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May 5, 2020

Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Lansing, MI 48917

RE: In the matter, on the Commission's own motion regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for **DTE ELECTRIC COMPANY** to fully comply with Public Act 295 of 2008.  
MPSC Case No. U-18232

Dear Ms. Felice:

Attached for electronic filing in the above referenced matter is DTE Electric Company's Application for Ex Parte Approval of the Assembly Solar and Riverfork Solar Purchase Power Agreement Contracts and Related Relief, Affidavit of David Harwood in Support of DTE Electric Company's Application for Approval of the Assembly Solar and Riverfork Solar Purchase Power Agreement Contracts, Affidavit of D. Dean Koujak in Support of DTE Electric Company's Renewable Request for Proposals Process, Report (Attachment) from Navigant, Contracts, and Proof of Service.

Very truly yours,

Paula M. Johnson-Bacon

PMB/lah  
Encl.  
cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,	)	
regarding the regulatory reviews, revisions,	)	
determinations, and or approvals necessary for	)	Case No. U-18232
DTE ELECTRIC COMPANY to fully comply	)	(Paperless e-file)
with Public Act 295 of 2008	)	
_____	)	

**APPLICATION FOR *EX PARTE* APPROVAL OF THE ASSEMBLY SOLAR  
AND RIVERFORK SOLAR PURCHASE POWER AGREEMENT CONTRACTS  
AND RELATED RELIEF**

DTE Electric Company (“DTE Electric” or the “Company”) files this Application pursuant to the Rules of Practice and Procedure Before the Commission (R460.17101 *et seq.*), the Michigan Court Rules (MCR 2.100 *et seq.*), the Michigan Administrative Procedures Act (MCL 24.201 *et seq.*) and other Michigan law including but not limited to MCL 460.1, *et seq.* and MCL 460.1001, *et seq.* DTE Electric requests *ex parte* approval by the Michigan Public Service Commission (“Commission”) of the Purchase Power Agreements (“PPAs”) between DTE Electric Company and Assembly Solar III, LLC, a subsidiary of Ranger Power, and DTE Electric Company and River Fork Solar II, LLC, a subsidiary of Ranger Power, along with related relief (collectively, the “Contracts”), including but not limited to *ex parte* approval of the renewable energy transfer prices set forth in Exhibit A-4 filed in Case No. U-20484 (which exhibit reflects the current Commission approved transfer price schedule for Renewable Energy PPAs and Company-owned Renewable Energy Systems) for the energy and capacity associated with the Assembly and Riverfork PPAs, for recovery under the Company’s Power Supply Cost Recovery (“PSCR”) process under MCL 460.6j. See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)).

In support of its requests, DTE Electric has attached the Contracts, the Affidavit of David Harwood, “DTE Energy Request for Proposals for Renewable Generation, Report from Navigant Consulting, Inc., n/k/a Guidehouse Inc.” and the affidavit of Dean Koujak and states as follows:

1. DTE Electric is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office at One Energy Plaza, Detroit, Michigan 48226. DTE Electric is a wholly-owned subsidiary of DTE Energy Company, supplying retail electric service to customers located in southeast Michigan, and is a public utility and Electric Provider with more than 1,000,000 retail customers in Michigan, subject to the jurisdiction of the Commission.

2. DTE Electric presently serves its jurisdictional metered retail electric customers under rates and charges approved by the Commission.

3. The attached Assembly Solar PPA is between DTE Electric and Assembly Solar III, LLC, a subsidiary of Ranger Power. The PPA requires Assembly Solar III, LLC to design, engineer, construct, install, startup, test, and maintain the Assembly project such that it can sell renewable capacity, energy, ancillary services, and RECs to DTE Electric for the 25-year term of the contract. The Assembly project will be sited in Shiawassee County and is anticipated to provide 79 MW of renewable energy capacity with commercial operation on or before December 31, 2021.

4. The attached Riverfork Solar PPA is between DTE Electric and Riverfork II, LLC, a subsidiary of Ranger Power. The PPA requires Riverfork II, LLC to design, engineer, construct, install, startup, test, and maintain the Riverfork project such that it can sell renewable capacity, energy, ancillary services, and RECs to DTE Electric for the 25-year term of the contract. The

Riverfork project will be sited in Calhoun County and is anticipated to provide 49 MW of renewable energy capacity with commercial operation expected on or before December 31, 2022.

5. In Paragraph 19.1 of both the Assembly and the River Fork PPAs, DTE Electric is granted an option to purchase the facility as defined, and upon terms and conditions set forth, within the respective Contract. Should DTE Electric choose to exercise the option under one or both of the Contracts, approval from the Commission will be sought as necessary or otherwise required by law.

6. The PPAs are consistent with the 2020 Amended REP that was filed on March 31, 2020.

7. If the Commission does not grant approval or in any material way modifies the Contracts, and/or any relief requested in the Company's Application or does not grant approval of DTE Electric's requested relief by July 23, 2020 then under the terms of the Contracts DTE Electric and Ranger Power can terminate these PPAs. Any later approval would severely compromise the developer's ability to achieve commercial operation by the contracted guaranteed completion dates which are consistent with the 2020 Amended REP.

8. In accordance with 2008 PA 295, as amended by 2016 PA 342, DTE Electric filed an Amended Renewable Energy Plan in March 2018 (U-18232). The Commission granted approval with changes of this amended plan on July 18, 2019. The Commission's changes were related to deferral of approval of assets with CODs in 2021 and beyond that did not qualify for full (100%) production tax credits until an order was issued in DTE Electric's Integrated Resource Planning (IRP) Case (U-20471). The Commission further indicated that to find such assets "prudent", DTE Electric must perform an analysis that examines "all options, including different technologies and ownership models".

9. DTE Electric consented to these changes on July 31, 2019 and in accordance with the order and subsequent consent, issued a renewable energy project Request for Proposals (RFP) in September 2019. The RFP was developed in consultation with the Commission Staff pursuant to and consistent with the December 4, 2008 Temporary Order and December 23, 2008 Amendatory Order in Case No. U-15800. The RFP conformed to the guidelines for requests for proposals approved by the Commission under 2008 PA 295. The RFP was an open bid event that requested proposals on different technologies (wind and solar), with varying ownership models (utility and 3rd party owned), with CODs in 2021, 2022 and 2023, that qualified for the full 30% Investment Tax Credit (ITC) for solar and 40-80% Production Tax Credits (PTC) for wind, and would otherwise qualify for inclusion in the REP. In addition, DTE Electric hired Navigant Consulting (“Navigant”) to provide independent consultation on the RFP process. Navigant provided guidance and oversight of the Company’s RFP development and proposal evaluation processes, leveraging their experience with utilities across the United States in similar procurements. The engagement with DTE included oversight of the development and execution of the evaluation process for RFP proposals and the Company’s self-developed Meridian wind project. Navigant’s report entitled, “DTE Energy Request for Proposals for Renewable Generation, Report from Navigant Consulting, Inc., n/k/a Guidehouse Inc.” has been included as part of this filing under the affidavit of Dean Koujak.

10. In Case No. U-15800, Attachment D to the Commission’s December 4, 2008 Temporary Order specifically provided that the “bid evaluation process may include an assessment of both price and non-price factors.” Evaluation components for this RFP included pricing, project feasibility, contract terms & conditions, technology operability, developer experience, project management, and developer financial strength. Each project proposal was evaluated on these six

factors on a scale of 1 to 5. The non-pricing factors were chosen to 1) help identify any critical flaws associated with the respondent or the project proposal, 2) help differentiate the proposals' probability of success, and 3) to aid in determining which projects should be selected to move into the negotiation phase. Navigant reviewed these scoring factors and determined them to be appropriate for this RFP and consistent with scoring factors used by other utilities in similar RFPs. In addition, bonus points were available for proposals that demonstrated relevant utility project experience, intent to use Michigan based contractors, components, or labor, and the inclusion of pollinator habitats (solar only). Projects were scored using the same non-economic evaluation components and criteria regardless of technology or ownership structure.

11. Evaluation of project LCOE required an adjustment to appropriately compare PPAs of different terms, or PPAs to a Build Transfer Agreement (BTA). The purpose of this adjustment was to assess the full customer cost of each project over the same time frame and help ensure projects with the lowest full life cycle cost were identified. This process is set forth in more detail in the attached Affidavit of David Harwood.

12. While DTE Electric is not requesting a financial incentive on these PPAs with this filing, the Company reserves all rights to request financial incentives on PPAs in the future consistent with Sections 6(s)(6) and 6(t)(15) of PA 341.

13. In response to the RFP, DTE Electric received seven project responses to the wind RFP and 50 project responses to the solar RFP. Given that the RFPs allowed for both build-transfer utility ownership structures and 3rd party owned purchase power agreements, many projects were submitted with multiple unique project options. In total, 186 unique project options were evaluated in the process. DTE Electric utilized scorecards that were reviewed by the Commission Staff and were consistent with Attachment D to the December 4, 2008 Temporary Order in MPSC Case No.

U-15800 and Exhibit No. A-33 (CLC-1) admitted in MPSC Case No. U-15806-RPS. Proposals that either 1) did not meet the minimum criteria outlined in the RFP or 2) were removed from consideration by the developer were not scored. In total, 34 projects representing 116 unique proposal options were considered.

14. Based on proposal scoring and the shortlist prioritization factors described in the attached Affidavit of David Harwood, the Company selected the Assembly and Riverfork PPAs for negotiation and subsequent inclusion in the 2020 Amended REP.

15. The levelized cost and generation supply levels of the Assembly and Riverfork PPAs are consistent with the cost and generation levels included in DTE Electric's 2020 Amended REP. Thus, the Assembly and Riverfork PPAs are reasonable and prudent and consistent with the retail rate impact limits under MCL 460.1045, and approval of the PPAs and DTE Electric's related requests for relief will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in the cost of service to customers beyond what is proposed in the Company's 2020 Amended REP.

16. The Company believes that it would be appropriate to use the renewable energy transfer prices set forth in Exhibit A-4 filed in Case No. U-20484 (which exhibit reflects the current Commission approved transfer price schedule for Renewable Energy PPAs and Company-owned Renewable Energy Systems) for the energy and capacity associated with the Assembly and Riverfork PPAs, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)).

17. Commission approval of the PPAs and DTE Electric's related requests, including use of the proposed transfer prices, will not cause alteration or amendment in DTE Electric rates or rate schedules, nor will Commission approval of the PPAs and DTE Electric's related requests

increase the cost of service to DTE Electric customers compared to what was assumed in DTE Electric's 2020 REP filed in April 2020, and are consistent with the retail rate impact limits under MCL 460.1045.

18. The Company competes for renewable energy, advanced cleaner energy and related equipment, products and services. Maintaining the confidentiality of the specific terms and conditions involved in acquiring such renewable energy, advanced cleaner energy, and related equipment, products and services will help ensure that the suppliers submit competitive proposals and offer their best prices to DTE Electric and thereby help DTE Electric achieve the lowest reasonable cost for these items. Accordingly, maintaining the confidentiality of the various redacted provisions of the Assembly and Riverfork PPAs, such as but not limited to specific pricing terms, preliminary data on turbine siting, and security amounts, will help the Company provide DTE Electric customers with lower cost renewable energy and advanced cleaner energy project alternatives consistent with 2016 PA 342 now and in the future.

19. Public disclosure of the redacted details in the PPAs will hamper the Company's ability to provide the lowest reasonable renewable energy and advanced cleaner energy power supply cost to its retail electric customers. Therefore, it is in DTE Electric's, as well as its customers' best interest for such commercially sensitive information to remain confidential and undisclosed. The original unredacted PPAs are available for inspection by the Commission and its Staff.

20. On December 4, 2008, the Commission issued a Temporary Order in Case No. U-15800 pursuant to MCL 460.1191(1), stating that the Commission intends to review and approve submitted contracts on an expedited basis with a target of issuing orders on such contracts



within 30 days from the date of filing (December 4, 2008 Temporary Order in MPSC Case No. U-15800, p. 16).

WHEREFORE, for the reasons stated above, DTE Electric respectfully requests that the Commission expeditiously issue an *ex parte* order in this case that:

A. Consistent with 2008 PA 295, it approves the attached Contracts in their entireties, and also approves the renewable energy transfer prices set forth in Exhibit A-4 filed in Case No. U-20484 for the energy and capacity associated with the Assembly and Riverfork PPAs, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j.

B. Determines that the Contracts comply with the retail rate limits under MCL 460.1045, and are reasonable and prudent;

C. Provides assurance that the full costs of the Assembly and Riverfork PPAs, including but not limited to the Contracts, will be recovered through the application of the Company's transfer price mechanism, the Company's Revenue Recovery Mechanism surcharges, and subsequent to the end of the renewable energy plan period, appropriate ratemaking mechanisms in accordance with MCL 460.1047;

D. Determines that the Contracts and related approvals and assurances will not result in an alteration or amendment in DTE Electric's rates or rate schedules and will not result in an increase in the cost of service to DTE Electric's customers, and therefore may be authorized and approved without notice or hearing; and

E. Grants such further relief as the Commission may deem necessary or appropriate.

Respectfully submitted,

DTE ELECTRIC COMPANY

By:

\_\_\_\_\_  
Attorneys for Applicant  
Lauren D. Donofrio (P66026)  
Paula Johnson-Bacon (P55862)  
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Detroit, Michigan 48226  
(313) 235-3813

Dated: May 5, 2020

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,	)	
regarding the regulatory reviews, revisions,	)	
determinations, and or approvals necessary for	)	Case No. U-18232
DTE ELECTRIC COMPANY to fully comply	)	(Paperless e-file)
with Public Act 295 of 2008	)	
_____	)	

**AFFIDAVIT OF DAVID B. HARWOOD IN SUPPORT OF DTE ELECTRIC COMPANY’S  
APPLICATION FOR APPROVAL OF THE ASSEMBLY SOLAR AND RIVERFORK  
SOLAR PURCHASE POWER AGREEMENT CONTRACTS**

STATE OF MICHIGAN     )  
                                          ,  
COUNTY OF WAYNE     )

David B. Harwood, being first duly sworn, deposes and says:

1. My title is Director of Renewable Energy Strategy for DTE Electric Company (“DTE Electric” or the “Company”). I graduated from the University of Michigan in 1983 with a Bachelor of Science Degree in Chemical Engineering. In 2001, I received a Master of Business Administration Degree from Baker College. I began my career at DTE Energy in 1983 as a power plant engineer responsible for water chemistry and environmental processes. After approximately ten years of plant experience with increasing levels of leadership responsibility, I led Company asset acquisition teams responsible for power plant valuations and participation in numerous utility power plant auctions during an era of utility generation divestitures in the East and Midwest in the late 1990’s. I was appointed Director of Generation Optimization in 2000, a new organization within the Company responsible for generation reliability planning, generation capital budget and

projects, long-term resource planning, and optimization of wholesale market participation before and during the implementation the Midcontinent Independent System Operator (MISO). I subsequently held Director level positions in Planning and Strategy, Generation Engineering, Nuclear Development, and Major Enterprise Projects.

In 2013, I was appointed Director of Renewable Energy responsible for Renewable Portfolio Standard (RPS) compliance under 2008 PA 295 (as amended by 2016 PA 342), renewable project development, commercial contracts, regulatory filings, and day to day operation and maintenance of the Company's renewable energy fleet. Currently, my role is focused on Renewable Energy strategy including RPS compliance, additional renewable supply planning, and contracting projects for RPS compliance, voluntary renewable programs and the Company's net zero carbon goals. I sponsored testimony before the Michigan Public Service Commission (MPSC or Commission) in General Rate Case U-15244 and Renewable Energy Reconciliation Case U-17632. I also sponsored testimony in the Company's 2020 Renewable Energy Plan (REP) Case No. U-18232, filed March 31, 2020.

2. With this filing, DTE Electric is seeking Commission ex parte approval of the Assembly Solar and Riverfork Solar Purchase Power Agreements ("PPA"), along with related relief. The Assembly Solar PPA is between DTE Electric and Assembly Solar III, LLC, a subsidiary of Ranger Power. The PPA requires Assembly Solar III, LLC to design, engineer, construct, install, startup, test, and maintain the Assembly project such that it can sell renewable capacity, energy, ancillary services, and RECs to DTE Electric for the 25-year term of the contract. The Assembly project will be sited in Shiawassee County and is anticipated to provide 79 MW of renewable energy capacity with commercial operation on or before December 31, 2021. The Riverfork Solar PPA is between DTE Electric and Riverfork II, LLC, a subsidiary of Ranger

Power. The PPA requires Riverfork II, LLC to design, engineer, construct, install, startup, test, and maintain the Riverfork project such that it can sell renewable capacity, energy, ancillary services, and RECs to DTE Electric for the 25-year term of the contract. The Riverfork project will be sited in Calhoun County and is anticipated to provide 49 MW of renewable energy capacity with commercial operation expected on or before December 31, 2022. I believe these PPAs are consistent with the 2020 Amended REP that was filed on March 31, 2020. The PPAs are being submitted with Ranger Power and DTE Electric signatures.

3. If the Commission does not grant approval or in any material way modifies these PPAs, and/or any relief requested in the Company's Application or does not grant approval of DTE Electric's requested relief by July 31, 2020 then under the terms of the PPAs DTE Electric and the project companies can terminate these PPAs. Both parties recognize that any later approval would severely compromise the developer's ability to achieve commercial operation by the contracted guaranteed completion dates which are consistent with the 2020 Amended REP.

4. In accordance with 2008 PA 295, as amended by 2016 PA 342, DTE Electric filed an Amended Renewable Energy Plan in March 2018 (U-18232). The Commission granted approval with changes of this amended plan on July 18, 2019. The Commission's changes were related to deferral of approval of assets with CODs in 2021 and beyond that did not qualify for full (100%) production tax credits until an order was issued in DTE Electric's Integrated Resource Planning (IRP) Case (U-20471). The Commission further indicated that to find such assets "prudent", DTE Electric must perform an analysis that examines "all options, including different technologies and ownership models".

5. DTE Electric consented to these changes on July 31, 2019 and in accordance with the order and subsequent consent, issued a renewable energy project Request for Proposals (RFP)

in September 2019. The RFP was developed in consultation with the Commission Staff pursuant to and consistent with the December 4, 2008 Temporary Order and December 23, 2008 Amendatory Order in Case No. U-15800. The RFP conformed to the guidelines for requests for proposals approved by the Commission under 2008 PA 295. The RFP was an open bid event that requested proposals on different technologies (wind and solar), with varying ownership models (utility and 3rd party owned), with CODs in 2021, 2022 and 2023, that qualified for the full 30% Investment Tax Credit (ITC) for solar and 40-80% Production Tax Credits (PTC) for wind, and would otherwise qualify for inclusion in the REP. In addition, DTE Electric hired Navigant Consulting (“Navigant”) to provide independent consultation on the RFP process. Navigant provided guidance and oversight of the Company’s RFP development and proposal evaluation processes, leveraging their experience with utilities across the United States in similar procurements. The engagement with DTE included oversight of the development and execution of the evaluation process for RFP proposals and the Company’s self-developed Meridian wind project. Navigant’s report entitled, “DTE Energy Request for Proposals for Renewable Generation, Report from Navigant Consulting, Inc., n/k/a Guidehouse Inc.” has been included as part of this filing under the affidavit of Dean Koujak.

6. In Case No. U-15800, Attachment D to the Commission’s December 4, 2008 Temporary Order specifically provided that the “bid evaluation process may include an assessment of both price and non-price factors.” Evaluation components for this RFP included pricing, project feasibility, contract terms & conditions, technology operability, developer experience, project management, and developer financial strength. Each project proposal was evaluated on these six factors on a scale of 1 to 5. The non-pricing factors were chosen to 1) help identify any critical flaws associated with the respondent or the project proposal, 2) help differentiate the proposals’

probability of success, and 3) to aid in determining which projects should be selected to move into the negotiation phase. Navigant reviewed these scoring factors and determined them to be appropriate for this RFP and consistent with scoring factors used by other utilities in similar RFPs. In addition, bonus points were available for proposals that demonstrated relevant utility project experience, intent to use Michigan based contractors, components, or labor, and the inclusion of pollinator habitats (solar only). Projects were scored using the same non-economic evaluation components and criteria regardless of technology or ownership structure.

7. Evaluation of project LCOE required an adjustment to appropriately compare PPAs of different terms, or PPAs to a Build Transfer Agreement (BTA). The purpose of this adjustment was to assess the full customer cost of each project over the same time frame and help ensure projects with the lowest full life cycle cost were identified. For example, DTE Electric assumes a 35-year project life on utility solar projects and the LCOE for such a project is calculated using the net present value of cost and production estimates over the entire 35-year timeframe. To appropriately compare such a project to a 25-year PPA, the LCOE for the PPA must include replacement costs for energy and capacity for years 26-35. This post PPA terminal value was estimated using a variety of prominent published market forecasts for energy and capacity. The median value of these estimates was used to quantify the post PPA market risk for any PPA proposals. Another important consideration in determining the ‘pricing’ factor score was the extent of pro forma contract exceptions that were returned with each proposal. Many proposals included significant pro forma contract strikes or modifications inconsistent with basic Company requirements. Over 80% of the proposals evaluated included a large amount of exceptions to basic requirements and received the lowest possible score in this category. When proposals were subsequently selected for shortlist and negotiation, the rectification of contract exceptions resulted

in an increase in the proposal LCOE by as much as \$4/MWh. Price increases occurred in every proposal negotiation related to this RFP and is consistent with my many years of prior experience in negotiating contracts. To evaluate the pricing of all projects on a comparative basis, an adjustment was made to the calculated LCOE on each proposal to reflect the expected increase in pricing due to the rectification of contract exceptions. Since every project was not selected and negotiated, this adjustment was determined based on the score received in the contract terms & conditions factor and ranged from \$1-\$4/MWh.

8. In response to the RFP, the Company received seven project responses to the wind RFP and 50 project responses to the solar RFP. Given that the RFPs allowed for both build-transfer utility ownership structures and 3rd party owned purchase power agreements, many projects were submitted with multiple unique project options. In total, 186 unique project options were evaluated in the process. DTE Electric utilized scorecards that were reviewed by the Commission Staff and were consistent with Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800 and Exhibit No. A-33 (CLC-1) admitted in MPSC Case No. U-15806-RPS. Proposals that either 1) did not meet the minimum criteria outlined in the RFP or 2) were removed from consideration by the developer were not scored. In total, 34 projects representing 116 unique proposal options were considered. Each of these proposals were evaluated using the weighted factors and potential bonus points described above to determine a shortlist for negotiation. However, the volume of responses and the complexity of evaluating the associated data was unprecedented in the Company's 12 years of experience in administering renewable RFPs. Given the volume of renewables the Company will be seeking over the next three years for both the 2020 Amended REP and Voluntary Green Pricing programs, the Company quickly determined that even the proposal shortlist would need to be prioritized and sequenced to manage the workload and cost



associated with negotiating multiple contracts with multiple counterparties. Some of the factors that influenced which projects were the first to be negotiated included:

Timing: The Company desires to pace its renewable investments over time to efficiently manage projects and achieve better quality and lower costs. In addition, some shortlisted project proposals had critical timelines related to tax credit eligibility, MISO queue and Generation Interconnect Agreement deadlines, or other factors. Finally, some proposals were bid into multiple years with different pricing, which allowed the Company some flexibility regarding negotiation timing.

Competition: The Company is very aware that other providers are also seeking the best renewable projects for their customers and negotiating tactics may help or hinder our ability to secure the best projects. For instance, some of the shortlisted project proposals planned to use Company-owned land. These projects did not have timing constraints and were not the highest scored/lowest price proposals, and since they are not at risk of being lost to other providers, the Company did not choose these proposals for initial negotiations.

Bundling: The Company also identified bundling opportunities, which might help secure the best projects for our customers versus losing them to other providers. Engaging a developer on multiple project proposals not only provides workload and cost benefits during negotiation but can also provide opportunities to reduce project costs in the long run.

Compliance: The April 1, 2020 filing requirement of this REP required that contracts herein must be completed quickly. The Company prioritized shortlist negotiations accordingly. Based on proposal scoring and the shortlist prioritization factors described above, the Company selected the Assembly and Riverfork PPAs for negotiation. These project proposals were highly scored and through negotiation were determined to be the best value for our customers in the 2020

Amended REP.

9. Based on my knowledge and experience related to the development of DTE Electric's 2020 Amended REP and my knowledge the Assembly and Riverfork solar projects, as well as the negotiations to establish the PPAs, I believe that these solar projects are consistent with DTE Electric's 2020 Amended REP. The levelized cost and generation supply levels of the Assembly and Riverfork PPAs were compared and determined to be consistent with the cost and generation levels included in DTE Electric's 2020 Amended REP. Thus, the Assembly and Riverfork PPAs are reasonable and prudent and consistent with the retail rate impact limits under MCL 460.1045, and approval of the PPAs and DTE Electric's related requests for relief will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in the cost of service to customers beyond what is proposed in the Company's 2020 Amended REP.

10. DTE Electric believes that it would be appropriate to use the renewable energy transfer prices set forth in Exhibit A-4 filed in Case No. U-20484 (which exhibit reflects the current Commission approved transfer price schedule for Renewable Energy PPAs and Company-owned Renewable Energy Systems) for the energy and capacity associated with the Assembly and Riverfork PPAs, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)).

11. Commission approval of the PPAs and DTE Electric's related requests, including use of the proposed transfer prices, will not cause alteration or amendment in DTE Electric rates or rate schedules, nor will Commission approval of the PPAs and DTE Electric's related requests increase the cost of service to DTE Electric customers compared to what was assumed in DTE Electric's 2020 REP filed in April 2020, and are consistent with the retail rate impact limits under MCL 460.1045.

12. While the Company is not requesting a financial incentive on these PPAs with this filing, the Company reserves all rights to request financial incentives on PPAs in the future consistent with Sections 6(s)(6) and 6(t)(15) of PA 341.

13. The Company competes for renewable energy, advanced cleaner energy and related equipment, products and services. Maintaining the confidentiality of the specific terms and conditions involved in acquiring such renewable energy, advanced cleaner energy, and related equipment, products and services will help ensure that the suppliers submit competitive proposals and offer their best prices to DTE Electric and thereby help DTE Electric achieve the lowest reasonable cost for these items. Accordingly, maintaining the confidentiality of the various redacted provisions of the Assembly and Riverfork PPAs, such as but not limited to specific pricing terms, preliminary data on siting, and security amounts, will help the Company provide DTE Electric customers with lower cost renewable energy and advanced cleaner energy project alternatives consistent with 2016 PA 342 now and in the future.

14. Public disclosure of the redacted details in the PPAs will hamper the Company's ability to provide the lowest reasonable renewable energy and advanced cleaner energy power supply cost to its retail electric customers. Therefore, it is in DTE Electric's, as well as its customers' best interest for such commercially sensitive information to remain confidential and undisclosed. The original unredacted PPAs are available for inspection by the Commission and its Staff.

15. Based on my experience and the above determinations, it is in DTE Electric's as

well as its customers' best interest for the Commission to approve the Assembly and Riverfork PPAs and grant the Company's related requests.

Further, Affiant sayeth not.

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David B. Harwood

Subscribed and sworn to before  
me this 5th day of May 2020.

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Estella R. Branson, Notary Public  
Oakland County, Michigan  
My Commission Expires: 10-26-2023  
Acting in Wayne County

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, )  
regarding the regulatory reviews, revisions, )  
determinations, and or approvals necessary for )  
DTE ELECTRIC COMPANY to fully comply )  
with Public Act 295 of 2008 )  
\_\_\_\_\_ )

Case No. U-18232  
(Paperless e-file)

**AFFIDAVIT OF D. DEAN KOUJAK IN SUPPORT OF DTE ELECTRIC COMPANY'S  
RENEWABLE REQUEST FOR PROPOSALS PROCESS**

STATE OF NEW YORK                     )  
                                                  )  
COUNTY OF WESTCHESTER         )

D. Dean Koujak, being first duly sworn, deposes and says:

1. My name is D. Dean Koujak, and I am a Director at Navigant, a Guidehouse Company. I hold a Bachelor of Science in Engineering Management from New York Institute of Technology, a Master of Business Administration from the State University of New York at Stony Brook, and a Juris Doctor from Hofstra University. I joined Navigant in late 2003 supporting competitive generation resource procurements. Since this time, I have supported and been engaged on competitive power procurements in multiple jurisdictions, including New York, New Jersey, Texas, Hawaii, California, Ohio, Massachusetts, Ontario, Saskatchewan, Alberta, and North Carolina. I have supported, developed, administered and observed several renewable resource

procurements to achieve renewable energy policy targets on behalf of both Utilities and Public Utility Commissions. I have served in many capacities with respect to renewable resource procurement, including as a procurement advisor, independent evaluator, independent observer, and independent monitor.

2. Navigant was retained by DTE Electric in September 2019 to assist, provide guidance and oversee DTE Electric in its Renewable Energy Request for Proposals ("RFP") process, leveraging prior experience with Utilities across the United States with similar procurements for Wind and Solar procurement.

3. Attached to this Affidavit as Attachment A is Navigant's Report, which sets out in detail my and my team's involvement in the DTE Electric RFP process, methods employed, observations, and conclusions regarding DTE Electric's All-Source RFPs for Solar and Wind Energy Resources.

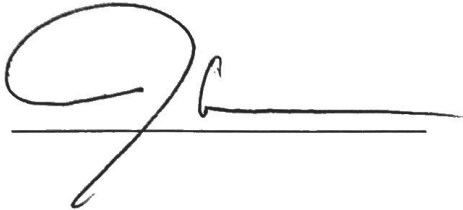
4. In our review of the RFP documents and evaluation process, we find that the goals of the RFP were achieved given the number of responses that were received and how they were evaluated. The qualification evaluations were performed on a fair and consistent basis with the process noted in the RFP. The evaluation stage, including the economic and non-economic evaluations, was performed on a fair and consistent basis with the process published in the RFP.

5. In overseeing the competitive solicitation process, we also conclude that the advancement of projects selected for inclusion in the 2020 Amended REP, including DTE Electric's Meridian project and other PPA projects, in relation to the projects received in the All-Source RFP, are reasonable and prudent.

Further, Affiant sayeth not.

  
D. Dean Koujak

Subscribed and sworn to before  
me this 12th day of April 2020.



JOSEPH ARCHINA  
Notary Public, State of New York  
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# **DTE Energy Request for Proposals for Renewable Generation**

**Report from Navigant Consulting, Inc., n/k/a Guidehouse Inc.**

**Prepared for:**



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## **Executive Summary**

### **Background**

This report summarizes Navigant Consulting, Inc., n/k/a Guidehouse Inc. (Navigant),<sup>1</sup> assessment methods and findings as an independent procurement advisor and evaluator for the Renewable Energy All-Source Requests for Proposals (RFPs) issued by DTE Electric Company (DTE or the Company). Under the RFPs, DTE solicited wind resources between 100 MW and 200 MW and solar resources between 25 MW and 200 MW. Proposers were requested to bid under a build transfer agreement (BTA) on either 3<sup>rd</sup> party developed or select DTE owned sites. The RFPs also allowed traditional power purchase agreement (PPA) bids.

The RFPs were issued pursuant to the DTE's Renewable Energy Plan as further set forth under its Amended 2018 Renewable Energy Plan, under the Michigan Public Service Commission Case No. U-18232. The RFPs are intended to help DTE comply with its Renewable Energy Plan requirements and fulfill large customer demand for voluntary green pricing programs.

DTE Electric retained Navigant to assist, guide, and oversee DTE in its RFP process, using prior experience with utilities across the US with similar procurements for wind and solar resources.

### **Summary and Recommendations**

We have completed our assessment with respect to the DTE RFP and find the following:

- Our overall assessment is that the goals of the RFP were achieved given the number of responses that were received and evaluated.
- The qualification evaluations were performed on a fair and consistent basis with the process noted in the RFP. Respondents were given an opportunity to cure noted deficiencies within a reasonable period of time, which helped maintain the range of proposals evaluated and the competition between them.
- The evaluation stage, including the economic and noneconomic evaluations, was performed on a fair and consistent basis with the process published in the RFP. Use of levelized cost of energy (LCOE) as the basis for scoring on economic grounds is reasonable and typical, as were the adjustments ascribed to the proposal types to effectively compare the proposals on an equivalent ratepayer impact basis across a 35-year time horizon. Use of a scoring sheet/matrix is also reasonable and typical. The range of scoring guidelines is reasonable and consistent with similar criteria we have developed or observed. DTE subject matter experts that performed the review and scoring were consistent in their approach. The combined scoring and ranking using a weighting between pricing and noneconomic criteria was reasonable.

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<sup>1</sup> On October 11, 2019, Guidehouse LLP completed its previously announced acquisition of Navigant Consulting, Inc. We are working to integrate the Guidehouse and Navigant businesses. In furtherance of that effort, we recently renamed Navigant Consulting, Inc. as Guidehouse Inc.

- The advancement of approximately 10 proposals to the short list was reasonable and demonstrated an effort on the part of DTE to ensure a competitive solicitation.
- Selection of finalists was also performed on a fair and consistent basis with the process published in the RFP.
- There is no evidence that the evaluation and selection process caused any unfair advantage or disadvantage to any interested party or respondent.

This report summarizes our review and findings as of the date of this report. In performing our work, we have relied on documents, direct observations, correspondence, analyses, and other information provided to us by DTE. While we believe this information to be reliable, it has not been independently verified for either accuracy or validity, and no assurances are offered with respect thereto. We make no representations, warranties, or opinions concerning the enforceability or legality of the laws, regulations, rules, agreements, or other similar documents reviewed as part of our work. Navigant and its employees are independent contractors providing professional services to DTE and are not officers, employees, or agents of DTE.

## 1. RFP Design and Issuance

This section summarizes the design of the requests for proposals (RFPs) and the issuance of the solicitations. DTE released two RFPs in tandem to solicit solar resources and wind resources. Each RFP allowed for proposals to submit:

- Build transfer agreements (BTAs) on 3<sup>rd</sup> party developed or select DTE sites
- BTAs with a power purchase agreement (PPA) option

For both the wind resource and solar resource solicitations, we reviewed five types of documents covering these RFP options:

- RFP overview document
- BTA documentation
- PPA documentation
- Exhibit A – pro forma contracts
- Exhibit B – technical specifications

Navigant reviewed the RFP overview document to ensure it is clear and transparent. As part of this review, the Navigant team reviewed the document to ensure that requested submittal items were aligned substantially with the internal scoring criteria and all items necessary for evaluation were requested in the RFP. The team also reviewed the RFP document to ensure sufficient information about the scoring criteria is included to ensure bidders are apprised of the key areas they will be evaluated against, so they may prepare their bids accordingly. Navigant's comments were adopted by DTE in its final issued RFP.

Proposals were evaluated using the evaluation and selection process described in Section 6 of the RFP (the Evaluation Process). For a proposal to advance to the evaluation process, it had to pass through a screening process to ensure that the proposals provided are complete with respect to content and conform to the bid requirements stated in the RFP. In some cases, proposals were evaluated and scored while those bidders were given a reasonable opportunity to clarify statements or provide missing information related to the threshold screening criteria. The bid requirements addressed specific concerns regarding the quality and attributes of the proposal, including:

- **Wind resource RFP qualification criteria:**
  - Conforming bid to RFP requirements:
    - BTA, BTA & PPA, or BTA on DTE site
    - Project is not less than 100 MW and not greater than 200 MW
    - For BTA projects only: does the project qualify for the production tax credit (PTC)?
    - Is the project going to achieve a commercial operation date (COD) by December 2023?

- Threshold experience requirements:
  - Lead developer for a minimum of at least five (5) commercially operating wind projects:
    - Each of the five (5) must be greater than or equal to 50 MW each
    - One of the five (5) must be greater than or equal to 100 MW
  - Number of years of lead developer experience is greater than or equal to five (5) years
- **Solar resource RFP qualification criteria:**
  - Conforming bid to RFP requirements:
    - BTA, BTA & PPA, or BTA on DTE site
    - Project is not less than 25 MW and not greater than 200 MW
    - For BTA projects only: does the project qualify for the 30% investment tax credit (ITC)?
    - Is the project going to achieve COD by December 2023?
    - Proposed technology meets DTE requirements (see Section 3.8, BTA)?
  - Threshold experience requirements:
    - Lead developer for a minimum of at least three commercially operating solar projects:
      - Each of the three referenced projects must be greater than or equal to 1 MW each
      - One of the three must be greater than or equal to 25 MW

After the proposals were screened, bids were then evaluated against economic evaluation criteria and noneconomic evaluation criteria. For the purposes of the economic evaluation criteria, DTE proposed capturing the overall cost of the proposed projects on a unitized and levelized per megawatt-hour (MWh) basis to facilitate a cross-proposal comparison. The industry standard is to adopt an **impact on revenue requirements** perspective to more accurately assess and determine the relative value of customers across the range of options presented. DTE's economic evaluation in this procurement process met this industry standard.

DTE's noneconomic evaluation criteria (as stated in RFP) included the following pertinent areas:

- **Project feasibility:** This area assesses the likelihood of the project achieving the stated COD, which includes an evaluation of the status of key areas on the critical path to achieving COD or may otherwise interfere with COD achievement, including:
  - Interconnection planning status, land acquisition, and turbine procurement
  - Community acceptance and support
  - Environmental impacts

- Permitting status and land rights
- **Exceptions to the DTE pro forma agreements:** This area evaluates the number and nature of the exceptions taken to the pro forma agreements to identify the following:
  - Evaluate the ability of the two parties to potentially execute an acceptable definitive agreement
  - The extent to which the exceptions shift risk to DTE.
- **Technical, operations, and maintenance:** Under this criterion, DTE would assess the following:
  - Technology reliability of the proposed wind turbines, solar panels, and inverters as well as the commercial terms of the panel/turbine supply agreement and warranty arrangements (as applicable)
  - Experience of the respondent and the respondent's advisors involved in generating energy projections and the quality and quantity of onsite solar/wind data, availability data, and guaranteed capacity factor
  - Capacity factor based on a PV forecasting model analysis (for solar) or the analysis of turbine locations, wind resource, and other key factors
  - Setback requirements are followed on the project layout
  - Status and schedule for completing the necessary interconnection arrangements to provide the delivery of energy at the proposal-specified point of interconnection
  - Proper metering and supervisory control and data acquisition (SCADA) systems have been proposed
  - Operations and maintenance plan
  - Whether similar projects can be visited by DTE
- **Experience and project management:** The pertinent experience of the respondent in developing, financing, constructing, operating, and maintaining solar or wind energy facilities, as applicable. Included in this assessment is the bidder's safety record.
- **Financial strength and creditworthiness:** Evaluates the ability of the developer to obtain credit support in the future from credit support providers (banks, parent companies, financial institutions).

The areas noted above are in-line with typical utility practice, which seeks to distill the relative state of readiness of the projects proposed and the risks/impediments that each face toward COD. With the looming ITC deadlines, it is imperative for utilities across the US to get it right for the tax credits to be fully monetized. In addition, DTE must meet its 15% renewable portfolio standard (RPS) requirement by 2021. Should the deal fail at a late stage, the utility may not be left with sufficient time to re-procure a resource that can provide ratepayers with the benefits of the tax credits, in addition to the overall system benefits provided by the resources themselves.

The technical, operations, and maintenance criteria reviewed the project from an ownership and operational standpoint to ensure quality, production certainty, interoperability, and ease of

operations. This criteria also ensure that the project development team has considered the technical factors necessary to deliver a project that reliably delivers power and conforms to both industry and Midcontinent Independent System Operator (MISO) standards for interconnection purposes. Prior experience in developing solar and wind facilities is a typical area reviewed by utilities to ensure that the developer is fully familiar with the requisite steps needed to take a project from the development stage through COD. Incidentally, those that provide financing judge renewable energy developers similarly—on their track record and history. Obtaining financing during project construction is on the critical path toward meeting the COD.

As part of our RFP review, the team developed several recommendations for the RFP overview document, the BTA documentation appendix for each resource type, the PPA documentation appendix for each resource type, and the evaluation protocol based on the team's experience with other similar solicitations, chiefly around aligning the RFP overview, the BTA and PPA documentation, and the score sheet. DTE addressed our concerns in the final versions of these documents. We were satisfied with these changes because DTE was responsive to the team's concerns. DTE issued the RFP on September 16, 2019.

## 2. Score Sheet Development

### 2.1 Economic Criteria

Pursuant to the RFP, a comprehensive levelized cost of energy (LCOE) model was developed by DTE to compare all proposals on an equivalent basis prior to proposal receipt. The basic premise of an LCOE model is to create a unitized, discounted comparative figure to compare proposals on an equivalent cost basis. The generally accepted lens in the industry to facilitate comparisons between ownership and non-ownership options is from an **impact to utility revenue requirements** basis. Accordingly, all costs expected to impact the utility's revenue requirements are captured by year and discounted to year 0. In addition, the expected energy production, on a MWh basis, is equivalently discounted back to year 0. With the costs being the numerator and the energy being the denominator, the quotient is a levelized \$/MWh comparator.

To compare on an **impact to revenue requirements** basis, certain adjustments were included as part of the economic evaluation to achieve equivalency across the contract structures. For PPAs, a financial compensation mechanism ("FCM") was originally included in the economic evaluation, but later removed from the analysis as further discussed below. This type of adjustment mechanism is typical and appropriate and captures two concepts.

- **Imputed debt adjustment:** Captures the credit quality impact of executing PPAs on utilities. PPAs are converted to a debt equivalent by major credit rating agencies. For utilities to continue executing PPAs without deleterious ripple effects on credit and, in turn, debt rates of the organization, a fixed recovery to counterbalance debt equivalence is included in revenue recovery. S&P has published a guide that utilities have cited in support of calculating this recovery. Specific examples include:
  - **California:** The California Public Utilities Commission (CPUC) has published a report<sup>2</sup> on the inclusion of debt equivalency (imputed debt) adjustments in the context of PPAs. The report notes: "In 2004 LTPP [long-term procurement planning] decision, D.04-12-048, the Commission recognized that Debt Equivalence is a real economic cost borne by an IOU [investor-owned utility] when it enters into a PPA, and can have an impact on a utility's credit rating. In D.04-12-048 the Commission ruled that Debt Equivalence has to be considered by IOUs and/or independent evaluator in the contract selection and approval process." In California, adjustments for imputed debt have been incorporated into procurement processes.

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<sup>2</sup> CPUC, *An Introduction to Debt Equivalency*, August 4, 2017.  
[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/About\\_Us/Organization/Divisions/Policy\\_and\\_Planning/PPD\\_Work/PPD\\_Work\\_Products\\_\(2014\\_forward\)/PPD%20-%20Intro%20to%20Debt%20Equivalency\(1\).pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/PPD_Work/PPD_Work_Products_(2014_forward)/PPD%20-%20Intro%20to%20Debt%20Equivalency(1).pdf)



- **Washington:** Puget Sound Energy (PSE)<sup>3</sup> conducted an all-source bid in 2018. Material presented to bidders at the pre-bid conference indicated that PSE assumes an imputed debt adder following the S&P methodology. The rationale for this practice is: “[t]o make a fair comparison between utilities that buy power and those that own resources.”
- **Oregon:** Oregon’s Competitive Bidding Guidelines, Order 06-446, state: “Consideration of ratings agency debt imputation should be reserved for the selection of the final bids from the initial short list of bids. The utility should obtain an advisory opinion from a ratings agency to substantiate its analysis and final decision, if requested by the Commission.”<sup>4</sup>
- **Florida:** Florida Power & Light’s solicitation of renewable resources in 2017, *Florida Power & Light Company’s Petition for Determination of Need for Okeechobee Clean Energy Center Unit 1* includes an illustration of the “equity required to rebalance due to the additional imputed debt[; it] is calculated by multiplying the debt equivalence by the target equity ratio.”<sup>5</sup>
- **Financial incentive:** The formula initially adopted during bid review contemplated an additional financial incentive roughly equal to imputed debt amount. This compensation adjustment for the execution of cost-effective PPAs is appropriate for the same reasons noted above.

While the FCM was originally included in the economic evaluation, the final bid scores reflect the results with this adjustment removed to address the concern that this adjustment may influence the final result. Removal of the FCM adjustment from the economic evaluation did not affect the results under the RFP process.

For PPA and BTA agreements, a project terminal value is factored into the analysis. Pricing achieved in a PPA solicitation reflects, effectively from a developer’s perspective, assumptions on a project’s value over its entire life, including its fair market value for when the developer expects to divest it to other investors. If divestiture occurs, it typically occurs post-ITC or PTC credit expiration (6 years for solar, 10 years for wind). This fair market value, when represented to the new investors, includes the merchant tail post-PPA expiration; in year 10 this would include the remaining life of the unit from years 11 through 35 (25 years remaining) that contributes to lowering offered PPA prices.

To effectively compare the BTA proposals against PPAs in-line with the methodology adopted by many independent power producers (IPPs), the full value of the plant throughout its expected useful life is included in the BTA modeling. DTE’s approach includes projected operations and maintenance costs for the expected useful life. In comparison, under a PPA arrangement, after

<sup>3</sup> PSE, “2018 All Resources and Demand Response RFP Bidder Conference,” presented July 9, 2018. [https://www.pse.com/-/media/PDFs/001-Energy-Supply/003-Acquiring-Energy/18RFP\\_Bidder\\_Conference\\_Final.pdf?la=en&revision=6153762a-ebd2-4902-baec-41e77df259fe&hash=B40AE867D974F088AF0433EAC7B982ED7169ACC2](https://www.pse.com/-/media/PDFs/001-Energy-Supply/003-Acquiring-Energy/18RFP_Bidder_Conference_Final.pdf?la=en&revision=6153762a-ebd2-4902-baec-41e77df259fe&hash=B40AE867D974F088AF0433EAC7B982ED7169ACC2)

<sup>4</sup> Included as Attachment C in PacifiCorp’s *Application for Approval of 2017R Request for Proposals* in <https://edocs.puc.state.or.us/efdocs/HAA/haa14285.pdf>.

<sup>5</sup> Florida Power and Light, *Florida Power & Light Company’s Petition for Determination of Need for Okeechobee Clean Energy Center Unit 1*, September 3, 2015. <http://www.floridapsc.com/library/filings/2015/05542-2015/05542-2015.pdf>

the agreement expires, IPPs would sell their power through the market and utility market purchases would include the cost of such power, which is then passed through the supply charge to ratepayers. To make the LCOE equivalent, the utility included the continued purchase of equivalent energy at market prices that would otherwise occur under the PPA arrangement. In capturing both the costs and benefits during the same time period of the two arrangements, the resulting LCOEs of the BTA and the PPA are more comparative and equivalent.

An alternative approach would be to develop a fair market value or salvage value to include as a positive value in year 20 of the BTA analysis, which considers the differential between forward market power costs and ongoing operations and maintenance discounted back at a market rate of return. This alternative approach is effectively the same as the approach adopted by DTE.

The Navigant and DTE Electric teams reviewed the mechanics of the spreadsheet and all assumptions related to the analysis prior to the proposal receipt for completeness and accuracy. Upon review, for a study period of 35 years, the teams found that the analysis accurately captures the revenue requirements across the two contract structures presented. The components included are reasonable and are in-line with similar practices when comparing utility-owned resources against PPA structures.

## **2.2 Noneconomic Criteria**

From the criteria noted in the RFP, DTE Electric prepared an evaluation score sheet to facilitate the evaluation. Pursuant to feedback provided by Navigant, DTE added detailed scoring criteria based on a rating scale of 1 (lowest score), 3, and 5 (highest score) for each evaluated criteria; these criteria specify what standard is required to be met by the proposers to achieve the stated score. Establishing these criteria prior to proposal receipt greatly enhances the overall transparency and fairness of the solicitation. In addition to specifying the scoring criteria, Navigant and DTE held a series of sessions to test the scoring criteria to ensure sufficient differentiation between the scores, with corrective action taken where the scoring criteria was not clearly differentiated.

As part of the development of the evaluation process, the DTE team established the relative weighting of the solicitation across the overall economic and noneconomic criteria as well as the subcomponent weighting of the areas evaluated under the noneconomic criteria. Under the bid rules, the combined scoring between the economic and noneconomic criteria establishes the rank-order list for final selection.

## 3. Proposal Receipt and Proposer Qualification

### 3.1 Prior to Proposal Receipt

Through a press release, DTE directed interested bidders to register on the PowerAdvocate platform for access to RFP events. DTE made all documentation and information related to the RFP available on the PowerAdvocate site.

Throughout the solicitation process, DTE used the messaging portion of PowerAdvocate to receive comments and questions from the interested parties and respondents and to post answers.

### 3.2 Proposal Receipt

On the proposal due date of November 5, 2019, the following submissions were received:

***Table 1. Received Proposal Submissions***

<b>Proposal Type</b>	<b>Number of Unique Bidders</b>	<b>Number of Projects Proposed</b>	<b>Number of Options Proposed</b>
Wind Resources	5	7	16
Solar Resources	17	50	169
<b>Total</b>	<b>22</b>	<b>57</b>	<b>185</b>

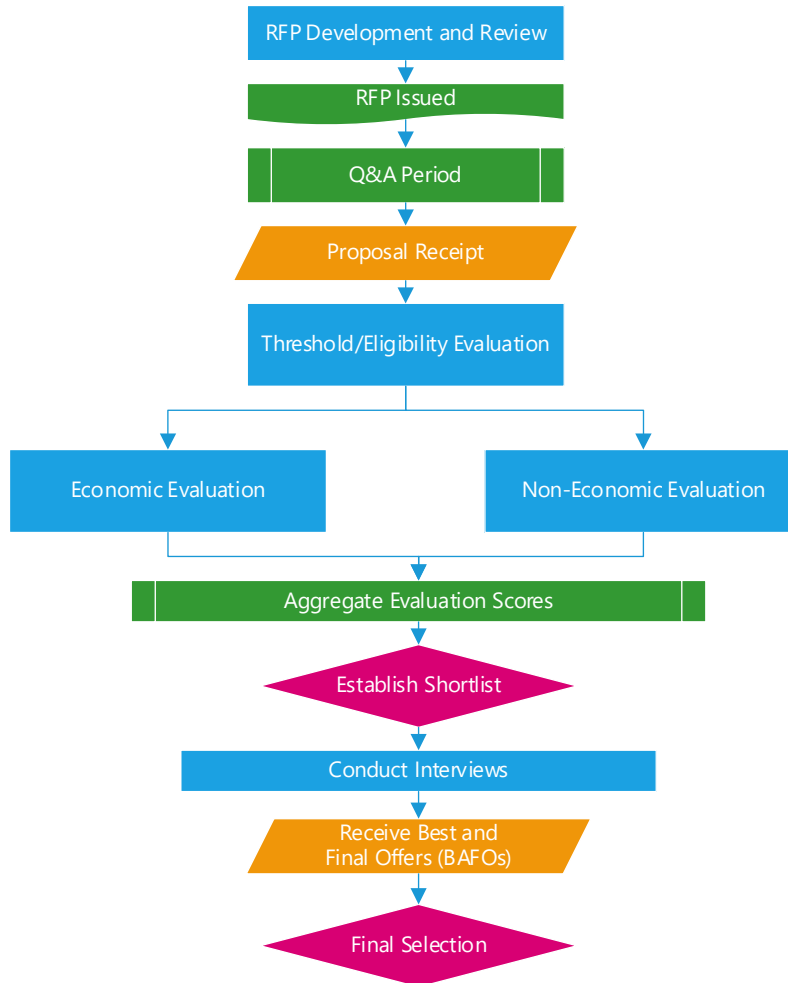
*Source: Navigant*

The information made available by the respondents via the PowerAdvocate platform was downloaded and provided to the DTE and Navigant team.

### 3.3 Proposal Threshold Screening

Pursuant to the RFP, the evaluation process was a multistage process including an eligibility/threshold screening stage and a detailed economic and noneconomic evaluation stage. Figure 1 illustrates the flow of work through the evaluation process.

**Figure 1. Flowchart of the Evaluation Process**



Source: Navigant

Under the threshold/eligibility evaluation stage, proposals were assessed for compliance with the initial qualifying eligibility and threshold criteria established under the RFP. As noted above, evaluation of all proposals proceeded while bidders were given a reasonable opportunity to clarify statements or provide missing information related to the threshold screening criteria. This modification of the review process was not a factor in the results of the bid review. Ultimately, 49 solar and 10 wind options did not conform to the bid rules.

## **4. Initial Shortlist Development**

### **4.1 Economic and Noneconomic Evaluation**

Proposals that successfully passed the eligibility and threshold stage were advanced to the initial evaluation stage.

DTE organized the evaluation among the scored criteria. Subject matter experts from DTE convened to review each of the following areas:

- **General experience and qualification criteria:** Members consisted of the core renewable procurement team, which scored proposals in the qualification, experience, and bonus criteria.
- **Renewable energy development criteria:** Members of this team oversee renewable energy development on behalf of DTE and are familiar with land, ordinance/permitting/community development, interconnection, and environmental/wildlife impacts.
- **Technology, operations, and management criteria:** This team consisted of DTE's subject matter experts in the areas of solar, wind technology, compliance and control, and balance of plant.
- **Economic evaluation and pricing criteria:** This team consisted of DTE's subject matter experts experienced in financial modeling and those who prepared the financial models for proposal cost inputs.
- **Contract terms and conditions criteria:** This team consisted of the individuals at DTE who are responsible for contract negotiations.
- **Project management and safety criteria:** This team consisted of those that manage and oversee the construction and development of renewable energy projects at DTE.
- **Financial strength and creditworthiness:** Navigant team members provided an initial review of the financial strength, which was subsequently reviewed by DTE's credit and finance department for the shortlisted entities.

An initial detailed evaluation was conducted at an offsite location with the above subject matter experts from DTE. An orientation was held to ensure that the teams were aligned with the scoring criteria and understood the standards that should be applied to ensure fairness and consistency across the evaluation. This process was observed and overseen by members of the Navigant team. During the initial evaluation, questions were sent to bidders for clarification. Most responses were received and considered during the 3-day event. By the last day, initial scoring results were available for the pricing and noneconomic criteria, which consisted of the bulk of the evaluation tasks. As minor questions remained, the teams followed up with the respondent over a few weeks to obtain remaining clarifications to update the scoring accordingly.

Proposals were ranked according to their combined score reflective of the economic and noneconomic evaluation. The top-ranking proposals were considered for shortlisting. DTE

proceeded down the list in order of ranking until a sufficient and reasonable number of proposals that would satisfy procurement objectives were selected to advance to the final selection stage.

## **4.2 Meridian Project**

The Meridian Project is a wind project just under 225 MW under development by DTE. While the development of this project was on a separate track from the RFPs, DTE compared the under development project against offers received under the RFPs to determine whether the DTE project should proceed independently. DTE's reviewers reviewed the project in-line with the other wind projects. Navigant reviewed the scoring methodology across all wind projects, including Meridian, to ensure equivalency in the approach taken by DTE's reviewers and also held a live question and answer session on the scoring of the proposals and the methodology taken. Given that the information for DTE's project was widely available and understood in the organization, the Navigant team sought to ensure that any ambiguity in developers' proposals under the current RFPs was addressed via additional clarifying questions sent to the proposers.

With respect to DTE's typical and anticipated renewable development practices and approach, the Navigant team sought to ensure that such commitments were firm to warrant the scoring applied. In certain criteria, DTE was not able to receive a full score because of the nature of the transaction (self-build, rate base), their equivalent development/financing experience, and the status of the project. DTE, for example, used a third party to provide a cost estimate for an EPC, but it was subject to further negotiation and adjustment and was scored accordingly. After a line-by-line review of the scoring across the noneconomic criteria evaluation completed by the DTE team, the Navigant team was satisfied that the Meridian evaluation was conducted on a consistent basis with other proposed wind projects. Additionally, the Meridian project was evaluated in the same manner as the BTA projects using consistent methodology for the economic evaluation. The main difference is the source of the development cost information for DTE's Meridian project, which is based on the third-party cost estimates for EPC services. Pursuant to these assumptions, the Navigant team was satisfied that the results of the economic evaluation were on par with the analysis conducted on the BTA and PPA projects received.

## **4.3 Results**

Results of the economic and noneconomic criteria were tabulated pursuant to the process established prior to proposal receipt. Out of the 185 proposals received from 22 respondents:

- Approximately 10 proposals from 5 respondents advanced to the short list for further evaluation. Additional proposals may be shortlisted according to DTE needs. At this time, the top-ranking proposals were shortlisted based on current expectations of need, which may change.
- 59 proposals from 13 respondents were deemed nonconforming.

- The remaining proposals did not advance to the short list at this time but may be considered in the event more supply is needed for voluntary green pricing programs under this solicitation.

This completed the detailed evaluation stage of the RFP process. DTE offered shortlisted respondents the opportunity to submit a best and final offer (BAFO) for each of their proposal(s). DTE would use the BAFO in the final selection stage after considering the proposals' updated combined scoring reflecting the BAFO pricing.

## 5. Final Award Group Development

### 5.1 Final Selection

In the final selection stage, further economic evaluation was performed on each shortlisted proposal based on its BAFO. At this stage, the bids were considered equal in merit, and DTE focused on the overall ability of the developers to commit to their stated bids. Accordingly, DTE held interviews with the final shortlist vendors to discuss:

- Their relative confidence in their projects and state of development.
- Their ability to commit to the PPA prices without conditions or, if any conditions exist, to state specifically what those conditions are for consideration.
- Discuss the relative differences between the range of options proposed, including those for the BTA versus the PPA.
- Other relevant points specifically related to the areas that DTE found were of concern in each of the final group's proposals.
- Considerations in the context of negotiations, where PPA prices are more prone to price adjustment due to the long-term nature of the contract when risk is negotiated back onto the developer. In the context of BTA negotiations, the risk exposure is limited due to the short-term nature of the agreement. Consequently, negotiations do not result in significant price increases but rather pass-throughs of additional cost or specs requested by the utility.

### 5.2 Results

From the final selection group, DTE selected the following projects, which represent the least risk and relative cost to the company:

- **The DTE Meridian Project (wind):** This project received the highest evaluation score among the all projects, which indicates that the project was assessed to have a relatively competitive price and low overall development risk.
- **A combination of PPA and BTA projects** have been selected to proceed to final negotiations. These projects received high evaluation scores given their respective ratings in the noneconomic and noneconomic criteria, indicating that the selected projects have low development risk and are competitively priced.

### 5.3 Negotiations

As of the date of this report, negotiations with developers on the short list are proceeding. DTE reports that PPA developers made commercial assumptions that were inconsistent with the RFP pro forma and, in some cases, were unacceptable to DTE. As a result, PPA prices increased during negotiations as DTE's position on these items was clarified. Based on our experience, adjustments made during negotiations are not uncommon and typical in the industry.



## **6. Recommendations**

We monitored and made recommendations to DTE during the solicitation based on its observation of and experience with similar solicitations. DTE adopted the Navigant team's recommendations to its satisfaction during the pendency of the process. Therefore, Navigant has no additional recommendations at this time.

## 7. Findings

The following is Navigant's independent assessment of whether the goals of the RFP were achieved and assessment of the RFP process conducted by DTE:

- Our overall assessment is that the goals of the RFP were achieved—22 respondents that submitted 185 total proposals.
- The qualification evaluation was performed on a fair and consistent basis using the process noted in the RFP. Initially excluded respondents were given an opportunity to cure their deficiencies within a short but reasonable period of time, which helped maintain the range of proposals evaluated and the competition between them.
- The evaluation stage, including the pricing and noneconomic evaluations, was performed on a fair and consistent basis with the process noted in the RFP. Use of LCOE as the basis for scoring on price is reasonable and typical, as is the methodology used to equate, from a revenue requirements standpoint, proposal options (BTA) that result in DTE ownership of the facilities against PPA options.
- Using a score sheet and scoring guide for the noneconomic criteria scoring is also reasonable and typical. The final range of rating guidelines is reasonable and consistent with similar criteria we have developed or observed. The Navigant team had an opportunity to review and comment on the scoring criteria, and DTE adopted the recommendations we proposed to our satisfaction. DTE subject matter experts that performed the evaluation and scoring, overseen by Navigant during the company's offsite event, were consistent in their approach. The combined scoring and ranking using a weighting between pricing/noneconomic criteria is reasonable.
- The advancement of a significant number wind and solar resources, as applicable, to the short list was reasonable and demonstrated an effort on the part of DTE to ensure a competitive solicitation.
- Selection of finalists was also performed on a fair and consistent basis with the process published in the RFP.
- Based on our review and observations, there is no evidence that the evaluation and selection process caused any unfair advantage or disadvantage to any interested party or respondent.

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**POWER PURCHASE AGREEMENT**

**BETWEEN**

**DTE ELECTRIC COMPANY**

**AND**

**ASSEMBLY SOLAR III, LLC**

**MAY 5, 2020**

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## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “Agreement”) is entered into as of MAY 5, 2020 (the “Effective Date”) between DTE ELECTRIC COMPANY (“Buyer”) and ASSEMBLY SOLAR III, LLC, a Delaware limited liability company (“Supplier”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the MPSC and the FERC;

**WHEREAS**, Supplier plans to build, own, and operate a proposed 79 MW<sub>AC</sub> measured at the Delivery Point (the “Contract Capacity”) solar photovoltaic generating facility in Shiawassee County, Michigan (including the Supplier’s interest in any associated facilities and equipment required to deliver Energy to the Delivery Point, as further described in [REDACTED] hereto and as the same may be updated in accordance with Section 5.8, the “Generating Facility”), which it intends to designate as a Renewable Energy System with the MPSC;

**WHEREAS**, the Parties intend that the electricity generated by the Generating Facility will comply with the requirements of the Act (as defined below) and satisfy a portion of Buyer’s obligations under the Renewable Energy Credits requirements thereof;

**WHEREAS**, the Parties intend that the Contract Capacity of the Generating Facility will comply with the requirements of the Act and satisfy a portion of Buyer’s obligations for renewable energy capacity under the Act; and

**WHEREAS**, Supplier desires to sell to Buyer, all the capacity, ancillary services and non-firm (subject to the requirements of this Agreement) energy generated by the Generating Facility and all the associated Renewable Energy Credits and Renewable Energy Benefits and Buyer desires to purchase such energy, Renewable Energy Credits and Renewable Energy Benefits from Supplier, upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### **1. DEFINITIONS**

1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

[REDACTED]

“Act” means Clean and Renewable Energy and Energy Waste Reduction Act, 2008 PA295, 2016 PA342, MCL 460.1001 et seq. and the regulations promulgated thereunder, in each case, as amended.

[REDACTED]

[REDACTED]

“Adjusted Delivered Amount” means, with respect to the calculation of a Shortfall for a Contract Year, the sum of the Delivered Amount for such Contract Year plus the aggregate amount of [REDACTED] for such Contract Year that accrued as a result of any Excused Outage, subject to Section 7.5.

[REDACTED]

“Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person.

“After Tax Basis” means that any payment received or deemed to have been received by a Party must be supplemented by a further payment to such Party so that the net amount actually received by the Party after taking into account all Taxes that would result from the receipt or accrual of such payments is equal to the full amount of the original payment that the Party would have received if no deduction or withholding had been required.

“Agreement” has the meaning ascribed to that term in the preamble of this Agreement.

“A.M. Best” means A.M. Best Company, Inc.

“Ancillary Services” means those services that are necessary to support Capacity and the transmission of Energy from resources to loads while maintaining reliable operation of the Transmission System in accordance with [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

“Auction Clearing Price” and “ACP” mean with respect to a MISO Planning Year, the price (expressed in \$ per MW Day) determined and announced by MISO in the Planning Resource Auction for such MISO Planning Year for capacity that is located in the Local Resource Zone in which Buyer’s service territory is located and clears in such Planning Resource Auction.

“Bankruptcy Code” means Title 11, United States Code, and any other state or U.S. federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute.

“Billing Period” has the meaning ascribed to that term in Section 4.1.1.

“Business Day” means any day other than Saturday, Sunday, Federal Reserve Bank holiday, or other day that is a holiday observed by Buyer.

“Buyer” has the meaning ascribed to that term in the preamble of this Agreement.

“Buyer’s REC Account” means Buyer’s Michigan Renewable Energy Certification System (MIRECS) Account and any successor thereto that is maintained for the purpose of tracking the production, sale, transfer, purchase and retirement of RECs by Buyer.

“Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on [REDACTED]

“Capacity” means the instantaneous rate at which Energy can be delivered, received or transferred measured in MW from the Generating Facility.

“Capacity Change in Law” has the meaning ascribed to that term in Section 26.17.

“Capacity Multiplier” means the capacity factor determined by reference to the table included in [REDACTED] which table reflects the factors that MISO utilizes as of the Effective Date to accredit capacity for a MISO Planning Year as such table may be updated as provided in [REDACTED]

[REDACTED]

“Capacity Value” means the amount of capacity in MW (equivalent to a Zonal Resource Credit) accredited to the Generating Facility for a specific MISO Planning Year, as calculated pursuant to Exhibit 3.3.

“Change in Control” means the Ultimate Parent ceases to Control and own, directly or indirectly, (a) from the Effective Date until the Commercial Operation Date, [REDACTED]

[REDACTED]

“Commercial Operation” means that Supplier has (a) demonstrated to Buyer’s reasonable satisfaction that the requirements set forth in Section 5.4 [REDACTED] have been satisfied with respect to the Generating Facility, and (b) delivered a certificate to Buyer in the form of [REDACTED] executed by a Responsible Officer of Supplier, together with the required supporting documentation.

“Commercial Operation Date” means the date on which Commercial Operation occurs.

“Commercial Pricing Node” means a price node in the MISO commercial model used to schedule and settle market activities.

“Confidential Information” has the meaning ascribed to that term in Section 25.1.

“Contract Capacity” has the meaning ascribed to that term in the recitals to this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

“Contract Representative” of a Party means the individual designated by that Party in [REDACTED] who is responsible for ensuring effective communication, coordination and cooperation between the Parties.

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

“Control” shall mean, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The terms “controlled by” and “under common control with” shall have correlative meanings.

“Corrected Invoice” has the meaning ascribed to that term in [REDACTED]

“Credit Rating” means with respect to a Person and a Relevant Rating Agency, the rating assigned by such Relevant Rating Agency to the long-term, senior, unsecured debt (not supported by third-party credit enhancement) or deposit obligations of such Person, or if no such ratings exists for such Person, the “issuer rating” or “issuer credit rating” (as applicable based on the Relevant Rating Agency) for such Person then assigned by the Relevant Rating Agency. In the event of an inconsistency in ratings among the Relevant Rating Agencies, the lower rating assigned shall control.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Daylight Hours” means with respect to a day, the period that starts with and includes the first full hour following sunrise on such day and continues through and includes the last full hour before sunset on such day, in each case in Detroit, Michigan as specified by the National Weather Service, or any successor agency that reports sunrise and sunset data, for such day.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Defaulting Party” has the meaning ascribed to that term in Section 21.1.

“Delay Damages” has the meaning ascribed to that term in Section 5.7.1.

“Delivered Amount” means with respect to any period, the actual amount of Energy delivered by Supplier to the Delivery Point in accordance with the terms of this Agreement during such period.

“Delivery Point” means the Generating Facility’s point of interconnection with the Transmission System, as more particularly defined in [REDACTED]

“Development Security” has the meaning ascribed to that term in Section 13.1.1.

“Disclosing Party” has the meaning ascribed to that term in Section 25.1.

“Disallowance Order” has the meaning ascribed to that term in Section 12.3.5.

“Dispute” has the meaning ascribed to that term in Section 17.1.1.

“DNP3” means the DNP3 distributed network protocol.

[REDACTED]  
[REDACTED]  
[REDACTED]

“Economic Energy Offer” means an offer that is duly submitted to MISO to sell Energy at a specified price, location, quantity and time.

“Effective Date” has the meaning ascribed to that term in the preamble of this Agreement.

[REDACTED]  
[REDACTED]  
[REDACTED]

“Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Interconnection Facilities, the Transmission System, or the transmission or distribution system of other electric utilities that is (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) is reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission or distribution system reliability of other electric utilities, and including any “Emergency” as such term is defined in the MISO Tariff.

“Energy” means three phase, 60-hertz alternating current electrical energy (measured in MWh) generated by the Generating Facility and delivered to the Delivery Point (less Station Service).

“Energy Settlement Costs” has the meaning ascribed to that term in [REDACTED]

“EPC Contract” has the meaning ascribed to that term in Section 5.4.

“EPT” means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.

“Event of Default” has the meaning ascribed to that term in Section 21.1.

[REDACTED]

[REDACTED]

“External Communications Interface” means the electronic connection point at which the Generating Facility’s data is made available to Buyer.

“Facility Debt” means the obligations of Supplier or its Affiliates to any Supplier’s Lender pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing. For the avoidance of doubt, Facility Debt includes Tax Equity Financing.

“FERC” means the Federal Energy Regulatory Commission.

“Financing” means any financing provided to Supplier or any Affiliate of Supplier with respect to the Generating Facility, including: (a) lending money, extending credit, purchasing notes or providing loan guarantees (whether directly to Supplier or to an Affiliate of Supplier) as follows: (i) for the construction, interim or permanent financing or refinancing of the Generating Facility; (ii) for working capital or other ordinary business requirements of the Generating Facility (including the maintenance, repair, replacement or improvement of the Generating Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Generating Facility; or (iv) for any capital improvement or replacement related to the Generating Facility; or (b) participating as a Tax Equity Investor in the Generating Facility.

“Financing Documents” means the documents associated with any Financing or Tax Equity Financing, including the loan and credit agreements, notes, bonds, indentures, security agreements,

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 or Tax Equity Financing for the Generating Facility, and also 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 Supplier in connection with development, construction, ownership, leasing, operation or maintenance of the Generating Facility.

“First Full Contract Year” means the first Contract Year that is a full calendar year.

“Forced Outage” means the removal from availability of any material portion of the Generating Facility, transmission line, or other equipment necessary for the generation of Energy and delivery by the Supplier of such Energy to the Delivery Point for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure resulting in a decrease to available Capacity. The term Forced Outage includes outages that may result from Force Majeure or an Emergency, as well as other types of unplanned outages.

“Force Majeure” has the meaning ascribed to that term in Section 16.2.

“Generating Facility” has the meaning ascribed to that term in the preamble of this Agreement.

“Generating Facility Property” means all property rights necessary for the use of the Generating Facility for its intended purpose, including (i) the Generating Facility, (ii) Supplier’s interest in the Site, (iii) Supplier’s interest in the Interconnection Facilities, (iv) Supplier’s interest in the Generating Facility collection facilities and substation, (v) Supplier’s rights and obligations under the Interconnection Agreement, (v) Supplier’s Required Permits and Approvals and all material contracts; and (vi) all Generating Facility fixtures, equipment and personal property; provided that to the extent that the “Generating Facility Property” includes any shared facilities, shared property rights or other shared rights that Supplier and one or more Affiliates or third parties share or jointly use, then the property rights described in this definition shall only apply to the extent of Supplier’s interest therein and shall not affect any such Affiliates or third parties.

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

“IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.

“Implied REC Price” has the meaning ascribed to that term in [REDACTED]

“Indemnified Party” has the meaning ascribed to that term in Section 14.1.

“Indemnifying Party” has the meaning ascribed to that term in Section 14.1.

“Interconnection Agreement” means the provisional and/or final, as applicable, generator interconnection agreement to be entered into between Supplier, MISO and Transmission Owner, in connection with the Generating Facility, as may be amended, restated, supplemented, or otherwise modified from time to time.

“Interconnection Agreement Effective Date” means the date on which the Interconnection Agreement is executed by the Supplier, MISO and Transmission Owner.

“Interconnection Facilities” means the equipment, supporting software and firmware, and ancillary facilities, including any modifications, additions and upgrades made to such facilities,



which are necessary to connect the Generating Facility to the Transmission System as described in [REDACTED]

“Interest Rate” means, for any date, the lesser of (x) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) plus 2% and (y) the maximum rate permitted by applicable Law.

“Law” means any federal, state, local or other law, common law, treaty, code, rule, ordinance, directive, regulation, judicial or administrative order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including the MISO Tariff, that is binding on a Party or any of its property.

“Letter of Credit” means an irrevocable stand-by letter of credit governed by the International Standby Practices (International Chamber of Commerce Pub. 59) and issued by a Qualified Financial Institution for the benefit of Buyer in substantially the form attached as [REDACTED] to this Agreement.

[REDACTED]

“Local Resource Zone” has the meaning ascribed to that term in the MISO Tariff.

“Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third-party upon an Indemnified Party or incurred in connection with any claim by a third-party against an Indemnified Party pursuant to Article 14.

“Major Contracts” has the meaning ascribed to that term in Section 5.10.

[REDACTED]

“Material Adverse Effect” means, with respect to a Party, any event or occurrence of whatever nature which could reasonably be expected to result in a material adverse change in, or material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, assets, liabilities, property, results of operations or condition (financial or otherwise) of such Party.

“Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters owned by Supplier, or its designee, required for (a) an accurate determination of the quantities of Delivered Amounts and Station Service from the Generating Facility and for recording other related parameters required for the reporting of data to Buyer; and (b) the computation of the payment due to Supplier from Buyer.

[REDACTED]

“MISO” means Midcontinent Independent System Operator, Inc. and any successor entity thereto that performs the functions of a regional transmission organization with respect to the region in which Buyer and the Generating Facility are located.

“MISO Planning Year” means a “Planning Year” as such term is defined in the MISO Tariff.

“MISO Tariff” means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for MISO, including the rules, protocols, procedures, business practice manuals, and other standards associated therewith, as the same may be amended, amended and restated, modified or supplemented from time-to-time and approved by FERC.

“Moody’s” means Moody’s Investors Service, Inc.

“MPSC” means the Michigan Public Service Commission.

[REDACTED]

“MW” means a megawatt of electrical capacity.

“MWh” means a megawatt hour of electrical energy.

[REDACTED]

“NERC” means the North American Electric Reliability Corporation and any successor entity thereto. References to NERC in this Agreement are deemed to include references to the applicable regional entity designated by NERC.

“NERC Reliability Standards” means those reliability standards applicable to the Generating Facility, or to the Generator Owner (as defined in the NERC Reliability Standards) or the Generator Operator (as defined in the NERC Reliability Standards) with respect to the Generating Facility, that are adopted by NERC and approved by the applicable regulatory authorities.

“Network Resource Interconnection Service” has the meaning ascribed to that term in the MISO Tariff.

“Non-Defaulting Party” means the Party that is not the Defaulting Party.

“Operating Day” has the meaning ascribed to that term in the MISO Tariff.

“Operating Representative” means any of the individuals designated by a Party, as set forth in [REDACTED] to transmit and receive routine operating and Emergency communications required under this Agreement.

“Operating Security” has the meaning ascribed to that term in Section 13.2.1.

“Operations and Maintenance Plan” has the meaning ascribed to that term in Section 5.9.6.1.

“Operator” means an experienced provider of operations and maintenance services to solar photovoltaic generating facilities located in the same geographical area as the Generating Facility selected by Supplier and approved by Buyer in its commercially reasonable discretion to serve as the provider of operations and maintenance services for the Generating Facility; provided, however, that SOLV, MaxGen Energy Services and Invenergy, (or any Affiliate of any such entity providing operations and maintenance services), and any Qualified Operator, in each case, shall be deemed approved by the Supplier to serve as the Operator hereunder.

“Option” has the meaning as set forth in Section 19.1.

[REDACTED]

“Party” and “Parties” have the meaning ascribed to those terms in the preamble of this Agreement.

“Penalties” means any penalties, fines, damages, sanctions or charges, including imbalance charges and fines or penalties, whether now existing or that become effective in the future, attributable to this Agreement and actually imposed on Buyer by any Governmental Authority, NERC, MISO or the Transmission Owner.

[REDACTED]

[REDACTED]

“Person” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

“Planned Outages” means the scheduled removal from service, in whole or in part, of the Generating Facility for inspection, maintenance or repair with the approval of Buyer.

“Planned Synchronization Date” means [REDACTED] as may be adjusted pursuant to Section 5.6.

“Planning Resource” has the meaning ascribed to that term in the MISO Tariff.

“Planning Resource Auction” has the meaning ascribed to that term in the MISO Tariff.

“Power Quality Standards” means the power quality standards established or otherwise enforced by NERC, MISO, IEEE-SA, National Electric Safety Code, or the National Electric Code (including their respective successor organizations or codes) and that apply to the Generating Facility, including any power quality standards imposed pursuant to the terms of the Interconnection Agreement or by the Transmission Owner, as applicable, in each case as they may be amended, restated, superseded, supplemented, or otherwise modified from time to time.

“Product” means all Energy, all Capacity, all Ancillary Services, all RECs, and all Renewable Energy Benefits from the Generating Facility.

“Project Milestone” means each of the milestones, obligations, and other requirements listed in [REDACTED] as any of the same may be adjusted pursuant to Section 5.6.

“Project Milestone Schedule” means the schedule of Project Milestones, completion dates and required documentation specified in [REDACTED] as the same may be adjusted pursuant to Section 5.6.

“Qualified Financial Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or the U.S. branch office of a foreign bank, with (a) a Credit Rating of at least “A-” by S&P and “A3” by Moody’s, and (b) having a combined capital surplus of at least \$1,000,000,000.

“Qualified Operator” means an operator of solar generation facilities of a similar type and size as the Generating Facility that has experience owning and/or operating and maintaining a minimum of 300 MW (ac) of solar photovoltaic energy assets for at least the last two years.

[REDACTED]

“Real-Time LMP” means the hourly Real-Time Locational Marginal Price (as defined in the MISO Tariff) at the Commercial Pricing Node for the Generating Facility.

“REC Administrator” means the Person appointed to administer the development, registering, tracking, qualifying, recording and transferring of Renewable Energy Credits established pursuant to the Act, and any successor thereto.

[REDACTED]

[REDACTED]

[REDACTED]

“Receiving Party” has the meaning ascribed to that term in Section 25.1.

“Relevant Rating Agencies” means Moody’s and S&P.

[REDACTED]

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

“Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances or benefits, however entitled, (a) allocated, assigned, awarded, certified or otherwise transferred or granted by any Governmental Authority in any jurisdiction in connection with the Generating Facility; or (b) associated with the production of electrical energy by the Generating Facility or based in whole or part on the Generating Facility’s use of renewable resources for generation or because the Generating Facility constitutes a renewable energy system or the like or because the Generating Facility does not produce greenhouse gases, regulated emissions or other pollutants, whether any such attributes, reductions, credits, offsets, allowances or benefits exist now or, subject to Section 3.12, in the future or whether they arise under existing Law or any future Law or whether such attribute, reduction, credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable, but in all cases shall not mean RECs or Tax Credits. Renewable Energy Benefits includes such attributes, reductions, credits, offsets, allowance or benefits attributable to Energy or Ancillary Services sold under this Agreement, and Energy or Ancillary Services consumed by the Generating Facility, such as Station Service, but excludes any Tax Credits.

“Renewable Energy Credit” or “REC” means a credit granted pursuant to Section 41 of the Act that represents generated renewable energy, including, without limitation, incentive RECs granted under sections 39(2)(a)-(e), as applicable, of the Act.

“Renewable Energy System” means, with respect to Michigan, a “renewable energy system” as defined in the Act.

“Replacement REC” means, for a particular REC Shortfall, a REC with comparable character to, and with an expiration date no earlier than, a REC that was delivered or should have been delivered during the second Contract Year of a Shortfall period.

“Responsible Officer” means with respect to Supplier, a vice president, senior vice president, chief executive officer, president, member, manager or other authorized signatory of Supplier, or if documents executed by Supplier are executed by an entity in its capacity as member, manager, or general partner of Supplier, any individual holding such position with such entity.

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [REDACTED] as may be adjusted pursuant to Section 5.6.

“SEC” means the Securities and Exchange Commission.

“Settlement Costs” has the meaning ascribed to that term in [REDACTED]

“Settlement Period” has the meaning ascribed to that term in Section 17.1.1.

[REDACTED]

“Shortfall Invoice” has the meaning ascribed to that term in Section 4.1.7.

“Site” means those parcels of land in Shiawassee County, Michigan, on which the Generating Facility will be located, and all applicable laterals and appurtenances thereto, including the land associated with the Generating Facility’s substation, as the same may be updated in accordance with Section 5.8.

“Station Service” means electrical energy consumed by the Generating Facility and purchased from DTE Electric Company according to Standard Contract Rider No. 3 – Parallel Operation and Standby Service and the related provisions of DTE Electric Company’s Rate Book for Electric Service.

“Storage Period” means any period during which either (a) an Excused Outage has occurred and is continuing or (b) the Generating Facility is generating Energy in excess of the Contract Capacity.

“Supplier” has the meaning ascribed to that term in the preamble of this Agreement.

“Supplier’s Lenders” means any Persons (other than an Affiliate of Supplier) and their successors and permitted assignees who provides Financing for the Generating Facility; provided that “Supplier’s Lenders” shall include any Affiliate of Supplier who acts as an investor in a Tax Equity Financing with respect to the Generating Facility.

“Supplier’s Required Permits and Approvals” has the meaning ascribed to that term in [REDACTED]

“Supply Amount” means, with respect to any Contract Year, the amount of Energy specified in [REDACTED] for such Contract Year.

“Synchronization Date” means the first date on which the Generating Facility is energized and operates in parallel with the Transmission System and delivers Test Energy to the Delivery Point.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

“Tax Credits” means (i) any and all present or future (whether known or unknown) state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Generating Facility, and (ii) present or future (whether known or unknown) cash payments or outright grants of money relating in any way to the ownership or operation of, or the production of Energy from, the Generating Facility.

“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each, a “Tax Equity Investor”).

“Term” has the meaning ascribed to that term in Section 2.2.

“Test Energy” means Energy delivered to and purchased by Buyer prior to the Commercial Operation Date.

“Transmission Owner” means Michigan Electric Transmission Company, LLC (METC) or any successor operator or owner of the Transmission System.

“Transmission System” means the facilities used for the transmission of electric energy, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Owner or MISO.

[REDACTED]

“Zonal Resource Credit” has the meaning ascribed to that term in the MISO Tariff.

## **2. TERM**

2.1 Effective Date. This Agreement is effective on the Effective Date; except that subject to the relevant provisions of Section 12.3, the obligation of Buyer to purchase and take delivery of Product will not be effective until the MPSC Approval Date.

2.2 Term. Supplier’s obligation to deliver Product, and subject to the occurrence of the MPSC Approval Date and the relevant provisions of Section 12.3, Buyer’s obligation to accept and pay for Product, under this Agreement will commence on the Synchronization Date and continue thereafter for a [REDACTED] from the Commercial Operation Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”).

## **3. SUPPLY OBLIGATIONS**

3.1 Energy. Subject to the other provisions of this Agreement, including those related to Excused Outages and Excused Delays, and the status of the Generating Facility as an intermittent resource, commencing on the Commercial Operation Date, Supplier shall sell and deliver the Supply Amount to Buyer at the Delivery Point.

3.2 Test Energy. During the period commencing on the Synchronization Date and continuing through the start of the first Contract Year, subject to the condition that [REDACTED]

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

3.3 Capacity. Buyer has all rights to the Capacity of the Generating Facility during the Term. Supplier shall take all actions as may be necessary or reasonably requested by Buyer to enable Buyer to receive the full Capacity Value of the Generating Facility in the MISO market or any other wholesale market in which Buyer may participate; provided that Buyer shall be responsible for all of Supplier’s costs and expenses incurred in connection with the foregoing obligation in [REDACTED]. As of the date on which any Energy is delivered to Buyer hereunder, Supplier represents and warrants that it has not sold the associated Capacity rights of the Generating Facility to any other Person or committed such Capacity rights in any capacity auction.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 3.6 Buyer's Obligation and Delivery. Buyer will serve as the MISO market participant as defined in the MISO Tariff and comply with all applicable MISO Tariff rules in performance of such duties. Subject to the terms of this Agreement, Buyer shall purchase and take delivery of all Energy produced by the Generating Facility (less Station Service) at the Delivery Point in accordance with the terms of this Agreement. Supplier is

responsible for all costs associated with delivery of the Energy to the Delivery Point. Buyer is responsible for all costs associated with receipt of the Energy at the Delivery Point and any other costs on Buyer's side of the Delivery Point. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Energy from the Generating Facility in any period during which the Generating Facility does not qualify as a Renewable Energy System, other than if such failure to qualify is a result or consequence of (i) Buyer's failure to perform any obligations hereunder or its duties as a market participant pursuant to applicable MISO Tariff rules or (ii) any change in applicable Law affecting the Generating Facility's status as a Renewable Energy System which Supplier is taking commercially reasonable actions to address in a prompt fashion.

3.7 No Obligation to Purchase. Buyer shall have the right, but not the obligation, to purchase or to pay for any Energy produced by the Generating Facility and delivered at the Delivery Point in excess of the Contract Capacity. If the Generating Facility produces Energy in excess of the Contract Capacity when averaged over a two minute period, Buyer will have the right to direct the curtailment of the Generating Facility so that it is producing Energy at an amount no greater than the Contract Capacity when averaged over a two minute period.

3.8 Settlements. Except as otherwise provided in this Agreement, Buyer is responsible for the settlement with MISO of all Energy purchased by Buyer during the Term, including all costs associated therewith, as well as all charges associated with scheduling activities, unless such costs or charges are incurred by Buyer as the result of Supplier's failure to perform its obligations under this Agreement or applicable Law (including the MISO Tariff), or as a result of any inaccurate or incomplete information provided to Buyer with respect to the Generating Facility.

3.9 Product Payments.

3.9.1 Buyer's Payments to Supplier. Buyer shall pay to Supplier the Contract Rate for each MWh of the Delivered Amount (as determined by data from monthly Meter readings).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

3.11 Delivery of Renewable Energy Credits.

- 3.11.1 All RECs and any benefits derived therefrom are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all RECs derived from the production of Energy from the Generating Facility. Supplier shall timely prepare and execute all documents and shall take all actions necessary under

applicable Law to cause the RECs delivered to Buyer in accordance with this Agreement to vest in Buyer, without further compensation, including, but not limited to, all actions necessary to register or certify the RECs or the Generating Facility with the REC Administrator, or a substitute applicable Governmental Authority, and to provide all production data and satisfy the reporting requirements of the REC Administrator or a substitute applicable Governmental Authority. Any and all fees, charges or expenses otherwise associated with registering, tracking, qualifying, and transferring RECs and Renewable Energy Benefits associated with this Agreement shall be for the account of Supplier, subject, in the case of qualifying Renewable Energy Benefits that did not exist as of the Effective Date only, to the proviso set forth in Section 3.12 below.

3.11.2 Supplier and Buyer agree that all RECs to be delivered to Buyer in accordance with this Agreement shall be issued to Supplier and transferred to Buyer in accordance with this Section 3.11.

3.11.3 On or before February 1 of each Contract Year, Supplier, as owner or operator of the Generating Facility, shall deliver to Buyer a written attestation for the prior Contract Year that the Energy represented in MWh used to certify RECs (a) has not been and will not be sold or otherwise exchanged for compensation or used for credit in Michigan or any other state or jurisdiction; and (b) has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction as prohibited under Michigan law.

3.12 Renewable Energy Benefits. All Renewable Energy Benefits shall be exclusively dedicated to and shall be vested in Buyer and Supplier hereby transfers to Buyer all Renewable Energy Benefits. In accordance with [REDACTED], Supplier shall take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable or as reasonably requested by Buyer to qualify for, and for Supplier or Buyer to receive, all available Renewable Energy Benefits and, if received by Supplier, to transfer Renewable Energy Benefits to Buyer, without further compensation. Supplier shall timely execute all documents and shall timely take all actions necessary under applicable Law to qualify for all available Renewable Energy Benefits and to cause Renewable Energy Benefits to vest in and be delivered to Buyer; provided, however, that in the event that, due to a change in applicable Law after the Effective Date, (i) a Renewable Energy Benefit is created that did not exist on the Effective Date or there is any material modification to any Renewable Energy Benefit that did exist on the Effective Date, and (ii) Buyer requests that Supplier take all steps necessary for Buyer to qualify for, and receive, such Renewable Energy Benefit, then Supplier shall take such steps and Buyer shall be responsible for all of Supplier's costs and expenses incurred in connection with the foregoing obligation in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**5. FACILITY CONSTRUCTION, OPERATIONS, AND MODIFICATIONS**

5.1 Construction of Generating Facility. Supplier is solely responsible for the planning, design, procurement, construction, start-up, testing, and licensing of the Generating Facility.

Supplier shall construct the Generating Facility in accordance with [REDACTED] and to ensure that (a) Supplier is capable of meeting its supply obligations over the Term and (b) the Generating Facility is at all times in compliance with all requirements imposed on a Renewable Energy System as set forth in the Act. Attached as [REDACTED] is the proposed single line diagram of the Generating Facility, the Interconnection Facilities, the Delivery Point and the location of the Meters. On or before the Commercial Operation Date, Supplier shall provide an updated version of [REDACTED] to reflect the as-built configuration of the Generating Facility, Interconnection Facilities, Delivery Point, and Meters.

- 5.2 Performance of Project Milestones. Without limiting its obligations under any other provision of this Agreement, Supplier shall, subject to extension pursuant to Section 5.6, complete each Project Milestone set forth in [REDACTED] and promptly following completion of each such Project Milestone shall deliver to Buyer such documentation specified in [REDACTED] together with such additional documentation and supporting evidence reasonably requested by Buyer demonstrating the completion of the applicable Project Milestone. Each written certification provided by Supplier pursuant to [REDACTED] must be executed by a Responsible Officer and be in a form reasonably acceptable to Buyer. Supplier shall notify Buyer promptly, and in any event [REDACTED], following its determination, or its becoming aware of information that leads to a reasonable conclusion, that a Project Milestone will not be met by the applicable date designated in the Project Milestone Schedule, and if requested by Buyer, shall convene a meeting with Buyer to discuss the situation and possible remediation plans not later than [REDACTED] following Buyer's request.
- 5.3 Synchronization Date. At least [REDACTED], but not more than [REDACTED], prior to the Synchronization Date, Supplier shall provide written notice to Buyer's Contract Representative that Supplier is preparing to synchronize to the Transmission System and the date on which such synchronization will occur. At such time that Supplier determines that the requirements for the Synchronization Date set forth in Article 5 and [REDACTED] have been satisfied, Supplier shall provide Buyer with written certification thereof and the other supporting documents as set forth in [REDACTED]. Buyer will have a reasonable period of time to review such evidence and raise any commercially reasonable objections to Supplier's satisfaction of any requirements for the achievement of the Synchronization Date.
- 5.4 Commercial Operation Date. Supplier shall notify Buyer at least [REDACTED] prior to the commencement of any performance and commissioning tests required by the engineering, procurement, and construction agreement entered into by Supplier for the Generating Facility (the "EPC Contract"); and the Interconnection Agreement. Subject to Section 6.7, Buyer has the right to have its representatives present at and witness each such test. Prior to the Commercial Operation Date, Supplier shall ensure that the Generating Facility includes all equipment required by the MISO Tariff to qualify as a "Dispatchable Intermittent Resource" and that such equipment is operating properly. At such time that Supplier determines that the requirements for achieving Commercial Operation set forth in this Section 5.4 and [REDACTED] have been satisfied, Supplier shall provide Buyer with a written certificate of a Responsible Officer of Supplier in the form attached as [REDACTED]

representing that such requirements have been satisfied and including the supporting documents set forth in [REDACTED]. Buyer will have [REDACTED] to review such evidence and raise any reasonable objections to Supplier's satisfaction of any requirements for the achievement of the Commercial Operation Date. Once Buyer has received Supplier's written certificate and is reasonably satisfied that Supplier has satisfied the requirements for achieving Commercial Operation set forth in [REDACTED], Buyer will confirm the achievement of the Commercial Operation Date by executing the certificate provided by Supplier. If Buyer determines that the requirements for Commercial Operation were satisfied concurrently with or prior to its receipt of Supplier's written certification, then the Commercial Operation Date will be the date on which Buyer received Supplier's written certification, and if Buyer reasonably determines that the requirements for Commercial Operation were not so satisfied, the Commercial Operation Date will be the date thereafter on which Buyer reasonably determines that the final requirement for Commercial Operation was satisfied, as specified by Buyer in connection with its execution of Supplier's certificate.

- 5.5 Construction Updates and Reporting. Supplier shall, prior to the issuance of "final notice to proceed" under the EPC Contract, on a quarterly basis provide to Buyer a report that includes the status in achieving Project Milestones and any other required milestones under the Interconnection Agreement, progress in obtaining any approvals or certificates in connection with achieving the Commercial Operation Date, and a discussion of any foreseeable disruptions or delays. Following such issuance of "final notice to proceed" under the EPC Contract, Supplier shall provide Buyer with monthly construction reports. The quarterly or monthly, as applicable, project reports must be provided by no later than the [REDACTED] after the end of every quarter or month, as applicable, for the previous quarter or month, as applicable. Upon the reasonable request of Buyer, Supplier shall meet with Buyer to review this data and any information related to Supplier's status in achieving the Project Milestone activities listed in the Project Milestone Schedule.

[REDACTED]

[illegible]

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

\_\_\_\_\_

[REDACTED]

[REDACTED]

5.9 Operation and Maintenance.

5.9.1 Supplier shall ensure that all Energy generated by the Generating Facility satisfies the Power Quality Standards and all other voltage, power factor, and other interconnection and parallel operating requirements specified in [REDACTED]

5.9.2 Supplier shall (a) at all times operate, maintain and repair, or, if applicable, shall cause its Operator to operate, maintain and repair, the Generating Facility in accordance with [REDACTED] and, without limiting the foregoing, in order to ensure that Supplier is capable of meeting its supply obligations over the Term; (b) the Generating Facility is at all times a Renewable Energy System; and (c) Supplier is at all times in compliance with applicable Law. In connection with the foregoing, Supplier shall, and as applicable, shall cause the Operator, (i) to maintain records of all operations of the Generating Facility in accordance with [REDACTED], (ii) to provide to Buyer, on reasonable request, copies of any regularly prepared operations and maintenance status reports of the Generating Facility that Supplier provides to MISO, (iii) to follow such regulations, directions and procedures of the

Transmission Owner, MISO, NERC and any applicable Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Generating Facility and to otherwise cause the Generating Facility to be operated consistent with all applicable NERC, MISO, and Transmission Owner requirements (including applicable requirements under the Interconnection Agreement), and (iv) use commercially reasonable efforts to prevent, avoid, or mitigate, as applicable, any events or circumstances that could reasonably be expected to cause or result in the photovoltaic modules included in the Generating Facility being subjected to shade, including using commercially reasonable efforts to negotiate with adjacent landowners. Each Party shall use all reasonable efforts to avoid any interference with the other's operations.

- 5.9.3 Supplier shall, or shall cause Operator to, at all times maintain at the Site and the Generating Facility, appropriate warning placards and other signage in accordance with [REDACTED].
- 5.9.4 Supplier shall perform such generator testing of the Generating Facility as is necessary or as Buyer may reasonably request in order to comply with the MISO Tariff or Transmission Owner, as applicable, requirements.
- 5.9.5 Supplier shall, and shall cause the Operator to, comply with all current and future NERC Reliability Standards applicable to either or both Generator Owners and Generator Operators (as defined in the NERC Reliability Standards), in each case as they pertain to the Generating Facility, including critical infrastructure protection standards.
- 5.9.6 Following the Commercial Operation Date, Supplier shall:
  - 5.9.6.1 Devise and implement, or cause the Operator to devise and implement, an operations and maintenance plan, or implement an existing plan, that includes the status of the Generating Facility and each of the major components thereof in order to maintain such equipment in accordance with [REDACTED] [REDACTED] [REDACTED] (the "Operations and Maintenance Plan"). Such Operations and Maintenance Plan must (i) include Supplier's plan to maintain facilities built on site to support communications and control using [REDACTED] and (ii) provide for the physical and cyber security of the Generating Facility and its related systems. Supplier shall keep, or cause the Operator to keep, all records with respect to inspections, maintenance, and repairs of the Generating Facility in accordance with [REDACTED].
  - 5.9.6.2 If reasonably requested by Buyer, on a monthly basis provide Buyer with a written report in a form reasonably acceptable to Buyer containing a detailed description regarding the ongoing operations of the Generating Facility during such month, including the status

of the operations of the Generating Facility or any component thereof, any equipment or other operational or maintenance failure, any defects or other issues and any repairs, and any replacements or other remediation provided or to be provided therefor;

5.9.6.3 Provide administrative and periodic reporting, including (a) on a regular (but not less frequently than quarterly) basis, safety records that include, without limitation, Occupational Safety and Health Administration recordable and non-recordable incidents, Site safety meeting information, and other data reasonably requested by Buyer; (b) on an annual basis, operational reports on various aspects of the Generating Facility, including performance, capacity factor, availability, weather, and generation data to confirm that the requirements of this Agreement have been met, which reports shall be in forms reasonably acceptable to Buyer; and (c) on an annual basis, quality assurance and quality control activities.

5.9.6.4 Provide written notice to Buyer describing in reasonable detail any hazardous conditions that develop with or otherwise exist at the Generating Facility, including failure or improper operation of the protective relaying and communications equipment, in each case as soon as is practicable following Supplier's knowledge of the occurrence thereof.

5.9.6.5 Provide written notice to Buyer describing in reasonable detail any actual or attempted breach or compromise of the physical or cyber security of the Generating Facility or its related systems, in each case as soon as is practicable following Supplier's knowledge of the occurrence thereof.

5.10 Generating Facility Contracts. On or prior to Commercial Operation Date, Supplier shall deliver to Buyer a written certification executed by a Responsible Officer of Supplier certifying that the material contracts necessary for the design and construction of the Generating Facility and the ability of Supplier to deliver Energy to Buyer at the Delivery Point have been entered into and are in full force and effect (collectively, the "Major Contracts"). As between the Parties, for the avoidance of doubt, Supplier is responsible for any acts, errors or omissions of its contractors and subcontractors Supplier engages to perform the design, engineering, construction, start-up, testing, operation and maintenance of the Generating Facility or any obligation of Supplier hereunder.

## **6. REVENUE METERING REQUIREMENTS**

6.1 Meters. Supplier will provide, install, own, operate and maintain all Meters, or if otherwise required by the Interconnection Agreement, Supplier will have the right to install, own, operate, and maintain such additional Meters as may be permitted pursuant to the terms of the Interconnection Agreement. The Meters will be used for quantity measurements under this Agreement and must meet all applicable requirements of MISO and the Transmission



Owner, as applicable. Where applicable, separate metering of Station Service may be required to accurately meter the Generating Facility load. Such separate metering must be bi-directional and must be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. Supplier may install a dedicated dial-up voice-grade circuit for Supplier to access the billing meter. In addition to the foregoing, Supplier has the right to install such additional metering equipment, and to make such changes to any metering equipment and any metering requirements, at the Generating Facility, in each case as it may determine is necessary or appropriate in connection with this Agreement, including equipment for measuring insolation at the Site for purposes of Buyer calculating, subject to Supplier's confirmation, the [REDACTED]

- 6.2 Location. Meters will be installed in equipment provided by Supplier, or as otherwise reasonably determined by Supplier to effectuate this Agreement. If the Meters are located on the low voltage side of the transformer(s), metered values may be reduced to account for actual transformer losses in accordance with the manufacturer's specifications if such losses are not metered. In addition, if Meters are not located at the Delivery Point, then for purposes of calculating the Delivered Amount, metered values will be adjusted to account for losses, as calculated by Buyer and subject to confirmation by Supplier, between the location of the Meters and the Delivery Point.
- 6.3 Non-Interference. Neither Party shall undertake any action that may interfere with the operation of the Meters. A Party shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters by such Party.
- 6.4 Metering Costs. Supplier is responsible for all costs and expenses associated with the installation, testing, maintenance, and operation of the Meters and other equipment installed by Supplier at the Generating Facility.
- 6.5 Meter Testing and Metering Accuracy. Supplier is responsible for testing of the Meters. Supplier shall provide Buyer reasonable advance written notice of each annual test of the Meters, and Buyer shall, subject to Section 6.7, have the right to witness such testing. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Supplier will repair and recalibrate or replace the Meters and provide prompt notice of any inaccuracy to Buyer, and Buyer will adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; except that the adjustment period may not exceed ninety (90) days. If adjusted payments are required, payments will be based upon the Parties' best estimate of the Delivered Amount and agreed upon within thirty (30) days after the date on which the inaccuracy was rectified. In such event, the Parties' adjusted payments will be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount, the Dispute shall be resolved in accordance with Article 17.
- 6.6 Failed Meters. If the Meters fail to register, payments due to Supplier for Energy will be based upon Supplier's estimate of the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy

existed cannot be determined, adjusted payments will be made for a period equal to one-half of the elapsed time since the latest prior test, except that the adjustment period may not exceed ninety (90) days. In such event, the Parties' estimated payments will be in full satisfaction of payments due hereunder.

- 6.7 Site Access. In addition to, but without limiting, any rights of access to the Generating Facility and the Site granted under any site access or other agreement between Supplier and DTE Electric Company, whether in its capacity as Buyer or otherwise, Buyer has the right to access the Site and the Generating Facility on reasonable advance notice to Supplier for the purpose of reading, inspecting or testing Supplier's Meters and other equipment and to perform such other inspections of the Site and the Generating Facility as Buyer may reasonably determine are appropriate in connection with the performance of this Agreement and which are accessible, practical and in accordance with [REDACTED]. In furtherance of the foregoing, Supplier shall at its own expense take such actions as are reasonably necessary to maintain safe access to the Site and the Generating Facility, including by providing Buyer with information reasonably necessary to exercise such right of access; providing parking facilities; performing applicable maintenance necessary to maintain safe access roads, gates, and parking facilities; and taking such other actions as are reasonably necessary for Buyer and its representatives to have safe access to the site. Buyer shall (a) cause its representatives to observe while at the Site, such reasonable environmental, health, and safety precautions and policies as Supplier may require and that have been communicated to Buyer and the applicable representatives, and (b) shall, in accordance with Article 14, indemnify Supplier and Supplier's Indemnified Parties for any and all Losses caused by Buyer or its representatives during any Site visit.

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[REDACTED]

[REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED]

8. PLANNED AND FORCED OUTAGES

- 8.1 Planned Outages. No later than thirty (30) days prior to the Commercial Operation Date, Supplier shall provide to Buyer a written schedule of Planned Outages (including maintenance outages) for the next 24 months, and shall thereafter on a monthly basis provide Buyer with an updated schedule for the upcoming 24 month period. In addition, commencing on the day prior to the Commercial Operation Date and continuing for each day thereafter during the Term, Supplier shall provide to Buyer a written schedule of Planned Outages (including maintenance outages) for the next one hundred and thirty (130) days on a rolling basis. The schedules provided by Supplier must be in a format reasonably agreed to by Buyer and Supplier, and must include a reasonable description of each proposed Planned Outage, including its anticipated duration, the portion of the Generating Facility affected, the purpose of such Planned Outage, and such other information as Buyer may reasonably request. Supplier shall provide Buyer with reasonable advance notice of any change in the Planned Outage schedule or a change in the start date or the end date of any Planned Outage. Buyer has the right to request that Supplier modify to the dates or duration (or both) of any Planned Outage with respect to the Generating Facility, and Supplier shall use commercially reasonable efforts to accommodate any such modification. Supplier shall input Planned Outages to Buyer's electronic scheduling system or by such other system as Buyer may direct. Except as otherwise set forth in this Section 8.1, Supplier shall not modify the Planned Outage schedule without Buyer's prior approval.
- 8.2 Mitigation. Supplier shall use commercially reasonable efforts to minimize the impact of any Planned Outage, including by scheduling any such Planned Outage during non-Daylight Hours (if practicable) and by minimizing the portion of the installed Capacity of the Generating Facility subject to a Planned Outage at any time, and unless required in order to comply with any warranty applicable to the Generating Facility, Supplier shall not schedule a Planned Outage during the months of June through September.
- 8.3 Forced Outage. Supplier shall promptly following knowledge of the occurrence thereof, provide Buyer with notice of any Forced Outage, including the amount of the Capacity of the Generating Facility that is not available because of such Forced Outage and the expected return date and time of such Capacity. Initial notice of a Forced Outage must be provided to Buyer's Operating Representative. Supplier shall update such report as necessary to advise Buyer of changed circumstances, and with respect to any continuing or anticipated Forced Outages, by no later than 5:00 am EPT through Buyer's scheduling system (or such other system as Buyer may direct) for the next seven (7) days. Supplier shall in writing confirm any oral notice of a Forced Outage as soon as practicable following such notice.

## **9. DATA COMMUNICATION AND TECHNOLOGY REQUIREMENTS**

- 9.1 Equipment. At least thirty (30) days prior to the Synchronization Date, Supplier shall, at its expense, install (and shall thereafter maintain) all necessary equipment to allow the Generating Facility to receive and respond, in compliance with DNP3 Application Note AN2013-001 (DNP3 Profile for Advanced PV Generation and Storage), to control signals sent by Buyer's SCADA system by the Commercial Operation Date. In connection with the foregoing, Supplier shall make all necessary repairs or replacements as soon as is reasonably practicable after receipt of notice from Buyer of any (i) inoperable

telecommunications path; (ii) inoperable software; or (iii) faulty instrumentation. In the event that Supplier reasonably determines that such repair is expected to take longer than five (5) Business Days to complete, Supplier shall provide Buyer with notice of such delay, including the reason for the delay and an estimated completion time. Buyer has the right to direct Supplier to curtail the output of the Generating Facility during any period with respect to which the Generating Facility is unable to either or both receive or respond to controls consistent with DNP3 standards sent by Buyer's SCADA system. As soon as is reasonably practical after Supplier demonstrates to Buyer's reasonable satisfaction that the Generating Facility is again capable of reliably receiving and responding, in accordance with DNP3 standards, to signals sent by Buyer's SCADA system, Buyer shall cease any curtailment of the Generating Facility. Without duplication of the foregoing, prior to the Commercial Operation Date, Supplier shall also ensure that the Generating Facility complies with the MISO Tariff requirements to qualify and operate as a "Dispatchable Intermittent Resource".

- 9.2 External Communications Interface. The External Communications Interface, and the data provided at the External Communications Interface provided for data exchange between the Generating Facility and Buyer, will accommodate and conform to the protocol of EPRI/DNP3.org's AN2013-001 standard, or its successor, for process, statistical, historical, control, and descriptive information. Supplier shall make all data categorized as mandatory within AN2013-001 standard, or its successor, available to Buyer at the External Communications Interface. Supplier shall configure, at its expense, the on-site RTU for aggregate monitoring and control, thereby presenting Buyer's GMS/SCADA system a single AN2013-001-compliant aggregated inverter.

## **10. REPORTS AND OTHER COMMUNICATIONS**

- 10.1 Generator Availability Data System (GADS) Performance Data. Supplier shall collect performance and event data associated with the Generating Facility and shall report such data to Buyer upon Buyer's reasonable request.
- 10.2 Operations Log. Without duplication of the requirements of Section 5.9.6.2, Supplier shall maintain an operations log, which must include the Delivered Amount for each hour, unplanned maintenance outages and Planned Outages, circuit breaker trip operations, and any other significant event or information related to the operation of the Generating Facility. The operations log must be available for inspection by Buyer at the Generating Facility upon reasonable advance request, and Supplier shall use commercially reasonable efforts to make the data that supports the log available on a real time basis by remote access to Buyer, if Buyer acquires the necessary equipment and software license to process the data by remote access.
- 10.3 Operations and Maintenance Plan. At least thirty (30) days prior to the Commercial Operation Date and thereafter at least thirty (30) days prior to the start of each Contract Year, Supplier shall provide Buyer with a copy of the Operations and Maintenance Plan for the Generating Facility for the upcoming Contract Year.
- 10.4 Financial Information.

- 10.4.1 Access to Additional Financial Information. The Parties agree that generally accepted accounting principles and SEC rules may require Buyer to evaluate if Buyer must consolidate Supplier's financial information with its own. Buyer will require reasonable access to Supplier's financial records and personnel to determine (acting reasonably) if consolidated financial reporting is required. If Buyer reasonably determines that consolidation is required, then Supplier shall provide, reasonably promptly after the end of each calendar quarter for the Term, unaudited (or, if available, audited) financial statements of Supplier for the most recent fiscal quarter or annual period, as applicable.

[REDACTED]

## 11. COMPLIANCE

- 11.1 Compliance with Laws. Each Party shall comply with all relevant Laws and shall, at its sole cost and expense, maintain in full force and effect all relevant permits, authorizations, licenses and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representative shall comply with all relevant requirements of MISO, the Transmission Owner, NERC and each Governmental Authority to ensure the safety of its employees and the public.

[REDACTED]

- 11.3 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facility is in violation of Laws that relate to Supplier or the operation or maintenance of the Generating Facility and could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.

## 12. APPROVALS

- 12.1 Condition Precedent. Unless Buyer waives its right to terminate this Agreement pursuant to [REDACTED] each Party's performance of its respective obligations under this Agreement is subject to Buyer obtaining the MPSC approval as described in [REDACTED]

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■ [REDACTED]

**18. NATURE OF OBLIGATIONS**

- 18.1 Relationship of the Parties. The provisions of this Agreement will not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 18.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

**19. PURCHASE OPTION**

- 19.1 Purchase Option. Supplier hereby grants to Buyer an option to purchase the Generating Facility Property (the “Option”) exercisable within six (6) months after the end of the eleventh (11<sup>th</sup>) Contract Year, on the terms and conditions set forth in this Section 19.1. Buyer may and shall exercise its Option by providing at least one hundred twenty (120) days’ notice to Supplier of its intent to purchase the Generating Facility Property.

■ [REDACTED]

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delivery and performance of this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

- 22.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Supplier does not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority that has not previously been made or obtained, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 22.4 [Reserved].
- 22.5 Availability of Funds. Supplier has, or reasonably expects to have at the time required, sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto, including as are necessary to develop, construct, operate, and maintain the Generating Facility.
- 22.6 Permits, Authorizations, Licenses, Grants, etc. Supplier, or an Affiliate thereof, has applied or will apply for or, if required as of the date of this representation, has received, the consents, permits, approvals, authorizations, licenses and grants listed in [REDACTED], and no other consents, permits, approvals, authorizations, licenses or grants, etc. are required by Supplier to construct and operate the Generating Facility and fulfill Supplier's obligations under this Agreement. Supplier shall be permitted to update [REDACTED] in advance of the Commercial Operation Date to reflect any additional permits then required for Supplier to construct and operate the Generating Facility and fulfill its obligations under this Agreement.
- 22.7 Related Agreements. As of the Effective Date and the Commercial Operation Date, Supplier has entered into or will enter into all necessary and material agreements as listed in [REDACTED] related to Supplier's obligations under this Agreement, and no other material agreements are required for Supplier to perform its obligations under this Agreement. Supplier shall be permitted to update [REDACTED] in advance of the Commercial Operation Date to reflect any additional material agreements then required for Supplier to perform its obligations under this Agreement.

- 22.8 Certification. The Generating Facility qualifies or will qualify as a Renewable Energy System and Supplier has been and is in material compliance with all requirements set forth in the Act.
- 22.9 Title. Supplier owns all Product attributable to the Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third-party.
- 22.10 Generating Facility Site. Supplier either (a) owns the real property on which the Generating Facility is located or (b) has obtained or will obtain at the time required the necessary rights to construct, own and operate the Generating Facility on such real property, throughout the Term.

**23. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants the following to Supplier as of the Effective Date and the beginning of each Contract Year, as applicable:

- 23.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in Michigan and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 23.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 23.3 Consents and Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in [REDACTED] the execution, delivery and performance of this Agreement by Buyer does not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings and notices which become applicable to Buyer as a result of



specific regulatory status of Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged, which consents, approvals, authorizations, permits, filings and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

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Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. Notwithstanding the foregoing, if Receiving Party is advised by its counsel that it is required to disclose the Confidential Information, the Receiving Party will:

25.2.2.1 Have the right to furnish that portion of the Confidential Information that the Receiving Party is advised by counsel is legally required; and

25.2.2.2 Shall use commercially reasonable efforts, at the expense of the Disclosing Party, to cause the Confidential Information so disclosed to be accorded confidential treatment.

Section 25.2.2 only applies to information disclosed as contemplated by Section 25.2.1. A Receiving Party will not be deemed to have violated this Section 25.2 if its officers and employees have discussions or other interactions with, or disclose information to, staff members of the MPSC, FERC or other regulatory bodies in which information about the Generating Facility and this Agreement is disclosed. The Receiving Party will endeavor to cause any such person to advise such staff members that information about the Generating Facility and this Agreement is confidential, but the Receiving Party will not be in breach of this Agreement if such staff members subsequently disclose such information.

25.3 Excluded Information. Confidential Information does not include the following:

25.3.1 Information that is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Article 25;

25.3.2 Information that was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party; and

25.3.3 Information that becomes available to the Receiving Party on a non-confidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose such information to the Receiving Party and the Receiving Party knew or, exercising reasonable due diligence, should have known of such obligation.

[REDACTED]

25.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby, and a Party shall not issue any such public announcement, statement or other disclosure without having first received the written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed, except as may be required by Law. Supplier shall reasonably cooperate with Buyer regarding its educational, promotional, marketing, and other informational activities with respect to the Generating Facility, including by providing Buyer with reasonable access to the Generating Facility for such activities (subject to the terms hereof, including Section 6.7). Notwithstanding the first sentence of this section, Buyer has the right to use information about the Generating Facility, including its location, capacity, and other factual data and images of the Generating Facility in connection with Buyer's educational, promotional, marketing, and other informational activities. It shall not be deemed a violation of this Article 25 to file this Agreement with the MPSC or FERC for approval as required by applicable Law.

**26. MISCELLANEOUS.**

**26.1 Notices and Other Information**

26.1.1 All notices and other communications hereunder must, unless expressly specified otherwise, be in writing and addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in [REDACTED]. A Party may update its information included in [REDACTED], including its Contract Representative and Operating Representative, by providing written notice other Party in accordance with this Section 26.1. Any changes to [REDACTED] do not constitute an amendment to this Agreement.

26.1.2 All notices or submittals required by this Agreement must be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, or electronic mail. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 2:00 pm EPT, and if transmitted after that time, on the following Business Day; except that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice is effective upon such tender.

26.1.3 All oral notifications required under this Agreement must be made to the receiving Party's Operating Representative and must promptly be followed by notice as provided in the other provisions of this Section 26.1.

26.2 Integration. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and

superseding all prior agreements and representations, whether written or oral, by the Parties with respect to such subject matter.

- 26.3 Counterparts. This Agreement may be executed in one or more duplicate counterparts, each of which will be deemed an original and when taken together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in secured electronic format will be effective as delivery of a manually executed counterpart of this Agreement.
- 26.4 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign Law is deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise, and any such reference also means a reference to such Law as the same may be amended, modified, supplemented or restated and be in effect from time to time. The words “include,” “includes” and “including” in this Agreement are not limiting, and are deemed in all instances to be followed by the phrase “without limitation”. References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated and where the context requires, words, including capitalized terms, importing the singular includes the plural and vice versa. The words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. Whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a weekend, or on a day which is not a Business Day, the event must be performed, or the period will end, on the next succeeding Business Day. All accounting terms not specifically defined herein are to be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied. All references to a particular Person include such Person’s successors and permitted assigns, or in the case of a Governmental Authority, the successor to such Governmental Authority’s functions. All references herein to any contract (including this Agreement) or other agreement are to such contract or other agreement as amended and supplemented or modified. Any term or condition herein that requires exercise of discretion or a determination that such action or decision is satisfactory or acceptable shall be made reasonably, unless such term or condition expressly provides otherwise.
- 26.5 Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor may they be used to aid in any manner in the construction of this Agreement.
- 26.6 Discontinued or Modified Index. If any index utilized herein is discontinued or substantially modified, then such index will be modified to the most appropriate available index, with appropriate basis changes to take into account any changes in the location of measurement.

[REDACTED]

- 26.8 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, or in the event that any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, invalid, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof; provided, however, that Supplier and Buyer shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is unenforceable, invalid, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, invalid, void, or contrary to Law, provided, further, however that if any such equitable adjustment requires, in Buyer's reasonable judgment, MPSC approval, and MPSC does not provide such approval, the Parties agree to renegotiate in good faith to implement an equitable adjustment acceptable to the MPSC and that otherwise satisfies the requirements of this Section 26.8.
- 26.9 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing or course of performance between the Parties constitutes a waiver of the rights of either Party under this Agreement. Any waiver will be effective only by a written instrument signed by the Party granting such waiver, and such does not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. Except as otherwise provided in this Agreement, the remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.
- 26.10 Amendments. All amendments to this Agreement must be mutually agreed upon by the Parties, produced in writing, and executed by an authorized representative of each Party in order to be effective. Buyer may submit an amendment to the MPSC or other Governmental Authority as applicable, for filing, acceptance or approval, and, if such

approval is required, any such amendment will not become effective unless and until such approval is received.

- 26.11 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.
- 26.12 Choice of Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the State of Michigan applicable to contracts made and to be performed within the State of Michigan and without reference to the choice of law principles of the State of Michigan or any other state. The Parties mutually and irrevocably consent to the jurisdiction of the courts of the State of Michigan and of the Federal Courts in the Eastern District of Michigan, and hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in such Michigan state or federal court. Each Party irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Party at its address specified in or pursuant to the provisions of Section 26.1. Each Party agrees that a final judgment in any such action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section 26.12 affects the right of a Party to serve legal process in any other manner permitted by law or affect the right of such Party to bring any action or proceeding against the other Party or its property in the courts of any other jurisdiction.
- 26.13 Further Assurances. The Parties shall execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party, may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 26.14 Forward Contract. The Parties acknowledge and agree that (a) this Agreement constitutes a “forward contract” within the meaning of the Bankruptcy Code or a “swap agreement” within the meaning of the Bankruptcy Code; (b) each Party hereto is a “forward contract merchant” or a “swap participant” within the meaning of the Bankruptcy Code; (c) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (d) all transfers of eligible credit support or other performance assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (f) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.
- 26.15 No Third-Party Beneficiaries. Except with respect to the rights of the Indemnified Parties in Section 14.1, (a) nothing in this Agreement nor any action taken hereunder may be construed to create any duty, liability or standard of care to any third-party, (b) no third-party has any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to this Agreement or the services to be provided hereunder.



[REDACTED]


[REDACTED]

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**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and the year first above written.

DTE ELECTRIC COMPANY

By:   
Name: \_\_\_\_\_  
Title:

ASSEMBLY SOLAR III, LLC

By: *Paul Harris*

Name: Paul Harris

Title: Vice President

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**POWER PURCHASE AGREEMENT**

**BETWEEN**

**DTE ELECTRIC COMPANY**

**AND**

**RIVER FORK SOLAR II, LLC**

**MAY 5, 2020**

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## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “Agreement”) is entered into as of MAY 5, 2020 (the “Effective Date”) between DTE ELECTRIC COMPANY (“Buyer”) and RIVER FORK SOLAR II, LLC, a Delaware limited liability company (“Supplier”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the MPSC and the FERC;

**WHEREAS**, Supplier plans to build, own, and operate a proposed 49 MW<sub>AC</sub> measured at the Delivery Point (the “Contract Capacity”) solar photovoltaic generating facility in Calhoun County, Michigan (including the Supplier’s interest in any associated facilities and equipment required to deliver Energy to the Delivery Point, as further described in [REDACTED] hereto and as the same may be updated in accordance with Section 5.8, the “Generating Facility”), which it intends to designate as a Renewable Energy System with the MPSC;

**WHEREAS**, the Parties intend that the electricity generated by the Generating Facility will comply with the requirements of the Act (as defined below) and satisfy a portion of Buyer’s obligations under the Renewable Energy Credits requirements thereof;

**WHEREAS**, the Parties intend that the Contract Capacity of the Generating Facility will comply with the requirements of the Act and satisfy a portion of Buyer’s obligations for renewable energy capacity under the Act; and

**WHEREAS**, Supplier desires to sell to Buyer, all the capacity, ancillary services and non-firm (subject to the requirements of this Agreement) energy generated by the Generating Facility and all the associated Renewable Energy Credits and Renewable Energy Benefits and Buyer desires to purchase such energy, Renewable Energy Credits and Renewable Energy Benefits from Supplier, upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### **1. DEFINITIONS**

1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

[REDACTED]

“Act” means Clean and Renewable Energy and Energy Waste Reduction Act, 2008 PA295, 2016 PA342, MCL 460.1001 et seq. and the regulations promulgated thereunder, in each case, as amended.

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“Adjusted Delivered Amount” means, with respect to the calculation of a Shortfall for a Contract Year, the sum of the Delivered Amount for such Contract Year plus the aggregate amount of ██████████ for such Contract Year that accrued as a result of any Excused Outage, subject to Section 7.5.

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“Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person.

“After Tax Basis” means that any payment received or deemed to have been received by a Party must be supplemented by a further payment to such Party so that the net amount actually received by the Party after taking into account all Taxes that would result from the receipt or accrual of such payments is equal to the full amount of the original payment that the Party would have received if no deduction or withholding had been required.

“Agreement” has the meaning ascribed to that term in the preamble of this Agreement.

“A.M. Best” means A.M. Best Company, Inc.

“Ancillary Services” means those services that are necessary to support Capacity and the transmission of Energy from resources to loads while maintaining reliable operation of the Transmission System in accordance with ██████████ ██████████  
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“Auction Clearing Price” and “ACP” mean with respect to a MISO Planning Year, the price (expressed in \$ per MW Day) determined and announced by MISO in the Planning Resource Auction for such MISO Planning Year for capacity that is located in the Local Resource Zone in which Buyer’s service territory is located and clears in such Planning Resource Auction.

“Bankruptcy Code” means Title 11, United States Code, and any other state or U.S. federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute.

“Billing Period” has the meaning ascribed to that term in Section 4.1.1.

“Business Day” means any day other than Saturday, Sunday, Federal Reserve Bank holiday, or other day that is a holiday observed by Buyer.

“Buyer” has the meaning ascribed to that term in the preamble of this Agreement.

“Buyer’s REC Account” means Buyer’s Michigan Renewable Energy Certification System (MIRECS) Account and any successor thereto that is maintained for the purpose of tracking the production, sale, transfer, purchase and retirement of RECs by Buyer.

“Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on [REDACTED]

“Capacity” means the instantaneous rate at which Energy can be delivered, received or transferred measured in MW from the Generating Facility.

“Capacity Change in Law” has the meaning ascribed to that term in Section 26.17.

“Capacity Multiplier” means the capacity factor determined by reference to the table included in [REDACTED] which table reflects the factors that MISO utilizes as of the Effective Date to accredit capacity for a MISO Planning Year as such table may be updated as provided in [REDACTED]

[REDACTED]

“Capacity Value” means the amount of capacity in MW (equivalent to a Zonal Resource Credit) accredited to the Generating Facility for a specific MISO Planning Year, as calculated pursuant to [REDACTED]

“Change in Control” means the Ultimate Parent ceases to Control and own, directly or indirectly, (a) from the Effective Date until the Commercial Operation Date, [REDACTED]

[REDACTED]

“Commercial Operation” means that Supplier has (a) demonstrated to Buyer’s reasonable satisfaction that the requirements set forth in Section 5.4 [REDACTED] have been satisfied with respect to the Generating Facility, and (b) delivered a certificate to Buyer in the form of [REDACTED] executed by a Responsible Officer of Supplier, together with the required supporting documentation.

“Commercial Operation Date” means the date on which Commercial Operation occurs.

“Commercial Pricing Node” means a price node in the MISO commercial model used to schedule and settle market activities.

“Confidential Information” has the meaning ascribed to that term in Section 25.1.

“Contract Capacity” has the meaning ascribed to that term in the recitals to this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

“Contract Representative” of a Party means the individual designated by that Party in [REDACTED] who is responsible for ensuring effective communication, coordination and cooperation between the Parties.

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

“Control” shall mean, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The terms “controlled by” and “under common control with” shall have correlative meanings.

“Corrected Invoice” has the meaning ascribed to that term in [REDACTED]

“Credit Rating” means with respect to a Person and a Relevant Rating Agency, the rating assigned by such Relevant Rating Agency to the long-term, senior, unsecured debt (not supported by third-party credit enhancement) or deposit obligations of such Person, or if no such ratings exists for such Person, the “issuer rating” or “issuer credit rating” (as applicable based on the Relevant Rating Agency) for such Person then assigned by the Relevant Rating Agency. In the event of an inconsistency in ratings among the Relevant Rating Agencies, the lower rating assigned shall control.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Daylight Hours” means with respect to a day, the period that starts with and includes the first full hour following sunrise on such day and continues through and includes the last full hour before sunset on such day, in each case in Detroit, Michigan as specified by the National Weather Service, or any successor agency that reports sunrise and sunset data, for such day.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Defaulting Party” has the meaning ascribed to that term in Section 21.1.

“Delay Damages” has the meaning ascribed to that term in Section 5.7.1.

“Delivered Amount” means with respect to any period, the actual amount of Energy delivered by Supplier to the Delivery Point in accordance with the terms of this Agreement during such period.

“Delivery Point” means the Generating Facility’s point of interconnection with the Transmission System, as more particularly defined in [REDACTED]

“Development Security” has the meaning ascribed to that term in Section 13.1.1.

“Disclosing Party” has the meaning ascribed to that term in Section 25.1.

“Disallowance Order” has the meaning ascribed to that term in Section 12.3.5.

“Dispute” has the meaning ascribed to that term in Section 17.1.1.

“DNP3” means the DNP3 distributed network protocol.

[REDACTED]

“Economic Energy Offer” means an offer that is duly submitted to MISO to sell Energy at a specified price, location, quantity and time.

“Effective Date” has the meaning ascribed to that term in the preamble of this Agreement.

[REDACTED]

“Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Interconnection Facilities, the Transmission System, or the transmission or distribution system of other electric utilities that is (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) is reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission or distribution system reliability of other electric utilities, and including any “Emergency” as such term is defined in the MISO Tariff.

“Energy” means three phase, 60-hertz alternating current electrical energy (measured in MWh) generated by the Generating Facility and delivered to the Delivery Point (less Station Service).

“Energy Settlement Costs” has the meaning ascribed to that term in [REDACTED]

“EPC Contract” has the meaning ascribed to that term in Section 5.4.



“EPT” means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.

“Event of Default” has the meaning ascribed to that term in Section 21.1.

[REDACTED]

[REDACTED]

“External Communications Interface” means the electronic connection point at which the Generating Facility’s data is made available to Buyer.

“Facility Debt” means the obligations of Supplier or its Affiliates to any Supplier’s Lender pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing. For the avoidance of doubt, Facility Debt includes Tax Equity Financing.

“FERC” means the Federal Energy Regulatory Commission.

“Financing” means any financing provided to Supplier or any Affiliate of Supplier with respect to the Generating Facility, including: (a) lending money, extending credit, purchasing notes or providing loan guarantees (whether directly to Supplier or to an Affiliate of Supplier) as follows: (i) for the construction, interim or permanent financing or refinancing of the Generating Facility; (ii) for working capital or other ordinary business requirements of the Generating Facility (including the maintenance, repair, replacement or improvement of the Generating Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Generating Facility; or (iv) for any capital improvement or replacement related to the Generating Facility; or (b) participating as a Tax Equity Investor in the Generating Facility.

“Financing Documents” means the documents associated with any Financing or Tax Equity Financing, including the loan and credit agreements, notes, bonds, indentures, security agreements,

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 or Tax Equity Financing for the Generating Facility, and also 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 Supplier in connection with development, construction, ownership, leasing, operation or maintenance of the Generating Facility.

“First Full Contract Year” means the first Contract Year that is a full calendar year.

“Forced Outage” means the removal from availability of any material portion of the Generating Facility, transmission line, or other equipment necessary for the generation of Energy and delivery by the Supplier of such Energy to the Delivery Point for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure resulting in a decrease to available Capacity. The term Forced Outage includes outages that may result from Force Majeure or an Emergency, as well as other types of unplanned outages.

“Force Majeure” has the meaning ascribed to that term in Section 16.2.

“Generating Facility” has the meaning ascribed to that term in the preamble of this Agreement.

“Generating Facility Property” means all property rights necessary for the use of the Generating Facility for its intended purpose, including (i) the Generating Facility, (ii) Supplier’s interest in the Site, (iii) Supplier’s interest in the Interconnection Facilities, (iv) Supplier’s interest in the Generating Facility collection facilities and substation, (v) Supplier’s rights and obligations under the Interconnection Agreement, (v) Supplier’s Required Permits and Approvals and all material contracts; and (vi) all Generating Facility fixtures, equipment and personal property; provided that to the extent that the “Generating Facility Property” includes any shared facilities, shared property rights or other shared rights that Supplier and one or more Affiliates or third parties share or jointly use, then the property rights described in this definition shall only apply to the extent of Supplier’s interest therein and shall not affect any such Affiliates or third parties.

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

“IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.

“Implied REC Price” has the meaning ascribed to that term in [REDACTED]

“Indemnified Party” has the meaning ascribed to that term in Section 14.1.

“Indemnifying Party” has the meaning ascribed to that term in Section 14.1.

“Interconnection Agreement” means the provisional and/or final, as applicable, generator interconnection agreement to be entered into between Supplier, MISO and Transmission Owner, in connection with the Generating Facility, as may be amended, restated, supplemented, or otherwise modified from time to time.

“Interconnection Agreement Effective Date” means the date on which the Interconnection Agreement is executed by the Supplier, MISO and Transmission Owner.

“Interconnection Facilities” means the equipment, supporting software and firmware, and ancillary facilities, including any modifications, additions and upgrades made to such facilities,

which are necessary to connect the Generating Facility to the Transmission System as described in [REDACTED]

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

“Law” means any federal, state, local or other law, common law, treaty, code, rule, ordinance, directive, regulation, judicial or administrative order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including the MISO Tariff, that is binding on a Party or any of its property.

“Letter of Credit” means an irrevocable stand-by letter of credit governed by the International Standby Practices (International Chamber of Commerce Pub. 59) and issued by a Qualified Financial Institution for the benefit of Buyer in substantially the form attached as [REDACTED] to this Agreement.

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

“Local Resource Zone” has the meaning ascribed to that term in the MISO Tariff.

“Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third-party upon an Indemnified Party or incurred in connection with any claim by a third-party against an Indemnified Party pursuant to Article 14.

“Major Contracts” has the meaning ascribed to that term in Section 5.10.

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

“Material Adverse Effect” means, with respect to a Party, any event or occurrence of whatever nature which could reasonably be expected to result in a material adverse change in, or material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, assets, liabilities, property, results of operations or condition (financial or otherwise) of such Party.

“Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters owned by Supplier, or its designee, required for (a) an accurate determination of the quantities of Delivered Amounts and Station Service from the Generating Facility and for recording other related parameters required for the reporting of data to Buyer; and (b) the computation of the payment due to Supplier from Buyer.

[REDACTED]

“MISO” means Midcontinent Independent System Operator, Inc. and any successor entity thereto that performs the functions of a regional transmission organization with respect to the region in which Buyer and the Generating Facility are located.

“MISO Planning Year” means a “Planning Year” as such term is defined in the MISO Tariff.

“MISO Tariff” means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for MISO, including the rules, protocols, procedures, business practice manuals, and other standards associated therewith, as the same may be amended, amended and restated, modified or supplemented from time-to-time and approved by FERC.

“Moody’s” means Moody’s Investors Service, Inc.

“MPSC” means the Michigan Public Service Commission.

[REDACTED]

“MW” means a megawatt of electrical capacity.

“MWh” means a megawatt hour of electrical energy.

[REDACTED]

“NERC” means the North American Electric Reliability Corporation and any successor entity thereto. References to NERC in this Agreement are deemed to include references to the applicable regional entity designated by NERC.

“NERC Reliability Standards” means those reliability standards applicable to the Generating Facility, or to the Generator Owner (as defined in the NERC Reliability Standards) or the Generator Operator (as defined in the NERC Reliability Standards) with respect to the Generating Facility, that are adopted by NERC and approved by the applicable regulatory authorities.

“Network Resource Interconnection Service” has the meaning ascribed to that term in the MISO Tariff.

“Non-Defaulting Party” means the Party that is not the Defaulting Party.

“Operating Day” has the meaning ascribed to that term in the MISO Tariff.

“Operating Representative” means any of the individuals designated by a Party, as set forth in [REDACTED], to transmit and receive routine operating and Emergency communications required under this Agreement.

“Operating Security” has the meaning ascribed to that term in Section 13.2.1.

“Operations and Maintenance Plan” has the meaning ascribed to that term in Section 5.9.6.1.

“Operator” means an experienced provider of operations and maintenance services to solar photovoltaic generating facilities located in the same geographical area as the Generating Facility selected by Supplier and approved by Buyer in its commercially reasonable discretion to serve as the provider of operations and maintenance services for the Generating Facility; provided, however, that SOLV, MaxGen Energy Services and Invenergy, (or any Affiliate of any such entity providing operations and maintenance services), and any Qualified Operator, in each case, shall be deemed approved by the Supplier to serve as the Operator hereunder.

“Option” has the meaning as set forth in Section 19.1.

[REDACTED]

“Party” and “Parties” have the meaning ascribed to those terms in the preamble of this Agreement.

“Penalties” means any penalties, fines, damages, sanctions or charges, including imbalance charges and fines or penalties, whether now existing or that become effective in the future, attributable to this Agreement and actually imposed on Buyer by any Governmental Authority, NERC, MISO or the Transmission Owner.

[REDACTED]

[REDACTED]

“Person” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

“Planned Outages” means the scheduled removal from service, in whole or in part, of the Generating Facility for inspection, maintenance or repair with the approval of Buyer.

“Planned Synchronization Date” means [REDACTED] as may be adjusted pursuant to Section 5.6.

“Planning Resource” has the meaning ascribed to that term in the MISO Tariff.

“Planning Resource Auction” has the meaning ascribed to that term in the MISO Tariff.

“Power Quality Standards” means the power quality standards established or otherwise enforced by NERC, MISO, IEEE-SA, National Electric Safety Code, or the National Electric Code (including their respective successor organizations or codes) and that apply to the Generating Facility, including any power quality standards imposed pursuant to the terms of the Interconnection Agreement or by the Transmission Owner, as applicable, in each case as they may be amended, restated, superseded, supplemented, or otherwise modified from time to time.

“Product” means all Energy, all Capacity, all Ancillary Services, all RECs, and all Renewable Energy Benefits from the Generating Facility.

“Project Milestone” means each of the milestones, obligations, and other requirements listed in [REDACTED] as any of the same may be adjusted pursuant to Section 5.6.

“Project Milestone Schedule” means the schedule of Project Milestones, completion dates and required documentation specified in [REDACTED] as the same may be adjusted pursuant to Section 5.6.

“Qualified Financial Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or the U.S. branch office of a foreign bank, with (a) a Credit Rating of at least “A-” by S&P and “A3” by Moody’s, and (b) having a combined capital surplus of at least \$1,000,000,000.

“Qualified Operator” means an operator of solar generation facilities of a similar type and size as the Generating Facility that has experience owning and/or operating and maintaining a minimum of 300 MW (ac) of solar photovoltaic energy assets for at least the last two years.

[REDACTED]

“Real-Time LMP” means the hourly Real-Time Locational Marginal Price (as defined in the MISO Tariff) at the Commercial Pricing Node for the Generating Facility.

“REC Administrator” means the Person appointed to administer the development, registering, tracking, qualifying, recording and transferring of Renewable Energy Credits established pursuant to the Act, and any successor thereto.

[REDACTED]

[REDACTED]

[REDACTED]

“Receiving Party” has the meaning ascribed to that term in Section 25.1.

“Relevant Rating Agencies” means Moody’s and S&P.

[REDACTED]

[REDACTED]

“Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances or benefits, however entitled, (a) allocated, assigned, awarded, certified or otherwise transferred or granted by any Governmental Authority in any jurisdiction in connection with the Generating Facility; or (b) associated with the production of electrical energy by the Generating Facility or based in whole or part on the Generating Facility’s use of renewable resources for generation or because the Generating Facility constitutes a renewable energy system or the like or because the Generating Facility does not produce greenhouse gases, regulated emissions or other pollutants, whether any such attributes, reductions, credits, offsets, allowances or benefits exist now or, subject to Section 3.12, in the future or whether they arise under existing Law or any future Law or whether such attribute, reduction, credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable, but in all cases shall not mean RECs or Tax Credits. Renewable Energy Benefits includes such attributes, reductions, credits, offsets, allowance or benefits attributable to Energy or Ancillary Services sold under this Agreement, and Energy or Ancillary Services consumed by the Generating Facility, such as Station Service, but excludes any Tax Credits.



“Renewable Energy Credit” or “REC” means a credit granted pursuant to Section 41 of the Act that represents generated renewable energy, including, without limitation, incentive RECs granted under sections 39(2)(a)-(e), as applicable, of the Act.

“Renewable Energy System” means, with respect to Michigan, a “renewable energy system” as defined in the Act.

“Replacement REC” means, for a particular REC Shortfall, a REC with comparable character to, and with an expiration date no earlier than, a REC that was delivered or should have been delivered during the second Contract Year of a Shortfall period.

“Responsible Officer” means with respect to Supplier, a vice president, senior vice president, chief executive officer, president, member, manager or other authorized signatory of Supplier, or if documents executed by Supplier are executed by an entity in its capacity as member, manager, or general partner of Supplier, any individual holding such position with such entity.

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [REDACTED] as may be adjusted pursuant to Section 5.6.

“SEC” means the Securities and Exchange Commission.

“Settlement Costs” has the meaning ascribed to that term in [REDACTED].

“Settlement Period” has the meaning ascribed to that term in Section 17.1.1.

[REDACTED]

“Shortfall Invoice” has the meaning ascribed to that term in Section 4.1.7.

“Site” means those parcels of land in Calhoun County, Michigan, on which the Generating Facility will be located, and all applicable laterals and appurtenances thereto, including the land associated with the Generating Facility’s substation, as the same may be updated in accordance with Section 5.8.

“Station Service” means electrical energy consumed by the Generating Facility and purchased from DTE Electric Company according to Standard Contract Rider No. 3 – Parallel Operation and Standby Service and the related provisions of DTE Electric Company’s Rate Book for Electric Service.

“Storage Period” means any period during which either (a) an Excused Outage has occurred and is continuing or (b) the Generating Facility is generating Energy in excess of the Contract Capacity.

“Supplier” has the meaning ascribed to that term in the preamble of this Agreement.

“Supplier’s Lenders” means any Persons (other than an Affiliate of Supplier) and their successors and permitted assignees who provides Financing for the Generating Facility; provided that “Supplier’s Lenders” shall include any Affiliate of Supplier who acts as an investor in a Tax Equity Financing with respect to the Generating Facility.

“Supplier’s Required Permits and Approvals” has the meaning ascribed to that term in [REDACTED]

“Supply Amount” means, with respect to any Contract Year, the amount of Energy specified in [REDACTED] for such Contract Year.

“Synchronization Date” means the first date on which the Generating Facility is energized and operates in parallel with the Transmission System and delivers Test Energy to the Delivery Point.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

“Tax Credits” means (i) any and all present or future (whether known or unknown) state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Generating Facility, and (ii) present or future (whether known or unknown) cash payments or outright grants of money relating in any way to the ownership or operation of, or the production of Energy from, the Generating Facility.

“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each, a “Tax Equity Investor”).

“Term” has the meaning ascribed to that term in Section 2.2.

“Test Energy” means Energy delivered to and purchased by Buyer prior to the Commercial Operation Date.

“Transmission Owner” means Michigan Electric Transmission Company, LLC (METC) or any successor operator or owner of the Transmission System.

“Transmission System” means the facilities used for the transmission of electric energy, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Owner or MISO.

[REDACTED]

“Zonal Resource Credit” has the meaning ascribed to that term in the MISO Tariff.

## 2. **TERM**

2.1 Effective Date. This Agreement is effective on the Effective Date; except that subject to the relevant provisions of Section 12.3, the obligation of Buyer to purchase and take delivery of Product will not be effective until the MPSC Approval Date.

2.2 Term. Supplier’s obligation to deliver Product, and subject to the occurrence of the MPSC Approval Date and the relevant provisions of Section 12.3, Buyer’s obligation to accept and pay for Product, under this Agreement will commence on the Synchronization Date and continue thereafter for a [REDACTED] from the Commercial Operation Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”).

## 3. **SUPPLY OBLIGATIONS**

3.1 Energy. Subject to the other provisions of this Agreement, including those related to Excused Outages and Excused Delays, and the status of the Generating Facility as an intermittent resource, commencing on the Commercial Operation Date, Supplier shall sell and deliver the Supply Amount to Buyer at the Delivery Point.

3.2 Test Energy. During the period commencing on the Synchronization Date and continuing through the start of the first Contract Year, subject to the condition that [REDACTED]

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

3.3 Capacity. Buyer has all rights to the Capacity of the Generating Facility during the Term. Supplier shall take all actions as may be necessary or reasonably requested by Buyer to enable Buyer to receive the full Capacity Value of the Generating Facility in the MISO market or any other wholesale market in which Buyer may participate; provided that Buyer shall be responsible for all of Supplier’s costs and expenses incurred in connection with the foregoing obligation in [REDACTED] As of the date on which any Energy is delivered to Buyer hereunder, Supplier represents and warrants that it has not sold the associated Capacity rights of the Generating Facility to any other Person or committed such Capacity rights in any capacity auction.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 3.6 Buyer's Obligation and Delivery. Buyer will serve as the MISO market participant as defined in the MISO Tariff and comply with all applicable MISO Tariff rules in performance of such duties. Subject to the terms of this Agreement, Buyer shall purchase and take delivery of all Energy produced by the Generating Facility (less Station Service) at the Delivery Point in accordance with the terms of this Agreement. Supplier is

responsible for all costs associated with delivery of the Energy to the Delivery Point. Buyer is responsible for all costs associated with receipt of the Energy at the Delivery Point and any other costs on Buyer's side of the Delivery Point. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Energy from the Generating Facility in any period during which the Generating Facility does not qualify as a Renewable Energy System, other than if such failure to qualify is a result or consequence of (i) Buyer's failure to perform any obligations hereunder or its duties as a market participant pursuant to applicable MISO Tariff rules or (ii) any change in applicable Law affecting the Generating Facility's status as a Renewable Energy System which Supplier is taking commercially reasonable actions to address in a prompt fashion.

3.7 No Obligation to Purchase. Buyer shall have the right, but not the obligation, to purchase or to pay for any Energy produced by the Generating Facility and delivered at the Delivery Point in excess of the Contract Capacity. If the Generating Facility produces Energy in excess of the Contract Capacity when averaged over a two minute period, Buyer will have the right to direct the curtailment of the Generating Facility so that it is producing Energy at an amount no greater than the Contract Capacity when averaged over a two minute period.

3.8 Settlements. Except as otherwise provided in this Agreement, Buyer is responsible for the settlement with MISO of all Energy purchased by Buyer during the Term, including all costs associated therewith, as well as all charges associated with scheduling activities, unless such costs or charges are incurred by Buyer as the result of Supplier's failure to perform its obligations under this Agreement or applicable Law (including the MISO Tariff), or as a result of any inaccurate or incomplete information provided to Buyer with respect to the Generating Facility.

3.9 Product Payments.

3.9.1 Buyer's Payments to Supplier. Buyer shall pay to Supplier the Contract Rate for each MWh of the Delivered Amount (as determined by data from monthly Meter readings).

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3.11 Delivery of Renewable Energy Credits.

3.11.1 All RECs and any benefits derived therefrom are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all RECs derived from the production of Energy from the Generating Facility. Supplier shall timely prepare and execute all documents and shall take all actions necessary under

applicable Law to cause the RECs delivered to Buyer in accordance with this Agreement to vest in Buyer, without further compensation, including, but not limited to, all actions necessary to register or certify the RECs or the Generating Facility with the REC Administrator, or a substitute applicable Governmental Authority, and to provide all production data and satisfy the reporting requirements of the REC Administrator or a substitute applicable Governmental Authority. Any and all fees, charges or expenses otherwise associated with registering, tracking, qualifying, and transferring RECs and Renewable Energy Benefits associated with this Agreement shall be for the account of Supplier, subject, in the case of qualifying Renewable Energy Benefits that did not exist as of the Effective Date only, to the proviso set forth in Section 3.12 below.

3.11.2 Supplier and Buyer agree that all RECs to be delivered to Buyer in accordance with this Agreement shall be issued to Supplier and transferred to Buyer in accordance with this Section 3.11.

3.11.3 On or before February 1 of each Contract Year, Supplier, as owner or operator of the Generating Facility, shall deliver to Buyer a written attestation for the prior Contract Year that the Energy represented in MWh used to certify RECs (a) has not been and will not be sold or otherwise exchanged for compensation or used for credit in Michigan or any other state or jurisdiction; and (b) has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction as prohibited under Michigan law.

3.12 Renewable Energy Benefits. All Renewable Energy Benefits shall be exclusively dedicated to and shall be vested in Buyer and Supplier hereby transfers to Buyer all Renewable Energy Benefits. In accordance with Good Utility Practice, Supplier shall take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable or as reasonably requested by Buyer to qualify for, and for Supplier or Buyer to receive, all available Renewable Energy Benefits and, if received by Supplier, to transfer Renewable Energy Benefits to Buyer, without further compensation. Supplier shall timely execute all documents and shall timely take all actions necessary under applicable Law to qualify for all available Renewable Energy Benefits and to cause Renewable Energy Benefits to vest in and be delivered to Buyer; provided, however, that in the event that, due to a change in applicable Law after the Effective Date, (i) a Renewable Energy Benefit is created that did not exist on the Effective Date or there is any material modification to any Renewable Energy Benefit that did exist on the Effective Date, and (ii) Buyer requests that Supplier take all steps necessary for Buyer to qualify for, and receive, such Renewable Energy Benefit, then Supplier shall take such steps and Buyer shall be responsible for all of Supplier's costs and expenses incurred in connection with the foregoing obligation in

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**5. FACILITY CONSTRUCTION, OPERATIONS, AND MODIFICATIONS**

5.1 Construction of Generating Facility. Supplier is solely responsible for the planning, design, procurement, construction, start-up, testing, and licensing of the Generating Facility.

Supplier shall construct the Generating Facility in accordance with [REDACTED] and to ensure that (a) Supplier is capable of meeting its supply obligations over the Term and (b) the Generating Facility is at all times in compliance with all requirements imposed on a Renewable Energy System as set forth in the Act. Attached as [REDACTED] is the proposed single line diagram of the Generating Facility, the Interconnection Facilities, the Delivery Point and the location of the Meters. On or before the Commercial Operation Date, Supplier shall provide an updated version of [REDACTED] to reflect the as-built configuration of the Generating Facility, Interconnection Facilities, Delivery Point, and Meters.

- 5.2 Performance of Project Milestones. Without limiting its obligations under any other provision of this Agreement, Supplier shall, subject to extension pursuant to Section 5.6, complete each Project Milestone set forth in [REDACTED] and promptly following completion of each such Project Milestone shall deliver to Buyer such documentation specified in [REDACTED] together with such additional documentation and supporting evidence reasonably requested by Buyer demonstrating the completion of the applicable Project Milestone. Each written certification provided by Supplier pursuant to [REDACTED] must be executed by a Responsible Officer and be in a form reasonably acceptable to Buyer. Supplier shall notify Buyer promptly, and in any event [REDACTED] following its determination, or its becoming aware of information that leads to a reasonable conclusion, that a Project Milestone will not be met by the applicable date designated in the Project Milestone Schedule, and if requested by Buyer, shall convene a meeting with Buyer to discuss the situation and possible remediation plans not later than [REDACTED] following Buyer's request.
- 5.3 Synchronization Date. At least [REDACTED], but not more than [REDACTED], prior to the Synchronization Date, Supplier shall provide written notice to Buyer's Contract Representative that Supplier is preparing to synchronize to the Transmission System and the date on which such synchronization will occur. At such time that Supplier determines that the requirements for the Synchronization Date set forth in Article 5 and [REDACTED] have been satisfied, Supplier shall provide Buyer with written certification thereof and the other supporting documents as set forth in [REDACTED]. Buyer will have a reasonable period of time to review such evidence and raise any commercially reasonable objections to Supplier's satisfaction of any requirements for the achievement of the Synchronization Date.
- 5.4 Commercial Operation Date. Supplier shall notify Buyer at least [REDACTED] prior to the commencement of any performance and commissioning tests required by the engineering, procurement, and construction agreement entered into by Supplier for the Generating Facility (the "EPC Contract"); and the Interconnection Agreement. Subject to Section 6.7, Buyer has the right to have its representatives present at and witness each such test. Prior to the Commercial Operation Date, Supplier shall ensure that the Generating Facility includes all equipment required by the MISO Tariff to qualify as a "Dispatchable Intermittent Resource" and that such equipment is operating properly. At such time that Supplier determines that the requirements for achieving Commercial Operation set forth in this Section 5.4 and [REDACTED] have been satisfied, Supplier shall provide Buyer with a written certificate of a Responsible Officer of Supplier in the form attached as [REDACTED]

5.5 Construction Updates and Reporting. Supplier shall, prior to the issuance of “final notice to proceed” under the EPC Contract, on a quarterly basis provide to Buyer a report that includes the status in achieving Project Milestones and any other required milestones under the Interconnection Agreement, progress in obtaining any approvals or certificates in connection with achieving the Commercial Operation Date, and a discussion of any foreseeable disruptions or delays. Following such issuance of “final notice to proceed” under the EPC Contract, Supplier shall provide Buyer with monthly construction reports. The quarterly or monthly, as applicable, project reports must be provided by no later than the [REDACTED] after the end of every quarter or month, as applicable, for the previous quarter or month, as applicable. Upon the reasonable request of Buyer, Supplier shall meet with Buyer to review this data and any information related to Supplier’s status in achieving the Project Milestone activities listed in the Project Milestone Schedule.

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[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

5.9 Operation and Maintenance.

5.9.1 Supplier shall ensure that all Energy generated by the Generating Facility satisfies the Power Quality Standards and all other voltage, power factor, and other interconnection and parallel operating requirements specified in [REDACTED]

5.9.2 Supplier shall (a) at all times operate, maintain and repair, or, if applicable, shall cause its Operator to operate, maintain and repair, the Generating Facility in accordance with [REDACTED] and, without limiting the foregoing, in order to ensure that Supplier is capable of meeting its supply obligations over the Term; (b) the Generating Facility is at all times a Renewable Energy System; and (c) Supplier is at all times in compliance with applicable Law. In connection with the foregoing, Supplier shall, and as applicable, shall cause the Operator, (i) to maintain records of all operations of the Generating Facility in accordance with [REDACTED], (ii) to provide to Buyer, on reasonable request, copies of any regularly prepared operations and maintenance status reports of the Generating Facility that Supplier provides to MISO, (iii) to follow such regulations, directions and procedures of the Transmission Owner, MISO, NERC and any applicable Governmental Authority to protect and prevent the Transmission System from experiencing

any negative impacts resulting from the operation of the Generating Facility and to otherwise cause the Generating Facility to be operated consistent with all applicable NERC, MISO, and Transmission Owner requirements (including applicable requirements under the Interconnection Agreement), and (iv) use commercially reasonable efforts to prevent, avoid, or mitigate, as applicable, any events or circumstances that could reasonably be expected to cause or result in the photovoltaic modules included in the Generating Facility being subjected to shade, including using commercially reasonable efforts to negotiate with adjacent landowners. Each Party shall use all reasonable efforts to avoid any interference with the other's operations.

- 5.9.3 Supplier shall, or shall cause Operator to, at all times maintain at the Site and the Generating Facility, appropriate warning placards and other signage in accordance with [REDACTED].
- 5.9.4 Supplier shall perform such generator testing of the Generating Facility as is necessary or as Buyer may reasonably request in order to comply with the MISO Tariff or Transmission Owner, as applicable, requirements.
- 5.9.5 Supplier shall, and shall cause the Operator to, comply with all current and future NERC Reliability Standards applicable to either or both Generator Owners and Generator Operators (as defined in the NERC Reliability Standards), in each case as they pertain to the Generating Facility, including critical infrastructure protection standards.
- 5.9.6 Following the Commercial Operation Date, Supplier shall:
  - 5.9.6.1 Devise and implement, or cause the Operator to devise and implement, an operations and maintenance plan, or implement an existing plan, that includes the status of the Generating Facility and each of the major components thereof in order to maintain such equipment in accordance with [REDACTED] [REDACTED] [REDACTED] (the "Operations and Maintenance Plan"). Such Operations and Maintenance Plan must (i) include Supplier's plan to maintain facilities built on site to support communications and control using [REDACTED] and (ii) provide for the physical and cyber security of the Generating Facility and its related systems. Supplier shall keep, or cause the Operator to keep, all records with respect to inspections, maintenance, and repairs of the Generating Facility in accordance with [REDACTED]
  - 5.9.6.2 If reasonably requested by Buyer, on a monthly basis provide Buyer with a written report in a form reasonably acceptable to Buyer containing a detailed description regarding the ongoing operations of the Generating Facility during such month, including the status of the operations of the Generating Facility or any component thereof, any equipment or other operational or maintenance failure,

any defects or other issues and any repairs, and any replacements or other remediation provided or to be provided therefor;

5.9.6.3 Provide administrative and periodic reporting, including (a) on a regular (but not less frequently than quarterly) basis, safety records that include, without limitation, Occupational Safety and Health Administration recordable and non-recordable incidents, Site safety meeting information, and other data reasonably requested by Buyer; (b) on an annual basis, operational reports on various aspects of the Generating Facility, including performance, capacity factor, availability, weather, and generation data to confirm that the requirements of this Agreement have been met, which reports shall be in forms reasonably acceptable to Buyer; and (c) on an annual basis, quality assurance and quality control activities.

5.9.6.4 Provide written notice to Buyer describing in reasonable detail any hazardous conditions that develop with or otherwise exist at the Generating Facility, including failure or improper operation of the protective relaying and communications equipment, in each case as soon as is practicable following Supplier's knowledge of the occurrence thereof.

5.9.6.5 Provide written notice to Buyer describing in reasonable detail any actual or attempted breach or compromise of the physical or cyber security of the Generating Facility or its related systems, in each case as soon as is practicable following Supplier's knowledge of the occurrence thereof.

5.10 Generating Facility Contracts. On or prior to Commercial Operation Date, Supplier shall deliver to Buyer a written certification executed by a Responsible Officer of Supplier certifying that the material contracts necessary for the design and construction of the Generating Facility and the ability of Supplier to deliver Energy to Buyer at the Delivery Point have been entered into and are in full force and effect (collectively, the "Major Contracts"). As between the Parties, for the avoidance of doubt, Supplier is responsible for any acts, errors or omissions of its contractors and subcontractors Supplier engages to perform the design, engineering, construction, start-up, testing, operation and maintenance of the Generating Facility or any obligation of Supplier hereunder.

## **6. REVENUE METERING REQUIREMENTS**

6.1 Meters. Supplier will provide, install, own, operate and maintain all Meters, or if otherwise required by the Interconnection Agreement, Supplier will have the right to install, own, operate, and maintain such additional Meters as may be permitted pursuant to the terms of the Interconnection Agreement. The Meters will be used for quantity measurements under this Agreement and must meet all applicable requirements of MISO and the Transmission Owner, as applicable. Where applicable, separate metering of Station Service may be required to accurately meter the Generating Facility load. Such separate metering must be

bi-directional and must be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. Supplier may install a dedicated dial-up voice-grade circuit for Supplier to access the billing meter. In addition to the foregoing, Supplier has the right to install such additional metering equipment, and to make such changes to any metering equipment and any metering requirements, at the Generating Facility, in each case as it may determine is necessary or appropriate in connection with this Agreement, including equipment for measuring insolation at the Site for purposes of Buyer calculating, subject to Supplier's confirmation, the [REDACTED].

- 6.2 Location. Meters will be installed in equipment provided by Supplier, or as otherwise reasonably determined by Supplier to effectuate this Agreement. If the Meters are located on the low voltage side of the transformer(s), metered values may be reduced to account for actual transformer losses in accordance with the manufacturer's specifications if such losses are not metered. In addition, if Meters are not located at the Delivery Point, then for purposes of calculating the Delivered Amount, metered values will be adjusted to account for losses, as calculated by Buyer and subject to confirmation by Supplier, between the location of the Meters and the Delivery Point.
- 6.3 Non-Interference. Neither Party shall undertake any action that may interfere with the operation of the Meters. A Party shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters by such Party.
- 6.4 Metering Costs. Supplier is responsible for all costs and expenses associated with the installation, testing, maintenance, and operation of the Meters and other equipment installed by Supplier at the Generating Facility.
- 6.5 Meter Testing and Metering Accuracy. Supplier is responsible for testing of the Meters. Supplier shall provide Buyer reasonable advance written notice of each annual test of the Meters, and Buyer shall, subject to Section 6.7, have the right to witness such testing. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Supplier will repair and recalibrate or replace the Meters and provide prompt notice of any inaccuracy to Buyer, and Buyer will adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; except that the adjustment period may not exceed ninety (90) days. If adjusted payments are required, payments will be based upon the Parties' best estimate of the Delivered Amount and agreed upon within thirty (30) days after the date on which the inaccuracy was rectified. In such event, the Parties' adjusted payments will be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount, the Dispute shall be resolved in accordance with Article 17.
- 6.6 Failed Meters. If the Meters fail to register, payments due to Supplier for Energy will be based upon Supplier's estimate of the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments will be made for a period equal to one-half of the elapsed time since the latest prior test, except that the adjustment period may

not exceed ninety (90) days. In such event, the Parties' estimated payments will be in full satisfaction of payments due hereunder.

- 6.7 Site Access. In addition to, but without limiting, any rights of access to the Generating Facility and the Site granted under any site access or other agreement between Supplier and DTE Electric Company, whether in its capacity as Buyer or otherwise, Buyer has the right to access the Site and the Generating Facility on reasonable advance notice to Supplier for the purpose of reading, inspecting or testing Supplier's Meters and other equipment and to perform such other inspections of the Site and the Generating Facility as Buyer may reasonably determine are appropriate in connection with the performance of this Agreement and which are accessible, practical and in accordance with [REDACTED].
- [REDACTED] In furtherance of the foregoing, Supplier shall at its own expense take such actions as are reasonably necessary to maintain safe access to the Site and the Generating Facility, including by providing Buyer with information reasonably necessary to exercise such right of access; providing parking facilities; performing applicable maintenance necessary to maintain safe access roads, gates, and parking facilities; and taking such other actions as are reasonably necessary for Buyer and its representatives to have safe access to the site. Buyer shall (a) cause its representatives to observe while at the Site, such reasonable environmental, health, and safety precautions and policies as Supplier may require and that have been communicated to Buyer and the applicable representatives, and (b) shall, in accordance with Article 14, indemnify Supplier and Supplier's Indemnified Parties for any and all Losses caused by Buyer or its representatives during any Site visit.

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maintenance outages) for the next 24 months, and shall thereafter on a monthly basis provide Buyer with an updated schedule for the upcoming 24 month period. In addition, commencing on the day prior to the Commercial Operation Date and continuing for each day thereafter during the Term, Supplier shall provide to Buyer a written schedule of Planned Outages (including maintenance outages) for the next one hundred and thirty (130) days on a rolling basis. The schedules provided by Supplier must be in a format reasonably agreed to by Buyer and Supplier, and must include a reasonable description of each proposed Planned Outage, including its anticipated duration, the portion of the Generating Facility affected, the purpose of such Planned Outage, and such other information as Buyer may reasonably request. Supplier shall provide Buyer with reasonable advance notice of any change in the Planned Outage schedule or a change in the start date or the end date of any Planned Outage. Buyer has the right to request that Supplier modify to the dates or duration (or both) of any Planned Outage with respect to the Generating Facility, and Supplier shall use commercially reasonable efforts to accommodate any such modification. Supplier shall input Planned Outages to Buyer's electronic scheduling system or by such other system as Buyer may direct. Except as otherwise set forth in this Section 8.1, Supplier shall not modify the Planned Outage schedule without Buyer's prior approval.

- 8.2 Mitigation. Supplier shall use commercially reasonable efforts to minimize the impact of any Planned Outage, including by scheduling any such Planned Outage during non-Daylight Hours (if practicable) and by minimizing the portion of the installed Capacity of the Generating Facility subject to a Planned Outage at any time, and unless required in order to comply with any warranty applicable to the Generating Facility, Supplier shall not schedule a Planned Outage during the months of June through September.
- 8.3 Forced Outage. Supplier shall promptly following knowledge of the occurrence thereof, provide Buyer with notice of any Forced Outage, including the amount of the Capacity of the Generating Facility that is not available because of such Forced Outage and the expected return date and time of such Capacity. Initial notice of a Forced Outage must be provided to Buyer's Operating Representative. Supplier shall update such report as necessary to advise Buyer of changed circumstances, and with respect to any continuing or anticipated Forced Outages, by no later than 5:00 am EPT through Buyer's scheduling system (or such other system as Buyer may direct) for the next seven (7) days. Supplier shall in writing confirm any oral notice of a Forced Outage as soon as practicable following such notice.

## **9. DATA COMMUNICATION AND TECHNOLOGY REQUIREMENTS**

- 9.1 Equipment. At least thirty (30) days prior to the Synchronization Date, Supplier shall, at its expense, install (and shall thereafter maintain) all necessary equipment to allow the Generating Facility to receive and respond, in compliance with DNP3 Application Note AN2013-001 (DNP3 Profile for Advanced PV Generation and Storage), to control signals sent by Buyer's SCADA system by the Commercial Operation Date. In connection with the foregoing, Supplier shall make all necessary repairs or replacements as soon as is reasonably practicable after receipt of notice from Buyer of any (i) inoperable telecommunications path; (ii) inoperable software; or (iii) faulty instrumentation. In the event that Supplier reasonably determines that such repair is expected to take longer than

five (5) Business Days to complete, Supplier shall provide Buyer with notice of such delay, including the reason for the delay and an estimated completion time. Buyer has the right to direct Supplier to curtail the output of the Generating Facility during any period with respect to which the Generating Facility is unable to either or both receive or respond to controls consistent with DNP3 standards sent by Buyer's SCADA system. As soon as is reasonably practical after Supplier demonstrates to Buyer's reasonable satisfaction that the Generating Facility is again capable of reliably receiving and responding, in accordance with DNP3 standards, to signals sent by Buyer's SCADA system, Buyer shall cease any curtailment of the Generating Facility. Without duplication of the foregoing, prior to the Commercial Operation Date, Supplier shall also ensure that the Generating Facility complies with the MISO Tariff requirements to qualify and operate as a "Dispatchable Intermittent Resource".

- 9.2 External Communications Interface. The External Communications Interface, and the data provided at the External Communications Interface provided for data exchange between the Generating Facility and Buyer, will accommodate and conform to the protocol of EPRI/DNP3.org's AN2013-001 standard, or its successor, for process, statistical, historical, control, and descriptive information. Supplier shall make all data categorized as mandatory within AN2013-001 standard, or its successor, available to Buyer at the External Communications Interface. Supplier shall configure, at its expense, the on-site RTU for aggregate monitoring and control, thereby presenting Buyer's GMS/SCADA system a single AN2013-001-compliant aggregated inverter.

## **10. REPORTS AND OTHER COMMUNICATIONS**

- 10.1 Generator Availability Data System (GADS) Performance Data. Supplier shall collect performance and event data associated with the Generating Facility and shall report such data to Buyer upon Buyer's reasonable request.
- 10.2 Operations Log. Without duplication of the requirements of Section 5.9.6.2, Supplier shall maintain an operations log, which must include the Delivered Amount for each hour, unplanned maintenance outages and Planned Outages, circuit breaker trip operations, and any other significant event or information related to the operation of the Generating Facility. The operations log must be available for inspection by Buyer at the Generating Facility upon reasonable advance request, and Supplier shall use commercially reasonable efforts to make the data that supports the log available on a real time basis by remote access to Buyer, if Buyer acquires the necessary equipment and software license to process the data by remote access.
- 10.3 Operations and Maintenance Plan. At least thirty (30) days prior to the Commercial Operation Date and thereafter at least thirty (30) days prior to the start of each Contract Year, Supplier shall provide Buyer with a copy of the Operations and Maintenance Plan for the Generating Facility for the upcoming Contract Year .
- 10.4 Financial Information.



- 10.4.1 Access to Additional Financial Information. The Parties agree that generally accepted accounting principles and SEC rules may require Buyer to evaluate if Buyer must consolidate Supplier's financial information with its own. Buyer will require reasonable access to Supplier's financial records and personnel to determine (acting reasonably) if consolidated financial reporting is required. If Buyer reasonably determines that consolidation is required, then Supplier shall provide, reasonably promptly after the end of each calendar quarter for the Term, unaudited (or, if available, audited) financial statements of Supplier for the most recent fiscal quarter or annual period, as applicable.

[REDACTED]

## 11. COMPLIANCE

- 11.1 Compliance with Laws. Each Party shall comply with all relevant Laws and shall, at its sole cost and expense, maintain in full force and effect all relevant permits, authorizations, licenses and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representative shall comply with all relevant requirements of MISO, the Transmission Owner, NERC and each Governmental Authority to ensure the safety of its employees and the public.

[REDACTED]

- 11.3 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facility is in violation of Laws that relate to Supplier or the operation or maintenance of the Generating Facility and could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.

## 12. APPROVALS

- 12.1 Condition Precedent. Unless Buyer waives its right to terminate this Agreement pursuant to [REDACTED], each Party's performance of its respective obligations under this Agreement is subject to Buyer obtaining the MPSC approval as described in [REDACTED]

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■ [REDACTED]

18. **NATURE OF OBLIGATIONS**

- 18.1 Relationship of the Parties. The provisions of this Agreement will not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 18.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

19. **PURCHASE OPTION**

- 19.1 Purchase Option. Supplier hereby grants to Buyer an option to purchase the Generating Facility Property (the “Option”) exercisable within six (6) months after the end of the eleventh (11<sup>th</sup>) Contract Year, on the terms and conditions set forth in this Section 19.1. Buyer may and shall exercise its Option by providing at least one hundred twenty (120) days’ notice to Supplier of its intent to purchase the Generating Facility Property.

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company and is in good standing in Michigan and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

- 22.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all necessary limited liability company actions necessary to authorize the execution, delivery and performance of this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 22.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Supplier does not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority that has not previously been made or obtained, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 22.4 [Reserved].
- 22.5 Availability of Funds. Supplier has, or reasonably expects to have at the time required, sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto, including as are necessary to develop, construct, operate, and maintain the Generating Facility.
- 22.6 Permits, Authorizations, Licenses, Grants, etc. Supplier, or an Affiliate thereof, has applied or will apply for or, if required as of the date of this representation, has received, the consents, permits, approvals, authorizations, licenses and grants listed in [REDACTED], and no other consents, permits, approvals, authorizations, licenses or grants, etc. are required by Supplier to construct and operate the Generating Facility and fulfill Supplier's obligations under this Agreement. Supplier shall be permitted to update [REDACTED] in advance of the Commercial Operation Date to reflect any additional permits then required for Supplier to construct and operate the Generating Facility and fulfill its obligations under this Agreement.
- 22.7 Related Agreements. As of the Effective Date and the Commercial Operation Date, Supplier has entered into or will enter into all necessary and material agreements as listed

in [REDACTED] related to Supplier's obligations under this Agreement, and no other material agreements are required for Supplier to perform its obligations under this Agreement. Supplier shall be permitted to update [REDACTED] in advance of the Commercial Operation Date to reflect any additional material agreements then required for Supplier to perform its obligations under this Agreement.

- 22.8 Certification. The Generating Facility qualifies or will qualify as a Renewable Energy System and Supplier has been and is in material compliance with all requirements set forth in the Act.
- 22.9 Title. Supplier owns all Product attributable to the Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third-party.
- 22.10 Generating Facility Site. Supplier either (a) owns the real property on which the Generating Facility is located or (b) has obtained or will obtain at the time required the necessary rights to construct, own and operate the Generating Facility on such real property, throughout the Term.

## **23. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants the following to Supplier as of the Effective Date and the beginning of each Contract Year, as applicable:

- 23.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in Michigan and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 23.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 23.3 Consents and Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in [REDACTED] the execution, delivery and performance of this Agreement by Buyer does not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require

[illegible]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

## 25. CONFIDENTIALITY

25.1 Confidential Information. “Confidential Information” means information provided by one Party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as “confidential” or “proprietary” or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information described in Section 25.3.

25.2 Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party’s similar information is treated within the Receiving Party’s organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party further agrees that it shall restrict disclosure of Confidential Information as follows:

25.2.1 The Receiving Party may disclose Confidential Information solely to (a) its agents, counsel, contractors and representatives as may be necessary to comply with and enforce the terms of this Agreement, (b) its agents, counsel, contractors, Affiliates, shareholders, directors, officers, employees, third parties performing work related to this Agreement for such Receiving Party; advisors; consultants; actual and potential equity (including tax equity) investors and lenders (and their respective advisors, consultants and agents); and representatives as reasonably required by such Receiving Party, (c) any Governmental Authority in connection with seeking any required regulatory approval, (d) to the extent required by applicable Law (subject to Section 25.2.2 below), (e) potential assignees of this Agreement (together with their agents, advisors and representatives), as may be necessary in connection with any such assignment (which assignment or transfer must be in compliance with Article 20) in each case after advising those agents of their obligations under this Article 25.

25.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall if permitted and practicable under the circumstances, provide the Disclosing Party with prompt notice of such request or requirement in order to enable Disclosing Party to seek an appropriate protective order or other remedy and to consult with Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. Notwithstanding the foregoing, if Receiving Party is advised by its counsel that it is required to disclose the Confidential Information, the Receiving Party will:

25.2.2.1 Have the right to furnish that portion of the Confidential Information that the Receiving Party is advised by counsel is legally required; and

25.2.2.2 Shall use commercially reasonable efforts, at the expense of the Disclosing Party, to cause the Confidential Information so disclosed to be accorded confidential treatment.

Section 25.2.2 only applies to information disclosed as contemplated by Section 25.2.1. A Receiving Party will not be deemed to have violated this Section 25.2 if its officers and employees have discussions or other interactions with, or disclose information to, staff members of the MPSC, FERC or other regulatory bodies in which information about the Generating Facility and this Agreement is disclosed. The Receiving Party will endeavor to cause any such person to advise such staff members that information about the Generating Facility and this Agreement is confidential, but the Receiving Party will not be in breach of this Agreement if such staff members subsequently disclose such information.

25.3 Excluded Information. Confidential Information does not include the following:

25.3.1 Information that is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Article 25;

25.3.2 Information that was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party; and

25.3.3 Information that becomes available to the Receiving Party on a non-confidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose such information to the Receiving Party and the Receiving Party knew or, exercising reasonable due diligence, should have known of such obligation.

- 25.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby, and a Party shall not issue any such public announcement, statement or other disclosure without having first received the written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed, except as may be required by Law. Supplier shall reasonably cooperate with Buyer regarding its educational, promotional, marketing, and other informational activities with respect to the Generating Facility, including by providing Buyer with reasonable access to the Generating Facility for such activities (subject to the terms hereof, including Section 6.7). Notwithstanding the first sentence of this section, Buyer has the right to use information about the Generating Facility, including its location, capacity, and other factual data and images of the Generating Facility in connection with Buyer's educational, promotional, marketing, and other informational activities. It shall not be deemed a violation of this Article 25 to file this Agreement with the MPSC or FERC for approval as required by applicable Law.

## 26. MISCELLANEOUS

### 26.1 Notices and Other Information.

- 26.1.1 All notices and other communications hereunder must, unless expressly specified otherwise, be in writing and addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in [REDACTED]. A Party may update its information included in [REDACTED] including its Contract Representative and Operating Representative, by providing written notice other Party in accordance with this Section 26.1. Any changes to [REDACTED] do not constitute an amendment to this Agreement.
- 26.1.2 All notices or submittals required by this Agreement must be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, or electronic mail. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 2:00 pm EPT, and if transmitted after that time, on the following Business Day; except that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice is effective upon such tender.



- 26.1.3 All oral notifications required under this Agreement must be made to the receiving Party's Operating Representative and must promptly be followed by notice as provided in the other provisions of this Section 26.1.
- 26.2 Integration. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations, whether written or oral, by the Parties with respect to such subject matter.
- 26.3 Counterparts. This Agreement may be executed in one or more duplicate counterparts, each of which will be deemed an original and when taken together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in secured electronic format will be effective as delivery of a manually executed counterpart of this Agreement.
- 26.4 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign Law is deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise, and any such reference also means a reference to such Law as the same may be amended, modified, supplemented or restated and be in effect from time to time. The words "include," "includes" and "including" in this Agreement are not limiting, and are deemed in all instances to be followed by the phrase "without limitation". References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated and where the context requires, words, including capitalized terms, importing the singular includes the plural and vice versa. The words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. Whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a weekend, or on a day which is not a Business Day, the event must be performed, or the period will end, on the next succeeding Business Day. All accounting terms not specifically defined herein are to be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied. All references to a particular Person include such Person's successors and permitted assigns, or in the case of a Governmental Authority, the successor to such Governmental Authority's functions. All references herein to any contract (including this Agreement) or other agreement are to such contract or other agreement as amended and supplemented or modified. Any term or condition herein that requires exercise of discretion or a determination that such action or decision is satisfactory or acceptable shall be made reasonably, unless such term or condition expressly provides otherwise.
- 26.5 Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor may they be used to aid in any manner in the construction of this Agreement.

26.6 Discontinued or Modified Index. If any index utilized herein is discontinued or substantially modified, then such index will be modified to the most appropriate available index, with appropriate basis changes to take into account any changes in the location of measurement.

[REDACTED]

26.8 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, or in the event that any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, invalid, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof; provided, however, that Supplier and Buyer shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is unenforceable, invalid, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, invalid, void, or contrary to Law, provided, further, however that if any such equitable adjustment requires, in Buyer's reasonable judgment, MPSC approval, and MPSC does not provide such approval, the Parties agree to renegotiate in good faith to implement an equitable adjustment acceptable to the MPSC and that otherwise satisfies the requirements of this Section 26.8.

26.9 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing or course of performance between the Parties constitutes a waiver of the rights of either Party under this Agreement. Any waiver will be effective only by a written instrument signed by the Party granting such waiver, and such does not operate as a waiver of, or estoppel with respect to, any subsequent failure to

comply therewith. Except as otherwise provided in this Agreement, the remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

- 26.10 Amendments. All amendments to this Agreement must be mutually agreed upon by the Parties, produced in writing, and executed by an authorized representative of each Party in order to be effective. Buyer may submit an amendment to the MPSC or other Governmental Authority as applicable, for filing, acceptance or approval, and, if such approval is required, any such amendment will not become effective unless and until such approval is received.
- 26.11 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.
- 26.12 Choice of Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the State of Michigan applicable to contracts made and to be performed within the State of Michigan and without reference to the choice of law principles of the State of Michigan or any other state. The Parties mutually and irrevocably consent to the jurisdiction of the courts of the State of Michigan and of the Federal Courts in the Eastern District of Michigan, and hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in such Michigan state or federal court. Each Party irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Party at its address specified in or pursuant to the provisions of Section 26.1. Each Party agrees that a final judgment in any such action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section 26.12 affects the right of a Party to serve legal process in any other manner permitted by law or affect the right of such Party to bring any action or proceeding against the other Party or its property in the courts of any other jurisdiction.
- 26.13 Further Assurances. The Parties shall execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party, may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 26.14 Forward Contract. The Parties acknowledge and agree that (a) this Agreement constitutes a “forward contract” within the meaning of the Bankruptcy Code or a “swap agreement” within the meaning of the Bankruptcy Code; (b) each Party hereto is a “forward contract merchant” or a “swap participant” within the meaning of the Bankruptcy Code; (c) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (d) all transfers of eligible credit support or other performance assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (f) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.
- 26.15 No Third-Party Beneficiaries. Except with respect to the rights of the Indemnified Parties in Section 14.1, (a) nothing in this Agreement nor any action taken hereunder may be

construed to create any duty, liability or standard of care to any third-party, (b) no third-party has any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

[REDACTED]

[REDACTED]

[REDACTED]

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and the year first above written.

DTE ELECTRIC COMPANY

By:

Name:

Title:

A handwritten signature in blue ink, appearing to read "Gerald Moore", is written over a horizontal line. The signature is stylized with a large initial 'G' and a trailing flourish.

RIVER FORK SOLAR II, LLC

By: *Paul Harris*

Name: Paul Harris

Title: Vice President

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

## PROOF OF SERVICE

ESTELLA BRANSON

Karyn B. Kazyaka, Notary Public  
Macomb County, Michigan  
My Commission Expires: 7-21-2023



**MPSC Case No. U-18232**  
**Ex Parte Application 2020**  
**SERVICE LIST**

**MPSC STAFF**

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