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Attorney

February 2, 2021

Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Post Office Box 30221  
Lansing, MI 48909

**Re: Case No. U-15805-T: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for CONSUMERS ENERGY COMPANY to fully comply with Public Acts 286 and 295 of 2008.**

Dear Ms. Felice:

Enclosed for electronic filing is **Consumers Energy Company's Application for Ex Parte Approval of a Build Transfer Agreement** in the above-captioned case. This is a paperless filing and is therefore being filed only in a PDF format. I have enclosed a Proof of Service showing electronic service upon the parties.

Sincerely,

Anne M. Uitvlugt

cc: Parties per Attachment 1 to Proof of Service

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 )
CONSUMERS ENERGY COMPANY to )
fully comply with Public Acts 286 and 295 )
of 2008. )
\_\_\_\_\_)

Case No. U-15805-T

CONSUMERS ENERGY COMPANY’S APPLICATION FOR EX PARTE APPROVAL
OF THE BUILD TRANSFER AGREEMENT RELATED
TO THE HEARTLAND FARMS WIND PROJECT

Consumers Energy Company (“Consumers Energy” or the “Company”), pursuant to
2008 PA 295 (“Act 295”), MCL 460.1028(4), applies to the Michigan Public Service
Commission (“MPSC” or the “Commission”) for ex parte approval of a Build Transfer
Agreement (“BTA”) to acquire the Heartland Farms Wind Project (“Heartland Farms”), a
Michigan electrical generating unit. The BTA is consistent with the Company’s Renewable
Energy Plan (“RE Plan”), approved by the Commission in Case No. U-18231. The BTA is
provided as Attachment 1 to this Application. In support of this Application, Consumers Energy
states as follows:

1. Consumers Energy is, among other things, engaged as a public utility in the
business of generating, purchasing, distributing, and selling electric energy to approximately
1.8 million retail customers in the state of Michigan. The retail electric system of Consumers
Energy is operated as a single utility system, within which uniform rates are charged.

2. Consumers Energy’s retail electric business is subject to the jurisdiction of the
Commission pursuant to various provisions of 1909 PA 106, as amended, MCL 460.551 et seq.;
1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; and

Act 295, as amended, MCL 460.1001 *et seq.* Pursuant to these statutory provisions, the Commission has the power and jurisdiction to regulate Consumers Energy's retail electric rates.

3. Act 295 requires Commission approval of contracts entered into for the purposes of the Company meeting Act 295's renewable energy credit standards. MCL 460.1028(4) states:

For an electric provider whose rates are regulated by the commission, the electric provider shall submit a contract entered into for the purposes of subsection (3) to the commission for review and approval. If the commission approves the contract, it shall be considered consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process.

Pursuant to MCL 460.1028, Consumers Energy is requesting approval of the BTA related to Heartland Farms.

4. In June of 2018, Consumers Energy issued a Request for Proposal ("RFP") and developed a bid evaluation process for projects to support the Company's RE Plan. The RFP solicited proposals for up to 400 MW of wind projects located within the state of Michigan, with a commercial operation date on or before December 31, 2021, and solar projects in the lower peninsula of Michigan with a nameplate capacity between 10 MW-AC and 100 MW-AC, with a commercial operation date on or before May 28, 2021. The RFP and bid evaluation process for the contract is hereinafter described and supported by the attached Affidavit of Jeffrey E. Battaglia, provided as Attachment 2.

5. Consumers Energy first established a list of qualified bidders who were known to be capable of providing the scope of services requested. This list included respondents to a similar Renewable Energy RFP issued in 2017 and other developers who were pre-qualified through recommendations and interviews. RFP respondents were also asked to complete a

pre-qualification questionnaire with their bid submissions. Industry reputation, experience, and financial strength sufficient to support their contract were important factors in the evaluation and selection of potential bidders. Based on that analysis, 69 companies were invited to respond to the RFP issued on June 8, 2018.

6. Consumers Energy received 17 wind project proposals from nine suppliers on or before July 9, 2018. Consistent with the competitive bid process utilized in previous bids for Renewable Energy projects and the Commission's 2008 Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy, which the Commission adopted in Attachment D of its December 4, 2008 Order in Case No. U-15800, the Company first evaluated the proposals for completeness and consistency with the proposal content and bid requirements as described in the RFP. Three proposals were rejected as a result of this step of the bid evaluation. Next, the Company evaluated the projects based on known environmental and other project placement implications. One of the wind projects was rejected at this stage due to concerns with zoning moratoriums. The Company then compared the costs of the remaining projects.

7. After reviewing the costs, merits, and risks associated with each project, Consumers Energy selected five wind projects from three developers for short-list consideration. The Company met with each of the short-list bidders and began negotiating commercial terms with each bidder. Through the negotiations, Consumers Energy selected the Heartland Farms project under a BTA deal structure as the most cost-effective proposal.

8. On December 4, 2020, Consumers Energy entered into a BTA with Heartland Farms Wind Project, LLC. Under the terms of the BTA, the developer is contractually obligated to manage, develop, procure, construct, and commission Heartland Farms to the Company's

contractual specifications. Upon issuance of a Notice to Proceed, Heartland Farms Wind Project, LLC will transfer to the Company the development assets associated with Heartland Farms, such as all necessary real estate agreements, the interconnection agreements, and marketable title to the Safe Harbor wind turbine generators and all other equipment and materials incorporated into the project through such date. Upon completion of construction and commissioning of the facility, the Company will acquire the completed wind project. The facility's commercial operation date is expected to be on or before December 31, 2022 in order to qualify for the available federal Production Tax Credit ("PTC") at the rate of 60%.

9. The Company negotiated several customer protections into the Heartland Farms BTA. These protections are similar to what were included in the Company's previously approved wind BTA for the Crescent Wind Project. These clauses are designed to reasonably protect the Company should the contractor be unable to complete the project by December 31, 2022, which would potentially impact qualification for the Production Tax Credit. Liquidated damages were included in the BTA should project delays occur.

10. After selecting the most cost-effective proposal, the total cost of the BTA was compared to the costs included in the Company's approved RE Plan in Case No. U-18231. A financial model is used to calculate the project's 31-year levelized cost of energy. The financial modeling demonstrated that the Heartland Farms project has a projected levelized cost of approximately \$56/MWh, provided the Company is successful in qualifying for the full-value of the available 60% PTC, to be demonstrated through the Safe Harbor provisions of the federal PTC rules. Under a worst-case scenario, where the Company would receive none of the available PTC and, for some highly unlikely reason, could not invoke the contractual customer protections, the project's Levelized Cost of Energy ("LCOE") is \$69.39/MWh. The expected

LCOE from the 200 MW of wind energy capacity at Heartland Farms is less than the levelized cost for new wind projects included in the Company's RE Plan.

11. In using reasonable efforts to keep certain commercially sensitive information relating to the bids and contracts confidential, Consumers Energy has redacted commercially sensitive terms and conditions of the attached BTA to maintain confidentiality, consistent with past practice of the Commission. Act 295 states that the "commission and a provider shall handle confidential business information under this act in a manner consistent with state law and general rules of the commission." MCL 460.1193(2). The Commission has recognized that power purchase agreements and Renewable Energy Purchase Agreements ("REPAs") contain confidential information. For example, in Case No. U-11130, the Commission limited disclosure of the confidential portions of a power purchase agreement to the MPSC Staff only in order to "strike a proper balance between the public interest in disclosure and the protection of commercially sensitive information in a competitive environment." MPSC Case No. U-11130, October 20, 1997 Order, page 13. The Commission has also approved REPAs submitted by the Company which had a limited number of commercially sensitive terms redacted. MPSC Case No. U-15805, July 27, 2010 and November 19, 2015 Orders. Similarly, in Case No. U-14626, the Commission approved multiple renewable energy contracts with various contract provisions redacted. MPSC Case No. U-14626, October 18, 2005 Order. The original unredacted contract is available for inspection by the MPSC Staff at the Company's offices or through an available virtual method.

12. Consumers Energy requests that the Commission provide assurance that the full actual costs of Heartland Farms will be recoverable through the combined application of the transfer price mechanism, the Renewable Energy surcharge, if necessary, or other mechanisms as

determined by the Commission to recover these costs upon conclusion of the RE Plan period in accordance with MCL 460.1047(6). The Company proposes to use the 2019 Transfer Price Schedule for the Heartland Farms contract that was agreed to in the Settlement Agreement entered into in Case No. U-20722. The Company seeks Commission approval of the Transfer Price Schedule for the life of Heartland Farms. Such approval will minimize the future uncertainty regarding the manner in which these costs will be recovered. The Transfer Price Schedule from Case No. U-20722 is attached to this Application as Attachment 3.

Also, pursuant to MCL 460.1047(1):

The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

The applicable rate of return on equity and the debt to equity ratio are those approved in MPSC Case No. U-15245, which were in effect when the Commission approved the Company's Initial RE Plan in MPSC Case No. U-15805.

13. The Commission indicated that it intends to review and approve contracts submitted under Act 295 "on an expedited basis with a target of issuing the order within 30 calendar days from the date of filing of each contract." MPSC Case No. U-15800, December 4, 2008 Order, page 16. The Company requests review and approval of the BTA on an expedited basis.

14. MCL 460.6a(1) states, in part:

A gas utility, electric utility, or steam utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. . . . The commission shall

require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. . . .

The approvals requested in this Application will not result in an alteration or amendment in rates or rate schedules and will not increase the cost of services to the Company's customers because the BTA is consistent with the planned activities, expenses, revenue recovery mechanisms, and surcharges described in Consumers Energy's RE Plan in Case No. U-18231. The approvals sought in this Application therefore "may be authorized and approved without notice or hearing." MCL 460.6a(3). See also MPSC Case No. U-15806, April 30, 2009 Order, pages 9-10; MPSC Case No. U-15805, December 2, 2010 Order, pages 5-6.

WHEREFORE, Consumers Energy Company respectfully requests the Michigan Public Service Commission to issue an ex parte order providing as follows:

A. Approving Consumers Energy's Application for ex parte approval of the Build Transfer Agreement related to the Heartland Farms project pursuant to MCL 460.1028, MCL 460.6j, the Orders issued in Case Nos. U-15800 and U-15805, and other applicable law;

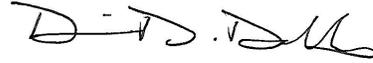
B. Approving the Transfer Prices described in this Application with respect to the attached contract;

C. Providing assurance that the full actual costs of the Heartland Farms project will be recoverable through the combined application of the Transfer Price mechanism, the renewable energy surcharges, and, subsequent to the end of the Renewable Energy Plan period, an appropriate ratemaking mechanism in accordance with MCL 460.1047(6); and

D. Granting such other and further relief that the Commission finds just and reasonable.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Dated: February 2, 2021

By:

\_\_\_\_\_  
Dennis D. Dobbs  
Vice President of Enterprise Project  
Management/Environmental Services  
Consumers Energy Company



By:

\_\_\_\_\_  
Anne M. Uitvlugt (P71641)  
Gary A. Gensch, Jr. (P66912)  
Attorneys for Consumers Energy Company  
One Energy Plaza  
Jackson, Michigan 49201  
(517) 788-2112

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 )
CONSUMERS ENERGY COMPANY to )
fully comply with Public Acts 286 and 295 )
of 2008. )

Case No. U-15805-T

VERIFICATION

STATE OF MICHIGAN )
)ss
COUNTY OF JACKSON )

Dennis D. Dobbs, being first duly sworn, deposes and says that he is the Vice President of Enterprise Project Management/Environmental Services of Consumers Energy Company; that he has executed the foregoing Application for and on behalf of Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.

Dated: February 2, 2021

By: [Signature]
Dennis D. Dobbs
Vice President of Enterprise Project
Management/Environmental Services
Consumers Energy Company

# **ATTACHMENT 1**

**Heartland Farms BTA - REDACTED**

Execution Version

**BUILD TRANSFER AGREEMENT**

**by and between**

**HEARTLAND FARMS WIND PROJECT, LLC ("Seller")**

**and**

**CONSUMERS ENERGY COMPANY ("Buyer")**

**Dated as of December 4, 2020**

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## EXHIBITS

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- Exhibit A Section 3-Collection System
- Exhibit A Section 4-Collection System Substation
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- Exhibit A Section 7 – Permanent Meteorological Tower Specifications
- Exhibit A Section 8 - Substation Equipment Procurement-Generator Step Up Transformer (GSU)
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Exhibit A-Appendix A	Wind Turbine Generator Technical Specification
Exhibit A-Appendix B	Consumers Energy Design Document Standards
Exhibit A-Appendix C	Electrical Switchboards
Exhibit A-Appendix D	Underground Collection Cable Specification
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Exhibit A-Appendix G	Lead Acid Battery Standard
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Exhibit A-Appendix L	SCADA Layout Diagram
Exhibit A-Appendix M	SCADA Points List
Exhibit A-Appendix N	MDF Layout Diagram
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Exhibit B Preferred Turbine Componentry

Exhibit C GSU Transformer Specification

Exhibit D Progress Payment Schedule

Exhibit E Deviations Schedule

Exhibit F Project Site & Layout

Exhibit G Operational Scope of Responsibilities Matrix During Commissioning

Exhibit H Real Estate Exhibits

- Exhibit H Real Property Spreadsheet
- Exhibit H Global Title Checklist
- Exhibit H Form of Wind Energy Easement
- Exhibit H Form of Memorandum of Wind Energy Easement
- Exhibit H Assignment of Wind Energy Easements
- Exhibit H Estoppel Certificate

- Exhibit H Assignment of Crossing Agreements
- Exhibit H Assignment of Drain Agreement
- Exhibit H Warranty Deed

Exhibit I Bill of Sale

Exhibit J Assignment Agreement Form

Exhibit K Project Controls

- Exhibit K Form of Monthly Progress Report
- Exhibit K Seller's Invoice Form
- Exhibit K Schedule of Values
- Exhibit K Project Schedule
- Exhibit K Sworn Statement
- Exhibit K Form of Full Conditional Waiver
- Exhibit K Form of Partial Unconditional Waiver
- Exhibit K Form of Full Unconditional Waiver
- Exhibit K Form of Partial Conditional Waiver
- Exhibit K Form of Notice of Commencement

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Exhibit O Buyer Delays

Exhibit P Form of Notice to Proceed (NTP)

Exhibit Q Cooperative Agreement for Heartland Stakeholder Engagement

Exhibit R Applicable Permits

Exhibit S Form of Seller's Officer's and Secretary's Certificate

Exhibit T Seller's Organization Chart

Exhibit U Seller's Organizational Documents

Exhibit V Intentionally Deleted

Exhibit W Wind Data

Exhibit X Insurance and Bond Requirements

Exhibit Y Intentionally Deleted

Exhibit Z Disclosure Schedules

Exhibit AA Preferred Manufacturers

Exhibit AB Intentionally Deleted

Exhibit AC Submittals and Deliverables List

Exhibit AD Contractors (Subcontractors and Major Suppliers)

Exhibit AE Curative Documents

- Exhibit AE Form of Non-Disturbance Agreement - Greenstone FCS
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- Exhibit AE Form of Joinder Land Contract
- Exhibit AE Form of Joinder Life Estate
- Exhibit AE Form of Joinder TIC

- Exhibit AE Affidavit of Non-Production
- Exhibit AE Form of Joinder in Wind Easement Agreement (Ratification)
- Exhibit AE Form of Amendment and Joinder to Wind Easement Agreement (Polaris & South Gratiot forms)
- Exhibit AE Form of Memorandum of Amendment and Joinder to Wind Easement Agreement (Polaris & South Gratiot forms)
- Exhibit AE Form of Amendment to Wind Easement Agreement (Polaris & South Gratiot forms)
- Exhibit AE Form of Memorandum of Amendment to Wind Easement Agreement (Polaris & South Gratiot forms)
- Exhibit AE Form of Amendment to Wind Easement Agreement (old Heartland form)
- Exhibit AE Form of Memorandum of Amendment to Wind Easement Agreement (old Heartland form)
- Exhibit AE Form of Amendment and Joinder to Wind Easement Agreement (old Heartland form)
- Exhibit AE Form of Memorandum of Amendment and Joinder to Wind Easement Agreement (old Heartland form)
- Exhibit AE Form of Amendment to Wind Easement Agreement (INV Tradewind form)
- Exhibit AE Form of Memorandum of Amendment to Wind Easement Agreement (INV Tradewind form)
- Exhibit AE Form of Site Plan Amendment
- Exhibit AE Form of Secretary's Certificate
- Exhibit AE Form of Manager's Certificate
- Exhibit AE Form of Certification of Partnership Agreement
- Exhibit AE Form of Affidavit of Scrivener's Error
- Exhibit AE Form of LLC Resolution
- Exhibit AE Form of Corporate Resolution
- Exhibit AE Form of Crossing Agreement
- Exhibit AE Form of Trust Certificate New Owner
- Exhibit AE Form of Trust Certificate
- Exhibit AE Form of Affidavit of Non-Payment (Single Lease)
- Exhibit AE Form of Affidavit of Non-Payment (Multiple Leases)
- Exhibit AE Form of Quit Claim Deed
- Exhibit AE Form of NDA
- Exhibit AE Potential Buyer Contributed Wind Energy Agreements
- Exhibit AE Form of Amendment to Wind Easement Agreement (CE Potential Buyer Contributed WEAs; Heartland Only)
- Exhibit AE Form of Memorandum of Amendment to Wind Easement Agreement (CE Potential Buyer Contributed WEAs; Heartland Only)

- Exhibit AE Form of Amendment to Wind Easement Agreement (CE Potential Buyer Contributed WEAs; Heartland & Gratiot)
- Exhibit AE Form of Memorandum of Amendment to Wind Easement Agreement (CE Potential Buyer Contributed WEAs; Heartland & Gratiot)
- Exhibit AE Letter Authorization regarding Potential Buyer Contributed Wind Energy Agreements

Exhibit AF Project Contracts

Exhibit AG Transformer Supply Agreement

Exhibit AH Assignment of Safe Harbor Turbines

Exhibit AI Assignment of Safe Harbor Cable

Exhibit AJ Forms of Material Project Contracts

- Exhibit AJ Form of BOP Substation
- Exhibit AJ Form of BOP Installation
- Exhibit AJ Form of BOP Collection Systems
- Exhibit AJ Form of Fire Trace System Agreement
- Exhibit AJ Form of 3S Lift Agreement
- Exhibit AJ Form of Padmount Transformer Supply Agreement
- Exhibit AJ General Cable Long Term Product Supply Agreement
- Exhibit AJ WTEC Long Term Product Supply Agreement
- Exhibit AJ Form of Turbine Supply Agreement

Exhibit AK Form of Job Book

Exhibit AL Safe Harbor Equipment Pool

Exhibit AM Production Tax Credit Beginning of Construction Certificate

Exhibit AN Intentionally Deleted

Exhibit AO Third-Party Ethics and Compliance Guidelines

Exhibit AP Intentionally Deleted

Exhibit AQ Quality Assurance Summary Plan

Exhibit AR Seller's Safety Program

Exhibit AS Invenergy Key Personnel

Exhibit AT Form of Guaranty

Exhibit AU Project Credit Support

Exhibit AV Lender's Certificate

Exhibit AW Environmental Species Disclosure

Exhibit AX Intentionally Deleted

Exhibit AY Intentionally Deleted

## BUILD TRANSFER AGREEMENT

This BUILD TRANSFER AGREEMENT (together with all exhibits appended hereto, "Agreement"), is made and entered into as of December 4, 2020 ("Effective Date"), by and between Consumers Energy Company, a Michigan corporation ("Buyer"), and Heartland Farms Wind Project, LLC, a Delaware limited liability company ("Seller"). Buyer and Seller shall each individually be referred to herein as a "Party" and collectively as the "Parties."

### RECITALS

**WHEREAS**, Seller has secured certain real property rights for and is developing an approximately 201 MW (nameplate capacity) wind-powered electric generating facility consisting of 72 WTGs (as defined below), located in Gratiot County, Michigan, that is commonly referred to as the Heartland Farms Wind Project (the "Project");

**WHEREAS**, Seller and its Affiliates possess the requisite expertise and resources to develop the Project for Buyer;

**WHEREAS**, subject to the Parties' respective obligations hereunder, Buyer desires that Seller, and Seller agrees to, (i) procure WTGs and towers, (ii) design and install foundations, and (iii) construct, start-up and test the WTGs and towers and certain ancillary equipment and materials, including the Collection System Circuits and Substation, to deliver all of the electrical energy generated by the WTGs to the Interconnection Point for the Project; and

**WHEREAS**, Buyer desires that Seller transfer the Project to Buyer on the terms and subject to the conditions of this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are incorporated into this Agreement, and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

#### ARTICLE I DOCUMENTS INCLUDED, DEFINITIONS AND CONSTRUCTION

##### 1.1 Specific Definitions.

As used in this Agreement, the following terms shall have the meanings ascribed to them below:

"Access Road" or "Access Roads" shall mean the Project Site roads required in accordance with the Scope of Work for ingress and egress to Project facilities.

"Acquisition Proposal" shall mean any offer, proposal, inquiry or indication of interest from any third party relating to any transaction involving (i) any acquisition or purchase by any Person (other than Buyer or an Affiliate of Buyer) of any interest in Seller or the Project Assets;

(ii) any merger, consolidation, business combination, or other similar transaction involving Seller or the Project Assets; (iii) any sale, lease, exchange, transfer, acquisition, assignment, option right, or disposition of the assets of Seller or the Project Assets; or (iv) any liquidation, dissolution, recapitalization or other significant corporate reorganization of Seller.

"Affiliate" of a specified Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" shall have the meaning given to it in the Preamble to this Agreement and further includes the documents referenced in this Agreement and all other documents pertaining to this Project that govern the Project, as the same may be modified, amended, or supplemented from time to time as permitted by this Agreement.

"ALTA Survey" shall mean an ALTA/NSPS survey, together with Items 1 (Substation portion of the Project Site only), 2, 3, 4, 5 (2-foot contours except 1-foot contours for the Substation portion of the Project Site), 6(a), 8, 11 (limited to the entire Substation portion of the Project Site and all other locations where improvements are or will be located), 21(a) (PA 132 of 1970 as amended for the Substation portion of the Project Site and as further required for Land Division Act approval [Act No. 288 of the Public Acts of 1967, as amended]), 13, 15 (Substation portion of the Project Site only), 16, 18, and 19 of the Table A requirements, of the Project Site sufficient to issue the ALTA Title Policy, prepared in accordance with the 2016 ALTA/NSPS survey requirements including (i) showing the staked boundaries and specifying the legal description of the Substation, (ii) showing the staked boundaries of all Wind Energy Easements and specifying the legal description of all Wind Energy Easements, (iii) all exceptions to title listed in the Title Commitments, Pro Forma Title Policy, and ALTA Title Policy (as applicable based on the various stages of the title review process for the Project prior to NTP) or referencing such exception as not applicable; (iv) showing all Drain Agreements and Crossing Agreements for the Project, (v) certified by a Michigan licensed surveyor to Buyer and the Title Insurer, and (vi) dated as of a date satisfactory to Buyer and the Title Insurer.

"ALTA Title Policy" shall mean the owner's title insurance policy in an amount not to exceed the Purchase Price issued by the Title Insurer in the condition required and approved by Buyer in the Final Pro Forma Title Policy, prepared in accordance with all standards and industry practice, and without any exceptions, including any of the standard title policy exceptions, other than the Permitted Encumbrances, together with affirmative insurance for the Access Roads, Crossing Agreements and Drain Agreements benefitting the Project.

"Applicable Law" or "Applicable Laws" shall mean all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, Permits, directives, and requirements of all Governmental Authorities (including all regulations or other requirements of a Governmental Authority that have been formally promulgated in a rule making proceeding but, pending final Order, is a proposed or temporary form having force of law) having jurisdiction over a Person (as to that Person), this Agreement,

the Project Site or the Project, as applicable. Without narrowing the broad definition but for purposes of greater certainty, shall include the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended; Qualified Agricultural Property requirements (MCL 211.1 et seq.) (including PA 261 of 2000, as amended); Farmland Development Rights (MCL 324.36101 et seq.); all Environmental Laws; FPA; PUHCA; and any zoning ordinance, zoning variance, Special Land Use Permit, setback, noise, shadow flicker or other requirements applicable for execution of this Agreement.

"Applicable Permits" shall mean, at any point in time, any Permit that is necessary (including required by Applicable Law) at such time in light of the stage of engineering, acquisition, development, environmental, zoning, construction or operation of the Project to (i) engineer, acquire, construct, test, operate, maintain, repair, own and use the Project; (ii) sell electricity therefrom; or (iii) enter into any contract or to consummate any transaction contemplated thereby.

"As-Built Survey" shall mean the Final ALTA Survey updated to show any changes to the Project Site (such as Project Layout and Permitted Encumbrances) and all improvements as they are constructed or installed on the Project Site and dated by the surveyor after Final Completion in accordance with Section 0.

"Assignment of Crossing Agreements" shall have the meaning given to it in Section 1.1.1.1(1).

"Assignment of Drain Agreements" shall have the meaning given to it in Section 1.1.1.1(2).

"Assignment of Remaining Project Assets" shall have the meaning given to it in Section 1.1.2.

"Assignment of Safe Harbor Cable" shall have the meaning given to it in Section 1.1.2.

"Assignment of Safe Harbor Turbines" shall have the meaning given to it in Section 1.1.2.

"Assignment of Wind Energy Easements" shall have the meaning given to it in Section 0.

"ASTM" shall mean ASTM International.

"BEA" shall have the meaning given to it in Section 0.

"Bill of Sale" shall have the meaning given to it in Section 1.1.2.

"Body of the Agreement" shall mean this document without Exhibits, schedules, or other documents referred to therein, including the Project Documents.

"Bond Cost" has the meaning given to it in Section 0.

"Bonds" shall have the meaning given to it in Section 0.

"Books and Records" shall mean all books, files, papers, agreements, correspondence, databases, information systems, programs, software, documents, records, images, diagrams, drawings and the like, and any documentation thereof related to Seller, the Project, or any of the Project Assets, in whatever medium.

"BOP/EPC Contractor" shall mean the primary civil and electrical Contractor who contracted with Seller pursuant to the Engineering, Procurement and Construction Agreement to perform the primary civil and electrical Scope of Work of this Project.

"Bring Down Production Tax Credit Opinion" shall have the meaning given to it in Section 0.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which commercial banks are closed in the State of Michigan.

"Buyer" has the meaning given to it in the Preamble to this Agreement.

"Buyer Delay" shall mean any of the items set forth on, and as provided in, Exhibit O. For clarity, no exercise of Buyer's rights or rejection hereunder, or any exercise of Buyer's rights of inspection or observation or any exercise or use of Dispute resolution rights or procedures, in each case in accordance with the terms of this Agreement, shall be deemed on its own to be a Buyer Delay.

"Buyer Event of Default" has the meaning given to it in Section 0.

"Buyer Indemnitee" or "Buyer Indemnites" has the meaning given to it in Section 0.

"Buyer's Authorized Officer" shall mean Buyer's officer who signed this Agreement or such officer's designee as designated in writing and delivered to Seller in accordance with the notice provisions in 0.

"Buyer's Response Deadline" has the meaning given to it in Section 1.1.1.1.

"Buyer's Representative" has the meaning given to it in Section 0.

"Change in Law" means the occurrence, after the Effective Date, of any of the following: (i) the adoption or taking effect of any Applicable Law and (ii) any change in any Applicable Law.

"Change Order" or "Change Orders" is one (1) or more written orders executed and dated by Seller and Buyer's Authorized Officer on behalf of Buyer to make changes to (i) the Work, (ii) any element of the Project Schedule, or (iii) the Purchase Price, which effectively amends this Agreement.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations and Internal Revenue Service guidance promulgated thereunder.

"Collection System Circuit" shall mean the permanent electrical and communications infrastructure required to transmit energy and SCADA data between each WTG and the Substation or to the SCADA control panel as appropriate, in accordance with the Scope of Work and the Turbine Specifications. A Collection System Circuit includes for each WTG, underground (and/or overhead if expressly specified in this Agreement) collection system cables, splices, junction boxes, disconnect switches, breakers and other Equipment and Materials as necessary between the WTG and the medium voltage bus in the Substation. For communications infrastructure purposes, each Collection System Circuit shall include fiber optic cable and all other associated Equipment and Materials necessary to transmit performance and operating data from each WTG to the SCADA control panel. Each Collection System Circuit, including each WTG associated therewith, is further described in the Scope of Work.

"Collection System Circuit Completion" shall have the meaning given to it in Section 0.

"Collection System Circuit Completion Certificate" shall mean the Milestone Completion Certificate for Collection System Circuit Completion.

"Commissioning Division of Responsibilities" shall mean the division of work activities set forth on **Error! Reference source not found.** to be performed, or caused to be performed, by Buyer or Seller, as set forth therein.

"Commissioning Plan" shall mean the commissioning procedures required to be completed for issuance of a Turbine Completion Certificate as set forth in the Turbine Supply Agreement.

"Conditions Precedent" shall mean, in any context used in this Agreement, the conditions which must be satisfied or waived by a Party before such Party shall have the legal obligation to proceed with the matter referenced in such context, such as conditions for Buyer to issue, or Seller to accept, the NTP.

"Confidential Information" shall mean any data or information, whether written or oral, clearly marked or orally identified, before or during such disclosure, as Proprietary or "Confidential" or reasonably understood as confidential in nature based on the circumstances that the Parties or their respective Affiliates are providing each other for purposes of discussing the Project. Confidential Information expressly excludes such information that is already known to the receiving Party at the time that it is disclosed to such Party, or which: (i) becomes publicly known through no wrongful act of the Receiving Party; (ii) is rightfully received from a third Party without restriction on disclosure and without breach of this Agreement; (iii) is independently developed by the Receiving Party; (iv) is approved for release by written authorization of the Disclosing Party; (v) has been furnished by the Disclosing Party to a third party without similar restriction on disclosure; or (vi) is required to be disclosed pursuant to Applicable Laws or other Requirements, Governmental Authorities' requirement or request, or court order, so long as the Party required to disclose the information provides the other Party with prior written notice of any required disclosure pursuant to such Applicable Laws or other Requirements, Governmental Authorities requirement or request, or court order.

"Consents" shall have the meaning given to it in Section 0.

"Construction Contracts" shall mean any contract, work order, or purchase agreement (including the Engineering, Procurement and Construction Agreement, Subcontracts, Turbine Supply Agreement, and Transformer Supply Agreement) for the engineering, procurement, installation, and/or construction of the Project, including the Equipment and Materials, or other performance of the Project by and between Seller and the applicable Contractor, or by and between Contractors of any tier, which shall be in writing, in the form(s) required by this Agreement, and otherwise comply with the obligations of Seller under this Agreement.

"Contractors" shall mean, collectively, the BOP/EPC Contractor and Subcontractors at all tiers that are party to any Construction Contracts and/or responsible for performing any Work, including the Transformer Vendor and Turbine Supplier; and "Contractor" shall mean each of the Contractors.

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

"Curative Documents" shall have the meaning given to it in Section 0.

"Damages" shall mean and include any Loss, damage, injury, decline in value, lost opportunity, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including any attorneys' fee, accounting fee, expert fee or advisory fee), charge, cost (including any cost of investigation), or expense of any nature.

"Debt" of any Person at any date shall mean, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, (iv) all monetary liabilities of such Person under contracts, agreements, or other arrangements, (v) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (vi) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (vii) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, and (viii) all obligations of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty.

"Defect Warranty Period" shall have the meaning given to it in Section 0.

"Defects or Deficiencies" shall mean any design, engineering, Equipment and Materials, system, component, workmanship, materials or other Work that: (i) does not conform to the Scope of Work; (ii) does not conform to Applicable Laws or Applicable Permits, in each case in effect as of Substantial Completion; (iii) is of improper or inferior workmanship or material; or (iv) does not conform to Prudent Industry Practices.

"Delay LD Cap" [REDACTED]

"Delay LDs" shall have the meaning given to it in Section 0.

"Delayed WTG" shall have the meaning given to it in Section 0.

"Deliverables" shall be the written documents and other information to be furnished to Buyer as specified in 0 and any other documents described in this Agreement as deliverable to Buyer including in the Technical Specifications that are to be furnished to Buyer.

"Design Documents" shall mean all drawings and specifications for the Work, including comprehensive drawings, manuals, warranties, and specifications setting forth in detail the requirements for the construction of the Project, further including those listed in Exhibit A-Appendix B

Consumers Energy Design Document Standards, provided or created by Seller (or its Contractors) using a licensed engineer/design professional.

"Deviations Schedule" shall mean the document attached to this Agreement as Exhibit E

Deviations Schedule E that provides a Buyer a summary of the variations in the Wind Energy Easements for the Project Site, including when there is no Wind Energy Easement.

"Direct Payments" shall have the meaning given to it in Section 0.

"Disclosing Party" shall have the meaning given to it in Section 0.

"Disclosure Schedule" means an Exhibit disclosing matters related to Seller's representations and warranties contained in 0.

"Dispute" shall have the meaning given to it in Section 0.

"Dollar" or "\$" shall mean United States dollars.

"Drain Agreements" shall mean all crossing agreements, easements (including any agreements and easements required by the applicable county drain commissioner from the underlying fee owner of such land in connection with the Project facilities) and other approvals and consents to the extent that any portion of the Project must enter on, through, over, across, or under any county drains.

"Effective Date" shall have the meaning given to it in the introductory paragraph of this Agreement.

"Engineering, Procurement and Construction Agreement" shall mean the agreement between Seller and the BOP/EPC Contractor to engineer, procure and construct the improvements required by this Agreement, which agreement shall be substantially in the form mutually agreed

upon by the Parties prior to NTP. The Engineering, Procurement and Construction Agreement is sometimes referred to in the Project Documents is the BOP Contract or the BOP/Engineering, Procurement and Construction Agreement.

"Environment" shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, air (including indoor air), plant and animal life, cultural and historic resources, and any other environmental medium or natural resource related to the Project.

"Environmental Attributes" shall mean any and all credits (including any tax credits or grants in lieu of tax credits), benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the generation, purchase, sale or use of renewable electric energy generated by the Project or the use of renewable electric generation technologies by the Project.

"Environmental Claim" shall mean any judicial or administrative action or proceeding, and any other request, demand, notice, investigation or order imposed upon or asserted against Buyer, Seller or the Project by a Governmental Authority or any other person, arising from or in any way related to any of the following: (i) the Release or Threat of Release of any Hazardous Materials affecting the Environment, the Project Site or the Project or any portion thereof; or (ii) any actual or alleged failure to comply with any Environmental Laws relating to the Project Site or the Project.

"Environmental Laws" shall mean any legal requirement or Applicable Law pertaining to the quality of, protection of, impairment of, remediation of, or damage to the Environment, including the following laws: the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Federal Water Pollution Control Act/Clean Water Act, 33 U.S.C. § 1251, et seq.; the Resource, Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Rivers and Harbors Act, 33 U.S.C. § 401, et seq.; the Transportation Safety Act of 1974, 49 U.S.C. § 1801, et seq.; and the Endangered Species Act, 16 U.S.C. § 1531, et seq.; the National Environmental Policy Act, 42 USC § 4321, et seq.; the National Historic Preservation Act, 16 U.S.C. § 470, et seq.; Federal Land Policy and Management Act, 43 U.S.C. § 1701, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668, et seq.; the Migratory Bird Treaty Act, 16 U.S.C. § 703, et seq.; the Michigan Natural Resources and Environmental Protection Act, MCL. 324.101, et seq. (including any future change in judicial or administrative decisions and rules and regulations interpreting, implementing, or applying any such Environmental Laws).

"Environmental Permits" shall mean any Permit or other authorization required by any Environmental Laws.

"Environmental Reports and Studies" shall have the meaning given to it in Section 0.

"Equipment and Materials" shall mean all materials, supplies, apparatus, devices, machinery, equipment, parts, special tools, components, construction utilities, instruments, appliances, and appurtenances thereto, including the WTG and Substation, that are (i) required for the design, construction, or operation of the Project in accordance with Prudent Industry Standards; or (ii) described in, required by, reasonably inferable from or incidental to the Scope of Work; and, in each case, which are intended to, or actually do, form a permanent part of the Project.

"Estoppel Certificate" shall have the meaning given to it in Section 1.1.1.5.

"Exhibit" and "Exhibits" shall have the meaning given to it in Section 0.

"FAA" shall mean the Federal Aviation Administration and its successors.

"FERC" shall mean the Federal Energy Regulatory Commission and its successors.

"Final ALTA Survey" shall have the meaning given to it in Section 0.

"Final Completion" shall have the meaning given to it in Section 0.

"Final Completion Certificate" shall mean the Milestone Completion Certificate for Final Completion.

"Final Payment" shall have the meaning given to it in Section 0.

"Final Pro Forma Title Policy" shall have the meaning given to it in Section 0.

"Final Seller's Invoice" shall have the meaning given to it in Section 0.

"Force Majeure" shall have the meaning given to it in Section 0 provided that the Party who claims Force Majeure has complied with the terms of 0.

"FPA" shall mean the Federal Power Act, as amended.

"Full Conditional Waiver" shall mean the written statement, as will be modified if the Construction Lien Act changes to comply with any applicable requirements, substantially in the form attached as Exhibit K

Form of Full Conditional Waiver, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.2 and 9.3.6.2) each of the Contractors) conditionally waives and releases all Seller Liens with respect to the Work provided the payment set forth in the written statement is received by such Person.

"Full Unconditional Waiver" shall mean the written statement, as will be modified if the Construction Lien Act changes to comply with any applicable requirements, substantially in the form attached as Exhibit K

Form of Full Unconditional Waiver, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.2 and 9.3.6.2) each of the Contractors) unconditionally waives and releases all Seller Liens with respect to the Work.

"Global Title Checklist" shall mean the document attached to this Agreement as Exhibit H

Real Property Spreadsheet that provides Buyer a summary of the status of various title (including Curative Documents) and survey activities under way or to be performed by Seller to achieve the conditions and obligations in 0 of this Agreement.

"Governmental Authority" and "Governmental Authorities" shall mean any (i) national, state, county, municipal, tribal or other local government (whether domestic or foreign) and any political subdivision thereof; (ii) any court or administrative tribunal; (iii) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction (including any zoning authority, FERC, MPSC, or any comparable authority); (iv) any non-governmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction (including the Transmission Owner); or (v) any arbitrator with authority to bind a Party at law or otherwise.

"GSU Transformer" shall mean the Substation Step Up Transformer for stepping up collector line voltage (34.5 kV) to transmission voltage (138kV).

"Guarantor" shall mean Invenergy Renewables Global LLC, a Delaware limited liability company.

"Guaranty" shall mean a guaranty from Guarantor in favor of Buyer, guaranteeing the obligations of Seller under this Agreement, substantially in the form attached hereto as Exhibit AT Form of Guaranty.

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

"Independent Accountant" shall have the meaning given to it in Section 0.

"Independent Engineer" shall mean Leidos or another nationally or regionally recognized engineering firm, mutually acceptable to the Parties and not an Affiliate of either Party, which engineering firm may be replaced from time to time by mutual agreement of the Parties.

"Infrastructure Completion" shall have the meaning given to it in Section 0.

"Infrastructure Completion Certificate" shall mean the Milestone Completion Certificate for Infrastructure Completion.

"Infrastructure Facilities" shall mean the Collection System Circuit, foundations, Access Roads, grounding grid, Substation and other plant facilities described in the Technical Specifications.

"Insurance" shall have the meaning given to it in Section 0.

"Intellectual Property" shall mean (i) United States, international, and non-United States patents and patent applications, (ii) registered and unregistered trademarks and service marks, including the goodwill associated therewith, (iii) registered and unregistered copyrights, and (iv) confidential and proprietary information, including trade secrets and know-how.

"Intellectual Property Claim" shall mean a claim or legal action for actual or alleged unauthorized disclosure, use, infringement, or misappropriation of any license, trade secret, patent, copyright, trademark, proprietary information, service mark, or other intellectual property ownership right arising from Seller's performance (or that of its Contractors or Affiliates) under this Agreement that: (i) concerns the Project or other services or equipment provided by Seller, any of its Affiliates, or any Contractor under this Agreement; (ii) is based upon or arises out of the performance of the Work by Seller, any of its Affiliates, or any Contractor, or the use or provision of any tools or other implements of construction by Seller, any of its Affiliates, or any Contractor; or (iii) is based upon or arises out of the design, engineering or construction of any item by Seller or any of its Affiliates or Contractors under this Agreement, the use of any item according to directions embodied in Seller's final process design, or any revision thereof, prepared or approved by Seller, or the sale or other disposition of any such item.

"Interconnection Agreement" shall mean the Generator Interconnection Agreement (GIA), Project No. E0J984, by and between Seller, Transmission Owner and the Transmission Provider.

"Interconnection Facilities" shall mean the facilities that are required to be constructed by or on behalf of the Transmission Owner to allow the Project to interconnect with the Transmission Owner's transmission facilities at the Interconnection Point.

"Interconnection Facilities Construction Agreement" shall mean any Facilities Construction Agreement for Project No. J984.

"Interconnection Point" shall mean the tap point where the Project interconnects with the Transmission Owner's Interconnection Facilities, as more fully set forth in the Scope of Work including the Technical Specifications.

"IRS" means the Internal Revenue Service.

"Job Book" means a manual prepared by Seller containing all Contractors (including the BOP/EPC Contractor and Subcontractors), engineering, design, purchasing and other information relating to the Work, including the Job Book for the WTGs and other Work and the other information described in Exhibit AK

Form of Job Book.

"Key Personnel" shall have the meaning set forth in Section 0.

"Labor" shall have the meaning set forth in Section 0.

"Labor Dispute" shall mean all work stoppages, slowdowns, strikes, disputes, disruptions, boycotts, walkouts, and other labor difficulties.

"Lender's Certificate" shall have the meaning set forth in Section 0.

"Liabilities" shall mean, with respect to a Person, any and all Debts, liabilities and obligations, of any kind whatsoever, whether absolute, accrued, contingent, fixed, known or unknown, or whether due or to become due.

"Lien" shall mean any mortgage, deed of trust, lien (choate or inchoate), Seller Lien, pledge, charge, security interest, assessment, reservation, absolute assignment, collateral assignment, hypothecation, option, purchase right, defect in title, encroachment, easement, reservation of right, or other burden, or encumbrance of any kind, whether arising by contract or under any Applicable Law and whether or not filed, recorded or otherwise perfected or effective under any Applicable Law, or any preference, priority or preferential arrangement of any kind or nature whatsoever including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

"Losses" shall mean any and all losses, Liabilities, claims, Damages (including any governmental penalty, or punitive, Delay LDs, or similar damages), deficiencies, diminution in value, interest, costs and expenses (including all attorneys' fees and other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding commenced incident to the enforcement of this Agreement).

"Material Project Contract" shall mean each Project Contract with a value in excess of [REDACTED] and each of the following: the Engineering, Procurement and Construction Agreement, Turbine Supply Agreement, the Transformer Supply Agreement and the Project's cable supply agreement.

"Memorandum of Wind Energy Easement" shall have the meaning given to it in Section 0.

"Michigan Content" shall mean Michigan Equipment and Materials and/or Michigan Labor, as applicable.

"Michigan Equipment and Materials" shall mean the cost to Buyer under this Agreement of all Equipment and Materials manufactured or assembled in the State of Michigan as incorporated into the Work.

"Michigan Equipment, Materials, and Labor Information" shall have the meaning given to it in Section 1.1.3.1.

"Michigan Labor" shall mean the number of labor hours attributed to the construction at the Project Site performed by residents of the State of Michigan.

"Milestone" shall mean each of the following: (i) WTG Foundation Completion, (ii) Collection System Circuit Completion, (iii) Substation Completion, (iv) Infrastructure Completion, (v) WTG Mechanical Completion, (vi) WTG Substantial Completion, (vii) Substantial Completion and (viii) Final Completion.

"Milestone Completion Certificate" shall mean a certificate, substantially in the form of Exhibit N

Milestone Completion Certificates

, as applicable setting forth the Milestone to which the Milestone Completion Certificate relates, and setting forth in reasonable detail the basis on which Seller believes that such Milestone has been achieved, and including any supporting materials, documents and calculations, and the results of all testing, in each case to the extent reasonably necessary to support that such Milestone has been achieved and which shall include a punch list for such Milestone (and in the case of Substantial Completion, the Punch List).

"Milestone Date" shall mean a required, critical path date by which the completion of a specific action by Seller is achieved/realized for a Milestone as set forth on the Project Schedule.

"MIOSHA" shall have the meaning given to it in Section 0.

"Monthly Progress Report" shall have the meaning given to it in Section 1.1.4.

"Moody's" shall mean Moody's Investors Services, Inc.

"MPSC" shall mean the Michigan Public Service Commission.

"MPSC Approval" shall mean the approval obtained in accordance with the process set forth in Section 0.

"MW" shall mean megawatts.

"NTP" shall mean the Notice to Proceed, in substantially the form attached as Exhibit P Form of Notice To Proceed (NTP) signed by Buyer and authorizing Seller to commence its performance under this Agreement of the engineering Work relating to the Project and thereafter prosecuting the Work to completion as required by this Agreement.

"NTP Closing" shall have the meaning given to it in Section 0.

"NTP Deadline" shall mean [REDACTED]

"O&M Manual" shall mean, collectively, all of the Vendor Manuals and the SCADA Manual.

"Obtained Permits" shall mean all Applicable Permits obtained as of the Effective Date in connection with the Project.

"Operations Date" shall mean the date that Buyer declares as the commercial operations commencement date for the Project under the Wind Energy Easements.

"Order" shall mean any order, writ, injunction, judgment, decree, ruling, assessment, settlement, determination, or arbitration award of any Governmental Authority or arbitrator.

"Organizational Documents" means the articles or certificate of incorporation and bylaws of a corporation or the equivalent constitutive documents of Seller or Buyer, as applicable, together with a certificate of good standing issued by the State of Seller's or Buyer's incorporation, as applicable, and the State of Michigan.

"OSHA" shall have the meaning given to it in Section 0.

"Outside Completion Deadline" shall mean [REDACTED]

"Padmount Transformer" shall mean the transformer located at the base of Wind Turbine Generator (WTG) for stepping up generator voltage (690V) to collector line voltage (34.5 kV).

"Part 201" shall have the meaning given to it in Section 0.

"Partial Conditional Waiver" shall mean the written statement, as will be modified if the Construction Lien Act changes to comply with any applicable requirements, substantially in the form attached as Exhibit K

Form of Partial Conditional Waiver, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 0 and 0) each of the Contractors) conditionally waives and releases all Seller Liens with respect to the Work provided the payment set forth in the written statement is received by such Person.

"Partial Unconditional Waiver" shall mean the written statement substantially as will be modified if the Construction Lien Act changes to comply with any applicable requirements in the form attached as Exhibit K

Form of Partial Unconditional Waiver, pursuant to which a Person (including Seller and (subject to the dollar provisos in Sections 9.3.2.4 and 0) each of the Contractors) unconditionally waives and releases all Seller Liens with respect to the Work for which it has been paid.

"Party" or "Parties" shall have the meaning given to them in the Preamble to this Agreement.

"Performance Acceptance Tests" shall mean the performance acceptance tests described in the Scope of Work.

"Permit" or "Permits" shall mean (i) each and every national, state, local or other regulatory requirement, permit (including all conditional permits), action, approval, consent, waiver, exemption, variance, franchise, order, judgment, decree, authorization, license, right, registration, filing, recording, submission, tariff, rate, certification, plan or license of, with or from a Governmental Authority or (ii) any required notice to, any declaration of, or with, or any registration by any Governmental Authority, including the Environmental Permits and Special Land Use Permit.

"Permit Applications" shall mean the Applicable Permits in connection with the Project for which Seller has applied.

"Permitted Encumbrances" shall mean (i) Liens for Taxes not yet due and payable or arising after Substantial Completion is achieved; (ii) easements, rights-of-way, reservations, restrictions, Liens and other similar encumbrances and exceptions, each as listed on the Title Commitments, Pro Forma Title Policy, or ALTA Survey that have not been objected to by Buyer pursuant to the provisions of Section 0, unless such objection has subsequently been waived in writing by Buyer; (iii) Liens created by the act or omission of Buyer and not caused by Seller's acts or omissions, or permitted by Buyer with its written consent; (iv) Seller Liens provided that Seller is in compliance with Section 0; (v) Liens which are junior to the applicable Real Property Documents or which are subject to an SNDA with the lienholder and (vi) easements, rights-of-way, reservations, restrictions, Liens and other similar encumbrances and exceptions listed on the Final Pro Forma Title Policy, or if Buyer waives the Condition Precedent in Section 0 with respect to the Final Pro Forma Title Policy, the Pro Forma Title Policy as of NTP Closing (except as otherwise agreed to by the Parties in any such waiver, as conditions to any such waiver or in an amendment to this Agreement).

"Person" shall mean any natural person, corporation, company, voluntary association, limited liability company, partnership, firm, association, joint venture, trust, unincorporated organization, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Phase I ESA" shall have the meaning given to it in Section 0.

"Potential Buyer Contributed Wind Energy Agreements" has the meaning given to it in Section 0.

"Pro Forma Title Policy" shall mean the pro forma/proposed title insurance policy that when the Project Assets for the Project Site are transferred, the Title Insurer agrees to issue the ALTA Title Policy in the condition of the pro forma/proposed title insurance policy together with the Title Policy Endorsements.

"Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard at law or in equity or before any Governmental Authority or any arbitrator or arbitration panel.

"Production Tax Credit Beginning of Construction Certificate" shall mean the certificate attached hereto as Exhibit AM

Production Tax Credit Beginning of Construction Certificate, delivered by Seller to Buyer on or before the Effective Date and at other such times contemplated herein, updated as necessary to reflect true and accurate facts as of the date it is delivered as provided in this Agreement.

"Production Tax Credit Delayed LD Opinion" shall have the meaning given to it in Section 0.

"Production Tax Credit Opinion" shall mean a [REDACTED]

"Production Tax Credit Guaranty" shall have the meaning given to it in Section 0.

"Production Tax Credit Guaranty Term" shall have the meaning given to it in Section 0.

"Production Tax Credit Qualified Law Firm" shall have the meaning given to it in Section 0.

"Production Tax Credit Qualifying Deadline" shall mean [REDACTED]

"Production Tax Credits" shall mean the renewable energy tax credit provided for in 26 USC § 45.

"Progress Payment" shall mean each payment to be made by Buyer to (i) Seller (or to Seller's Contractors if there is a Seller Lien in existence pursuant to the terms and conditions for payment as provided in this Agreement) or (ii) Seller's designated Contractors for Direct Payment on behalf of Seller; and in each case, in accordance with the Progress Payment Schedule for payments set forth in Exhibit D

Progress Payment Schedule and the Seller's Invoice, which in the aggregate shall not exceed the Purchase Price, as such amount may only be increased by Change Order or an amendment to the Body of this Agreement.

"Progress Payment Schedule" shall mean the Progress Payment Schedule attached hereto as Exhibit D

Progress Payment Schedule.

"Project" shall have the meaning given to it in the Recitals to this Agreement.

"Project Assets" shall mean all of the right, title and interest in and to the property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, comprising the Project, including the following:

- (i) The Project Site;
- (ii) Project Documents;
- (iii) All of the tangible and intangible rights and property relating to the Project, including such rights and property pertaining to ownership, construction, repair or maintenance of the Project and any and all rights to the Environmental Attributes attributable to the Project or the electricity generated therefrom;
- (iv) All insurance benefits, including claims, rights and proceeds, arising from or relating to the Project Assets;
- (v) All rights or claims against third parties relating to the Project Assets, whether choate or inchoate, known or unknown, contingent or non-contingent;
- (vi) All rights relating to transmission credits, tax credits, warranty and/or damage payments related to the Project Assets, deposits and prepaid expenses, claims for refunds of utility charges and rights to offset in respect thereof; and
- (vii) Equipment and Materials.

"Project Contract" and "Project Contracts" shall mean all agreements, instruments, commitments, licenses, and other legally binding arrangements, together with any amendments, restatements, supplements and other modifications thereto, to which Seller or any of its Affiliates is a party and which are necessary for the ownership, development, construction, operation and/or maintenance of the Project, including the Real Property Documents and the Construction Contracts.

"Project Documents" shall mean the following to the extent related to the Project:

- (i) Project Contracts;
- (ii) Production Tax Credit Beginning of Construction Certificate;
- (iii) Title and Survey Documents;
- (iv) Design Documents and Record Drawings together with other Seller-supplied documentation (including Seller-supplied engineering calculations and installation or operating manuals or procedures) that are, or to the extent that same are, prepared or revised by Seller for or in connection with the performance of the Work;

(v) All Applicable Permits and all Permit Applications or renewals thereof pertaining to the Project and Consents, including all Environmental Permits and Special Land Use Permits;

(vi) All Insurance policies that name or benefit Buyer or its Affiliates;

(vii) The Job Book;

(viii) Michigan Equipment, Materials, and Labor Information;

(ix) The O&M Manual;

(x) Sworn Statements, Full Unconditional Waivers, Full Conditional Waivers, Partial Unconditional Waivers and Partial Conditional Waivers;

(xi) All Milestone Completion Certificates and supporting, related and ancillary documents for the Project;

(xii) All Crossing Agreements;

(xiii) All Drain Agreements;

(xiv) Easements, as applicable, for Access Roads to allow ingress and egress to public roads;

(xv) All Real Property Documents Governmental Approvals;

(xvi) Guaranty;

(xvii) The Real Property Spreadsheet;

(xviii) Seller's Safety Program, including all safety data, books, and manuals;

(xix) All Books and Records; and

(xx) All other documents necessary or customary for Buyer to use the Project for its intended purpose including all other documents referenced in any of the foregoing documents or this Agreement.

"Project Layout" shall have the meaning given to in Section 0.

"Project Manager" is the Person who is one of the Key Personnel with the responsibilities set forth in Section 0.

"Project Schedule" shall mean the Work schedule setting forth certain stages or elements of the Work and describing the estimated time of completion by Seller of such stages and elements including meeting the Milestones, all as set forth in Exhibit K

Project Schedule, subject only to changes as permitted by this Agreement. The Production Tax Credit Qualifying Deadline and the Outside Completion Deadline in the Project Schedule are not estimates and cannot be changed by Seller.

"Project Site" shall mean the real property located in [REDACTED], upon which the Project, including its WTGs, Interconnection Facilities, Substation, other Project facilities and its access rights will be located, and any additional real property encumbered by interests necessary for the Project including all Access Roads, Crossing Agreements and Drain Agreements, as more particularly described in Exhibit F

Project Site & Layout

but otherwise excluding real property with no Project facilities and that is not within one hundred (100) feet of any Project facilities as shown in Exhibit F

Project Site & Layout

, which Exhibit F

Project Site & Layout

shall be updated as provided in accordance with Section 0.

"Property Team Calls" shall have the meaning given to it in Section 0.

"Prudent Industry Standards" shall mean those practices, methods, standards, and acts engaged in or approved by a significant portion of the industry for utility scale wind-powered electrical facilities in the United States that at a particular time in the exercise of good judgment by experienced wind energy developers and/or professional engineering construction firms in connection with the design, engineering, construction, maintenance, repair and use of electrical and other equipment, facilities improvements of such facilities and commensurate with the standards of safety, performance, dependability, efficiency and economy, would reasonably have been expected to accomplish the desired result in a manner consistent with other utility scale wind-powered facilities and all Applicable Laws and Applicable Permits; and provided further that if any portion of such Prudent Industry Standards set forth in this Agreement conflicts with or is less stringent than any Applicable Laws or Applicable Permits, the Applicable Laws and Applicable Permits shall supersede the less stringent or conflicting provisions. Reference to a standard, code or specification of any society, organization, or association shall (unless expressly stated otherwise herein) mean the latest standard, code or specification standard adopted and published at the time of Seller's performance of the Work. Where these methods, standards, manuals or codes differ from technical requirements otherwise specified in this Agreement, the provisions that impose the most stringent requirements upon Seller will, unless expressly provided otherwise in this Agreement, take precedence. Further "Prudent Industry Standards" shall mean project management practices that shall likewise be performed in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to utility scale wind-powered electrical projects. "Prudent Industry Standards" does not necessarily mean one particular practice or method in all cases, but is instead intended to encompass a range of practices and methods under the circumstances; however, this qualification does not authorize Seller to

claim that Prudent Industry Standards authorize Seller to violate Applicable Laws, other Requirements or express obligations of Seller in this Agreement.

"PUHCA" shall mean the Public Utility Holding Company Act of 2005.

"Punch List Holdback" shall mean an amount equal to [REDACTED] of the aggregate value of the Punch List Items as of Substantial Completion.

"Punch List Items" or "Punch List" shall mean the written list of items provided by Seller in connection with the achievement of Substantial Completion, identifying those items of Work [REDACTED] that remain to be completed, but that cannot reasonably be expected to impact negatively on the operation, availability for generation or safety of the Project, together with the value of each such item as of Substantial Completion.

"Purchase and Sale" shall have the meaning given to it in Section 0.

"Purchase Price" shall mean [REDACTED]

"Purchase Price Allocation Schedule" shall have the meaning given to it in Section 0.

"Quality Assurance Plan" shall have the meaning given to it in Section 0.

"Radial Line" means a 345 kV electric line that will run from the Collection System Substation to a point of interconnection with Transmission Owner's electric transmission system in a switching station to be constructed and owned by Transmission Owner, said electric line being inclusive of the connections to the Collection System Substation and to Transmission Owner's switching station at its starting and ending points.

"Real Property Documents" shall mean the Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases, Wind Energy Lease Amendments, Memorandum of Wind Energy Easements, Memorandum of Wind Energy Leases, Assignment of Wind Energy Easements, Assignment of Wind Energy Leases, Crossing Agreements, Assignment of Crossing Agreements, Drain Agreements, Assignment of Drain Agreements, Warranty Deed, and other deeds and each additional or other agreement, including any restrictive covenants, leases, licenses, easements, instruments, or documents that provide Seller with real property interests in or to the Project Site or that otherwise provide Seller with real property rights, interests or permissions in furtherance of the Project as well as ingress and egress to and from a public road, and all of which will be assigned to Buyer as provided in this Agreement. The Real Property Documents are more particularly identified on Exhibit H

Real Property Spreadsheet. Notwithstanding the foregoing, once Substantial Completion is achieved, the Real Property Documents shall not include any temporary agreements held by Seller or its Contractors that were only necessary for the initial construction activities of the Project.

"Real Property Documents Deadline" shall have the meaning given to it in Section 0.

"Real Property Documents Governmental Approvals" shall mean all Consents of Governmental Authorities required under Applicable Law to cause the Real Property Documents to comply with all Applicable Laws including requirements for the conveyance of real property (MCL 565.1 et seq.), the Land Division Act (MCL 560.101 et seq.), Qualified Agricultural Property requirements (MCL 211.1 et seq.) (including PA 261 of 2000, as amended), and Farmland Development Rights (MCL 324.36101 et seq.).

"Real Property Spreadsheet" shall mean the document attached to this Agreement as Exhibit H

Real Property Spreadsheet Real Property Spreadsheet that provides Buyer (i) name of the document, a description of the execution status, term, names of parties to the instrument, and effective and expiration dates of the Wind Energy Easements (including the Wind Easement Amendments thereto), Wind Energy Leases (including the Wind Energy Lease Amendments thereto), Substation property and any other Real Property Documents granting rights over third parties' properties, (ii) names of the landowners, and (iii) tax parcel identification number.

"Receiving Party" shall have the meaning given to it in Section 0.

"Record Drawings" means the complete set of as-built drawings (provided in one (1) electronic copy) prepared by Seller or its Contractors in accordance with Exhibit A-Appendix B

Consumers Energy Design Document Standards, and which accurately and completely represents in detail the physical placement of Work including all Equipment and Materials, WTGs, Substation and the Collection System Circuit, as constructed, assembled, erected, and installed. Record Drawings shall also include elementary diagrams, one-line diagrams, wiring diagrams, and physical drawings showing the precise location of all underground power and communication cables.

"Recovery Plan" shall have the meaning given to it in Section 0.

"Release" shall mean any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment of any Hazardous Material.

"Requirements" shall have the meaning given to it in Section 0.

"Retainage" shall have the meaning given to it in Section 0

"Safe Harbor Equipment" shall mean the Safe Harbor Turbines and the Safe Harbor Cable.

"Safe Harbor Cable" shall mean electrical cable with a cost of between [REDACTED] to IWEM when purchased and identified pursuant to Section 0 and transferred to the Buyer pursuant to Section 0 hereof.

"Safe Harbor Turbines" shall mean those seven (7) wind turbine generators (2.52 MW per WTG) with 127 meter rotors and 88.6 meter hub heights identified pursuant to Section 0 and transferred to Buyer pursuant to Section 0 hereof.

"Safe Harbor Equipment Pool" shall have the meaning given to it in Section 0.

"Safe Harbor Cable Supply Agreement" [REDACTED]

"Safe Harbor Turbine Supply Agreement" shall mean, [REDACTED]

"SCADA Manual" shall mean the manual provided by Turbine Supplier setting out the instructions and procedures for the operation and maintenance of the SCADA System.

"SCADA System" shall mean the supervisory control and data acquisition and output prediction system for the Project, which system must coordinate, communicate and interface with Buyer's systems to allow Buyer to download and transfer all information in the system to Buyer's own internal operating and archival systems. SCADA System shall exclude the Turbine Supplier's WindCONTROL system.

"Scope of Work" shall mean, collectively, Exhibit A

Build Transfer Scope of Work\_(Build Transfer Scope of Work), Exhibit B

Preferred Turbine Componentry\_(Preferred Turbine Componentry), and Exhibit C  
GSU Transformer Specification\_(GSU Transformer Specifications), including the appendices to such Exhibits.

"Secured File-Transfer Website" shall have the meaning given to it in Section 0.

"Seller" shall have the meaning given to it in the Preamble to this Agreement.

"Seller Event of Default" shall have the meaning given to it in Section 0.

"Seller Indemnitee" shall have the meaning given to it in Section 0.

"Seller Lien" or "Seller Liens" shall have the meaning given to it in Section 0.

"Seller's Invoice" shall have the meaning given to it in Section 0

"Seller's Organization Chart" shall have the meaning given to it in Section 1.1.2.

"Seller's Safety Program" shall have the meaning given to in Section 0.

"SNDA" shall mean the Subordination, Non-disturbance and Attornment Agreements attached as Exhibit AE

Form of Non-Disturbance Agreement – Greenstone FCS, or as modified with the prior written consent of Buyer.

"Spare Parts" shall mean spare parts necessary to operate and maintain the Project after the date of Substantial Completion.

"Special Land Use Permit" shall mean the Special Land Use Permits identified on Exhibit R  
Applicable Permits in [REDACTED] in each case as approved by local units of government pursuant to MCL 125.3502 and MCL 125.3504.

"Subcontract" or "Subcontracts" shall mean individually and collectively the agreements, as the context requires, between BOP/EPC Contractor and Subcontractors and between Subcontractors of all tiers that incorporate the certain terms of the Engineering, Procurement and Construction Agreement consisting of the Insurance, Third-Party Ethics and Compliance Guidelines, liability provisions (payment and performance obligations, compliance with Applicable Laws, indemnities, and warranties), and as otherwise governs the applicable portion of the Subcontractors' Scope of Work.

"Subcontractor" or "Subcontractors" shall mean individually or collectively, as the context requires, the Contractors who have contracted with the BOP/EPC Contractor or a subcontractor of any tier below the BOP/EPC Contractor to perform a portion of the Scope of Work of this Project, including all materialmen, suppliers and laborers.

"Submittal Schedule" shall mean Exhibit AC  
Submittals and Deliverables List.

"Substantial Completion" shall have the meaning given to it in Section 0.

"Substantial Completion Certificate" shall mean the Milestone Completion Certificate for Substantial Completion.

"Substation" shall mean collectively and individually the foundations, underground and overhead electrical interconnection lines, GSU Transformers, metering devices, control enclosures and protective devices, together with all other associated Equipment and Materials and

improvements, which are necessary to convert the 34.5 kV output voltage of the Collection System Circuit to the interconnection voltage of 345 kV and to provide electrical protection for the Project.

"Substation Completion" shall have the meaning given to it in Section 0.

"Substation Completion Certificate" shall mean the Milestone Completion Certificate for Substation Completion.

"Sworn Statement" shall mean a written statement substantially in the form attached as Exhibit K  
Sworn Statement.

"Tariffs" shall mean a tax or duty imposed by a United States of America Governmental Authority on Equipment and Materials that are imported into the United States of America from other countries and which such Equipment and Materials are used by Seller to complete the Project. Notwithstanding the prior sentence, Tariffs do not include any other costs of Equipment and Materials.

"Tax" or "Taxes" shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, unemployment, disability, social security, excise, severance, stamp, occupation, premium, windfall profit, environmental, customs, import, export, duty, capital stock, franchise, profit, withholding, real property and personal property ad valorem taxes and assessments, sales, use, transfer, Transfer Taxes, registration, value added, alternative or add-on minimum, estimated, or other tax, impost, levy or duty of any kind whatsoever, including any interest, penalty, or addition thereto, whether any such Tax is disputed.

"Tax Clearance Certificate" shall have the meaning given to it in Section 1.1.6.

"Tax Return" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes of any kind or nature filed or required to be filed with any Governmental Authority, including any schedule or attachment thereto, and including any amendment thereof.

"Tax Status Letter" shall have the meaning given to it in Section 1.1.6.

"Technical Specifications" shall mean the technical specifications set forth on Exhibit A-Appendix A  
Wind Turbine Generator Technical Specification

"Threat of Release" shall mean a reasonable likelihood of a Release that may require action in order to prevent or mitigate impairment of or damage to the Environment that may result from such Release.

"Title and Survey Documents" shall mean all title and survey documents comprising the Title Commitments, Pro Forma Title Policy, Final Pro Forma Title Policy, ALTA Title Policy,

preliminary ALTA Survey, Final ALTA Survey, As-Built Survey and all documents referenced therein.

"Title Commitments" shall mean the ALTA/ACSM title commitments issued by the Title Insurer showing fee, leasehold or easement title to the Project Site is vested with Seller, subject to only Permitted Encumbrances, together with all documents referenced in the title commitments including all vesting deeds for the interest(s) of Seller and the underlying landowner, and that commit the Title Insurer to issue policies in the same condition at the time set forth in this Agreement. Such accompanying documents shall be directly attached to the ALTA/ACSM title commitments and shall be delivered as part of the same digital file in the Secured File-Transfer Website or Seller shall include hyperlinks in the ALTA/ACSM title commitments which lead directly to the referenced accompanying documents.

"Title Insurer" shall mean Stewart Title Insurance Company.

"Title Objection Notice" shall have the meaning given to it to Section 0.

"Title Policy Endorsements" shall mean the title policy endorsements required by Buyer to ensure provision of all coverage, including deleting or providing affirmative coverage over title objections. The Title Policy Endorsements shall also include the following endorsements for the Project Site: (i) either ALTA 17-06 (Access and Entry) or ALTA 17.1-06 (Indirect Access and Entry); (ii) either ALTA 18-06 (Single Tax Parcel) or ALTA 18.1-06 (Multiple Tax Parcel); (iii) ALTA 22-06 (Location); (iv) ALTA 9.8-06 (Covenants, Conditions and Restrictions-Owner's Policy-Land Under Development); (v) ALTA 25-06 (Same as Survey); (vi) ALTA 19-06 (Contiguity-Multiple Parcels)(if applicable); (vii) Zoning 3.2-06 (Zoning-Land Under Development); (viii) Arbitration (if applicable); (ix) Additional Insurance; (x) ALTA 36.2-06 (Energy Project-Leasehold Owner's); (xi) ALTA Form 36.4-06 (Energy Project-Covenants, Conditions and Restrictions-Land Under Development-Owner's); and (xii) ALTA Form 36.6-06 (Energy Project-Encroachment).

"Transfer Tax" shall mean any sales Tax, use Tax, conveyance Tax, recording Tax, value added Tax, transaction privilege Tax, transaction Tax, conveyance fee, use Tax, stamp Tax, stock transfer Tax or other similar Tax, including any related penalties, interest and additions thereto, related to the transfer of the Project Assets and Work to the Buyer in connection with this Agreement.

"Transformer Supply Agreement" shall mean the Equipment and Service Purchase Agreement to be executed by and between the Transformer Vendor and Seller for the GSU Transformer substantially in the form attached hereto as Exhibit AG Transformer Supply Agreement.

"Transformer Vendor" shall mean a Contractor who is a Buyer-approved GSU transformer supplier listed in Section 0 of the Scope of Work or who is otherwise approved by Buyer in writing.

"Transmission Owner" shall mean Michigan Electric Transmission Company (METC), or its successors or assigns under the Interconnection Agreement.

"Transmission Provider" shall mean the Midcontinent Independent System Operator (MISO), or its successors or assigns under the Interconnection Agreement.

"Turbine Supplier" shall mean, with respect to the Safe Harbor Turbines and the Safe Harbor Turbine Supply Agreement, General Electric Company, and with respect to the other WTGs and the Turbine Supply Agreement for such WTGs, GE Renewables North America, LLC.

"Turbine Supply Agreement" shall mean the Construction Contracts by and between Seller and the Turbine Supplier for the supply of WTGs for the Project, which consist of, with respect to the Safe Harbor Turbines, the Safe Harbor Turbine Supply Agreement, and with respect to each other WTG, the Contract for Sale of Wind Turbine Generators substantially in the form mutually agreed upon by the Parties prior to NTP.

"UCC" shall have the meaning given to it Section 1.1.2.

"UCC Release" shall have the meaning given to it in Section 0.

"UCC Search" shall have the meaning given to it in Section 1.1.2.

"Vendor Manual" means each operations manual and data sheets with respect to the Work provided by Contractors including the Turbine Supplier. For the avoidance of doubt, the inclusion of the Vendor Manual in the O&M Manual shall not relieve Seller of any obligation to ensure that such Vendor Manual conforms to the requirements of this Agreement, including the Scope of Work.

"Warranty" and "Warranties" shall both have the meaning given to them in Section 0.

"Warranty Deed" shall have the meaning given to it in Section 1.1.2.1(3).

"Warranty Defect" shall have the meaning given to it in Section 0.

"Warranty Work" shall have the meaning given to it in Section 0.

"Wind Data" shall mean all meteorological data actually generated for the Project by meteorological towers on the Project Site and all final third-party reports and studies regarding such data that are relevant to the use of any of the WTGs, in each case as amended, supplemented, or updated.

"Wind Energy Easement Form" shall have the meaning given to it in Section 0.

"Wind Energy Easements" or "Wind Energy Easement" are collectively or individually, as applicable, the leases or easements granted by each landowner listed in Exhibit H

Real Property Spreadsheet, pursuant to the Easement Agreement form attached as Exhibit H

Real Property Spreadsheet, and list of which is attached as part of the Real Property Spreadsheet attached as Exhibit H

Real Property Spreadsheet, as may only be modified as mutually agreed to by the Parties. Unless the context expressly requires otherwise, each Wind Energy Easement and any other amendments must be approved by Buyer.

"Wind Energy Easement Amendments" or "Wind Energy Easement Amendment" are collectively or individually, as applicable, the amendments to the Wind Energy Easements granted, as necessary pursuant to Section 0, by each such applicable landowner listed in Exhibit H

Real Property Spreadsheet, pursuant to the Wind Energy Easement Form attached as Exhibit H

Real Property Spreadsheet, and the list of which is also attached as part of the Real Property Spreadsheet attached as Exhibit H

Real Property Spreadsheet, as may only be modified as mutually agreed to by the Parties. Unless the context expressly requires otherwise, each Wind Energy Easement Amendment and any other amendments must be approved by Buyer.

"Wind Energy Leases" shall have the meaning given to it in Section 0.

"Wind Energy Lease Amendments" or "Wind Energy Lease Amendment" are collectively or individually, as applicable, the amendments to the Wind Energy Leases granted by each landowner listed in Exhibit H

Real Property Spreadsheet, pursuant to the Wind Energy Lease Form attached as Exhibit H

Real Property Spreadsheet, and the list of which is also attached as part of the Real Property Spreadsheet attached as Exhibit H

Real Property Spreadsheet, as may only be modified as mutually agreed to by the Parties. Unless the context expressly requires otherwise, each Wind Energy Lease Amendment and any other amendments must be approved by Buyer.

"Wind Energy Lease Amendment Form" shall have the meaning given to it in Section 0.

"Work" shall mean all work and services for the Project, the design, engineering, procurement, construction, start-up and turnover of the Project and the procurement, delivery, assembly, erection, installation, commissioning, start-up and turnover of the WTGs, which work and services shall include all aspects of the work and services described in the Construction Contracts, the Turbine Supply Agreement and the Technical Specifications, and the provision of all Equipment and Materials, machinery, tools, labor, transportation, administration and other

services and items required to achieve Final Completion, all in accordance with this Agreement including the Project Contracts.

"WTG" or "WTGs" means the Safe Harbor Turbines and each of the other 65 wind turbine generators (2.82MW per WTG) with 127 meter rotors and 88.6 meter hub heights to be installed on the Project Site as part of the Project, as further described in the Turbine Supply Agreement, for a total number of 72 WTGs.

"WTG Foundation Completion" shall have the meaning given to it in Section 0.

"WTG Foundation Completion Certificate" shall mean the Milestone Completion Certificate for WTG Foundation Completion.

"WTG Mechanical Completion" shall have the meaning given to it in Section 0.

"WTG Mechanical Completion Certificate" shall mean the Milestone Completion Certificate for WTG Mechanical Completion.

"WTG Substantial Completion" shall have the meaning given to it in Section 0.

"WTG Substantial Completion Certificate" shall mean the Milestone Completion Certificate for WTG Substantial Completion.

## 1.2 Documents Included.

### 1.2.1 Exhibits.

This Agreement includes the exhibits which are attached hereto or shall be attached hereto as may be amended, supplemented, or replaced from time to time (individually, "Exhibit" and collectively, "Exhibits"), and which are specifically made a part hereof by this reference. In certain instances when specified in this Agreement, certain exhibits are intended to qualify and limit the representations, warranties or covenants and others are intended to expand or supplement the terms of this Agreement. A Party may only supplement or amend an exhibit to this Agreement by mutual agreement of the Parties.

### 1.2.2 Online Document Sharing.

When a Party has an obligation to deliver a document (but expressly excluding communications, consents and approvals that are governed by notice provisions of Section 0) to the other Party prior to Final Completion, each Party shall fulfill its obligation by delivering the final executed document using FirmEx licensed software (as has been established by Seller) for all real estate documents and Project Wise licensed software (as has been established by Buyer) for all other documents to be delivered under this Agreement, each which shall serve as the secured file-transfer website that automatically generates notices of a Party's upload of a document to the other Party (each of the two softwares being a "Secured File-Transfer Website"). The automatic notice generated by the Secured File-Transfer Website shall clarify (by the names of the documents and/or the names of the file folders the documents are being

uploaded to) whether the documents being uploaded are for final, fully-executed documents, partially-executed documents or drafts of documents that are in the process of being reviewed and/or executed as such site is intended to serve as the formal notice of a deliverable for purposes of this Agreement. Seller shall maintain/utilize each Secured File-Transfer Website at Seller's cost and expense for its use until the earlier of any of the following events: (i) termination of this Agreement, (ii) the latter of Seller achieving Final Completion or Seller delivering the As-Built Survey. Failure to upload any document to the properly designated folder in a Secured File-Transfer Website, as set forth in this Agreement, shall not constitute a proper upload for the purposes of this Agreement and any relevant review time shall not begin to run until such document is uploaded to the properly designated folder. For clarity, and notwithstanding anything to the contrary in this Agreement, Seller shall only be obligated to post documents to ProjectWise when required by Exhibit AC

#### Submittals and Deliverables List.

##### 1.3 Entire Agreement.

This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the date first above stated, and supersedes any and all negotiations, agreements and representations made or dated prior thereto. Subsequent to the date hereof, this Agreement may be supplemented, modified or otherwise amended by mutual agreement or in accordance with the terms of this Agreement. Such amendments, if any, must be in the form of a written amendment to the Body of this Agreement or Change Orders, as applicable, and signed by authorized representatives of both Parties to this Agreement.

##### 1.4 Conflicting Provisions.

In the event of any conflict or inconsistency between or among this Agreement including all documents referenced therein, such conflict shall be resolved in accordance with the following order of precedence (provided that, notwithstanding the following order, physical design or technical requirements of the fabrication or assembly of the WTGs as set forth in the Technical Specifications shall always control in the event of conflicting provisions contained in the other Project Documents): (i) amendments to the Body of this Agreement; (ii) Change Orders; (iii) the Body of this Agreement including other provisions that address conflicts or inconsistencies; (iv) the Scope of Work including the Technical Specifications; and (v) the other Exhibits, Project Contracts and other documents referenced therein and any other Project Documents. Either Party, upon becoming aware of any conflict or inconsistency among any of the components of this Agreement, shall promptly notify the other Party in writing of such conflict or inconsistency. Notwithstanding the definition of Prudent Industry Standards, Prudent Industry Standards cannot supersede the express terms and requirements of this Agreement. To the extent not in conflict or inconsistent, the documents in the Agreement shall be considered complementary and what is required by one shall be binding as if required by all. Any failure to specifically list a requirement in one document, once the requirement is specifically listed in another, shall in no manner imply the inapplicability, or any limitation on the applicability, of such requirement. In the event of a conflict between any of the documents,

the provisions that impose the most stringent requirements upon Seller will take precedence, unless and except as may be otherwise determined by Buyer.

1.5 Construction.

1.5.1 Terminology.

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

1.5.1.1 Capitalized terms used in this Agreement shall have the meanings specified in this Article or defined elsewhere in this Agreement.

1.5.1.2 The singular shall include the plural and the masculine shall include the feminine and neuter.

1.5.1.3 References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement, and references to paragraphs, sections, or clauses shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

1.5.1.4 The words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words "include," "includes" or "including" shall mean "including, but not limited to" or words to similar effect.

1.5.1.5 The term "day" shall mean a calendar day (beginning at 12:00 a.m. and ending at 11:59 p.m.). The term "month" shall mean a calendar month, and the term "year" shall mean a calendar year.

1.5.1.6 Whenever an event is to be performed by a particular date, or a period that 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 shall be performed, or the period shall end, on the next succeeding Business Day.

1.5.1.7 Accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied.

1.5.1.8 All references to a particular entity shall include such entity's successors and permitted assigns.

1.5.1.9 All references herein to any contract (including this Agreement) or other agreement shall be to such contract or other agreement as amended and supplemented or modified to the date of reference.

1.5.1.10 All references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified,

supplemented or restated and be in effect from time to time, including, successor laws.

1.5.2 Headings.

The titles of the articles and sections herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.5.3 Interpretation or Approvals.

Notwithstanding anything else to the contrary in this Agreement, no inspection, review, or approval by Buyer or any representative of Buyer (or any action or inaction of Buyer as a result of or in conjunction with such inspection review) of any design, specification, drawing, plan, manual, test, Equipment and Materials, program, method, procedure or Work provided or performed by Seller or any Contractors shall constitute an approval, endorsement, confirmation or acknowledgement by Buyer that the same satisfies the requirements of this Agreement; nor shall any such inspection, review or approval relieve Seller of any of its obligations or liabilities under or arising from this Agreement except when such approval is required by this Agreement and either (i) given in writing and signed by Buyer's Project Representative or (ii) "deemed approved" by Buyer as provided in this Agreement. No waiver or failure by Buyer in whole or in part to exercise any right to inspect, review or approve any design, specification, drawing, plan, manual, test, Equipment and Materials, program, method, procedure or Work shall in any way relieve Seller of full liability for the quality, character, and performance of the Work and every part of it, nor shall it prejudice or affect the rights of Buyer set forth in this Agreement. Seller acknowledges, agrees and understands that all reviews, approvals, consents and determinations required of Buyer for any and all purposes shall be made by Buyer in its sole discretion unless expressly provided otherwise in this Agreement, and further all reviews, approvals, consents and determinations required of Buyer are always furnished for the purpose of evaluating whether in Buyer's reasonable opinion, and not as an expert in design or engineering (even when there is a licensed Person employed by Buyer), whether the information or documents appear to execute upon Seller's general Scope of Work and in no way is to serve as a substitute for, reduction of, or waiver of Seller's and its Contractors' (including their engineers' and other designers') obligations to perform the Work.

## **ARTICLE II RESPONSIBILITIES OF SELLER**

2.1 Seller's Obligation to Provide the Project.

Seller shall fully perform or cause to be performed all the Work in accordance with this Agreement in order to provide Buyer with the Project in accordance with this Agreement. The responsibilities of Seller set forth in this 0 are in addition to, and not a limitation of, the other responsibilities and obligations of Seller under this Agreement, including the Project Documents.

2.2 Standards of Performance.

Seller, subject to the terms and conditions of this Agreement, represents and agrees that it shall be responsible for the timely performance and prosecution of the Work in accordance with (i) the specific standards set forth in this Agreement, including the Scope of Work and the Technical Specifications; *provided, however*, when there are not specific standards, but rather more general terms, such as "adequate" or "sufficient," Seller shall rely on the professional judgement of a qualified, experienced, licensed engineer to establish the specifications in writing to comply with such terms, further provided such judgment is consistent with design intent of (i) the Scope of Work, (ii) Applicable Permits, (iii) Applicable Laws, (iv) Prudent Industry Standards; and (v) the requirements, terms and obligations of all Project Contracts including all Real Property Documents and Construction Contracts (collectively the "Requirements"). Notwithstanding anything to the contrary in Subsection (v) above, Seller's immaterial noncompliance with the Project Contracts, including all Real Property Documents and Construction Contracts, shall not be considered in assessing whether any Condition Precedent or Milestone has been achieved and shall not prevent the achievement of any such Condition Precedent or Milestone. Any immaterial noncompliance referenced in the foregoing sentence shall not be construed to alter Seller's obligations under this Agreement.

### 2.3 Production Tax Credit Opinion.

Attached as Exhibit AM

Production Tax Credit Beginning of Construction Certificate is Seller's Production Tax Credit Beginning of Construction Certificate. As a Condition Precedent to NTP, Seller shall provide an updated Production Tax Credit Beginning of Construction Certificate that certifies that the facts in the Production Tax Credit Beginning of Construction Certificate have not changed. If the facts change in the updated Production Tax Credit Beginning of Construction Certificate, such Condition Precedent shall not have been satisfied, unless Seller cooperates with Buyer in obtaining a bring down Production Tax Credit Opinion that reaches the same conclusions as the original Production Tax Credit Opinion provided by Orrick Herrington & Sutcliffe, LLP or another similarly qualified law firm selected by Buyer and reasonably acceptable to Seller ("Bring Down Production Tax Credit Opinion") or Buyer otherwise consents to such changed facts in the updated Production Tax Credit Beginning of Construction Certificate. For the avoidance of doubt, the Bring Down Production Tax Credit Opinion shall address solely the changes in fact reflected in the updated Production Tax Credit Beginning of Construction Certificate to reach the same conclusions reached in the Production Tax Credit Opinion and shall not address any change in Applicable Law since the Effective Date.

### 2.4 Provision of Materials, Supplies, and Services.

Seller shall provide or cause to be provided the Equipment and Materials, technical, professional and construction personnel and supervision, construction tools and equipment, and the services required, and shall be responsible for completing the Work in accordance with the terms of this Agreement. Seller shall be responsible for the Work and for coordination and management of all Contractors. In furtherance of the foregoing, Seller shall, and to the extent applicable, cause each Contractor to, do the following:

#### 2.4.1 Handling of Equipment and Materials.

Provide for the handling of Equipment and Materials and construction equipment, including, as necessary, inspection, expediting, shipping, unloading, receiving, quality control, and customs clearance and be responsible for all customs duties, taxes, tariffs, and similar charges payable in connection with the importation of Equipment and Materials into the United States.

#### 2.4.2 Quality of Equipment and Materials.

Ensure that all Equipment and Materials supplied shall be new (unless otherwise agreed by Seller and Buyer) and shall meet the requirements of the Technical Specifications, Scope of Work and all Applicable Permits. References in the Scope of Work to Equipment and Materials, articles or patented processes by trade name, make or catalog number shall be regarded as establishing a standard of quality expected by Buyer. Seller and the Contractors may use any equipment, material, article, or process that is substantially similar to that named in the Scope of Work, subject to the prior written approval of Buyer.

#### 2.4.3 Construction Means and Methods.

Be solely responsible for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work. Seller acknowledges and agrees that it shall not be Buyer's responsibility to oversee, supervise, inspect or otherwise perform any activities that will be inferred to shift, or mandate that Buyer has assumed, responsibility for any actions or inactions of Seller and its Contractors. If Buyer should identify that Seller has not performed a responsibility and Buyer notifies Seller of the same, such action shall not act to shift any responsibility for Seller's actions or inactions, including for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work, to Buyer in any part or way.

#### 2.4.4 Construction Utilities and Other Facilities.

Provide or cause to be provided all construction utilities required for the performance of the Work and provide, within the Project Site, temporary roads, office space and furniture, telephone facilities, drinking water and sanitary facilities to be used by Contractors in the performance of the Work together with any additional facilities or other conditions required by Applicable Laws.

#### 2.4.5 Maintenance of Project Site.

Keep the Project Site free from accumulation of waste materials, rubbish and other debris resulting from performance of the Work and in compliance with all Requirements; and, reasonably promptly after Substantial Completion, remove from those portions of the Project Site involved in the commercial operation of the Project, in conformity with Applicable Laws and other Requirements, all such waste materials, rubbish and other debris, as well as all tools, construction equipment, machinery and surplus material that would interfere with the commercial operation of the Project or violate any Real Property Documents (specifically excluding materials, tools and construction equipment necessary to complete Punch List Items); and before final departure from the Project Site after completion of the Punch List

Items, remove from the Project Site, in conformity with Applicable Laws and other Requirements, all remaining waste and rubbish generated during performance of Punch List work and all remaining materials, tools and construction equipment of Seller and Contractors, leave the Project Site in clean and usable condition, and perform all necessary reclamation or re-vegetation to remedy any crop damage caused to the Project Site or any adjacent real property. Notwithstanding the foregoing, Seller shall not trespass or otherwise enter adjacent real property in performing the Scope of Work.

#### 2.4.6 Project Site Safety.

Establish and memorialize in writing the safety and security precautions and programs as set forth in Exhibit AR

Seller's Safety Program, including address and comply with the requirements set forth in the Buyer's Safety/Fire Protection Program, in the Michigan Occupational Safety and Health Act (Act 154 of the Michigan Public acts of 1974) as amended ("MIOSHA"), in the federal Occupational Safety and Health Act ("OSHA"), and in all other Applicable Laws (including all Environmental Laws) and Prudent Industry Standards, Insurance requirements and all other Requirements, and shall likewise comply with (and cause its Contractors to comply with) all other safety measures and procedures reasonably required to be implemented by Buyer at the Project Site (collectively, and as any one or more of them may be subsequently amended, the "Seller's Safety Program"). Seller shall provide appropriate notice of the requirements of, and the obligation to comply with, this Section 0 to all Persons entering the Project Site, including all of Seller's employees and Contractors, to abide by such rules and regulations and all safety and security laws applicable at the Project Site. Seller shall erect and maintain or cause to be erected and maintained, as required by existing conditions and the progress of the Work, all safeguards for safety and security, including lights, barriers, fences and railings. Seller shall be responsible for placing high priority on safety and health during performance of the Work. Seller shall be responsible for safety related to and during the performance of the Work at the Project Site and shall take reasonable measures to ensure that it and all of its Contractors (including all working by or through Seller) provide and maintain a safe working environment and properly protect (i) all Persons in proximity of the Project Site, employed or otherwise, from risk of injury and danger to health, and (ii) all property, including property of Buyer and third parties, from damage or loss. Before commencing Work, Seller shall inspect the Project Site and become familiar with the safety and health conditions there, and shall effectively communicate to all of its Contractors all safety, fire and health regulations in force at the Project Site. Notwithstanding anything to the contrary, neither the provision, review, or approval by Buyer of Seller's Safety Program, nor Buyer's or its consultants' entry onto the Project Site, constitutes an assumption by Buyer of any responsibility for the safety and security of Persons or property and shall not relieve Seller and its Contractors of any liability for injury to Persons or damage to property or impose on Buyer any such liability.

#### 2.4.7 Quality Assurance.

Comply with the quality assurance plan in performing the Work, which Quality Assurance Plan is attached hereto as Exhibit Q

Cooperative Agreement for Heartland Stakeholder Engagement\_and deliverables listed in Exhibit AC

Submittals and Deliverables List (the "Quality Assurance Plan"). Any changes to the Quality Assurance Plan shall be reviewed in advance by Buyer with Buyer having an opportunity to provide comments; however, Buyer's review and comments shall in no manner act as a transfer of responsibility or liability for the quality of the Work or compliance with the Quality Assurance Plan as such responsibility shall in all respects remain with Seller and its Contractors.

#### 2.4.8 Emergencies.

In the event of any emergency on the Project Site relating to the Work endangering Persons or property, take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as practicable (but in no event later than twenty-four (24) hours after receiving notice of the event), report any such incidents, including Seller's response thereto, to Buyer. Buyer's taking or not taking any emergency action shall not limit Seller's obligations or liability hereunder irrespective of whether before or after Final Completion.

#### 2.4.9 Roads.

Be responsible for all damage it and its Affiliates, Contractors or Persons working by or through such parties cause to public roads and highways on or off the Project Site, including all Access Roads. To the extent a Crossing Agreement, Drain Agreement, agreement for Access Roads or other use agreement associated with the Work, such as temporary use agreement only needed for Seller's construction activities (e.g., staging, access, etc.), that may or may not be a Project Contract requires that activities be taken during and/or to complete the obligations of Buyer or Seller in connection with such agreement, the Scope of Work shall automatically include such obligations. Crossing Agreements, Drain Agreements, agreements for Access Roads or other use agreements associated with the Work shall be provided by Seller to Buyer, and Seller shall use commercially reasonable efforts to deliver to Buyer, no later than seven (7) days after recording of those agreements or execution of those agreements if they will not be recorded.

#### 2.4.10 Utilities and Drainage Infrastructure.

Confirm the absence or location of existing underground utilities at the Project Site, including drainage tile, in advance of construction involving excavation commencing on the Project Site. Any adjustments to Design Documents required to avoid or address utilities are Seller's responsibility and included in the Purchase Price without additional payment by Buyer.

#### 2.4.11 Interconnection to the Transmission Owner's Transmission System.

Coordinate activities with and provide access to the Transmission Owner to enable installation and commissioning of all associated equipment provided and installed by the

Transmission Owner and its agents and allow the Project to interconnect at the Interconnection Point. Post NTP coordination shall include the Buyer's Representative.

#### 2.4.12 Commissioning.

Conduct all commissioning, start up, synchronization, operation, and testing, including as contemplated in the Commissioning Plan in accordance with this Agreement. Buyer's Representative and up to three (3) teams of two (2) technically qualified employees, agent, or expert shall have the right to be present during the commissioning, start up, synchronization, operation, and testing of the Work pursuant to this Agreement; provided, that Buyer's Representative and any such other Person shall abide by Seller's safety requirements and shall not interfere with the Work. Buyer shall have access to the SCADA network during start up to view all commissioning activities.

#### 2.5 Information Assistance to Buyer in Dealings with Governmental Authorities.

Seller shall provide or cause to be provided to Buyer information reasonably requested by Buyer to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by Buyer in dealing with any Governmental Authority in matters relating to the Work and the Project, including providing an unredacted copy of the Safe Harbor Cable Supply Agreement and the Safe Harbor Turbine Supply Agreement in the event of an IRS audit, with such copies returned or destroyed when the IRS audit is final, including any appeals.

#### 2.6 Hazardous Chemicals and Hazardous Materials.

Seller shall perform or cause to be performed the following obligations and responsibilities:

##### 2.6.1 Information Concerning Hazardous Chemicals.

As and to the extent required by Applicable Laws, Seller shall provide material safety data sheets, warning labels, or other documentation covering all Hazardous Chemicals, as defined under MIOSHA, furnished under or otherwise associated with the Work. Seller shall provide to Buyer copies of any such applicable safety data sheets prior to the commencement of such Work or at such time as any such substance enter the Project Site.

##### 2.6.2 Action Upon Encountering Hazardous Materials.

If Seller encounters any Hazardous Materials (or materials or substances which Seller reasonably believes to be Hazardous Materials) in or on the Project Site in a location or otherwise under circumstances which would create a safety or health hazard for any Person working on the Project at the Project Site, Seller shall immediately stop any Work to the extent required to avoid any such safety or health hazard and until such safety or health hazard no longer exists or can be safely avoided. Seller shall notify Buyer promptly upon encountering any such Hazardous Materials (or materials or substances which Seller believes to be such Hazardous Materials) at, in, on, under, or emanating from the Project Site.

## 2.7 Labor and Personnel.

Seller shall provide, or cause to be provided, all management services necessary for the Work and provide, or cause to be provided, all labor and personnel (collectively, "Labor") required to timely perform the Work, including management services and personnel, in accordance with the Requirements.

### 2.7.1 Seller's Representative.

Seller shall employ the person identified as the "Project Manager" and who is also one of the Key Personnel as defined below. The Project Manager shall have full supervision over the completion of the Work, act as the primary point of contact with Buyer regarding all matters relating to the Work, and have full authority to bind Seller.

### 2.7.2 Staffing; Key Personnel.

1.1.1 Seller shall provide and maintain staff sufficient for the completion of the Work in accordance with the Project Schedule who have the technical and managerial experience, qualifications, certifications, and licenses necessary to perform the Work in accordance with the Requirements. Seller shall provide and maintain a qualified and competent organization at the Project Site with adequate capacity and numbers of construction and startup personnel, equipment, and facilities to execute the Work in a safe, efficient, environmentally sound, and professional manner at a rate of progress in accordance with the Project Schedule. In establishing the Purchase Price and Project Schedule, Seller has investigated the Labor conditions and availability of Labor. Buyer shall be informed of all key personnel, including the Project Manager, construction manager, engineering manager, and start-up manager, as each are identified in Exhibit AS

Invenergy Key Personnel ("Key Personnel"). Key Personnel shall not be removed or replaced without written notification to Buyer; *provided, however*, Buyer has the right to approve any changes of the on-site construction manager, which approval will not be unreasonably withheld. If Buyer fails to respond within three (3) Business Days of notice and request for approval, Buyer's right to approve will be deemed waived for that change of the on-site construction manager (although future changes will still require the same process for approval). Buyer shall have the right to require removal of any on site personnel for cause due to any material breach of this Agreement or Seller Event of Default regarding material safety issues or other material breach and the Seller shall not unreasonably withhold approval of Buyer's written request for such removal.

### 2.7.3 Licensed Personnel.

Whenever required by Applicable Law or Prudent Industry Standards, Seller agrees to employ licensed personnel to perform engineering, design, architectural or other professional services in the performance of the Work.

### 2.7.4 Personnel Documents and Language.

Seller shall ensure that at the time of hiring and before performing any Work, all Labor performing the Work (including Labor of Contractors) is in possession of all documents (including visas, driver's licenses, and work permits) as may be required by any and all Applicable Law to perform the Work. Upon request, subject to appropriate confidentiality protections, Seller shall provide any such documentation to Buyer in a timely fashion in order for Buyer to verify compliance or to comply with any request or requirement of any Governmental Authority.

#### 2.7.5 Code of Ethics.

1.1.2 Seller represents that it has reviewed and agreed to be bound by, and shall cause all Contractors and all employees, consultants, Affiliates, and representatives, to review and be bound by, the Third-Party Ethics and Compliance Guidelines which are attached as Exhibit AO

Third-Party Ethics and Compliance Guidelines. Without limiting the other provisions in such Third-Party Ethics and Compliance Guidelines, Seller further represents that it and Persons working on the Project Site cannot possess alcohol, drugs, guns and ammunition at the Project Site as provided in such Third-Party Ethics and Compliance Guidelines. Buyer shall have the right to require Seller to remove from the Project Site any of Seller's employees, Contractors, consultants, Affiliates, or representatives who fail to abide by this Section 2.7.5.

#### 2.7.6 Labor Relations.

2.7.6.1 When the Work is performed by building and construction trades Labor, a pre-job conference shall be held with local labor representatives, with reasonably available documentation of such pre-job conferences, if any, to be provided to Buyer, prior to starting Work. Buyer shall be afforded the opportunity to attend and participate in pre-job conferences. Seller shall promptly inform and reasonably cooperate with Buyer on material labor relations matters. Seller shall consult with Buyer prior to rendering its decision(s) on labor relations matters that may impact the timely, efficient, and productive performance of the Work. Seller shall exercise its management rights contained in applicable labor agreements to establish, maintain, and enforce work rules conducive to timely, efficient, productive, and harmonious work operation. Seller shall take reasonable steps to resolve grievances, jurisdictional disputes, or alleged or actual violations of collective bargaining agreements. Subject to the foregoing, Seller shall be solely responsible for management of Labor and labor relations with respect to the Work.

2.7.6.2 Seller shall, and shall cause its Contractors to, use reasonable efforts to adopt practices designed to avoid Labor Disputes, and to minimize the risk of Labor-related delays or disruption of the progress of the Work. Contractor shall advise Buyer promptly, in writing, of any verifiable actual or threatened Labor Dispute.

#### 2.7.7 Prevailing Wage and Similar Requirements.

Seller shall comply with any prevailing wage and similar requirements that are imposed on the Work by any Governmental Authority, if applicable.

2.8 Compliance with Applicable Laws.

Seller shall comply, and shall cause all Contractors, employees, agents and representatives to comply, with all Applicable Laws in connection with the performance of Seller's obligations under this Agreement.

2.9 Storage.

Except for the limited purpose in Section 0 for the Safe Harbor Equipment as provided therein, Seller shall provide appropriate storage at the Project Site. In all storage locations, Seller shall provide security for all Equipment and Materials, including reasonable Spare Parts, materials, supplies, and any equipment required to unload, assemble, erect, install, commission, startup, and test the Work, together with any property owned or leased by Contractors. Seller shall protect the foregoing items and all Work from damage, and shall be responsible for any damage to such property.

2.10 Cooperation Regarding Commercial Operation.

Seller and Buyer recognize that after a WTG has been commissioned and placed into commercial operation by Buyer, Seller may be continuing with completion of the Work. Until Substantial Completion has been achieved, Buyer shall not unreasonably interfere with Seller's prosecution of the Work. After Substantial Completion has been achieved, Seller shall not unreasonably interfere with Buyer's commercial operations and use of the Project Site.

2.11 No Shop.

From and after the date of this Agreement and until and unless this Agreement is terminated, neither Seller nor any of its Affiliates (or its or their agents or representatives) shall, directly or indirectly: (i) solicit, initiate, facilitate, or continue any prior occurring or ongoing discussions pertaining to the making, submission or announcement of any Acquisition Proposal to any Person other than Buyer or an Affiliate of Buyer; (ii) furnish any Confidential Information, including regarding Seller, the Project, the Project Assets or the terms of or transactions contemplated by this Agreement, to any Person other than Buyer or an Affiliate of Buyer in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; or (iii) engage (including continuing to engage) in discussions or negotiations with any Person other than Buyer or an Affiliate of Buyer with respect to any Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal.

2.12 Safe Harbor Equipment.



Safe Harbor Equipment Pool



### ARTICLE III PROPERTY

#### 3.1 Real Property Documents.

##### 3.1.1 Generally; Collaboration.

3.1.1.1 Commencing on the Effective Date, Buyer may conduct due diligence of the type and scope customary for transactions of the nature as set forth in this Agreement, and Seller shall make available to Buyer by means of the Secured File-Transfer Website (which is the FirmEx software that acts as a virtual data room), as described in Section 0, all Project Documents, including all Real Property Documents and such due diligence materials as Buyer may reasonably request. Executed Curative Documents shall be made available on such Secured File-Transfer Website as soon as practicable after their full execution and no later than as set forth below. Drafts of additional proposed Curative Documents or modified Buyer-approved Curative Documents for Buyer's review and approval shall be sent to Buyer as provided below in Section 1.1.1.1.

##### 3.1.1.2 Collaboration.

(1) Commencing on the Effective Date until NTP Closing, Seller and Buyer shall hold a telephone conference at least one (1) time

every two (2) weeks to generally discuss the Wind Energy Easements, Wind Energy Leases, Wind Energy Easement Amendments, Wind Energy Lease Amendments, the Deviations Schedule, Title Commitments, preliminary/draft ALTA Survey, status of Drain Agreements and Crossing Agreements, and Seller's Real Property Spreadsheet, and the Global Title Checklist ("Property Team Calls").

(2) Commencing ten (10) days after the Effective Date, and thereafter every two (2) weeks (on dates to be mutually agreed upon) until the Title Objection Notice is received from Buyer, Seller shall deliver the Global Title Checklist to Buyer organized by parcel (as reflected by the Seller's Real Property Spreadsheet) and Title Commitment reflecting the curative efforts presently underway, identifying the number of Title Commitments received and describing generally the curative efforts underway as well as an updated Seller's Real Property Spreadsheet to the extent updated based on the changes in the Project Site and/or to the Wind Energy Easements, Wind Energy Leases, Substation property.

(3) Commencing seven (7) days after the receipt of Buyer's Title Objection Notice described in Section 0, Seller shall furnish to Buyer on the same two-week basis as set forth in subsection (2) above a written status update using the itemized Title Objection Notice (which is based on the Global Title Checklist as provided below) to update Buyer on the status of Seller's curative efforts required by Buyer's Title Objection Notice.

(4) Notwithstanding the "no later than" deadlines set forth below, Seller shall work with diligence and good faith to deliver Real Property Documents to Buyer as quickly as commercially reasonably possible, and Buyer shall work collaboratively with Seller in the same manner to review the Real Property Documents and provide objections and other feedback on Seller's proposed curative actions. Both Parties acknowledge and agree that the period between the Effective Date and the NTP Deadline mandates the commitment of both Parties and their vendors to work together in the manner described herein.

1.1.1.1 3.1.1.3 Curative Documents. Attached as Exhibit AE

Curative Documents are copies of Curative Documents that Buyer has approved for Seller to cure title and survey objections customarily raised for projects similar to the Project ("Curative Documents"). Buyer authorizes Seller to utilize these Buyer-approved Curative Documents without having to obtain Buyer's approval in order to expedite Seller's curative actions. If Seller desires to add additional Buyer-approved Curative Documents or materially modify any of the Buyer-approved Curative Documents for one (1) or more parcels, Seller shall present such documents to Buyer for Buyer's review and approval by sending them as proposed/draft Curative Documents to the following specifically designated

folder on the Secured File Transfer Website "Curative Documents – Draft Forms for Buyer Approval" accompanied by an automated notice reflecting the upload to such folder. Buyer after receipt shall use good faith efforts to review and approve or provide edits to the same (including furnishing a different Curative Document in lieu thereof), which approved or edited document shall become a Buyer-approved Curative Document as quickly as commercially reasonably possible but in no event later than [REDACTED] after receipt. If Buyer shall fail to respond within the [REDACTED] period, Buyer shall be deemed to have waived any objections to the use of such document(s) as updated Buyer-approved Curative Documents. Notwithstanding the foregoing, Buyer and Seller agree that due to the high number of documents involved under this Agreement, all documents submitted to Seller for consideration of being Buyer-approved Curative Documents must be submitted in an organized and efficient manner to facilitate their review. To that end, all documents to be considered for such approval may only be submitted to Seller by being clearly identified as proposed draft Curative Documents and located in the above-referenced required folder of the Secured File Transfer Website. When Curative Documents have been approved by Buyer or deemed approved by Buyer as provided herein, such forms shall be moved to the Secured File Transfer Website folder labeled "Curative Documents – Approved Forms."

### 3.1.2 Seller's Real Property Spreadsheet and Global Title Checklist.

1.1.2 Seller shall also make available on the Secured-File Transfer Website and update it as provided herein, and at other reasonable times, (a) the Real Property Spreadsheet in the form attached as Exhibit H

1.1.3 Real Property Spreadsheet, that provides a comprehensive status summary of the Real Property Documents and (b) the Global Title Checklist in the form attached as Exhibit H

Real Property Spreadsheet that provides a comprehensive status summary of the title and survey activities, including the Curative Documents. As Seller updates the Seller's Real Property Spreadsheet and Global Title Checklist (which Global Title Checklist shall become the Title Objection Notice as provided below) from a prior delivery to Buyer in accordance with the scheduled reporting set forth above in this Agreement, Seller shall redline or otherwise identify the changes made since the last update to Seller's Real Property Spreadsheet and Global Title Checklist and upload the redline or other documented changes to the folder of the Secured File-Transfer Website identified as the "Real Property Spreadsheets" and "Global Title Checklist" folders with an automated notice accompanying the updates sent to Buyer reflecting the update to such folders. If the update does not include a redline, Seller shall otherwise identify the changes made since the prior update.

### 3.1.3 Buyer's Iterative Responses.

During the Property Team Calls, Buyer shall work in good faith to furnish comments, objections and guidance on the Wind Energy Easements, Wind Energy Leases, Wind Energy Easement Amendments, Wind Energy Lease Amendments, Title Commitments, preliminary ALTA Survey and any other Real Property Documents, either received or otherwise discussed during the Property Team Calls, in an effort to allow the Seller to create a set of Real Property Documents that will meet Buyer's needs as a Condition Precedent to NTP. Whenever Seller furnishes the Global Title Checklist during this iterative process, Buyer will use commercially reasonable efforts to provide its comments, objections and guidance within the Global Title Checklist within [REDACTED]. Notwithstanding the foregoing dates for responses, if Buyer does not respond to one or more items in the Global Title Checklist, such failure to respond to such items shall not be deemed Buyer's approval of such items. Buyer's objections to any conditions, requirements and exceptions in the Title Commitments and preliminary ALTA Survey within Global Title Checklist during this iterative process shall constitute title objections that will form a part of Buyer's Title Objection Notice, and may also include a listing of information Buyer reasonably requires in addition to the Title Commitments and further supporting title documents to determine whether Buyer has any additional objections to title and/or survey. Seller and Buyer acknowledge that, during this iterative review and objection process, there will be certain exceptions and other title matters that Buyer will not be able to fully evaluate prior to its receipt of the preliminary ALTA Survey, and that Buyer reserves the right to object to such matters during the supplemental title and survey review period set forth in Section 0 below. Notwithstanding the foregoing, Buyer and Seller agree that due to the high number of documents involved under this Agreement, all documents submitted to Seller for consideration must be submitted in an organized and efficient manner and filed in the appropriate file in the Secured File Transfer Website to facilitate their review. To that end, all documents to be considered must be clearly identified in the manner it is referred to in this Agreement. All such documents shall be uploaded to the Secured File-Transfer Website in the folder labeled with their corresponding document type accompanied by an automated notice describing the documents uploaded.

### 3.1.4 Wind Energy Easement and Wind Energy Lease.

1.1.3.1 3.1.4.1 The Parties agree that Seller shall use the form of Wind Energy Easement attached as Exhibit H

1.1.3.2 Form of Wind Energy Easement ("Wind Energy Easement Form") for new easements entered into after the Effective Date for the WTGs to be constructed, owned and operated at the Project Site, which shall be considered an acceptable document when properly and validly executed by landowners within the Project Site and shall require no amendment to comply with the Requirements of this Agreement. Notwithstanding the foregoing, Seller has entered into the form of Wind Energy Easement attached as Exhibit H

1.1.3.3 Form of Wind Energy Easement ("Prior Wind Energy Easement Form") for the sites as specified in the Real Property Spreadsheet. With

respect to the Prior Wind Energy Easement Form use for the Project Site, the Parties agree such document is not acceptable for the Project and Seller shall enter into the form of Wind Energy Easement Amendment attached as Exhibit H

1.1.3.4 Form of Wind Energy Easement ("Wind Energy Easement Amendment Form") with such landowners, which together with the Prior Wind Energy Easement Form shall be considered collectively an acceptable Wind Energy Easement when properly and validly executed by such applicable landowners within the Project Site. Seller has also entered into various existing Wind Energy Leases ("Wind Energy Leases") on the Project Site. These Wind Energy Leases are not acceptable documents, but will be acceptable if amended by the form of Wind Energy Lease Amendment attached as Exhibit H

Form of Wind Energy Easement ("Wind Energy Lease Amendment Form"). Within [REDACTED] of the Effective Date, or within [REDACTED] after the [REDACTED]

[REDACTED] Seller shall deliver to Buyer the applicable executed Real Property Document(s) along with (i) a Deviations Schedule identifying all changes except identification of the landowner and property at issue and (ii) redlining/markings of such Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases, and Wind Energy Lease Amendments which identifies all changes or variations made in the Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases and Wind Energy Lease Amendments compared to the approved Wind Energy Easement Form, Wind Energy Easement Amendment Form, Wind Energy Lease Form, and Wind Energy Lease Amendment Form. Notwithstanding the foregoing, no later than [REDACTED] ("Real Property Documents Deadline"), Seller shall deliver to Buyer copies of all executed Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases and Wind Energy Lease Amendments along with (i) a Deviations Schedule identifying all changes except identification of the landowner and property at issue and (ii) redlining/markings of such Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases, and Wind Energy Lease Amendments which identifies all changes or variations made in the Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases and Wind Energy Lease Amendments compared to the approved Wind Energy Easement Form, Wind Energy Easement Amendment Form, Wind Energy Lease Form, and Wind Energy Lease Amendment Form. By [REDACTED] ("Buyer's Response Deadline"), Buyer shall notify Seller if Buyer does not approve any such variations in a Wind Energy Easement, Wind Energy Easement Amendment, Wind Energy Lease, or Wind Energy Lease Amendment. Seller shall then obtain an appropriate amendment to the Wind Energy Easement, Wind Energy Easement Amendment, Wind Energy Lease, or

Wind Energy Lease Amendment to address Buyer's concerns to its satisfaction as one of the Conditions Precedent to Buyer's obligation to issue the NTP. Notwithstanding anything to the contrary herein, if Seller fails to deliver any of the documents required by the Real Property Documents Deadline, Buyer's Response Deadline shall automatically extend with respect to those documents that were not timely delivered to allow [REDACTED]; *provided*, however, if a later delivered Real Property Document affects a prior delivered and approved Real Property Document, Buyer shall be permitted to raise concerns with such prior Real Property Document.

#### 3.1.4.2 Intentionally deleted.

3.1.4.3 Seller shall work in good faith and with all diligence to obtain all amendments, using approved amendments as Curative Documents, to the applicable Wind Energy Easement, Wind Energy Easement Amendment, Wind Energy Lease and Wind Energy Lease Amendment within [REDACTED] thereafter, but in any event, Seller shall furnish Buyer by [REDACTED] the updated executed amendments and updated Deviations Schedule specifying the status of such amendments as Curative Documents. All drafts of Curative Documents for the Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases and Wind Energy Lease Amendments shall be identified by uploading them into the "Curative Documents – Drafts for Buyer's Approval" folder and when the forms are approved, transferred into the Curative Documents – Approved Forms." When a Wind Energy Easement, Wind Energy Amendment, Wind Energy Lease or Wind Energy Lease Amendment is fully-executed by all required Persons, they shall be uploaded into the Secured File Transfer Website folder as follows for: (a) Wind Energy Easements, Wind Energy Easement Amendments, Wind Energy Leases, Wind Energy Lease Amendments: "Wind Energy Easements/Leases – Executed"; (b) Substation property: "Substation – Executed"; and all other Real Property Documents: "Global Title Checklist Documents – Executed."

3.1.4.4 The Parties acknowledge that Buyer holds certain existing leasehold and/or easement rights for the development and operation of wind energy facilities as described in attached Exhibit AE (collectively, the "Potential Buyer Contributed Wind Energy Agreements"). The Potential Buyer Contributed Wind Energy Agreements may be used by Seller, as Buyer's contractor, for inclusion in the Project Layout in accordance with Section 0 of this Agreement. Buyer authorizes Seller to act as Buyer's contractor for the purpose of (i) conducting testing, surveying and other diligence activities on the real property where the Potential Buyer Contributed Wind Energy Agreements are located, (ii) pursuing any necessary permits and approvals for the Project with respect to the Potential Buyer Contributed Wind Energy Agreements, and (iii) pursuing any amendments to the

Potential Buyer Contributed Wind Energy Agreements, or other curative documents from the owners and other parties having interests in the real property where the Potential Buyer Contributed Wind Energy Agreements are located. Buyer authorizes Seller to conduct certain permitting activities with respect to the real property subject to the Potential Buyer Contributed Wind Energy Agreements as provided in the letter authorization attached in Exhibit AE. In addition, Buyer agrees to cooperate with Seller in good faith to timely execute any necessary applications, amendments and other documents in connection with the foregoing activities. The Parties acknowledge that the Potential Buyer Contributed Wind Energy Agreements are not currently in an acceptable form, but will be acceptable if amended by the Wind Energy Lease Amendment form. For avoidance of doubt, Buyer confirms that Seller shall not be required to include the Potential Buyer Contributed Wind Energy Agreements in the Deviation Schedule.

### 3.1.5 Title and Survey of Real Property Interests.

3.1.5.1 Initial Delivery of Title Commitments. Within [REDACTED], Seller shall order the Title Commitments on all parcels on the Project Site and request that the Title Insurer to respond within seven (7) days thereafter with a schedule by when the Title Insurer will deliver Title Commitments and how many will be delivered by such dates; *provided, however*, that such Title Commitments shall be received by Buyer no later than the Real Property Documents Deadline. Seller shall concurrently furnish to Buyer a copy of such order to the Title Insurer. Buyer acknowledges that Seller may, at its option, cause the Title Insurer to provide a single "combined" Title Commitment that would be updated by the Title Insurer to add additional parcels as new title work is completed, rather than providing individual Title Commitments.

3.1.5.2 Initial Delivery of Survey. Seller shall also obtain a preliminary ALTA Survey from a properly Michigan licensed and experienced professional surveyor for the then-current Project Site no later than the Real Property Documents Deadline.

3.1.5.3 Updated Delivery of Global Title Checklist. Concurrently with the delivery of the preliminary ALTA Survey as provided in the preceding paragraph, Seller shall deliver to Buyer an updated Global Title Checklist organized by parcel (as reflected by the Real Property Spreadsheet) and Title Commitment reflecting the curative efforts presently underway or, if cure is not possible, providing a detailed explanation of why cure is not possible and Seller's proposed alternative solution to address issue for Buyer's consideration as part of Buyer's review and approval process herein.

3.1.5.4 Buyer's Survey Review Period. No later than [REDACTED], Buyer shall supplement its existing title objection notices given

through the iterative process by providing Seller with a notice of Buyer's objections to any conditions, requirements and exceptions in the (i) Title Commitments that were not previously reviewed and objected to by Buyer during the iterative process provided for herein, or which were otherwise pending Buyer's survey review, and (ii) preliminary ALTA Survey (which shall not include objections to Permitted Encumbrances) ("Title Objection Notice"). The Title Objection Notice shall continue to be in the form of the Global Title Checklist and may also include a listing of information Buyer reasonably requires in addition to the Title Commitments and supporting title documents to determine whether Buyer has any additional objections to title and/or survey. Hereinafter, Buyer's Title Objection Notice and Global Title Checklist shall be one and the same document, irrespective of the term used.

3.1.5.5 Curative Obligations. [REDACTED] after the date of Buyer's Title Objection Notice, Seller shall notify Buyer how Seller will address each objection or request for information in the Title Objection Notice and the expected date it will do so. Thereafter, Seller shall work with diligence and good faith to furnish all information that Buyer requires pursuant to the Title Objection Notice and cure all objections made by Buyer in the Title Objection Notice by curative actions, including utilizing curative documents on forms approved by Buyer (including those pre-approved as Buyer-approved Curative Documents) and the Title Insurer. During this period, the status updates in the updated Global Title Checklist, as required above in Section 0, shall show a percentage completion by category of the curative task (e.g., SNDA, joinders, amendments releases), as well as a detailed breakdown of curative actions and resolutions for each objection in the Title Objection Notice (which resolution may require a proposed alternative solution for Buyer's approval).

#### 3.1.5.6 Pro Forma Title Policy and ALTA Survey.

(1) No later than the Real Property Documents Deadline, Seller shall deliver to Buyer a (i) preliminary Pro Forma Title Policy (updated to reflect curative efforts undertaken to date), (ii) updated ALTA Survey, (iii) Curative Documents obtained to such date, and (iv) a written summary updating the status of Seller's curative efforts from the immediately preceding status update provided for in Section 0 using the same Title Objection Notice/updated Global Title Checklist that the Parties have been using during this time period prior to NTP. The Pro Forma Title Policy shall be "blacklined" in a manner that clearly and directly identifies the revisions from/to the Title Commitments.

(2) Seller and Buyer shall work together cooperatively and in good faith towards revising the preliminary Pro Forma Title Policy, ALTA Survey, and Curative Documents in the manner and condition to address Buyer's objections and concerns. Seller shall furnish all information and

documents requested and cure all objections made by Buyer including utilizing Curative Documents. Further, Seller shall continue to provide the updates as provided in Section 0 above.

(3) No later than [REDACTED] prior to the anticipated NTP Closing) and as a Condition Precedent to NTP, Seller shall deliver to Buyer a revised preliminary Pro Forma Title Policy, revised ALTA Survey, all Curative Documents fully-recorded (or delivered to the Title Company for recording) when customary, and the updated Title Objection Notice/Global Title Checklist addressing each of the objections made by Buyer and, if any objections could not be addressed, the reason why and any alternatives Seller might suggest to reasonably address Buyer's objection. The revised ALTA Survey and all iterative revisions of the ALTA Survey between the preliminary ALTA Survey delivered as set forth above, and the updated ALTA Survey shall in each instance be "clouded" or "blacklined" in a manner that clearly and directly identifies all revisions. The Pro Forma Title Policy shall be "blacklined" in a manner that clearly and directly identifies the revisions from/to the preliminary Pro Forma Title Policy furnished as set forth above. If Buyer approves the revised Pro Forma Title Policy and ALTA Survey, Buyer shall deliver written notice thereof to Seller, and the final Buyer-approved Pro Forma Title Policy shall be referred to as the "Final Pro Forma Title Policy" and the final Buyer-approved ALTA Survey shall be referred to as the "Final ALTA Survey." If Seller shall fail to address all matters raised by Buyer in the Title Objection Notice to Buyer's satisfaction, Buyer may terminate this Agreement upon notice to Seller as provided in Section 0 and Section 0 of this Agreement.

3.1.5.7 Changes to Project Site. Without limiting the specific requirements in Section 0, in the event that the final Project Site is at any time changed as permitted by this Agreement to include one or more parcels that are not covered by the existing Title Commitments, Final Pro Forma Title Policy, ALTA Survey, and Final ALTA Survey, Seller shall thereafter promptly order Title Commitments and the updated ALTA Survey covering such new parcels and cause the Title Insurer to add such new parcels to the Final Pro Forma Title Policy and surveyor to update the ALTA Survey. Following Buyer's receipt of any such new Title Commitments, including supporting title documents (and updated Pro Forma Title Policy, as applicable), the updated ALTA Survey (and updated Final ALTA Survey, if applicable), new Wind Energy Easements, and updated Deviations Schedule and Real Property Schedule, Buyer shall have the right to provide Seller with an updated Title Objection Notice covering such parcels, in which case the same process set forth in this Section 0 shall start anew for only those parcels, but the Parties agree to cooperate and work in good faith to each reduce their response time on a pro rata basis to allow the Final Pro Forma Title Policy and Final ALTA Survey prior to the anticipated NTP Closing. For any changes to parcels after the NTP Closing, the Parties shall work in

good faith to establish an expedited schedule using the same process set forth in this Section 0 and adjusting each time period on an equally proportionate basis.

3.1.5.8 Drains. Seller shall require the Surveyor to obtain maps of any county drains located within the Project Site from the county drain commissioner(s), and for the Surveyor to ensure that any preliminary and updated ALTA Survey and the Final ALTA Survey identify the location of any such county drains within the Project Site (regardless of whether there is an easement recorded in the office of the register of deeds for the applicable county or in the office of the drain commissioner for the applicable county) that are not released as provided for in this Section 0. Buyer's Title Objection Notice and/or Property Team Conference Calls may include objections to Project facilities crossing/encroaching upon county drains, and Seller shall follow the same process for curative efforts to obtain Drain Agreements that address such objections and to assure that the Title and Survey Documents at Substantial Completion reflect such Drain Agreements.

3.1.5.9 Crossing Agreements. Buyer's Title Objection Notice and/or Property Team Conference Calls may include objections that Seller shall obtain one or more Crossing Agreements and Seller shall follow the same process for curative efforts to obtain Crossing Agreements that address such objections and to assure that the Title and Survey Documents at Substantial Completion reflect such Crossing Agreements.

3.1.5.10 As-Built Survey. Within [REDACTED] Substantial Completion, Seller shall deliver to Buyer the As-Built Survey.

3.1.5.11 Land Owner Information. Seller shall provide Buyer with the following information: (a) within [REDACTED] of commencement of construction of the Project, land owner information for the Wind Energy Easements, including without limitation, land owner names, land owner payment amounts, and IRS Form W-9 for each such land owner so that Seller may establish such land owners as Buyer vendors; and (b) thirty (30) days prior to the Operations Date, footages of corridors and other facility information as may be needed to calculate land owner payments required under the Wind Energy Easements.

### 3.2 UCC Search of Personal Property Interests.

1.1.4 3.2.1 Seller's UCC Search. As part of the Milestone Deliverables for NTP and Substantial Completion (each dated no earlier than [REDACTED] prior to NTP or Substantial Completion, as applicable) for personal property and fixtures, including the WTGs and other Project Assets, Seller shall furnish to Buyer searches of the Uniform

Commercial Code ("UCC") records of the Michigan Secretary of State or of any other applicable jurisdiction, against Seller and Seller's Affiliates identified on Exhibit T

Seller's Organization Chart (collectively, "Seller's Organization Chart"), evidencing that no UCC financing statements or other Liens are filed against Seller and any such Affiliates in respect of the Project Assets including the Equipment and Materials (other than Permitted Encumbrances) ("UCC Search").

3.2.2 Buyer's UCC Search. Buyer is authorized to conduct its own UCC Search at any time and from time to time.

1.1.5 3.2.3 Lender Release or Certification. If at any time Seller or any party in Seller's Organization Chart has granted to a lender or mortgagee a Lien on the Project Assets other than Permitted Encumbrances, Seller shall by the earlier of [REDACTED] after notice or discovery of such Lien or the Substantial Completion date obtain either (i) a full release and termination of such Lien over the Project Assets from the third party in accordance with Applicable Law ("UCC Release") or (ii) if such Lien is granted by any party in Seller's Organization Chart (other than Seller), either directly or indirectly, a certificate certifying and agreeing that such Lien does not include any Lien or security interest in the Project Assets, in the form attached as Exhibit AV

Lender's Certificate ("Lender's Certificate").

3.3 Project Layout.

Attached as Exhibit F

#### Project Site & Layout

is the preliminary Project Layout of the Project that sets out in schematic format the preliminary location of all improvements of the Project ("Project Layout"). As part of the Milestone Deliverables for NTP and as a Condition Precedent for NTP, Seller shall furnish Buyer an updated Project Layout that is consistent with the Wind Energy Easements, Pro Forma Title Policy, ALTA Survey and Environmental Reports and Studies and Permits and that otherwise complies with the terms and conditions of this Agreement. Thereafter, Seller shall not make any material changes to the Project Layout without the prior written consent of Buyer, which consent shall be effectuated by a Change Order, provided that any such change shall be consistent with the Wind Energy Easements, Pro Forma Title Policy, ALTA Survey and Environmental Reports and Studies, and Permits and that otherwise complies with the terms and conditions of this Agreement. All changes to the Project Layout will be conditioned upon Buyer's ability to conduct the due diligence investigations of, if applicable, new property to be added in accordance with this Q. Notwithstanding anything to the contrary, the final Project Layout cannot site any WTGs closer than one hundred (100) feet to a forested habitat (measured from the centerline of such WTG), unless otherwise agreed to by Buyer, and such WTGs may be less than one thousand (1,000) feet from a forested habitat so long as all setbacks of Governmental Authorities are met.

3.4 Environmental Assessment.

3.4.1 Without limiting Seller's responsibilities set forth herein for Hazardous Materials and compliance with Environmental Laws, on or before NTP Closing (but dated no more than [REDACTED]), Seller shall conduct, for each parcel of the Project Site, a Phase I Environmental Site Assessment in conformance with the most recent versions of the ASTM International Standard Practice E1527-13 ("Phase I ESA"). The purpose of the Phase I ESAs is to establish, for the benefit and protection of Buyer and its interests, all available defenses to environmental liability under Applicable Laws. All Phase I ESAs shall be (a) conducted at Seller's expense; (b) conducted by Stantec Consulting Services Inc. or another reputable environmental consulting firm reasonably acceptable to Buyer; (c) issued in the name of Seller and Buyer; and (d) delivered to Buyer in draft form with a reasonable opportunity (but not greater than [REDACTED]) to provide comments and suggested revisions, which comments and revisions shall be considered in good faith by Seller or its consultants. If a Phase I ESA identifies one or more Recognized Environmental Conditions (as defined by the ASTM standard practice), Buyer may, after NTP Closing, conduct a Phase II investigation, including sampling and testing of soil, groundwater or other media, to evaluate such Recognized Environmental Conditions. If the Project Site or any one (1) or more parcels of the Project Site is a "facility" as that term is defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq. ("Part 201"), Buyer may prepare and disclose to the Michigan Department of Environment, Great Lakes, and Energy, a Baseline Environmental Assessment ("BEA") pursuant to Section 20126(1)(c) of Part 201. Any such Phase II investigation, BEA, or other post-Phase I environmental report or other work product shall be conducted or prepared at Buyer's expense and shall not delay, impede or interfere with Seller's development and/or construction activities on the Project Site. In the event that the final Project Site is at any time changed as permitted by this Agreement to include one or more parcels that are not covered by then-existing Phase I ESAs prepared pursuant to this Section, Seller shall thereafter promptly conduct one or more Phase I ESAs on such additional parcel or parcels. The Phase I ESAs referenced in this Section are collectively referred to as "Environmental Reports and Studies."

### 3.5 Project Contracts.

Seller shall not enter into any Material Project Contract that differs from the forms of Project Contracts set forth in this Agreement without the prior written consent of Buyer, except for changes that are not materially adverse to Buyer. Without limiting what may also be considered materially adverse, the Parties agree that any deviations or potential deviations to the warranty provisions of any Material Project Contract shall be considered materially adverse for which Buyer's consent in its sole discretion is required in all instances. Seller shall promptly notify Buyer of any potential deviation from the applicable forms of Project Contracts, and, in the event Seller seeks to execute any Material Project Contract with such deviation, Seller shall in addition to the notice above first provide to Buyer the proposed final form of such Material Project Contract, identifying all deviations from the applicable form of Project Contract and whether Seller believes any such deviation is to a warranty provision or is otherwise materially adverse to Buyer, with reasonable time for Buyer to review, dispute Seller's assertion that any such deviation is not to a warranty provision or is otherwise not materially adverse to Buyer, and, to the extent Buyer's approval is required, approve or withhold its approval of such proposed deviation (such approval

not to be unreasonably withheld or delayed). Within [REDACTED] of Buyer's receipt of such proposed final form of such Material Project Contract from Seller, to the extent applicable, Buyer shall raise any such dispute or notify Seller that Buyer does not consent to a deviation requiring Buyer's consent, and if Buyer does not take such action within such [REDACTED] period, Buyer shall be deemed to have approved, agreed and consented to such Material Project Contract. The Parties shall resolve any dispute regarding the matters set forth in this Section 0 in accordance with 0. The Parties acknowledge that Seller may enter into several Project Contracts, including several Construction Contracts, splitting the Scope of Work amongst multiple Contractors under multiple Project Contracts, including construction Contractors, and that Seller may do so as long as it complies with the provisions hereof, including this Section 0, including that in determining whether any Material Project Contract differs from the form set forth herein, such several Project Contracts shall be viewed collectively in the aggregate. Any gaps in responsibility or warranties arising from Seller acting as its own general contractor shall remain as Seller's responsibility notwithstanding anything to the contrary in this Agreement including the limitations of Seller's responsibilities after Substantial Completion. If any changes are made to the Project Contracts that adversely affect the Warranty and Buyer's consent was not obtained, Seller shall remain fully responsible to Seller notwithstanding anything to the contrary in 0.

Seller shall not enter into a Material Project Contract except with a Contractor or Subcontractor pre-approved by Buyer pursuant to Exhibit AD

Contractors (Subcontractors and Major Suppliers) or Exhibit AA without the Buyer's prior written approval. Seller and Buyer agree that Buyer's approval does not relieve Seller of any of its obligations, duties or responsibilities under this Agreement. Upon the request of Buyer, Seller shall provide to Buyer background information regarding the experience, financial strength, personnel and other information concerning any proposed Contractor or Subcontractor not listed on Exhibit AD

Contractors (Subcontractors and Major Suppliers) or Exhibit AA. Seller shall at all times be responsible for the actions, omissions, operations and Work of all Contractors and Subcontractors as provided in this Agreement.

### 3.6 Liens Arising from Work.

Except to the extent arising with respect to Buyer's failure to make payment under this Agreement and Seller's failure to comply with this Section 3.6: (i) Seller shall not directly or indirectly create, incur, assume, or suffer to be created by it or any Contractor (including any employee, laborer, materialman, or other supplier of goods or services) any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, mechanic's lien, construction lien, charge, or encumbrance on the Work, the Project Site, Project Assets, or any part thereof or interest therein (each a "Seller Lien" and collectively, "Seller Liens"); (ii) upon receipt of payments as provided in this Agreement, Seller shall keep the Project Site, Project Assets, and the Work (including all Equipment and Materials, Contractor equipment and materials), free of Seller Liens; and (iii) upon receipt of payments as provided in this Agreement, Seller shall promptly pay or discharge and discharge of record (including by recording a bond to the extent permitted by and in accordance with Applicable Law) any such Seller Lien or other charges which, if unpaid, might be or become a Seller Lien. Seller shall notify Buyer as soon as practicable after (but in any event within ten (10) days after Seller knows or discovers) the assertion of any Seller Lien in violation of this Agreement. Upon the failure of Seller to promptly discharge

or cause to be released any Seller Lien as required by this Section 0 within the earlier of thirty (30) days after Seller's notice or Substantial Completion, Buyer may, but shall not be obligated to, at Seller's expense (a) pay the lien claimant to discharge the Seller Lien or (b) obtain a surety bond for such Seller Lien. Upon such payment therefor, Buyer shall be entitled to immediately recover from Seller the amount and costs thereof together with all expenses incurred by Buyer (expressly including all actual attorneys' fees) in connection with such payment or set off and deduct all such amounts against any sums owed by Buyer to Seller.

## **ARTICLE IV RESPONSIBILITIES OF BUYER**

### 4.1 Buyer's General Obligation.

Buyer agrees to cooperate with Seller and not to unreasonably interfere with Seller and Seller's agents, employees or Contractors during the performance of this Agreement.

### 4.2 Buyer's Specific Obligations.

Buyer shall be responsible for the following matters and actions to be performed on a timely basis:

#### 4.2.1 Post-NTP Access to Project Site.

After Buyer has acquired title to the Project Site, Buyer hereby grants to Seller and to such Persons or entities as the Seller may designate in writing the right of access within the Project Site (including the full extent of Buyer's access rights under the Wind Energy Easements, Crossing Agreements, Drain Agreements, and rights for Access Roads if and to the extent assigned to Buyer) as necessary to perform its Work hereunder, subject to the requirements of this Agreement and the limitations and requirements of Applicable Laws.

#### 4.2.2 Post-Substantial Completion Access to Project Site.

Following Substantial Completion, Buyer shall grant reasonable rights of ingress and egress to and from the Project Site for Seller and all Contractors sufficient for the performance of Seller's obligations under this Agreement that arise after Substantial Completion, such as completion of the Punch List Items, and to correct Work pursuant to the Warranty.

#### 4.2.3 Buyer's Representative.

Upon the Effective Date and during the term of this Agreement, Buyer shall designate by written notice to Seller a Buyer's Representative, who shall be authorized to act on behalf of Buyer, with whom Seller may consult at all reasonable times, and whose written instructions, requests, and decisions will be binding upon Buyer as to all matters pertaining to this Agreement and the performance of Buyer hereunder ("Buyer's Representative"). If the Buyer's Representative does not have authority to approve Change Orders, Buyer shall deliver a notice to Seller identifying such persons within Buyer's organization that do have such authority. Buyer may, at any time by written notice to Seller, change the Buyer's Representative or, if applicable, the persons designated as having authority to approve Change Orders. The Buyer's Representative may be provided and changed by Buyer upon notice to Seller.

#### 4.2.4 Operating Personnel.

Buyer shall supply, or cause to be supplied, operating personnel for training, commissioning and commercial operation following transfer of care, custody and control of the Project or any operating portion thereof for Buyer as deemed necessary by Buyer.

#### 4.2.5 Payment Obligations to Seller.

Buyer shall pay the Purchase Price and all other sums required to be paid by Buyer pursuant to and in accordance with the terms of this Agreement.

#### 4.2.6 Compliance with Applicable Laws.

Buyer shall comply, and cause all of its employees, agents and representatives to comply, with all Applicable Laws in connection with the performance of Buyer's obligations under this Agreement.

#### 4.2.7 Compliance with Site Rules and Regulations.

Buyer will cause its personnel present on the Project Site to observe and comply with all health, safety, security, environmental and other regulations established by Seller or the Contractor for the Project Site or for any location away from the Project Site where the field construction office for the Project is established (and where Buyer's personnel may be present) that have been made known to Buyer by delivery of a copy thereof to the Buyer's Representative.

### 4.3 MPSC Regulatory Filing.

4.3.1 Buyer shall submit an application to the MPSC for approval of this Agreement no later than [REDACTED] after the Effective Date.

4.3.2 The Parties shall diligently and in good faith, using commercially reasonable efforts, pursue such approval from the MPSC. The Parties shall work together, collaborate and mutually support each other in seeking, pursuing and making strategic decisions toward such approval from the MPSC. Each Party shall share information and resources with the other Party, and provide and accept input and feedback from the other Party, toward such approval from the MPSC.

4.3.3 Seller hereby consents to the disclosure of confidential information regarding the Project and its current status in public filings, discovery, and communications with the MPSC, the MPSC Staff and parties to MPSC proceedings to be made by Buyer in connection with seeking approval of this Agreement or in developing the Project; and hereby waives any confidentiality provisions relating thereto currently in effect; provided that (i) Buyer shall use reasonable efforts to seek confidential treatment pertaining to this Agreement and any other confidential information about the transactions contemplated in this Agreement that Buyer has a need to disclose for purposes of MPSC proceedings, and (ii) the Parties will work together in good faith to prepare redacted copies of this Agreement

and any other such information for disclosure to any such Person. Notwithstanding the foregoing, Buyer shall have the right to publicly disclose the levelized cost of the Project associated with the transactions contemplated in this Agreement.

4.3.4 Subject to Section 0, (i) if a final MPSC order, not subject to rehearing or appeal under regulatory and statutory deadlines, approving this Agreement is not obtained by the NTP Deadline, either Party may in its sole discretion terminate this Agreement by providing written notice to the other Party no later than [REDACTED] after the NTP Deadline, or (ii) if at any time the MPSC denies approval of this Agreement, either Party may in its sole discretion terminate this Agreement by providing written notice to the other Party no later than [REDACTED] after the MPSC's denial of approval of this Agreement becomes not subject to rehearing or appeal under statutory deadlines.

4.3.5 If the MPSC grants conditional approval of this Agreement, including denial of any cost recovery associated with this Agreement, and the conditions of such approval are not acceptable to Buyer, in its sole discretion, then Buyer shall have the right to terminate this Agreement by providing written notice to the Seller no later than [REDACTED] after the conditional approval becomes not subject to rehearing or appeal under applicable regulatory and statutory deadlines. If the Seller notifies Buyer within [REDACTED] after the issuance of the MPSC conditional approval, as applicable, that such conditional approval contains terms and conditions that will materially increase the cost of Seller of developing, designing or constructing the Project or Seller's ability to achieve the WTG Substantial Completion by the Production Tax Credit Qualifying Deadline and Buyer desires to proceed with this Agreement pursuant to the terms of the conditional approval, the Parties shall in good faith negotiate an equitable adjustment to the Purchase Price to account for any such resulting material increase in the Seller's costs or the Project Schedule, as applicable. In connection therewith, the Seller shall provide such evidence as is reasonably requested by Buyer to substantiate such material cost and/or schedule impact to Seller. If the Parties are unable to agree on such changes to the Purchase Price within [REDACTED] of Seller's preceding notice, the Buyer shall thereafter terminate this Agreement.

4.3.6 If the MPSC grants unconditional approval of this Agreement by the NTP Deadline, Buyer will provide Seller notice of said approval no later than [REDACTED] after the approval becomes not subject to rehearing or appeal under statutory deadlines.

#### 4.4 Wholesale Energy Sales.

The Parties agree that all energy produced from the Project, including any test energy produced, will be owned by Buyer upon generation thereof. As between Seller and Buyer, the Parties agree that Buyer shall have the responsibility to be registered in MISO as a market participant with respect to such energy, and Buyer shall operate in such capacity at Seller's reasonable direction. The Parties agree that at any time prior to Final Completion, all energy produced from the Project will be sold at wholesale by Buyer into the energy markets administered by the Transmission Owner.

#### 4.5 Cooperation.

4.5.1 In addition to the Parties' obligations to cooperate with respect to commissioning and commercial operations of the Project as provided in Section 0, from time to time following the Effective Date until Final Completion, Buyer shall reasonably cooperate with Seller in constructing, developing and transferring the Project in accordance with this Agreement, including in accordance with the schedule and deadlines set forth herein, and Buyer shall execute, acknowledge and deliver any documents reasonably necessary to effectuate the foregoing as provided in this Agreement. Buyer shall cooperate with Seller and its representatives with respect to all filings that Seller elects to make or, pursuant to Applicable Law, shall be required to make in connection with the transactions contemplated by this Agreement. Notwithstanding the transfer of Project Contracts as contemplated by Sections 0 and 1.1.6, and subject to the provisions of this Agreement, Buyer acknowledges and agrees that Seller or one of its Affiliates will act on behalf of Buyer with respect to the Project Contracts at all times prior to Final Completion with respect to the completion of Punch List Items, the achievement of Final Completion and any Warranty Work.

4.5.2 To the extent needed for the purpose of achieving Substantial Completion, and until Substantial Completion, Seller will continue to have control over the Project and access to the Project Site in all day-to-day construction, commissioning and operational activities including complying with all Requirements and the requirements for safety set forth in Section 0. After Substantial Completion, Seller will continue to manage the Construction Contracts in order to achieve Final Completion. Seller's role, rights and obligations as described in this Section 0 shall automatically terminate upon Final Completion.

4.5.3 At all times prior to Final Completion, Buyer shall transfer any amounts received by Buyer under any Construction Contract, including liquidated damages, to an account of Seller as directed by Seller, in each case, to the extent related to matters for which the Purchase Price is reduced or Seller is obligated to make a payment to Buyer. On and after the date of Final Completion, to the extent any such amounts received by Buyer under any Construction Contract, including liquidated damages, relate to matters for which the Purchase Price is reduced or Seller is obligated to make a payment to Buyer, Buyer shall transfer such amounts to an account of Seller as directed by Seller.

4.5.4 In furtherance of Seller's rights under this Section 0, Buyer shall not, until Final Completion, amend or modify the Construction Contracts without Seller's prior written consent (which Seller shall not withhold unreasonably).

#### 4.6 Performance Acceptance Tests.

Buyer shall be responsible for any Performance Acceptance Tests under the Turbine Supply Agreement or otherwise.

### **ARTICLE V NOTICE TO PROCEED**

5.1 Buyer's and Seller's Conditions Precedent to the NTP.

The following are both Buyer's and Seller's Conditions Precedent to issuance of the NTP:

5.1.1 MPSC Approval. Buyer has received MPSC Approval as provided in Section 0 or Section 0 and which approval must be final and not subject to being overturned or modified on appeal or further appeal, in each case, under regulatory or statutory deadlines.

5.1.2 Governmental Authority Consents. Seller must have received and delivered to Buyer the Special Land Use Permit identified on Exhibit R

Applicable Permits, from applicable Governmental Authorities, for Seller's performance of its obligations under this Agreement including the construction and operations (as of Substantial Completion) of the Project; which approvals, variances and permits must be final and not subject to being overturned or modified on appeal or further appeal, in each case, under statutory deadlines. If there has been any change to the Special Land Use Permit (or its equivalent as required by the Governmental Authorities), Seller has notified Buyer of the change and whether it materially adversely affects the Project during operations for Buyer's determination regarding Seller's conclusion. With respect to Consents that are not obtained prior to NTP, Buyer and Seller have agreed on the remaining Consents to be obtained by the earlier of Substantial Completion or the date required by the Governmental Authorities necessary for Seller's timely performance under this Agreement.

5.2 Buyer's Conditions Precedent to the NTP.

The following are Buyer's Conditions Precedent to issuance of the NTP:

5.2.1 Estoppel Certificates.

5.2.1.1 Seller shall have delivered to Buyer an executed estoppel certificate for each Wind Energy Easement (expressly excluding portions of the Project Site which are owned by Seller), substantially in the form attached hereto as Exhibit H

(with any changes thereto only as approved by Buyer) ("Estoppel Certificate"). Such Estoppel Certificates shall be executed no earlier than [REDACTED] prior to NTP. Notwithstanding the foregoing requirement, Buyer agrees to cooperate in good faith with Seller by agreeing that if (i) Seller can furnish executed Estoppel Certificates for (a) the Wind Energy Easements granting rights to real property on which [REDACTED] of WTGs are located based on the Project Layout, and (ii) [REDACTED] of the Wind Energy Easements granting rights to real property upon which facilities (other than WTGs) are located based on the Project Layout (expressly excluding portions of the Project Site which are owned by Seller) are furnished, Buyer will accept the foregoing percentages of Estoppel Certificates as meeting Seller's obligations.

5.2.1.2 Seller's certification that on and as of NTP Closing, each Material Project Contract (executed as of NTP Closing) shall be in full force and effect, and neither Seller nor any other Person shall be in breach of or default under any such Material Project Contract, and no event shall have occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of rights or cause or permit termination or acceleration under, or result in the creation of any Lien under any such Material Project Contract (other than Permitted Encumbrances).

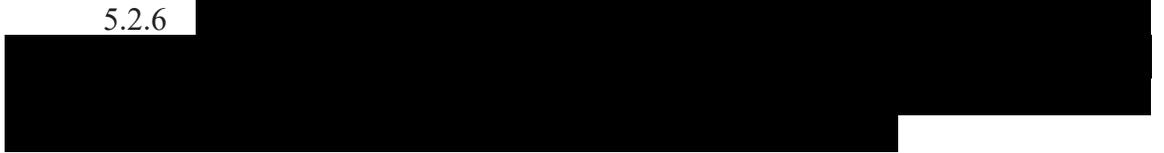
5.2.2 Seller's Representations and Warranties. All of the representations and warranties of Seller in this Agreement shall be true and correct in all material respects, except that any representation and warranty that speaks as of another date shall be true and correct in all material respects as of such date;

5.2.3 Production Tax Credit Beginning of Construction Certificate. Seller shall have delivered the updated Production Tax Credit Beginning of Construction Certificate as required in Section 0 of this Agreement to Buyer.

5.2.4 Final Documents for the Project Site. Seller has delivered to Buyer (i) the updated Project Layout as described in Section 0; (ii) the Final ALTA Survey, (iii) the Final Pro Forma Title Policy evidencing it will be issued at NTP, (iv) all Project Contracts that have been executed and are binding and which are identified on Exhibit AF, as updated to bring current the list of Project Contracts and (v) the Environmental Reports and Studies, in each case, in accordance with 0.

5.2.5 Seller's Invoice. Seller has delivered Seller's Invoice for the Progress Payment for the NTP together with all supporting documentation and requirements established in Section 0.

5.2.6



5.2.7 No Tariff Change. There shall not have occurred a change in Tariffs under Section 0 with a cost increase of , or if such change occurred prior to the issuance of NTP, Seller and Buyer were unable to agree upon a reasonable and appropriate allocation of responsibility of such cost increase as provided in Section 0.

5.3 Seller's Conditions Precedent to the NTP.

The following are Seller's Conditions Precedent to issuance of NTP:

5.3.1 Buyer's Representations and Warranties. All of the representations and warranties of Buyer in this Agreement shall be true and correct in all material respects, except that any representation and warranty that speaks as of another date shall be true and correct in all material respects as of such date;

5.3.2 Buyer's Performance. Buyer shall have performed and complied in all material respects with this Agreement, including there is no Buyer Event of Default.

5.3.3 No Tariff Change. There shall not have occurred a change in Tariffs under Section 0 with a cost increase of more [REDACTED], or if such change occurred prior to the issuance of NTP, Seller and Buyer were unable to agree upon a reasonable and appropriate allocation of responsibility of such cost increase as provided in Section 0.

5.4 Issuance of the NTP or Termination.

When Seller believes that each of the Conditions Precedent to NTP as set forth in Section 0, Section 0 and Section 0 are satisfied (or have been waived), it shall so notify Buyer in writing. Buyer shall respond to Seller's notice within [REDACTED] as follows:

5.4.1 If Buyer agrees that each of the Conditions Precedent to the NTP is satisfied, Buyer shall issue the NTP to Seller, and Seller shall promptly commence the engineering Work and timely perform all Work in accordance with this Agreement, including the Project Schedule.

5.4.2 If Buyer disagrees that one or more of the Conditions Precedent to NTP has not been achieved, Buyer shall notify Seller of the same. Seller shall take, or cause to be taken, such action as may be necessary to achieve such Milestone, and upon completion of such actions shall deliver to Buyer another notification that the NTP's Conditions Precedent are satisfied. The foregoing procedure shall be repeated as necessary until Buyer agrees that the NTP's Conditions Precedent have been achieved; *provided, however*, if the Conditions Precedent to NTP are not satisfied by Seller by the NTP Deadline, Seller may terminate this Agreement as provided in Section 0.

5.4.3 If the Parties Dispute whether any Condition Precedent to NTP has been satisfied, the Parties shall resolve such Dispute in accordance with 0. If Seller issues the notice that it believes that each of the Conditions Precedent to NTP are satisfied, and the Parties Dispute whether that is the case, and such Dispute resolves that the Conditions Precedent to NTP were satisfied, then such Conditions Precedent to NTP shall be deemed to have been satisfied as of the date that Seller delivered such notice and Buyer shall have no right to terminate this Agreement pursuant to Section 0, and Buyer shall not be deemed to have an Event of Default and the Parties shall proceed in a diligent manner to the NTP Closing.

5.5 Use of Seller's Affiliates.

Seller shall obtain the prior written consent of Buyer, which consent shall not be unreasonably withheld, prior to engaging any Affiliate of Seller as a Contractor hereunder for the Work or when an Affiliate of Seller is a Contractor for Work authorized by a Change Order.

5.6 Contractors.

As of the Effective Date, Seller has selected Contractors to perform portions of the Work as identified on Exhibit AD

Contractors (Subcontractors and Major Suppliers). While not yet selected, Buyer and Seller agree that there are certain Contractors who are considered preferred providers/manufacturers of Equipment and Materials and other portions of the Work as identified on Exhibit AA.

## 5.7 Construction Contracts.

1.1.7 5.7.1 Seller shall not allow a Contractor to commence performance of any Work prior to executing a Construction Contract that complies with this Agreement, with copies delivered to Buyer, other than pursuant to a limited notice to proceed with respect to such Contractor who will not have a Material Project Contract; *provided, however*, (a) such Contractor furnishes adequate insurance and indemnity consistent with Seller's obligations under this Agreement and by Substantial Completion, all limited notices to proceed are converted into Construction Contracts and copies are then delivered to Buyer; and (b) Seller may issue a limited notice to proceed to a Contractor who will have a Material Project Contract for such Contractor to perform Work on engineering or Equipment and Materials so long as such Work is not performed on the Project Site. Certain forms of Construction Contracts approved by the Parties are attached as Exhibit AG

### 1.1.8 Transformer Supply Agreement and Exhibit AJ

Forms of Material Project Contracts. If Seller desires to use forms of Construction Contracts other than those approved by Buyer under this Agreement, they must in addition to the insurance and indemnity requirements above: (i) identify Buyer as a third-party beneficiary and entitle Buyer to assignment of the Construction Contract as provided in this Agreement; and (ii) provide for payment and performance bonds, at Seller's sole expense, for the Work when the Work is of a nature that can be secured by such surety bonds. Notwithstanding the foregoing sentence, Seller shall not enter into any Material Project Contract that differs from the forms of Project Contracts approved by Buyer except in accordance with Section 0. Subject to and in accordance with Section 0, if Seller enters into any Construction Contracts that varies from such forms of Construction Contract, it shall so notify Buyer of the variation. Notwithstanding any variations in the Construction Contracts or that there is no Construction Contract executed at all, Seller shall remain responsible for the Work, including the Work that Seller is contracting to be done with Contractors, the construction means and methods, and for the acts and omissions of Contractors as provided in this Agreement.

5.7.2 No Construction Contract shall bind or purport to bind Buyer, but each Construction Contract shall provide for assignment of such Construction Contract to Buyer upon notice to, and without requiring the consent of, such Contractor. Seller hereby collaterally assigns to Buyer all its interest in all Construction Contracts and the road use and staging agreements necessary during Seller's construction activities now existing or hereafter entered into by Seller for performance of any part of the Work, which assignment will be effective only upon a termination of this Agreement for a Seller Event of Default and only as to those Construction Contracts and the road use and staging agreements necessary during Seller's construction activities that Buyer designates in writing. Such collateral assignment cannot be withdrawn by Seller, and Buyer may accept or reject said

assignment at any time by notice to Seller. Upon the effective date of any such assignment of the Construction Contract and the road use and staging agreements necessary during Seller's construction activities to Buyer: (i) Seller shall, within [REDACTED], furnish to Buyer the digitally-searchable copies (or originals if legally required for enforcement by Buyer) of the designated Construction Contracts and the road use and staging agreements requested by Buyer unless such were previously delivered by Seller; (ii) Buyer shall only assume Liabilities occurring and arising on or after Buyer takes the assignment of the Construction Contracts and road use and staging agreements; and (iii) Buyer shall only be required to compensate a designated Contractor for compensation accruing to it for Work done including Equipment and Materials delivered from and after the date Buyer takes the assignment of the involved Construction Contract, road use, or staging agreement in writing. All Liabilities arising before and all sums due and owing by Seller to a designated Contractor for Work performed or Equipment and Materials supplied prior to the effective date of assignment of such Construction Contract, road use or staging agreement, and all other obligations of Seller accruing prior to such assignment's effective date, shall constitute and remain an obligation solely between such Contractor and Seller, and Buyer shall have no Liability with respect to such sums or any other obligations of Seller.

#### 5.8 Commencement of Construction.

Seller shall not commence, nor cause or authorize others to commence, any construction activities on the Project Site until and unless Seller has given Buyer at least [REDACTED] notice so as to allow the Buyer to execute and record the Notice of Commencement, prepared by Seller, in the form attached as Exhibit K

Form of Notice of Commencement and deliver a copy of the recorded Notice of Commencement to Seller. Promptly upon Seller's receipt, and in compliance with the Michigan Construction Lien Act, Seller shall post, or cause the posting, of the recorded Notice of Commencement in a conspicuous place at the Project Site.

### ARTICLE VI DELIVERABLES

#### 6.1 Transfer of Project Assets.

6.1.1 Within [REDACTED] of Buyer's issuance of the NTP ("NTP Closing"), Seller shall:

6.1.1.1 Transfer the following Project Assets to Buyer and deliver the same to Buyer:

(1) The assignment document substantially in the form of Exhibit H ("Assignment of Wind Energy Easements"), for the Wind Energy Easements and Memorandum of Wind Energy Easements to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the applicable Wind Energy Easement duly executed by the landowner, assigning to Buyer all of Seller's right, title and interest in, to and under the Wind Energy Easements and Memorandum of Wind

Energy Easements, and recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Buyer's rights in and to the applicable Wind Energy Easements;

(2) The Memorandum of Wind Energy Easement for each of the Wind Energy Easements in substantially the form of Exhibit H ("Memorandum of Wind Energy Easement") duly executed by Seller (or Seller's predecessor-in-interest) and the landowner;

(1) (3) To the extent any Crossing Agreements are finalized at NTP, the assignment document for such Crossing Agreements substantially in the form of Exhibit H

Assignment of Crossing Agreements ("Assignment of Crossing Agreements"), to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the Crossing Agreements duly executed by the landowner and/or Governmental Authority having such rights, assigning to Buyer all of Seller's right, title and interest in, to and under the Crossing Agreements, and recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Buyer's rights in and to the Crossing Agreements;

(4) [Reserved].

(5) [Reserved].

(2) (6) To the extent any Drain Agreements are finalized at NTP, the assignment document for such Drain Agreements substantially in the form of Exhibit H

Assignment of Drain Agreement ("Assignment of Drain Agreements"), to Buyer, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the Drain Agreements duly executed by the landowner and/or Governmental Authority having such rights, assigning to Buyer all of Seller's right, title and interest in, to and under the Drain Agreements, with each being recorded in the applicable county register of deeds office where the Project Site is located giving record notice of the existence of Buyer's rights in and to the Drain Agreements unless the drain commissioner of such county prefers not to record such agreements;

(3) (7) The Warranty Deed substantially in the form of

(4) Exhibit H

Warranty Deed\_("Warranty Deed"), duly executed by Seller and recorded in the applicable county register of deeds office where the Project Site is located, transferring to Buyer marketable title free of Liens (other than Permitted Encumbrances) in the real estate required to be owned by Seller in the Project Site for the Substation pursuant to Exhibit A and all of Seller's right, title and interest therein;

(8) The Real Property Documents Governmental Approvals.

(5) (9) Marketable title free of Liens (other than Permitted Encumbrances) in the Safe Harbor Equipment pursuant to an assignment and assumption agreement referred to as Assignment of Safe Harbor Turbines substantially in the form of Exhibit AH

(6) Assignment of Safe Harbor Turbines\_an assignment and assumption agreement referred to as Assignment of Safe Harbor Cable substantially in the form of Exhibit AI

(7) Assignment of Safe Harbor Cable\_and all other Equipment and Materials incorporated in the Project through such date, pursuant to a Bill of Sale in Exhibit I

Bill of Sale\_

(8) (10) The assignment document substantially in the form of Exhibit J

Assignment Agreement Form Assignment Agreement Form for the Interconnection Agreement and the Interconnection Facilities Construction Agreement, free of Liens (other than Permitted Encumbrances), duly executed by Seller and when required by the applicable document duly executed by the counterparty, assigning to Buyer all of Seller's right, title and interest in, to and under the Interconnection Agreement and the Interconnection Facilities Construction Agreement;

(11) The ALTA Title Policy dated the time and date of recording of the Warranty Deed in the same condition as the Final Pro Forma Title Policy for all Real Property Documents; and

(12) The other customary closing documents reasonably required by Buyer or Title Insurer or required by Applicable Laws for the transfer of real property interests in the Project and issuance of the ALTA Title Policy, including, to the extent applicable, an Owner's Affidavit, Notice to the Assessor (for unplatted property), 1099-S, Non-Foreign Property Transfer Affidavit (FIRPTA), and closing statement.

6.1.1.2 The following items shall be delivered by Buyer to Seller at NTP Closing:

- (1) Buyer's countersignature pages for the assignments of Real Property Documents to Buyer other than the Warranty Deed;
- (2) The NTP Progress Payment established in the Progress Payment Schedule and as further provided in Section 0;
- (3) Buyer's closing statement; and
- (4) Any other customary closing documents reasonably required by Seller, Title Insurer or required by Applicable Laws for the transfer of real property interests in the Project to Buyer.

1.1.9 6.1.2 Upon Substantial Completion (or any earlier termination of this Agreement in accordance with the provisions hereof), Seller shall assign to Buyer (to the extent not already owned by Buyer) (i) each Project Contract and (ii) marketable title free of Liens (other than Permitted Encumbrances) in any other Project Assets, pursuant to a bill of sale, substantially in the form of Exhibit I

1.1.10 Bill of Sale\_ ("Bill of Sale"), other than Project Assets transferred at NTP by the Assignment of Wind Energy Easements, Assignment of Crossing Agreements, Assignment of Drain Agreements, Warranty Deed, Assignment of Safe Harbor Turbines substantially in the form of **Error! Reference source not found.** ("Assignment of Safe Harbor Turbines"), Assignment of Safe Harbor Cable substantially in the form of **Error! Reference source not found.** ("Assignment of Safe Harbor Cable"), and Bill of Sale set forth above or the Assignment Agreement Form set forth in Exhibit J

Assignment Agreement Form ("Assignment of Remaining Project Assets"), or other customary instruments of assignment or transfer in form mutually agreeable to Buyer and Seller for any other Project Assets duly executed by Seller and/or any applicable Seller Affiliate and when required by a Project Document to be assigned duly executed by the other party to the Project Contract and, to the extent customary, recorded with the applicable county register of deeds or other Governmental Authority, assigning to Buyer all of Seller's right, title and interest in, to and under the remaining Project Assets including any Project Documents unless otherwise specified in this Agreement, within the time specified in this Agreement, but in any event no later than Substantial Completion. Each Party agrees to execute and deliver, or cause its respective Affiliates to execute and deliver, such further documents and instruments and to take such further actions after Substantial Completion as may be necessary or desirable and reasonably requested by the other Party to give effect to this Section 1.1.2.

## 6.2 Engineering & Design.

Seller shall perform (or arrange for performance pursuant to a Construction Contract executed in accordance with this Agreement) all engineering and design services for completion of the Project and performance of the Work in conformity with the requirements of

this Agreement. Seller shall design the Project and the Work, using qualified, properly insured, and experienced design and engineering professionals either as employees or as Contractors, in compliance with the Requirements. Seller shall prepare and submit to Buyer for its review and comment all Design Documents in accordance with the Project Schedule and Section 0. The Design Documents shall include copies of the Construction Contracts between Seller and each Contractor if not previously furnished to Buyer, all technical submittals from Contractors, and Seller's technical calculations reasonably required to conduct a proper evaluation and review. All engineering and design Work shall be certified by licensed professionals, and all Design Documents requiring sealing shall be sealed by the Engineer of Record as that term is customarily used in Michigan.

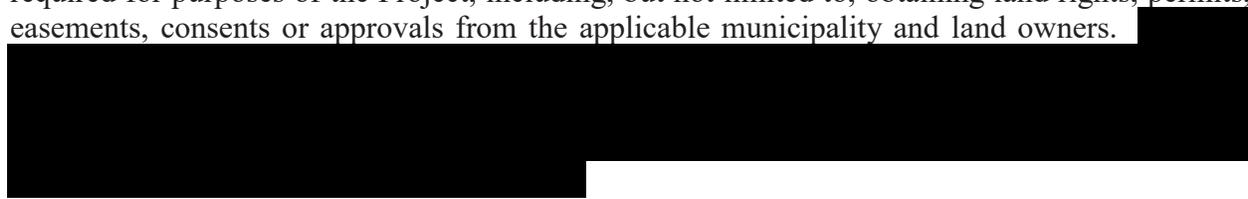
### 6.3 Applicable Permits.

Seller shall obtain or cause to be obtained all Applicable Permits required for it and its Contractors, Laborers, and their personnel to perform Work of the type contemplated herein, including the Special Land Use Permits in Exhibit R

Applicable Permits, as all are Seller's responsibility and expense. The cost of such Applicable Permits is included in the Purchase Price. Seller shall be responsible for meeting all requirements of such Applicable Permits, up to and including final termination or closure of such permits. Exhibit R

Applicable Permits shall be updated by Seller to comply with all Requirements during the Project and delivered to Buyer, and upon Buyer's receipt and acknowledgment in writing such updated Exhibit R

Applicable Permits shall be deemed attached hereto. No Work that requires an Applicable Permit shall commence before such Applicable Permit is issued and copies are delivered to Buyer. Copies of all such Applicable Permits not delivered as a Condition Precedent to NTP as part of the Consents or as set forth in the preceding sentence shall be delivered as a Condition Precedent to achieving Substantial Completion. Buyer shall cooperate and respond to any reasonable requests from Seller for input or information with respect to Permit Applications. Seller shall be responsible for cooperating with Buyer for the installation of any aircraft detection lighting system that is required for purposes of the Project, including, but not limited to, obtaining land rights, permits, easements, consents or approvals from the applicable municipality and land owners.



### 6.4 Spare Parts.

6.4.1 Inventory. All spare parts needed for the Commissioning Plan shall be stored at the Project Site in accordance with the Requirements. Seller shall only be entitled to use Spare Parts from Buyer's inventory in connection with commissioning activities for the Project if Buyer consents to such use and if such Spare Parts are available in inventory. If such use occurs, Seller shall promptly replace or cause to be replaced each Spare Part so

used with an identical, new Spare Part at no additional cost to Buyer and in a timely manner no later than Substantial Completion.

6.4.2 Recommended List. As part of the O&M Manual Deliverable described in Section 0, Seller shall provide a general list of additional recommended Spare Parts necessary to operate and maintain the Project for a period of two (2) years after Substantial Completion. The recommended list shall be delivered in advance of the O&M Manual if necessary to assure Buyer can purchase, assemble and store the same at or prior to Substantial Completion of the Project. Upon the request of Buyer, Seller shall cooperate to permit Buyer to purchase any such additional Spare Parts and to handle (if purchased through Seller), store and maintain all Spare Parts. Such additional cost if required to be paid for by Seller shall be added to the Purchase Price by Change Order.

6.5 Other Materials.

6.5.1 WTG Job Book. Following NTP, the Job Book shall be updated on a timely basis from time to time and delivered to Buyer for review and comment as the Work progresses.

6.5.2 Delivery. Seller shall furnish to Buyer a reproducible electronic copy (in a format/media satisfactory to Buyer) of final versions of the following: (i) on or before Substantial Completion, each of the O&M Manual and Job Book; and (ii) on or before Final Completion, each of the final Record Drawings (as-built drawings).

6.6 Books and Records, Tax Accounting.

Not later than one hundred and eighty (180) days after Substantial Completion, a breakdown of the Purchase Price in accordance with the property retirement unit categories and other systems of accounts and in a records format in accordance with Exhibit A-Appendix J

Records Format-Retirements Unit Format Example\_together with all Books and Records substantiating the Purchase Price breakdown shall be delivered to Buyer. Overhead and profit shall not be listed as separate items. For physical Project Assets, the Seller will provide the following: retirement unit, quantity, cost, ID number, make, model, serial number, and unit number. For land, the Seller will provide the parcel and deed information.

6.7 Information Updates.

6.7.1 Additional Warranties. Seller shall provide to Buyer a PDF electronic copy of any additional extended-period Equipment and Materials manufacturer warranties of the Contractors.

1.1.11 6.7.2 Disclosure Schedule. Until Substantial Completion is achieved, Seller may update Seller's representations and warranties in Sections 0 through 0 and 0 through 0, by providing updated Disclosure Schedules, without the update being a breach of Seller's obligations under this Agreement so long as the new information in such updated Disclosure Schedule does not materially adversely affect the Project or Buyer, and any

reference to such Disclosure Schedule shall refer to the most recently updated version of such Disclosure Schedule, a copy of which is attached as Exhibit Z

1.1.12 Disclosure Schedules. Seller shall (i) deliver a copy of the update in the form of the Disclosure Schedule attached Exhibit Z

1.1.13 Disclosure Schedules and (ii) state in writing whether the new information in such updated Disclosure Schedule materially adversely affects the Project or Buyer. Buyer may object to Seller's assertion that such updated Disclosure Schedule does not materially adversely affect the Project or Buyer. Buyer shall have [REDACTED] from receipt of both the notice and updated Disclosure Schedule to make such objection, failing which the updated Disclosure Schedule shall replace the then-current Disclosure Schedule, a copy of which is attached as Exhibit Z

Disclosure Schedules. If Buyer makes such objection to any portion of the updated Disclosure Schedule on the basis that it has determined that such update materially adversely affects the Project or Buyer, Buyer shall notify Seller of such objection. If the Parties are unable to resolve such Dispute within [REDACTED] of such notice from Buyer, either Party may refer such Dispute to the dispute resolution process set forth in 0. Seller shall provide in the notice that accompanies any updated Disclosure Schedule that Buyer will be deemed to have no objection to the updated Disclosure Schedule unless Buyer objects to Seller's assertion that such updated Disclosure Schedule does not materially adversely affect the Project or Buyer within [REDACTED] of receipt of both the notice and updated Disclosure Schedule.

#### 6.8 Test and Commissioning Results.

Seller shall perform, or caused to be performed, the applicable commissioning tests as required by the Commissioning Plan and provide to Buyer opportunity to review and comment within seventy two (72) hours of completion of such commissioning test, which for clarity, such review shall be done as part of and within the time frames allocated for WTG Substantial Completion in Section 0. The Parties shall perform, or cause to be performed, their respective obligations under the Commissioning Division of Responsibilities as set forth in Exhibit G

Operational Scope of Responsibilities Matrix During Commissioning, prior to or after Substantial Completion, as applicable.

#### 6.9 Insurance Information.

The certificates of insurance and endorsements required pursuant to 0 shall be delivered to Buyer.

#### 6.10 Other Documents.

All other Deliverables set forth in this Agreement as a document or information to be provided to Buyer or those listed in Exhibit AC

Submittals and Deliverables List by the date specified in the Project Schedule attached as Exhibit K

Project Schedule Project Schedule, shall be delivered to Buyer; *provided, however*, if there is no date specified, then no later than Final Completion.

6.11 Buyer Comment.

Provided that Seller has furnished the necessary information and documents for Buyer's review and comment in accordance with the requirements of this Agreement, including the Project Schedule or Submittal Schedule, as applicable, Buyer shall notify Seller of any resulting comments or queries, which Seller shall consider and address in good faith. Buyer's review and comment to a Design Document does not make any Design Document ISSUED FOR CONSTRUCTION as this is a Seller obligation. Buyer's review and comments to the Design Documents, or any portion thereof, shall not in any way relieve Seller of any of its obligations, representations, or warranties set forth in this Agreement, including with respect to the accuracy of the dimensions, details, integrity, and quality of the Design Documents or the ability of the Project to meet all of the requirements under this Agreement. Buyer's review and comment shall be not as a licensed or qualified engineer, designer, or contractor irrespective of whether Buyer has such qualified persons as employees or agents, but rather to review and comment in accordance with the general intent of Buyer and any such comment shall in no way reduce or eliminate Seller's responsibilities under this Agreement. Buyer's inability to complete its review as a result of Seller's failure to comply with its obligations, including the obligation to provide Deliverables or other documents and information required by this Agreement or reasonably requested, shall not constitute a Buyer Change Order, Buyer Delay or a Buyer Event of Default.

6.12 Ownership of Documents.

Before NTP, Seller shall be the exclusive owner of, including all copyrights to, the Design Documents and Record Drawings. On and after NTP, after title transfers pursuant to Section 0, Buyer shall be the exclusive owner of, including all copyrights to, the Design Documents and Record Drawings. Seller agrees that no legend, notice or other marking claiming any such Design Documents or Record Drawings as being confidential or proprietary to Seller or to any Contractor shall be included on the same, and should any such Design Documents or Record Drawings include a legend, notice or other marking in violation of the foregoing, Buyer shall be free to disregard same. Buyer shall indemnify Seller and any Contractor, and hold Seller and such Contractor who prepared the Design Documents and Record Drawings harmless from and against any use of the Design Documents and Record Drawings on any project, other than the Project, and any modification to the Design Documents or Record Drawings performed without Seller's participation.

6.13 Guaranty.

On the Effective Date and concurrent with Seller's execution of this Agreement, Seller shall deliver to Buyer the Guaranty guaranteeing and securing all of Seller's obligations under this Agreement. The Guaranty shall be issued in the form of Exhibit AT

Form of Guaranty attached hereto. The cost of the Guaranty is included in the Purchase Price. The Guaranty shall not terminate until the expiration of the Defect Warranty Period.

## **ARTICLE VII PROJECT PLANNING, SCHEDULING AND CONTROL**

### **7.1 Project Schedule.**

Seller shall perform the Work substantially in accordance with the Project Schedule; however, Seller shall complete the applicable Work required on or before the Production Tax Credit Qualifying Deadline or Outside Completion Deadline, as provided herein. Provided that if Seller is late on any of its obligations in Exhibit O (Buyer Delay) such failure shall result in an equivalent day for day extension for Buyer's associated obligations on such Exhibit O, except that the Production Tax Credit Qualifying Deadline and Outside Completion Date shall not be extended. Buyer Delay shall be addressed under Section 0.

### **7.2 Changes to the Project Schedule.**

Written notice of all changes to the Project Schedule shall be given to Buyer as part of the Monthly Progress Report (in accordance with Section 0) and Seller shall promptly notify Buyer of any material delays in the Project Schedule.

### **7.3 Acceleration of Work.**

If at any time Seller is or believes that it is likely to be delayed in meeting any of the Milestone Dates that impact critical path Work by more than [REDACTED], Seller will reasonably promptly notify Buyer and after prompt consultation with Buyer, Seller shall promptly submit to Buyer for review and comment a written recovery plan ("Recovery Plan") to restore the progress of critical path Work to adherence to achieving the Milestone Dates. The Recovery Plan may include acceleration of the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work. Submission and execution of the Recovery Plan shall be at Seller's sole cost and expense.

### **7.4 [Reserved]**

### **7.5 Acceleration Where Work Is Not Delayed.**

If reasonably practicable and upon Buyer's written request to accelerate the Work for Buyer's convenience to establish WTG Substantial Completion before the Production Tax Credit Qualifying Deadline, Seller may accelerate the Work on the basis of: (i) reimbursement of direct cost (i.e., premium portion of overtime pay to the extent required by Applicable Laws, additional crews, shifts, or Equipment and Material costs, and such other items of cost requested in advance by Seller and approved by Buyer, which approval will not be unreasonably withheld) plus (ii) a reasonable allowance for profit, overhead, and contingency mutually agreed by the Parties not to exceed the percentage set forth in Section 0, but with respect to clauses (i) and (ii), there shall be a not-to-exceed amount mutually agreed by the Parties. Any acceleration of the Work not specifically requested and approved by Buyer pursuant to this Section in writing by a Change Order shall be at Seller's sole cost and expense. Buyer shall have the right to reasonably

audit Seller's calculated direct costs and savings or costs not incurred associated with any acceleration. In the event of any acceleration requested pursuant to this Section, Seller shall, at no cost to Buyer, promptly provide a plan for such acceleration, including Seller's recommendations for the most effective and economical acceleration.

#### 7.6 Progress Reports and Meetings.

1.1.14 7.6.1 Following the delivery of the NTP, Seller shall provide Buyer the Monthly Progress Report as required by the Technical Specifications which shall be substantially in the form of and contain the information indicated in Exhibit K

Form of Monthly Progress Report ("Monthly Progress Report"). Seller shall update the Project Schedule as part of the Monthly Progress Report (without adjustment to the Production Tax Credit Qualifying Deadline and Outside Completion Deadline), to indicate the status of each element of the Project Schedule in reasonable detail or as Buyer may reasonably request.

7.6.2 Seller and Buyer shall conduct meetings at the Project Site or other location if mutually agreeable to the Parties, and according to a mutually agreed meeting schedule throughout construction of the Project, to thoroughly discuss the progress and status of construction. Such meetings shall be attended by Seller's Project Manager (or his or her duly authorized representative) and the Buyer's Representative (or his or her duly authorized representative), and by such additional representatives of each Party as such Party may desire. Buyer's Representative may elect to attend meetings by telephone or video conference.

#### 7.7 Visits; Observation at Engineering/Construction Meetings with Third Parties.

7.7.1 In addition to attendance at the meetings and reports as set forth in Section 0, Buyer, through Buyer's Representative and one (1) other employee, agent, or expert, shall have the right to (i) observe or cause to be observed the performance of the Work, (ii) visit the Project and Project Site, and (iii) (to the extent Seller is able to arrange for such observation) observe or cause to be observed the manufacture of the Equipment and Materials; *provided, however*, that Buyer shall provide Seller with reasonable advance notice of any visits and such observations and visits shall be with reasonable frequency (other than for routine observation by Buyer's personnel who are regularly on the Project Site). Buyer's observations and visits shall not unreasonably interfere with the performance of the Work or otherwise with Seller's performance of its obligations under this Agreement, and any Persons observing the Work shall abide by any and all safety rules and procedures applicable to the Project and the Project Site. Additional employees, agents, or experts of Buyer may be present during such activities upon reasonable notice, at reasonable times with reasonable frequency.

7.7.2 For purposes of this Section 0, Seller shall give Buyer reasonable advance notice of all material engineering and construction meetings that are not part of the regularly scheduled progress meetings in Section 0 in order to permit Buyer to send a representative, if it so desires.

## ARTICLE VIII INSPECTION AND CORRECTION OF WORK

### 8.1 Periodic Inspections.

In addition to Buyer's rights to visit the Work as provided above in Section 0, Buyer shall have the right to reasonably visit, review or observe any aspect of the Work. Buyer may inform Seller promptly if it believes there are any Defects or Deficiencies in the Work not in conformance with this Agreement, including the Project Documents, and/or if it believes there are Defects and Deficiencies it discovers during any inspection of the Work; *provided, however*, that Buyer's failure to so notify will not constitute a breach of this Agreement. Any visit, review or observation by Buyer or any of its representatives of any part of the Work, or any failure to inspect, shall in no way affect Seller's obligations to perform the Work in accordance with this Agreement. All such visits, reviews or observations shall be conducted in a manner that does not unreasonably interfere with the normal performance and progress of the Work.

### 8.2 Observance of Tests.

Buyer through Buyer's Representative or authorized representative and one (1) additional employee, agent, or expert shall have the right to observe all tests of the Project and tests of the Work including (to the extent Seller is able to arrange for such observation) at the Turbine Supplier's facilities, in each case with reasonable frequency, at reasonable times during normal business hours and upon reasonable advance notice except as otherwise provided in Section 0. Seller shall give at least [REDACTED] prior notice, unless another time period is otherwise specified in the Scope of Work, to Buyer of any Project tests including the time and location of the tests. Additional employees, agents, or experts of Buyer may be present during such activities upon reasonable notice, at reasonable times with reasonable frequency.

### 8.3 Correction of Work.

Prior to Substantial Completion, Seller shall correct or cause to be corrected, at no additional cost to Buyer, any Defects or Deficiencies in any part of the Work, regardless of the stage of its completion or the time, place or means of discovery of such Defects or Deficiencies; however, Buyer cannot force Seller to correct any Defects or Deficiencies until such interferes with or inhibits achieving Substantial Completion or any Milestone Date thereafter. After Substantial Completion, any remaining Defects or Deficiencies are Punch List Items and shall be addressed as part of the Punch List Items, and Warranty Defects shall be addressed pursuant to the provisions in 0.

## ARTICLE IX PURCHASE AND SALE, PURCHASE PRICE AND PAYMENT

### 9.1 Purchase and Sale.

In accordance with the Progress Payment Schedule, including the amount to be paid at the NTP Closing, and subject to and upon the terms and conditions of this Agreement, Seller shall irrevocably, unconditionally sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, the Project, which includes all the Project Assets,

free and clear of all Liens (other than Permitted Encumbrances for the Real Property Documents) and rights of others, with all Work completed (the "Purchase and Sale").

## 9.2 Purchase Price.

### 9.2.1 General.

Buyer agrees to pay, and Seller agrees to accept, an amount in U.S. Dollars equal to the Purchase Price. Subject to this Section 0 and Section 0, the Purchase Price shall not be changed and, except as otherwise provided in this Agreement, Seller shall not be entitled to any other compensation and reimbursement of expenses in each case without the prior written authorization of Buyer by a Change Order or an amendment to this Agreement. Payments of the Purchase Price shall be made at the times and in the manner provided in this Section 0.

### 9.2.2 Taxes.

9.2.2.1 The Purchase Price includes any and all Taxes (including, subject to the next paragraph in this Section 0, any increase of such Taxes that may occur during the term of this Agreement) arising out of Seller's or any Contractor's performance of the Work or otherwise imposed on Seller or its Contractors, including: (i) with respect to any Equipment and Materials, Labor, or services provided under this Agreement, any Tax imposed on the Project Assets related to the Work, import duties, customs duties, and harbor and other taxes for imported items; (ii) sales and use taxes on all materials and Labor provided by Seller under this Agreement or otherwise on the Work; (iii) Taxes imposed on Seller as a result of Seller's connection with any taxing jurisdiction; and (iv) franchise, income, corporate, doing business, or similar taxes imposed upon Seller or measured by its income or receipts. No amount in addition to the Purchase Price will be due to Seller on account of any such Taxes. For purposes of employment taxes, Buyer shall not be deemed the employer of any individuals performing services under the Agreement on the behalf of Seller or any Contractors, regardless of whether or not such individuals are employed by Seller or by any such Contractors of any tier; and, without limitation, as between Buyer and Seller, Seller shall be liable for any payroll taxes due with respect to any such individual performing services under the Agreement on behalf of Seller or Contractors. Notwithstanding anything to the contrary in this Agreement and further notwithstanding the transfer of title to the Project Assets to Buyer, subject to Section 0, Seller shall remain responsible for paying all Taxes levied on the real and personal property of Buyer that constitutes a Project Asset until Substantial Completion. Seller shall timely pay all Taxes, other than those for which Buyer is responsible under this Agreement. Buyer shall be responsible for paying all Taxes on the real and personal property of Buyer that constitutes a Project Asset after Substantial Completion. If Buyer is required by Applicable Law to pay or collect any Taxes for which Seller is responsible under this Section 0, then such Taxes paid by Buyer shall be reimbursed by Seller to Buyer by deducting such

amount paid from the next Progress Payment owed, if any amounts are still owed to Seller, or within thirty (30) days of Seller's receipt of Buyer's invoice for such reimbursement, as Buyer elects by notice to Seller.

9.2.2.2 The Parties agree that the Purchase Price accounts for the cost of compliance by Seller with Applicable Law in effect as of the Effective Date. Notwithstanding the foregoing, in the event that, after the Effective Date, there is a Change in Law, and if such Change in Law (i) renders the performance of this Agreement (in whole or in part) illegal or unenforceable, or (ii) materially increases Michigan sales or use tax payable by Seller, then the Parties shall meet within no more [REDACTED] after notice from Seller to Buyer to discuss and, acting in good faith, attempt to agree upon any amendments that may be required to this Agreement in order to: (a) take account of the Change in Law such that Seller can continue to comply with the terms of this Agreement, and (b) preserve the allocation of risks, rights and obligations between the Parties and the commercial balance of this Agreement contemplated by the Parties at the Effective Date, including making any changes to the Purchase Price to account for any increase in Seller's cost resulting from such Change in Law.

### 9.2.3 Bonds.

Upon the reasonable request of Buyer, Seller will notify Buyer of the anticipated date of commencement of construction of the Project and furnish a copy of any available proposed pro forma Bonds. At any time, Buyer may notify Seller whether Buyer requests Bonds on all or specified parts of the construction Work. Within thirty (30) days of such request from Buyer, Seller shall cause to be issued, or cause the applicable Contractor to have issued, such Bonds. Buyer shall pay all costs of such Bonds charged by the surety (without mark-up) ("Bond Costs") directly to the applicable Contractor or surety or to Seller. In the event Seller pays any such costs of such Bonds, Buyer shall reimburse Seller for such costs within thirty (30) days of receipt of an invoice from Seller.

### 9.2.4 Interconnection Costs.

Buyer shall be responsible for all interconnection costs relating to facilities beyond the Point of Change of Ownership, including Network Upgrades (including Stand Alone Network Upgrades), Affected System upgrades, Distribution Upgrades, Generator Upgrades, Transmission Owner's Interconnection Facilities and System Protection Facilities (such terms all as defined in the Transmission Provider's open access tariff), and all security deposits paid in connection with any of the foregoing, in each case, including any such amounts provided for in the Interconnection Agreement or the Interconnection Facilities Construction Agreement. Buyer shall pay such amounts directly to, and post such security directly with, the Transmission Provider or other applicable Person. In the event, Seller makes any such payments or posts any such security, Buyer shall promptly reimburse Seller therefor, including that, at the NTP Closing, Buyer shall reimburse Seller for any such payments made or security posted by Seller on or before the NTP Closing.

[REDACTED]

[REDACTED]

9.2.6 Change in Tariffs.

[REDACTED]

[REDACTED]

9.2.7 Nature of a Fixed Purchase Price Contract.

Seller and Buyer acknowledge that cost risks are inherent in the execution of a fixed price contract for acquisition and construction for a facility of this type. Seller acknowledges that it may have miscalculated its costs, and may result in Seller (or its Contractors) expending more

resources than it estimated or planned and which it did not account for or otherwise intend to expend based on the Purchase Price. Similarly, Buyer acknowledges that Seller may have been conservative in its assumptions regarding the overall cost of the Project, and that the actual cost to Seller for the Project may in fact be significantly less than the Purchase Price. The fact that either Party may have so miscalculated the costs to perform hereunder, or that either Party expended extra resources that it did not intend to spend as a result of such miscalculation, shall not form the basis for any Change Order or other claim of relief hereunder.

### 9.3 Terms of Payment.

Payments of the Purchase Price to Seller shall be made as follows:

#### 9.3.1 Progress Payment Schedule.

Subject to the provisions of this Section 0 and Seller's compliance herein, Buyer shall make Progress Payments to Seller in accordance with Work completed, less retainage, and the provisions herein on account of the Purchase Price, the amounts specified in the form of Seller's Invoice and for which Seller has not previously been paid. Each Progress Payment is included in the Progress Payment Schedule attached as Exhibit D

Progress Payment Schedule ("Progress Payment Schedule"), and each Progress Payment shall be due and payable only to the extent it is supported by the completion of that corresponding Work for the Progress Payment. Seller shall provide, as part of its invoicing documentation as provided in Section 0, a monthly cash flow updated based on Work complete, in progress and forecast on the first day of each month.

#### 9.3.2 Seller's Invoices.

For each payment hereunder, Seller shall submit an invoice ("Seller's Invoice") in the form of Exhibit K

Seller's Invoice Form, including a [REDACTED] retainage of the invoiced amount ("Retainage") (which Retainage will be reduced to the Punch List Holdback at Substantial Completion). Seller specifically agrees that it shall not request in any Seller's Invoice the payment of any sum attributable to Work (i) for which Seller has already been paid and (ii) except for the Progress Payment on the Effective Date and at NTP Closing, before the Work has achieved the stage of completion represented by Seller as complete in the applicable Seller's Invoice. With respect to the Seller's Invoice for the Progress Payment upon Substantial Completion, such Seller's Invoice shall be adjusted to reduce the Retainage withheld by Buyer to the Punch List Holdback. Each Seller's Invoice for all Progress Payments requested must include all of the following or it shall not be deemed a complete Seller's Invoice and Buyer shall have no obligation to make the payment:

1.1.14.1 9.3.2.1 A document identifying: (i) the Progress Payment Schedule (Exhibit D)

1.1.14.2 Progress Payment Schedule), updated as provided in clause (viii) of this Section 9.3.2.1(a); (ii) the related Progress Payments set forth on the

Progress Payment Schedule that are then payable; (iii) any other amounts then payable by Buyer to Seller under any other provision hereof if any (without limiting Buyer's or Seller's right to Dispute any amounts requested for payment); (iv) a summary of all Progress Payments previously invoiced by Seller, including the identification number and date of each such Seller's Invoice; (v) a summary of any unresolved Disputes with respect to any Seller's Invoices; (vi) a summary of all Progress Payments previously paid by Buyer and the date such payment was received; and (vii) any Taxes that either Buyer or Seller is required to reimburse the other Party under this Agreement, together with supporting documentation of the same; and (viii) an updated cash flow forecast of the Progress Payment Schedule (Exhibit D

Progress Payment Schedule) on the first of each month;

9.3.2.2 A list or spreadsheet identifying all Michigan Content, the percentage of Michigan Content, for the period covered by Seller's Invoice together with a cumulative amount through the date of Seller's Invoice ("Michigan Equipment, Materials, and Labor Information"), provided that, in lieu of providing such Michigan Equipment, Materials, and Labor Information with each Seller's Invoice, Seller may include such Michigan Equipment, Materials, and Labor Information in its last Seller's Invoice before Substantial Completion;

9.3.2.3 A Sworn Statement from Seller and any Contractor who is performing in the aggregate more than [REDACTED] of Work (such as the BOP/EPC Contractor, Transformer Vendor, and Turbine Supplier) under its applicable Construction Contract for any Work performed prior to and included in the Seller's Invoice for the Progress Payment;

9.3.2.4 From Seller and each Contractor who performed any Work that Buyer paid for under the prior Progress Payment, a Partial Unconditional Waiver for amounts previously paid to Seller, unless the applicable Contractor has completed all its Work under the applicable Construction Contract, in which case Seller shall submit a Full Unconditional Waiver for such Contractor(s); *provided, however*, Buyer waives Seller's obligation to provide the Partial Unconditional Waiver or Full Unconditional Waiver from Contractors whose Construction Contracts collectively do not exceed a total contract price of [REDACTED] in the aggregate but such waiver by Buyer shall not be construed or interpreted as a waiver of Seller's obligations under this Agreement to provide clear title, free of Liens (other than Permitted Encumbrances);

9.3.2.5 From each Contractor who performed any Work that is covered by Seller's current Seller's Invoice for the Progress Payment, a Partial Conditional Waiver for the Work that Buyer is paying for such Work in advance of the receipt of a Partial Unconditional Waiver in accordance the

Progress Payment Schedule, unless the applicable Contractor will be completing all its Work under the applicable Construction Contract, in which case Seller shall submit a Full Conditional Waiver for such Contractor(s) that Buyer is paying for such Work in advance of the receipt of a Full Unconditional Waiver; *provided, however*, Buyer waives Seller's obligation to provide the Partial Conditional Waiver or Full Conditional Waiver from Contractors whose Construction Contracts collectively do not exceed a total contract price of [REDACTED] in the aggregate but such waiver by Buyer shall not be construed or interpreted as a waiver of Seller's obligations under this Agreement to provide clear title, free of Liens (other than Permitted Encumbrances);

9.3.2.6 Upon the request for a Progress Payment for achieving Substantial Completion, with respect to Equipment and Materials, to the extent they constitute personal property or may constitute personal property under Applicable Laws, (i) an updated UCC Search as provided in Section 1.1.4, and (ii) evidence that the Equipment and Materials have been delivered and installed on the Project Site; and

9.3.2.7 Upon the request for a Progress Payment for achieving Final Completion, the Deliverables described in Section 1.1.9.

### 9.3.3 Progress Payments.

9.3.3.1 Buyer shall, on the Effective Date, pay the Progress Payment for the Effective Date.

9.3.3.2 Buyer shall, on the date of the NTP Closing, pay the Progress Payment for NTP. Any amounts paid by Seller to Turbine Supplier under the Turbine Supply Agreement shall not be invoiced to Buyer until the Progress Payment for NTP. Notwithstanding the foregoing, in the event that NTP does not occur, Buyer is not responsible for reimbursing Seller for payments made to Turbine Supplier under the Turbine Supply Agreement.

9.3.3.3 Seller shall provide a monthly cash flow forecast on the first of each month after the Effective Date. Buyer shall pay each monthly Progress Payment within the date that is [REDACTED] following the date of Seller's Invoice therefore, in each case, which Invoice must include all accompanying documentation required by Section 0 to make the Seller's Invoice complete. For clarity, Buyer may Dispute the amounts requested in or other information contained in Seller's Invoice (or such accompanying documentation). Buyer shall pay to Seller the amount that remains after deduction from the amount requested in the Seller's Invoice of the following amounts: (x) any portion thereof that Buyer Disputes in good faith as not being due and owing (which if Seller disagrees with Buyer's refusal, Seller may refer it to a Dispute to be resolved in accordance with 0), (y) any overpayment by Buyer for any previous Progress Payment, and (z) any

undisputed amounts payable by Seller to Buyer hereunder, subject to Seller's right to Dispute any reduced amounts it disagrees with in good faith in accordance with 0. Subject to Section 0 and 0, the determinations made as contemplated by this Section 0 shall be made for purposes of payment only and shall not in any way (1) affect, relieve, or reduce Seller's obligations to perform and complete the Work in accordance with the provisions of this Agreement, or (2) be deemed to be a warranty or acceptance by Buyer with respect thereto.

9.3.4

[REDACTED]

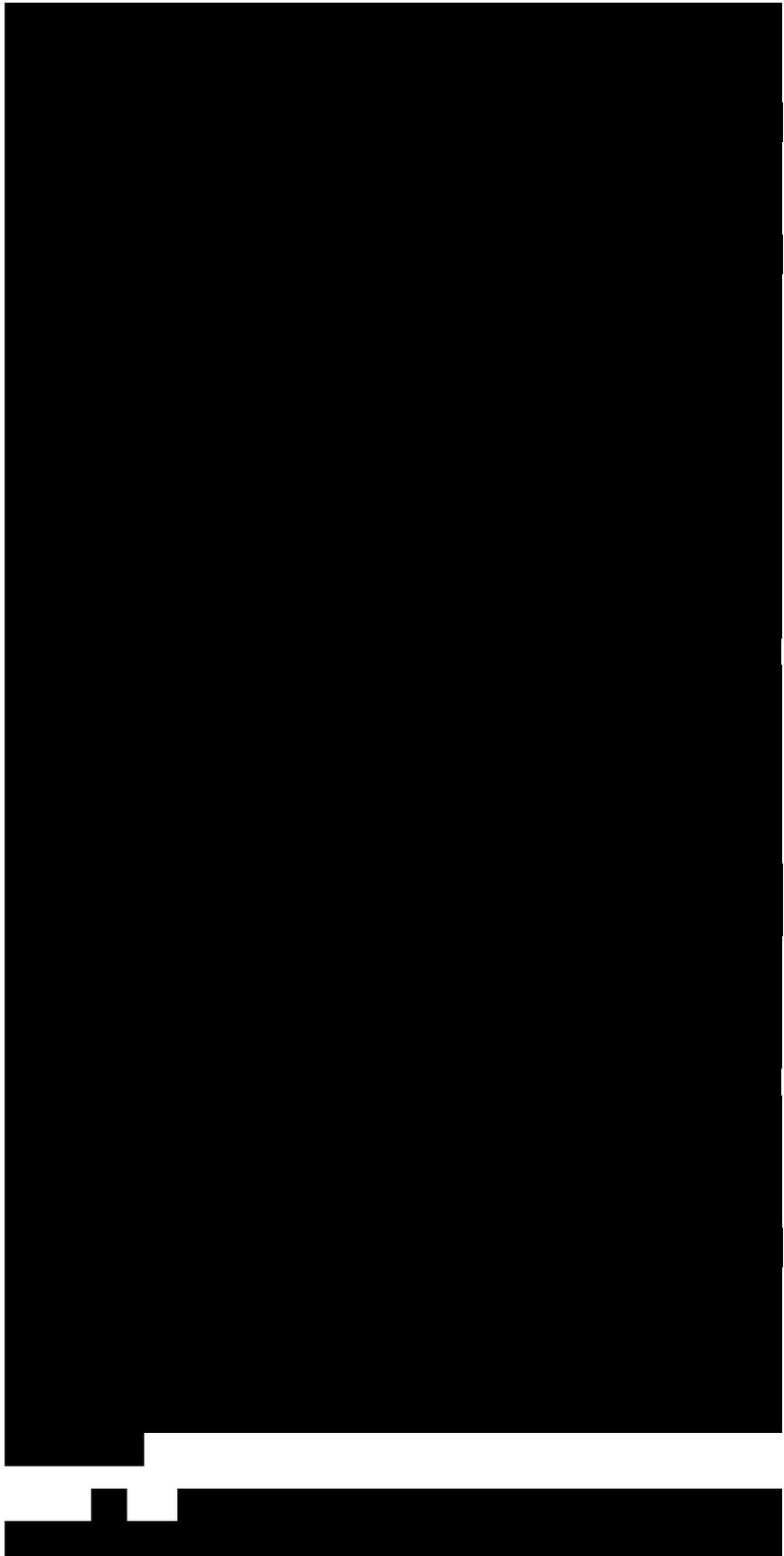
[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]



[Redacted]

[Redacted]

[Redacted]

[Redacted]



9.3.5 Punch List Holdback Payments.

Following Substantial Completion, Seller may submit to Buyer Seller's Invoices on a monthly basis for Punch List Items completed, and Buyer shall pay any undisputed amounts within [REDACTED] following receipt of such Seller's Invoice and the same documents required for a Progress Payment; provided that in no event shall the amount of the Punch List Holdback be less than [REDACTED] of the aggregate value of the Punch List Items after giving effect to any such payment. In the event of any disagreement with respect to such amounts, the Parties will work in good faith to resolve such dispute, and in the event they are unable to come to a resolution, shall resolve such Dispute in accordance with 0.

9.3.6 Final Payment.

On or after the date on which Final Completion is achieved, Seller shall submit to Buyer:

9.3.6.1 A final Seller's Invoice (the "Final Seller's Invoice") which invoice shall set forth all amounts due to Seller that remain unpaid in connection with the Work, including any outstanding Punch List Holdback, not to exceed the Purchase Price (payment of such amounts, the "Final Payment");

9.3.6.2 With respect to each Contractor (to the extent not previously delivered), a Full Conditional Waiver and Full Unconditional Waiver as provided in Section 0 for such Contractor(s); *provided, however*, Buyer waives Seller's obligation to provide the Full Conditional Waiver or Full Unconditional Waiver from Contractors whose Construction Contracts collectively do not exceed a total contract price of [REDACTED] in the aggregate but such waiver by Buyer shall not be construed or interpreted as a waiver of Seller's obligations under this Agreement to provide clear title, free of Liens (other than Permitted Encumbrances); and

9.3.6.3 With respect to Seller, a Full Conditional Waiver for the outstanding amount owed under the Final Seller's Invoice and a Partial Unconditional Waiver for all amounts previously paid to Seller.

Within [REDACTED] after delivery of the foregoing, Buyer shall pay to Seller the undisputed amount due under such Final Seller's Invoice. Buyer shall have the right to conduct an audit at any time pursuant to Section 0. At the time of Final Payment, a Full Unconditional Waiver shall be executed by Seller and delivered to Buyer and Full Unconditional Waivers from all Contractors who provided a Full Conditional Waiver as provided in Section 0 above. In the event of any Dispute with respect to such Final Payment, the Parties will work in good faith to resolve such Dispute, and in the event they are unable to come to a resolution, shall resolve such Dispute in accordance with 0.

9.3.7 Non-refundable.

Notwithstanding any provision to the contrary herein, each Progress Payment hereunder shall be non-refundable when made, and in no event shall Buyer be entitled to a direct refund of any Progress Payment; provided that Seller shall refund to Buyer any amounts received that have not been expended for Work performed in accordance with this Agreement for the benefit of the Project (such as to pay for materials to be incorporated into the Project or payments made to any Contractor). In the event that Buyer terminates this Agreement for a Seller Event of Default, Buyer shall be entitled to pursue rights and remedies to which it is legally entitled, including proceeding against security provided by Seller hereunder, but except as provided in the preceding sentence, no Progress Payment shall be refundable.

9.3.8 Suspension for Payment Disputes.

In the event that amounts for which Seller has invoiced Buyer (in good faith in accordance with Section 0) that are under Dispute by Buyer are such that (x) amounts for which Seller has invoiced Buyer (in good faith in accordance with Section 0) are more than (y) [REDACTED] of the amount of Purchase Price Buyer actually paid to Seller, then Seller may suspend the Work hereunder and the work of Contractors until such time as the Disputes are resolved to the extent that (x) amounts for which Seller has invoiced Buyer (in good faith in accordance with Section 0) are less than (y) [REDACTED] of the amount of Purchase Price Buyer actually paid to Seller. For clarity, the foregoing amounts shall not include payments made for the WTGs to Seller or Turbine Supplier, as applicable. Buyer may make any payment under protest for all or such amounts Seller has invoiced Buyer in order to prevent a Seller suspension of the Work under this Section 0.

9.4 Limitations on Payments to Seller.

9.4.1 If Buyer is the subject of a claim with a third party for which Seller is responsible pursuant to this Agreement and, in Buyer's reasonable judgment, there is not sufficient insurance of Seller and its Contractors to pay for any such costs and expenses, Buyer may withhold payment to the extent of such claim.

9.4.2 Any other costs or expenses owed by Seller to Buyer and past due may be deducted from payments owed to Seller.

9.4.3 Any amounts paid to any of the Contractors to eliminate a Seller Lien or avoid the placement of a Seller Lien on the Project or Project Site for Work performed will be deducted as provided in Section 0.

9.4.4 Any payments to be paid as Direct Payments as set forth in Section 0 will be deducted from amounts owed to Seller as provided in Section 0.

9.5 Withholding of Payment.

9.5.1 Buyer shall have no obligation to make any payment to Seller at any time when a Seller Event of Default has occurred and is continuing. Such right to withhold payments due Seller shall be limited to amounts reasonably necessary to cure every Seller Event of Default.

9.5.2 Failure by Buyer to pay any amount Disputed in good faith shall not alleviate, diminish, modify, nor excuse Seller's obligations to perform hereunder. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Seller of any of its obligations hereunder.

9.6 Payments to Buyer.

Except to the extent otherwise expressly provided herein, any un-Disputed amounts payable by Seller to Buyer under this Agreement shall be due within thirty (30) days of Seller's receipt of Buyer's invoice for such payment.

9.7 Adjustments to Purchase Price.

The Purchase Price may only otherwise be adjusted (i) by increasing the Purchase Price by Change Order or amendment to the Body of this Agreement signed by Buyer for additional Work, or (ii) by reducing the Purchase Price as a result of Delay LDs. Any increase in the Purchase Price shall be applied to the payment as described in the Change Order or, if not directed, then to the Progress Payment described in the Change Order and reduction to the Purchase Price shall be applied (x) first, to the Progress Payment for Substantial Completion (y) next, to each Progress Payment preceding the Substantial Completion in reverse order from last to first, and (z) lastly, if there is not sufficient amounts owed, Seller shall reimburse Buyer within thirty (30) days thereafter.

9.8 Manner of Payment; Direct Payments.

All payments to be made to either Party under this Agreement shall be paid in U.S. Dollars and shall be paid electronically (by means of wire) in immediately available funds on the date due or, if such date is not a Business Day, on the immediately succeeding Business Day, to such account as may be designated by such Party from time to time by notice to the other Party in accordance with 0. Buyer shall pay all amounts payable to Seller hereunder by wiring the applicable amounts in immediately available funds to the accounts

designated by Seller in writing by Seller at or prior to Seller furnishing the Seller's Invoice for such amount to be paid. Buyer may pay Progress Payments (or portions thereof) directly to the applicable Contractor for their portion of the Work, and shall make such Progress Payments directly to the Turbine Supplier when due under the Turbine Supply Agreement if requested by Seller after NTP, which specified amounts shall not be disputed by Seller and shall be in accordance with the payment terms of each Person's respective Turbine Supply Agreement, once Seller is entitled to the Progress Payment in accordance with the terms and conditions set forth in this Agreement, and which payments shall be referred to individually and collectively as the "Direct Payments." For clarity, in the event that NTP does not occur, Buyer shall not be responsible for reimbursing Seller for the payments made by Seller to such Persons, including for Item Number 8.1 of Exhibit D

Progress Payment Schedule. Except in the case of an assignment of the Construction Contracts as permitted by this Agreement for Work performed after the assignment and Direct Payments, Seller shall be responsible for paying all Contractors in connection with the Work performed by such Contractors. Buyer shall not otherwise have any obligation to pay any Contractor with respect to the Work performed by such Contractors; however Buyer may elect to do so if there is Seller Liens arising from Seller's failure to pay the Contractor for its portion of the Work, provided Buyer first gives Seller [REDACTED] notice of Buyer's intent to pay Contractor so as to allow Seller to either obtain Buyer's agreement to refrain from making payment based on the information Seller provides or to discharge or bond the Seller Lien off the Project Site and allow Seller to pursue the matter with such Contractor. If Seller neither convinces Buyer to refrain from making payment and Buyer is acting in good faith nor Seller discharges or bonds the Seller Lien, Buyer shall be free to proceed with making payment to the Contractor.

## 9.9 Purchase Price Allocation.

### 9.9.1 Calculation.

Following the Effective Date, from time to time as is necessary for either Party, including in connection with NTP and Substantial Completion, the Parties will work together in good faith to mutually agree to schedule(s) allocating the Purchase Price (and all other capitalized costs) among the Project Assets grouped by the seven (7) asset classes referred to in Treasury Regulations Section 1.1060-1(c) (the "Purchase Price Allocation Schedule"). In connection with NTP and Substantial Completion, the Purchase Price Allocation Schedule shall be completed within ninety (90) days of the NTP Closing and Substantial Completion, as applicable. Any Purchase Price Allocation Schedule shall be revised to take into account subsequent adjustments to the Purchase Price, including any adjustments and any indemnification payments (which shall be treated for Tax purposes as adjustments to the Purchase Price), as mutually agreed by the Parties and in accordance with the provisions of Section 1060 of the Code and the Treasury Regulations thereunder.

### 9.9.2 Reporting.

The Parties shall report the transaction for federal and, where applicable, state income tax purposes on IRS Form 8594 in accordance with the Purchase Price Allocation Schedule

described in Section 0. Seller and Buyer each agrees to provide the other promptly with any other information required to complete Form 8594.

### 9.9.3 Disputes.

If the Parties are unable to agree on the Purchase Price Allocation Schedule pursuant to Section 0 or any subsequent adjustment to the Purchase Price Allocation Schedule, the Parties shall refer such Dispute to an Independent Accountant, which firm shall make a final and binding determination as to all matters in Dispute with respect to this Section 0 (and only such matters) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountant shall not have the power to modify or amend any term or provision of this Agreement. Each Party shall bear and pay one-half (1/2) of the fees and other costs charged by the Independent Accountant. "Independent Accountant" means a public accounting firm jointly selected by the Buyer and Seller that neither has an existing or prior relationship nor a conflict of interest with Buyer, Seller, or either of their Affiliates.

### 9.10 Fees and Costs.

Seller shall timely pay all Taxes, rent and other amounts due under the Wind Energy Easements (as may be amended pursuant to the terms of this Agreement by Seller) and other Real Property Documents until Substantial Completion, and the costs other Project Contracts, the Title and Survey Documents (but excluding the Title Policy Endorsements, which shall be Buyer's sole cost and expense), Environmental Reports and Studies, UCC Searches, curative documents, and filing fees associated with the Purchase and Sale as each of these costs are included in the Purchase Price. To the extent Seller does not timely pay any such amounts, Buyer may pay such amounts directly to the applicable Person, and Seller agrees to promptly reimburse Buyer for any such amounts paid by Buyer, which Buyer may by notice to Seller elect to deduct from amounts owed to Seller or require payment within thirty (30) days thereafter. After Substantial Completion, Buyer shall timely pay all such Taxes and other amounts and costs as required that become due thereafter. Notwithstanding the foregoing, Buyer shall timely pay all Taxes, and rent and other amounts due under the Wind Energy Easements and other Real Property Documents, to the extent such amounts are based on the Project's improvements on the real property or the operation of or generation of revenue by the Project (for example, increased Taxes based on an increased assessment based on such improvements, or rent payments based on such operations or revenues, such as a percentage of such revenues).

### 9.11 Intended Tax Treatment.

Buyer and Seller intend for each WTG comprising part of the Project to be treated as originally placed in service by Buyer for all federal, state and local income tax purposes and each agree to file all federal, state and local income tax returns in a manner consistent with such intention, unless required by a final determination, within the meaning of Section 1313 of the Internal Revenue Service Code, to the contrary.

## **ARTICLE X CHANGE ORDERS**

### 10.1 Basis for Change Orders.

The Parties may from time to time enter into written Change Orders executed by Buyer and Seller in accordance with this 0. Change Orders are only binding upon a Party when executed by an authorized officer of such Party. All Change Orders shall be originated, considered, and made effective only in accordance with this Section 0, and must be utilized notwithstanding that a reference to a Change Order may not be in other applicable sections of this Agreement pertaining to the same. The Parties shall execute a Change Order to document any changes to a Material Project Contract requiring Buyer's consent pursuant to Section 0. Notwithstanding the foregoing, the Parties may also make changes by amending the Body of this Agreement using a written amendment to this Agreement as provided in Section 0. Notwithstanding anything to the contrary in this Agreement, in no event shall any Change Order, or the subject matter thereof, operate to change the Purchase Price or the Project Schedule or provide Seller with relief from its obligations to pay, or limit Buyer's right to hold back, Delay LDs, except, in each case, to the extent specifically set forth in writing in such Change Order.

#### 10.2 Buyer's Rights to Request Change Orders.

10.2.1 Buyer may, at any time prior to the date that is [REDACTED] after the issuance of NTP, request changes to the Work, including the Technical Specifications or the Project Schedule, and within [REDACTED] of receipt of any such request, Seller shall consider and respond, and if practicable, propose a draft Change Order reflecting the changes pursuant to such request. Once such draft Change Order is finalized, and executed and delivered by Buyer and Seller, Seller shall proceed to perform in accordance with such Change Order and this Agreement. Any appropriate increase or decrease in the Purchase Price, change in the Project Schedule to the extent it requires Buyer's approval as provided in this Agreement, or change to the Work shall be described in detail in the applicable Change Order.

10.2.2 Buyer may, on or after the date that is [REDACTED] after the issuance of NTP, request changes to the Work, including the Technical Specifications or the Project Schedule which Seller may consider in its discretion.

#### 10.3 Seller's Right to Propose Change Orders.

10.3.1 Seller may, at any time prior to the completion of all Work, propose changes to the applicable Work. Buyer shall timely consider such changes but shall have no obligation to make any such changes. Seller will not be relieved of any obligation under this Agreement while such a proposed Change Order is under consideration. If, pursuant to this Section 0, a Change Order is finalized, and executed and delivered by Buyer and Seller, Seller shall proceed to perform in accordance with such Change Order and this Agreement. Any appropriate increase or decrease in the Purchase Price, change in the Project Schedule to the extent it requires Buyer's approval as provided in this Agreement, or change to the Work shall be described in detail in the applicable Change Order.

[REDACTED]



10.3.3 In the case of a Buyer Delay, Seller shall not be liable for, and Buyer shall not hold back, any Delay LDs. In the case of any Buyer Delay, Seller shall be entitled to a Change Order memorializing an increase to the Purchase Price to the extent there is a material increase in cost to Seller to perform the Work [REDACTED] of the increased cost. The Production Tax Credit Qualifying Deadline cannot be extended for Buyer Delay. Seller shall notify Buyer of the impending Change Order within ten (10) days after Seller first becomes aware of the commencement of the Buyer Delay, and the Parties shall endeavor in good faith to negotiate and execute the Change Order after delivery to Buyer of such Seller Change Order request. If Seller shall fail to deliver the proposed Change Order to Buyer in accordance with the requirements herein [REDACTED]

[REDACTED] Notwithstanding anything to the contrary in this Section 0, in any event, Seller shall continue to exercise all reasonable efforts to continue to perform its obligations under this Agreement (including achieving WTG Substantial Completion by the Production Tax Credit Qualifying Deadline) and shall exercise all commercially reasonable efforts to mitigate or limit Damages to Buyer.

#### 10.4 Remedies for Buyer Delay and Force Majeure.

Notwithstanding anything to the contrary in this Agreement, the elimination or reduction in Delay LDs as provided in Section 0 and an increase in the Purchase Price as provided in Sections 0 shall be the sole remedies of Seller for any Buyer Delay. Further notwithstanding anything contrary in this Agreement, an increase in the Purchase Price as provided above in Section 0 shall be the sole remedy of Seller for any Force Majeure. In no event shall Seller be entitled to any additional compensation, any recovery of any damages, or extension of the Production Tax Credit Qualifying Deadline in connection with any Force Majeure events or Buyer Delay, including consequential damages, lost opportunity costs, impact damages or other similar remuneration.

#### 10.5 Disagreements.

In the event of a Dispute concerning the need for or the substance of a proposed Change Order, such Dispute shall be resolved in accordance with 0 as a Dispute.

#### 10.6 Price Changes.

Change Orders resulting in an increase in the Purchase Price may be priced according to the time and material rate mutually agreed to by the Parties or other equitable method of calculation, which shall include an allowance for Seller's overhead and profit mutually agreed by the Parties not to exceed the maximum percentage permitted by Section 0 with a total not-to-exceed price, or, if the Parties so agree, at a fixed price. If the Parties agree upon a price or payment terms for the changes in the Change Order, the Purchase Price shall be adjusted to reflect the same, and the adjusted Purchase Price will be set forth in the Change Order. Labor costs included in any increase to the Purchase Price will not reflect any premium based on productivity loss or otherwise on diminished efficiency or productivity in the performance of the Work.

#### 10.7 Audit Rights.

Seller shall maintain at all times accurate records, books, logs and documentation that will adequately substantiate in detail Seller's actual out of pocket costs associated with Work authorized and performed under such Change Order on a time and material basis plus an aggregate fee for Seller and all Contractors for profit and overhead not to exceed [REDACTED] (unless otherwise agreed to by the Parties in such Change Order) of the cost of the time and the new Work. Seller shall, at its option, either deliver to Buyer a true copy of, or shall make available for inspection and copying by Buyer or its representatives at Buyer's cost, all such Books and Records that may be necessary to adequately substantiate such Work for review and audit by Buyer or its representatives upon Buyer's request during the term of this Agreement and for a period of three (3) years after Final Payment under this Agreement. All such information shall be subject to the provisions of Section 0.

### **ARTICLE XI COMPLETION OF MILESTONES**

#### 11.1 Achievement of Milestones.

When Seller believes that a Milestone has been achieved, it shall deliver to Buyer a corresponding Milestone Completion Certificate in the form as shown in Exhibit N

#### Milestone Completion Certificates

. Such Milestone Completion Certificate shall include (i) the results of all testing relevant to achievement of such Construction Milestone, (ii) the date on which such Milestone was achieved, and (iii) sufficient detail to enable Buyer to determine that the relevant Milestone has been achieved. Buyer shall have

[REDACTED]

to accept by countersigning such Milestone Completion Certificate or to deliver to Seller a rejection of such Milestone Completion Certificate together with Buyer's reasonable basis for asserting that such Milestone has not been achieved which for clarity may be that Buyer disputes whether any item should be on the applicable punch list (or in the case of Substantial Completion, the Punch List), in each case, set forth in reasonable detail. If Buyer fails to accept or reject any Milestone Completion Certificate within the foregoing timeframe, Buyer shall be deemed to have accepted such Milestone Completion Certificate. If Buyer rejects any Milestone Completion Certificate, the Parties shall cooperate in good faith to address or correct any issues related to Buyer's rejection; provided, that Seller may continue to perform, or cause to be performed, the Work in its reasonable judgment while the Parties work to address or correct any such issues. If the Parties are unable to agree within

[REDACTED]

, whether such Milestone has been achieved, or on the measures required to achieve such Milestone, either Party may submit the Dispute to the Independent Engineer, whose determination shall be final and binding on the Parties. Notwithstanding anything to the contrary in this Agreement, a Milestone shall be deemed to have been achieved when, and only when, (A) Seller has executed and delivered, and Buyer has countersigned and delivered, the Milestone Completion Certificate applicable to such Milestone or (B) the Independent Engineer delivers a final written determination to the Parties pursuant to the immediately preceding sentence that such Milestone has occurred. The effective date of any Milestone shall be the date on which the Milestone Completion Certificate for such Milestone that is accepted or deemed accepted had been originally submitted by Seller to Buyer hereunder. For the avoidance of doubt, the Parties contemplate that a Milestone may be achieved, and a corresponding Milestone Completion Certificate may be executed, with respect to a discrete subset of the systems, infrastructure or equipment comprising the Project, such as, by way of example only, achievement of a Milestone with respect to a discrete number of WTGs that is less than all WTGs comprising the Project.

11.1.1 It is understood and agreed that acceptance of Milestone Completion Certificates is solely for the purpose of (i) confirming that Buyer agrees (or does not disagree) that the Project has achieved a stage of completion in conformance with the Agreement's requirements but without prejudice to Seller's obligation hereunder to deliver to Buyer in conformance with this Agreement's requirements, and (ii) affording the Parties

the opportunity to identify and resolve any issues regarding conformance prior to Substantial Completion. Notwithstanding any disagreements or Disputes with regard to achievement of a Milestone, Seller shall continue to prosecute completion of the Work substantially in accordance with the Project Schedule. Notwithstanding the foregoing or any provision to the contrary in this Agreement, the countersigning of any Milestone Completion Certificate by Buyer, or a written determination by the Independent Engineer that a Milestone has occurred following resolution of a Dispute with respect thereto pursuant to Section 0, shall evidence that the applicable Milestone has been achieved and that the Work related thereto has been accepted (other than for the Work which is part of the Punch List, except in the case of Final Completion). Such acceptance by Buyer shall not be interpreted as a waiver of any Warranty Defects discovered in the future.

#### 11.2 WTG Foundation Completion.

Seller shall achieve or cause to be achieved WTG Foundation Completion with respect to each individual WTG foundation and associated Infrastructure Facilities in accordance with the requirements of this Agreement. "WTG Foundation Completion" with respect to an individual WTG foundation, shall have occurred when the following requirements are met, except with regard to items included on the punch list for Foundation Completion:

11.2.1 Such foundation is mechanically completed and installed in accordance with this Agreement;

11.2.2 Such foundation is structurally complete, grounded, ready for installation of the WTG, and contains all necessary embedded inserts for connection to the applicable Collection System Circuit have been properly installed;

11.2.3 The concrete portion of such foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the WTG or a portion of WTG (e.g. base and mid tower sections) thereon;

11.2.4 The grounding grid of the WTG foundation is complete;

11.2.5 Backfilling of the area surrounding such foundation has been completed in accordance with the foundation design (but excluding activities related to reclamation or revegetation);

11.2.6 Seller has documented any changes to such foundation and the associated Infrastructure Facilities (both above-ground and below-ground in the immediately surrounding area);

11.2.7 Seller has made available to Buyer quality control documents associated with placing mass concrete for the WTG foundations in accordance with the ACI Code described in the Technical Specifications including temperature monitoring results of the cure period and prepared and submitted a punch list with respect to the foundations;

11.2.8 The crane hardstand and laydown and work areas associated with each of the WTG foundations in such WTG foundation group have been completed; and

11.2.9 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for WTG Foundation Completion pursuant to Section 0.

11.3 Collection System Circuit Completion.

Seller shall achieve or cause to be achieved Collection System Circuit Completion with respect to each individual Collection System Circuit and associated WTGs' electrical works in accordance with the requirements of this Agreement. "Collection System Circuit Completion," with respect to each Collection System Circuit, shall have occurred when the following requirements are met, except with regard to items included on the punch list for Collection System Circuit Completion:

11.3.1 The Padmount Transformers and Padmount Transformer foundations have been completed in accordance with this Agreement;

11.3.2 All of the electrical Work necessary to achieve connection of such Padmount Transformers to the Substation in accordance with this Agreement have been installed, insulated, protected and tested, including synchronization with such system;

11.3.3 The fiber optic cable has been installed and tested and meets the specifications of the Turbine Supplier;

11.3.4 All of the electrical Work, including the installation of all power cable and grounding, necessary to energize the WTGs (excluding phase rotation and voltage checks) on the circuit are completed in accordance with the requirements of this Agreement;

11.3.5 The complete fiber optic network connection from each WTG on such Collection System Circuit to the substation and the fiber to the permanent meteorological tower location compliant with the Turbine Supplier's SCADA requirements have been provided, installed and tested;

11.3.6 All Equipment and Materials associated with such electrical Work have been installed in accordance with the requirements of this Agreement and checked for adjustment;

11.3.7 Such electrical Work necessary to achieve connection of the WTGs to Transmission Owner's Interconnection Facilities (excluding the SCADA System) are either (i) energized or (ii) immediately capable of being energized upon completion of the Interconnection Facilities and Substation by Buyer;

11.3.8 All of such electrical Work has been properly constructed, installed, insulated and protected where required for such operation, correctly adjusted, tested and commissioned, are mechanically, electrically and structurally sound in accordance with the requirements of this Agreement, and can be used safely in accordance with this Agreement, including all Requirements;

11.3.9 Seller has prepared and submitted a punch list with respect to the Collection System Circuit; and

11.3.10 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Collection System Circuit Completion pursuant to Section 0.

11.4 Substation Completion.

Seller shall achieve or cause to be achieved Substation Completion in accordance with this Agreement. "Substation Completion" shall have occurred when the following requirements are met, except with regard to items included on the punch list for Substation Completion:

11.4.1 All access roads and other improvements necessary for performance with the Collection System Substation Work have been completed;

11.4.2 All Equipment and Materials necessary for the Substation have been installed in accordance with the requirements of this Agreement and can be used safely in accordance with this Agreement including all Requirements;

11.4.3 All Equipment and Materials necessary to achieve connection of the Substation to the Interconnection Point have been installed, and the Substation is either (i) energized, or (ii) immediately capable of being energized upon completion of the Interconnection Facilities by Buyer;

11.4.4 The Substation is mechanically complete in accordance with the requirements of this Agreement, with all relaying, metering, GIA required telemetry communications and other equipment;

11.4.5 All tests and inspections associated with such Substation Equipment and Materials have been completed according to the Requirements and documented (except to the extent the fiber optic cable or the SCADA System cannot be tested because of the status of the Turbine Supplier's Work as built or field verified redlined drawings are provided to the Buyer at least [REDACTED] prior to issuance of a Milestone Certificate for Substation Completion;

11.4.6 Seller has prepared and submitted a punch list with respect to the Substation;

11.4.7 The Collection System Substation is capable of delivering all of the electrical energy generated by the WTGs to the Point of Interconnection;

11.4.8 The Substation has been successfully energized and tested; and

11.4.9 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Substation Completion pursuant to Section 0.

#### 11.5 Infrastructure Completion.

Seller shall achieve or cause to be achieved Infrastructure Completion in accordance with this Agreement. "Infrastructure Completion" shall have occurred when the following requirements are met, except with regard to items included on the punch list for Infrastructure Completion:

11.5.1 The Project Site roads have been constructed or improved and maintained in accordance with the specifications of this Agreement excluding reclamation work;

11.5.2 Seller has made available to Buyer all quality control documents required for Infrastructure Facilities;

11.5.3 WTG Foundation Completion has been achieved for the WTG foundations;

11.5.4 Collection System Circuit Completion has been achieved for the Collection System circuits (does not include the SCADA System);

11.5.5 Substation Completion has been achieved;

11.5.6 The grounding grid has been installed and tested and meets the Turbine Supplier's specifications;

11.5.7 The Equipment and Materials in connection with the foregoing and any other Infrastructure Facilities have been installed in accordance with the manufacturer's installation specifications;

11.5.8 Such Equipment and Materials are mechanically sound and all Equipment and Materials other than the WTGs are electrically sound and have been tested and may be operated without damage to the Project or other property and without injury to any person;

11.5.9 Seller has prepared and submitted a punch list with respect to Infrastructure Completion; and

11.5.10 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Infrastructure Completion pursuant to Section 0.

#### 11.6 WTG Mechanical Completion.

For each individual WTG, Seller shall achieve or cause to be achieved WTG Mechanical Completion with respect to such individual WTG in accordance with the requirements of this Agreement. "WTG Mechanical Completion," with respect to an individual WTG, shall have occurred when the following requirements are met, except with regard to items included on the punch list for WTG Mechanical Completion:

11.6.1 The WTG has been installed in accordance with the manufacturer's installation specifications included in the Turbine Supply Agreement, including performing generator alignment;

11.6.2 Seller has made available the completed GE Installation Checklist document and the GE Bus Bar Installation Checklist document, both of which must reflect that the Turbine Supplier has determined that each WTG is mechanically complete;

11.6.3 The WTG is mechanically and electrically sound and has been tested and is capable of being electrically connected to the grid and operated without damage to the Project or other property and without injury to any Person;

11.6.4 Seller has prepared and submitted a punch list with respect to such WTG; and

11.6.5 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for WTG Mechanical Completion with respect to the applicable WTGs pursuant to Section 0.

11.7 WTG Substantial Completion.

For each individual WTG, Seller shall achieve or cause to be achieved WTG Substantial Completion with respect to such individual WTG in accordance with the requirements of this Agreement. "WTG Substantial Completion," with respect to an individual WTG, shall have occurred when the following requirements are met, except with regard to items included on the punch list for WTG Substantial Completion:

11.7.1 All prior Milestones for such WTG (to the extent necessary for such WTG to otherwise achieve WTG Substantial Completion) have been fully achieved;

11.7.2 The circuit on the Collection System Circuit for such WTG has been installed and tested and meets the Turbine Supplier's specifications;

11.7.3 Such WTG has been commissioned by the Turbine Supplier in accordance with the Commissioning Plan, and Seller has received from the Turbine Supplier for such WTG a Turbine Completion Certificate under and as defined in the Turbine Supply Agreement;

11.7.4 Seller has submitted to Buyer each portion of the O&M Manual and SCADA Manual then in Seller's possession;

11.7.5 Seller has prepared and submitted a punch list with respect to such WTG; and

11.7.6 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for WTG Substantial Completion with respect to the applicable WTGs pursuant to Section 0.

11.8 Substantial Completion.

Seller shall achieve or cause to be achieved Substantial Completion in accordance with the requirements of this Agreement. "Substantial Completion" shall have occurred when the following requirements are met, except with regard to Punch List Items:

11.8.1 Seller has achieved WTG Substantial Completion for each WTG;

11.8.2 All prior Milestones for each WTG have been fully achieved, except for Work that qualifies as Punch List Items to be completed prior to Final Completion;

11.8.3 All quality assurance documentation has been provided to and received by Buyer in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Assurance Plan except for Punch List items;

11.8.4 Each WTG and the balance of the Project is capable of delivering electric power to the Interconnection Point in accordance with the requirements in the Scope of Work;

11.8.5 The SCADA System is in compliance with this Agreement and documentation of successful SCADA Control Tests (including AVR functionality) are delivered;

11.8.6 Seller has delivered Project Documents and Deliverables, including preliminary Record Drawings necessary to safely operate the Project (with the final Record Drawings to be delivered at Final Completion), O&M Manual, SCADA Manual, Job Book, Books and Records, Warranties (as provided in Section 0), and the Assignment of Remaining Project Assets, including the Bill of Sale;

11.8.7 The Project Site has been cleaned-up in accordance with all Requirements including the removal of waste materials and rubbish caused by Seller's Work related activities except for Punch List Items;

11.8.8 The Project Contracts information in Exhibit AF has been updated, with such updates to Exhibit AF marked by redlining or other appropriate mechanism reflecting the changes since Exhibit AF was delivered to Buyer at NTP;

11.8.9 Any issues relating to the Quality Assurance Plan have been resolved in accordance with the Requirements;

1.1.15 11.8.10 Seller and each Contractor shall have delivered the applicable waivers and other documents required in Section 0 as of Substantial Completion; Seller shall have obtained, and Buyer shall have received copies of, all Consents, Approvals and Applicable Permits, including the Special Land Use Permit, set forth on Exhibit R

Applicable Permits;

11.8.11 Seller shall have delivered the Production Tax Credit Beginning of Construction Certificate to Buyer, and the representations and warranties contained therein shall be true and correct in all material respects as of Substantial Completion;

11.8.12 Seller shall have delivered a Tax Status Letter to Buyer as required in Section 1.1.16;

11.8.13 Seller has paid all Delay LDs to Buyer previously invoiced pursuant to Section 0 that were not waived (or such Delay LDs were deducted from the Purchase Price paid to Seller or will be deducted in connection with the Progress Payment for Substantial Completion); and

11.8.14 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Substantial Completion, including the Punch List, pursuant to Section 0.

11.9 Final Completion.

Seller shall achieve or cause to be achieved Final Completion in accordance with the requirements of this Agreement. "Final Completion" shall have occurred when the following requirements are met:

11.9.1 Seller shall have achieved Substantial Completion;

11.9.2 Seller has delivered to Buyer the As-Built Survey;

1.1.16 11.9.3 Seller has delivered each Deliverable identified in Exhibit AC Submittals and Deliverables List;

11.9.4 All Punch List Items have been completed;

11.9.5 All quality assurance documentation has been provided to and received by Buyer in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Plan Summary;

11.9.6 Buyer has received the final Record Drawings in electronic formats as required in Section 0;

11.9.7 The Project Site has been cleaned-up in accordance with all Requirements, including the removal of waste materials and rubbish caused by Seller's Work related activities;

11.9.8 Seller has restored or repaired, as required by the Real Property Documents or otherwise required by this Agreement including Requirements, all property of landowners that has been physically impacted by performance of the Work;

11.9.9 All reclamation work has been completed;

11.9.10 All other items necessary to complete the Work have been completed, including installation and commissioning of one (1) permanent meteorological mast in accordance with the Scope of Work; and

11.9.11 Seller has signed and delivered to Buyer, and Buyer has accepted or is deemed to have accepted, the Milestone Completion Certificate for Final Completion pursuant to Section 0.

## **ARTICLE XII REPRESENTATIONS AND WARRANTIES OF SELLER**

As of the Effective Date and then again reaffirmed as of the NTP Closing and the date Seller achieves Substantial Completion, Seller hereby represents and warrants to Buyer all of the following set forth in this 0; *provided, however*, that to the extent any representation and warranty is specified as being given as of a specific date, such representation and warranty shall be deemed to be made only as of such date and based on the Project Layout on such date:

### 12.1 Organization.

Seller is duly formed, validly existing and in good standing under its jurisdiction of formation and is duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) require such qualification, including in the State of Michigan. All of Seller's Organizational Documents are in full force and effect, and true, correct and complete copies are attached as Exhibit U

Seller's Organizational Documents to this Agreement.

### 12.2 Authority.

Seller has the requisite power and authority to (i) conduct its business as now conducted, to own, lease and operate its other assets (including the Project Assets); (ii) to execute and deliver this Agreement and the Project Documents; (iii) and to perform fully its obligations hereunder and thereunder, including to acquire, develop, engineer, design, construct, commission, warrant, own and operate the Project and to enter into all Project Contracts contemplated hereunder to be entered into by Seller and otherwise do all things necessary to effect the transactions contemplated hereby and transferring, or causing the transfer of, the Project and Project Assets to Buyer. Seller is not in violation of any of its Organizational Documents and attached as Exhibit S

Form of Seller's Officer's and Secretary's Certificate is Seller's Officer's and Secretary's Certificate and attached as Exhibit T

Seller's Organization Chart is Seller's Organization Chart identifying Seller's parent affiliates.

### 12.3 Binding Effect.

Seller has taken all necessary limited liability company action to authorize, effect and approve the transactions set forth in this Agreement and all Project Documents. This

Agreement has been duly executed and delivered by Seller. Assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity). Upon the execution and delivery by Seller of the Project Documents to which it is a party, assuming the due authorization, execution and delivery of each such Project Document, each such Project Document will constitute the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

#### 12.4 No Violations.

Seller's execution and delivery of this Agreement and the execution and delivery by Seller of the Project Documents, together with the consummation and performance of their obligations hereunder and thereunder do not (i) conflict with or violate the Organizational Documents of Seller; (ii) conflict with, violate, constitute a default under, trigger any "change of control" rights or remedies under, impose or create any Lien under, or impose, result in or create any right of any Person related to acceleration of remedies, buy-out rights, rights of first offer or refusal or rights of termination under, any Project Contract; (iii) conflict with or violate any Applicable Law or any Order applicable to Seller, or any of its properties or assets, including the Project Assets; or (iv) require the consent or approval of any Person which has not already been obtained or will not be obtained prior to the applicable Milestone Date, and such shall be delivered to Buyer prior to Substantial Completion.

#### 12.5 Project Assets.

12.5.1 At NTP Closing and thereafter as balance of the Project Assets are transferred, Seller has good, marketable and indefeasible title or easement rights, as applicable under this Agreement, to all of its Project Assets free and clear of any and all Liens (other than Permitted Encumbrances), including those in Exhibit F

Project Site & Layout  
\_that identifies the Project Site and Exhibit H

Real Property Spreadsheet that identify all Real Property Documents, that are intended or necessary for Buyer's ownership or use of the Project Site. To Seller's knowledge, there are no unrecorded easements or claims or encroachments or prescriptive easements affecting any portion of the Project Site other than the Permitted Encumbrances. Seller has no legal obligation, contingent or otherwise, or any nonbinding understanding to sell, lease, dispose of, or otherwise transfer or subject to Lien (other than Permitted Encumbrances) any Project Assets.

12.5.2 At NTP Closing and Substantial Completion, there are no condemnation, zoning or other land-use proceedings by or before any Governmental Authority, now pending or threatened, with respect to the Project, including the sale, reduction, or use of the MW power or Environmental Attributes therefrom or any portion thereof, that does or would adversely affect, interfere with or alter the Project, including Buyer's use of the Project Site or the use of the Project. Neither Seller nor its Affiliates has received written notice of any pending or threatened special assessment proceedings affecting any portion of the Project Site nor any proposals, plans, studies, or investigations of any Governmental Authority regarding the Project, including the Project Site.

12.5.3 With respect to the Real Property Documents, when title or assignment of rights thereto is transferred to Buyer as set forth herein:

12.5.3.1 Each of the Real Property Documents is legal, valid, binding, and enforceable against Seller and, to Seller's knowledge, each other party thereto, in accordance with its terms;

12.5.3.2 Each of the Real Property Documents is in full force and effect and no defaults have occurred and are continuing thereunder, and no event has occurred which, with or without notice or lapse of time or both, would constitute a breach or default thereunder or permit termination, modification or acceleration by any party under any such Real Property Documents, and Seller has not received from, or given to, any counterparty thereto any written notification that any event has occurred which (whether with or without notice, lapse of time or both) would constitute a breach or default thereunder, in any case, which has resulted in or could reasonably be expected to result in any adverse effect;

1.1.16.1 12.5.3.3 True, correct and complete copies of all Real Property Documents and all amendments to any of the Real Property Documents have been delivered to Buyer as are listed in detail on the attached Exhibit H

Real Property Spreadsheet through the shared electronic online document site described in Section 0 as will be updated from time to time as provided in this Agreement; and

12.5.3.4 There are no disputes, oral agreements or forbearance programs as to any of the Real Property Documents involving Seller or any of its Affiliates or, to Seller's knowledge, any other Person.

12.5.3.5 None of Seller or any of its Affiliates, and, to Seller's knowledge, no counterparty to any Real Property Documents, is in violation of any Applicable Laws with respect to the Project Site, nor has Seller or any of its Affiliates received any written notification that any Person is in violation of any Applicable Laws with respect to the Project Site.

12.5.4 To Seller's knowledge, there are no plans, studies or efforts by any Governmental Authority to widen, modify or realign, or to impose restrictions on the use of any Access Roads providing access to or within the Project Site, or any portion thereof, which would restrict access, or increase the cost of access, to the Project.

12.5.5 There are no defects or conditions of the soil or land, including any wetlands, which has or could reasonably be expected to have an adverse effect on the Project.

12.5.6 There are no commitments or agreements between Seller or any of its Affiliates and any Governmental Authority or public or private utility adversely affecting the Project Site, or any portion thereof, or any improvements, the Obtained Permits or the Permit Applications that will have an adverse effect on the Project or Buyer.

12.5.7 To Seller's knowledge, there are no other facts or conditions relating to the Project, including the Project Site, taken as a whole that have or could reasonably be expected to have a material adverse effect on the Project on Buyer.

12.5.8 No mining, mineral or water extraction or development project is under construction or for which permits are currently being obtained, located or planned to be located on or under the Project Site, or any portion thereof, which would have an adverse effect on the use and operation of the Project Site for the development and operation of the Project.

12.5.9 There are no existing or continuing claims against the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller or its Affiliates).

12.5.10 All utility services necessary for the construction and operation of the Project for Buyer's intended purpose are available at the Project Site or will be so available as and when required upon commercially reasonable terms.

12.5.11 The Project Assets comprise all of Seller's right, title and interest in respect of the Project. At Substantial Completion, the Project Assets shall include all of the assets, rights, privileges, consents, approvals and permits necessary for Buyer to, as of Substantial Completion, own and operate the Project in compliance with the Requirements, including Applicable Laws.

12.5.12 No Affiliate of Seller is party to a Project Contract.

## 12.6 Taxes.

12.6.1 All Tax Returns required to have been filed by or with respect to Seller with respect to the Project and the Project Assets have been duly and timely filed, and each such Tax Return was true, correct and complete; *provided, however*, that no representation is made pursuant to this Section 0 regarding any Tax attribute of the Project or the Project Assets. All Taxes required to be paid by Seller with respect to the Project or any of the

Project Assets (whether or not shown or required to be shown on any Tax Return) have been timely paid.

12.6.2 There is no action or audit now pending, threatened in writing, or to Seller's knowledge proposed action or audit against, or with respect to, Seller with respect to the Project or any of the Project Assets in respect of any Taxes. There are no Liens for Taxes on any of the Project Assets (except for Permitted Encumbrances).

12.6.3 There is no dispute or claim concerning any liability for Taxes with respect to Seller regarding the Project or any of the Project Assets for which notice has been provided, threatened or asserted, or which is otherwise known to Seller. No issues have been raised by any Governmental Authority in writing to Seller in any examination by any Governmental Authority with respect to Seller that, by application of similar principles, reasonably could be expected to result in a proposed deficiency for any other Tax period of such Person not so examined for which the statute of limitations has not closed. Seller has not waived (and is not subject to a waiver of) any statute of limitations in respect of Taxes nor has Seller agreed to (and is not subject to) any extension of time with respect to a Tax assessment or deficiency with respect to the Project or any of the Project Assets.

12.6.4 Seller has not received (or is not subject to) any ruling from any Governmental Authority or entered into (or is not subject to) any agreement with a Governmental Authority with respect to Taxes regarding the Project or any Project Assets (other than with respect to property Taxes unrelated to the Project Site).

12.6.5 Seller, with respect to the Project and Project Assets, has no liability for the Taxes of any Person, (i) as a transferee or successor, (ii) by contract, or (iii) otherwise.

12.6.6 For purposes of Section 1445(b)(2) of the Code, Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Code.

1.1.17 12.6.7 Seller shall order a Tax Clearance Certificate from the State and Local Governmental Authority where the Project Site is located in the form attached as Exhibit L

Form of Tax Clearance Certificate ("Tax Clearance Certificate") and obtain and deliver to Buyer a Tax Status Letter from such Governmental Authority indicating whether there are any amounts owed to such Governmental Authority as of NTP (or another date to be mutually agreed) by Seller with respect to the Project and the Project Assets ("Tax Status Letter"). If any amounts are owed, Seller represents and warrants that it shall make timely payment of such amounts, and such amounts paid or to be paid are solely at Seller's cost and expense.

1.1.18 12.6.8 Seller shall have delivered the Production Tax Credit Beginning of Construction Certificate true and correct in the form attached hereto as Exhibit AM

Production Tax Credit Beginning of Construction Certificate\_as of the Effective Date, NTP Closing, and the date of Substantial Completion, respectively, under the terms and conditions of and as otherwise required by Section 0.

## 12.7 Consents and Approvals.

Seller is not required to give any notice to or obtain any consent, approval, order or authorization of or registration, declaration or filing with or exemption (collectively, the "Consents") from any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Project Documents, including the Real Property Documents Governmental Approvals. Copies of Consents shall be delivered to Buyer in a timely manner and (i) with respect to any Work for which a Consent is required, prior to Seller's commencement of the applicable Work; and (ii) with respect to the balance of the Project, on or prior to the date required by the nature of the Consent, but in any event not later than the Substantial Completion date.

## 12.8 Compliance with Law.

Seller has complied and will continue to comply, and caused each of Seller's Affiliates (to the extent related to the Project) and Contractors to comply, with all Applicable Laws and Orders applicable to each such Party, the Project Assets, and the Project, and has not received any notice of any non-compliance.

## 12.9 Litigation.

Seller and any of their Affiliates has not received written notice of any Proceeding, and there is no pending or threatened Proceeding, against Seller or that relates to the Project, this Agreement, the Project Documents or any Project Assets. Seller shall notify Buyer of any Proceeding it discovers relating to the foregoing within five (5) Business Days of such discovery, including any such Proceeding involving Affiliates, Contractors, or other Persons.

## 12.10 Project Contracts.

12.10.1 Exhibit AF is a true, correct and complete list of all Project Contracts that have been executed and all of the Material Project Contracts that either have been obtained or will be obtained by NTP, Substantial Completion, or Final Completion are specified in 0 AF.

12.10.2 Each Project Contract is (i) duly authorized, executed and delivered by Seller; (ii) constitutes a legal, valid, binding and enforceable agreement of Seller, and to Seller's knowledge, each other Person who is a party to the applicable Project Contract; (iii) assignable to Buyer without further action of approvals of any Person other than Seller (or if Consent from any counterparty to a Project Contract is needed, such Consent can be obtained in the ordinary course of business to comply with this Agreement); and (iv) will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement, the Project and the Project Documents.

12.10.3 Neither Seller nor, to Seller's knowledge, any other Person is in breach of or in default under any Project Contract to which such Person is a party, and, to Seller's knowledge, no event has occurred which with the passage of time or giving of

notice or both would constitute such a default, result in a loss of rights or permit termination or acceleration under, or result in the creation of any Lien.

12.10.4 (i) No Project Contract has been mortgaged, pledged, hypothecated, deeded in trust or otherwise subjected to any security interest or Lien other than Permitted Encumbrances and (ii) no Material Project Contract has been amended, modified or supplemented.

12.10.5 At the time any Project Contract is assigned to Buyer pursuant to this Agreement, there are no outstanding payments or obligations pursuant to such Project Contract arising out of the Work owed by the Seller or its Affiliates, on the one hand, to any Person who is a party to such Project Contract, on the other hand.

12.11 Environmental Attributes.

Seller is not party to any agreement to sell electric power from the Project or Environmental Attributes related to the electric power to be generated by the Project.

12.12 Environmental Matters.

12.12.1 Seller is and during all applicable limitation periods has been in compliance with all Environmental Laws except as disclosed to Buyer in the Project Documents. To Seller's knowledge, the Project Site is and during all applicable limitation periods has been in compliance with all Environmental Laws except as disclosed to Buyer in the Project Documents. Seller is not subject to any binding and enforceable Orders relating to protection of the Environment and related to the Project nor is Seller by operation of any Environmental Law required to take any action relating to the protection of the Environment by reason of any Hazardous Materials related to the Project or related to the Project Site. For purposes of this Agreement, "Hazardous Materials" shall not include customary and necessary quantities of commercial products required for completion of the Work, including motor vehicle fuel, when used, stored, and managed in compliance with applicable Environmental Laws.

12.12.2 There are no pending or threatened Environmental Claims related to the Project or the Project Site and, to Seller's knowledge, there is no legal or factual basis for the assertion of any Environmental Claim.

12.12.3 Neither Seller nor its Affiliates has and, to Seller's knowledge, no other Person has made, caused or allowed any (a) Releases of Hazardous Materials which have occurred on the Project Site, or (b) Releases of Hazardous Materials which have occurred immediately adjacent to the Project Site, in each case which are or were required to be investigated or reported by Seller, or their Affiliates, or with respect to the Project or any Project Assets, under any Environmental Law.

1.1.19 12.12.4 Seller has completed, as of NTP Closing, the pre-construction surveys identified on Exhibit AW

1.1.20 Environmental Species Disclosure. Except as set forth on Exhibit AW

Environmental Species Disclosure to Seller's knowledge, (i) no species listed or proposed for listing as threatened or endangered under any Environmental Law, or otherwise identified under Environmental Laws as having special status have been observed on the land to be occupied by the Project, (ii) no burial grounds and no archeological resources (which for purposes of this representation shall be deemed to mean any material remains of past human life or activities which are of archeological interest and at least fifty (50) years of age) or paleontological resources (which for purposes of this representation shall be deemed to refer to "fossils" as such term is commonly used) in either case have been identified on the Project Site, and (iii) no cultural or historical sites are located on the Project Site.

Buyer may decide to pursue an Eagle Conservation Plan, Eagle Take Permit, Habitat Conservation Plan, Bird and Bat Conservation Strategy or Incidental Take Permit for current federally listed or protected species. Seller shall provide support to Buyer for such items through Substantial Completion if any federally listed or protected species is identified on the Project Site and Buyer decides to seek to obtain an Eagle Conservation Plan, Eagle Take Permit, Habitat Conservation Plan or Incidental Take Permit for such federally listed or protected species. If Buyer does elect to pursue any such items, Buyer shall be responsible for such documents and applications and shall manage any consultants supporting such documents and applications. Seller's support shall be providing to Buyer all agency correspondence, environmental data, and associated reports developed through NTP, and being available to Buyer for questions and participating in agency meetings if requested by Buyer through Substantial Completion.

#### 12.13 Permits.

##### Exhibit R

Applicable Permits sets forth a true, correct and complete list of all (i) Applicable Permits required for the development and construction, and, as of Substantial Completion, for operation, ownership and use of the Project, (ii) Obtained Permits as of the Effective Date, and (iii) Permit Applications as of the Effective Date. With respect to the Permit Applications, each such Permit Application has been or will be validly filed as specified in Exhibit R

Applicable Permits, in compliance with Applicable Laws, and has not been terminated, revoked or modified. Neither Seller, nor an Affiliate of Seller has received (a) a written notice from any Governmental Authority revoking any Obtained Permit or rejecting any Permit Application or (b) a written notice from any Governmental Authority modifying the requirements pertaining to any Obtained Permit or Permit Application. The Parties recognize that inherent in the development and construction of a Project of this nature, new Permits arise from time to time, and as such, at any time (other than at Substantial Completion) the representation in clause (i) of this Section 0 is to Seller's knowledge, provided that at Substantial Completion, such representation is not so qualified.

#### 12.14 [Reserved].

#### 12.15 Project Schedule.

Seller has conducted all necessary due diligence and investigation of the Project Site, its conditions, Applicable Laws, Applicable Permits, Labor skill and availability, and other conditions necessary for Seller to determine that the Milestone Dates as proposed by Seller in this Agreement are reasonable and achievable by Seller, and that Seller is not relying on any information, assurances or other promises of Buyer outside of the terms of this Agreement to establish the Milestone Dates, including the Production Tax Credit Qualifying Deadline.

12.16 Brokers or Finders.

Neither Seller or any of their Affiliates has engaged any broker, finder or other agent with respect to the Purchase and Sale contemplated by this Agreement and the Project Documents, any sale or financing of the Project, or any Production Tax Credits or other items or attributes that may be generated by the Project upon operation, including Tax credits or benefits or Environmental Attributes or other pollution or emission credits or benefits, for which Buyer or the Project could become, or are, liable or obligated.

12.17 Absence of Regulation.

12.17.1 Seller is in compliance with PUHCA and the FPA.

12.17.2 The Project is in compliance with all applicable requirements of FERC.

12.18 Intellectual Property.

Seller has rights to all Intellectual Property necessary for the development or use of the Project including all Work. Seller has not (i) infringed upon or misappropriated any Intellectual Property rights of any Person or (ii) received any written charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that a Person must license or refrain from using any Intellectual Property rights of any such Person in connection with the Project).

12.19 Default.

Seller is not in default under this Agreement or any of the Project Documents.

12.20 Solvency.

No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller or any Affiliate of Seller that could affect Seller or Guarantor's ability to perform their respective obligations pursuant to this Agreement and/or the Guaranty. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller or any Affiliate of Seller that could affect Seller or Guarantor's ability to perform their respective obligations pursuant to this Agreement and/or the Guaranty; nor does Seller have any plan or intention and has not received any notice that any other Person has any plan or intention of filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and

has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder. Assuming the payment by Buyer of its obligations for Progress Payments under this Agreement, Seller will continuously have sufficient funds available to meet its payment obligations in respect of the Work and the development and construction of the Project pursuant to this Agreement including the Project Contracts.

12.21 Project Credit Support.

Except as set forth in Exhibit AU

Project Credit Support, Seller has no outstanding letters of credit, guarantees, or other credit assurances that have been issued for the account of Seller other than the Guaranty.

12.22 Insurance.

All Insurance policies required hereunder are in full force and effect, no payment of premiums with respect thereto is past due, and no notice of cancellation or termination has been received by the owner or holder of such policy, except for cancellations or terminations of policies that were replaced with substantially similar coverage and terms prior to the effectiveness of such cancellation or termination and delivered to Buyer. No pending claims exist under any such policies with respect to the Project or the Project Assets.

12.23 FAA Determinations.

As of NTP Closing and Substantial Completion, Seller has obtained and continues to hold true, correct and complete copies of a FAA determination of No Hazard to Air Navigation for each location where Seller intends to erect a WTG as part of the Project. Seller has not received any communication from the FAA that it objects to the construction of the Project or any portion thereof except as disclosed to Buyer under the Disclosure Schedule and cured prior to Seller achieving Substantial Completion.

12.24 Wind Data.

Seller has delivered to Buyer true, correct and complete copies of all Wind Data, if any, in Seller's possession, which is identified on Exhibit W

Wind Data.

### **ARTICLE XIII REPRESENTATIONS AND WARRANTIES OF BUYER**

As of the Effective Date and then again reaffirmed as of the NTP Closing and the date Seller achieves Substantial Completion, Buyer hereby represents and warrants to Seller all of the following set forth in this 0; *provided, however*, that to the extent any representation and warranty is specified as being given as of a specific date, such representation and warranty shall be deemed to be made only as of such date:

13.1 Organization.

Buyer (i) has been duly incorporated, is validly existing and is in good standing under its jurisdiction of formation and (ii) has been duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) requires such qualification, including the State of Michigan.

13.2 Authority.

Buyer has the requisite power and authority to execute and deliver this Agreement and, subject to receipt of the MPSC Approval and the approval of its Board of Directors, to perform fully its obligations hereunder.

13.3 Binding Effect.

Buyer has taken all necessary corporate action to authorize, effect and approve the transactions set forth herein except as otherwise provided in this Agreement. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

13.4 No Violations.

Buyer's execution and delivery of this Agreement, together with the performance of its obligations hereunder do not (i) violate Buyer's Organizational Documents, (ii) violate or constitute a default under any agreement or instrument to which Buyer is a party or by which Buyer may be bound, (iii) violate any Applicable Law, order, writ, injunction, decree, statute, rule or regulation applicable to Buyer, or its properties or assets, or (iv) except as otherwise provided in this Agreement, require the consent or approval of any Person, which has not already been obtained.

13.5 Consents and Approvals.

Other than the MPSC Approval, Buyer is not, nor will Buyer be, required to give any notice to or obtain any Consent from any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Project Documents or the consummation of the transfer of the Project Assets to Buyer.

13.6 Brokers or Finders.

Buyer has not engaged any broker, finder or other agent with respect to the transactions contemplated by this Agreement, any purchase or financing of the Project, or any purchase or transfer of any production credits or other items or attributes that may be generated by the Project upon operation, including Tax credits or benefits or Environmental Attributes or other pollution or emission credits or benefits, for which Seller could become, or is, liable or obligated.

13.7 Solvency.

No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Buyer. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Buyer or the income of Buyer; nor does Buyer have any plan or intention of and has not received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Buyer is solvent and has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder.

## ARTICLE XIV INSURANCE AND BONDS

### 14.1 Insurance Requirements.

Seller shall, at its sole expense, procure and maintain, and shall cause its Contractors to procure and maintain, throughout the term of this Agreement the types of insurance with the minimum limits as set forth on Exhibit X

Insurance and Bond Requirements\_("Insurance").

1.1.21 14.1.1 Insurance Deliverables. On the Effective Date, Seller has delivered to Buyer Seller's certificates of insurance and additional insured endorsements, if applicable, for all Insurance then maintained in accordance with Exhibit X

1.1.22 Insurance and Bond Requirements. Seller shall maintain or cause to be maintained Builder's Risk insurance. Such Builder's Risk insurance shall be paid for by Seller. Within ten (10) days of the NTP Closing, Seller shall furnish a copy of Seller's Builder's Risk of insurance covering the Work that names Buyer as an additional insured and shall maintain such Builder's Risk insurance through Substantial Completion. The Builder's Risk policy shall be prepared and issued in accordance with Exhibit X

Insurance and Bond Requirements.

14.1.2 Limits. The limits of Insurance indicated above are minimum requirements that shall not be interpreted or permitted to limit Seller's liability. Buyer's receipt of certificates and endorsements that do not comply with the Insurance requirements or Seller's failure to provide certificates shall not limit or relieve Seller of the duties and responsibilities of maintaining insurance in compliance with these Insurance requirements and shall not constitute a waiver of requirements.

### 14.2 Bond Requirements.

Seller shall (at Buyer's request and sole expense to be paid directly to Seller or the surety or Contractor) procure and maintain, or to the extent requested by Buyer shall cause its Contractors to procure and maintain, throughout the term of this Agreement payment and performance bonds in accordance with Buyer's directions in Section 0 and as further provided in Exhibit X

Insurance and Bond Requirements\_("Bonds").

14.2.1 Bonds Deliverables. Upon Buyer's request, Seller shall deliver to Buyer the proposed Bonds in accordance with Section 0.

14.2.2 Limits. The Bond requirements indicated above are minimum requirements that shall not be interpreted or permitted to limit Seller's liability. Buyer's receipt of Bonds that do not comply with this Agreement or Seller's failure to provide Bonds shall not limit or relieve Seller of the duties and responsibilities of maintaining Bonds in compliance with these Bond requirements and shall not constitute a waiver of requirements.

## ARTICLE XV INDEMNIFICATION

### 15.1 Seller's General Indemnity.

Subject to 0, Seller shall defend and indemnify Buyer, its Affiliates, and their respective employees, agents, partners, shareholders, officers, directors, members, managers, successors, and permitted assigns (each, a "Buyer Indemnitee" and collectively "Buyer Indemnites"), from and against the following:

15.1.1 All Losses arising from (i) claims for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious act or omission (including strict liability) by Seller, and by those working by or through Seller on the Project, during Seller's performance of this Agreement, including the Work; or (ii) from performing or failing to perform any of its obligations under this Agreement; or (iii) any curative action under any of the Warranties following performance, in each case, of Seller, Seller's Affiliates, any Contractor until Substantial Completion is achieved and thereafter to extent Seller has responsibility for Contractor's performance with respect to Punch List and under the Warranty (except to the extent any Contractor is directed by Buyer) or anyone employed by any of them;

15.1.2 All Losses that arise out of or result from the following:

15.1.2.1 Except to the extent arising with respect to Buyer's failure of its payment obligations hereunder (and in turn, amounts owed to any Contractor) (i) any Seller Lien arising in violation of this Agreement on any of the Equipment and Materials, the Work, Project Site, or other Project Assets or any fixtures or personal property included in the Work or forming a part of the Project (whether or not such Seller Lien is valid or enforceable), and (ii) all claims for payment or compensation for Work performed hereunder, whether or not reduced to a Seller Lien, filed by any Contractors (including all Persons performing any portion of the Work);

15.1.2.2 Employers' liability or workers' compensation claims filed by any employees or agents of Seller or any of its Contractors;

15.1.2.3 All Losses arising from third-party claims, including claims by Contractors and employees of Seller and Contractors, and claims directly from Buyer and Buyer Indemnites that arise out of or result from (i) the failure of Seller or any of its Contractors to comply with the terms and

conditions of this Agreement, including any inaccuracy in or breach of any representation or warranty made by Seller or breach of or failure to perform any covenant of Seller in this Agreement, further including under Applicable Laws and Permits; and (ii) premises liability during the course of Seller's performance of the Work;

15.1.2.4 Any and all fines, penalties, or assessments issued by any Governmental Authority that Buyer may incur as a result of executing any applications for the Project that were directly requested in writing by Seller (and in any event, excluding any applications or filings with the MPSC or FERC);

15.1.2.5 All Losses arising from claims by any Governmental Authority that arise out of or result from the failure of Seller to pay, as and when due, all Taxes (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority which Seller is obligated to pay pursuant to the terms of this Agreement;

15.1.2.6 All Losses arising from claims by any Governmental Authority claiming Taxes based on gross receipts or on income of Seller, any of its Contractors, or any of their respective agents or employees with respect to any payment made to or earned by Seller, any of its Contractors, or any of their respective agents or employees under this Agreement;

15.1.2.7 All Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the Project or Project Site, that arise out of or result from:

(1) The use of Hazardous Materials by Seller or any Contractor in connection with the performance of the Work which use includes the storage, transportation, processing, or disposal of Hazardous Materials;

(2) Any Release or Threat of Release of Hazardous Materials in connection with the performance of the Work by Seller or any Contractor; or

(3) Any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened, or actual violation of any Applicable Laws or Applicable Permits by Seller or Contractor with respect to Hazardous Materials in connection with the performance of the Work.

15.1.2.8 Claims, actions, or suits filed against Buyer or by any Contractor for additional costs incurred or for additional compensation, in each case, arising out of Contractor's performance of the Work or other participation in the Project;

15.1.2.9 Claims, liens, obligations, liabilities, expenses, and causes of action of whatever kind arising out of any employment decision or action made or taken by Seller or its Contractors with respect to its or their employees; and

15.1.2.10 Any fraud, gross negligence, intentional misrepresentation or willful misconduct by Seller, including its Affiliates and Contractors, in connection with this Agreement.

WITH RESPECT TO CLAIMS AGAINST BUYER BY SELLER'S EMPLOYEES, SELLER UNDERSTANDS AND AGREES THAT THE INDEMNIFICATION OBLIGATION HEREIN SHALL NOT BE LIMITED IN ANY WAY BY THESE PROVISIONS, AND SELLER EXPRESSLY WAIVES ITS IMMUNITY AS A COMPLYING EMPLOYER UNDER ANY APPLICABLE WORKERS' COMPENSATION LAW, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION.

#### 15.2 Patent Infringement and Other Indemnification Rights.

Subject to 0, Seller shall defend, indemnify, and hold harmless the Buyer Indemnitee against all Losses arising from any Intellectual Property Claim. If Buyer provides notice to Seller of the receipt of any such claim, Seller shall promptly, but in no event later than thirty (30) days from the date of such notice from Buyer (or earlier, if required to preserve the rights of Buyer with respect to such claim), at its own expense, settle, or defend any such Intellectual Property Claim and Seller shall promptly pay all Losses awarded against or incurred by Buyer and, subject to the next sentence, at Buyer's election: (i) procure for Buyer, or reimburse Buyer for procuring, the right to continue using the infringing service, Equipment and Materials, or other Work; (ii) modify the infringing service, Equipment and Materials, or other Work so that the same becomes non-infringing; or (iii) replace the infringing service, Equipment and Materials, or other Work with non-infringing service, Equipment and Materials, or other Work, as the case may be, in each case without adverse impact on the capacity, reliability, utility, operability, value, or useful life of the Project or on its maintenance or repair. If Buyer is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Seller shall take one or more of the actions under the preceding clauses (i), (ii), or (iii) as directed by Buyer and shall promptly use its commercially reasonable efforts to have such injunction removed; *provided, however*, that in no case shall Seller take any action which adversely affects Buyer's continued use and enjoyment of the applicable service, Equipment and Materials, or other Work without the prior written consent of Buyer. Buyer's acceptance of the Deliverables, Equipment and Materials, or other components of the Work shall not be construed to relieve Seller of any obligation under this Section 0.

#### 15.3 Buyer's Indemnity.

Subject to 0, Buyer shall defend and indemnify Seller, its Affiliates, and their respective employees, agents, partners, shareholders, officers, directors, members, managers,

successors, and permitted assigns (each, a "Seller Indemnitee"), from and against any Losses incurred or suffered by any Seller Indemnitee to the extent resulting from:

15.3.1 Any inaccuracy in or breach of any representation or warranty made by Buyer in Q of this Agreement;

15.3.2 Any breach of, or failure to perform or fulfill, any covenant, agreement or obligation of Buyer contained in this Agreement;

15.3.3 Any and all liability for Taxes to which the Project Assets or the Work may be subject, assessed or otherwise encumbered with respect to any period for which Buyer is responsible;

15.3.4 Claims for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious act or omission (including strict liability) by Buyer at the Project Site. Notwithstanding anything to the contrary, this indemnity shall only apply for such foregoing acts or omissions by Buyer if and to the extent any Losses are the direct result of Buyer's acts or omissions provided that none of the following apply: (i) the Losses are not covered by Seller's Insurance; (ii) the Losses are not required under this Agreement to be covered by Seller's Insurance; and (iii) the Losses are not Losses customarily covered by insurance similar to Insurance required to be carried by Seller under this Agreement;

15.3.5 Any and all Losses arising on or after, or relating to periods or portions thereof ending on or after, completion of the Project and Seller's obligations hereunder with respect to the Project Assets; and

15.3.6 Any fraud, gross negligence, intentional misrepresentation or willful misconduct by Buyer in connection with this Agreement.

15.4 Survival of Indemnities.

The indemnities of Seller and Buyer set forth in this Agreement, wherever located, shall survive the termination or expiration of this Agreement for the applicable statute of limitations; provided that Seller's representations and warranties in Q and Buyer's representations and warranties in Q, and the indemnity obligations with respect thereto, shall survive until the date that is [REDACTED] after Substantial Completion. Notwithstanding the expiration of the indemnity obligations for breaches of the Seller's representations and warranties, such expiration shall not reduce or limit the Seller's obligations under Q.

15.5 Additional Indemnity Provisions.

15.5.1 No Party shall have any obligation to indemnify the other Party or its Indemnitees until the aggregate amount of Losses claimed by such Party hereunder exceeds [REDACTED] and, in the event such threshold is exceeded, such Indemnified Party shall be entitled to recover all such Losses above such threshold.

15.5.2 Notwithstanding any provision to the contrary herein, no Party shall be obligated to indemnify the other Party or its Indemnitees to the extent the negligence or willful misconduct of such other Party or such Indemnitee proximately caused the Losses at issue.

15.6 Attorneys' Fees.

15.6.1 In each case under this Agreement, including under Section 0 and Section 0 herein, Seller shall indemnify any Buyer Indemnitees actual attorneys' fees and expenses incurred by such Indemnitees in connection with any indemnity claim under this Agreement except to the extent Seller is the prevailing party.

15.6.2 In each case under this Agreement, including under Section 0 herein, Buyer shall indemnify any Seller Indemnitees actual attorneys' fees and expenses incurred by such Indemnitees in connection with any indemnity claim under this Agreement except to the extent Buyer is the prevailing party.

**ARTICLE XVI TITLE; RISK OF LOSS**

16.1 Clear Title.

Seller warrants and guarantees that legal title to and ownership of the Project shall be free and clear of any and all Liens when title thereto passes to Buyer other than Permitted Encumbrances and those created by Buyer; *provided, however*, that nothing in this Section 0 shall diminish Seller's obligation to provide Partial Conditional Waivers, Partial Unconditional Waivers, Full Conditional Waivers and Full Unconditional Waivers as and when required under this Agreement.

16.2 Title.

Title to the Project Assets, other than the Work, shall transfer to Buyer as set forth in Section 0. With respect to the engineering, procurement, installation and construction Work, title to such Work shall transfer upon the earlier of (i) payment by Buyer for such Work, or (ii) incorporation of such Work, including Equipment and Materials, into the Project.

16.3 Risk of Loss.

16.3.1 Notwithstanding the foregoing, Seller shall bear the risk of loss and damage with respect to the Project and the Work until Seller achieves Substantial Completion. Prior to Substantial Completion: (i) any Work that is damaged or lost while Seller retains risk of loss with respect thereto shall be rebuilt, restored or replaced by Seller; (ii) Seller shall also be responsible for any damage or loss falling within the deductible under such Seller's Insurance (notwithstanding the limitation in Section 0); and (iii) without limiting the generality of any of the foregoing, Seller shall be fully responsible for any loss, theft or damage to the Work including all Equipment and Materials intended to be incorporated into the Work, due to theft, pilferage, rust, weathering, and the elements; *provided, however*, in each of the foregoing cases such matter occurred on or before Substantial Completion has been achieved by Seller. With respect to the foregoing events, Seller shall forthwith repair or replace the Work including the Equipment and Materials so damaged or destroyed, at its own expense, in accordance with this Agreement.

16.3.2 Buyer shall bear the risk of loss and damage with respect to the Project after Substantial Completion. After Substantial Completion: (i) any part of the Project that is damaged or lost while Buyer retains risk of loss with respect thereto shall be rebuilt, restored or replaced by Buyer (provided, for clarity, this clause shall not relieve Seller of its obligations under the Warranty and Punch List); (ii) Buyer shall also be responsible for any damage or loss falling within the deductible under such Buyer's insurance (notwithstanding the limitation in Section 0); and (iii) without limiting the generality of any of the foregoing, Buyer shall be fully responsible for any loss, theft or damage to the Project including all Equipment and Materials intended to be incorporated into the Project, due to theft, pilferage, rust, weathering, and the elements; *provided, however*, in each of the foregoing cases such matter occurred after Substantial Completion has been achieved by Seller.

## ARTICLE XVII WARRANTIES

### 17.1 Warranty.

Seller warrants and guarantees, subject to and as provided in this 0 ("Warranty" or "Warranties"), to Buyer that all Work conforms to the Work specifications included in the ISSUED FOR CONSTRUCTION Design Documents and Record Drawings and all Requirements. Without limiting the preceding Warranty, the Seller warrants to Buyer as part of the Warranty as follows:

17.1.1 All Equipment and Materials shall be new (except the Safe Harbor Equipment), unused, and undamaged and Seller warrants that it has not taken any action or inaction that invalidates any Contractors' warranties, including all Turbine Supplier's and Transformer Vendor's warranties; and all Project Documents provided to Buyer, including the Design Documents and Record Drawings, are authentic, accurate, and complete.

17.1.2 Notwithstanding the foregoing, the Seller's Warranty (subject to the terms of this Article XVII) for the WTGs and Transformer will not expire upon expiration of the Defect Warranty Period if the Turbine Supply Agreement's and Transformer Supply Agreement's warranties are not assignable and assigned to Buyer but such Seller's Warranty rather shall extend and cover the warranty periods for such Equipment and Materials required by the Scope of the Work.

17.1.3 The completed Work shall perform its intended functions as a complete integrated wind energy generation system as described in this Agreement, including the Scope of Work.

17.2 Correction.

17.2.1 Work (or any portion thereof) that fails to comply with the Warranty due to a failure by Seller to comply with the Warranty is a "Warranty Defect."

17.2.2 If any Warranty Defect occurs, Seller shall cause such Warranty Defect to be corrected at no additional cost to Buyer, provided (i) that, to the extent applicable, Buyer has pursued the applicable matter in accordance with Section 0 below, (ii) that Buyer gives notice (in reasonable detail) to Seller of the breach of Warranty during the Defect Warranty Period (or Buyer asserted the applicable matter against the relevant Contractor or Contractors during the Defect Warranty Period) and (iii) such matter was ultimately determined to be Seller's responsibility under the Warranty in accordance with the provisions herein.

17.2.3 Buyer shall first assert any matter for which it seeks Warranty coverage for the Project against the relevant Contractor or Contractors, as applicable in light of the nature of such matter, in accordance with the applicable Project Contracts and shall provide written notice to Seller of such matter. If such Contractor(s) denies responsibility for such matter, or if such Contractor does not commence correction or complete correction or otherwise respond within [REDACTED] after Buyer asserts such matter in writing against such Contractor(s), then Buyer may assert a claim against Seller or may seek Seller's assistance in prosecuting such matter against the relevant Contractor(s); *provided, however*, that, if Seller is able to demonstrate (including following any applicable dispute resolution process with the applicable Contractors) that such Contractor(s) or any other Contractor(s) is in fact responsible for such matter or that such matter is outside of the scope of the Warranty, Seller shall have no liability for such matter.

17.2.4 The Parties agree and acknowledge that the portion of Warranty for which Seller is responsible is not a "wrap" of the underlying warranties provided by the Contractors, but is instead a warranty intended to fill in any gaps in Warranty coverage by the Contractors. Except with respect to any gaps in Warranty coverage, which shall be covered by the Warranty for which Seller is responsible, Buyer shall rely exclusively on the Warranties of the Contractors with respect to the quality and performance of the Work and Equipment and Materials provided or performed by the Contractors.

17.3 Defect Warranty Period.

The Warranty shall be effective during the period ("Defect Warranty Period") commencing on the date Substantial Completion is achieved (and before such date, Seller remains responsible for Defects and Deficiencies and its other obligations) and ending on [REDACTED]; *provided, however*, (i) that the Defect Warranty Period for any Work, including Equipment and Materials, required to be re-performed, repaired, corrected, or replaced following discovery of any noncompliance with the Warranty during the

Defect Warranty Period shall re-start the Defect Warranty Period for such corrected or repaired Work; (ii) [REDACTED] supplements, and does not reduce, the warranties of Contractors, including the Turbine Supplier and Transformer Vendor, for manufactured Equipment and Materials, goods and products, including all manufacturer warranties and (iii) the Defect Warranty Period for each WTG (but not the erection or installation thereof which shall be covered by the remaining provisions of this Article XVII and shall not be subject to the limitation of this subsection (iii)) shall end on [REDACTED]. This Defect Warranty Period does not apply to any other representations or warranties given by Seller, other than the Warranty.

#### 17.4 Correction of Defects.

If the Work is found to contain a Warranty Defect during the Defect Warranty Period, Seller or its Contractors, as applicable, shall have a reasonable opportunity to inspect such Warranty Defect and, at Seller's or its Contractors' own cost and expense (including the cost of labor and equipment), Seller or its Contractors shall uncover, correct, refinish, redesign, repurchase, repair, or replace such Warranty Defect (and any equipment or facility that is disturbed or damaged in the course of such Warranty Work) and otherwise remedy such breach with materials of new and good quality, and re-perform all such defective components of the Work in accordance with the same requirements for the Work of this Agreement within the time period required below in Section 0 ("Warranty Work"). To the extent not covered in a Contractor's warranty, Seller shall bear all costs and expenses associated with correcting any Warranty Defect, including necessary disassembly, transportation, reassembly, and retesting, as well as re-performing, reworking, repair, replacement, commissioning, and testing such part of the Work as shall be necessary to cause the applicable portion of the Work to conform to the applicable requirements of the Work. If, as part of the Warranty Work, Seller or its Contractors is obligated to repair, replace, or rework any Equipment and Materials, item, or other portion of the Work hereunder, Seller shall undertake a technical analysis of the problem and correct the "root cause" as appropriate based on the nature of the Warranty Defect or other breach unless Seller can demonstrate to Buyer's satisfaction, in its sole discretion, that there is not a reasonable risk of reoccurrence of such problem.

#### 17.5 Time for Warranty Work.

Seller shall commence, or cause its Contractors to commence, performance of the Warranty Work within [REDACTED] (or such longer period as Buyer may approve in writing) after receipt by Seller of a notice from Buyer delivered in accordance with this Section 0 specifying a failure of any of the Work to satisfy the Warranty, and requesting Seller to correct the failure, and shall diligently pursue such Warranty Work without interruption or suspension until completion, except that if such Warranty Work constitutes an emergency defined as one that (i) materially and adversely affects the business operations of the Project or (ii) causes or threatens to cause death or substantial injury to any Person or damage or destruction of property, Seller shall commence, or cause its Contractors to commence, performance of Warranty Work within [REDACTED] after notice sent by electronic mail to Seller's Project Manager. The Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Project. In all cases, Warranty Work shall be diligently pursued from commencement required thereof and corrected within [REDACTED] of notice except and

unless the Warranty Work is of a nature that it cannot be completed within such time period, in which event Seller shall have a mutually agreeable number of days, not to exceed [REDACTED] without Buyer's written consent. During such time periods, Seller may perform the actual Warranty Work or force the Contractors to perform the Warranty Work.

17.6 Warranty Work; Acceptance Tests.

Seller warrants in favor of Buyer that all of the Warranty Work, including all materials incorporated into the Work as part of the Warranty Work or otherwise undertaken pursuant to the Warranties set forth in this 0 shall comply with the Warranty (including all Requirements). Seller and Buyer shall mutually agree on how to demonstrate to Buyer, taking into consideration Buyer's reasonable requirements, that such Warranty Work undertaken pursuant to this 0 and the components changed, repaired, or replaced are and remain in compliance with the Warranty. Seller may assign these requirements to the Contractors; *provided, however*, if no Contractor is responsible, Seller shall remain responsible as provided in Section 0.

17.7 Failure to Perform the Warranty Work.

If Seller does not proceed to complete the Warranty Work, or cause any relevant Contractor to proceed to complete the Warranty Work, required to satisfy any Warranty claim within the time periods for correction required by this 0, Buyer may elect to perform the necessary Warranty Work to remedy the Warranty Defect pursuant to the Warranty claim, or have third parties perform the necessary Warranty Work, and Seller shall, within [REDACTED] of receiving Buyer's request for payment of the costs of Buyer performing or causing to be performed such Warranty Work, reimburse Buyer for all documented costs and expenses reasonably incurred by Buyer (including costs of Buyer's personnel and actual attorneys' fees) and its Affiliates with respect to such Warranty Work. In the event any of the Warranty Work fails to satisfy the Warranty during the Defect Warranty Period, and any such failure occurs under circumstances where there is an immediate need for repairs, Buyer may perform such Warranty Work for Seller's account without giving the prior notice otherwise required hereunder; provided, that Buyer provides reasonably prompt notice to Seller of such immediate need prior to performing such Warranty Work.

17.8 Warranty Disclaimer.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES, AGREEMENTS, OR UNDERSTANDINGS THAT EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT.

**ARTICLE XVIII DEFAULT; TERMINATION**

18.1 Events of Default by Seller.

Seller shall be in default under this Agreement upon the occurrence of any of the following events (each a "Seller Event of Default"):

18.1.1 Seller fails to achieve Substantial Completion by the Outside Completion Deadline;

18.1.2 Seller contravenes any Applicable Law or Applicable Permit such that the ability of Seller or any Contractor to perform the Work in accordance with this Agreement is hindered or the Project or Buyer is adversely affected, except to the extent such violation is directly and solely caused by a Buyer Event of Default and such violation continues for [REDACTED] after notice;

18.1.3 Seller fails to make any payment of any amount when due (other than amounts disputed in good faith) as required to be made by Seller to Buyer hereunder, which failure continues for [REDACTED] after notice of such non-payment, including fails to make prompt payments (which is defined as within [REDACTED] of receipt of notice from Buyer) of undisputed amounts when due to Contractors for Labor, materials, or equipment;

18.1.4 Seller suspends performance of the Work, or any part thereof (except when Seller is permitted in accordance with Section 0 of this Agreement), or abandons the Project and in any such case Seller does not cure its noncompliance therewith within [REDACTED] after notice from Buyer thereof;

18.1.5 Seller fails to maintain Seller's Insurance required to be maintained pursuant to this Agreement and fails to cure any failures within [REDACTED] of such failure; *provided, however*, Seller will remain responsible for all losses that should have been covered by the Insurance during such period as provided in 0, 0 and as otherwise provided as a covenant of Seller in this Agreement;

18.1.6 Seller assigns or transfers this Agreement or any right or interest herein except as expressly permitted otherwise in this Agreement;

18.1.7 Seller becomes insolvent, or generally does not pay its Debts as they become due, or admits in writing its inability to pay its Debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization or bankruptcy proceedings are commenced by Seller; and such proceedings are not terminated, stayed or dismissed within [REDACTED] after the commencement thereof; or

18.1.8 Seller fails to perform any other material obligation hereunder not otherwise set forth above, or makes a false representation or warranty, if not cured within [REDACTED] notice from Buyer to Seller, except that such [REDACTED] cure period shall be extended if (i) curing such failure reasonably requires more than [REDACTED]; (ii) Seller commences such cure within such [REDACTED] period and diligently prosecutes such cure; and (iii) such cure is accomplished within [REDACTED] after the date on which Seller first receives a notice from Buyer with respect thereto.

Notwithstanding the foregoing time periods, to the extent such failure creates an emergency or threatening situation that requires Buyer in its judgment to mitigate its Losses, Buyer may, at its cost, take such actions it deems necessary to mitigate its Losses (other than terminating this Agreement).

## 18.2 Buyer's Rights and Remedies.

In the event of a Seller Event of Default, Buyer (or its successor in interest) shall have the following rights and remedies and may elect to pursue any or all of them as a result of such Seller Event of Default, and Seller shall have the following obligations:

18.2.1 Except as otherwise provided in Section 0, if such Seller Event of Default continues or extends beyond the Outside Completion Deadline, Buyer may terminate this Agreement by giving notice of such termination to Seller and shall have the further rights and remedies set forth in this 0; provided, that in the event of a Seller Event of Default pursuant to Section 0 or Section 0, Buyer shall be deemed to have given notice of termination to Seller immediately upon the occurrence of such a Seller Event of Default, and all amounts owing by Seller to Buyer hereunder shall immediately become due and payable. In the event Buyer terminates this Agreement in accordance with the provisions hereof after NTP Closing, Seller (i) shall withdraw from the Project Site, (ii) without limiting Seller's obligations or Buyer's rights, shall assign to Buyer such agreements, including warranties from Seller's Contractors and the remaining unassigned Project Contracts, including Construction Contracts, as Buyer may request, and shall deliver and make available to Buyer all Intellectual Property Rights of Seller related to the Work reasonably necessary to permit Buyer to complete or cause the completion of the Work and to own, operate, repair, maintain, finance, dispose of, demolish, or otherwise use the Project, and in connection therewith Seller authorizes Buyer and its respective agents and successors and assigns to use such information for such purposes, and (iii) shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Seller in the performance of the Work as Buyer may direct; and Buyer may take possession of any or all Project Assets including Seller's Deliverables, and equipment and materials of Seller related to the Work necessary for completion of the Work and the ownership, operation, repair, maintenance, financing, disposition, demolition, or otherwise use the Project (whether or not such is a Project Asset and Project is complete);

18.2.2 Buyer may proceed against any security given by Seller or for the benefit of Buyer for Seller's performance under this Agreement, including the Guaranty;

18.2.3 In the event Buyer terminates this Agreement in accordance with the provisions hereof after NTP Closing, Buyer shall have the right (i) to self-perform or employ any other Person to complete the Work by whatever method that Buyer may deem necessary in Buyer's judgment, including by enforcing any security given by or for the benefit of Seller for its performance under this Agreement or otherwise, and (ii) to make such expenditures as in Buyer's judgment will accomplish the timely completion of the Work in accordance with the terms of this Agreement, regardless of whether the sum of those expenditures plus all amounts previously paid to Seller under this Agreement exceeds the Purchase Price;

18.2.4 Buyer may seek equitable relief to cause Seller to take action, or to refrain from taking action, or otherwise enforce Seller's obligations or Buyer's rights by specific performance, injunctive and/or other equitable relief (without posting of bond or other security), or to make restitution of amounts improperly received under this Agreement. In the event an action for specific performance is brought, Seller waives any right to challenge the request for specific performance as a remedy as Seller acknowledges that the goods and services being provided under this contract are unique;

18.2.5 Buyer may, in its sole discretion, make such payment to Contractors for undisputed amounts that cures any Seller Event of Default and invoice Seller for the cost of such payment or offset such costs against payments otherwise due to Seller under this Agreement; or

18.2.6 Irrespective of whether Buyer terminates this Agreement, Buyer may seek damages subject to the terms of 0 for a Seller Event of Default.

### 18.3 Consequences of Termination by Buyer.

Upon termination of this Agreement by Buyer, including upon a Seller Event of Default described in Section 0, the following provisions shall apply:

18.3.1 In the event Buyer terminates this Agreement in accordance with the provisions hereof after NTP Closing, Seller shall remove its personnel and any personal property belonging to Seller or its personnel from the Project Site (or other location where the field construction office for the Project may be located) except as provided above in Section 0, and shall refrain and cause its personnel to refrain from taking from the Project Site or the field construction office any Project Assets including any Project Documents and other documents constituting Confidential Information of Buyer;

18.3.2 Buyer shall be entitled to all legal and equitable remedies that are not expressly prohibited or limited by the terms of this Agreement (including reimbursement of any payment of the Purchase Price to the extent not yet paid to third parties for the benefit the Project (such as to pay for materials to be incorporated into the Project or payments made to any Contractor); *provided; however*, such reimbursement shall not waive Buyer's right to also seek damages as provided in this Agreement).

18.3.3 Notwithstanding anything to the contrary herein, in the event of a Buyer termination for a Seller Event of Default on or before the NTP Closing, and if (prior to such termination) Seller did not act in good faith to achieve the Conditions Precedent to NTP, then Seller shall within [REDACTED] after such termination refund all payments made by Buyer to Seller. This provision does not apply if Seller fails to achieve NTP by the NTP Deadline so long as (prior to such termination) Seller acted in good faith to achieve the Conditions Precedent to NTP.

### 18.4 Buyer Event of Default.

The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (each, a "Buyer Event of Default"):

18.4.1 Buyer becomes insolvent, or generally does not pay its Debts as they become due, or admits in writing its inability to pay its Debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization or bankruptcy proceedings are commenced by Buyer; and such proceedings are not terminated, stayed or dismissed within [REDACTED] after the commencement thereof;

18.4.2 Buyer fails to make payment of any amount when due (other than amounts disputed in good faith) as required to be made by Buyer pursuant to this Agreement, which failure continues for [REDACTED] after notice of such non-payment is given by Seller to Buyer;

18.4.3 Buyer assigns or transfers this Agreement or any right or interest herein except as expressly permitted otherwise in this Agreement; or

18.4.4 Buyer fails to perform or observe any of its material obligations under this Agreement not otherwise specifically addressed in this Section 0, or makes a false representation or warranty in any material respect, and such failure continues for [REDACTED] after notice is given by Seller to Buyer, except that such [REDACTED] cure period shall be extended if (i) curing such failure reasonably requires more than [REDACTED]; (ii) Buyer commences such cure within such [REDACTED] period and diligently prosecutes such cure; and (iii) such cure is accomplished within [REDACTED] after the date on which Buyer first receives a notice from Seller with respect thereto.

#### 18.5 Seller's Remedies.

In the event of a Buyer Event of Default, Seller (or its successor in interest) shall have the following rights and remedies and may elect to pursue any or all of them, as a result of such Buyer Event of Default, and Buyer shall have the following obligations:

18.5.1 Seller may seek equitable relief to enforce the provisions of this Agreement.

18.5.2 Seller may seek damages for Seller's costs not to exceed the limits on Buyer's liability set forth in Section 0.

18.5.3 In the case of a Buyer Event of Default pursuant to Section 0 or Section 0, Seller may either suspend Work until the Dispute is resolved or terminate this Agreement, in each case, in accordance with this Section 0.

18.5.4 In the case of a Buyer Event of Default pursuant to Section 0, upon any such Buyer Event of Default resulting from one such non-payment, Seller may suspend Work until such payment is made.

18.5.5 In the case of a Buyer Event of Default pursuant to Section 0, upon any such Buyer Event of Default consisting of two (2) successive non-payments, Seller may either suspend Work until such payment is made or terminate this Agreement, in each case, in accordance with this Section 0.

With respect to suspension of Work by Seller as permitted by this Agreement, (i) Seller shall continue to protect and maintain the Work performed, *including* those portions on which Work has suspended, and (ii) Seller shall resume performance of the Work upon the cure of (which includes a settlement in lieu of cure of) such Buyer Event of Default.

[REDACTED]

[REDACTED]

[REDACTED]

18.7 Termination Prior to NTP.

18.7.1 Buyer's Board of Directors Approval. If, within [REDACTED] after the Effective Date, Buyer has not obtained its Board of Directors' approval to proceed with the Project, Buyer may terminate this Agreement; provided that, if Buyer does not terminate this Agreement within [REDACTED] after the Effective Date, Buyer shall be deemed to have waived its rights under this Section 0.

18.7.2 Buyer's NTP Termination. If any Buyer's Conditions Precedent to NTP in Section 0 and Section 0 are not satisfied for any reason or otherwise waived by Buyer on or before the NTP Deadline, Buyer may, after and within ten (10) Business Days of the NTP Deadline, terminate this Agreement, in which case neither Party shall have any further liability to the other except (i) any obligation that expressly survives termination of this

Agreement and (ii) Seller may retain the Progress Payment made on the Effective Date so long as Seller has in good faith been pursuing achieving the Conditions Precedent for NTP.

18.7.3 Seller's NTP Termination. If any Seller's Conditions Precedent to NTP in Section 0 and Section 0 are not satisfied for any reason or otherwise waived by Seller on or before the NTP Deadline, Seller may after and within ten (10) Business Days of the NTP Deadline, terminate this Agreement, in which case neither Party shall have any further liability to the other except (i) any obligation that expressly survives termination of this Agreement and (ii) Seller may retain the Progress Payment made on the Effective Date so long as Seller has in good faith been pursuing achieving the Conditions Precedent for NTP.

18.7.4 NTP Deemed Issued. If, within ten (10) Business Days after the NTP Deadline, NTP has not been issued and neither Party has terminated this Agreement, each Party will be deemed to have waived its Conditions Precedent to NTP and NTP will be deemed to have been issued and accepted on the eleventh (11<sup>th</sup>) Business Day after the NTP Deadline and the Parties shall proceed with the NTP Closing.

#### 18.8 Effect of Termination.

If this Agreement is terminated as permitted under this Agreement, all rights and obligations of the Parties hereunder shall terminate and no Party shall have any liability to the other Party, except for the rights and obligations of the Parties that survive the termination of this Agreement, including those obligations of the Parties that by their specific nature must survive termination such as the obligation to indemnify a Party. Notwithstanding anything to the contrary contained herein, termination of this Agreement shall not release any Party from any liability for any breach by such Party of the terms and provisions of this Agreement prior to such termination.

### **ARTICLE XIX FORCE MAJEURE**

#### 19.1 Excuse.

Neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations and shall be excused in the performance of its obligations if such delay or failure under this Agreement is due to an event of Force Majeure to the extent provided in this Agreement.

#### 19.2 Definition of Force Majeure.

"Force Majeure" means any event or circumstance to the extent beyond the control of the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, that occurs following the Effective Date and before the termination of this Agreement and that delays or prevents a Party's timely performance of its obligations under this Agreement, but only to the extent that (i) such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (ii) such event of Force Majeure is caused by factors beyond that Party's reasonable control, and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to foresee, prevent, avoid,

mitigate or overcome such event or consequences, including but not limited to the following enumerated events:

19.2.1 Acts of God such as hurricanes, floods, lightning, earthquakes and storms that are abnormally severe and not reasonably foreseeable for the period of time when and the area where such storms occur, based on, in the case of the Project Site, the most recent ten (10) year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for the vicinity of the Project;

19.2.2 Fire or explosions;

19.2.3 a failure of performance of a third party providing electric transmission service;

19.2.4 restraint by court order or other Governmental Authority;

19.2.5 Sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

19.2.6 National labor strike which was neither known to Seller or its Contractors nor generally known in the industry prior to the time the Party would have had to hire (or hired) Labor or place (or placed) an order for Equipment and Materials to meet the Milestones;

19.2.7 War, riot, acts of a public enemy, terrorism, or other civil disturbance; and

19.2.8 Epidemics or pandemics, including the COVID-19 pandemic and its resulting effects. Notwithstanding that the COVID-19 pandemic initiated prior to the Effective Date, the Parties acknowledge that the COVID-19 pandemic could have future effects on global supply chains, construction activity and the economy. In light of this, without otherwise reducing Seller's obligations hereunder, including those in this 0 and in particular Section 19.4, the COVID-19 pandemic and its effects may meet the definition of Force Majeure after the Effective Date. The Parties acknowledge that as of the Effective Date, the COVID-19 pandemic has not caused a Force Majeure under this Agreement.

### 19.3 Exclusions.

None of the following shall constitute an event of Force Majeure:

19.3.1 Economic hardship of either Party;

19.3.2 The non-availability of wind to generate electricity from the Project;

19.3.3 A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority except as otherwise provided in this Agreement such as Buyer's failure to obtain MPSC Approval;

19.3.4 Equipment and Materials failure, unless caused by a Force Majeure event;

19.3.5 Climatic and weather conditions, other than those particular climatic or weather conditions specifically identified in Section 0 above;

19.3.6 Frost laws or other seasonal restrictions on traffic weight limits or speeds;

19.3.7 Subject to Section 0, any delay, default or failure (direct or indirect) in obtaining materials or Labor by Seller or any Contractor performing any Work or any other delay, default or failure (financial or otherwise) of Seller or any Contractor unless such delay, default or failure is itself caused by a Force Majeure event; and/or

19.3.8 Any change in market conditions that causes a change in price of any Labor or Equipment and Materials required for the Work.

#### 19.4 Conditions.

A Party may rely on a claim of Force Majeure to excuse its performance only if such Party complies with all of the following:

19.4.1 Provides prompt notice after becoming aware of such Force Majeure, not to exceed ten (10) days, of such Force Majeure event to the other Party (i) identifying the specific nature of the Force Majeure event, (ii) documenting the commencement date of the Force Majeure event, and (iii) giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement.

19.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

19.4.3 Takes action to correct or cure the event or condition excusing performance so that the necessary suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being corrected or cured using commercially reasonable efforts; *provided, however*, that settlement of strikes or other Labor Disputes will be completely within the sole discretion of the Party affected by such strike or Labor Dispute;

19.4.4 Exercises all commercially reasonable efforts to mitigate or limit Damages to the other Party; and

19.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to the Force Majeure event that interfered with the Party's performance.

#### 19.5 Determination.

If Buyer agrees that a Force Majeure event has occurred (including that all conditions required in Section 0 were fully performed), then (i) an extension of the Project Schedule as to the specific activity or activities affected, limited to one (1) day for each day of

Force Majeure Event delay, may be granted, subject to the limitation that no extension shall be granted to extend the Production Tax Credit Qualifying Deadline. If granted, such extension shall not operate to release Seller or any surety from any of their obligations. Buyer and Seller shall then execute a Change Order reflecting the extension granted for the Force Majeure event; and (ii) an increase in the Purchase Price shall be permitted to the extent provided in Section 0.

19.6 Termination for Extended Force Majeure.

If either Party is rendered unable to perform its obligations hereunder, in whole or in substantial part, after the Effective Date because of an event of Force Majeure by notice to the other Party, at any time after such event of Force Majeure has continued for a period of [REDACTED] and prior to the performance or resumption of performance by the Party claiming Force Majeure, the non-affected Party may terminate this Agreement. In the case of a termination based on an event of Force Majeure, each of the Parties shall be relieved of its obligations under this Agreement except those that expressly survive termination.

**ARTICLE XX SURVIVAL**

The terms of the Confidentiality Agreement in Section 0, all representations, warranties, covenants of each Party, the indemnification obligations of each Party, financial obligations arising and accruing between the Effective Date and termination of this Agreement in 0, the default remedies in 0, notices in 0, limits of liability in 0 and the provisions of 0 shall each survive termination of this Agreement in accordance with the terms herein, including Section 0.

**ARTICLE XXI NOTICES**

21.1 Address.

Any notice or other communication required, permitted or contemplated hereunder shall be in writing, and shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Buyer:

Consumers Energy Company  
One Energy Plaza  
Jackson, Michigan 49201  
Attn: Christopher Fultz  
Telephone:  
Email: [christopher.fultz@cmsenergy.com](mailto:christopher.fultz@cmsenergy.com)

And (which is mandatory)

Consumers Energy Company  
One Energy Plaza  
Jackson, Michigan 49201  
Attn: Kelly M. Hall  
Telephone: 517-788-2910  
Email: [kelly.hall@cmsenergy.com](mailto:kelly.hall@cmsenergy.com)

To Seller:

Heartland Farms Wind Project, LLC  
c/o Invenenergy LLC  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606  
Attn: Mike Bessell  
Telephone: (312) 224-1400  
Email: [MBessell@invenenergy.com](mailto:MBessell@invenenergy.com)

And (which is mandatory)

Heartland Farms Wind Project, LLC  
c/o Invenenergy LLC  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606  
Attn: Legal Department  
Telephone: (312) 224-1400  
Email: [GeneralCounsel@invenenergy.com](mailto:GeneralCounsel@invenenergy.com)

21.2 Delivery and Receipt.

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if sent by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, upon receipt by the receiving Party; (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier; (iii) if sent by electronic mail, at the time such electronic mail is transmitted by the sending Party as shown by the electronic mail transmittal confirmation of the sending Party; or (iv) if delivered in person, upon receipt by the receiving Party.

**ARTICLE XXII LIMITATION ON LIABILITY**

22.1 Limitations on Seller's Liability.

22.1.1 Except as provided in Section 0 below, Seller's total liability for claims by Buyer arising out of or relating to the performance or non-performance of Seller's obligations under this Agreement, including Seller's indemnity obligations hereunder, shall in no event exceed [REDACTED] (as the same may be adjusted from time to time).

22.1.2 The Seller's total limit of liability with respect to any claim shall not apply, whatsoever:

22.1.2.1 To any (i) amounts paid by Seller to or on behalf of Buyer or Buyer Indemnitee arising out of the willful misconduct, gross negligence

or fraud of Seller, its Affiliates, any Contractor or any employee, agent or invitee of any of the foregoing arising on or before Substantial Completion is achieved and thereafter to extent Seller has responsibility for Contractor's performance under the Warranty or Punch List (except to the extent any Contractor is directed by Buyer) or (ii) Seller's indemnification obligations hereunder to the extent occurring with respect to third parties, including any intellectual property claims and any claims by Governmental Authorities; or (iii) any Governmental Authority imposes fines, penalties or other enforcement fees arising from the acts or omissions of Seller, its Affiliates, any Contractor or any or any employee, agent or invitee of any of the foregoing.

22.1.2.2 To any Delay LDs for Delayed WTGs in Section 0, which shall be subject to the separate Delay LD Cap.

22.1.2.3 With respect to any claim for which Seller, including any Contractor or any employee, agent or invitee of any of the foregoing, is responsible under this Agreement that is covered by Seller's insurance or Bonds or required by this Agreement to be covered by Seller's Insurance or, to the extent requested and paid for by Buyer, the Bonds, in each case, to the extent of such Insurance or Bonds. For clarity, it is the intent of the Parties that the limitation of liability hereunder shall not relieve the insurers' and sureties' obligations for any insured or bonded risks; and any amounts paid by such Persons shall not count against Seller's limitation of liability set forth in Section 0. In no event shall Seller's total limit of liability operate to limit any Party's recovery against Insurance or Bonds.

## 22.2 Limitations on Buyer's Liability.

22.2.1 Except as provided in Section 0 below, Buyer's total liability for claims by Seller and/or Seller Indemnitees arising out of or relating to the performance or non-performance of Buyer's obligations under this Agreement (but excluding Buyer's obligation to pay the Purchase Price as indicated below) shall in no event exceed [REDACTED] (as the same may be adjusted from time to time).

22.2.2 The Buyer's total limit of liability with respect to any claim shall not apply, whatsoever, to the following:

22.2.2.1 To any (i) amounts paid by Buyer to or on behalf of Seller or a Seller Indemnitee arising out of the willful misconduct, gross negligence or fraud of Buyer or its Affiliates or any employee, agent or invitee of the foregoing or (ii) Buyer's indemnification obligations hereunder to the extent occurring with respect to third parties, including any claims by Governmental Authorities; or (iii) any Governmental Authority imposes fines, penalties or other enforcement fees arising from the acts or

omissions of Buyer or its Affiliates or any employee, agent or invitee of any of the foregoing.

22.2.2.2 [Intentionally deleted]

22.2.2.3 To the obligation to pay the Purchase Price pursuant to this Agreement.

22.3 Damages.

WITHOUT LIMITING THE FOREGOING AND EXCEPT FOR DELAY LOSSES, NO PARTY SHALL BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR INCIDENTAL DAMAGES, SPECIAL DAMAGES, EXEMPLARY DAMAGES, CONSEQUENTIAL DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES CONSISTING OF BUSINESS INTERRUPTION, LOST PROFITS, OR PUNITIVE DAMAGES, EXCEPT TO THE EXTENT SOUGHT OR AWARDED AS A RESULT OF A THIRD PARTY CLAIM.

**ARTICLE XXIII DISPUTES**

23.1 Good Faith Efforts to Resolve Disputes.

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

23.2 Step Negotiations.

In the event that either Seller or Buyer concludes, after making a good faith effort to resolve a Dispute in the normal course of business at the Buyer's Representative and Seller's Project Manager level, that such Dispute cannot be resolved informally within [REDACTED], then the aggrieved Party shall have the right to initiate the processes identified in this 0.

23.3 Senior Executive Negotiations.

If the Dispute has not been resolved by the Buyer's Representative and Seller's Project Manager within [REDACTED], then either Seller or Buyer shall have the right to give the other written notice of its request to have the Dispute heard by a senior executive of their respective organizations. Each Party shall identify in writing a senior executive(s) who shall have the responsibility and authority to negotiate on behalf of the Parties under this Section. Unless extended by written agreement between the senior executives, this process must occur within [REDACTED] after the written notice requesting negotiations under this subsection.

23.4 Confidentiality.

All negotiations pursuant to Section 0 and Section 0 shall be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable judicial

evidentiary requirements, unless a settlement is reached and agreed to in a writing signed by each Party's representative.

### 23.5 Referral to Litigation.

If the Dispute has not been resolved pursuant to the aforesaid procedure within the indicated timeframe set forth above, then either Seller or Buyer may, by notice to the other, submit the Dispute to judicial resolution. The joinder of Contractors and other Persons for whom Seller is responsible or has contracted with regard to this Project shall be permitted and Buyer is a third-party beneficiary of all Contracts; however, Seller shall remain responsible for such Contracts and the Contractors and other Persons under this Agreement.

### 23.6 Lien Proceedings.

It shall not be deemed a violation of this Section 0 for Seller to make any filing or commence any action to assert or perfect a Seller Lien required by Applicable Law to secure the payment by Buyer of amounts overdue to Seller hereunder. If it shall be determined that no payment is owed by Buyer, or the Parties shall reach a settlement on the payment Dispute, or Buyer makes payment which is the subject of the Seller Lien, Seller shall promptly discharge the Seller Lien, and if it shall fail to do so, Seller hereby designates Buyer as Seller's attorney-in-fact to discharge the Seller Lien from the public record so long as such discharge is accompanied by the court order, settlement agreement or evidence of payment of the amount which is the subject of the Seller Lien.

### 23.7 Continuation of Performance.

Unless (i) this Agreement is terminated by Buyer, (ii) otherwise agreed in writing by the Parties in advance, or (iii) permitted by and in strict compliance with Section 0 or Section 0, the Parties shall continue to perform their respective obligations under this Agreement during any Dispute or Proceeding by the Parties in accordance with this 0.

### 23.8 Consent to Exclusive Jurisdiction.

Each of the Parties irrevocably consents and agrees that any Proceeding arising from or related to any Dispute may be brought in any of the state or federal courts having jurisdiction over this Agreement in the states of Michigan or New York, and that, by execution and delivery of this Agreement, each Party (i) accepts the exclusive jurisdiction of the aforesaid courts, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court and agrees that such final, non-appealable judgment may be enforced by suit on the judgment or in any other manner provided by Applicable Law, (iii) irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of any Proceeding with respect to this Agreement in any such court, and further irrevocably waives, to the fullest extent permitted by Applicable Law, any claim that any such Proceeding brought in any such court has been brought in an inconvenient forum, (iv) agrees that service of process in any such action may be effected by delivering a copy thereof by the means of notice set forth in 0 hereof, to such Party at its notice address set forth herein, or at such other

address of which the other Party hereto shall have been notified, and (v) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law.

#### 23.9 Waiver of Jury Trial.

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

### ARTICLE XXIV MISCELLANEOUS

#### 24.1 Expenses.

Except as otherwise expressly set forth in this Agreement, all fees, costs and expenses incurred by a Party in connection with this Agreement and the transactions contemplated hereby, shall be the obligation of the Party incurring such fees, costs or expenses.

#### 24.2 No Stockholder or Member Liability.

The Parties acknowledge and agree that the officers, directors, stockholders, members, managers, other security holders, employees and consultants of Buyer, Seller, and their respective Affiliates are not parties to this Agreement and that the representations, warranties, covenants and agreements made in this Agreement are provided only by Buyer and Seller and Seller's Persons performing Work, as the case may be. The Parties agree that neither Party shall have recourse against any officer, director, stockholder, member, manager, other security holder, employee or consultant of Buyer, Seller or their respective Affiliates under or in connection with this Agreement, whether for any representation, warranty, covenant, agreement (including any indemnification) or otherwise, except the Guaranty.

#### 24.3 Confidentiality.

24.3.1 Neither Party shall disclose to any Person Confidential Information provided by one Party (the "Disclosing Party") to the other Party ("Receiving Party"). Confidential Information shall not be used for any purposes other than the purposes set forth in this Agreement, shall be held in strict confidence by the Receiving Party and shall not be disclosed without the prior consent of the Disclosing Party, except to such Party's Affiliates, employees, agents, advisors or consultants or Governmental Authorities with a need to know the Confidential Information for the purposes of performing work or reviewing information related to this Agreement or the Project.

24.3.2 Notwithstanding anything contained in this Agreement to the contrary, Buyer shall be permitted to disclose Confidential Information regarding the Project to any Person after the NTP Closing (such as, for example, location, Project size, the make and model of the WTGs, site studies, and technology, but, for clarity, not the terms of this

Agreement). Notwithstanding anything contained in this Agreement to the contrary, following the NTP Closing, Seller may disclose, without the consent of Buyer, (i) the name, location and size of the Project, the make and model of the WTGs, and (ii) that Seller sold and Buyer purchased the Project and Seller is constructing the Project and, following Substantial Completion, constructed the Project. Seller shall not use Buyer or Buyer's Affiliates' name or logo without advance written consent provided by Buyer.

#### 24.4 Public Announcements.

No public announcement (whether in the form of a press release or otherwise) shall be made by or on behalf of either Party or its representatives with respect to the subject matter of this Agreement unless: (i) the other Party has agreed in writing to permit such public announcement to be made, which permission shall not be unreasonably withheld, or (ii) such public announcement is required by Applicable Law and the Party required to make such announcement has given prior written notice in accordance with Q to the other Party as promptly as practicable prior to such announcement. Any public announcement made as permitted under this Section Q shall be made only in accordance with a text mutually agreed upon by the Parties, such agreement not to be unreasonably withheld or delayed. The Parties shall cooperate in good faith to prepare press releases (including mutual press releases) with, and upon the request of, one another. In furtherance of the foregoing, the Parties agree to the cooperative agreement for stakeholder engagement attached hereto as Exhibit Q.

#### 24.5 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD APPLY ANY OTHER LAW.

#### 24.6 Successors and Assigns; Collateral Assignment; Binding Effect.

Other than in accordance with this Section Q, neither Party may assign its rights or obligations under this Agreement without the prior consent of the other Party, which consent may be withheld in such Party's sole discretion. Seller may not assign its rights or obligations under this Agreement except for the obligations for the Warranty as provided in Q, unless Buyer provides prior written consent of such assignment, which consent may be withheld in Buyer's sole discretion. Any assignment in contravention of this Section shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

#### 24.7 Severability.

Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect

the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

24.8 Section Headings.

The section headings are for the convenience of the Parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties.

24.9 Counterparts; Electronic Versions.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement and any amendments hereto, to the extent executed and delivered by means of a facsimile machine or e-mail of a PDF file containing a copy of an executed agreement (or signature page thereto), shall be treated in all respects and for all purposes as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof.

24.10 No Third-Party Beneficiaries.

This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided in this Agreement (such as Buyer Indemnitee), no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

24.11 Time of Essence.

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

24.12 Waiver.

Neither the failure of nor any delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Applicable Law, except as otherwise expressly provided in this Agreement: (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party, (ii) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party

or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

24.13 No Partnership or Joint Venture.

The Parties hereto do not intend to create a partnership or joint venture by virtue of this Agreement. No Party shall owe any fiduciary duty to any other Party by virtue of this Agreement or otherwise.

24.14 Entire Agreement; Interpretation; Amendment.

This Agreement represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral and written understandings and all contemporaneous oral negotiations, commitments and understandings between the Parties. This Agreement represents the result of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and none of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, this Agreement shall be interpreted and construed in accordance with its usual and customary meaning, and the Parties hereby waive the application, in connection with the interpretation and construction of this Agreement, of any Applicable Law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. Buyer and Seller may only amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by the Parties and with respect to Buyer, signed by Buyer's Authorized Officer.

24.15 Cooperation.

Each of the Parties agrees to perform all such acts (including executing and delivering such instruments and documents, and providing an unredacted copy of the Safe Harbor Cable Supply Agreement and the Safe Harbor Turbine Supply Agreement in the event of an IRS audit, with such copies returned or destroyed when the IRS audit is final, including any appeals) as shall be reasonably requested by the other Party to fully effectuate each and all of the purposes and intent of this Agreement.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the Parties as of the date first above written.

**BUYER:**

CONSUMERS ENERGY COMPANY

DocuSigned by:  
*GARRICK J ROCHOW*  
4CD782834A5E4D0...GARRICK J ROCHOW  
Name: \_\_\_\_\_  
Title: President and CEO

**SELLER:**

HEARTLAND FARMS WIND PROJECT,  
LLC

DocuSigned by:  
*Michael Baird*  
By: 8DEF6E702295442  
Name: Michael Baird  
Title: Vice President

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## **EXHIBITS**

### Exhibit A

Build Transfer Scope of Work

Section 1-General

Section 2-Civil/Structural

Section 3-Collection System

Section 4-Collection System Substation Addition

Section 5-SCADA and Communications

Section 6-Turbine Installation

Section 7-Permanent Meteorological Tower Specifications

Section 8-Substation Equipment Procurement-Generator Step up  
Transformer (GSU)

Section 9-Radial Line

Exhibit A  
Build Transfer Scope of Work

Exhibit A  
Section 1-General

Exhibit A  
Section 2-Civil/Structural

Exhibit A  
Section 3-Collection System

Exhibit A  
Section 4-Collection System Substation

Exhibit A  
Section 5-SCADA and Communications

Exhibit A  
Section 6-Turbine Installation

Exhibit A  
Section 7 – Permanent Meteorological Tower Specifications

Exhibit A

Section 8 - Substation Equipment Procurement-Generator Step Up Transformer (GSU)

Exhibit A  
Section 9 - Radial Line

Exhibit A-Appendix A  
Wind Turbine Generator Technical Specification

Exhibit A-Appendix B  
Consumers Energy Design Document Standards

Exhibit A-Appendix C  
Electrical Switchboards

Exhibit A-Appendix D  
Underground Collection Cable Specification

Exhibit A-Appendix E  
Preliminary Construction Details

Exhibit A-Appendix F

Oil-Water Separator

Exhibit A-Appendix G  
Lead Acid Battery Standard

Exhibit A-Appendix H  
Circuit Breaker Specification

Exhibit A-Appendix I  
Relay Recommendations

Exhibit A-Appendix J

Records Format-Retirements Unit Format Example

Exhibit A-Appendix K  
SCADA Pedestal H Frame Diagram

Exhibit A-Appendix L  
SCADA Layout Diagram

## Exhibit A-Appendix M

### SCADA Points List

Exhibit A-Appendix N

MDF Layout Diagram

Exhibit A-Appendix O

Substation One line

Exhibit A-Appendix P

Nacelle Jib Hoist

Exhibit A-Appendix Q  
Aircraft Detection Lighting System (ADLS)

Exhibit B

Preferred Turbine Componentry

Exhibit C

GSU Transformer Specification

Exhibit D

Progress Payment Schedule

Exhibit E  
Deviations Schedule

Exhibit F  
Project Site & Layout

## Exhibit G

### Operational Scope of Responsibilities Matrix During Commissioning

Exhibit H

Real Estate Exhibits

Exhibit H  
Real Property Spreadsheet

Exhibit H

Global Title Checklist

Exhibit H  
Form of Wind Energy Easement

Exhibit H

Form of Memorandum of Wind Energy Easement

Exhibit H

Assignment of Wind Energy Easements

Exhibit H  
Estoppel Certificate

Exhibit H

Assignment of Crossing Agreements

Exhibit H

Assignment of Drain Agreement

Exhibit H  
Warranty Deed

Exhibit I  
Bill of Sale

Exhibit J  
Assignment Agreement Form

Exhibit K  
Project Controls

Exhibit K

Form of Monthly Progress Report

Exhibit K

Seller's Invoice Form

Exhibit K  
Schedule of Values

Exhibit K  
Project Schedule

Exhibit K  
Sworn Statement

Exhibit K

Form of Full Conditional Waiver

Exhibit K

Form of Partial Unconditional Waiver

Exhibit K

Form of Full Unconditional Waiver

Exhibit K

Form of Partial Conditional Waiver

Exhibit K

Form of Notice of Commencement

Exhibit L

Form of Tax Clearance Certificate

Exhibit M

[Intentionally Deleted]

Exhibit N

Milestone Completion Certificates

Exhibit O  
Buyer Delays

Exhibit P

Form of Notice To Proceed (NTP)

## Exhibit Q

### Cooperative Agreement for Heartland Stakeholder Engagement

Exhibit R  
Applicable Permits

Exhibit S

Form of Seller's Officer's and Secretary's Certificate

Exhibit T

Seller's Organization Chart

Exhibit U

Seller's Organizational Documents

Exhibit V

[Intentionally Deleted]

Exhibit W

Wind Data

## Exhibit X

### Insurance and Bond Requirements<sup>1</sup>

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<sup>1</sup> NTD: Parties exchanging this Section separately. To be inserted when agreed.

Exhibit Y

[Intentionally Deleted]

Exhibit Z  
Disclosure Schedules

Exhibit AA  
Preferred Manufacturers

Exhibit AB

[Intentionally Deleted]

Exhibit AC

Submittals and Deliverables List

Exhibit AD

Contractors (Subcontractors and Major Suppliers)

Exhibit AE  
Curative Documents

Exhibit AE

Form of Non-Disturbance Agreement – Greenstone FCS

Exhibit AE

Form of Non-Disturbance Agreement – Chemical Bank

Exhibit AE

Form of Non-Disturbance Agreement - General

Exhibit AE

Form of Joinder Land Contract

Exhibit AE  
Form of Joinder Life Estate

Exhibit AE  
Form of Joinder TIC

Exhibit AE

Affidavit of Non-Production

Exhibit AE

Form of Joinder in Wind Easement Agreement (Ratification)

Exhibit AE

Form of Amendment and Joinder to Wind Easement Agreement  
(Polaris & South Gratiot forms)

Exhibit AE

Form of Memorandum of Amendment and Joinder to Wind Easement Agreement  
(Polaris & South Gratiot forms)

Exhibit AE

Form of Amendment to Wind Easement Agreement  
(Polaris & South Gratiot forms)

Exhibit AE

Form of Memorandum of Amendment to Wind Easement Agreement  
(Polaris & South Gratiot forms)

Exhibit AE

Form of Amendment to Wind Easement Agreement  
(old Heartland form)

Exhibit AE

Form of Memorandum of Amendment to Wind Easement Agreement  
(old Heartland form)

Exhibit AE

Form of Amendment and Joinder to Wind Easement Agreement  
(old Heartland form)

Exhibit AE

Form of Memorandum of Amendment and Joinder to Wind Easement Agreement  
(old Heartland form)

Exhibit AE

Form of Amendment to Wind Easement Agreement  
(INV Tradewind form)

Exhibit AE

Form of Memorandum of Amendment to Wind Easement Agreement  
(INV Tradewind form)

Exhibit AE

Form of Site Plan Amendment

Exhibit AE

Form of Secretary's Certificate

Exhibit AE

Form of Manager's Certificate

Exhibit AE

Form of Certification of Partnership Agreement

Exhibit AE

Form of Affidavit of Scrivener's Error

Exhibit AE  
Form of LLC Resolution

Exhibit AE  
Form of Corporate Resolution

Exhibit AE  
Form of Crossing Agreement

Exhibit AE

Form of Trust Certificate (New Owner)

Exhibit AE  
Form of Trust Certificate

Exhibit AE

Form of Affidavit of Non-Payment (Single Lease)

Exhibit AE

Form of Affidavit of Non-Payment (Multiple Leases)

Exhibit AE  
Form of Quit Claim Deed

Exhibit AE  
Form of NDA

Exhibit AE

Potential Buyer Contributed Wind Energy Agreements

Exhibit AE

Form of Amendment to Wind Easement Agreement  
(CE Potential Buyer Contributed WEAs; Heartland Only)

Exhibit AE

Form of Memorandum of Amendment to Wind Easement Agreement  
(CE Potential Buyer Contributed WEAs; Heartland Only)

Exhibit AE

Form of Amendment to Wind Easement Agreement  
(CE Potential Buyer Contributed WEAs; Heartland & Gratiot)

Exhibit AE

Form of Memorandum of Amendment to Wind Easement Agreement  
(CE Potential Buyer Contributed WEAs; Heartland Only)

Exhibit AE

Letter Authorization regarding Potential Buyer Contributed Wind Energy Agreements

Exhibit AF  
Project Contracts

Exhibit AG

Transformer Supply Agreement

Exhibit AH

Assignment of Safe Harbor Turbines

Exhibit AI

Assignment of Safe Harbor Cable

Exhibit AJ

Forms of Material Project Contracts

Exhibit AJ  
Form of BOP Substation

Exhibit AJ  
Form of BOP Installation

Exhibit AJ

Form of BOP Collection Systems

Exhibit AJ

Form of Fire Trace Systems Agreement

Exhibit AJ  
Form of 3S Lift Agreement

Exhibit AJ

Form of Padmount Transformer Supply Agreement

Exhibit AJ

General Cable Long Term Product Supply Agreement

Exhibit AJ

WTEC Long Term Product Supply Agreement

Exhibit AJ

Form of Turbine Supply Agreement

Exhibit AK  
Form of Job Book

Exhibit AL

Safe Harbor Equipment Pool

Exhibit AM

Production Tax Credit Beginning of Construction Certificate

Exhibit AN

[Intentionally Deleted]

Exhibit AO

Third-Party Ethics and Compliance Guidelines

Exhibit AP

[Intentionally Deleted]

Exhibit AQ

Quality Assurance Summary Plan

Exhibit AR  
Seller's Safety Program

Exhibit AS  
Invenergy Key Personnel

Exhibit AT  
Form of Guaranty

Exhibit AU  
Project Credit Support

Exhibit AV  
Lender's Certificate

Exhibit AW

Environmental Species Disclosure

Exhibit AX

[Intentionally Deleted]

Exhibit AY

[Intentionally Deleted]





<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 11/3/2020 3:06:27 PM</b>	
<b>Style name:</b> WNJ Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://WNJDMS/WNJDMS/20894543/1	
<b>Modified DMS:</b> iw://WNJDMS/WNJDMS/18928346/36	
<b>Changes:</b>	
Add	152
Delete	798
Move From	10
Move To	10
Table Insert	0
Table Delete	2
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>972</b>

# **ATTACHMENT 2**

**Affidavit of Jeffrey E. Battaglia**

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 )  
CONSUMERS ENERGY COMPANY to )  
fully comply with Public Acts 286 and 295 )  
of 2008. )  
\_\_\_\_\_ )

Case No. U-15805-T

**AFFIDAVIT OF JEFFREY E. BATTAGLIA**

Jeffrey E. Battaglia, being first duly sworn, deposes and says as follows:

1. My title is Director of Enterprise Project Management – Generation Transformation for Consumers Energy Company (“Consumers Energy” or the “Company”).

2. I have obtained three degrees: an Associate of Science, Welding Engineering Technology from the Delta College, a Bachelor of Business Administration from Northwood University, and a Master of Business Administration from Michigan State University. I retain a Master Certification in Project Management from George Washington University and continue to maintain a Certified Welding Inspector Certification from the American Welding Society. In 1999, I began employment at Dow Chemical in Midland, MI as a Project Manager. My responsibilities included managing the research and development within the Engineering Sciences and Market Development organization throughout the United States and abroad. In detail, my duties included new and emerging chemical process technologies in chemical process computer simulation, lab scale process plant proof design, pilot scale process plant proof design, and commercialization of process plants. In 2006, I began a position with Consumers Energy in the Learning and Development organization developing standards, processes, training plans, and enforcing adherence to governing compliance. Also, in this role, I supported the gas and electric utility within Engineering and Project Management service organizations on their projects

including defining technical specifications, scope development, providing field management, compliance support, estimating, and risk management. My responsibilities included management of project scope, schedule, budget, and quality.

In 2009, I progressed to the position of Welding Engineer. My responsibilities in that position included technical leadership for a department of multi-discipline technical subject matter experts and technicians on electric generation projects. In 2011, I accepted a Project Manager position on large electric generation retrofit and upgrade projects. In this role, I was onsite managing large projects and multifaceted project teams through development and execution phases of projects. In 2016, I progressed to the Program Manager role for electric generating plant retirements. In this position, I developed, implemented, and managed program management strategies in the direction of large electric generation asset retirements. In addition, while in this role I supported development and led workforce and community transition planning, maintained certain customer relationships, led compliance with governing bodies, and supported providing direction to peer industry companies. In 2020, I progressed to the Director of Enterprise Project Management - Generation Transformation where my duties include leading a team toward strategy alignment and development with Integrated Resource Planning in the electric generation business, directing development of renewable electric generation assets, providing regulatory support, and continuing leadership of the asset retirement program plan and execution. In direct relation and more specific to this filing, as Director of Enterprise Project Management - Generation Transformation, I am responsible for the maturation and development of select major projects. My team is responsible for, including but not limited to, successful acquisition and completion of the following development-related activities: Site Selection Process (Technology Studies, Access to Transmission, Stakeholder Engagement); Easement Agreement Process (land acquisition);

Development Studies Process (Site Plan, Environmental, Interconnection, Noise, Shadow Flicker); Local, State, and Federal Permit Process (Special Land Use Permit, Michigan Public Service Commission (“MPSC” or the “Commission”) Approval, Federal Aviation Administration matters); and Long Lead Time Procurement Process (Turbine Contract, Balance Of Plant (“BOP”) Engineering, Procurement and Construction (“EPC”), and Main Power Transformer) in order to transition a complete project execution package to the Company’s Enterprise Project Management organization.

3. I have read the foregoing Application and I am familiar with the contents thereof. The facts contained therein are true, to the best of my knowledge and belief.

4. As Director of the Enterprise Project Management – Generation Transformation, I support the development, acquisition, modification and retirement of generation assets. This includes managing the acquisition of the Heartland Farms Wind Project (“Heartland Farms”), an electric generating facility located in Gratiot County, Michigan. The Build Transfer Agreement (“BTA”) filed herein was negotiated under my direction. The contract selection and negotiation process for the contract is hereinafter described.

5. In June of 2018, Consumers Energy solicited Requests for Proposals (“RFPs”) for wind and solar projects to support the Company’s Renewable Energy Plan (“RE Plan”). The Company sought proposals for up to 400 MW of wind projects (with nameplate capacity between 75 to 200 MW) located within the state of Michigan with a Commercial Operation Date (“COD”) on or before December 31, 2021. Wind Developers were allowed to propose Development Asset Acquisition or BTA deal structures. In the same solicitation, the Company also solicited proposals from Solar Developers for projects required to be located within the lower peninsula of Michigan

with a nameplate capacity of 10 MW-AC to 100 MW-AC and with a COD on or before May 28, 2021.

6. Consumers Energy established a list of qualified bidders who were known to be capable of providing the scope of services requested. This list included respondents to a similar Renewable Energy RFP released in 2017 and other developers who were pre-qualified through recommendation and interviews. Respondents were asked to complete a pre-qualification questionnaire with their bid submissions. Industry reputation, experience, and financial strength sufficient to support their contract and performance were important factors in the evaluation and selection of potential bidders. Based on analysis, 69 companies were invited to respond to the Renewable Energy RFP issued on June 8, 2018.

7. In response to the solicitation, 17 wind project proposals were received from nine suppliers on or before July 9, 2018. Proposals were first evaluated based on completeness and consistency with the proposal content and bid requirements as described in the RFP. Three proposals were rejected as a result of this step. Second, the Company reviewed proposals based on disclosed environmental and other project placement implications. One of the wind project proposals was rejected at this stage due to concerns the Company deemed significant enough to impede or hamper project success. These concerns included zoning moratoriums. Next, the Company compared the costs of the remaining 13 projects.

8. The Company then used a financial model to calculate each project's 31-year levelized cost of energy ("LCOE"). The LCOE calculation utilizes purchase price (consisting of wind turbine generator cost, estimated BOP EPC cost, Main Power Transformer, Generator Interconnection Agreement Costs, Safe Harbor Equipment, and Developer Fee) and each project's calculated net capacity factor (derived from a qualified third-party wind resource assessment

consultant). Multiple stakeholders from within the Company were engaged to review and rate the technical merits and associated risks of each project. An evaluation table was developed to fairly compare the proposals and different contracting types. After reviewing the costs, technical merits, and risks associated with each project, a short list of five proposals from three developers was developed. The Company met with and began negotiating commercial terms and pricing with each of the short-listed developers. Based on the quantitative and qualitative information obtained through these negotiations, the Company ultimately selected and executed transactions to acquire the Crescent Wind project and Heartland Farms project from the five short-listed proposals.

9. During negotiations for the Heartland Farms project, two changes occurred to the bid originally submitted. First, the original developer sold the project to the current developer. The original developer had proposed only Development Asset Acquisition contract structures. However, through the negotiating process the current developer and the Company determined that the preferred type of transaction for this project would utilize the BTA structure sought through the RFP. Second, during the negotiation process, the project's forecast COD was moved to the end of 2022 due to the land rights acquisition process being in its early stages and due to the availability of the developer's safe harbor equipment. Throughout these changes, the Company was in negotiations with the other short-listed projects. The Company determined that Heartland Farms continued to be the best evaluated of the remaining short-listed projects.

10. The Heartland Farms project is located in Gratiot County. The project consists of 65 GE 2.82-127 on 89-meter hub height turbines and seven GE 2.52-127 on 89-meter hub height safe harbor turbines totaling 200.94 MW installed capacity. The Generator Interconnection Agreement ("GIA") is currently limited to 200 MW nameplate capacity.

11. The Company calculated the Heartland Farms project to have an LCOE of approximately \$56/MWh, provided the Company is successful in qualifying for the federal Production Tax Credit (“PTC”) available for projects that started construction in 2018 and complete construction by the end of 2022 (in accordance with guidance issued by the IRS in IRS Notice 2013-29, IRS Notice 2013-60, IRS Notice 2014-46, IRS Notice 2015-25, IRS Notice 2016-31 and IRS Notice 2017-14). To fulfil the 525 MW of new wind capacity included in the approved RE Plan, the Company has added the 150 MW Gratiot Wind project that achieved COD in late 2020, the 166 MW Crescent Wind project that is expected to achieve COD in early 2021, and the 200 MW Heartland Farms project included in this application which is expected to reach Commercial Operation in late 2022. With this project, the Company expects to achieve the Renewable Energy Credit portfolio requirements from 2008 PA 295, as amended by 2016 PA 342, consistent with the Commission’s approval in Case No. U-18231.

12. On December 4, 2020, Consumers Energy entered into a BTA with Heartland Farms Wind Project, LLC. Under the terms of the BTA, the developer is contractually obligated to manage, develop, obtain necessary permits, engineer, procure, construct, and commission Heartland Farms to the Company’s contractual specifications. Upon issuance of a Notice to Proceed, Heartland Farms Wind Project, LLC will transfer to the Company the development assets associated with Heartland Farms, such as all necessary real estate agreements, the interconnection agreements, and marketable title to the Safe Harbor wind turbine generators and collector cable and all other equipment and materials incorporated into the project through such date. Upon issuance of a Notice to Proceed, the developer will also begin to procure and install turbines, complete engineering, construction, startup, and testing. Upon completion of these activities, the Company will complete the purchase of the wind project and begin to operate the facility. The

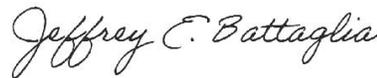
COD of the facility is expected to be on or before December 31, 2022 in order to qualify for the available federal PTC at the rate of 60%.

13. The Company negotiated several customer protections into the Heartland Farms BTA. These protections are similar to what were included in the Company's previously approved wind BTA for the Crescent Wind project. These customer protections include liquidated damages should there be project delays. These clauses are designed to reasonably protect the Company and its customers should the contractor be unable to complete the project by December 31, 2022, which would potentially impact qualification for the Production Tax Credit. Per the Commission's December 6, 2019 Rehearing Order when approving the Crescent Wind project BTA, the Company has evaluated, "two scenarios, i.e. one for which the utility can guarantee and another scenario for what it cannot guarantee" that will inform the Commission on the economic impact of the project. The most likely scenario is achieving the LCOE previously discussed of \$56/MWh. This is the scenario the Company expects; however, this LCOE relies upon the Company receiving the full available 60% PTC, which, as the Commission has previously indicated, the Company cannot "guarantee." The second scenario that the Company could "guarantee" is the worst-case scenario. This scenario is unlikely to occur, and for this scenario to occur, the Company would receive none of the available PTC and, for some highly unlikely reason, could not invoke the contractual customer protections. The LCOE of this unlikely worst-case scenario is \$69.39/MWh. While the Company understands that being educated with both scenarios will make a more informed decision, the Company believes its track record of constructing wind farms according to plan and receiving the full PTC value allowable is also important. To date, the Company has built or purchased four wind farms, all of which have been delivered according to plan.

14. The Company is requesting an ex parte order granting approval of the Heartland Farms BTA by the Commission. Timely review and approval will provide greater likelihood of Heartland Farms successfully meeting the 2022 IRS “completion of construction” requirement and qualifying for the PTC. Based upon my experience conducting Renewable Energy RFPs and negotiating Renewable Energy contracts, I believe this contract to be reasonable and prudent. The projected LCOE of Heartland Farms is less than the LCOE of the proxy wind facilities in Case No. U-18231, the project is expected to achieve 60% PTC, and the project will support the Company in reaching its Renewable Energy Credit portfolio requirements according to approved plans.

15. This contract is consistent with Consumers Energy’s Renewable Energy Plan and should be approved.

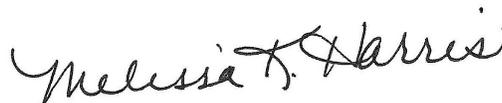
If sworn as a witness, I would testify as set forth above.



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Jeffery E. Battaglia

Subscribed and sworn to before me this 2<sup>nd</sup> day of February 2021.



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Melissa K. Harris, Notary Public  
State of Michigan, County of Jackson  
My Commission Expires: 06/11/2027  
Acting in the County of Jackson

# **ATTACHMENT 3**

**2020 MPSC Staff Transfer Price Schedule**

## Attaching to U-15800

### 2020 MPSC Staff Transfer Price Schedule

#### **Background**

The Commission's December 20, 2011 Commission Order in Case No. U-16582 directed the Michigan Public Service Commission Staff (Staff) to convene a technical conference with the following objectives:

- Address the appropriate inputs for developing transfer prices;
- Address the method for developing transfer prices; and
- Determine adequate measures to protect confidential information that recognizes the rights of the other parties to examine and test the evidence that may be used to develop transfer prices.

Staff convened the first technical conference on January 18, 2012 with DTE Electric Company (Formerly known as Detroit Edison Company), Michigan Environmental Council (MEC) and the Environmental Law and Policy Center (ELPC) to discuss inputs and the methodology for developing transfer prices and adequate measures to protect confidential information that allows for intervening parties to test the transfer price calculation methodology in the course of a contested case hearing. The parties agreed to work on solutions to the issues and provide the information electronically on February 15, 2012 and meet again on February 21 to discuss what each party had filed.

At the February 21, 2012 technical conference, Staff and MEC described the proposed transfer price calculation methodologies. The Attorney General also participated in the meeting. Additionally, processes to disclose necessary confidential information to parties yet adequately protect the data were discussed.

Staff convened a larger technical conference on May 30, 2012 with all Companies and interveners that participated in cases with transfer price issues. The goal of this larger technical conference was to try to reach consensus on a procedure to develop and update the transfer price schedules on a yearly basis. The parties attending the technical conferences provided discussion and feedback related to inputs and the methodology for developing transfer prices and measures to protect confidential information that allows for intervening parties to adequately test the transfer price calculation methodology in the course of a contested case.

#### **Methodology**

Staff's proposed methodology is to set yearly transfer price schedules that will cover the remaining time frame of the renewable energy planning period (2029) on a going forward basis. The transfer prices resulting from this methodology will be used by electric providers<sup>1</sup> as a point of reference.

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<sup>1</sup> Currently Consumers Energy Company, DTE Electric Company, Indiana Michigan Power Company, Upper Michigan Energy Resources Corporation and Wisconsin Electric Power Company utilize transfer price schedules.

Staff believes transfer price schedules should be representative of what a Michigan electric provider would pay had it obtained the energy and capacity (the non-renewable market price component) through a long term power purchase agreement for traditional fossil fuel electric generation. MCL460.1047 explains that when setting the transfer price, the Commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs, information filed under Section 6j of 1939 PA 3 (MCL 460.6j), and wholesale market data, including but not limited to, locational marginal pricing. To best determine the value of the non-renewable component of PA 295 of 2008 compliant generation, Staff believes that for purposes of developing the MPSC Staff Transfer Price Schedule that the levelized cost of a new natural gas combined cycle (NGCC) plant would likely be analogous to the market price mentioned above. Starting with the U.S. Energy Information Administration's (EIA) levelized cost estimate for an advanced natural gas combined cycle facility, Staff built a trend line from the cost estimate to effectively follow the value of energy, capacity and inflation through 2029 that represents the cost of a new NGCC plant in each year.

To determine the slope of the trend line, Staff utilized data and projections provided by the EIA and the IHS Global Insight. Staff utilized fuel cost forecasts and producer price indices including utility natural gas, employment cost, industrial commodities, metals and metal products, and machinery and equipment. Consistent with common industry practice, Staff proposes that by analyzing projected construction cost components and fuel price forecasts throughout the plan period, Staff was able to calculate a proxy for market energy prices, capacity prices, ancillary benefits and the effect of inflation through the 2029 plan period.

Staff believes that, given current market conditions, the market will converge towards the price of a new NGCC plant every year. In an effort to accurately and effectively assign value to the non-renewable component of renewable energy generation and capacity, Staff developed this transfer price methodology so that it will result in a proxy for how a long term power purchase agreement would be structured. This methodology is the basis for the calculation of the MPSC Staff Transfer Price Schedules.

### **Data Protection**

The Commission specified that a purpose of the technical conferences was to discuss adequate measures to protect confidential information but allows for intervening parties to adequately test the transfer price calculation methodology in the course of a contested case hearing. Staff has received permission from IHS Global Insight to allow the parties to a contested case to visit the MPSC offices and review the producer price indices used to create the trend line for Staff's transfer price schedule.

## **Timing**

Staff will issue an updated MPSC Staff Transfer Price Schedule each spring in docket number U-15800. This is done to allow the electric providers time to incorporate the MPSC Staff Transfer Price Schedule into future renewable energy case filings for the calculation of the incremental cost of compliance.

In each contested Renewable Cost Reconciliation case, the electric provider will request a transfer price schedule be established and file its proposed transfer price schedule. Additionally, Staff will file the MPSC Staff Transfer Price Schedule.

Upon Michigan Public Service Commission approval of a transfer price schedule in the Renewable Cost Reconciliation, the transfer price schedule will be in effect until a new transfer price schedule is established in a subsequent proceeding. The most recently approved transfer price schedule will apply to all new renewable energy contracts and projects approved by the Commission. The most recently approved transfer price schedule will have no impact on contracts or projects that have already had transfer price schedules assigned.

## **2020 MPSC Staff Transfer Price Schedule**

Staff presents its 2020 MPSC Staff Transfer Price Schedule. Using the same methodology as its 2012 – 2019 MPSC Staff Transfer Price Schedules,<sup>2</sup> Staff updated three components. These updates include:

- Updated Global Insight data.
- Utilized Energy Information Administration Annual Energy Outlook 2020 natural gas base case Henry Hub nominal gas price projection.
- Updated the Global Insight base year to 2024.

The 2020 Staff Transfer Price Schedule updates resulted in an overall average decrease in transfer prices when compared to the 2019 Staff Transfer Price Schedule.

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<sup>2</sup> Due to the timing of the technical conferences, the 2012 MPSC Staff Transfer Price Schedule was not filed in this docket, but only filed in Renewable Cost Reconciliation Cases No: U-16662, U-16655 and U-16656 .

	<b>2019 Transfer Price Schedule</b>	<b>2020 Transfer Price Schedule</b>
2020	\$63.16	\$56.27
2021	\$64.58	\$57.77
2022	\$66.44	\$59.21
2023	\$68.82	\$60.86
2024	\$71.70	\$63.64
2025	\$73.52	\$65.71
2026	\$75.14	\$67.61
2027	\$77.31	\$69.94
2028	\$79.96	\$72.60
2029	\$83.52	\$75.45

Levelized Cost Calculation

	NGCC	notes
Capacity MW	400	MW
Loading Factor	71.00%	% of time the unit would be dispatched if available
Equivalent Avail.	87.00%	% of time the unit would be available for dispatch.
Capacity Factor	61.77%	(Loading Factor)(Equivalent Availability)
Heat Rate Btu/kWh	6719	BTU/kWh
Fuel Cost \$/MMBtu	\$3.91	\$ per Million BTU
Total Cost MM no AFUDC	\$518.108	MM
AFUDC	\$70.84	MM
Total Cost MM	\$588.952	MM
Fixed Charge Rate	11.59%	% used to calculate fixed cost recovery component
Fixed O&M \$/kW	\$14.62	\$/kW
Annual Lev. Fixed Cost MM	\$68.26	MM
Total Annual Lev. Fixed Cost MM	\$74.11	MM
Fixed Cost \$/kWh	0.0342	\$/kWh
Fuel Cost \$/kWh	0.0263	\$/kWh
Var. O&M \$/kWh	0.0031	\$/kWh
Total Var. Cost	0.0294	\$/kWh
<b>Total Cost \$/kWh</b>	<b>0.06364</b>	\$/kWh

Overnight Cost (MM) 489.116635

AFUDC		Total Overnight Cost (MM) in 2020 \$	Inflation Rate	Cumulative	Finance Rate	
Year	GCC	\$489.117	2%		6.56%	
	1	5%	24	24.94	24.94	1.64
	2	30%	147	152.66	177.61	11.65
	3	35%	171	181.67	359.28	23.57
	4	30%	147	158.83	518.11	33.99
	1		489	518.108		70.84

Fixed price cost escalation: Fixed portion of levelized cost with 2024 as base year (2024=1)

Variable cost price escalation: Variable portion of levelized cost is multiplied by Nat Gas price forecast index, with 2024 as a base year (i.e. 2024=1).

FIXED Cost Component					\$34.24		VARIABLE			\$29.40	
	Producer Price Index--Intermediate Materials	Producer Price Index--Industrial Commodities	Producer Price Index--Machinery & Equipment	Producer Price Index--Metals & Metal Products	Average	Producer Price Index--Utility Natural Gas	Employment Cost Index--Total Private Compensation	Weighted Average (Utility Nat Gas 70% ; Employment Cost 30%)		2019 Transfer Price Schedule	2020 Transfer Price Schedule
2020	-	-	-	-	32.2817	-	-	23.9908	2020	\$63.16	\$56.27
2021	-	-	-	-	32.5464	-	-	25.2211	2021	\$64.58	\$57.77
2022	-	-	-	-	33.0434	-	-	26.1621	2022	\$66.44	\$59.21
2023	-	-	-	-	33.5939	-	-	27.2697	2023	\$68.82	\$60.86
2024	-	-	-	-	34.2390	-	-	29.3998	2024	\$71.70	\$63.64
2025	-	-	-	-	34.9503	-	-	30.7636	2025	\$73.52	\$65.71
2026	-	-	-	-	35.7169	-	-	31.8974	2026	\$75.14	\$67.61
2027	-	-	-	-	36.4847	-	-	33.4523	2027	\$77.31	\$69.94
2028	-	-	-	-	37.2382	-	-	35.3583	2028	\$79.96	\$72.60
2029	-	-	-	-	37.9666	-	-	37.4874	2029	\$83.52	\$75.45

**Source: EIA Annual Energy Outlook 2020**

<https://www.eia.gov/outlooks/aeo/data/browser/#/?id=1-AEO2020&region=0->

Period (Used for Levelized Calculation)	Henry Hub Using 2020 Annual Energy Outlook (Nominal)	
2022	1	2.68
2023	2	2.78
2024	3	2.95
2025	4	3.27
2026	5	3.64
2027	6	3.90
2028	7	4.11
2029	8	4.22
2030	9	4.26
2031	10	4.30
2032	11	4.41
2033	12	4.60
2034	13	4.77
2035	14	4.86
2036	15	4.96
2037	16	5.14
2038	17	5.30
2039	18	5.43
2040	19	5.56
2041	20	5.68
<b>Discount Rate</b>		<b>8.98%</b>
<b>Net Present Value Fuel</b>		<b>\$35.77</b>
<b>Levelized Fuel Price</b>		<b>\$3.91</b>

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 )
CONSUMERS ENERGY COMPANY to )
fully comply with Public Acts 286 and 295 )
of 2008. )
\_\_\_\_\_ )

Case No. U-15805-T

PROOF OF SERVICE

STATE OF MICHIGAN )
) SS
COUNTY OF JACKSON )

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on February 2, 2021 she served an electronic copy of the Consumers Energy Company's Application for Ex Parte Approval of a Build Transfer Agreement upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

Melissa K. Harris (handwritten signature)

Melissa K. Harris

Subscribed and sworn to before me this 2nd day of February 2021.

Crystal L. Chacon (handwritten signature)

Crystal L. Chacon, Notary Public
State of Michigan, County of Ingham
My Commission Expires: 05/25/24
Acting in the County of Jackson

**ATTACHMENT 1 TO CASES NOS. U-15805**

**Counsel for the Michigan Public  
Service Commission Staff**

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