LP * CP - EP * MP$$

Where "LPD" means the Lost Production Damages in respect to any applicable calendar month (expressed in dollars).

"LP" means the aggregate quantity of Lost Production of such month (expressed in MWh).

"CP" means the Contract Price (expressed in \$/MWh).

"EP" means the quantity of Lost Production of such month (expressed in MWh) that was sold to a Person other than the Buyer.

“MP” means the lesser of (a) Contract Price (expressed in \$/MWh) and (b) the average per MWh compensation Seller received due to selling Lost Production to any Person other than Buyer (expressed in dollars).

- 6.7 Forced Outages. Seller shall notify Buyer of any Forced Outage affecting Seller’s Project. Such notice must include the existence, nature, and expected duration of the Forced Outage. Such notice shall be given as soon as practical, but in no event later than six (6) hours after the Forced Outage occurs unless the delay is due to efforts to control immediate danger to person or property.
- 6.8 Forecasting. Buyer may, with the advance written consent of Seller, add forecasting services (the “*Forecast*”) for Seller’s Project to Buyer’s contract with a qualified forecasting vendor, at Seller’s expense. In the event Seller consents to Buyer contracting for such Forecast, Buyer may deduct from the amount due and owing to Seller pursuant to this Agreement the actual cost to obtain the Forecast.

Unless otherwise agreed by the Parties, the following forecasts shall be non-binding, but shall be provided in a Commercially Reasonable manner and in compliance with the Applicable Law and applicable tariff requirements, in a format satisfying the requirements of Buyer. If necessary, during the Term, Buyer and Seller shall negotiate Commercially Reasonable changes to the requirements and procedures set forth above, as necessary to comply with applicable tariff or requirements and to accommodate changes to the respective generation technology of the parties and the operating and scheduling procedures of Buyer. The following forecasts shall be provided by Seller:

- 6.8.0 Annual Delivery Schedules. No later than ninety (90) calendar days before the beginning of each Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day expected Energy, by hour, for such Contract Year.
- 6.8.1 Monthly Delivery Schedules. Five (5) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day’s average expected Energy, by hour, for such month.
- 6.8.2 Daily Delivery Schedules. By 5:30 a.m. prevailing Eastern Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of Seller’s Project’s available Capacity for each hour of the immediately succeeding day (“*Day-Ahead Forecast*”), it being understood that Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable MISO market in order to schedule the Energy with the MISO. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s Commercially Reasonable estimate of Seller’s Project’s available Capacity. Seller may not change such schedule past the deadlines provided in this Section 6.8.2 except in the event of a Forced Outage or schedule change imposed

by Buyer or the MISO, in which case Seller shall as soon as practicable provide Buyer with a copy of any and all updates to such schedule indicating changes from the then-current schedule. These notices and changes to the schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such period only Buyer shall rely on Buyer's best estimate based on information reasonably available to Buyer.

- 6.8.3 Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its schedule on the actual date of delivery for any reason, including Forced Outages (other than a scheduling change imposed by Buyer or MISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer as soon as practicable by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the MISO of Forced Outages in accordance with Section 6.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of Seller's Project during or after the end of the outage. In the event of a real time Forced Outage (not caused by the default or negligence of Buyer), for each hour during such Forced Outage where Buyer had scheduled energy delivery from Seller, Seller shall be responsible for compensating Buyer for any positive difference between (i) (A) the actual cost of replacement power (expressed as an average in dollars per MWh) less (B) the Contract Price (ii) multiplied by the lesser of (x) the amount of Energy scheduled but not delivered due to such Forced Outage and (y) the scheduled energy delivery in such hour.

6.9 Buyer as Scheduling Coordinator for Seller's Project.

- 6.9.0 Within sixty (60) days following the Effective Date, Buyer and Seller shall meet in good faith to negotiate those changes to the form of Scheduling Coordinator Services Agreement attached to this Agreement as Exhibit F necessary to reflect the specifics of the Seller's Project, and the services that will be provided by Buyer to Seller with respect to the Seller's Project.
- 6.9.1 Upon initial synchronization of Seller's Project to the Transmission Provider's System, Buyer shall be the Scheduling Coordinator with the MISO for Seller's Project for both the delivery and the receipt of the Energy at the Point of Interconnection. Seller agrees to operate Seller's Project in MISO Resource Control Mode 1 at all times when it is reasonably possible to do so. Consistent with the terms of the Scheduling Coordinator Services Agreement, executed on the Effective Date of this Agreement, Seller will contract with another provider of scheduling coordinator services (i) if Buyer is no longer able to perform as the Scheduling Coordinator or (ii) at Seller's discretion, upon providing the notice required by the Scheduling Coordinator Services Agreement.

**ARTICLE 7  
SECURITY & DAMAGES**

7.1 Default Security.

7.1.0 Development Period Security. To secure Seller's obligations under this Agreement prior to Commercial Operation, Seller agrees to deliver to Buyer, and maintain in full force and effect from the date specified in this Section 7.1.0, below, until the earlier of (a) delivery of the Delivery Term Security to Buyer in accordance with Section 7.1.1 or (b) the return date specified in Section 7.2, the following Development Period Security:

[REDACTED]

[REDACTED]

The Development Period Security shall be in the form of cash or a Letter of Credit, until the return date specified in this Section 7.1.0.

7.1.1 Delivery Term Security.

[REDACTED]

7.2 Restoration, Retention and Release of Default Security. Buyer shall be entitled, in its sole discretion, to draw upon all or any part of the Default Security in the amount due (after accounting for any applicable cure period) from Seller to Buyer under this Agreement

from any form of Default Security, except for an Acceptable Guaranty, in which case Buyer must make demand for payment terms of such Acceptable Guaranty. Prior to drawing on any Default Security, Buyer shall make a demand on Seller to pay such amounts due from Seller to Buyer pursuant to this Agreement once such amounts have matured and become due and payable. Following the Commercial Operation Date, to the extent that Buyer makes any draw or receives any payment from the Delivery Term Security, Seller shall, within ten (10) Business Days, restore the Delivery Term Security to its full required value. In the event this Agreement is terminated due to a Seller Event of Default, Buyer may retain any Default Security until satisfaction of Seller's monetary obligations hereunder and, in all other cases, Buyer shall promptly return any Default Security to Seller following the end of the Term (including the early termination hereof). Seller is not required to replenish any amount paid to Buyer from the Development Period Security.

- 7.3 Default Security Requirements. Seller shall have the right to provide Default Security in one or more of the following forms: (1) with respect to Development Period Security, (a) a Letter of Credit and (b) Cash Security, [REDACTED]; and (2) with respect to Delivery Term Security, (a) a Letter of Credit, (b) an Acceptable Guaranty, and (c) Cash Security, provided that: Seller may direct that the balance of any Development Period Security held by Buyer may be applied to the Delivery Term Security obligation.

7.3.0 Letter of Credit:

- (1) The Letter of Credit must be substantially in the form of Exhibit D or otherwise reasonably acceptable to Buyer;
- (2) The Letter of Credit must be issued by a Qualified Custodian;
- (3) The Letter of Credit must require Seller to provide a minimum of thirty (30) days advance written notice prior to any expiration, non-renewal, or early termination, with a right for Buyer to immediately draw the full value of the Letter of Credit if Seller fails to provide a substitute form of Default Security meeting the requirements of this Agreement within ten (10) Business Days of the written notice required herein and may retain the funds until satisfaction of Seller's obligations hereunder;
- (4) Costs of a Letter of Credit shall be borne by the Seller.

7.3.1 Guaranty. Seller may provide a guaranty, substantially in the form of Exhibit E (an "**Acceptable Guaranty**") from an Acceptable Guarantor.

7.3.2 Cash Security. If Seller delivers cash to satisfy its Default Security obligations, such cash deposit shall either be (i) in an account under which Buyer is designated as beneficiary with sole authority to draft from the account or otherwise access

the security; or (ii) held by a Qualified Custodian, reasonably acceptable to Buyer and pursuant to documentation reasonably satisfactory to Buyer, as escrow agent with instructions to pay claims made by Buyer pursuant to this Agreement; provided, (A) that all funds must be held in the United States and (B), with respect to subpart (i), (1) Buyer is not a defaulting Party, (2) Buyer maintains a credit rating of at least (i) “Baa2” or higher by Moody’s; or (ii) “BBB” or higher by S&P or (iii) “BBB” or higher by DBRS, and (3) Buyer is not on “credit watch” or similar credit position with Moody’s, S&P or DBRS. Buyer has no obligation to Seller to provide interest on the Cash Security to Seller, and is not assuming any fiduciary duty to Seller to earn or maximize interest or a return on the Cash Security or the investment of such funds.

Provided Seller is not then in material default, Seller shall have the right to change the form of security provided to Buyer upon thirty (30) days’ notice to Buyer and shall promptly return to Seller any Default Security that exceeds the required level of Default Security. The replacement security shall be in the form of security otherwise acceptable under this Agreement.

7.4 Delay Damages. The Parties acknowledge and agree that if Seller’s Project fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date (as such date may be extended pursuant to Section 5.2), Buyer will incur damages and that the Seller shall pay Buyer the liquidated damages as provided for below:

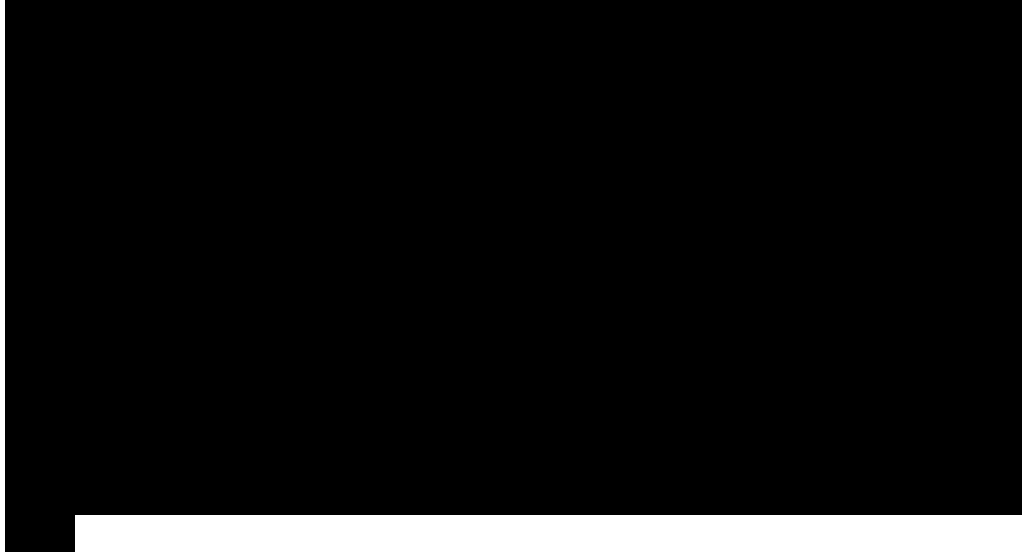
7.4.0 If Seller’s Project fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, then for each day of such failure until (and excluding) the Commercial Operation Date, Seller will be liable for liquidated damages (“*Delay Damages*”) of:

[REDACTED]

[REDACTED]

Buyer shall deduct the amount of Delay Damages from the Default Security at any time after the Guaranteed Commercial Operation Date if the Seller fails to make payment for such Delay Damages within ten (10) Business Days after receipt of an undisputed invoice from Buyer.

[REDACTED]



7.4.3 In the event of a Seller Event of Default occurring prior to the Commercial Operation Date, or if this Agreement is terminated pursuant to Section 7.4.1, Buyer's sole and exclusive remedy upon an early termination of this Agreement shall be Seller's forfeiture to Buyer of the balance of the remaining Development Period Security less any Delay Damages Seller paid in cash pursuant to Section 7.4.1.

**ARTICLE 8  
EVENTS OF DEFAULT AND TERMINATION**

8.1 Seller Event of Default.

8.1.1 Any of the following constitute a Seller Event of Default and, upon occurrence, except as noted in this Section 8.1.1, no cure period is applicable:

- (i) Seller is Bankrupt;
- (ii) Seller's actual fraud, intentional misrepresentation, willful misconduct or the unauthorized sale or diversion of Energy by Seller to a third party, except as in accordance with this Agreement; or

- (iii) Seller's failure to pay Delay Damages pursuant to Section 7.4 (whether such payment is in cash or through Buyer's draw on the Development Period Security), if such failure is not cured within thirty (30) days after the date such payment was due.
- (iv) Any representation or warranty made by Seller is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) calendar days after notice from Buyer to Seller.

8.1.2 Except as otherwise set forth in Section 8.1.1, any of the following constitute a Seller Event of Default upon occurrence, but is subject to cure within thirty (30) days after the date of written notice from Buyer to Seller of:

- (i) Seller's failure to deliver Default Security as required by Article 7 of this Agreement and the failure to maintain or restore such Default Security during the Term of this Agreement as required by Section 7.2;
- (ii) Seller's or Seller's Affiliate's, as applicable, a default of a material provision of the GIA, after any cure period under the GIA;
- (iii) Except as otherwise expressly provided in this Section 8.1, Seller's failure to comply with any other material obligation under this Agreement if not cured within thirty (30) days after the date of written notice from Buyer to Seller; provided that if Seller has initiated a cure for the failure to comply and such cure cannot be completed within thirty (30) days, the cure period for such failure shall be extended to no more than ninety (90) days;
- (iv) Seller's failure to pay when due any payment required by this Agreement;  
or
- (v) Seller Abandons Seller's Project.

## 8.2 Buyer Event of Default.

8.2.1 Any of the following constitutes a Buyer Event of Default and, upon occurrence, no cure period is applicable:

- (i) Buyer is Bankrupt; or
- (ii) Buyer's actual fraud, intentional misrepresentation, willful misconduct; or
- (iii) Any representation or warranty made by Buyer in this Agreement is false or misleading in any material respect when made; or
- (iv) Buyer's assignment of this Agreement, except as permitted in accordance with Article 12.

8.2.2 Any of the following constitute a Buyer Event of Default upon occurrence:

- (i) Buyer's failure to make any payment required by this Agreement if not cured within ten (10) days after the date of written notice from Seller to Buyer; or
- (ii) Except as otherwise expressly provided in this Section 8.2, Buyer's failure to comply with any other material obligation under this Agreement or the Scheduling Coordinator Services Agreement if not cured within thirty (30) days after the date of written notice from Seller to Buyer; provided that if Buyer has initiated a cure for the failure to comply and such cure cannot be completed within thirty (30) days, the cure period for such failure shall be extended to no more than ninety (90) days.

8.3 Financing Parties' Right to Cure a Seller Event of Default.

8.3.0 Seller shall provide Buyer with written notice identifying Seller's Financing Parties and Tax Equity Investors, including contact information. Following receipt of such notice, Buyer agrees to provide notice of a Seller Event of Default to the Financing Parties and Tax Equity Investors contemporaneously with the delivery of any such notice to Seller. Buyer further agrees to accept a cure of a Seller Event of Default performed by any of the Financing Parties or Tax Equity Investors, provided that (i) the cure is accomplished within the applicable cure period set forth in this Agreement and meets the requirements of this Agreement or (ii) is consistent with the terms of any consent or similar agreement entered into by Buyer and such Financing Party or Tax Equity Investor, as applicable.

8.4 Termination.

8.4.0 Upon the occurrence of a Seller Event of Default or Buyer Event of Default, which has not been cured within the specified cure period, if applicable, the non-defaulting Party may, (i) unless otherwise stated, pursue all rights and remedies available to it under Applicable Law and this Agreement, and (ii) terminate this Agreement upon written notice to the defaulting Party.

8.4.1 In the event this Agreement is terminated due to a Seller Event of Default and, subsequent to such termination Seller, its successors or assigns desires to sell to Buyer Energy from Seller's Project, Buyer, in its sole discretion, may require Seller to ratify this Agreement and sell such energy during the remaining Term pursuant to the terms and conditions herein, including but not limited to the Contract Price. This Section 8.4.1 shall survive the termination of this Agreement for a period of one (1) year after such termination.

8.4.2 Prior to the Commercial Operation Date, Seller may, in its sole discretion, terminate this Agreement and Buyer's sole and exclusive remedy shall be retention of the remaining Development Period Security.

8.4.3 In the event Delay Damages exceed the Delay Damages Limit (as described in Section 7.4.0), Buyer may terminate this Agreement pursuant to Section 7.4.1 and Buyer's sole and exclusive remedy, upon such early termination of this Agreement, shall be the balance of the remaining Development Period Security.

## ARTICLE 9 INDEMNIFICATION AND LIABILITY

- 9.1 General Indemnity. Each Party (the "*Indemnifying Party*") shall indemnify, defend, and hold the other Party and its officers, directors, Affiliates, agents, employees, contractors, and subcontractors (the "*Indemnified Parties*"), harmless from and against any and all claims (including reasonable attorneys' fees) for personal injury or death to natural persons and physical damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by the Indemnifying Party's (i) violation of Applicable Laws by, (ii) negligent or tortious acts, errors, or omissions by, or (iii) intentional acts or willful misconduct of, the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors, or omissions of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors, or omissions caused the damages. Neither Party shall be indemnified for its damages resulting from its own gross negligence or willful misconduct. Nothing in this Section 9.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement or for any event or occurrence for which any remedy is specified hereunder. These indemnity provisions shall not be construed to relieve any insurer or its obligations to pay claims consistent with the provisions of a valid insurance policy.
- 9.2 Failure to Defend Settlement. If an Indemnifying Party fails, pursuant to Section 9.1, to assume the defense of a claim meriting indemnification, the Indemnified Party may, at the expense of the Indemnifying Party, Contest, settle, or pay such claim at the expense of the Indemnifying Party, provided, however, that settlement or full payment of any such claim may be made only following prior consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or otherwise warrants settlement. No compromise or settlement of a claim may be effected by the Indemnifying Party without the Indemnified Party's prior consent unless (i) there is no finding or admission of any violation by the Indemnified Party of any Applicable Law, (ii) the Indemnified Party receives a full release of and from any other claims that may be made against the Indemnified Party by the Person bringing the claim, and (iii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.
- 9.3 Relationship with Insurance. The provisions of this Article 9 shall not be construed so as to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy. Insurance coverage does not cap or limit the liability of an Indemnifying Party. Except as otherwise provided in this Article 9, in the event that a Party is obligated to indemnify and hold the other Party harmless under this

Article 9, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following Commercially Reasonable efforts by the Indemnified Party to obtain such insurance proceeds.

9.4 Indemnification Procedure. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 9 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and reasonably acceptable to the Indemnified Party; provided, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's reasonable expense subject to Section 9.3.

9.5 Fines.

9.5.0 Any fines, penalties or other costs incurred by either Party or such Party's officers, directors, Affiliates, agents, employees, contractors or subcontractors, and their respective successors and assigns for non-compliance by such Party, its officers, directors, Affiliates, agents, employees, contractors or subcontractors, and their respective successors and assigns with the requirements of any Applicable Laws, Environmental Laws or Governmental Approvals or requirements of the Transmission Provider shall be the sole responsibility of such non-complying Party.

9.5.1 If such fines, penalties or other costs are assessed against Buyer by the Transmission Provider, any Governmental Agency or court of competent jurisdiction due to the non-compliance by Seller with any Applicable Laws, Environmental Law or Governmental Approvals with respect to Seller's actions prior to the Point of Interconnection, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Seller to comply therewith, subject to refund in the event that Seller or Buyer prevails in any Contest described below. Seller shall also reimburse Buyer for any and all legal or other expenses (including attorneys' fees) incurred by Buyer in connection with such losses, liabilities, damages and claims.

9.5.2 If such fines, penalties or other costs are assessed against Seller by the Transmission Provider, any Governmental Agency or court of competent jurisdiction due to the non-compliance by Buyer with any Applicable Laws, Environmental Law or Governmental Approvals with respect to Buyer's actions from and after the Point of Interconnection, Buyer shall indemnify and hold harmless Seller against any and all losses, liabilities, damages and claims suffered

or incurred because of the failure of Buyer to comply therewith, subject to refund in the event that Buyer or Seller prevails in any Contest described below. Buyer shall also reimburse Seller for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Seller in connection with such losses, liabilities, damages and claims.

9.5.3 Either Party shall, upon written notice to the other Party, have the right to reasonably Contest in the name of either or both Parties, as required, or to require the other Party to reasonably Contest, the assessment of such fines, penalties or costs and such contesting Party shall be responsible for any costs and expenses (including the costs and expenses of the other Party) relating to such Contest.

#### 9.6 Limitations of Liability, Remedies, and Damages.

9.6.0 Each Party acknowledges and agrees that in no event shall any partner, shareholder, member, manager, owner, officer, director, employee, or any Affiliate of either Party that is not expressly subject to and has not expressly assumed or been assigned duties or obligations under this Agreement be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party and the sole recourse for payment or performance of the obligations under this Agreement shall be against Seller or Buyer and each of their respective assets and not against any other entity, except for such liability as is expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

9.6.1 If an express remedy or measure of damages is set forth in this Agreement with respect to a particular matter, then such remedy or measure of damages shall be the sole and exclusive remedy with respect to such matter. Each Party's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity for the same damage or injury are waived.

9.6.2 IN NO EVENT SHALL SELLER OR BUYER OR THEIR RESPECTIVE SUBCONTRACTORS, VENDORS OR ANY TIER OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR AFFILIATE BE LIABLE FOR ANY EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE ARISING AT ANY TIME FOR ANY REASON ARISING OUT OF THIS AGREEMENT OR THE BREACH THEREOF, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PROFESSIONAL LIABILITY, CONTRIBUTION, WARRANTY, OR OTHERWISE, INCLUDING LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, SERVICE INTERRUPTIONS, COST OF PURCHASED OR REPLACEMENT POWER, CLAIMS OF CUSTOMERS, OR LOSS OF USE OF CAPITAL OR REVENUE THE REMEDIES AVAILABLE TO SELLER AND BUYER IN CONNECTION HERewith

WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY, OR OTHERWISE SHALL BE EXCLUSIVELY THOSE EXPRESSLY SET FORTH HEREIN. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL LIMIT AMOUNTS RECOVERABLE AS THIRD-PARTY INDEMNITY OBLIGATIONS UNDER Article 9. THIS SECTION SHALL NOT BAR THE RECOVERY BY SELLER OF THE VALUE OF LOST PTCs OR ITC RESULTING FROM THE CURTAILMENT OF SELLER'S PROJECT OR A TERMINATION OF THIS AGREEMENT FOR A BUYER EVENT OF DEFAULT.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE OR OTHERWISE OBTAINING AN ADEQUATE REMEDY WOULD BE INCONVENIENT, AND THE DAMAGES PROVIDED FOR BY THIS AGREEMENT ARE NOT PENALTIES AND CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS ANTICIPATED TO BE SUFFERED AND SUCH PAYMENTS SHALL BE PAID IN ACCORDANCE WITH THE CIRCUMSTANCES CONTEMPLATED BY THIS AGREEMENT REGARDLESS OF THIS AMOUNT OF LOSSES AND DAMAGES ACTUALLY SUSTAINED.

- 9.6.3 Except as provided in Section 6.8.3 and as may be mutually agreed upon in the Scheduling Coordinator Services Agreement, the Parties acknowledge and agree that, Seller's inaccurate expected outage schedules or durations or estimates of availability of Seller's Project, even if the inaccurate expected outage schedule or duration is caused, in whole or in part, by Seller's negligence, do not constitute a Seller Event of Default nor shall Seller have otherwise any liability to Buyer hereunder for damages caused by such inaccuracies.
- 9.6.4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN THE PERIOD PRIOR TO THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE FINANCIAL LIABILITY FOR DELAY DAMAGES AND ANY OTHER DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE DEVELOPMENT PERIOD SECURITY (WHETHER SUCH DAMAGES ARE ASSERTED IN CONTRACT, IN WARRANTY, IN TORT (OTHER THAN FRAUD), BY STATUTE OR OTHERWISE).
- 9.6.5 No Implied Warranties. UNLESS EXPRESSLY SET FORTH IN THIS AGREEMENT, THERE ARE NO WARRANTIES, WHETHER IMPLIED, STATUTORY, AT LAW OR IN EQUITY, WHETHER ORAL OR WRITTEN, AND WHETHER ARISING FROM CUSTOM OR TRADE OTHERWISE INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.7 System Casualty.

9.7.0 If Seller's Project suffers material damage or is destroyed, Seller shall promptly notify Buyer and thereafter provide Buyer with a report of the damage or destruction, Seller's estimate of the extent of the damage or destruction and its effect on Generation Output and Associated Capacity.

9.7.1 Provided that the damage is not a result of a Buyer Event of Default, Buyer's gross negligence or willful misconduct,



The Parties rights, obligations and liabilities pursuant to this Section 9.7.1, shall be subject, and subordinate to, the rights of Seller's Financing Parties and Tax Equity Investors.

9.7.2 Seller shall have the right to terminate this Agreement and shall not have any obligation to repair and restore Seller's Project if it is destroyed or damaged as a result of a Buyer Event of Default or by Buyer's gross negligence or willful misconduct.

9.8 Survival. Article 9 shall survive the termination or expiration of this Agreement.

**ARTICLE 10  
INSURANCE**

10.1 Required Coverage. Seller, at its own expense, must procure, prior to the commencement of any physical construction at the Site, and must maintain in force throughout the period of this Agreement the following minimum insurance coverages that are placed with an insurer that has an A.M. Best rating of A- VII or better or with a S&P rating of A or better (or an equivalent rating by a nationally recognized financial rating agency of similar standing) or otherwise acceptable to the Buyer:

10.1.0 If Seller has one or more employees, workers' compensation insurance providing statutory benefits in accordance with the laws and regulations of the State of Michigan;

- 10.1.1 If Seller has one or more employees, employer's liability of not less than five hundred thousand dollars (\$500,000) for each accident;
- 10.1.2 Commercial general liability insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for sudden and accidental pollution to the extent normally available and punitive damages to the extent normally available, and a cross liability endorsement, with minimum limits of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, and two million dollars (\$2,000,000) products/completed operations aggregate (general liability and general aggregate limits are to be on a "Per Project/Per Location" basis);
- 10.1.3 Comprehensive automobile liability insurance for coverage of, as applicable, owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of one million dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage; and
- 10.1.4 Umbrella/excess liability insurance at a minimum of twenty million dollars (\$20,000,000) per occurrence and in the aggregate; provided,

if any insurance required to be maintained by Seller hereunder ceases to be available in the commercial insurance market, Seller shall provide written notice to Buyer and Seller shall use every Commercially Reasonable effort to obtain other insurance that would provide comparable coverages and protection against the risk to be insured.

- 10.2 Additional Insured. The commercial general liability insurance, comprehensive automobile insurance, and umbrella/excess liability insurance policies shall name Buyer, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants, and employees ("**Other Party Group**") as additional insureds. Seller shall deliver to Buyer in accordance with Section 10.4, an insurance certificate evidencing the required coverage, limits, and additional insured provisions as required by this Agreement. All policies required under this Article 10 shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group, insurance coverage shall be primary and non-contributory, and provide thirty (30) days advance written notice to Buyer prior to anniversary date of cancellation or material change in coverage or policy condition, with the exception of ten (10) days' advance written notice for nonpayment of premiums. For purposes of this section, material change is considered to be any modification or reduction in coverage that would cause Seller's insurance policies to be out of compliance with the terms of this Article 10. To the extent endorsement of the required policies to provide such written notice of cancellation or material change is not commercially available, Seller shall be obligated to provide written notice of cancellation

or material change to Buyer. The insurance certificate shall indicate, if applicable, that the required notice will be sent to Buyer in conformance with this Section 10.2.

- 10.3 Continuing Coverage. The commercial general liability insurance and comprehensive automobile liability insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- 10.4 Proof of Insurance. Upon commencement of construction at the Site, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Seller shall provide certification of all insurance required in this Agreement, executed by the insurer or by an authorized representative.
- 10.5 Seller shall provide sixty (60) days' notice prior to making any changes to existing insurance coverage and should provide new certificates of insurance that comply with the requirements of this Article 10.
- 10.6 Commercial Availability of Insurance. If any insurance required to be maintained by Seller hereunder ceases to be available in the commercial insurance market, Seller shall provide written notice to Buyer and Seller shall use every Commercially Reasonable effort to obtain other insurance that would provide comparable coverages and protection against the risk to be insured.
- 10.7 Lapse in Insurance Coverage. Subject to Section 10.6, Seller's failure to maintain required insurance coverage or makes a change to its insurance coverage that does not satisfy the terms of this Agreement shall be deemed a Seller Event of Default after notice and a thirty (30) day cure period in accordance with Section 8.1.1(iv) and Buyer may, upon prior notice to Seller, procure the required insurance coverage at Buyers expense to be recovered as an offset to any amount owed by Buyer to Seller. Seller shall promptly give Buyer notice of Seller's failure to maintain required insurance coverage and of any change to its insurance coverage that does not satisfy the terms of this Agreement.

## **ARTICLE 11 NOTICES**

- 11.1 Any notice provided for in this Agreement, or served, given or made in connection with this Agreement, shall be in writing and shall be deemed properly served, given or made, if delivered in person or sent by facsimile, courier service, email, or registered, first class certified U.S. mail, postage prepaid, addressed to the intended recipient at the address set forth below; provided, that any notice delivered in accordance with the preceding sentence in a manner other than by email shall at all times also be delivered by email. Telephone conversations do not constitute notice under this Agreement. The contact information of a Party set forth below may be updated upon delivery of written notice to the other Party and is effective upon confirmation of receipt.

To Seller	To Buyer
<p><u>Contract Notices:</u>  Copper Country Power I  Attention: Manager  101 West Big Beaver Road, Suite 1400  Troy, Michigan 48084  [REDACTED]</p> <p><u>With a Copy to:</u>  [REDACTED]</p>	<p><u>Contract Notices:</u>  Upper Peninsula Power Company  Attention: Gradon Haehnel  1002 Harbor Hills Drive  Marquette, MI 49855  Phone: (906) 232-1400  Email:  ghaehnel@uppc.com</p> <p><u>With a Copy to:</u>  Miller, Canfield, Paddock, and Stone,  P.L.C  Attention Paul M. Collins  120 N. Washington Square, Suite 900  Lansing, Michigan 48910  Phone: (517) 483-4908  Email: collinsp@millercanfield.com</p>
	<p><u>Scheduling Notices:</u>  Upper Peninsula Power Company  Attention: System Operations  500 North Washington St.  Ishpeming, MI 49849  Phone: (906) 485-2800  Email: <a href="mailto:sysops@uppc.com">sysops@uppc.com</a></p>

**ARTICLE 12  
ASSIGNMENT AND OWNERSHIP**

- 12.1 Assignment Prohibited. Neither Party shall either voluntarily or by operation of law assign or transfer its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, except that:
- 12.1.0 Seller’s consent shall not be required for a Buyer assignment in connection with a merger, consolidation, sale, corporate reorganization, or similar transaction involving substantially all of the assets of Buyer.
  - 12.1.1 Buyer’s consent shall not be required, upon notice to Buyer, for Seller to assign, transfer, pledge, or encumber this Agreement or any revenues or proceeds to any Financing Party or as collateral for the financing with respect to the development, construction, or operation of Seller’s Project.
  - 12.1.2 Buyer’s consent shall not be required for Seller to enter into any Tax Equity Transactions with any Tax Equity Investor and Buyer shall take all actions necessary to accommodate such a transaction.

12.1.3 Buyer's consent shall not be required for Seller to transfer or assign this Agreement or its rights and obligations hereunder with respect to:

- (a) any exercise by a Financing Party of its rights and remedies under the Financing Documents;
- (b) any exercise by a Tax Equity Investor of its rights and remedies under the transaction documents for a Tax Equity Transaction;
- (c) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of Seller's Project; and/or
- (d) (i) any Person succeeding to all or substantially all of the assets of the Seller with equal or greater creditworthiness or (ii) an Affiliate with equal or greater creditworthiness; provided, that in each case, such transferee or assignee shall provide Buyer with a copy of the assignment or transfer document and shall have provided the applicable Default Security in accordance with this Agreement; and, provided, further, that any transferee or assignee or Seller shall have, through its own employees or through a contract with a Qualified Operator.

12.1.4 Buyer's consent shall not be required for a change in control, provided that Seller retains ownership of Seller's Project.

If consent for any assignment is required, such consent will not be unreasonably withheld, delayed, or conditioned.

12.2 Financing Party and Tax Equity Investor Provisions. Buyer shall provide such consents to collateral assignment, certifications, representations, estoppels, information, or other documents, as may be reasonably requested by Seller in connection with a transaction involving or relating to the Financing Documents ("**Lender Consent**") or a Tax Equity Transaction ("**Tax Equity Investor Consent**"), provided, however, that in providing a Lender Consent or Tax Equity Investor Consent, Buyer shall have no obligation to modify the terms of this Agreement.

Seller shall reimburse, or shall cause the Financing Party to reimburse, Buyer for the direct expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution, and/or delivery of each Lender Consent or Tax Equity Investor Consent, respectively, and any documents requested by Seller, the Financing Party or the Tax Equity Investor, pursuant to this Section 12.2.

Buyer will make reasonable efforts to accommodate Seller's request that Buyer execute consent agreements and to execute certifications, representations and supply information for the purpose of assisting Seller in obtaining financing for Seller's Project; provided, however, that in responding to any such request, Buyer is not obligated to provide any consent or enter into any agreement that adversely affects Buyer's rights, benefits, risks or

obligations under this Agreement. Routine and Commercially Reasonable requests from Seller's Tax Equity Investor and Financing Party will be deemed not to adversely affect Buyer's rights, benefits, risks or obligations under this Agreement. Seller is responsible for all reasonable cost and expense associated with Buyer's efforts under this Section 12.2.

12.3 [Reserved.]

12.4 Assumption of Liabilities. No assignment by Seller shall be effective, notwithstanding Buyer's consent thereto, unless the assignee under such assignment agrees in writing to unconditionally assume all of the duties, liabilities, and obligations of Seller under this Agreement.

12.5 Obligations to Assignee. No assignment shall be effective, notwithstanding consent thereto, to the extent that such assignment purports to extend, increase, or otherwise alter the obligations of the non-assigning Party under this Agreement, other than the substitution of the assignee for the assigning Party.

12.6 Validity. Any attempted or purported assignment, assumption, or transfer by a Party made other than in accordance with this Article 12, whether made voluntarily or by operation of law, shall be void and of no effect.

12.7 10-Year Purchase Option.

12.7.1 At the conclusion of the tenth (10<sup>th</sup>) Contract Year, so long as Buyer is not a defaulting Party, Buyer shall have the option to purchase Seller's Project assets or all of the issued and outstanding membership interests in Seller (the "**Target**") for the Purchase Price as of the last day of the tenth (10<sup>th</sup>) Contract Year (the "**Option**").

- (i) To exercise the Option, not less than one hundred eighty (180) days prior to the last day of the tenth (10<sup>th</sup>) Contract Year, Buyer shall provide written notice to Seller of Buyer's intent to exercise such option ("**Option Notice**"). Upon the Option Notice, Seller shall cooperate, and cause its employees, contractors, and consultants to cooperate, with Buyer in the implementation of the Option.
- (ii) Buyer acknowledges and agrees that its exercise of the Option is subject to the following conditions ("**Option Conditions**"): (A) receipt of required Regulatory Approvals, and (B) the negotiation and execution of a mutually acceptable at, Buyer's option, asset purchase agreement or membership interest purchase agreement as ("**Purchase Agreement**"), as necessary to enable Buyer's acquisition of the Target, and other mutually acceptable ancillary agreements necessary for a transfer of ownership of the Target to Buyer. The Purchase Agreement shall: (1) provide that Buyer's purchase is on an "as is, where is" basis, with Seller only providing representations and warranties that are considered "fundamental representations" and (2) include such other terms and conditions that are in the normal course for the

purchase of operating solar projects or limited liability companies that own an operating solar project.

12.7.2 Determination of the Purchase Price. The “**Purchase Price**” shall be the higher of the Floor Price and the “**Fair Market Value**” of the Target. The Fair Market Value of the Target shall be determined as follows:

- (i) Within thirty (30) days of the Option Notice, Seller shall propose an independent appraiser with national experience and expertise in valuing solar photovoltaic generating facilities in the electric power industry (a “**Qualified Appraiser**”). The first Qualified Appraiser appointed by Seller (the “**First Appraiser**”) shall determine a fair market value for the Target. If Buyer does not dispute the determination of fair market value made by the First Appraiser, that determination shall be the Fair Market Value for the purposes of determining the Purchase Price. The cost of the appraisal completed by the First Appraiser shall be borne entirely by Buyer.
- (ii) If Buyer disputes the determination made by the First Appraiser, then Buyer will select a second Qualified Appraiser and the two appraisers will, in turn, select a third Qualified Appraiser (the “**Third Appraiser**”). The Third Appraiser shall determine a fair market value for the Target which, in the absence of fraud or manifest error, shall be the Fair Market Value for the purposes of determining the Purchase Price.
- (iii) The First Appraiser and the Third Appraiser shall each act reasonably and in good faith to determine the fair market value of the Target and shall set forth such determination in a written opinion delivered to the Parties within thirty (30) days of being engaged by the Parties.
- (iv) The costs of the appraisal by the Third Appraiser and the process for selecting the Third Appraiser pursuant to Section 12.7.2(ii) (“**Third Appraiser Costs**”) shall be borne by Buyer, if the fair market value determined by the Third Appraiser is equal to or greater than the fair market value determined by the First Appraiser pursuant to Section 12.7.2(i). The Third Appraiser Costs shall be borne by Seller, if the fair market value determined by the Third Appraiser is less than the fair market value determined by the First Appraiser pursuant to Section 12.7.2(i).

12.7.3 Purchase Option Due Diligence. Within thirty (30) days following Buyer’s Option Notice, Seller shall provide Buyer with access to an electronic data room containing: (i) operations and maintenance logs; (ii) copies of any and all contracts associated with operating and maintaining Seller’s Project; (iii) all contracts providing Seller with real property rights with respect to Seller’s

Project; (iv) all interconnection agreements; (v) copies of any extended warranties; (vi) documentation on any liens on Seller's Project assets; (vii) any formal notices of dispute from third parties or notices of non-compliance with Applicable Law from Governmental Agencies; (viii) any previously completed environmental reports, including but not limited to any Phase I Environmental Site Assessment, Phase II Environmental Site Assessment, Baseline Environmental Assessment, Documentation of Due Care Compliance, Response Activity Plan or similar, and (ix) any other documentation that is reasonably material to Seller's Project's value as an operating project. Buyer shall have sixty (60) days after it obtains access to the data room to review the documentation in the data room, request reasonable additional information concerning Seller's Project, and complete its due diligence.

- (1) Within one hundred twenty (120) days following Buyer's Option Notice, Buyer may conduct, at Buyer's sole expense, any and all environmental, geotechnical and other physical due diligence regarding the Site reasonably required or desired by Buyer in order to satisfy itself in all respects with the physical condition thereof, including any and all inspections and assessments (the "**Physical Inspection**") Buyer shall provide to Seller final drafts of any and all reports, assessments, analysis, environmental site assessments, summaries and other materials, including but not limited to sample results, boring logs, survey results, and any other underlying data, provided by or for Buyer in connection with, or otherwise pertaining to, such Physical Inspection. Seller shall grant Buyer access for the purpose of performing the Physical Inspection at a Commercially Reasonable time.

#### 12.7.4 Closing, Withdrawal of the Option Notice.

- (i) Buyer may withdraw an Option Notice pursuant to Section 12.7.1, (A) at any time within ninety (90) days of issuance of the Option Notice, for any reason; and (B) at any time within one hundred eighty (180) days due to reasonably unsatisfactory environmental conditions identified during its due diligence.
- (ii) Buyer shall have a period of twenty (20) days following the later of (A) Buyer's acceptance of the Fair Market Value specified by the First Appraiser pursuant to Section 12.7.2(i) and (B) issuance of the Fair Market Value specified by the Third Appraiser (should the fair market value specified by the First Appraiser not be accepted) pursuant to Section 12.7.2(ii), to confirm or retract in writing its Option Notice. Buyer's failure to confirm its Option Notice in a timely manner shall be deemed retraction of its Option Notice.
- (iii) In the event Buyer confirms in writing its Option Notice, (A) Buyer shall seek to obtain any Regulatory Approvals required in connection with its purchase of the Target within ninety (90) days of such confirmation, and (B) within twenty (20) Business Days of

receipt of all such Regulatory Approvals, the Parties shall cause the closing to occur: (1) Buyer shall pay the Purchase Price to Seller and execute all ancillary agreements necessary to effectuate the closing on the purchase of the Target; and (2) Seller shall execute and deliver all ancillary agreements necessary to effectuate the closing on the purchase of the Target.

- (iv) In the event Buyer withdraws its Option Notice or is deemed to have done so, or the Option Conditions are not satisfied or waived by Seller as of the intended closing date, or the purchase fails to close within two hundred ten (210) days of Buyer's written confirmation of its Option Notice, Buyer's Option shall terminate and be of no further force and effect.

12.8 Title Transfer; Warranties; Manuals. Seller shall transfer good title to Seller's Project to Buyer upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to affect such transfer. Seller's Project will be sold "as is, where is, with all faults". Seller will assign to Buyer any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning Seller's Project (other than as to title). Seller shall also provide Buyer all Seller's Project operation and maintenance manuals and logs in Seller's possession and provide Buyer basic training on the operation and maintenance of Seller's Project upon Buyer's reasonable request. Upon purchase of Seller's Project, Buyer shall assume complete responsibility for the operation and maintenance of Seller's Project and liability for the performance of (and risk of loss for) Seller's Project, and, except for any Seller obligations that survive termination as identified herein. Seller will have no further liabilities or obligations hereunder for Seller's Project or under this Agreement.

## **ARTICLE 13**

### **TAXES**

13.1 Taxes. All taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any Governmental Agency (collectively, "**Taxes**") on or with respect to Seller's Project, the Site, the construction, ownership, leasing, operation, and maintenance of Seller's Project and/or the Site, and the production of Energy prior to the Point of Interconnection are the responsibility of and shall be paid by Seller. Buyer shall pay or cause to be paid all Taxes on or with respect to the Energy purchased by Buyer at and after the Point of Interconnection. Any sales, production, or excise Taxes attributable to the Energy purchased by Buyer from Seller's Project up to the Point of Interconnection, including but not limited to ad valorem Taxes, that are levied against Buyer shall be reimbursed by Seller (unless otherwise required by Applicable Law). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall reimburse the Party that paid such Taxes. Such reimbursement shall be made by the responsible Party on or before sixty (60) days after (i) the responsible Party receives an invoice for such Taxes, or (ii) such Taxes are actually paid and proof of payment is furnished to the responsible Party, whichever is earlier.

- 13.2 Tax Credits and Incentives. Provided Buyer has not exercised its option to purchase pursuant to Section 12.7 of this Agreement, Seller shall be entitled to all: (i) federal and state production tax credits (including Production Tax Credits), investment tax attributes (including investment credits and energy credits under Code sections 46 and 48, respectively), and any other tax credits which are or will be generated by Seller's Project due to Seller's Project's prime mover, and (ii) any cash payments or grants of money relating in any way to the development, construction, or operation of Seller's Project. Buyer is not obligated to Seller if Seller's Project does not qualify for any of the tax credits or incentives described in this Section 13.2.
- 13.3 Provision of Information. The Parties may provide information concerning Seller's Project to any requesting taxing authority.
- 13.4 Cooperation.
- 13.4.0 The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. In the event that, at any time during the Term, (a) MISO or the MISO Tariff is changed or if an applicable regional reliability council issues a directive, rule or regulation that materially adversely affects Seller or Buyer so that the benefits and burdens of this Agreement are no longer as contemplated by the original intentions of the Parties, the Parties shall use their Commercially Reasonable efforts to reform this Agreement in order to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits and burdens to each Party while maintaining the economic bargain of the original Agreement; provided, however, that no Party is obligated to agree to a change in price; and (b) changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.
- 13.4.1 Seller and Buyer shall use Commercially Reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize Taxes, so long as neither Party is materially adversely affected by such efforts.

## **ARTICLE 14**

### **FORCE MAJEURE**

- 14.1 Force Majeure. The term "*Force Majeure*" or "*Force Majeure Event*" means an event or circumstance that prevents or delays a Party from performing its obligations under this Agreement, which event or circumstance (i) was not anticipated as of the Effective Date, (ii) is not within the reasonable control of, or the result of the fault or negligence of, the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided, including (1) acts of God; (2) sudden actions of the elements, such as landslide, lightning, ice storms, earthquake, storm, hurricane, flood, drought, tornado, hail, dust storm, wind storm, pandemic, pestilence, or other natural disasters; (3) fire, explosion, sabotage, vandalism beyond that which could reasonably be

prevented by the Party; terrorism, war, riots, blockages, insurrection; (4) restraint by court order or other Governmental Agency (provided, that such restraint is of a general nature and not specific to Seller's Project, this Agreement or the claiming Party and does not arise from any action or inaction of the Party claiming the Force Majeure that is in contravention of this Agreement or is otherwise in violation of any Applicable Law); (5) delay in interconnection of Seller's Project; provided, such delay does not arise from any action or inaction of the Party claiming Force Majeure; and (6) the adoption of or change in any taxes or tariffs imposed by a Governmental Agency following the Effective Date, but only if such adoption or change makes performance impossible even with the passing of time or otherwise unlawful. Force Majeure shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this Agreement; (b) acts or omissions of a third party (not under contract to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure as defined herein); (d) changes in market conditions; (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions; or (f) failure to meet any milestone listed in Section 5.2 that does not result from a Force Majeure Event.

- 14.2 Exclusions. Notwithstanding anything in this Agreement to the contrary, Force Majeure Events do not include: changes in market conditions or changes in the availability or the lack of funds or Seller's Project financing; the inability or failure of Seller to arrange for, acquire, or procure transmission services; any waiting period or other period of time that is usual and necessary in connection with any Governmental Agency action; inclement weather affecting construction, start-up, operation, or decommissioning of Seller's Project that is within the normal course for Site; and the unavailability of equipment, repairs, or spare parts for Seller's Project, except to the extent due to an independent Force Majeure Event.
- 14.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the event shall, as soon as practicable, but no later than ten (10) days after learning of the occurrence of the event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance. A Party failing to deliver notice of a Force Majeure Event within the ten (10) day period does not preclude such Party from claiming Force Majeure thereunder, but no extension of time to perform shall be granted for any period in which the Party failed to provide notice after such ten (10) day period.
- 14.4 Performance. The performance of any obligation required hereunder shall be excused, in whole or in part, during the continuation of any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof. Prior to the Commercial Operation Date, the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended on a day-for-day basis. For each day that performance is delayed. Each Party suffering a Force Majeure Event shall take, or cause to be taken, all Commercially Reasonable action as may be necessary to

overcome or mitigate the effects of any Force Majeure Event and to resume performance hereunder as soon as practicable under the circumstances.

- 14.5 Limitation on Effect of Force Majeure. In no event will any delay or failure of performance caused by any Force Majeure Event extend this Agreement beyond its stated Term. If the Party affected by the Force Majeure Event is unable to satisfy its obligations under this Agreement for a continuous period of three hundred sixty-five (365) days after the occurrence of the Force Majeure Event, the unaffected Party may terminate this Agreement, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; provided. If Buyer terminates this Agreement pursuant to this Section 14.5, then Buyer shall promptly release all outstanding Default Security except an amount equal to outstanding costs and balances incurred prior to the effective date of such termination, which retained Default Security Buyer shall promptly release upon satisfaction of such costs and balances.

## **ARTICLE 15 CONFIDENTIALITY**

- 15.1 Confidential Information. The Parties may develop certain information, processes, know-how, techniques, and procedures concerning Seller's Project, that the Parties consider confidential and proprietary (and marked as such), and may disclose to each other certain information and data (the "***Confidential Information***"). The Parties expressly agree that this Agreement and any information regarding production from Seller's Project is Confidential Information; provided, the existence of this Agreement itself shall not be Confidential Information. Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "***Disclosing Party***") may make such Confidential Information available to the other (each, a "***Receiving Party***") subject to the provisions of this Article 15.
- 15.2 Non-Disclosure of Confidential Information. Upon receiving Confidential Information, the Receiving Party shall:
- 15.2.0 Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except Financing Parties and those parties permitted by Section 15.2.1, as required by Applicable Law or upon request of a Governmental Agency, subject to the restrictions set forth herein;
- 15.2.1 Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation, or maintenance of Seller's Project or the purposes of this Agreement; and
- 15.2.2 Use such Confidential Information solely for the development, construction, operation, or maintenance of Seller's Project or for the purposes of this Agreement.
- 15.3 Exclusions. The restrictions of this Article 15 do not apply to:

- 15.3.0 Release of Confidential Information to a Governmental Agency required for obtaining any approval, making any required filing or to the Commission as set forth in Article 17;
- 15.3.1 Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;
- 15.3.2 Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, provided that the Person or Persons developing such information have not had access to any Confidential Information;
- 15.3.3 Information which is received from a third party which has not received the information subject to any confidentiality restrictions or in violation of the any confidentiality obligation to the non-disclosing Party; and
- 15.3.4 Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law; provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

Notwithstanding the foregoing, Seller may disclose Confidential Information to equity investors (including tax equity investors), lenders, other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them.

- 15.4 Publicity. In no way limiting the foregoing, neither Party shall issue a press or publicity release without the prior written approval of the other Party. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain Governmental Approvals relating to Seller's Project, by Applicable Law or as are necessary in order to fulfill such Party's obligations under this Agreement.
- 15.5 Survival. The obligations of the Parties under this Article 15 shall survive the expiration or termination of this Agreement.

## **ARTICLE 16 GENERAL PROVISIONS**

- 16.1 Disputes.
  - 16.1.1 Invoice Disputes. In the event of a dispute regarding an invoice, Buyer shall pay the undisputed amount to Seller pursuant to the terms of this Agreement and Buyer shall further notify Seller of the amount(s) in dispute and the basis for the dispute. Any billing dispute shall be governed by the terms of Section 16.1.2. When the billing dispute has been resolved, Buyer shall pay the amount owed

within ten (10) Business Days of the date of such resolution and such payment shall include interest calculated based on the number of days past since the original due date applied to the Interest Rate.

16.1.2 Dispute Resolution. With the exception of a dispute arising under Sections 8.1.1(i) or 8.2.1(i), when a dispute has arisen and negotiations between the Parties have reached an impasse, either Party may give the other Party written notice of the dispute. In the event such notice is given, the parties shall attempt to resolve the dispute promptly by negotiations between representatives who have authority to settle the controversy and who are at a higher level of management than the Persons with direct responsibility for the matter. Within ten (10) Business Days after delivery of the notice, the receiving Party shall submit to the other a written response. Thereafter, the representatives shall confer in person or by telephone promptly to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored.

If the dispute has not been resolved by negotiation between the representatives within thirty (30) days of the notice, or if the parties have failed to confer within twenty (20) days after delivery of the notice, the parties shall endeavor to settle the dispute by non-binding mediation. The mediation shall consist of both parties agreeing to one neutral mediator, providing the mediator with simultaneous, non-shared written position statements, and daylong mediation at the chosen mediator's desired location.

Should the mediation not lead to settlement of the dispute, then either Party may proceed to a court of competent jurisdiction. All negotiations and proceedings pursuant to this process are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by Applicable Law. The Party requesting the mediation shall pay the costs of the mediation. The Parties shall each bear their own attorney costs and fees.

16.2 Time Bar. If a notice of dispute has not been issued within fifteen (15) months following the occurrence of events or circumstances giving rise to the dispute (regardless of the actual knowledge of either Party of such events and circumstances), all claims related to such dispute (including any allegations of billing errors) shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

16.3 Governing Law and Venue.

16.3.0 This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan, as applicable, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

16.3.1 Venue for any claim or action arising from this Agreement shall be resolved in federal or state courts of competent jurisdiction situated within the State of Michigan.

- 16.3.2 Subject to the exceptions set forth in Section 16.1.2, Seller and Buyer each hereby knowingly, voluntarily, and intentionally waive any rights they may have to a trial by jury in respect of any dispute based hereon, or arising out of, under, or in connection with, this Agreement or any course of conduct, course of dealing, statements (whether oral or written), or actions of Seller and Buyer related hereto and expressly agree to have any disputes be adjudicated by a judge of the court having jurisdiction, without a jury.
- 16.4 Governmental Approvals.
- 16.4.0 Buyer shall secure and maintain, at no cost to Seller, all Regulatory Approvals, permits, licenses, easements, rights of way, releases and other approvals necessary for the performance by Buyer of its obligations hereunder.
- 16.4.1 Copies of all Governmental Approvals obtained by Seller for the operation of Seller's Project shall be provided to Buyer upon request or as specifically required under this Agreement.
- 16.5 Entire Agreement. This Agreement, including all exhibits hereto, constitutes the entire understanding between the Parties and supersedes any and all previous understandings or agreements between the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 16.6 No Third-Party Beneficiaries; No Dedication to Public Use. Nothing in this Agreement shall be construed to create any rights in, or grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or understanding established under this Agreement. Neither Party, by this Agreement, dedicates any part of Seller's Project to the public or to the service provided under this Agreement, nor does this Agreement affect the status of Buyer as an independent public utility corporation, or Seller as an individual or entity.
- 16.7 Set-off Rights. Seller shall be permitted to set off against any payments due and payable by Seller to Buyer hereunder the amount of any undisputed unpaid payments by Buyer to Seller hereunder, and Buyer shall be permitted to set off against any payments due and payable by Buyer to Seller hereunder the amount of any undisputed unpaid payments by Seller to Buyer hereunder.
- 16.8 Several Liability. Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective.
- 16.9 No Partnership. Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or to impose any partnership obligation or liability on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

- 16.10 Electric Service. If Seller requires any services at Seller's Project, Seller shall receive such service in accordance with the appropriate service provider's electrical tariffs as existing or, as may be established from time to time and, on file with and authorized by the Commission.
- 16.11 [Reserved].
- 16.12 Modification or Amendment. No modification, amendment, or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by both Parties.
- 16.13 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstance is held to be illegal, invalid, or unenforceable under any present or future Applicable Law or by any Governmental Agency, (i) such term or provision shall be fully severable, (ii) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance here from and (iv) the Parties shall negotiate in good faith to enter into such modifications of this Agreement as may be necessary to preserve the economic and other benefits of this Agreement to the affected Party to the greatest extent possible and permissible.
- 16.14 Survival. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation. In addition to those provisions of this Agreement that expressly survive termination of this Agreement, provided, (i) any obligations of a Party to pay another Party and any other obligations of a Party the performance of which was required prior to termination of this Agreement, (ii) the confidentiality provisions of Article 15, (iii) Article 9, and (iv) the provisions of Article 16 the survival of which are necessary to address any disputes between the Parties, shall survive a termination of this Agreement.
- 16.15 [Reserved].
- 16.16 Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.
- 16.17 Captions. All indexes, titles, subject headings, Article titles, and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive, or to affect the meaning of the contents or scope of this Agreement.
- 16.18 Counterparts. This Agreement may be signed in counterparts each of which shall be an original and all of which together shall constitute one and the same instrument. The delivery of an executed counterpart by facsimile or electronic mail shall be deemed to be valid delivery thereof.
- 16.19 Rate Changes. The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term hereof. Neither Party shall seek (nor

support any third party seeking) any prospective or retroactive change to the rates or terms of service under this Agreement pursuant to Section 205, 206, or 306 of the Federal Power Act. The standard of review for changes to this Agreement whether proposed by a Party, a non-party, or FERC acting sea sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the “*Mobile-Sierra doctrine*”), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

- 16.20 Exhibits. This Agreement includes Exhibits A, B, C-1, C-2, D, E and F, which are attached, and incorporated by reference herein. Exhibits may from time to time be changed in writing upon mutual agreement of the Parties.
- 16.21 Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving Party. The failure of any Party to require the performance of any term or obligation of this Agreement or to exercise any right or remedy upon a breach thereof shall not constitute waiver of any such breach of any other covenant, duty, agreement, or condition and shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
- 16.22 Audit. Each Party shall have the right, at its sole expense and upon reasonable advance notice, during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made hereunder or to verify the other Party’s performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Energy delivered at the Point of Interconnection. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within fifteen (15) months after the date of such statement or payment.
- 16.23 Site and Seller’s Project Responsibility, Ownership and Operational Control. Buyer and Seller acknowledge that nothing in this Agreement shall constitute or be deemed to constitute an ownership interest or operational control over the Site or Seller’s Project by Buyer and that Buyer has no responsibility or liability for environmental conditions, site restoration, or premises liability for the Site or Seller’s Project.

## **ARTICLE 17**

### **REGULATION BY THE MICHIGAN PUBLIC SERVICE COMMISSION**

- 17.1 Notice of Disclosure. Seller acknowledges that Buyer, as a public utility, is subject to regulation by the Commission and that Buyer may be required to submit information, data, or documents regarding this Agreement, Seller, or Seller’s Project. Seller acknowledges that, notwithstanding anything herein to the contrary, after providing Seller with two (2) Business Days’ prior notice, Buyer may submit a copy of this Agreement and any other information related herewith to the Commission as part of

complying with any portion of a Commission request, order, or other regulatory proceeding; provided that, prior to submitting a copy of this Agreement or such other information to the Commission, Buyer shall make reasonable efforts to obtain a protective order for this Agreement and any such information or, if unable to obtain such protective order after use of reasonable efforts, work in good faith with Seller in preparing redacted copies of this Agreement, and any such information for submission.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Power Purchase Agreement to be executed on the date first written above.


**UPPER PENINSULA POWER COMPANY**

BY:  (Gradon Hachnel)

ITS: CEO

DATE: 05/21/2024

**COPPER COUNTRY POWER I, LLC**

BY:  (Jordan Roberts)

ITS: Manager

DATE: 5/22/2024

**Exhibit A: Detailed Description of Seller’s Project**

Seller’s Project will generate electricity using photovoltaic panels located at the Site, and includes Seller’s interconnection facilities and any and all additions, replacements or modifications, as more particularly described in this Exhibit A. Seller’s Project includes all real property rights with respect to the Site, all of the personal property located at the Site, any other assets and rights, and any other tangible or intangible interests with respect to the Groveland Mine Solar Project.

**A. Seller’s Project Information**

Developer Name	Circle Power Renewables LLC
Seller Name	Copper Country Power I, LLC
Location:	Former Groveland Mine & Surrounding Area
Township:	T42N T41N
Range:	R30W R29W
Section:	T42N R30W, Section 25 and 36 T42N R29W, Section 30, 31, and 32 T41N R29W, Section 5 and 6
County Name	Dickinson County
Nearest Community & Miles	Felch, 7 miles
Interconnection Queue Numbers	J1814 J2316

**B. Energy Generation Information**

Total Nameplate Capacity of Seller’s Project:	62.5 MW <sub>AC</sub>
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**C. Equipment to be Used in Seller’s Project**

Component	Manufacturer	Model and Number of Units
Panels	[REDACTED]	[REDACTED]
Inverters	[REDACTED]	[REDACTED]
Main Power Transformer	[REDACTED]	[REDACTED]

**D. Interconnection Facilities**

(Attach multiple sections if more than one substation is planned for Seller’s Project.)

Description

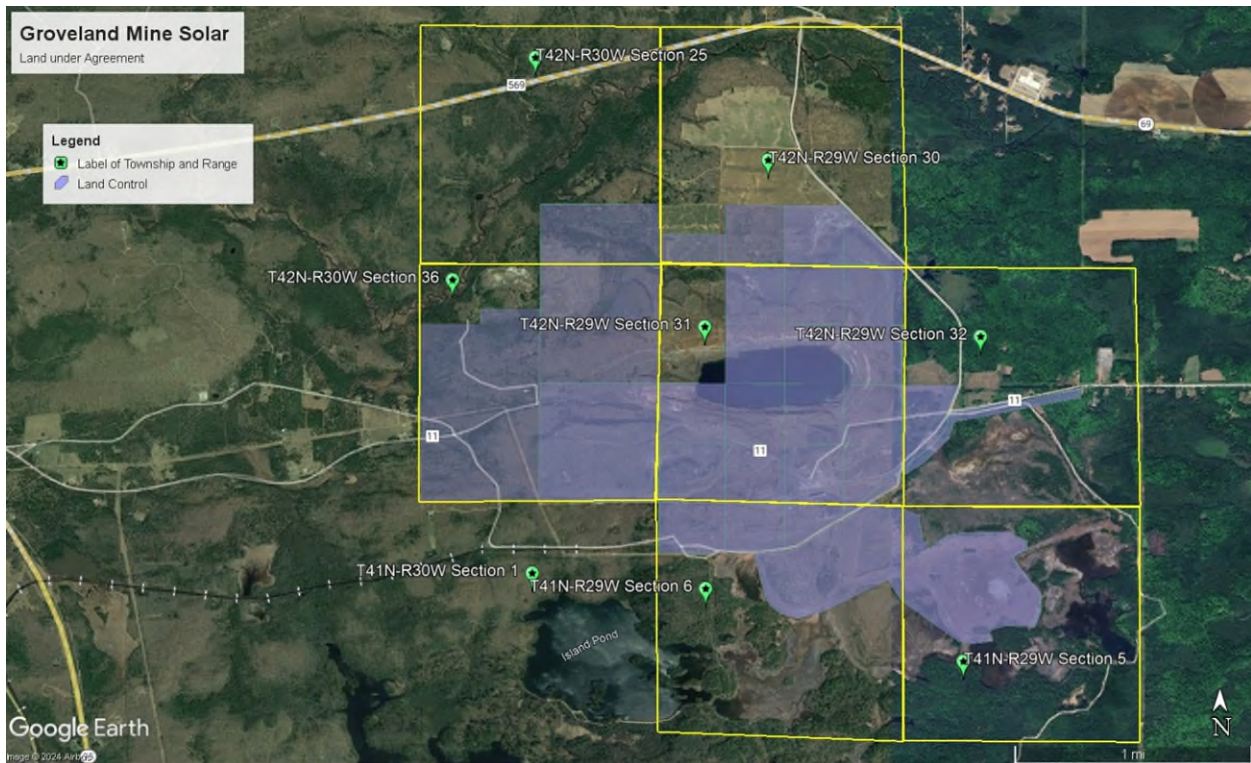
: as described in GIA

**E. Acknowledgement**

I solemnly affirm the foregoing are true to the best of my knowledge, information, and belief.

Signed: \_\_\_\_\_  
Print Name: [ ] \_\_\_\_\_  
Date: \_\_\_\_\_  
Seller's Project Name: [ ] \_\_\_\_\_  
Federal Tax ID: [ ] \_\_\_\_\_

*MAP OF SELLER'S PROJECT AREA*






**4. Seller's Project Developer Acknowledgement**

I solemnly affirm the contents of the foregoing are true to the best of my knowledge, information, and belief.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID: \_\_\_\_\_

**Exhibit C-1: Generation Interconnection Agreement (22.5 MW<sub>AC</sub>)**

Public version of J1814 GIA found in link below:

[https://cdn.misoenergy.org/ATC-Copper%20Country%20Power%20GIA%20J1814%20SA%204254%20Public%20CEII\\_PRIV%20Redacted632079.pdf](https://cdn.misoenergy.org/ATC-Copper%20Country%20Power%20GIA%20J1814%20SA%204254%20Public%20CEII_PRIV%20Redacted632079.pdf).

**Exhibit C-2: Generation Interconnection Agreement (Remaining Capacity)**

**[INSERT INTERCONNECTION AGREEMENT UPON EXECUTION]**

**Exhibit D: Form of Letter of Credit**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No: \_\_\_\_\_ Date of Issuance: \_\_\_\_\_  
Beneficiary: Upper Peninsula Power Initial Expiration Date: [Must be at least  
Company one year after date of issuance]  
Applicant:

As the Issuing Bank (“*Issuer*”), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this “*Letter of Credit*”) in favor of the above-named beneficiary (“*Beneficiary*”) for the account of the above-named applicant (“*Applicant*”) in the amount of US\$\_\_\_\_\_ (\_\_\_\_\_ U.S. Dollars).

This Letter of Credit is issued pursuant to the provisions of that certain Power Purchase Agreement, between Copper Country Power I, LLC and Beneficiary dated as of [ ], 20[ ] (as the same may have been or may be amended from time to time, the “*PPA*”).

Except as set forth below in connection with a Non-Renewal Notice (as defined below), Beneficiary may draw upon this Letter of Credit at any time and from time to time in an amount that is equal to or less than all amounts that are due and owing from Applicant to Beneficiary but have not been paid to Beneficiary within the time allowed for such payments under the PPA, including any and all cure periods. In accordance with this Letter of Credit, Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary’s draft(s) at sight in substantially the form attached hereto as Attachment “A” (“*Sight Draft*”), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signatory must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will affect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer’s own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer’s letterhead office, the office located at [ ] or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered or certified mail that it elects not to extend this Letter of Credit for such additional period (a “*Non-Renewal Notice*”). Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary’s address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer’s letterhead address.

If Applicant fails to provide a substitute form of Default Security (as defined in the PPA) meeting the requirements of the PPA within ten (10) Business Days after issuing the Non-Renewal Notice, then Beneficiary shall have the right, upon presentation of a Sight Draft to Issuer, to (i) immediately draw the full value of this Letter of Credit and (ii) retain such funds until satisfaction of Applicant's obligation to provide Default Security under the PPA.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall affect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Attachment "B." Such transfer will be affected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments, or agreements, or references in the PPA or any other documents, instruments, or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "*UCP*"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war, or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: \_\_\_\_\_  
Authorized Signature

**ATTACHMENT "A"**  
**TO LETTER OF CREDIT**  
**SIGHT DRAFT**

Draft Number \_\_\_\_\_  
\$ \_\_\_\_\_

Pursuant to that certain irrevocable Standby Letter of Credit No.: [ ] (the "Letter of Credit"), issued by [Name of Issuing Bank] (the "Issuing Bank"), in favor of [Name of Beneficiary] (the "Beneficiary") for the account of [Name of Applicant] ("Applicant"), the undersigned hereby requests that you, Issuing Bank, at sight, pay to the order of Beneficiary, the amount of USD\$( \_\_\_\_\_ and 00/100ths U.S. Dollars), such amount being equal to [or less than all amounts that, as of the date hereof, are due and owing from Applicant to Beneficiary but have not been paid to Beneficiary within the time allowed for such payments, including within any and all cure periods, under the PPA] [OR] [the full value of the Letter of Credit, in connection with a Non-Renewal Notice]<sup>1</sup>.

Value received and charged to the account of: [Name of Issuer and address]. Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No. \_\_\_\_\_.

Dated: Upper Peninsula Power Company

By: \_\_\_\_\_  
[name and title]

Account: [Applicant to be inserted]

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<sup>1</sup> Note: Beneficiary to select the reason for the particular Sight Draft.

**ATTACHMENT “B”**  
**TO LETTER OF CREDIT**  
**FORM OF TRANSFER REQUEST**

Irrevocable Standby Letter of Credit No. \_\_\_\_ (the “Letter of Credit”)

Current Beneficiary:

Applicant:

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To: [Name of Issuer] (“Issuer”)

The undersigned, as the current “Beneficiary” of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

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From and after the date this transfer request is delivered to Issuer, the transferee shall be the “Beneficiary” under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges, and benefits thereof.

Dated:

Upper Peninsula Power Company

By:

Name:

Title:

[Notary Acknowledgement]

To be signed by a natural person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity and acknowledged by a notary public.

## Exhibit E: Form of Acceptable Guaranty

### FORM OF GUARANTY

This Guaranty is executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_, a \_\_\_\_\_ (“Guarantor”), in favor of \_\_\_\_\_ in favor of Upper Peninsula Power Company, a Michigan corporation (“Company”), in connection with the performance by Copper Country Power I, LLC, a Delaware limited liability company (“Seller”) of a Power Purchase Agreement dated \_\_\_\_\_, 20\_\_\_\_ between Seller and Company (the “PPA”).

#### - RECITALS -

A. Seller is planning to construct, own, and operate a solar power electric generation facility having Expected Nameplate Capacity of approximately 62.5 MW<sub>AC</sub> to be located in Dickinson County (the “Seller’s Project”).

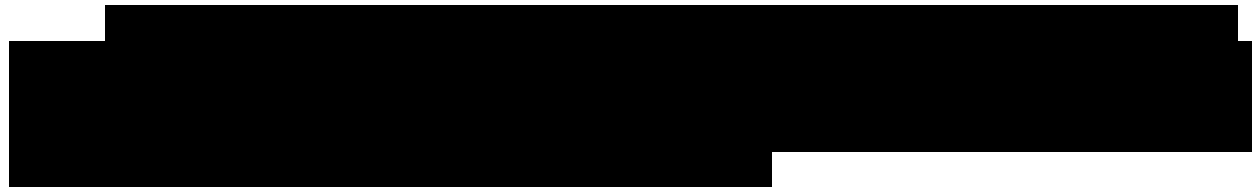
B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from Seller’s Project on the terms and conditions set forth therein.

Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the payment obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

#### - AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA (the “Obligations”). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.



3. Rights of Company. Guarantor hereby grants to Company, in Company’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time, in each case in accordance with the PPA:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall promptly, but in any case within five (5) days after receipt of written demand by Company (a) pay to Company an amount equal to any such amount up to the Capped Guaranty Amount and/or perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including reasonable, documented attorneys' fees) incurred by Company as a result thereof, all in accordance with the terms of this Guaranty and in such manner as Company may reasonably direct. Any demand for payment shall reasonably and briefly specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due, with a specific statement that Company is calling upon Guarantor to pay under this Guaranty. For the avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Company under the terms and conditions of the PPA.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert defenses relating to any or all of the following:

(a) subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

- (c) any defense based upon an election of remedies by Company;
- (d) any duty of Company to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;
- (f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or Seller's Project, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
- (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a [corporation], duly organized, validly existing, and in good standing under the laws of the state of its [incorporation]. Seller is a direct or indirect wholly owned subsidiary of Guarantor. Guarantor has all necessary [corporate] power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor hereby agrees to pay to Company, upon demand, and in addition to the maximum liability set forth in Section 3 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all reasonable, documented attorneys' fees and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Limitations.

(a) The obligation and liability of Guarantor under this Guaranty is specifically limited to payment in respect of the Obligations, subject to any and all rights, set-offs, offsets, claims, counterclaims, limitations, qualifications and other defenses, solely to the extent that each of the foregoing are available to Seller under the PPA, as may be applicable, other than as expressly waived by Guarantor pursuant to Sections 6 and 7 hereof.

(b) Guarantor has no obligation or liability to any Person relating to, arising out of or in connection with this Guaranty or the PPA, other than as expressly set forth herein and therein.

12. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

13. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

14. Successors and Assigns. Neither Guarantor nor Company may assign this Guaranty without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that in the event the Seller assigns its interest in accordance with the PPA, that Guarantor may assign this Guaranty, in whole or in part, to any Affiliate of such assignee, purchaser or transferee of the Seller that is an Acceptable Guarantor, which such assignee, purchaser or transferee shall automatically then be deemed the "Seller" for all purposes hereunder and such Affiliate of the assignee, purchaser or transferee shall automatically then be deemed the "Guarantor" for all purposes hereunder.

15. Governing Law and Venue. This Guaranty shall be governed by and construed in accordance with the law of the State of Michigan without regard to the principles of conflicts of law thereof. Venue for any claim or action arising from this Guaranty shall be resolved in federal or state courts of competent jurisdiction situated within the State of Michigan.

16. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, GUARANTOR AND COMPANY EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF GUARANTOR AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION, WITHOUT A JURY.

17. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

- (a) if to Company as provided in the PPA
- (b) if to Guarantor:

*Attn:*

Phone: ( \_\_\_\_ )

Fax: ( \_\_ )

*with a copy to:*

*Attn:*

Phone: ( \_\_\_\_ )

Fax: ( \_\_ )

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

18. Termination. Subject to Section 5 hereof, this Guaranty and all of the obligations of Guarantor hereunder shall automatically terminate on the date of the complete payment, expiration or termination of the Obligations; provided, however, that Section 5 and this Section 18 shall survive such termination of this Guaranty; provided further, that the obligations of Guarantor under this Guaranty shall survive any termination pursuant to this Section 18 solely with respect to any claims made by Company under this Guaranty prior to such termination.

19. Defined Terms. Unless otherwise defined herein, all capitalized terms used herein which are defined in the PPA shall have their respective meanings as therein defined. All references to the PPA contained herein shall be construed to mean the PPA as amended from time to time.

*[Signature page follows]*

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.

**[Name of Guarantor]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit F: Form of Scheduling Coordinator Services Agreement**

Groveland Mine Solar - PPA Cost							Groveland Mine Solar - Market Value								
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Solar MWh	ZRC's	PPA Energy (\$/MWh)	PPA Capacity (\$/MW-Yr)	Total PPA Cost	FCM Calculation	Total Cost	Solar MWh	Average LMP (\$/MWh)	Energy Market Value	ZRCs	Forecasted Capacity Price (\$/MW-Yr)	Forecasted Capacity Value (Total)	REC Value	Total Forecasted Market Value	Net Cost / (Benefit)
1 Year 1	134,270	24.2				\$ 10,433,834.72	134,270	\$ 50.35	\$ 6,760,494.50	24.2	\$ 102,340.00	\$ 2,476,252.80	\$ 335,675.00	\$ 9,572,422.30	\$ 861,412.41
2 Year 2	133,599	24.1				\$ 10,384,833.04	133,599	\$ 46.28	\$ 6,182,945.52	24.1	\$ 104,540.40	\$ 2,519,308.65	\$ 333,996.63	\$ 9,036,250.79	\$ 1,348,582.25
3 Year 3	132,931	24.0				\$ 10,336,139.33	132,931	\$ 43.91	\$ 5,836,985.14	24.0	\$ 106,892.56	\$ 2,563,113.12	\$ 332,326.64	\$ 8,732,424.90	\$ 1,603,714.42
4 Year 4	132,266	23.9				\$ 10,287,753.29	132,266	\$ 45.30	\$ 5,991,649.96	23.9	\$ 109,297.64	\$ 2,607,679.25	\$ 330,665.01	\$ 8,929,994.22	\$ 1,357,759.07
5 Year 5	131,605	23.7				\$ 10,239,674.66	131,605	\$ 47.75	\$ 6,284,123.16	23.7	\$ 111,756.84	\$ 2,653,020.28	\$ 329,011.68	\$ 9,266,155.12	\$ 973,519.55
6 Year 6	130,947	23.6				\$ 10,191,903.21	130,947	\$ 51.03	\$ 6,682,207.55	23.6	\$ 114,271.37	\$ 2,699,149.67	\$ 327,366.63	\$ 9,708,723.85	\$ 483,179.37
7 Year 7	130,292	23.5				\$ 10,144,438.73	130,292	\$ 54.99	\$ 7,164,752.51	23.5	\$ 116,842.47	\$ 2,746,081.13	\$ 325,729.79	\$ 10,236,563.43	\$ (92,124.70)
8 Year 8	129,640	23.4				\$ 10,097,281.03	129,640	\$ 59.89	\$ 7,764,166.98	23.4	\$ 119,471.43	\$ 2,793,828.62	\$ 324,101.14	\$ 10,882,096.75	\$ (784,815.71)
9 Year 9	128,992	23.3				\$ 10,050,429.97	128,992	\$ 63.97	\$ 8,251,634.55	23.3	\$ 122,159.54	\$ 2,842,406.31	\$ 322,480.64	\$ 11,416,521.50	\$ (1,366,091.53)
10 Year 10	128,347	23.2				\$ 10,003,885.41	128,347	\$ 67.47	\$ 8,659,591.90	23.2	\$ 124,908.13	\$ 2,891,828.65	\$ 320,868.23	\$ 11,872,288.79	\$ (1,868,403.38)
11 Year 11	127,706	23.0				\$ 9,957,647.27	127,706	\$ 69.22	\$ 8,839,778.67	23.0	\$ 127,718.56	\$ 2,942,110.32	\$ 319,263.89	\$ 12,101,152.89	\$ (2,143,505.62)
12 Year 12	127,067	22.9				\$ 9,911,715.46	127,067	\$ 71.61	\$ 9,099,269.98	22.9	\$ 130,592.23	\$ 2,993,266.27	\$ 317,667.57	\$ 12,410,203.82	\$ (2,498,488.55)
13 Year 13	126,432	22.8				\$ 9,866,089.97	126,432	\$ 75.75	\$ 9,577,200.84	22.8	\$ 133,530.55	\$ 3,045,311.68	\$ 316,079.24	\$ 12,938,591.76	\$ (3,072,501.79)
14 Year 14	125,800	22.7				\$ 9,820,770.77	125,800	\$ 75.89	\$ 9,546,926.77	22.7	\$ 136,534.99	\$ 3,098,262.04	\$ 314,498.84	\$ 12,959,687.65	\$ (3,138,916.88)
15 Year 15	125,171	22.6				\$ 9,775,757.89	125,171	\$ 80.66	\$ 10,096,255.61	22.6	\$ 139,607.03	\$ 3,152,133.07	\$ 312,926.35	\$ 13,561,315.02	\$ (3,785,557.13)
Nominal Total	\$ 1,945,063					\$ 151,502,155			\$ 116,737,984			\$ 42,023,752	\$ 4,862,657	\$ 163,624,393	\$ (12,122,238)
Net Present Value									\$ 951,795			\$ 353,517	\$ 47,769	\$ 1,353,082	\$ 131,803

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

\* \* \* \*

In the matter of the application of	)	
<b>UPPER PENINSULA POWER COMPANY</b>	)	Case No. U-20350
for approval of its integrated resource plan	)	
<u>pursuant to MCL 460.6t and for other relief.</u>	)	

**PROOF OF SERVICE**

Victoria J. Seyfried, being first duly sworn, deposes and states that on June 21, 2024, she served Upper Peninsula Power Company’s Application for Approval of the Groveland Solar PPA upon the parties set forth on the attached Service List via electronic mail.

\_\_\_\_\_  
Victoria J. Seyfried

Subscribed and sworn before me  
on this 21st day of June, 2024.

\_\_\_\_\_  
Kacey O’Neill, Notary Public  
State of Michigan, County of Livingston  
My Commission Expires: 12/26/2026  
Acting in the County of Ingham

## SERVICE LIST

CASE NO. U-20350

### **Administrative Law Judge**

Hon. Martin D. Snider

[sniderm@michigan.gov](mailto:sniderm@michigan.gov)

### **Michigan Public Service Commission Staff**

Daniel E. Sonneveldt (P58222)

Heather Durian (P67587)

[sonneveldtd@michigan.gov](mailto:sonneveldtd@michigan.gov)

[durianh@michigan.gov](mailto:durianh@michigan.gov)

### **Michigan Attorney General**

Michael E. Moody (P51985)

[moodym2@michigan.gov](mailto:moodym2@michigan.gov)

[ag-enra-spec-lit@michigan.gov](mailto:ag-enra-spec-lit@michigan.gov)

### **Circle Power, LLC**

Timothy J. Lundgren (P62807)

[tlundgren@potomaclaw.com](mailto:tlundgren@potomaclaw.com)

### **Association of Businesses Advocating Tariff Equity**

Michael J. Pattwell (P72419)

Stephen A. Campbell (P76684)

[mpattwell@clarkhill.com](mailto:mpattwell@clarkhill.com)

[scampbell@clarkhill.com](mailto:scampbell@clarkhill.com)

### **Citizens Against Rate Excess**

John R. Liskey (P31580)

Constance D. Groh (P73590)

[john@liskeypllc.com](mailto:john@liskeypllc.com)

[cdgroh@liskeypllc.com](mailto:cdgroh@liskeypllc.com)

### **Verso Corporation**

Justin K. Ooms (P82065)

[jkooms@potomaclaw.com](mailto:jkooms@potomaclaw.com)