

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA MICHIGAN)
POWER COMPANY (I&M) FOR APPROVAL OF)
(1) ISSUANCE TO I&M OF CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY)
UNDER IND. CODE § 8-1-8.5-2 FOR THE)
ACQUISITION AND DEVELOPMENT THROUGH)
PURCHASE SALE AGREEMENTS (PSA) OF)
TWO SOLAR POWER GENERATING)
FACILITIES TO BE KNOWN AS LAKE TROUT,)
AND MAYAPPLE (CLEAN ENERGY PSA)
PROJECTS); (2) TO THE EXTENT NECESSARY,)
ISSUANCE OF AN ORDER PURSUANT TO IND.)
CODE § 8-1-2.5-5 DECLINING TO EXERCISE)
JURISDICTION UNDER. IND. CODE § 8-1-8.5-)
5(e) (3) APPROVAL OF EACH PSA PROJECT)
AS A CLEAN ENERGY PROJECT UNDER IND.)
CODE § 8-1-8.8-11; (4) APPROVAL OF TWO)
SOLAR RENEWABLE ENERGY PURCHASE)
AGREEMENTS FOR PROJECTS TO BE KNOWN)
AS ELKHART COUNTY AND SCULPIN (CLEAN)
ENERGY PPA PROJECTS) AS CLEAN ENERGY)
PROJECTS UNDER IND. CODE § 8-1-8.8-11; (5))
ASSOCIATED TIMELY COST RECOVERY)
UNDER IND. CODE § 8-1-8.8-11 FOR ALL PSA)
AND PPA PROJECTS; AND (6) OTHER)
ACCOUNTING AND RATEMAKING AUTHORITY.)

CAUSE NO. 45868

**SUBMISSION OF DIRECT TESTIMONY OF
TIMOTHY B. GAUL**

Applicant, Indiana Michigan Power Company (I&M), by counsel, respectfully submits the direct testimony and attachments of Timothy B. Gaul in this Cause.

Respectfully submitted,



Teresa Morton Nyhart (Atty. No. 14044-49)

Lauren Aguilar (Atty. No. 33943-49)

Barnes & Thornburg LLP

11 South Meridian Street

Indianapolis, Indiana 46204

Nyhart Phone: (317) 231-7716

Aguilar Phone: (317) 231-6474

Fax: (317) 231-7433

Nyhart Email: tnyhart@btlaw.com

Aguilar Email: laguilar@btlaw.com

Tammara D. Avant (Atty. No. 31466-49)

American Electric Power Service Corporation

101 W. Ohio St., Suite 1320

Indianapolis, Indiana 46204

Phone: (317) 508-9262

Email: tdavant@aep.com

Attorneys for

Indiana Michigan Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 28th day of March, 2023, by email transmission, hand delivery or United States Mail, first class, postage prepaid to:

T. Jason Haas
Indiana Office of Utility Consumer Counselor
Office of Utility Consumer Counselor
115 West Washington Street
Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov
thaas@oucc.in.gov



Jeffrey M. Peabody

Teresa Morton Nyhart (Atty. No. 14044-49)
Lauren Aguilar (Atty. No. 33943-49)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Aguilar Phone: (317) 231-6474
Fax: (317) 231-7433
Nyhart Email: tnyhart@btlaw.com
Aguilar Email: laquilar@btlaw.com

Tammara D. Avant (Atty. No. 31466-49)
American Electric Power Service Corporation
101 W. Ohio St., Suite 1320
Indianapolis, Indiana 46204
Phone: (317) 508-9262
Email: tdavant@aep.com

Attorneys for INDIANA MICHIGAN POWER COMPANY

INDIANA MICHIGAN POWER COMPANY

PRE-FILED VERIFIED DIRECT TESTIMONY

OF

TIMOTHY B. GAUL

Content

I. Introduction of Witness	1
II. Overview of the 2022 All Source RFP and Selected Projects.....	4
III. Competitive RFP Development / Issuance and Engagement of Independent Monitor.....	9
IV. Proposal Review and Project Selection	11
V. Negotiation Process and Market Pressures	17
VI. Overview of the PSAs	25
VII.Overview of the PPA Agreements	37
VIII.Best Estimates of PSA Project Costs.....	41
IX. Summary and Conclusion.....	47

**DIRECT TESTIMONY OF TIMOTHY B. GAUL
ON BEHALF OF
INDIANA MICHIGAN POWER COMPANY**

I. Introduction of Witness

1 **Q1. Please state your name and business address.**

2 My name is Timothy B. Gaul and my business address is 1 Riverside Plaza,
3 Columbus, OH 43215.

4 **Q2. By whom are you employed and in what capacity?**

5 I am employed by American Electric Power Service Corporation (AEPSC), a
6 wholly-owned subsidiary of American Electric Power Company, Inc. (AEP), as
7 Director – Regulated Infrastructure Development. AEP is the parent company of
8 Indiana Michigan Power Company (I&M or Company). AEPSC provides
9 engineering, financing, accounting, regulatory, and similar planning and advisory
10 services to AEP’s regulated electric operating companies, including I&M.

11 **Q3. Briefly describe your educational background and professional
12 experience.**

13 I have a Bachelor of Science degree from the State University of New York
14 College of Environmental Science and Forestry at Syracuse University, in New
15 York and a Master of Science degree from Creighton University, in Omaha,
16 Nebraska. I also have a graduate certification in Financing and Deploying Clean
17 Energy from Yale University.

18 During my career with AEP, I served as Director of the Transmission Siting
19 Department where I led the team responsible for providing transmission project
20 siting and development support for projects across AEP’s 13 state transmission
21 footprint and for competitive transmission siting efforts. I assumed my current

1 position as a Director in the Regulated Infrastructure Development group in
2 2021.

3 Prior to joining AEP in 2016, I was the Vice President of the US Power and
4 Energy Division at Louis Berger, an international architecture, planning, and
5 engineering firm, where I was responsible for the company's US energy
6 program serving utility clients, energy developers, and the federal government.

7 **Q4. What are your responsibilities as Director of Regulated Infrastructure**
8 **Development?**

9 As Director, Regulated Infrastructure Development, I am part of a team that: (1)
10 structures and issues requests for proposals (RFPs) for energy resources; (2)
11 reviews and evaluates proposals received in response; (3) negotiates and
12 finalizes the agreements with the successful respondent(s); (4) serves as the
13 primary interface between the Company and the Independent Monitor; and (5)
14 provides ongoing commercial support as the Company pursues regulatory
15 approvals and moves forward to construction and eventual completion of energy
16 projects.

17 **Q5. Have you previously testified before any regulatory commissions?**

18 Yes. I have provided testimony before state utility commissions in Michigan,
19 Oklahoma, Kansas, Missouri, Illinois, Pennsylvania, West Virginia, Virginia, and
20 New Jersey.

21 **Q6. What is the purpose of your testimony?**

22 I support I&M's request for approval of a) the acquisition through two Purchase
23 and Sale Agreements (PSAs) of the Lake Trout and Mayapple solar power
24 generating facilities (Clean Energy PSA Projects); and b) two solar Renewable
25 Energy Purchase Agreements for the Elkhart County and Sculpin Projects
26 (Clean Energy PPA Projects), all of which were selected through a competitive
27 all-source RFP. For ease of reference each Renewable Energy Purchase
28 Agreement is referred to in this filing as a power purchase agreement or "PPA".

1 More specifically, my testimony includes the following:

- 2 • Overview of the 2022 All Source RFP (2022 RFP) and selected
- 3 projects;
- 4 • Review of the RFP development and issuance process and
- 5 engagement of Independent Monitor;
- 6 • Description of the proposal review and selection;
- 7 • Overview of the negotiation process, market pressures;
- 8 • Overview of the PSAs;
- 9 • Overview of the PPAs;
- 10 • Best Estimates of the PSA Project Costs; and
- 11 • Summary and Conclusion

12 **Q7. Are you sponsoring any attachments?**

13 Yes, I am sponsoring:

14 Attachment TBG-1 – 2022 All Source RFP

15 Attachment TBG-2C – Confidential/Highly Competitively Sensitive Versions of
16 the Bid Score Summary Sheet

17 Attachment TBG-3 and 3C – Lake Trout PSA (Confidential/Highly Competitively
18 Sensitive)

19 Attachment TBG-4 and 4C – Mayapple PSA (Confidential/Highly Competitively
20 Sensitive)

21 Attachment TBG-5 and 5C – Sculpin PPA (Confidential/Highly Competitively
22 Sensitive)

23 Attachment TBG-6 and 6C – Elkhart County PPA (Confidential/Highly
24 Competitively Sensitive)

25 In addition, I am co-sponsoring a portion of Attachment BT-1 and BT-2 (included
26 with Company witness Taberner testimony), which provides the information
27 required under the Commission's General Administrative Order 2022-01.

1 Specifically, I support the description of the new generation's expected capacity
2 factors, dispatchability, and accreditation characteristics.

3 **Q8. Are you sponsoring any workpapers?**

4 Yes, I am sponsoring:

5 WP-TBG-1C – Risk Register for Lake Trout PSA Project (Confidential/Highly
6 Competitively Sensitive)

7 WP-TBG-2C – Risk Register for Mayapple PSA Project (Confidential/Highly
8 Competitively Sensitive)

9 **Q9. Were these attachments and workpapers prepared or assembled by you or
10 under your direction and supervision?**

11 Yes.

II. Overview of the 2022 All Source RFP and Selected Projects

12 **Q10. Please provide an overview of the RFP.**

13 The I&M 2022 All Source RFP sought to acquire approximately 500 MW of
14 solar, 800 MW of wind, and other supplemental capacity resources through
15 either PPAs or PSAs to meet the overall capacity and energy needs of the
16 Company identified in the Preferred Portfolio. The Integrated Resource Plan
17 (IRP) is discussed by Company witnesses Lucas and Becker. The competitive
18 RFP targeted projects with commercial operation dates to support the
19 Company's capacity needs during PJM Interconnection LLC's (PJM) 2025-2026
20 and 2026-2027 Planning Years. The 2022 All Source RFP is summarized in
21 Table TBG-1 below. The 2022 All Source RFP is available in Attachment TBG-
22 1.

23 The RFP was designed in a way that allowed for an open, non-discriminatory
24 competitive procurement process that considered both third-party and utility

1 ownership, a range of resource types or combinations of resource types, and
 2 various sizes and capacities within reasonable operational limits for utility needs.
 3 The RFP required projects to be located within either Indiana or Michigan for
 4 solar or supplemental capacity resources. An expanded geographic scope was
 5 used for wind project consideration to engage a broader range of potential
 6 projects that included Illinois and Ohio. Additionally, all projects were required
 7 to either be pursuing a PJM interconnection service agreement or have firm
 8 transmission from MISO into PJM to be considered eligible for consideration.

Table TBG-1: I&M 2022 All-Source Request for Proposal Summary

Category	Wind (Storage Optional)	Solar (Storage Optional)	Supplemental Capacity Resources ¹
Nameplate Capacity	Approximately 800 MWac	Approximately 500 MWac	Supplemental capacity to meet overall capacity need.
Location	Indiana, Michigan, Ohio or Illinois	Indiana or Michigan	Indiana or Michigan
Battery Energy Storage Option	Targeting within a ratio of 5:1 to 3:1 of nameplate and greater than or equal to 4 hours of storage	Targeting within a ratio of 5:1 to 3:1 of nameplate and greater than or equal to 4 hours of storage	Greater than or equal to 4 hours of storage, with consideration for projects that can enhance existing I&M facilities
Carbon Emissions Requirement	N/A	N/A	Generating units must have low carbon emissions or mitigating technology
Minimum PPA/PSA Size	5 MWac	5 MWac	5 MWac
Minimum PSA Design Life	30 year	30 year	Preferred 30 year; minimum 15 year (technology dependent)
Minimum PPA Term	15 year (must show a 30 year option)	15 year (must show a 30 year option)	15 year
PPA Price Structure	Fixed price / Non-Escalating All-in around-the-clock price	Fixed price / Non-Escalating All-in around-the-clock price	N/A
Affiliate or Self Build	No	No	No

¹ Standalone Storage, Emerging Technologies, Thermal, and Other Capacity Resources

9 **Q11. Please provide a summary of the Projects selected in the I&M 2022 RFP.**

10 Following the RFP process, I&M entered into two PSAs for 469 MW of solar
 11 resources (Clean Energy PSA Projects) and two PPAs for 280 MW of solar
 12 resources (Clean Energy PPA Projects) as shown in Table TBG-2 below
 13 (collectively referred to as Clean Energy Projects). All of the projects are

1 connected to the PJM grid, and all are located in Indiana within I&M's service
 2 territory except for the Mayapple Project, which will directly connect with an AEP
 3 transmission line that extends west of the I&M service territory in Pulaski
 4 County. I&M has also entered into a capacity only purchase agreement (CPA)
 5 for 210 MW of natural gas peaking capacity. The CPA agreement is not part of
 6 this request for approval and will be addressed in a separate filing.

Developer	Project	Type	Form	COD (m/yr)	Size (MW)¹
EDF	Lake Trout	Solar	PSA	4/2026	245
Lightsource bp	Mayapple	Solar	PSA	5/2026	224
					469
EDF	Sculpin	Solar	30 yr PPA	12/2025	180
Savion	Elkhart County	Solar	30 yr PPA	12/2025	100
Rockland	Montpelier	NG Peaking	7 yr Capacity-only	Existing	210
					490
TOTAL					959 MW

7
 8 **Q12. Please further describe each of the Clean Energy Projects that are subject**
 9 **in this proceeding.**

10 I&M is proposing the following two Clean Energy PSA Projects, with the
 11 Company purchasing 100% ownership of the project and operating the facilities
 12 for the life of the facility.

- 13 • The Lake Trout Project is located in Indiana and will produce 245 MWs of
 14 solar generation using single axis tracking design. The developer for this
 15 project is EDF Renewables Development, Inc. (EDF). The Project is
 16 expected to be operational in April of 2026. The Lake Trout Project is
 17 expected to be capable of producing enough energy to power
 18 approximately 73,500 homes.
- 19 • The Mayapple Project is located in Indiana and will produce 224 MWs of
 20 solar generation using single axis tracking design. The developer for this
 21 project is Lightsource bp. The Project is expected to be operational in

¹ All MW references refer to installed capacity, or ICAP.

1 May of 2026. The Mayapple Project is expected to be capable of
2 producing enough energy to power approximately 67,200 homes.

3 I&M proposes the following two Clean Energy PPA Projects, with the Company
4 contracting for the capacity, energy, and renewable energy certificates (RECs)
5 from these facilities, once the resources are operational.

- 6 • The Sculpin Project is located in Indiana and will produce 180 MWs of
7 solar generation using single axis tracking design. The developer for this
8 project is EDF. The Project is expected to be operational by December
9 15, 2025. The Sculpin Project is expected to be capable of producing
10 enough energy to power approximately 54,000 homes.
- 11 • The Elkhart County Project is located in Indiana and will produce 100
12 MWs of solar generation. The developer for this Project is Savion, LLC
13 (Savion). This Project is expected to be operational by December 31,
14 2025. The Elkhart County Project is expected to be capable of producing
15 enough energy to power approximately 30,000 homes.

16 **Q13. Please provide an overview of the Project Developers and their experience**
17 **developing renewable energy projects.**

18 Renewable energy agreements were negotiated and executed with three Project
19 Developers: *EDF, Lightsource bp, and Savion*. All three companies are well
20 established developers of renewable energy projects and have specific
21 experience developing projects in the region. Each developer has provided the
22 below company summary information:

23 **EDF**

24 EDF is a market leading independent power producer and service provider with
25 35 years of expertise in renewable energy. The company delivers grid-scale
26 power resources through wind (onshore and offshore), solar photovoltaic, and
27 storage projects; distribution-scale power through solar and storage projects;
28 and asset optimization through providing technical, operational, and commercial

1 expertise to maximize performance of generating projects. EDF Renewables'
2 North American portfolio consists of 24 GW of developed projects and 13 GW
3 under service contracts. EDF Renewables North America is a subsidiary of EDF
4 Renewables, the dedicated renewable energy affiliate of the EDF Group based
5 in France.

6 Lightsource bp

7 Lightsource bp is a global leader in the development and management of solar
8 energy and energy storage projects and a 50:50 joint venture with bp. For more
9 than a decade, Lightsource bp has delivered affordable, safe and sustainable
10 energy to businesses and communities around the world. Their team includes
11 nearly 1,000 industry experts, working in 19 countries, providing full scope
12 development for projects, from initial site selection, financing and permitting to
13 long-term management of solar projects and energy sales to their customers.
14 Lightsource bp in the U.S. is headquartered in San Francisco, CA.

15 Savion

16 Savion, a Shell Group portfolio company operating on a stand-alone basis, is an
17 industry-leading solar and energy storage organization with a growing portfolio
18 of more than 23 GW. Savion is currently one of the country's largest utility-scale
19 solar and energy storage project development companies. Combined, the
20 Savion team has developed 2,533 MW of operating, in-construction, and
21 contracted solar energy projects, with a current solar and storage development
22 pipeline of 15,829 MW and 7,886 MW, respectively. Savion has contracted 891
23 MW with utility and C&I clients in PJM and has a current PJM solar and storage
24 development pipeline of 4,099 MW and 1,428 MW, respectively.

III. Competitive RFP Development / Issuance and Engagement of Independent Monitor

1 **Q14. What steps were taken by the Company prior to the issuance of the RFP?**

2 Prior to issuance of the RFP, I&M (1) retained an Independent Monitor; (2)
3 drafted the RFP based on the needs outlined in the Company's IRP; (3)
4 assessed the pool of projects in the PJM approval process that would be eligible
5 to bid into the RFP; and (4) engaged with stakeholders to gather input on the
6 RFP's structure and requirements.

7 **Q15. Please describe your role in the Company's 2022 All-Source RFP.**

8 My role in the 2022 All-Source RFP was to oversee and facilitate the RFP
9 process through its development, administration, evaluation, negotiation, and
10 agreement execution phases for the Clean Energy Projects, which are the
11 subject of this proceeding. I also served as the primary contact for coordination
12 with the Independent Monitor and I&M throughout the process.

13 **Q16. Please identify and explain the role of the Independent Monitor.**

14 I&M retained Charles River Associates (CRA) to serve as the Independent
15 Monitor on behalf of I&M for the All-Source RFP. As the Independent Monitor,
16 CRA managed the RFP process and helped support the design and
17 development of the RFP; led the stakeholder engagement process and
18 feedback; conducted the Eligibility and Threshold (E&T) review for all proposals;
19 and monitored the RFP administration from issuance to selection. CRA was
20 also consulted post-selection to address emerging issues during contract
21 negotiations, such as pricing changes due to supply constraints, to ensure the
22 competitive procurement process was not compromised. Witness Koujak
23 discusses CRA's role and experience as Independent Monitor in additional
24 detail in his direct testimony.

1 **Q17. How did the Company develop the structure and requirements of the RFP?**

2 I&M worked in cooperation with the Independent Monitor to develop the RFP
3 based on the overall capacity need identified in I&M's 2021 IRP submitted in
4 January 2022 in Indiana and filed in February 2022 in Michigan. The RFP was
5 developed to conform to requirements approved by the Commission order dated
6 December 8, 2021 in Cause No. 45546² as well as the requirements of
7 Michigan's *Competitive Procurement Guidelines for Rate-Regulated Electric*
8 *Utilities* (MI Procurement Guidelines). The RFP was structured to be non-
9 discriminatory and flexible with respect to technology, allow for project sizes as
10 small as 5 MW, allow for stakeholder input in the development of the RFP prior
11 to its issuance, and consider both third-party and utility ownership structures.

12 **Q18. How did the Company collect and incorporate stakeholder input in the**
13 **development of the RFP?**

14 The Independent Monitor facilitated a stakeholder engagement process
15 designed to provide stakeholders with an opportunity to provide input in the
16 development of the RFP. The engagement effort allowed stakeholders to
17 review the overall purpose, process, and schedule of the RFP, review RFP
18 documents, and provide input to CRA and the Company.

19 Stakeholder communications were initiated early January 2022, notifying
20 interested parties that I&M would be releasing an RFP in March 2022. CRA
21 hosted an RFP website (imallsourcerfp.com) that shared information about the
22 RFP development and issuance process, allowed for download of RFP
23 documents and presentations, and provided contact information (phone/email)
24 for sharing comments and suggestions directly with CRA. Stakeholder
25 questions and responses were published on the website to ensure all
26 participants had equal access to RFP information.

² See Section A. 8 of Stipulation and Settlement Agreement for the Joint Petition of Indiana Michigan Power Company (I&M) and AEP Generating Company (AEG) for certain determinations with respect to the Commission's jurisdiction over the return of ownership of Rockport 2.

1 On January 18, 2022 CRA hosted an RFP Development Meeting during which
2 the structure of the RFP was shared and stakeholders were asked to provide
3 initial comments to support the development of the Draft RFP. The Draft RFP
4 was then released by CRA on January 28, 2022 followed by a Pre-RFP
5 Stakeholder Meeting on February 8, 2022. Input from stakeholders during and
6 following the Pre-RFP Stakeholder Meeting was received, responded to, and
7 where reasonable, incorporated into the Final RFP that was issued on March
8 10, 2022 via the CRA website.

IV. Proposal Review and Project Selection

9 **Q19. Please describe the initial bid receipt and overall bidder response to the**
10 **2022 All Source RFP.**

11 All bids were submitted electronically to CRA on April 21, 2022 and shared with
12 I&M. In total, CRA (and I&M) received 32 proposals from 12 unique bidders.
13 Proposals included Solar, Wind, Solar plus Storage, Wind/Solar plus Storage,
14 Thermal capacity resources, and standalone battery storage technologies.
15 Several bidders submitted multiple bids for the same project (e.g., bid variations
16 with battery energy storage systems and multiple expected commercial
17 operations dates), accounting for a greater number of bids than projects. A total
18 of approximately 7,500 MW of proposed projects across 32 project bids were
19 received.

20 **Q20. Were proposals offered on an exclusive basis to the Company?**

21 No. The proposals were not offered to the Company on an exclusive basis and
22 the bidders could withdraw their proposal at any time.

1 **Q21. Please outline the general process steps in the proposal review and**
2 **project selection process.**

3 The proposal review and project selection process involved the following
4 general steps:

5 Step 1: Bid Clarification and Eligibility & Threshold (E&T) Review

6 Step 2: Detailed Analysis & Due Diligence

7 Step 3: Shortlist Identification and Negotiations

8 Step 4: Final Project Selection and Agreement Execution

9 **Q22. Please describe the Bid Clarification process.**

10 Upon receipt of proposals, the Company and the Independent Monitor reviewed
11 the proposals for completeness. If information was either missing or unclear in
12 a specific proposal, bidders were given the opportunity to provide clarifying
13 information to the Independent Monitor and the Company to further evaluate the
14 proposal. Initial bid clarification requests were compiled within a month of
15 proposal receipt, primarily focused on verifying key E&T requirement information
16 and pricing assumptions.

17 **Q23. Please describe the E&T review.**

18 An initial review of the proposals was conducted by the Independent Monitor to
19 ensure all bids conformed with the E&T requirements listed in the 2022 RFP
20 Section 9.1 (see Attachment TBG-1). The E&T requirements included criteria
21 such as meeting the RFP target commercial operation date, minimum project
22 size, location of proposed resources, interconnection status, and minimum
23 design life.

24 The E&T review was conducted in parallel with the bid clarification process,
25 ensuring that bidders were given reasonable opportunity to clarify
26 inconsistencies or data gaps in their respective proposals. If a proposal did not
27 reasonably meet any of the requirements of Sections 9.1.1 – 9.1.12 of the 2022

1 RFP, the proposal was deemed to be ineligible for further evaluation and the
2 bidder notified accordingly. Further detail on this process is provided by witness
3 Koujak.

4 **Q24. Were any projects removed from further consideration that passed the**
5 **E&T review?**

6 Yes. Two of the three wind projects that had passed the E&T review ultimately
7 rescinded their bids from the RFP to pursue other agreements. One of the
8 projects subsequently entered into a PPA with an outside industrial customer.
9 The other project was ultimately selected by I&M's sister company Appalachian
10 Power Company. Appalachian Power Company had been reviewing the wind
11 project before the I&M RFP was released and ultimately selected the project
12 after completing the detailed bid analysis phase.

13 **Q25. Please describe the Detailed Analysis portion of the RFP process.**

14 Those projects that passed the E&T review underwent a detailed analysis,
15 continuing due diligence, and evaluation (scoring) process conducted by a
16 multidisciplinary team of knowledgeable industry professionals from AEP, I&M,
17 and select outside consultants.³ Team members had specific expertise in each
18 of the non-price factor topics with backgrounds in engineering, project
19 management, operations and maintenance, real estate, economic development,
20 wind and solar resource assessment, transmission planning, environmental
21 science and permitting, energy economics and modeling, and contract law.

22 The multidisciplinary team conducted the Economic Analysis (further
23 summarized below), which accounted for 60 points (60%) of the proposal's total
24 score, and the Non-Price Analysis, which accounted for 40 points (40%) of the
25 proposal's total score. The two scores were then combined to determine an
26 overall score for each bid. All scores were reviewed by the Independent Monitor

³ Outside consultants included: DNV, Inc., for third party evaluation of the solar resource information; Simon Wind, for third party evaluation of the wind resource information; and HDR, Inc. for support conducting an environmental and social justice assessment of each project.

1 for reasonableness and consistency. The detailed analysis process allowed the
2 Company to objectively evaluate and rank each eligible bid, which informed the
3 decision to move forward with negotiations and further due diligence on the
4 proposals.

5 **Q26. What were the components of the Economic Analysis?**

6 The Integrated Resource Planning team completed the Economic Analysis for
7 each of the proposals that met the E&T requirements. The analysis included
8 inputs directly from the proposals, such as the bid price, interconnection costs,
9 and term length. It also included various inputs from the interdisciplinary team
10 such as transmission congestion and line loss estimates, estimated operation
11 and maintenance costs, and other operating company specific modeling
12 variables such as applicable federal tax credits and financing assumptions. The
13 Economic Analysis resulted in several key price metrics that were used to
14 determine the ultimate price score for each of the proposals. A more detailed
15 description of the Economic Analysis, price metrics, and price scoring can be
16 found in Company witness Becker's testimony.

17 **Q27. How was pricing compared across different proposal contract types, with**
18 **different term lengths, and different energy product offerings in the**
19 **Economic Analysis?**

20 Price comparisons across proposals with different contract types, technologies,
21 and term lengths were facilitated through a two-phased process focused on
22 three price-based metrics. The first phase (Phase 1) of the Economic Analysis
23 focused on the assessment and comparison of projects of similar generation
24 type (wind, solar, or supplemental capacity) using either a calculated Levelized
25 Adjusted Cost of Energy (LACOE) or Levelized Adjusted Cost of Capacity
26 (LACOC) metric. The second phase (Phase 2) then assessed and compared
27 the projects across all technology types based on a Value to Cost (V/C) ratio.
28 The V/C ratio allowed for the holistic consideration of all the value streams
29 provided by each generation type in the comparison. Across both phases, the

1 metrics were calculated in a manner that ensured proposals could be compared
2 on an equivalent basis across the range of technology types, contract structures
3 (PSA or PPA), contract term lengths, and energy product offerings.

4 Ultimately, given the number of projects remaining after the E&T analysis, the
5 Independent Monitor and I&M agreed that no project would be eliminated in the
6 first phase and all eligible projects would proceed from Phase 1
7 (LACOE/LACOC) to Phase 2 (V/C) comparisons. A more detailed review of the
8 economic analysis and scoring can be found in the Direct Testimony of Witness
9 Becker.

10 **Q28. What non-price factors were considered in the evaluation of each of the**
11 **proposals?**

12 A total of ten non-price factors grouped into four categories were considered in
13 the evaluation of each proposal. The four categories each accounted for up to
14 ten points of the total non-price score of each bid. The categories are described
15 below with respect to the individual non-price factors considered in each.

16 The Asset-Specific Benefits and Risks category included two factors, 1) the
17 *Contract Term/Asset Life-Related Market Risks* factor, and 2) the Ownership
18 Optionality and Flexibility Benefits factor. Overall, this category evaluated the
19 project configuration and contract terms of the proposals with respect to
20 operational flexibility and performance expectations of the resource, while also
21 considering the potential for increased exposure of the Company to future
22 market volatility.

23 The Development Status and Risks category included two factors, the 1)
24 *Development Status, Interconnection Status, and Other Project Completion*
25 *Risks* factor, and the 2) *Project Timing* factor. This category assessed each
26 project with respect to its potential to meet its proposed commercial operation
27 date, its interconnection progress, and any notable material supply risks. It also

1 awarded points to those projects that could be available for the 2025-2026
2 capacity year.

3 The Environmental, Social, and Economic Impacts/Benefits category was
4 comprised of three factors, 1) the *Carbon Emissions* factor, 2) the
5 *Environmental and Wildlife Impact / Permitting* factor, and 3) the *Economic*
6 *Stimulus Benefits, Community Support, and Supplier/Contractor Diversity* factor.
7 Together these factors assessed the overall impact on communities, inclusive of
8 considerations for natural and/or historic resources, environmental and social
9 justice, and local zoning or permitting approvals. The Company engaged a
10 third-party consultant HDR, Inc. to assist with the environmental and social
11 justice analysis. This category also included consideration of potential
12 community benefits such as the potential for increased value to (or use of) local
13 businesses, economic development, and the developer's plan to use small and
14 diverse suppliers and subcontractors, and/or contractors based in Indiana or
15 Michigan.

16 The Proposal and Project Quality category was also comprised of three non-
17 price factors: 1) *Bidder Experience and Financial Wherewithal* factor; 2)
18 *Exceptions to AEP Generation Facility Design Standards* factor; and 3)
19 *Exceptions to Form PSA or PPA* factor. Together, these factors evaluated the
20 overall experience of the developer, their financial status, and their willingness
21 to adhere to AEP's design and contracting expectations.

22 **Q29. Please provide a summary of the total scores for all the eligible proposals.**

23 Once the economic and non-price evaluations were completed and reviewed by
24 the Independent Monitor for consistency and completeness, the scores were
25 combined to yield a Total Score for each bid. Total scores for all the eligible
26 bids ranged from roughly 55 to 93 out of 100. A full report of the price and non-
27 price scores for each of the eligible bids is provided in the Bid Score Sheet,
28 Attachment TBG-2C. Further discussion on the selection process and rationale
29 are provided by Witness Koujak.

1 **Q30. What projects were selected for detailed contract negotiations (shortlist)?**

2 The Company selected the lowest reasonable cost facilities that best met the
3 energy and capacity needs of the Company. A total of seven project proposals
4 were selected for further shortlist contract negotiations. Ultimately, five of the
5 seven projects were successfully negotiated. These projects are represented in
6 Table TBG-2 above, and include two solar PPAs, two solar PSAs, and a
7 capacity-only contract from an existing gas facility.

V. Negotiation Process and Market Pressures

8 **Q31. Describe the contract negotiation activities with the developers of the**
9 **Clean Energy Projects.**

10 The Company began commercial contractual negotiations once the parties were
11 formally notified that their bids were selected for shortlist negotiations. Due
12 diligence efforts contained in this phase focused on further review and
13 assessment of each project's site development plans, land agreements, and
14 local approval status, grid interconnection studies and status, as well as
15 continual refinement of the engineering studies, design expectations, and
16 construction scope of work to support negotiations. Formal commercial and
17 contractual discussions included regular focused discussions on key contract
18 terms as well as ongoing commercial discussions as design requirements, the
19 construction scope of work, and contract terms were finalized.

20 Ultimately, the Company was successful in executing agreements for the Clean
21 Energy Projects and one capacity-only contract following shortlist negotiations.
22 The four Clean Energy Projects negotiated through this process are presented
23 herein which agreements are included in I&M Attachments TBG-3 and 3C
24 through TBG-6 and 6C.

1 **Q32. Why were two projects removed from further consideration during**
2 **shortlist negotiations?**

3 Two shortlisted projects were ultimately removed from further consideration as a
4 result of new information that arose during additional due diligence and ongoing
5 discussions during contract negotiations.

6 A standalone storage project was initially selected for its capacity-only bid.
7 However, upon further review of the project, I&M determined that [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 A solar project was ultimately removed from further consideration due to

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **Q33. Did any of the projects change during the shortlist negotiation process?**

18 Yes. The majority of projects that bid into the RFP were early in their
19 development, with many of the key design, construction, and procurement
20 decisions still outstanding in the normal course of a project development
21 timeline. During the roughly eight-month period from when proposals were
22 shortlisted until contracts were negotiated, bidders continued with the
23 development efforts that are typical for renewable energy projects at this stage
24 in their development. [REDACTED]

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]

1 **Q34. How did market pressures impact the RFP bid and review process?**

2 Developers submit bids into the RFP with cost estimates that are backed by a
3 range of both explicit and implied assumptions about material supply chains,
4 contracting costs, design expectations, and the legal and regulatory framework
5 understood at the time of submittal. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 **Q35. What market pressures influenced the bids received in response to the**
13 **2022 All Source RFP?**

14 A range of events impacted markets both immediately before and during the bid
15 selection and negotiation process for the 2022 All Source RFP, including: the
16 Uyghur Forced Labor Prevention Act (UFLPA) and subsequent detainment of
17 module deliveries by U.S. Customs and Border Protection, Russia’s invasion of
18 Ukraine, the initiation of the Antidumping Duty and Countervailing Duty
19 (AD/CVD) investigation by the U.S. Department of Commerce (Commerce), the
20 enactment of the Inflation Reduction Act (IRA), the release of guidance around
21 the IRA’s Prevailing Wage and Apprenticeship requirements, PJM
22 interconnection queue reform, and the rise in inflation and interest rates. [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 **Q36. Which market pressures had the most impact on project schedules?**

28 Ongoing supply chain risks and delays in the PJM interconnection process have
29 been the primary drivers of schedule changes during the bid review and

1 negotiation process. Continuing supply chain risks and commodity inflation
2 driven by the war in Ukraine, pending solar module tariff outcomes of the
3 AD/CVD investigation, and competition among developers for material supply
4 and contractor support have all added scheduling risks to projects.

5 However, delays and uncertainty in the PJM interconnection process have likely
6 had the most significant impact on project development timelines. Generation
7 interconnection requests have more than tripled since in the last several years.⁴
8 This rapid increase in queue volume has caused significant delays, increasing
9 the time required for acquiring an executed interconnection agreement from a
10 little over two years in 2015 to nearly five years today. The extended timeline
11 has been problematic for developers since many projects face financial
12 uncertainty until the interconnection study process can identify the scope and
13 cost of network upgrades that are required for the project to come online.

14 The overall effect of the PJM queue delays has been a reduction in the supply of
15 projects that can support the increasing demand for renewables in a manner
16 that meets the timing of energy and capacity needs of the system. Although
17 FERC has approved reforms to help resolve the generation interconnection
18 queue bottleneck, the plan itself will take years to execute and new generation
19 interconnection requests are no longer being accepted until more of the backlog
20 is processed.

21 **Q37. What market pressures and/or economic factors affected commodities,**
22 **equipment, and labor costs?**

23 A range of economic factors caused increases to cost and volatility in raw
24 materials, equipment costs, interest rates, and labor during the bid evaluation
25 and negotiation process. Each of these factors impacted bid pricing and shaped
26 contract negotiations.

⁴ PJM, 2022. PJM Members Endorse Plans to Revamp and Improve the Generation Interconnection Process. <https://www.pjm.com/-/media/about-pjm/newsroom/2022-releases/20220427-pjm-members-endorse-plans-to-revamp-and-improve-the-generation-interconnection-process.ashx>

1 Raw materials, including steel and aluminum, continue to see higher pricing and
2 volatility driven by lingering impacts of the pandemic, the war in Ukraine,
3 inflation, and the energy crisis in Europe. As an example, early in 2022, the Hot
4 Rolled Coil (HRC) steel index⁵, which generally fluctuated between \$500 – \$800
5 per ton in the years preceding the pandemic, rose from \$1,000 to \$1,500 per ton
6 driven by Russia’s invasion of Ukraine (the two countries together account for
7 nearly 50% of the world’s pig iron, a key component in steel production).

8 Although prices declined in the latter half of the year, steel prices (at the time of
9 this testimony) have risen again to nearly \$1,200 per ton displaying a
10 combination of high pricing and volatility that continue to impact supplier pricing
11 for steel products which directly affect solar racking, tracking and piling systems.

12 The solar module industry has been impacted by a range of regulatory changes,
13 investigations, uncertainty, and supply challenges that have driven up pricing
14 and slowed solar deployments. The UFLPA signed into law in late 2021,
15 resulted in significant bottlenecks at U.S. ports in mid-2022 as Customs and
16 Border Protection (CBP) officials worked through compliance reviews on a
17 growing backlog of shipments. Soon after, Commerce initiated an investigation
18 to determine if the United States should impose additional
19 antidumping/countervailing duties (AD/CVD) on imports of solar cells and
20 modules coming from Cambodia, Malaysia, Thailand, and Vietnam. The
21 investigation stems from claims that Chinese companies were attempting to
22 circumvent current U.S. AD/CVD tariffs by performing a minor production step in
23 these countries. A preliminary determination in the investigation was released in
24 late 2022 that suggested certain suppliers from the four countries could be
25 assessed duties of between 15-240% on their modules (87 FR 75221).

26 Together, these actions have both increased schedule concerns around solar
27 module delivery and added uncertainty around solar module pricing.

⁵ S&P Capital IQ Pro Website, Steel – Domestic Hot Rolled Coil (CME-NYMEX) data. Accessed March, 24 2023. S&P Global Market Intelligence, 55 Water Street, New York, NY 10041

1 Rising inflation driven by an array of pandemic-related factors in 2021 led to an
2 increase in interest rates. This, in turn, has affected project finance costs,
3 reduced the ability of developers to attract tax equity financing⁶, and further
4 exacerbated pricing impacts from ongoing supply chain challenges. Though
5 inflation is on a slow decline, uncertainty around Federal Reserve actions and
6 effect on interest rates continues to be a concern for bidders.

7 The IRA, passed in August of 2022, included an array of benefits for renewable
8 deployment. The extension and expansion of renewable energy tax credits
9 resulted in a boom of planned development, with new planned renewable
10 deployments increasing significantly since its enactment. [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **Q38.** [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

⁶ Sweeney, 2023. Renewable project financing to rebound in 2023 as energy transition accelerates. S&P Global Commodity Insights. S&P Global Market Intelligence, 55 Water Street, New York, NY 10041

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 **Q39. Please elaborate on how the Company has responded to the industry**
20 **challenges described above through contract negotiations.**

21 As discussed above, recent supply chain disruptions, inflation, regulatory
22 uncertainty, and other market pressures have impacted the energy industry and
23 the world economy in general. These challenges are ongoing and will continue
24 to impact the development and deployment of new generation needed to
25 support the company's near-term capacity needs.

26 [REDACTED]
27 [REDACTED]

⁷ PJM, 2023. PJM Details Resource Retirements, Replacements and Risks | PJM Inside Lines.
<https://insidelines.pjm.com/pjm-details-resource-retirements-replacements-and-risks/>

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 As shown in the following section, each agreement also incorporates financial
21 assurances that the developer will meet its contractual obligations; that the
22 facilities will align with performance expectations; and that major equipment
23 suppliers and contractors will honor all warranties, guarantees, and
24 commitments to the projects.

25 Overall, the Company's [REDACTED] Best Estimate is reasonably
26 designed [REDACTED] allowing the Company to
27 acquire the resources needed to meet our customers' need for energy and
28 capacity resources.

VI. Overview of the PSAs

1 **Q40. Please describe the PSA structure and key components of the PSAs.**

2 The PSA governs the construction of the selected facilities by the developers
3 and establishes the overall framework within which the Company and the
4 developer engage throughout the design, construction, commissioning, and
5 purchase of the equity interests of the project holding companies, as well as any
6 rights or warranties that remain in effect after completion of the project.

7 The PSA document is organized by topical sections that present defined
8 contract terms, process steps for engagement at major project development
9 milestones, as well as the rights, requirements, and responsibilities of each
10 party throughout the life of the agreement. Table TBG-3 provides a summary of
11 each major section of the PSA and its overall purpose.

1

Table TBG-3 – Major PSA Components and Purpose	
Definitions and Rules of Interpretation	Establishes the agreed upon terms and rules for interpretation of those terms within the construct of the agreement
Purchase and Sale of Purchased Interests	Describes the assets to be purchased, the mechanics of the closing process, the purchase price, and process in the event of force majeure or major changes in law
Conditions Precedent (CP); Notice to Proceed/Firm Date	Establishes the conditions that must be met (requirements) of both parties to move forward with the project post-regulatory approval
Development and Construction Covenants, and Other Pre-Closing Covenants	Pledges made by each party regarding the conduct of the project development and construction effort, including coordination and reporting rules, codes of conduct, etc.
Representations and Warranties	Statements by each of the parties that they must assure are true and accurate regarding key conditions, facts, and circumstances with respect to the parties involved and the project
Conditions Precedent (CP) to Closing for Buyer and Seller	Establishes the conditions that must be met (requirements) of both parties to finalize the purchase of the project (by I&M) and sale of the project by the developer
Post-Closing Covenants	Pledges made by each party pursuant to engagement between the parties that extend after the closing is complete
Indemnification and Termination	Contract terms outlining the survival period of project associated liabilities, process for handling disputes and claims between the parties, and any limitations on claims that can be made of either party

2 **Q41. Please describe the overall structure of the Lake Trout PSA and key terms**
3 **of the agreement.**

4 The Lake Trout PSA provides the commercial structure, procedural rules, rights,
5 and responsibilities of and for the Company to acquire 100% of the equity
6 interests of Lake Trout Solar, LLC, a project holding company which owns the to
7 be constructed 245 MW Lake Trout Solar Project in Indiana. The following
8 bullets outline key components of the agreement and the project:

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- The Purchase Price, a component of the Best Estimate of the project, is

[Redacted text block 1]

- [Redacted text block 2]

[Redacted text block 3]

- [Redacted text block 4]

[Redacted text block 5]

- [Redacted text block 6]

[Redacted text block 7]

- [Redacted text block 8]

[Redacted text block 9]

- 1 • [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 • [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 • [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 • [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED]

[REDACTED]

[REDACTED]

1 **Q42. What are the requirements for reaching Firm Date in the Lake Trout PSA?**

2 Firm Date is the date on which EDF and the Company have met a series of CPs
3 to authorize the advancement of construction activities and commit the
4 Company to future payment and receipt of the facility once the project is
5 completed. The Firm Date is similar to a Notice to Proceed (NTP) date under
6 other similar agreements.

7 Each party must either achieve the prescribed CPs, or waive the requirement for
8 the project to move forward into the final design and construction phase.
9 Typical CPs included in the Lake Trout PSA include: having an approved site
10 plan, certificates that the representations and warranties made by Buyer and
11 Seller are true and correct, agreed upon insurance coverages and credit
12 support, and that this Commission has approved the project for cost recovery. A
13 complete list of the CPs to Firm Date are shown in sections 3.1-3.4 in the Lake
14 Trout PSA.

15 **Q43. Does the Lake Trout PSA include [REDACTED]**

16 [REDACTED] ?

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

1 [REDACTED]
2 [REDACTED]

3 **Q44. How did the Company [REDACTED] for the Lake Trout Solar**
4 **Project?**

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] |
18 [REDACTED]

19 **Q45. Please summarize the general closing conditions in the Lake Trout PSA.**

20 The closing of the Lake Trout PSA will occur when certain closing conditions
21 have either been met or waived by the appropriate party to the PSA. The
22 closing conditions in the Lake Trout PSA [REDACTED]

23 [REDACTED]

- 24 • [REDACTED]
25 [REDACTED]
- 26 • [REDACTED]
27 [REDACTED]

- 1 • [REDACTED]
- 2 [REDACTED]
- 3 • [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]

8 **Q46.** [REDACTED]

- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]

19 **Q47. Please describe the overall structure of the Mayapple PSA and key terms**
20 **of the agreement.**

21 The Mayapple PSA provides the commercial structure, procedural rules, rights,
22 and responsibilities of and for the Company to acquire 100% of the equity
23 interests of Mayapple Solar, LLC, a project holding company which owns the to
24 be constructed 224 MW Mayapple Solar Project in Pulaski County, Indiana. The
25 following bullets outline key components of the agreement and the Project:

- 26 • The Purchase Price, a component of the Best Estimate of the project, is
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED] The NTP date is the date by which I&M and Lightsource bp have confirmed that they have met all required CPs to NTP and final project design and construction can commence. I&M's principal CP to NTP is that all Indiana Utility Regulatory Commission (IURC) and Michigan Public Service Commission (MPSC) approvals have been received for the project. Lightsource bp's principal CPs to NTP require that key local approvals and interconnection agreements have been received and major contracts with material suppliers and construction contractors have been executed for the Project.

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 1 • [REDACTED]
- 2 [REDACTED]
- 3 • [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]

7 **Q48. What are the CPs for reaching NTP in the Mayapple PSA?**

8 Reaching NTP provides Lightsource bp and I&M the authorization under the
9 PSA to advance activities into the major construction phase of the facility and
10 commits the Company to future payment and receipt of the projects once each
11 of the projects are completed. Typical CPs in the Mayapple PSA include:
12 having obtained necessary state commission approvals, FERC approvals, a
13 finalized site plan, certificates that the representations and warranties made by
14 Buyer and Seller are true and correct, and agreed upon insurance coverages
15 and credit support. A complete list of the CPs to NTP are shown in Section 3.10
16 in the Mayapple PSA.

17 **Q49. Does the Mayapple [REDACTED] ?**

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

[REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]

Q50. Please summarize the general closing process contained in the Mayapple PSA.

The closing of the Mayapple PSA will occur when certain closing conditions have either been met or are waived by the appropriate party to the PSA. The closing conditions in the Mayapple PSA include that Lightsource bp has:

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]

1 **Q51. How do the PSAs address the Prevailing Wage and Apprenticeship (PWA)**
2 **requirements contained in the recently enacted Inflation Reduction Act**
3 **(IRA)?**

4 Both projects will be developed in a manner that is compliant with the PWA
5 requirements under the IRA to ensure that I&M's customers will benefit from the
6 full value of the PTCs. Several contract provisions were negotiated to ensure
7 that PWA compliance is met, including:

- 8 • [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 • [REDACTED]
- 12 [REDACTED]
- 13 • [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]

16 **Q52. Do the PSAs contain liquidated damages or financial assurances that the**
17 **developers will meet their obligations?**

18 Yes. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

VII. Overview of the PPA Agreements

4 **Q53. Please provide an overview of the Clean Energy PPA agreements.**

5 I&M entered into two Clean Energy PPA agreements with separate developers,
6 also shown in Table TBG-2. The Clean Energy PPAs provide I&M with rights to
7 the production attributes of the renewable resources for the term of the contract
8 including capacity, RECs, and energy.

9 **Q54. Please describe the structure and terms of the Elkhart County Solar**
10 **Project.**

11 The Elkhart County Solar Project is a 100 MW solar project under development
12 by Savion, located in Elkhart County, Indiana. The Project has an expected
13 commercial operation date of December 31, 2025 upon which date, I&M will
14 purchase all of the renewable energy produced by the facility for a term of 30
15 years at a [REDACTED]. The following are several key
16 features of the Elkhart County PPA:

- 17 • Savion, LLC will initiate the construction phase of the project upon receipt
18 of a final non-appealable order from both the IURC and the MPSC.
- 19 • The Commercial Operation Date is December 31, 2025, [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
- 23 • The Project has a PJM AE2 queue number and no identified network
24 upgrade responsibilities.

1 [REDACTED]
2 [REDACTED]

3 **Q56. Does the PPA with Savion provide any financial assurances that Savion**
4 **will meet its obligations under the PPA?**

5 Yes. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 **Q57. Please describe the structure and terms of the Sculpin Solar Project.**

13 The Sculpin Project is a 180 MW solar project under development by EDF
14 located in Dekalb County, IN. The Project has an expected commercial
15 operation date of December 15, 2025 upon which date, I&M will purchase all of
16 the renewable energy produced by the facility for a term of 30 years at a [REDACTED]
17 [REDACTED]. The following are several key features of the
18 Sculpin PPA:

19 • EDF will initiate the construction phase of the project upon I&M's receipt
20 of a final non-appealable order from both the IURC and the MPSC [REDACTED]
21 [REDACTED] ial
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 • The Commercial Operation Date is December 15, 2025, [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 **Q59. Does the PPA with EDF provide any financial assurances that EDF will**
 10 **meet its obligations under the PPA?**

11 Yes. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]

VIII. Best Estimates of PSA Project Costs.

16 **Q60. What is the Company’s best estimate of total installed capital costs of the**
 17 **Lake Trout Project at completion?**

18 The Best Estimate for the Lake Trout total installed capital cost is identified by
 19 component in Figure TBG-3 below.

Figure TBG-3

TOTAL INSTALLED CAPITAL COST	
	Lake Trout 245 MW Solar
PSA Price	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

21

Owner's Costs	
Resiliency & Integration	
Project Management	
Other Owner's Costs	
Acquisition and Development	
Overheads	
AFUDC	
Project Contingency	
Total Facility Cost	

1

2 **Q61. What is the Company's best estimate of total installed capital costs of the**
3 **Mayapple Project at completion?**

4 The best estimate for the Mayapple Project total project installed cost is
5 identified by component in Figure TBG-4 below.

6

1

Figure TBG-4

TOTAL INSTALLED CAPITAL COST	
	Mayapple 224 MW Solar
PSA Price	
Owner's Costs	
Resiliency & Integration	
Project Management	
Other Owner's Costs	
Acquisition and Development	
Overheads	
AFUDC	
Project Contingency	
Total Facility Cost	

2

3 **Q62. What are the component costs included in the Best Estimate?**

4 The Best Estimate of the total installed capital costs includes: the PSA Price,
 5 Owner's costs, and a Project Contingency. I summarize each of these
 6 components below.

7 The PSA Price reflects the cost of the negotiated purchase price between the
 8 Company and the Developer for the engineering, procurement and construction
 9 of the Clean Energy PSA Projects, including base interconnection costs. [REDACTED]

10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 Owner's Costs can be broken into two general categories: those associated with
 16 construction oversight, engineering/design reviews, and the physical integration
 17 of the project into I&M operations, and; those incurred by the Company for the

1 identification and acquisition of the project (i.e. the RFP process, due diligence,
2 and fees associated with negotiations and regulatory process). A more detailed
3 description of what costs are included in the description of owner's costs is
4 found in Company witness Lozier's testimony.

5 Lastly, the Best Estimate of the total installed capital costs also includes a
6 project contingency. The Project Contingency includes cost consideration for
7 typical risks that often occur during the development and construction stages of
8 large infrastructure projects.

9 **Q63. Why is a contingency included in the Best Estimates?**

10 For projects the size and complexity of the Clean Energy PSA Projects, and for
11 projects that will not be placed in service for several years from the date this
12 testimony will be filed, it is impractical to believe that no new issues or
13 challenges will arise through the course of the project's final development,
14 design, and construction. To address this reality, a contingency budget was
15 developed using a combination of identified project-specific risks and a
16 reasonable allocation of funds for unidentified risks based on projects of similar
17 size, type, and complexity. For each identified risk, the cost to mitigate the risk
18 was evaluated. The contingency assessment for each Project is provided in my
19 workpapers: WP-TBG-1C – Risk Register for Lake Trout PSA Project
20 (Confidential/Highly Competitively Sensitive); WP-TBG-2C – Risk Register for
21 Mayapple PSA Project (Confidential/Highly Competitively Sensitive).

22 **How was the Project Contingency estimate developed?**

23 The Project Contingency was developed through an iterative process that began
24 upon project selection for shortlist negotiations. At the outset of negotiations,
25 I&M and the developer engaged in an in-depth due diligence process that
26 expanded on the information collected during the project selection effort. In
27 parallel, the two parties engaged in the negotiation of the PSA itself, working
28 through key agreement terms to come to mutual resolution.

1 Through these two parallel and interrelated efforts, a range of potential project
2 issues and risks were identified and tracked. Some risks were resolved by
3 proposing changes to the project design, removing a proposed supplier, or
4 simply gaining a greater understanding of the issue, while others were resolved
5 through negotiations of the terms of the PSA, Scope of Work, or other
6 associated documents.

7 Those issues that were not eventually resolved were qualitatively assessed by
8 project SMEs to determine the level of risk the issue posed to the project. The
9 highest risk issues from this qualitative assessment served as the primary
10 source of information for compilation of the project Risk Registers (See WP-
11 TBG-1C – Risk Register for Lake Trout PSA Project (Confidential/Highly
12 Competitively Sensitive); WP-TBG-2C – Risk Register for Mayapple PSA Project
13 (Confidential/Highly Competitively Sensitive). The Risk Registers, in turn, served
14 as the basis upon which an overall Project Contingency was calculated.

15 Reasonable contingency levels were calculated for each of the major risk areas
16 identified in the Risk Registers. The pricing evaluations considered a range of
17 information from industry sources (e.g. market indexes, industry trend reports,
18 recent bid results, etc.) developer provided inputs, and the professional
19 experience and judgements of our SMEs.

20 **Q64. What types of risks were considered in the Project Contingency?**

21 The Project Contingency included consideration of [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 **Q65. What risks comprised the major portions of the Project Contingency?**

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]

1 **Q66. In your opinion, are the estimated costs of the PSA Projects reasonable?**

2 Yes. The PSA costs are the result of the competitive All-Source RFP process
3 and direct arms' length negotiation and executed transactions as discussed
4 above. Respondents to the RFP were motivated to reply with competitive bids in
5 order to be considered for review and negotiation of an agreement. It was
6 commercially practicable to secure the estimated costs of the PSA Projects in
7 this manner. The inclusion of the potential cost impact of project risk and factors
8 beyond the Company's control provides Best Estimates that reasonably address
9 industry challenges, and is reasonably designed to manage the timely
10 development of the Projects. This is particularly appropriate given recent and
11 ongoing economic conditions, and better positions the Company, Commission,
12 and stakeholders to assess the Project costs at the time the Projects are
13 presented for pre-approval.

IX. Summary and Conclusion

14 **Q67. Please summarize your testimony and conclusions.**

15 The agreements for the purchase of the renewable resources and energy output
16 presented in my testimony are the result of a competitive RFP process, arms'
17 length negotiation, reasonably reflect change of law and supply chain
18 disruptions and other economic conditions and are consistent with industry
19 practice. The Project costs reasonably reflect industry trends and the potential
20 cost impact of project risk and factors beyond the Company's control. The
21 agreement terms are reasonably designed to manage industry and economic
22 challenges while facilitating the capacity and energy resources required by the
23 Company to meet its customers' ongoing need for electricity. Therefore, the
24 Commission should approve these agreements and the Best Estimate for each
25 Clean Energy PSA so that the Company may move forward with the
26 development of these Clean Energy Projects.

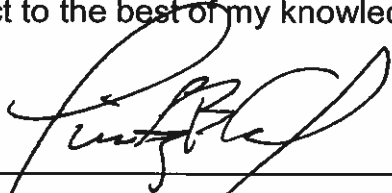
1 **Q68. Does this conclude your pre-filed verified direct testimony?**

2 Yes, it does.

VERIFICATION

I, Timothy B. Gaul, Director – Regulated Infrastructure Development at American Electric Power Service Corporation, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Date: 3/23/23



Timothy B. Gaul



**American Electric Power Service Corporation
as agent for
Indiana Michigan Power Company**

Request for Proposals

Approximately 800 MWac of nameplate rated
Wind Energy Resources,
(with Optional Energy Storage Systems)

Approximately 500 MWac of nameplate rated
Solar Energy Resources,
(with Optional Energy Storage Systems)

**Supplemental Capacity to Meet Overall Capacity Need from
Standalone Storage, Emerging Technologies, Thermal,
and Other Capacity Resources**

The Resources requested via this RFP will be acquired via Purchase and Sale Agreements (PSA) for purchase of 100% of the equity interest of the Project's limited liability company (Project LLC) at Mechanical Completion for solar projects (or other ITC qualifying projects), and on or about final completion for wind projects (or other Non-ITC qualifying projects)

OR

Power Purchase Agreements (PPA) for purchase of the Renewable Energy Products produced by a Solar and/or Wind Energy Resource and Supplemental Capacity Products produced by Supplemental Capacity Resources.

RFP Issued: March 10, 2022
Proposals Due: April 21, 2022

Web Address: <https://www.IMAllSourceRFP.com>



Table of Contents

	Page
1) Introduction	1
2) RFP Overview	3
3) Product Description and Requirements	4
4) PSA Bid Price and Structure	8
5) PPA Bid Price and Structure	9
6) RFP Schedule and Proposal Submission.....	11
7) Proposal Submittal.....	12
8) Proposal Content	13
9) RFP Proposal Evaluation.....	14
10) Reservation of Rights	20
11) Confidentiality.....	21
12) Bidder's Responsibility	22
13) Contacts	22



Attachments

Project Summary.....Appendix A

Bidder’s Credit-Related InformationAppendix B

Bidder ProfileAppendix C

Form Purchase and Sale Agreement (PSA).....Appendix D

Form Power Purchase Agreement (PPA)Appendix E

AEP Generation Facility Standard.....Appendix F

AEP Requirements for Connection of Facilities.....Appendix G

Wind Resource Information.....Appendix H

Solar Resource InformationAppendix I

Storage Resource InformationAppendix J

Thermal Resource Information.....Appendix K

Emerging Technology Resource Information.....Appendix L

Project Land Lease Costs / Decommissioning Costs / Auxiliary Load.....Appendix M

Project Technical Due Diligence Material.....Appendix N

Environmental / Wildlife / Site Information.....Appendix O

Indiana and Michigan Economic Stimulus Benefits / Community Support /
Supplier/Contractor DiversityAppendix P

Proposal Content Check Sheet.....Appendix Q

BACKGROUND

I&M is pursuing additional generation and capacity resources consistent with its 2021 IRP via an all-source request for proposals (RFP) as follows:

- Approximately 800 MW Wind via a purchase and sale agreement (PSA) for purchase of 100% equity interest in a project company or a power purchase agreement (PPA) for purchase of Renewable Energy Products produced by a Wind resource
- Approximately 500 MW Solar via a purchase and sale agreement (PSA) for purchase of 100% equity interest in a project company or a power purchase agreement (PPA) for purchase of Renewable Energy Products produced by a Solar resource
- Supplemental Capacity Resources to meet overall capacity need via a purchase and sale agreement (PSA) for purchase of 100% equity interest in a project company or a power purchase agreement (PPA) for purchase of Supplemental Capacity Products produced by a Supplemental Capacity Resource

1. Introduction

American Electric Power Service Corporation (AEPSC) and Indiana Michigan Power Company (I&M, Company or Indiana Michigan Power) are subsidiaries of American Electric Power Company, Inc. (AEP).

AEPSC is administering this Request for Proposals (RFP) on behalf of I&M. Affiliates of AEP and I&M (Affiliate) are not permitted to participate in this RFP.

American Electric Power is one of the largest electric utilities in the United States, delivering electricity and custom energy solutions to approximately 5.5 million customers in 11 states. AEP owns the nation's largest electricity transmission system, a more than 40,000-mile network that includes more 765-kilovolt extra-high voltage transmission lines than all other U.S. transmission systems combined. AEP also operates 223,000 miles of distribution lines. AEP ranks among the nation's largest generators of electricity, owning approximately 30,000 megawatts of generating capacity in the U.S. AEP also supplies over 5,300 megawatts of renewable energy to customers. AEP's utility units operate as AEP Ohio, AEP Texas, Appalachian Power (in Virginia and West Virginia), AEP Appalachian Power (in Tennessee), Indiana Michigan Power, Kentucky Power, Public Service Company of Oklahoma, and Southwestern Electric Power Company (in Arkansas, Louisiana and east Texas). AEP's headquarters are in Columbus, Ohio. More information about AEP can be accessed by visiting www.aep.com.





Indiana Michigan Power Company, headquartered in Fort Wayne, IN, encompasses the AEP service territories in Indiana and Michigan. I&M serves over 470,000 Indiana customers and 130,000 Michigan customers. Currently I&M has approximately 5,400 MW of generating capacity.

I&M's current generation portfolio mix includes the following:

BASE LOAD - 4,760 MW. Resources include the coal-fired Rockport Plant (2,620 MW) located in Rockport, IN; and the Cook Nuclear Plant (2,278 MW) located in Bridgman, MI.

HYDRO CAPACITY - 22.4 MW. I&M owns six hydro plants across Indiana and Michigan. (See Table 1).

WIND RESOURCES - 450 MW. I&M has 450 MW of long-term renewable energy purchase agreements (REPA) with wind generation resources located in the state of Indiana (See Table 2).

UNIVERSAL-SCALE SOLAR – 34.7 MW. I&M's Clean Energy Solar Pilot Project (CESPP) consists of four separate solar facilities totaling 14.7 MWs. All four solar facilities achieved commercial operation by the end of 2016 and currently operating as designed. Additionally, St. Joseph Solar Farm, a 20 MW solar facility in the South Bend area, achieved commercial operation in 2021.

Table 1 (Hydro Plants)		
Facility Name	Name-Plate	Location – State (County)
Elkhart	3.4 MW	IN (Elkhart)
Twin Branch	4.8 MW	IN (St. Joseph)
Constantine	1.2 MW	MI (St. Joseph)
Mottville	1.7 MW	MI (St. Joseph)
Buchanan	4.1 MW	MI (Berrien)
Berrien Springs	7.2 MW	MI (Berrien)
Total	22.4 MW	

Table 2 (Wind REPAs)		
Facility Name	Name-Plate	Location – State (County)
Fowler Ridge I	100 MW	IN (Benton, Tippecanoe)
Fowler Ridge II	50 MW	IN (Benton, Tippecanoe)
Wildcat	100 MW	IN (Madison, Tipton)
Headwaters	200 MW	IN (Randolph)
Total	450 MW	

Table 3 (Solar Assets Owned)		
Facility Name	Name-Plate	Location – State (County)
Deer Creek	2.5 MW	IN (Grant)
Twin Branch	2.6 MW	IN (St. Joseph)
Olive	5.0 MW	IN (St. Joseph)
Watervliet	4.6 MW	MI (Berrien)
St. Joseph	20.0 MW	IN (St. Joseph)
	34.7 MW	



In addition to its generation portfolio, I&M has approximately 5,300 miles of transmission and 20,500 miles of distribution lines. Additional information regarding I&M can be accessed by visiting www.indianamichiganpower.com.

2. RFP Overview

- 2.1. I&M is pursuing additional solar and wind generation resources as identified in its 2021 IRP submitted in January 2022 in Indiana and filed in February 2022 in Michigan. Though the IRP has identified specific MW buildouts of solar and wind resources, the Company may pursue more of any resource type as result of its RFP process, as detailed in Section 9.4.
- 2.2. I&M is requesting Proposals which will result in obtaining approximately 800 MW of nameplate rated Wind Energy Resources, 500 MW of nameplate rated Solar Resources, and Supplemental Capacity Resources to meet overall capacity need. The Projects sought through this RFP are to satisfy the IRP requirements through 2026. Depending on the results of the RFP, the Company may pursue additional resources. The minimum nameplate rated bid size for this RFP is 5 MWac.
- 2.3. Supplemental Capacity Resources include Standalone Storage, Emerging Technologies, Thermal, and Other Capacity Resources.
- 2.4. As an alternate Proposal for a standalone Solar or Wind energy resource, Bidders may include a Proposal for a Solar or Wind energy resource with a co-located energy storage system (Storage Option). Standalone storage proposals will also be accepted in this RFP.
- 2.5. The Resources requested via this RFP will be acquired via Purchase and Sale Agreements (PSA) for purchase of 100% of the equity interest of the Project's limited liability company (Project LLC) at Mechanical Completion for solar projects (or other ITC qualifying projects), and on or about final completion for wind projects (or other Non-ITC qualifying projects), or, Power Purchase Agreements (PPA) for purchase of the Renewable Energy Products produced by a Solar and/or Wind Energy Resource and Supplemental Capacity Products produced by a Supplemental Capacity Resource. I&M will not consider proposals in this RFP that do not meet these criteria.
- 2.6. For PSA Proposals, while qualifying for Federal Tax Credits is not an Eligibility and Threshold Requirement (§9.1) for participating in the RFP, the value brought to the Proposals in buying down the cost of energy by utilization of these tax credits is significant, and is included in the Company's Economic Analysis (§9.2) and ranking of each of the respective Proposals.
- 2.7. Affiliates of AEP and I&M (Affiliate) are not permitted to participate in this RFP.



- 2.8. I&M may explore establishing a tax partnership structure with one or more of the selected proposals either individually or as a portfolio.
- 2.9. I&M may execute one or more Solar, Wind, or Supplemental Capacity Resource Project PSAs or PPAs as a result of this RFP.
- 2.10. Any Project(s) with which I&M moves forward as a result of this RFP will be subject to I&M's receipt of the necessary regulatory approvals.
- 2.11. I&M has engaged Charles River Associates (CRA) to serve as an Independent Monitor for the RFP. Overall, CRA will serve in a lead role with respect to the stakeholder engagement processes associated with the RFP, ensuring that stakeholder input is incorporated into the competitive procurement process, screening RFP responses, and monitoring AEP/I&M's efforts associated with the development, issuance, and evaluation of the bids (pursuant to all jurisdictional requirements set forth by the Indiana Utility Regulatory Commission "IURC" and the Michigan Public Service Commission "MPSC").
- 2.12. All questions regarding this RFP should be emailed to I&M2022RFP@aep.com and [Cc IMAllSourceRFP@CRAI.com](mailto:IMAllSourceRFP@CRAI.com)

CRA will post a list of the non-confidential "Questions and Answers" at its website on a weekly basis following the issuance of the RFP until the Proposal Due Date.

- 2.13. This RFP is not a commitment by the Company to acquire any Project or purchase Renewable Energy Products or Supplemental Capacity Products from any Project, and it does not bind the Company or its Affiliates in any manner. The Company in its sole discretion will determine which Bidders, if any, it wishes to engage in negotiations with that may lead to definitive PSA or PPA agreements with one or more selected Projects.
- 2.14. RFP bid results and any analysis of RFP bid results will be provided by AEP to Interested Stakeholders that (i) have executed non-disclosure agreements and (ii) are not competitive entities (*i.e.*, potential bidders and their consultants and affiliates). Bid results and any analysis of bid results will be provided in a manner that does not disclose the identity of the bidder unless prior written consent is obtained by AEP to disclose the identity of the bidder. AEP may disclose this information without liability hereunder.

3. Product Description and Requirements

- 3.1. PSA Completed Projects: For PSA Proposals, each Project must be a complete, commercially operable, integrated electric generating plant, including all facilities that are necessary to generate and deliver energy into 1) PJM (PJM Interconnection L.L.C), 2) MISO (Midcontinent Independent System Operator) with firm deliverability rights into PJM, or 3) I&M's Distribution System by the Expected Commercial Operation Date.



- 3.2. PPA Products: For PPA Proposals, the Company is seeking to purchase the Renewable Energy Products and Supplemental Capacity Products from a low cost Product to deliver energy into 1) PJM, 2) MISO with firm deliverability rights into PJM, or 3) I&M's distribution electrical system via a PPA.
- 3.2.1. Renewable Energy Products shall include:
- 3.2.1.1. Energy
 - 3.2.1.2. Capacity
 - 3.2.1.3. Ancillary Services (if available)
 - 3.2.1.4. Environmental Attributes
- 3.2.2. Supplemental Capacity Products shall include:
- 3.2.2.1. Energy
 - 3.2.2.2. Capacity
 - 3.2.2.3. Ancillary Services (if available)
 - 3.2.2.4. Environmental Attributes (if available)
- 3.3. Expected Commercial Operation Date (COD): The Company is pursuing Projects that can achieve an Expected Commercial Operation Date (COD) by 12/15/2024 or 12/15/2025 to meet I&M's capacity obligation for PJM capacity planning years 2025-2026 or 2026-2027. I&M has a preference for Projects that can achieve a COD by 12/15/2024.
- 3.4. Target Size: The I&M RFP is seeking approximately 800 MWac nameplate rated Wind generation resources, approximately 500 MWac nameplate rated Solar generation resources, and Supplemental Capacity Resources to meet overall capacity need. The ultimate amount of any one type of resource selected will depend on AEP's bid selection process.
- 3.5. Minimum Acceptable Project Size: 5 MWac.
- 3.6. Location: Solar and Supplemental Capacity Resource Projects must be located in the states of Indiana or Michigan. Wind Projects must be located in the states of Indiana, Michigan, Illinois, or Ohio. All Project must interconnect to: 1) PJM, 2) MISO with firm deliverability rights into PJM, or 3) I&M's Distribution System. I&M has a preference for Projects that provide economic benefit to the states of Indiana or Michigan.
- 3.7. Local Content: I&M encourages the use of local goods or services sourced, in whole or in part, from one or more Indiana or Michigan businesses where feasible. The bidder should identify these resources in their proposal.



3.8. Project Development:

- 3.8.1. In addition to AEP Generation Facility Standards (See Sections 6.4 and 6.5 for instructions to obtain) each Project must satisfy the following as applicable:
- Wind Project turbines must be manufactured by GE, Vestas, or Siemens-Gamesa (see Appendix F).
 - Solar panels and inverters must be manufactured by those approved vendors in the AEP Generation Facility Standard (see Appendix F).
 - Battery Energy Storage Systems must satisfy the AEP Battery Energy Storage System Technical Specification and Design Criteria (Appendix F)
 - For non-wind/solar generation, the asset shall be, or have been, built using utility grade equipment, components and materials. The asset design shall incorporate prudent utility features for maintainability and safe reliable operation.
 - Thermal generating units are required to have low carbon emissions or mitigating technology.
 - Emerging Technology must have demonstrated feasibility, be commercialized, and qualify as a Capacity Resource under the PJM Tariff.
- 3.8.2. Wind Projects: Each Wind Project must have a robust wind resource analysis/study prepared by an independent consultant, which shows the expected energy output from the Project utilizing the turbines that will be used for the Project. Such analysis should include P50, P75, P90, P95 and P99 output with 1-year, 5-year, 10-year, 20-year and 30-year estimates. Bidders will be required to provide site information, including raw meteorological data to the Company for use by the Company's independent consultant (Appendix H).
- 3.8.3. Solar Project: Bidders are required to submit all required Solar Resource Information (Appendix I).
- 3.8.4. Standalone Storage Projects: Bidders are required to submit all required Standalone Storage Resource Information (Appendix J).
- 3.8.5. Thermal Projects: Bidders are required to submit all required Thermal Resource Information (Appendix K).
- 3.8.6. Emerging Technology Projects: Bidders are required to submit all required Emerging Technology Resource Information (Appendix L).
- 3.8.7. New Wind and Solar Projects must have a minimum design life of 30 years. The design life for Supplemental Capacity Resources is technology dependent with a preference for 30 years and a minimum of 15 years.



- 3.8.8. Wind or Solar with Storage Option: Bidders may include in their Solar or Wind proposals, as an option, a Bid Price for a Solar or Wind energy resource with a co-located energy storage system. The optional energy storage system must be 1) within a ratio of 5:1 to 3:1 of the nameplate rating (MWac) of the Solar or Wind energy resource to the nameplate rating (MWac) of the energy storage system and, 2) for a minimum of 4 hours of capacity.
- 3.8.9. Energy Storage Systems Co-located with Existing I&M Solar Facilities: I&M will accept Proposals for Energy Storage Projects that can enhance existing I&M Solar facilities with storage capability.
- 3.8.10. Bidder must have established site control of the proposed Project. Site control must be in the form of direct ownership, land lease, land lease option, or easement. A letter of intent will not be an acceptable form of demonstrated site control. Projects co-located with existing I&M Solar Facilities will be deemed to have established site control.
- 3.8.11. Proposals that include the use of Union Labor are preferred by I&M, but Proposals with non-Union Labor will be accepted.
- 3.8.12. Bidder shall use reasonable efforts to utilize and adopt a subcontracting plan to use small and diverse suppliers as subcontractors for work.
- 3.9. Interconnection:
- 3.9.1. Project must be interconnected to:
- 1) PJM, or
 - 2) MISO with Bidder being responsible for securing Firm Transmission from the project in MISO to PJM, or
 - 3) I&M's distribution electrical system.
- 3.9.2 Projects in PJM must have a completed PJM System Impact Study.
- 3.9.3 Projects interconnecting to MISO must have completed Phase 3 of MISO's Definitive Planning Phase and have the Final DPP SIS and Network Upgrade Facilities Study and have secured Firm Transmission into PJM.
- 3.9.4 Projects interconnecting to I&M's distribution electrical system must have a completed Distribution Impact Study from the I&M Distribution Planning Group.
- 3.9.5 Energy Storage Projects co-located with existing I&M Solar Facilities are required to have either 1) a completed system impact study, or 2) established capacity injection rights into PJM



- 3.9.6 The interconnection point with the PJM transmission system or I&M's distribution electrical system will be the Point of Delivery.
- 3.9.7 Bidders are responsible for following the established policies and procedures that are in effect regarding facility interconnection and operation with the interconnecting utility, PJM, or MISO, as applicable.
- 3.9.8 The Bidder is responsible for all costs associated with transmission interconnections and system upgrades as required by the interconnecting utility, PJM, or MISO as applicable. Bidders of Projects located in MISO are also responsible for any costs associated with obtaining Firm Transmission to PJM.

4. PSA Bid Price and Structure:

- 4.1. Proposal pricing must be for the Company's acquisition of a turnkey Project that is a complete, commercially operable, and integrated electric generating plant:
 - 4.1.1. Wind Projects must be designed for a minimum 30-year life. Pricing for Wind Projects must include, but not be limited to, approved wind turbine generators with 30-year life certification (as sited) from manufacturer, balance of plant equipment, O&M facilities, SCADA, IT, all facilities required to deliver energy into PJM or MISO. In addition, pricing must include costs associated with ALTA/title insurance and construction financing.
 - 4.1.2. Solar Projects must be designed for a minimum 30-year life. Pricing for Solar Projects must include, but not be limited to, solar modules, inverters, tracking system, balance of plant equipment, operations and maintenance facilities (if applicable), SCADA, and all facilities required to deliver energy into PJM or MISO. In addition, pricing must include costs associated with ALTA/title insurance and construction financing.
 - 4.1.3. Supplemental Capacity Resources will have a design life that is technology dependent with a preference for 30 years and a minimum of 15 years. Pricing for Supplemental Capacity Projects must include, but not be limited to, balance of plant equipment, O&M facilities, SCADA, IT, all facilities required to deliver energy to the point of interconnection. In addition, pricing must include costs associated with ALTA/title insurance and construction financing.
- 4.2. In addition to Section 4.1, Proposal pricing must include the costs associated with the following:
 - 4.2.1. A minimum of two-year comprehensive warranty from a creditworthy entity for all equipment, including design, labor and materials, and fitness for purpose;



- 4.2.2. Post-commercial operation testing activities and associated costs, including the installation and removal of any temporary test meteorological stations (wind only); and
- 4.2.3. Transmission and interconnection facilities required for the Project, including a detailed list of system or network upgrades, as required by PJM or MISO. Bidders of Projects located in MISO are also responsible for any costs associated with obtaining Firm Transmission to PJM.
- 4.2.4. Pricing shall include ALL costs associated with the development, engineering, procurement, construction, commissioning and applicable testing of the facility.
- 4.2.5. Pricing shall include transfer of all property rights and/or any land lease(s) / easements. (Land hosting either the O&M facility or a project substation must be owned and not leased.)
- 4.3. The proposal shall not be contingent upon awarding an operations and maintenance agreement for the Project and Proposal Bid Price shall not be contingent upon an operations and maintenance agreement for the Project.
- 4.4. Solar Projects and Other ITC Qualifying Projects: The PSA will be for the purchase of 100% of the equity interest of the Project LLC. Three payments under the PSA will be made at Mechanical Completion, Substantial Completion, and Final Completion (See Appendix D – Form Purchase and Sale Agreement for definitions and additional details). The Company will not make any progress payments prior to Mechanical Completion.
- 4.5. Wind Projects and Other Non-ITC Qualifying Projects: The PSA will be for the purchase of 100% of the equity interest of the Project LLC at the completion and commissioning of the Project. Payment by I&M to the Bidder will be at or near the Commercial Operation Date (COD). The Company will not make any progress payments.
- 4.6. Prices must be firm, representing best and final bid. Proposals and bid pricing must be valid for at least 180 days after the Proposal Due Date.

5. PPA Bid Price and Structure

- 5.1. Seller shall use Appendix A and any other attachments as needed to fully articulate the pricing of its Proposal.
- 5.2. Wind and Solar Resources: The Bid Price must be for a bundled Renewable Energy Product as described in Section 3.2.1. The Bid Price shall be on an “as-available” per MWh basis with no separate payment for any Renewable Energy Products.
 - 5.2.1. Bid Price must be a fixed, non-escalated, “all-in”, around-the-clock price (\$/MWh) for the entire term of the agreement.



- 5.2.2. Pricing must include all capital costs, fixed and variable O&M costs, taxes and any other costs associated with delivering the full contracted energy output of the facility to the bid-specified Point of Delivery.
- 5.2.3. Energy Storage Option Bid Pricing must include all costs described in Section 5.2.2 for both the “solar or wind” energy resource and the storage resource necessary to give the Company the right to dispatch and operate the storage resource. The Company shall have the right to dispatch the storage resource at its discretion (within operating limitations) and for its benefit.
- 5.3. Supplemental Capacity Resources: Bidders shall specify in detail all pricing components related to their Proposal for each Supplemental Capacity Product as described in Section 3.2.2, including contracted capacity.
 - 5.3.1. Proposals that have material contingencies as determined by I&M, such as for financing and/or credit related issues, will not be considered.
 - 5.3.2. Bidders should specify any necessary fuel adders associated with their Proposal, including current fuel arrangements and pricing mechanisms.
- 5.4. Bidders are required to include a Proposal with pricing for a 30-year term. In addition to the required 30-year term Proposal, Bidders may submit an alternative Proposal. The alternative Proposal must include pricing for no less than a 15-year term.
- 5.5. Optional Project size(s) provided cannot be contingent on Bidder selling the remaining portion of the Project to another party via a sale of a portion of the project company or a power purchase agreement.
- 5.6. Proposals must include a buyout option for I&M to purchase the Resource at the end of the PPA term and a first right to purchase the Resource should the bidder elect to sell the Resource. The provision to exercise such a right to purchase will be included in the terms of the executed PPA with any selected project. The exercising of any such right will be contingent upon, at a minimum, notice from I&M to exercise the right, any due diligence inspections required by I&M, and approval from all applicable regulatory authorities.
- 5.7. The Company will pay for Renewable Energy Products and Supplemental Capacity Products prior to the Delivery Period at the Real-Time Locational Marginal Price (\$/MWh) at the Point of Delivery less any associated PJM charges.
- 5.8. All costs associated with distribution and/or transmission interconnection (as applicable) and interconnection facilities required for the Project, including any system upgrades, as required by I&M, PJM, or MISO (including Firm Transmission) up to the Point of Delivery, shall be included in the Bidder’s pricing where appropriate under current FERC orders and rulings.



- 5.9. Prices must be firm, representing best and final bid. Proposals and bid pricing must be valid for acceptance at least 180 days after the Proposal Due Date.

6. RFP Schedule and Proposal Submission

- 6.1. The schedule and deadlines set out in this section apply to this RFP. I&M reserves the right to revise this schedule at any time and at its sole discretion.

RFP Issued	3/10/2022
Proposal Due Date	4/21/2022
Bidder(s) Selected for Final Contract Negotiations	7/5/2022
Contract Execution	November 2022
State Regulatory Filings	December 2022
Receipt of Full Regulatory Approval Order(s)	April 2023
Seller Conditions to NTP achieved	June 2023
Notice to Proceed (NTP)	June 2023
Commercial Operation by	December 2024 or December 2025

- 6.2. Proposals must be complete in all material respects and received no later than 3 p.m. EPT on the Proposal Due Date as defined in Section 7 of this RFP.
- 6.3. Proposals should include an electronic copy of all PJM, MISO, or I&M Studies completed to date for the Project.
- 6.4. Bidders will be required to sign a Confidentiality Agreement (CA) prior to receiving the following documents:
- Form PSA (Appendix D)
 - Form PPA (Appendix E)
 - AEP Generation Facility Standard (Appendix F)
 - Wind:
 - GEN 4560 Wind Projects Technical Spec Rev 5
 - Solar:
 - GEN-4550 Solar Projects Technical Spec Rev 10
 - GEN-4551 Performance Test Requirements Rev 2
 - Battery
 - GEN-4570 BESS Technical Specification Rev 2
 - Scope of Work (Appendix F)
 - AEP Design Criteria for Battery Energy Storage Systems Fire Safety (Document Number: DC-FP-BATT) (Appendix F)
 - WindEnergyInputSheet_2022.xls (Appendix H)
 - Solar Data Review Form.xls and SolarEnergyInputSheet_2022.xls (Appendix I)
 - Storage Data Review Form.doc (Appendix J)
 - Thermal Data Review Form.doc (Appendix K)



- Emerging Tech Data Review Form.doc (Appendix L)
- Project Land Lease and Decommissioning Cost.xls (Appendix M)
- Project Technical Due Diligence Material (Appendix N)
- Environmental Wildlife Site Review Form.doc (Appendix O)
- Local Benefits Support and Supplier Diversity.doc (Appendix P)

6.5. Bidder should request I&M's Form CA by emailing I&M2022RFP@aep.com and Cc IMAllSourceRFP@CRAI.com and including the following documentation:

- Verification of Site Control as required by Section 3.8.10.
- Completed interconnection study as follows:
 - PJM Projects: Completed PJM System Impact Study as required by Section 3.9.2 and 3.9.5, or
 - MISO Projects: Completed Final DPP SIS and Network Upgrade Facilities Study and Firm Transmission into PJM as required by Section 3.9.3, or
 - I&M Distribution Projects: Completed I&M Distribution Impact Study as required by Section 3.9.4.

6.6. I&M reserves the right to solicit additional proposals, if it deems necessary to do so, and the right to submit additional information requests to Bidders during the evaluation process.

6.7. Proposals and bid pricing must be valid for at least 180 days after the Proposal Due Date at which time Proposals shall expire unless the Bidder has been notified that its Proposal has been included in the Short-List.

6.8. A Proposal should be as comprehensive as possible to enable the Company to make a definitive and final evaluation of the Proposal's benefits to its customers without further contact with the Bidder.

7. Proposal Submittal

For Proposals that are under 30 MB in size, please submit your Proposal to the Independent Monitor via email at IMAllSourceRFP@crai.com. Please note that the Independent Monitor will always confirm receipt. If you do not receive an email confirmation after submission, please follow up with us as we likely did not receive your submission. Please submit your proposal well prior to the proposal submission deadline to allow time for addressing any issues that may arise during submission.

For Proposals that are over 30 MB in size, or if desired, to ensure proposal delivery regardless of proposal size, at least 2 business days prior to the proposal submission deadline, please contact us via email at IMAllSourceRFP@crai.com for further instructions on how to submit your Proposal via CRA's secure WebTransfer platform. We will provide you with access to the web transfer system in order to submit your proposal files.



One hard copy of the Bidder's complete Proposal shall be submitted within 3 business days of the Proposal Due Date. Hard copies of the Proposal must be identical to the electronic copy submitted on the Proposal Due Date of April 21, 2022. Hard copies shall be submitted to:

American Electric Power Service Corporation
Attn: I&M 2022 All-Source RFP Manager
1 Riverside Plaza (25th Floor)
Columbus, OH 43215

8. Proposal Content

Bidders must submit the following information for Proposals. All electronic versions of the Appendices shall be individual files.

- 8.1. A completed Proposal Content Check Sheet (Appendix Q)
- 8.2. A cover letter signed by an authorized representative of the Bidding Company with a statement of firm pricing for 180 days after the Proposal Due Date.
- 8.3. An executive summary of the Project's characteristics and timeline, including any unique aspects and benefits.
- 8.4. Summary documentation demonstrating how the Project will qualify for the PTC for Wind Projects; or the ITC for Solar Projects (and other ITC qualifying projects) under Section 45 of the Internal Revenue Code of 1986, as amended. Bidder shall provide a detailed plan regarding the steps taken to date and future actions required to satisfy IRS Safe Harbor requirements.
- 8.5. Detailed information regarding the equipment (e.g. wind turbine, solar module, inverter, energy storage resource, etc.) manufacturer's warranty offering including parts and labor coverage and other key terms.
- 8.6. The identity of all persons and entities that have a direct or indirect ownership interest in the Project.
- 8.7. Completed Appendix A (Project Summary).
- 8.8. A completed Appendix B (Bidder's Credit-Related Information).
- 8.9. A completed Appendix C (Bidder Profile). Bidders must provide a general description of its (including its affiliates) background and experience in the development and construction of at least three projects similar to the Projects sought by the Company in this RFP. In addition, Bidders should provide at least three third-party references for such projects.



- 8.10. A complete list of the Bidder's commercial, legal, and other exceptions to the terms and conditions contained in the applicable Form Purchase Sale Agreement or Form Power Purchase Agreement (Appendix D or Appendix E).
- 8.11. A list of any exceptions it takes to the applicable AEP Generation Facility Standard and Scope of Work (Appendix F).
- 8.12. Any exceptions to AEP Requirements for Connection of Facilities (Appendix G).
- 8.13. All required Resource Analysis / Study Information for the corresponding resource type (Appendix H, Appendix I, Appendix J, Appendix K, or Appendix L).
- 8.14. Bidder's Proposal shall include expected Land Lease Costs, Decommissioning Costs, and Auxiliary Load. Land Lease Costs shall be provided by year for a 30-year operating period (See Appendix M).
- 8.15. Energy Storage Option: Bidders providing an alternate Proposal for a Solar or Wind energy resource with an energy storage resource shall provide this option separate from the base Solar or Wind energy resource only Proposal. This optional Proposal shall include all applicable information from Section 8 in addition to technical, operating, performance, and warranty details associated with the storage resource. Any Battery Energy Storage System (BESS) offered shall comply with the AEP Design Criteria for Battery Energy Storage Systems Fire Safety (Document Number: DC-FP-BATT). This document will be provided to Bidders subsequent to execution of a CA (See Section 6.4 and 6.5).
- 8.16. All required Technical Due Diligence Material (Appendix N)
- 8.17. A completed Appendix O (Environmental / Wildlife / Site Information)
- 8.18. A completed Appendix P (Indiana and Michigan Economic Stimulus Benefits / Community Support / Supplier/Contractor Diversity)

9. RFP Proposal Evaluation

Proposals must include ALL applicable content requirements as described in Section 8. I&M will consider bids that are reliable, feasible, and represent a reasonable cost means of satisfying the requirements of this RFP. The Evaluation Process, which includes five main steps, is central to the success of I&M's RFP process.

- Section 9.1: Eligibility and Threshold Requirements
- Section 9.2: Economic Analysis
- Section 9.3: Non-Price Analysis
- Section 9.4: Resource Selection
- Section 9.5: Short-Listed Proposals



9.1 Eligibility and Threshold Requirements: If the Bidder does not qualify under any one of the Sections 9.1.1 – 9.1.12, the Bidder will not qualify for this RFP and will be notified accordingly.

9.1.1 Proposal must be for a Purchase and Sale Agreement or Power Purchase Agreement for a Wind, Solar, or Supplemental Capacity Resource (§2.5).

9.1.2 Projects must have an Expected COD by 12/15/2024 or 12/15/2025 (§3.3).

9.1.3 Project must have a minimum nameplate rating of 5 MWac (§3.5).

9.1.4 Projects must be located in IN, MI, OH or IL for Wind, or IN or MI for Solar and Supplemental Capacity Resources (§3.6).

9.1.5 Bidder must have 1) a completed PJM System Impact Study (§3.9.2 and §3.9.5) which remains active in the PJM queue, 2) a completed MISO Final DPP SIS and Network Upgrade Facilities Study and Firm Transmission from the Project into PJM (§3.9.3), or 3) a completed I&M Distribution Impact Study (§3.9.4)

9.1.6 Bidder must have established Site Control (§3.8.10).

9.1.7 Project Specific Requirements (§3.8.1):

9.1.7.1 Wind Projects: Turbines must be manufactured by GE, Vestas, or Siemens-Gamesa

9.1.7.2 Solar Projects: Solar panels and inverters must be manufactured by approved vendors in the AEP Generation Facility Standard for Solar Facilities

9.1.7.3 Standalone Storage Projects: Asset shall be, or have been, built using utility grade equipment, components, and materials. The asset design shall incorporate prudent utility features for maintainability and safe reliable operation. Battery Energy Storage Systems must be manufactured by approved vendors in the AEP Generation Facility Standard for BESS Facilities.

9.1.7.4 Thermal Projects: Asset shall be, or have been, built using utility grade equipment, components, and materials. The asset design shall incorporate prudent utility features for maintainability and safe reliable operation. In addition, assets must have low carbon emissions or have accompanying mitigating technology. Thermal Projects considered low carbon emissions projects may include Natural Gas, Biomass, and Biofuels Technologies.



- 9.1.7.5 Emerging Technology Projects: Asset shall be, or have been, built using utility grade equipment, components, and materials. The asset design shall incorporate prudent utility features for maintainability and safe reliable operation. In addition, Emerging Technology Projects must be for a proven technology and be commercially feasible.
- 9.1.8 Resource Information: Bidder must submit all required Resource Studies / Information listed in Appendix H (wind), Appendix I (solar), Appendix J (Standalone Storage), Appendix K (Thermal), and Appendix L (Emerging Technology) for the proposed resource type (§3.8.2 – §3.8.6).
- 9.1.9 Project life must be designed for a minimum of 30 years for Wind and Solar or meet the technology design life standard for Supplemental Capacity Resources (§3.8.7).
- 9.1.10 Bidder or its affiliates shall have completed the development, engineering, equipment procurement and construction of a project, within the United States or Canada, of the same technology type, and of a size equal to or greater than the Bidder's proposed Project and/or have demonstrated appropriate experience (Appendix A). Bidder is required to include requested financial information (Appendix B) so that AEP's credit department can conduct a financial wherewithal assessment.
- 9.1.11 Bidder's exceptions to the Form PSA and Form PPA shall be complete and, considered individually or in the aggregate, minimally acceptable to the Company as a basis for further discussions (§8.10). I&M reserves the right to disqualify any Bidder who provides an incomplete list of exceptions (for example, by noting that the Bidder's exceptions list has not been reviewed by certain commercial, functional or legal reviewers and may be supplemented with additional exceptions on further review).
- 9.1.12 Proposal must include detailed exceptions, if any, to the applicable AEP Generation Facility Standard and Scope of Work in Appendix F. (§8.11).
- 9.2 Economic Analysis: During the Economic Analysis phase, I&M will determine three key price evaluation metrics for each of the Proposals:
1. Levelized Adjusted Cost of Energy (LACOE)
 2. Levelized Adjusted Cost of Capacity (LACOC)
 3. Value to Cost Ratio

These metrics and intermediate terms used in the calculation of these metrics are defined below

- 9.2.1 Total Cost: I&M will determine the present value of all the costs of each qualifying Proposal. This total cost calculation is based on the Proposal's Bid Price (\$M),



Operations and Maintenance Costs (including Land Lease costs), Tax Expenses, Fuel Costs, Cost of Energy for Charging Storage, Decommissioning Costs (including expected salvage and terminal value), and applicable Federal Tax Credit (Wind – Production Tax Credit, Solar – Investment Tax Credit). To the extent the asset is not under I&M control at any point in the period, cost will reflect market purchases of bundled Renewable Energy Products and Supplemental Capacity Products. In addition, I&M will include the debt equivalence cost of PPAs and transmission congestion cost as determined by the Company’s distribution or transmission congestion screening analysis. Other costs may be included based on the Company’s discretion to appropriately evaluate each Proposal. This may be done to ensure the Company is comparing all qualifying Proposals on an equivalent basis.

- 9.2.2 Total Value: I&M will determine the present value of all the value streams of each qualifying Proposal. This total value calculation is based on expected PJM revenues for the Proposal’s energy, capacity, and any renewable energy certificates in the PJM market. Additionally, other value streams may be included based on the Company’s discretion to appropriately evaluate each Proposal. This may be done to ensure the Company is comparing all qualifying Proposals on an equivalent basis.
- 9.2.3 Levelized Adjusted Cost of Energy: The LACOE is calculated by dividing the Total Cost by the present value of the Proposal’s expected lifetime energy output.
- 9.2.4 Levelized Adjusted Cost of Capacity: The LACOC will be calculated by dividing the Total Cost by the present value of the Proposal’s installed capacity rating.
- 9.2.5 Value to Cost Ratio: The Value to Cost Ratio will be calculated by dividing the Total Value of the Proposal by the Total Cost of the Proposal.

9.3 Non-Price Analysis:

I&M will consider all applicable factors including, but not limited to, the following factors to determine the viability of the Proposal.

9.3.1 Asset-Specific Benefits and Risks

Contract Term/Asset Life-Related Market Risks

The Company will review the extent to which the proposal exposes the Company and its customers to higher than projected market prices and volatility due to the term-length of a contract or the finite life of an asset.

Ownership Optionality and Flexibility Benefits



The Company will review the bid and associated terms relative to the benefits that would accrue to the Company and its customers with respect to operational flexibility. Key considerations will include the ability for the project to reliably meet energy, capacity, and ancillary service needs under emergency and volatile market conditions; and the enhancement value of the facility with respect to current and changing future operational and market needs (ex: storage and new technologies, ability to adapt to new market rules).

9.3.2 Development Status and Risks

Development Status, Interconnection Status, and Other Project Completion Risks

The Company will review the development status of the project including, but not limited to the status of land leases, permitting (local and federal), and arrangements with equipment suppliers and contractors. The review will focus on potential risks (e.g. project schedule, equipment supply arrangements) associated with achieving the targeted commercial operations date. Review under this category will also include an assessment of the proposed project's planned interconnection arrangements, with a focus on completeness of the Generation Interconnection process as prescribed by the respective Regional Transmission Organization (RTO), as well as the scope, schedule, and estimated deliverability of the prospective project.

Project Timing

The Company will review the likelihood that a project will be online in time to support the timing of near term capacity needs identified in the Preferred Plan in I&M's IRP process. Those projects that can reliably meet commercial operation status earliest in 2024 will be scored highest.

9.3.3 Environmental, Social, and Economic Impacts/Benefits

Carbon Emissions Goal

AEP is committed to a goal to achieve net zero carbon emissions by 2050, with an interim target to cut emissions 80% from 2000 levels by 2030. Each bid will be reviewed with respect to its emissions rate, carbon capture technology, and potential to facilitate non-carbon based fuel sources.

Environmental and Wildlife Impact / Permitting

The Company will review the status of applicable environmental documents associated with the project which may include, but not be limited to: a permit matrix and plan, wetland and waters delineations, cultural and historical resource investigations, wildlife surveys and assessments, habitat assessments, resource



agency correspondence and meeting notes, potential for environmental justice concerns, Phase I ESAs, and any other available permit documentation.

Indiana and Michigan Economic Stimulus Benefits, Community Support, and Supplier/Contractor Diversity

The Company will review the Bidder's proposal for its potential to increase private investment by companies that value proximity to renewable energy sources. This category will also include a review of the economic benefits to local governments and businesses as well as local property and sales tax benefits. Known current or historical community support or opposition for renewable projects and the bidder's plan for managing community relations will be evaluated. The review will also include consideration of the developer's plan to use small and diverse suppliers and subcontractors, and contractors based in Indiana and Michigan.

9.3.4 Proposal/Project Quality

Bidder Experience and Financial Wherewithal

The Company will review the Bidder's experience including Bidder's success in completing similar sized projects in the relevant state/jurisdiction, the number of successful projects the Bidder has been involved with to-date, and the Bidder's role in the completion of those projects. The Bidder's ability to meet contractual credit requirements through the review of recent financial statements, ability to post collateral and raise capital, and any other relevant financial information including current credit ratings will also be assessed. The Company will evaluate the form of the Bidder's collateral, including potential parent guaranty, and verify that it is acceptable AEP.

Exceptions to AEP Generation Facility Design Standards

The Company will review the exceptions the Bidder proposed to AEP's Facility Generation Standards and its associated attachments (such as the Scope of Work) for bids that have passed the E&T requirements. All exceptions will be considered in the scoring of this category. Prior agreement by AEP in previous negotiations does not constitute acceptance of an exception.

Exceptions to Form PSA or PPA

The Company will review the exceptions the Bidder proposed to the Company's form agreements with a focus on risks or additional costs to the Company for those projects that have passed E&T requirements. All exceptions will be considered in the scoring of this category. Prior agreement by AEP in previous negotiations does not constitute acceptance of an exception.



9.4 Resource Selection: I&M will incorporate the results of its Economic and Non-Price Analyses to determine an optimized short-list of Proposals through the following steps:

9.4.1 Step 1: I&M will group all Proposals by resource type within the following categories (Resource Type Group):

1. Wind (+Storage)
2. Solar (+Storage)
3. Supplemental Capacity Resources

9.4.2 Step 2: I&M will calculate a First Composite Score, made up of LACOE / LACOC (60%) and Non-Price (40%) scores, for each Proposal. The Proposals within each Resource Type Group will be ranked according to this First Composite Score.

9.4.3 Step 3: On the basis of the first Composite Score rankings, I&M will select approximately 1,600 MW nameplate of Wind (+Storage), approximately 1,000 MW nameplate of Solar (+Storage), and approximately 100 MW nameplate of Supplemental Capacity Resources to carry into Step 4.

9.4.4 Step 4: I&M will calculate a Second Composite Score on the Proposals selected from Step 3, made up of Value-to-Cost Ratio (60%) and Non-Price (40%) scores, for the purpose of comparing Proposals across Resource Type Groups. The Proposals will be ranked according to this Second Composite Score.

9.4.5 Step 5: I&M will select the Proposals from the Step 4 ranking to create a portfolio that meets the Company's Accredited Capacity Resource needs (Proposal Short List). Selection based on the Step 4 ranking could lead to I&M choosing more or less MW of wind or solar resources than originally targeted.

9.5 Short-Listed Proposals: I&M will consider bids that are reliable, feasible and represent a reasonable cost means of satisfying the requirements of this RFP. I&M will identify one or more Short-Listed Bidders for further discussions and negotiations of one or more executable agreements. Bidders not selected to the Short-List will be notified promptly.

9.5.1 I&M reserves the right to disqualify from the Short-List any Bidder who provides a marked Form PSA or Form PPA that materially departs from their previously submitted exceptions list (see §9.1.11).

10. Reservation of Rights

A Proposal will be deemed accepted only when the Company and the successful Bidder have executed either a definitive Purchase Sale Agreement for the Company's acquisition of the



Project or a Power Purchase Agreement. The Company has no obligation to accept any Proposal, whether or not the stated price in such Proposal is the lowest price offered, and the Company may reject any Proposal in its sole discretion and without any obligation to disclose the reason or reasons for rejection.

By participating in the RFP process, each bidder agrees that any and all information furnished by or on behalf of the Company in connection with the RFP is provided without any representation or warranty, express or implied, as to the usefulness, accuracy, or completeness of such information, and neither the Company nor its Affiliates nor any of their personnel or representatives shall have any liability to any bidder or its personnel or representatives relating to or arising from the use of or reliance upon any such information or any errors or omissions therein.

The Company reserves the right to modify or withdraw this RFP, to negotiate with any and all qualified Bidders to resolve any and all technical or contractual issues, or to reject any or all Proposals and to terminate negotiations with any Bidder at any time in its sole discretion. The Company reserves the right, at any time and from time to time, without prior notice and without specifying any reason and, in its sole discretion, to (a) cancel, modify or withdraw this RFP, reject any and all Proposals, and terminate negotiations at any time during the RFP process; (b) discuss with a Bidder and its advisors the terms of any Proposal and obtain clarification from the Bidder and its advisors concerning the Proposal; (c) consider all Proposals to be the property of the Company, subject to the provisions of this RFP relating to confidentiality and any confidentiality agreement executed in connection with this RFP, and destroy or archive any information or materials developed by or submitted to the Company in this RFP; (d) request from a Bidder information that is not explicitly detailed in this RFP, but which may be useful for evaluation of that Bidder's Proposal; (e) determine which Proposals to accept, favor, pursue or reject; (f) reject any Proposals that are not complete or contain irregularities, or waive irregularities in any Proposal that is submitted; (g) accept Proposals that do not provide the lowest evaluated cost; (h) determine which Bidders are allowed to participate in the RFP, including disqualifying a Bidder due to a change in the qualifications of the Bidder or in the event that the Company determines that the Bidder's participation in the RFP has failed to conform to the requirements of the RFP; (i) conduct negotiations with any or all Bidders or other persons or with no Bidders or other persons; (j) execute one or more definitive agreements with any Bidder, and (k) utilize a Bidder's completed Appendices and any supplemental information submitted by the Bidder in any of its regulatory filings.

The Company has seen variable prices throughout many sectors needed to bid and develop a project due to the coronavirus pandemic, supply chain shortages, shipping delays, and now a war in Europe. The Company believes this may, in the short term, until such markets settle, result in higher bid prices to account for potential market risks. Allowing potential shortlist projects to have the opportunity to submit a downward price adjustments to their project will provide time for projects to further understand current markets and allow projects to further refine their costs, hopefully resulting in lower costs for customers. As such, the Company reserves the right, at its sole discretion, and in coordination with the Independent Monitor,



to request Best and Final Offer (“BAFO”) pricing from potential shortlisted proposers during the bid selection process

11. Confidentiality

I&M will take reasonable precautions and use reasonable efforts to maintain the confidentiality of all bids submitted. Bidders should clearly identify each page of information considered to be confidential or proprietary. I&M reserves the right to release any proposals to agents or consultants for purposes of proposal evaluation. I&M’s disclosure policies and standards will automatically bind such agents or consultants. Regardless of the confidentiality, all such information may be subject to review by or in proceedings before the appropriate state authority, or any other governmental authority or judicial body with jurisdiction relating to these matters and may be subject to legal discovery. Under such circumstances, I&M and AEPSC will make reasonable efforts to protect Bidder’s confidential information.

12. Bidder’s Responsibilities

- 12.1. It is the Bidder’s responsibility to submit all requested material by the deadlines specified in this RFP.
- 12.2. The Bidder should make its proposal as comprehensive as possible so that I&M may make a definitive and final evaluation of the proposal’s benefits to its customers without further contact with the Bidder.
- 12.3. Bidders are responsible for the timely completion of the project and are required to submit proof of their financial and technical wherewithal to ensure the successful completion of the project.
- 12.4. The Bidder will be responsible for any expenses Bidder incurs in connection with the preparation and submission of a Proposal and/or any subsequent negotiations regarding a Proposal in response this RFP. I&M will not reimburse Bidders for their expenses under any circumstances, regardless of whether the RFP process proceeds to a successful conclusion or is abandoned by I&M at its sole discretion.

13. Contacts

- 13.1. General RFP Questions: All correspondence and questions, with the exception of interconnection related questions, regarding this RFP should be directed to:

To: I&M2022RFP@aep.com

Cc: IMAllSourceRFP@CRAI.com

- 13.2. PJM Interconnection: All correspondence and questions regarding the PJM Interconnection process can be found at:

PJM Interconnection



13.3. MISO Interconnection: All correspondence and questions regarding the MISO Interconnection process can be found at:
MISO Interconnection



Appendix A

Project Summary

A1. Company Information

Bidder (Company):		
Contact Name:		
Contact Title:		
Address:		
City:	State:	Zip Code:
Work Phone:	Cell Phone:	
Email Address:		
Is the Proposal being submitted through a partnership, joint venture, consortium, or other association? _____ If so, please identify all partners, joint ventures, members, or other entities or persons comprising same.		
<i>Additional company information to be provided in Appendix B – Bidder's Credit-Related Information and Appendix C – Bidder's Profile</i>		

A2. General Project Information

Project Name:	
Resource Type: <i>(e.g. Wind, Solar, Standalone Storage, NG Simple Cycle, Combined Cycle, etc.):</i>	
Project site located (County, State):	
PJM Queue #:	PJM Study Status:
Expected Commercial Operation Date:	
Design Life (Years):	
Bidder confirms that it has substantial Project site control	(Y/N):
Is the proposal for 100% of the asset? (Y/N) If no, what percentage?	%



A3. Wind Project Information

Percentage of Federal Production Tax Credit that Project will qualify for:	%
Turbine Manufacturer:	Model Number:
Number of Turbines:	
Turbine Specific Site Suitability Report completed & included in proposal?	(Y/N):
Independent wind report / analysis completed and included in proposal?	(Y/N):
Source of wind energy forecast:	
Wind Project Nameplate (MWac): Wind Project Nameplate (MWdc): Wind Project Capacity Factor (%):	Expected Annual Availability (%):
<i>Additional Wind Project information to be provided in Appendix H – Wind Resource Information</i>	

A4. Solar Project Information

Percentage of Federal Investment Tax Credit that the Project will qualify for:	%
Module Manufacturer / Model:	Annual Degradation (%):
Configuration (Fixed Tilt / Single Axis):	
Inverter Manufacturer / Model:	
Solar Project Nameplate (MWac): Solar Project Nameplate (MWdc): Solar Project Capacity Factor (%):	Expected Annual Availability (%):
<i>Additional Solar Project information to be provided in Appendix I – Solar Resource Information</i>	

A5. Energy Storage Option Information (co-Located with Wind and Solar Projects)

Storage Resource Description:				
Duration (Hours):				
Ratio of the nameplate rating (MWac) of the Solar or Wind energy resource to the nameplate rating (MWac) of the energy storage system:				:
Economic Life Assumption (Years):				
Project Capacity Values, MW	Nameplate Rating	Winter Rating	Summer Rating	PJM Capacity Value
<i>Additional Storage Project information to be provided in Appendix J – Storage Resource Information</i>				



A6. Standalone Storage Project Information

Storage Resource Description:				
Duration (Hours):				
Economic Life Assumption (Years):				
Project Capacity Values, MW	Nameplate Rating	Winter Rating	Summer Rating	PJM Capacity Value
<i>Additional Storage Project information to be provided in Appendix J – Storage Resource Information</i>				

A7. Thermal Project Information

Fuel Type (Primary / Secondary):				
Project Capacity Values, MW	Nameplate Rating	Winter Rating	Summer Rating	PJM Capacity Value
Estimated remaining useful life (years):				
<i>Additional Thermal Project information to be provided in Appendix K – Thermal Resource Information</i>				

A8. Emerging Technology Project Information

Resource Description:				
Economic life assumption:				
Project Capacity Values, MW	Nameplate Rating	Winter Rating	Summer Rating	PJM Capacity Value
<i>Additional Emerging Technology Project information to be provided in Appendix L – Emerging Technology Resource Information</i>				



A9. PSA Proposal Bid Pricing

Base Proposal				
Expected Transfer by	Equipment Manufacturer	Expected Annual Energy	Capacity Factor	Bid Price, \$
December 15, 2024				\$
December 15, 2025				\$
Remaining Economic Life Assumption (Years):				
Does Bid Price include the use of union labor?				(Y/N):
Does Bid Price take into consideration the AEP Requirements for Connection of Facilities (Appendix G)				(Y/N):
Base Proposal with Energy Storage Option				
Expected COD by	Equipment Manufacturer	Expected Annual Energy	Capacity Factor	Bid Price, \$
December 15, 2024				\$
December 15, 2025				\$

A10. PPA Proposal Bid Pricing

Wind or Solar Base Proposal				
Expected Commence Date	PPA Term	Expected Annual Energy	Capacity Factor	Bundled Price \$/MWh
December 15, 2024				
December 15, 2025				
Wind or Solar Base Proposal with Storage Option				
Expected Commence Date	PPA Term	Expected Annual Energy	Capacity Factor	Bundled Price \$/MWh
December 15, 2024				\$
December 15, 2025				\$



Supplemental Capacity Proposal							
Expected Commence Date	PPA Term	Expected Annual Energy	Capacity Factor	Energy Price \$/MWh	Capacity Price \$/MWh	Ancillary Services Price \$/MWh	Environmental Attribute Price \$/MWh
December 15, 2024							
December 15, 2025							
Specify necessary fuel adders, including current fuel arrangements and pricing mechanisms:							
Does Bid Price include the use of union labor?							(Y/N):
<i>Optional size(s) provided <u>cannot</u> be contingent on Bidder selling the remaining portion of the Project to another party via a sale of a portion of the project company or a power purchase agreement.</i>							

All. Interconnection (PJM)

PJM Queue #:	Substation Name / Voltage:
Feasibility Study Complete (Y/N):	Feasibility Study Report Date:
System Impact Study Complete (Y/N):	System Impact Study Report Date:
Facilities Study Complete (Y/N):	Anticipated Facilities Study Completion Date:
Total Network Upgrade Costs Allocated to Project from System Impact Study or Facilities Study if completed:	\$
Total Direct Interconnection costs from System Impact Study or Facilities Study if completed:	\$
Point of Interconnection with :	
Types of transmission service (NRIS, ERIS)	
PJM Interconnection Status, including description of any communication with PJM specifically indicating project status related to recently proposed PJM Queue Reform (i.e. "Fast Lane") (describe):	
<i>Please attach a copy of all interconnection studies and/or the expected completion date(s).</i>	



A12. Interconnection (MISO)

MISO Project #:	Substation Name / Voltage:	
Phase 2 Complete (Y/N):	Phase 2 Report Date:	
Phase 3 Complete (Y/N):	Phase 3 Report Date:	
Point of Interconnection with :		
Types of transmission service (NRIS, ERIS)		
Firm Deliverability into PJM?	(Y/N)	
If no, cost estimated with securing such deliverability?	\$	
MISO Interconnection Status, including status of any Storage (describe):		
<p><i>Please attach a copy of all interconnection studies and/or the expected completion date(s).</i></p>		

A13. Environmental, Wildlife, and Site Information

Site Legal Description:	
Address:	
City:	State: Zip Code:
County	Longitude: Latitude:
Site Control (lease, own, site purchase pending, etc.):	
Site Acres:	
Is there potential for expansion (Y / N):	If Yes; acres available:
Have you contacted all required permitting agencies regarding this project and identified all necessary permits?	
Local (County, City, etc.) (Y / N):	
State (Y / N):	
Federal (Y / N):	
Wildlife Resources (Federal, State, etc.) (Y / N):	
Other (Y / N):	
Are there any Federal, State, or Tribal lands in the vicinity (within 1 mile) of the project?	
What is the current status of Bidder's FAA permitting process? Has the project been issued Determination of No Hazard? (For the entire project? For a portion of the project? If so, when is the expiration date?)	



Has habitat for any rare, threatened, or endangered species been identified within the vicinity (within 1 mile) of the project? If so, for what species?	
If habitat has been identified in the project vicinity, what is the current status of consultations with the U.S. Fish and Wildlife Service or applicable state agency?	
<i>Additional Site information provided in Appendix O – Environmental, Wildlife, and Site Information</i>	

A14. Projects Completed of the Same Technology Type

Provide a summary of all projects (≥ 5 MWac) that Bidder has successfully developed and completed in the United States or Canada. For each project, describe the Bidder’s specific role in the project.

Project	Location	MW	Bidder’s Role
Total MW =			

Please provide a summary of the operating history of previously built projects (≥ 5 MW), if necessary, provide in a separate attachment



Appendix B

Bidder's Credit-Related Information

Full Legal Name of the Bidder:
Type of Organization (Corporation, Partnership, etc.):
Bidder's % Ownership in Proposed Project:
Full Legal Name(s) of Parent Corporation: 1. 2. 3.
Entity Providing Credit Support on Behalf of Bidder (if applicable): Name: Address: City: Zip Code:
Type of Relationship:
Current Senior Unsecured Debt Rating: 1. S&P: 2. Moodys:
Bank References & Name of Institution:
Bank Contact: Name: Title: Address: City: Zip Code: Phone Number:
Legal Proceedings: As a separate attachment, please list all lawsuits, regulatory proceedings, or arbitration in which the Bidder or its affiliates or predecessors have been or are engaged that could affect the Bidder's performance of its bid. Identify the parties involved in such lawsuits, proceedings, or arbitration, and the final resolution or present status of such matters.
Financial Statements: Please provide copies of the Annual Reports for the three most recent fiscal years and quarterly reports for the most recent quarter ended, if available. If available electronically, please provide link.
Ability to Post Collateral and Raise Capital: Please provide a narrative describing the Bidders' ability and plan to both post collateral and raise capital to facilitate the development and construction of the project.



Appendix C

Bidder Profile

Please list Bidder's Affiliate companies:

- 1.
- 2.
- 3.
- 4.

Please attach a summary of Bidder's background and experience in the development of projects of the same technology as the proposed project.

References

1. Company
 - a. Contact Name:
 - b. Contact Number:
 - c. Project:
2. Company
 - a. Contact Name:
 - b. Contact Number:
 - c. Project:
3. Company
 - a. Contact Name:
 - b. Contact Number:
 - c. Project:
4. Company
 - a. Contact Name:
 - b. Contact Number:
 - c. Project:



Appendix D

Form Purchase and Sale Agreement (PSA)

See Sections 6.4 and 6.5 for instructions to obtain the Form Purchase and Sale Agreement.



Appendix E

Form Power Purchase Agreement (PPA)

See Sections 6.4 and 6.5 for instructions to obtain the Form Power Purchase Agreement



Appendix F

AEP Generation Facility Standard

See Sections 6.4 and 6.5 for instructions to obtain the applicable AEP Generation Facility Standard and Scope of Work.



Appendix G

AEP Requirements for Connection of Facilities

Please follow the link below to access the AEP Requirements for Connection of Facilities (“Requirements for Connection of New Facilities or Changes to Existing Facilities Connected to the AEP Transmission System”).

https://aep.com/assets/docs/requiredpostings/TransmissionStudies/Requirements/AEP_Intercconnection_Requirements_Rev3_CONSOLIDATION.pdf



Appendix H

Wind Resource Information

Required Information

- Attach the independent wind energy report
 - Wind report shall also include P50, P75, P90, P95 and P99 production estimates with 1, 5, 10, 20 and 30 year timeframes
 - Independent consultant information (resume, contact information) if not included in the wind energy report.
- Describe on-site meteorological campaign including:
 - Number of met towers
 - Height of met towers
 - Remote sensing (lidar and/or sodar)
 - Number of years of data for each tower / remote sensing device.
- Identify any wind direction sector management or other operation restrictions.
- Experience of developer in IN, MI, IL, or OH. Identify the number of projects, years each project has been operating, turbine models and capacity rating.
- Source and basis of the wind speed data used in the development of energy projections for the project. Explain all assumptions for wake losses, line losses, etc. and the location where the data was measured.
- Wind turbine power curve adjusted for the site's specific air density.
- Provide a description of the system intended to provide real-time telemetry data.
- Attach an 8760 calendar year hourly energy forecast, net of all losses (See Section 6.4 and 6.5 for instructions to obtain the WindEnergyInputSheet_2022.xls.)
- Bidders shall provide a summary of representative wind data with measurement height referenced and any extrapolations used to estimate the wind speeds at the proposed hub height. (This item shall be provided in the electronic version of the Proposal only.)

The following information should be available upon request; however, is not required with the submission of the Proposal.

- Project boundary (shape files, kmz files, or pdf on USGS topographic map)
- Land control, broken down by leased land, likely to be leased land, likely NOT to be leased land, and indeterminate status (shape files, kmz are best)
- Setbacks/exclusions (shape files preferred),
- Met tower installation commissioning sheets and all subsequent maintenance documents
- Raw data files for all on-site met towers
- If applicable, sodar or lidar documentation and raw data files
- Proposed turbine locations (shape file, kmz file, Excel file with coordinates, including map datum (e.g., WGS84, NAD83))
- All documents related to turbine availability, electrical system design with losses
- Any other materials the developer has in terms of turbine siting



Appendix I

Solar Resource Information

See Sections 6.4 and 6.5 for instructions to obtain any of the documents identified below:

1. Proposal must provide the source and basis of the solar irradiance data used in the development of energy projections for the Project. Explain all assumptions used in forecasted generation calculations.
2. Bidder must populate the data required in the Company's "Solar Data Review Form" spreadsheet.
3. Bidder must attach an 8760 calendar year hourly energy forecast, net of all losses using the Company's form spreadsheet (SolarEnergyInputSheet_2022.xls).
4. Bidder must supply the Project Layout along with the contour and elevation data in CAD format.
5. Bidder must identify its choice in Approved Module Manufacturer and Approved Inverter Manufacturer associated with the bid and provide the applicable production data (Expected Annual Energy, Capacity Factor. Bidder shall attach module and inverter warranty information with its proposal.
6. If Bidder has not finalized Module Manufacturer, they must identify the module options and provide the applicable production data (Expected Annual Energy, Capacity Factor) for each module mfg. Bidder shall attach module warranty information with its proposal.



Appendix J

Storage Resource Information

See Sections 6.4 and 6.5 for instructions to obtain any of the documents identified below:

1. Bidder must populate the data required in the Company's "Storage Data Review Form" document.



Appendix K

Thermal Resource Information

See Sections 6.4 and 6.5 for instructions to obtain any of the documents identified below:

1. Bidder must populate the data required in the Company's "Thermal Data Review Form" document.



Appendix L

Emerging Technology Resource Information

See Sections 6.4 and 6.5 for instructions to obtain any of the documents identified below:

1. Bidder must populate the data required in the Company's "Emerging Tech Data Review Form" document.



Appendix M

Project Land Lease Costs / Decommissioning Costs / Auxiliary Load

See Sections 6.4 and 6.5 for instructions to obtain any of the documents identified below:

1. Bidder must populate the data required in the Company's "Project Land Lease and Decommissioning Cost" spreadsheet. Information to be provided shall include:
 - a. Expected Land Lease Costs by year for at least a 35-year operating period. The Land Lease costs will be used in the Economic Analysis
 - b. Estimated decommissioning costs (including salvage value). In addition, Bidder shall provide any associated decommissioning studies
 - c. Expected Auxiliary Load (Station Power) the Project expects to consume for a typical year on a monthly basis



Appendix N

Project Technical Due Diligence Material

See Sections 6.4 and 6.5 for instructions to obtain the Project Technical Due Diligence Material List.

This list will include basic technical due diligence material that the Company will require to perform an initial technical due diligence of the Project



Appendix O

Environmental / Wildlife / Site Information

1. Bidder must populate the data required in the Company's "Environmental Wildlife Site Review Form" document (*See Sections 6.4 and 6.5 for instructions to obtain*).
2. Bidder must include the following attachments (referenced to Appendix O)
 - a. Site Layout: Attach a diagram identifying anticipated placement of major equipment and other project facilities, including transmission layouts and Point of Delivery.
 - b. Site Control: Verify site control and reference documentation provided under Appendix N.
 - c. Permit Matrix: List and describe all city, county, state and federal permits required for this project. Include: status, duration, planned steps, any known mitigation requirements, critical milestones, and timelines.
 - d. Environmental Report Summary: The initial Proposals shall include a summary of all environmental studies, reports and agency meetings associated with the Project. (See below for potential reports to summarize, include data summaries, results and findings)
3. Please attach any reports providing environmental information specific to the project, including but not limited to, the following reports as available:
 - a. Critical Issues Analysis
 - b. Site Characterization Assessment and Reports
 - c. Environmental Work / Survey Plan
 - d. Federal / State Rare, Threatened, or Endangered Species Assessments and Surveys
 - e. Bat Acoustic Survey Report
 - f. Avian Use Survey Report
 - g. Raptor Nest Survey Report
 - h. Prey-base Survey Report
 - i. Wetland and Waters Delineation / Assessment Report
 - j. Phase I Environmental Site Assessment Report
 - k. Historical and Cultural Resource Survey / Assessment Report
 - l. All Other Environmental Resource Surveys, Assessments, and Study Reports
 - m. Record and Notes of all Federal and/or State Resource Agency Correspondence and Meetings
 - n. Environmental Justice Analyses
 - o. Aviation / FAA and Glare Studies
 - p. Radar Study
 - q. Noise and Shadow Flicker Study
 - r. Associated Project Infrastructure and Environmental Resource Shapefiles (.kmz format)
 - s. Bird and Bat Conservation Strategy and Eagle Conservation Plan (if available)



Appendix P

Indiana and Michigan Economic Stimulus Benefits / Community Support / Supplier/Contractor Diversity

See Sections 6.4 and 6.5 for instructions to obtain any of the documents identified below:

1. Bidder must populate the data required in the Company's "Local Benefits Support and Supplier Diversity" document.



Appendix Q

Proposal Content Check Sheet

Section	Item	Completed
8.2	Cover Letter with Statement of Firm Pricing	
8.3	Executive Summary	
8.4	Summary PTC/ITC Documentation	
8.5	Equipment Warranty Information	
8.6	Identity of Persons / Ownership	
8.7	Appendix A (Project Summary)	
	- Company & Generation Project Information	
	- Bid Pricing	
	o Module warranty information	
	- Interconnection and Point of Delivery	
	o Attach copies of all interconnection studies / completion dates	
	- Site Information	
	- Projects Completed of the same generation type	
8.8	Appendix B (Bidder's Credit Related Information)	
8.9	Appendix C (Bidder Profile)	
8.10	Appendix D (Exceptions to Form PSA) or	
8.10	Appendix E (Exceptions to Form PPA)	
8.11	Appendix F (Exceptions to AEP Wind or Solar Generation Standard)	
8.12	Appendix G (Exceptions to AEP Requirements for Connection of Facilities)	
8.13	Required Resource Analysis / Study Information	
	- Appendix H (Wind Resource Information), if applicable	
	- Appendix I (Solar Resource Information), if applicable	
	- Appendix J (Standalone Storage Resource Information), if applicable	
	- Appendix K (Thermal Resource Information), if applicable	
	- Appendix L (Emerging Technology Resource Information), if applicable	
8.14	Appendix M Projected Land Lease Costs	
8.15	Energy Storage Information (Optional)	



8.16	Appendix N Project Technical Due Diligence Material	
8.17	Appendix O Environmental / Wildlife / Site Information	
8.18	Appendix P Indiana and Michigan Economic Stimulus Benefits / Community Support / Supplier/Contractor Diversity	

**Attachment TBG-2C – Bid Score Summary Sheet.xlsx (Confidential/Highly
Competitively Sensitive)**

**CONFIDENTIAL – PROVIDED IN EXCEL FORMAT
NOT REPRODUCED HEREIN**

PURCHASE AND SALE AGREEMENT

Dated as of March 24, 2023

by and between

Indiana Michigan Power Company

as Buyer

American Electric Power Service Corporation

as Buyer Agent

and

EDF Renewables Development, Inc.

as Seller

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION	1
Section 1.1 Defined Terms	1
Section 1.2 Rules of Interpretation	35
ARTICLE II PURCHASE AND SALE OF PURCHASED INTERESTS	37
Section 2.1 Purchase and Sale of Purchased Interests	37
Section 2.2 Payment of Purchase Price.....	37
Section 2.3 Reserved.....	37
Section 2.4 Mechanics of Closing	37
Section 2.5 Closing; Costs.	38
Section 2.6 Post-Closing.....	39
Section 2.7 Purchase Price Allocation.....	40
Section 2.8 Withholding Rights.....	41
Section 2.9 [Reserved].....	41
Section 2.10 Buyer’s Agent.....	41
Section 2.11 [REDACTED].....	41
Section 2.12 [REDACTED].....	44
Section 2.13 [REDACTED].....	46
Section 2.14 [REDACTED].....	52
Section 2.15 [REDACTED].....	52
ARTICLE III CONDITIONS PRECEDENT; FIRM DATE.....	54
Section 3.1 Effectiveness of Purchase and Sale Obligations.....	54
Section 3.2 Buyer Firm Date CPs.....	54
Section 3.3 Seller Firm Date CPs.	56
Section 3.4 Mutual Firm Date CPs.	57
Section 3.5 Covenant	58
Section 3.6 Termination for Failure to Achieve Firm Date.....	58
Section 3.7 [REDACTED].....	58
ARTICLE IV DEVELOPMENT AND CONSTRUCTION COVENANTS	58
Section 4.1 Development and Construction Generally.....	58
Section 4.2 Communications; Progress Report; Buyer Site Representative.....	59
Section 4.3 Other Seller Actions.....	60
Section 4.4 Site Plan; Access Rights; Document Review and Approval; Reporting.....	64
Section 4.5 NERC Compliance Plan	68
Section 4.6 Site Finalization; Title and Survey.	68

TABLE OF CONTENTS
(continued)

	Page
Section 4.7	State Commission Approvals..... 71
Section 4.8	FERC Approvals..... 73
Section 4.9	Financing; Cooperation..... 73
Section 4.10	[Reserved]..... 74
Section 4.11	Intended Tax Treatment..... 74
Section 4.12 75
Section 4.13	No Sales of Test Power; Placement in Service..... 76
Section 4.14	Project Insurance Policies..... 77
Section 4.15	O&M Building Substantial Completion..... 77
Section 4.16	Guaranteed Mechanical Completion; Guaranteed Substantial Completion Date; Liquidated Damages..... 77
Section 4.17	Final Completion..... 78
Section 4.18	Warranty..... 78
Section 4.19	[Reserved]..... 78
Section 4.20	AEP Supplier Code of Conduct..... 78
Section 4.21 79
Section 4.22	Prevailing Wage and Apprenticeship Requirements..... 79
ARTICLE V OTHER PRE-CLOSING COVENANTS.....	80
Section 5.1	Consents and Reasonable Efforts..... 80
Section 5.2	Restrictions on Actions..... 80
Section 5.3	Notification of Completion or Failure of Conditions..... 82
Section 5.4	Intercompany Obligations..... 82
Section 5.5	No Negotiations..... 82
Section 5.6	Seller Credit Support..... 83
Section 5.7 84
Section 5.8	Project Document Credit Support Obligations..... 84
Section 5.9 84
Section 5.10 85
ARTICLE VI REPRESENTATIONS AND WARRANTIES OF SELLER.....	85
Section 6.1	Corporate Existence and Powers..... 85
Section 6.2	Company Existence and Powers..... 85
Section 6.3	Authority; Ownership of Company..... 85
Section 6.4	Consents and Approvals..... 86
Section 6.5	No Conflicts..... 86
Section 6.6	Legal Proceedings..... 86
Section 6.7	Compliance with Law..... 86
Section 6.8	Environmental Matters..... 87
Section 6.9	Right and Title to Purchased Interests..... 87
Section 6.10	Right and Title to Company Assets..... 88
Section 6.11	Land Contracts..... 88

TABLE OF CONTENTS
(continued)

	Page
Section 6.12	Real Property. 89
Section 6.13	Material Contracts..... 90
Section 6.14	Permits. 94
Section 6.15	Finders..... 95
Section 6.16	Intellectual Property..... 95
Section 6.17	Solar Data..... 95
Section 6.18	Insurance 96
Section 6.19	Reports 96
Section 6.20	Tax Matters. 96
Section 6.21	Tax Credit Qualification 99
Section 6.22	Substantially Complete Project; No Other Business. 99
Section 6.23	Sufficient Funds. 100
Section 6.24	Financial Statements; No Undisclosed Liabilities; Absence of Certain Changes. 100
Section 6.25	Employees; Employee Benefits 101
Section 6.26	Labor Matters 101
Section 6.27	Investment Company Act 101
Section 6.28	Bankruptcy 101
Section 6.29	Affiliate Transactions..... 101
Section 6.30	Subsidiaries 101
Section 6.31	Bank Accounts 101
Section 6.32	[Reserved] 102
Section 6.33	Credit Support..... 102
Section 6.34	[Reserved] 102
Section 6.35	Consents 102
Section 6.36	[Reserved] 102
Section 6.37	Foreign Corrupt Practices Act; Export Control; Anti-Boycott Laws 102
Section 6.38	Solvency..... 102
ARTICLE VII REPRESENTATIONS AND WARRANTIES OF BUYER 103
Section 7.1	Corporate Existence and Powers 103
Section 7.2	Authority 103
Section 7.3	No Conflicts 103
Section 7.4	Consents and Approvals 103
Section 7.5	Legal Proceedings 104
Section 7.6	Finders..... 104
Section 7.7	Sufficient Funds 104
Section 7.8	Compliance With Laws..... 104
ARTICLE VIII BUYER'S CONDITIONS PRECEDENT TO CLOSING 104
Section 8.1	Buyer's Conditions Precedent to Closing..... 104

TABLE OF CONTENTS
(continued)

	Page
ARTICLE IX SELLER’S CONDITIONS PRECEDENT TO CLOSING	107
Section 9.1 Seller’s Conditions Precedent to Closing	107
ARTICLE X POST-CLOSING COVENANTS	109
Section 10.1 Records	109
Section 10.2 Buyer Confidential Information.....	109
Section 10.3 Seller Confidential Information	110
Section 10.4 Tax Matters.	112
Section 10.5 [Reserved]	114
Section 10.6 Confidentiality Regarding This Agreement.....	114
Section 10.7 Further Assurances.....	114
Section 10.8 Transfer Taxes	114
Section 10.9 Removal of Excluded Assets	115
Section 10.10 Seller’s Post-Closing Covenants.....	115
Section 10.11 Insurance.....	115
Section 10.12 Post-Closing Completion of the Project.	116
Section 10.13 Assets Distribution to Buyer or Merger.....	117
Section 10.14 [REDACTED]	117
ARTICLE XI INDEMNIFICATION	118
Section 11.1 Survival.	118
Section 11.2 Indemnifications.	118
Section 11.3 Limitation of Liability.....	122
ARTICLE XII TERMINATION	123
Section 12.1 Termination.....	123
Section 12.2 Effect of Termination.....	124
ARTICLE XIII MISCELLANEOUS	125
Section 13.1 Payment Instructions.....	125
Section 13.2 Assignment	125
Section 13.3 Notices	125
Section 13.4 Choice of Law; Consent to Jurisdiction; Service of Process.	126
Section 13.5 Waiver of Jury Trial.....	127
Section 13.6 Entire Agreement; Amendments and Waivers	127
Section 13.7 Multiple Counterparts	128
Section 13.8 Invalidity	128
Section 13.9 Titles	128
Section 13.10 Third Party Beneficiaries	128

TABLE OF CONTENTS
(continued)

	Page
Section 13.11 Cumulative Remedies	128
Section 13.12 No Partnership or Joint Venture	128
Section 13.13 No Merger	128
Section 13.14 [REDACTED]	128

Schedules and Exhibits

Seller Schedules

Schedule 1.1(b)	Excluded Assets
Schedule 1.1(c)	Project and Facilities
Schedule 1.1(d)	Seller's Knowledge
Schedule 1.1(e)	Calculation of Updated Property Burdens Adjustment
Schedule 1.1(f)	Permitted Encumbrances
Schedule 4.4(a)	Facilities Location Layout
Schedule 5.4	
Schedule 6.4	Seller Consents and Approvals
Schedule 6.6	Seller Litigation
Schedule 6.7	Compliance with Law
Schedule 6.8	Environmental Matters
Schedule 6.11(a)	Land Contracts
Schedule 6.12(a)	Real Property Exceptions
Schedule 6.12(b)	
Schedule 6.13(a)	Material Contracts
Schedule 6.13(g)	Liquidated Damages Claims under Material Contracts
Schedule 6.13(i)	Notice of Disputes under Material Contracts
Schedule 6.14(a)	Company Permits
Schedule 6.14(b)	Exceptions to Company Permits
Schedule 6.15	Finders
Schedule 6.16	Third-Party Intellectual Property Rights
Schedule 6.17	Solar Data
Schedule 6.18	Insurance
Schedule 6.24(a)	Financial Statements
Schedule 6.24(b)	Undisclosed Liabilities
Schedule 6.24(c)	Certain Changes
Schedule 6.26	Labor Matters

Schedule 6.29	Affiliate Transactions
Schedule 6.31	Bank Accounts
Schedule 6.33	Credit Support

Buyer Schedules

Schedule 1.1(a)	Buyer's Knowledge
Schedule 4.7	Buyer Commission Approvals
Schedule 7.4	Buyer Consents and Approvals
Schedule 7.5	Buyer Litigation

Exhibits

Exhibit A	Closing Title Endorsements
Exhibit B	Form of Easement Estoppel
Exhibit C	[REDACTED] EPC Contract
Exhibit D	Form of Excluded Assets and Liabilities Assignment Agreement
Exhibit E-1	Form of Mechanical Completion Certificate
Exhibit E-2	Form of Substantial Completion Certificate
Exhibit E-3	Form of Final Completion Certificate
Exhibit F	Form of Landlord Estoppel
Exhibit G	Form of Letter of Credit
Exhibit H	Form of Major Project Document Estoppels
Exhibit I-1	Form of Conditional Lien Waiver
Exhibit I-2	Form of Unconditional Lien Waiver
Exhibit J	[REDACTED] Module Supply Agreement
Exhibit K	[REDACTED]
Exhibit L	Required Project Warranty
Exhibit M	Scope of Work and Specifications
Exhibit N	Form of Seller Parent Guaranty
Exhibit O	Mechanical, Substantial and Final Completion

Exhibit P	Form of Progress Report
Exhibit Q	Form of Membership Interest Assignment
Exhibit R	Form of Seller Release
Exhibit S	[Reserved]
Exhibit T	AEP Supplier Code of Conduct
Exhibit U	[Redacted]
Exhibit V	[Redacted]
Exhibit W	[Redacted]
Exhibit X	[Reserved]
Exhibit Y	[Redacted]
Exhibit Z	Form of Land Contract Amendment
Exhibit AA	List of Approved Contractors
Exhibit BB	[Redacted] HV Agreement
Exhibit CC	Form of PWA Requirements Certificate
Exhibit DD	[Redacted]
Exhibit EE	[Redacted]
Exhibit FF	[Reserved]
Exhibit GG	[Redacted] Transformer Agreement
Exhibit HH	[Redacted]

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT dated as of March 24, 2023 (the “*Execution Date*”), is made and entered into by and between EDF Renewables Development, Inc., a Delaware corporation (the “*Seller*”), Indiana Michigan Power Company, an Indiana corporation (the “*Buyer*”), and solely with respect to its agency relationship with Buyer hereunder, American Electric Power Service Corporation, a New York corporation (“*Buyer Agent*”).

RECITALS

- A. Seller is the owner of one hundred percent (100%) of the Equity Interests of Lake Trout Solar LLC, a Delaware limited liability company (the “*Company*”) (such interests, the “*Purchased Interests*”), which owns all of the rights and Assets with respect to the Project (defined below).
- B. The Company is developing and constructing an up to 245 MWac (the “*Anticipated Total Capacity*”) solar electric generating facility as more particularly described in Schedules 1.1(c) and 4.4(a) and Exhibit M (the “*Project*”).
- C. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, one hundred percent (100%) of the Purchased Interests, including ownership of the Project [REDACTED] pursuant to the terms and subject to the conditions of this Agreement.
- D. At or immediately following the Closing, (i) Buyer intends to either cause the Company to distribute the Project and related Assets to Buyer or merge the Company with and into Buyer, with Buyer surviving the merger (the “*Assets Distribution to Buyer or Merger*”), and (ii) thereafter, Buyer and Seller desire for Seller to perform and complete the development, construction and commissioning of the Project after the Closing on the terms, [REDACTED]

AGREEMENT

NOW THEREFORE, in consideration of the sums to be paid to Seller by Buyer hereunder and the mutual representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Defined Terms. For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“*Abnormal Weather Conditions*” [REDACTED]

[REDACTED]

“**Acquisition Proposal**” means any proposal for a merger, consolidation or other business combination involving the Company or the Project, or any proposal or offer to acquire, directly or indirectly, in any manner, any Equity Interest, or any Assets of, the Company or the Project.

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

[REDACTED]

[REDACTED]

[REDACTED]

“**Adverse Effect**” means a material and adverse effect on the ownership, operation or maintenance of the Project or the value thereof to the Company, including (i) a material decrease in electric power generation from the Project, or (ii) a material increase in the costs of owning, operating or maintaining the Project.

[REDACTED]

“**AEP Supplier Code of Conduct**” means the American Electric Power Supplier Code of Conduct attached hereto as Exhibit T.

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

[REDACTED]

[REDACTED]

[REDACTED]

“Base Purchase Price” means [REDACTED]

“Baseline Amount” means an amount equal to [REDACTED]

“Benefit Plan” means “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, or other pension, bonus, profit sharing, stock option or other agreement or arrangement providing for employee remuneration or benefits, including a “multiemployer plan,” as that term is defined in Section 4001(a)(3) of ERISA.

“Business” means the ownership of the Company Assets and the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, operation and maintenance of the Project and the conduct of other activities by the Company related or incidental to the foregoing, all as currently conducted or to be conducted.

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

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

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

“Buyer Commission Approvals” means the final non-appealable order(s) from the Commissions contemplated on Schedule 4.7.

“Buyer Confidential Information” is defined in Section 10.2(a).

“Buyer Consents” is defined in Section 7.4.

“Buyer Firm Date CPs” is defined in Section 3.2.

“Buyer Indemnified Parties” is defined in Section 11.2(a).

“Buyer Indemnifying Party” is defined in Section 11.2(b).

“*Buyer Permits*” is defined in Section 6.14(a). Buyer Permits includes, without limitation any Permit required for the Assets Distribution to Buyer or Merger.

“*Buyer Responsibility Firm Date Conditions*” means [REDACTED]

“*Buyer’s Fundamental Representations*” means [REDACTED]

“*Buyer’s Knowledge*” means [REDACTED]

“*Buyer’s Site Representative*” is defined in Section 4.2(c).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

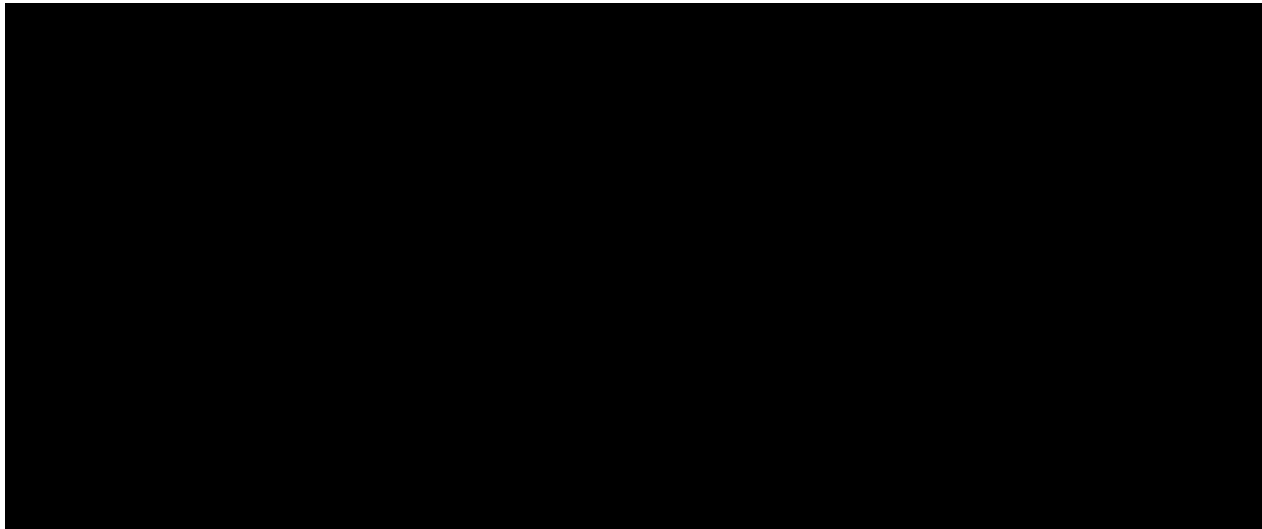
[REDACTED]

[REDACTED]

“*Closing*” is defined in Section 2.4(b).

“*Closing Date*” is defined in Section 2.4(b).

“*Closing Payment*” [REDACTED]



“*Closing Statement*” is defined in Section 2.4(a).

“*Closing Statement Update*” is defined in Section 2.4(a).

“*Closing Title Endorsements*” means the standard ALTA title insurance endorsements listed on Exhibit A attached hereto covering the Real Property and Facilities.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder.

“*Commission Approvals*” means the Buyer Commission Approvals and the Seller Commission Approvals.

“*Commissions*” means the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

“*Company*” is defined in Recital A.

“*Company Assets*” means, unless otherwise provided herein, all of the Assets of the Company, including:

- (a) the Solar Data;
- (b) the Facilities;
- (c) the Material Contracts;
- (d) the Property Agreements;
- (e) the Permit Applications and the Company Permits;
- (f) all RECs and Environmental Attributes of the Project;
- (g) the Corporate Records;

- (h) the Interconnection Rights;
- (i) the Real Property;
- (j) the design layout of the Facilities;
- (k) all emissions allowances or credits, renewable energy credits, green tags, or other environmental or financial attributes of the Facilities, if any; and
- (l) all PTCs, investment tax credits, and other federal or state tax credits, deductions, or exemptions, and federal or state cash payments or outright grants of money, in each case relating to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, operation or maintenance of the Facilities.

“Company Permits” is defined in Section 6.14(a).

“Component” means all parts, materials, equipment, components and systems incorporated into the Work.

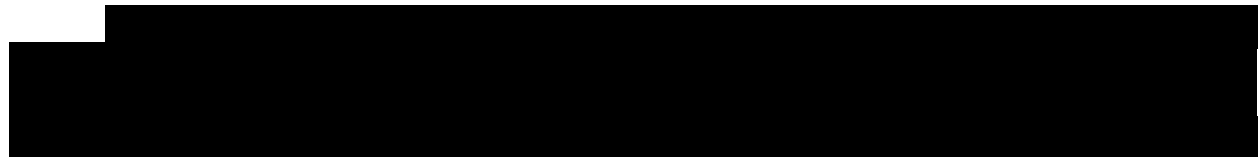
“Consent and Recognition Agreement” means an agreement between Buyer and the Financing Agent containing a consent to collateral assignment to the Financing Parties during the period prior to Closing and recognition by the Financing Parties of this Agreement, in form and substance reasonably satisfactory to Buyer.



“Construction Loan Agreement” means (a) the loan or credit agreement to be entered into among the Company, as Borrower, and the Financing Parties from time to time party thereto, with respect to the Financing, and (b) the other documents, instruments and agreements entered into in connection with the Financing.

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

“Contractors” means the EPC Contractor (BOP), the HV Contractor, the Module Supplier, the Transformer Supplier and each other counterparty to a Major Project Document.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

“Corporate Records” means the minute books, membership interest certificates (if any), membership interest transfer ledgers and Corporate Documents of the Company.

[REDACTED]

“Credit Rating” means, for any Person, the lower of the senior unsecured and non-credit-enhanced long-term debt rating of such Person by Moody’s or S&P, or if such Person does not have such a senior unsecured and non-credit-enhanced long-term debt rating, the lower of the issuer rating of such Person by Moody’s or S&P.

“Creditworthy Bank” means [REDACTED]

[REDACTED]

“*Crossing Agreements*” means written agreements or consents made for the benefit of Company and issued by all necessary parties that authorize the installation, maintenance and operation of the Facilities in, over or with respect to (as applicable) exclusive rights-of-way, easements or other areas subject to Permitted Encumbrances that require consent or approval for the installation, maintenance or operation of the Facilities located on the subject real property, or as may be required by Title Company in order to issue an ALTA 36.6 endorsement.

“*Default*” means any circumstance, event or condition that, with or without notice or the passage of time or both, would constitute a violation, breach or event of default, or give rise to any penalty or right of termination, cancellation, acceleration or modification, or require any consent or waiver.

“*Delay Liquidated Damages*” means MC Delay Liquidated Damages and SC Delay Liquidated Damages.

[REDACTED]

“*Easement Estoppels*” means the estoppel certificates from the grantors under those Land Contracts which constitute easements in substantially the form attached hereto as Exhibit B.

[REDACTED]

“*Electronic Data Room*” means the Box website hosted by Buyer in the folder named [REDACTED] to which Seller and certain of its Representatives have been provided access.

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

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, related to the Project (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program), but excluding any Tax benefits or credits associated with the Project. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United States Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.

“Environmental Laws” means all Laws and Permits relating to the environment, human health, safety, natural resources, plant and animal species, cultural and archaeological resources, or the use of or Release into the environment of any Hazardous Materials, including the Clean Air Act (42 U.S.C. §7401 et seq.), the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Safe Drinking Water Act (42 U.S.C. §300f et seq.), the U.S. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. §668 et seq.), the Migratory Bird Treaty Act (16 U.S.C. §703 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 to 4370h), the National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), and Title 14 Code of Federal Regulations Part 77, and 49 U.S.C. § 44718, and any similar or analogous state and local statutes or regulations promulgated thereunder and decisional law of any Authority, as each of the foregoing has been or may be amended or supplemented from time to time in the future, and any applicable standard of conduct under any common law doctrine, including negligence, nuisance or trespass, personal injury or property damage related to or arising out of the presence, Release or exposure to Hazardous Materials.

“EPC Contract” means that certain Balance of Plant and Installation Agreement to be entered into between EPC Contractor (BOP) and Company on terms and conditions consistent with [REDACTED] Exhibit C, the Scope of Work and Specifications, and this Agreement and as otherwise reasonably approved by Buyer pursuant to the terms and conditions of this Agreement.

“EPC Contractor” means the EPC Contractor (BOP) and the HV Contractor.

“EPC Contractor (BOP)” means one of the approved contractors listed under the EPC Contractors (BOP) section of Exhibit AA that will be a counterparty to the EPC Contract.

“Equity Interests” means capital stock, partnership, membership or trust interests, shares or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

“Equity Securities” means (a) Equity Interests, (b) subscriptions, calls, warrants, options or commitments of any kind or character legally entitling any Person to acquire, any Equity Interests and (c) securities convertible into or exercisable or exchangeable for Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Exception Documents” is defined in Section 4.6(b)(iii).

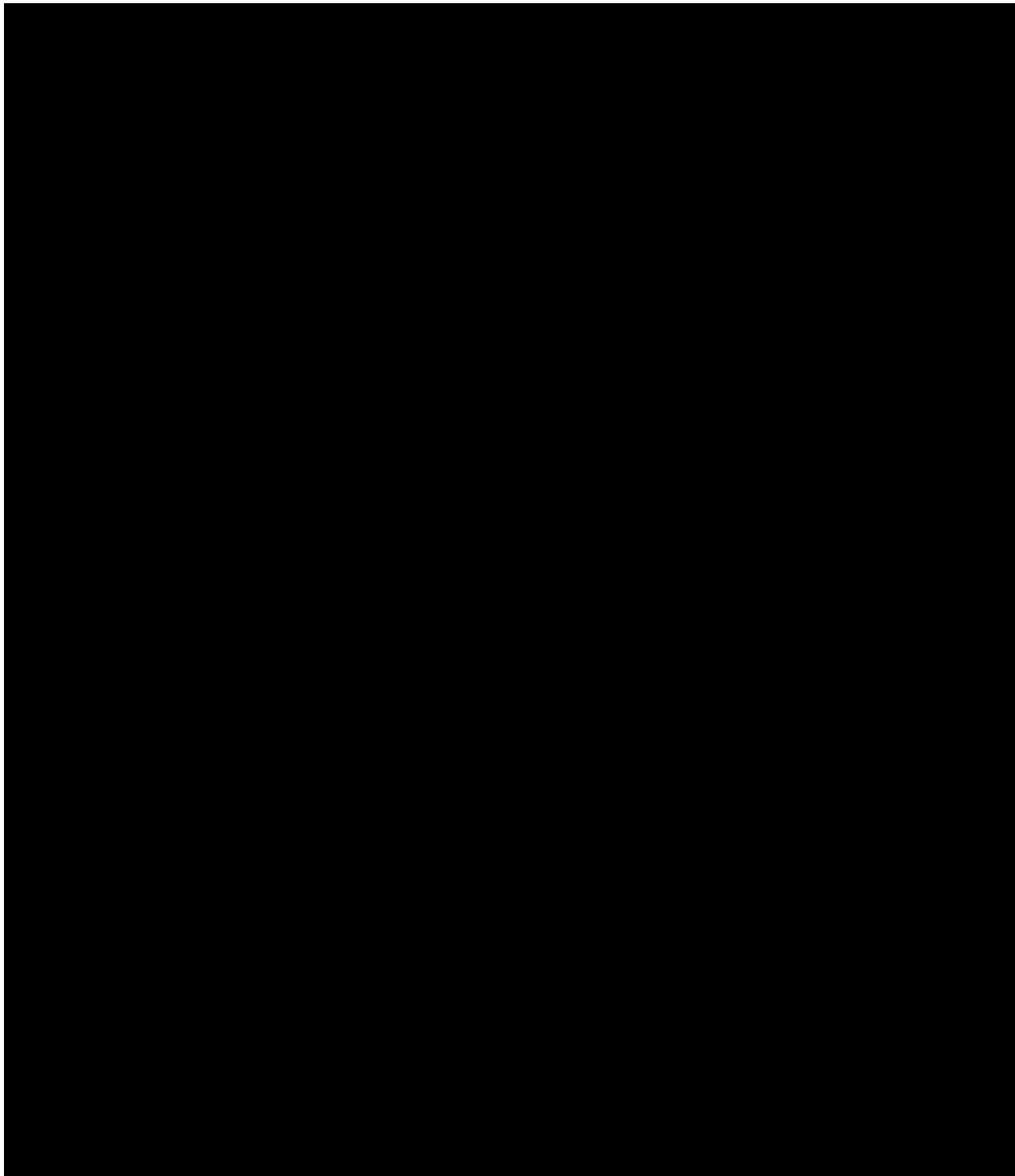
[REDACTED]

“Excluded Assets” means those Assets listed on Schedule 1.1(b).

“Excluded Assets and Liabilities Assignment Agreement” means an assignment agreement to convey Excluded Assets and Excluded Liabilities from the Company to Seller or one of its Affiliates, in the form attached hereto as Exhibit D.

“Excluded Liabilities” means, collectively, the following Liabilities:

[REDACTED]



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

“Exhibits” means the exhibits attached to, and expressly contemplated in, this Agreement, including those to be delivered at the Execution Date or at the Closing Date.

“Facilities” means the solar modules, inverters, power stations, O&M Building, electrical collector system, substation, racking and tracking systems, communication lines, civil works,

roads, fences, gates, foundations, project substation, transmission and gen-tie lines, whether overhead or undergrounds, laydown areas, work areas and other temporary and permanent fixtures, and all other equipment, components, materials, improvements and assets relating to the Project, including those set forth on Schedule 1.1(c).

“**FERC**” means the Federal Energy Regulatory Commission, including its staff acting under delegated authority.

“**FERC 203 Approval**” means an Order issued by FERC under Section 203 of the FPA approving Seller’s sale to Buyer, and Buyer’s acquisition from Seller, of the Purchased Interests.

“**Final Completion**” is defined in Exhibit O.

“**Final Completion Certificate**” means a certificate in the form attached hereto as Exhibit E-3 issued by Seller, certifying as to the satisfaction or achievement of Final Completion and attaching copies of each “Final Completion Certificate” (as such term is defined in the EPC Contract and HV Agreement, as applicable) issued by the EPC Contractors.

“**Final Completion Date**” means the date on which the Project shall have achieved Final Completion and the Final Completion Certificate with respect thereto shall have been accepted by (or pursuant to this Agreement is deemed accepted by) Buyer in accordance with Exhibit O.

“**Final Completion Payment**” means [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

“**Final Pro Forma Title Policy**” is defined in Section 4.6(d).

[REDACTED]

“**Financial Assurance Certificate**” is defined in Section 4.9(b).

“**Financial Close**” means execution and delivery of the Construction Loan Agreement by the Company and Financing Parties and initial drawdown of funds thereunder.

“**Financial Close Date**” means the date on which Financial Close occurs.

“**Financial Statements**” is defined in Section 6.24(a).

“**Financing**” is defined in Section 4.9(a).

“**Financing Agent**” means any single trustee, administrative agent or similar representative acting on behalf of the Financing Parties or such other single representative designated in writing by Seller.

“Financing Parties” means the lenders and/or equity investors (including any trustee or agent on behalf of such lenders (and other secured parties) and/or equity investors) providing equity and/or debt financing or refinancing or letters of credit to Seller or any of its Affiliates, successors or assigns, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

“Firm Date” [REDACTED]

“Firm Date Conditions” is defined in Section 3.1.

“Firm Date Deadline” means [REDACTED]

“FPA” means the Federal Power Act of 1935, as amended, 16 U.S.C. §§ 791 *et seq.*

“GAAP” means generally accepted accounting principles in the United States of America as recognized by the American Institute of Certified Public Accountants, consistently applied for a Person throughout the specified periods and maintained on a consistent basis for a Person throughout the period or periods indicated and consistent with such Person’s prior financial practice.

“Guaranteed Mechanical Completion Date” means [REDACTED]

“Guaranteed Substantial Completion Date” means [REDACTED]

“Hazardous Materials” means any substances, pollutants, contaminants, wastes, or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive material, hazardous wastes, toxic substances, asbestos or any materials containing asbestos, urea formaldehyde, polychlorinated biphenyls, per and polyfluoralkyl substances, perfluorooctanoic acid, and perfluorooctane sulfate) designated, regulated, or defined under or with respect to which any requirement or Liability may be imposed pursuant to any Environmental Law.

“*HV Agreement*” means that certain Engineering, Procurement and Construction Services Agreement (Substation and Transmission Line) to be entered into by and between Company and HV Contractor, on terms and conditions consistent with [REDACTED] Exhibit BB, the Scope of Work and Specifications, and this Agreement and as otherwise reasonably approved by Buyer pursuant to the terms and conditions of this Agreement.

“*HV Contractor*” shall be one of the approved contractors listed under the HV Contractors section of Exhibit AA that will be a counterparty to the HV Agreement.

[REDACTED]

“*Indebtedness*” means, with respect to any Person, any indebtedness, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or representing the deferred and unpaid balance of the purchase price of any property (including pursuant to capital leases), including any such balance that constitutes an accrued expense or a trade payable, and shall also include, to the extent not otherwise included, the guaranty of items which would be included within this definition.

“*Indemnified Party*” or “*Indemnified Parties*” shall mean, as applicable, the Buyer Indemnified Parties, the Seller Indemnified Parties or both the Buyer Indemnified Parties and the Seller Indemnified Parties.

“*Indemnifying Party*” means, as applicable, the Buyer Indemnifying Party, the Seller Indemnifying Party or both the Buyer Indemnifying Party and the Seller Indemnifying Party.

“*Indemnity Cap*” means an amount equal to [REDACTED]

“*Independent Accountant*” means [REDACTED] (or if such Person is unavailable to provide its services, another a nationally recognized firm of independent certified public accountants that is mutually acceptable to Seller and Buyer and that has not performed material services for Seller, Buyer, or any of their respective Affiliates, during the [REDACTED] prior to the selection of the Independent Accountant).

“*Independent Engineer*” means [REDACTED] (or, if such Person is unavailable to provide its services, another nationally recognized engineering firm that is mutually acceptable to Seller and Buyer, that possesses substantial expertise with solar energy projects, and that has not performed material services for Seller, Buyer, or any of their respective Affiliates, during the [REDACTED] prior to the selection of the Independent Engineer).

“*Independent Solar Engineer*” means [REDACTED] (or, if such Person is unavailable to provide its services, another nationally recognized engineering firm that is mutually acceptable to Seller and Buyer, that possesses substantial expertise with solar energy projects, and that has not

performed material services for Seller, Buyer, or any of their respective Affiliates, during the [REDACTED] [REDACTED] prior to the selection of the Independent Solar Engineer).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

“Interconnection Agreement” means each Interconnection Service Agreement entered into by and among Company, Transmission Provider and Transmission Owner with respect to the Interconnection, in the form required by the Transmission Provider and the Transmission Owner; it being understood and agreed that Company shall not request any material deviations therefrom without the prior approval of Buyer.

“Interconnection Construction Service Agreement” means each Interconnection Construction Service Agreement or similar agreement, if any, to be entered into by and among the Company, the Transmission Provider (or other applicable regional transmission organization) and the Transmission Owner (or (i) a transmission owner operating within the Transmission Provider’s network, if applicable or (ii) a transmission owner operating outside the Transmission Provider’s network, whose system is affected by the Project, if applicable) with respect to the Interconnection, in the form required by the Transmission Provider (or other applicable regional transmission organization) and the applicable transmission owner; it being understood and agreed that Company shall not request any material deviations therefrom without the prior approval of Buyer. For the avoidance of doubt, Interconnection Construction Service Agreement includes any agreement between the Company and the Transmission Provider (or other applicable regional transmission organization) with respect to network upgrades required for the Project.

“Interconnection Cost” means

[REDACTED]

“Interconnection Rights” means any and all of the Company’s or Seller’s rights and interests in the Project’s Interconnection under the Interconnection Agreements and the Interconnection Construction Service Agreements, and any subsequent studies, reports or other documents provided by Transmission Provider and/ or Transmission Owner.

“Interest Rate” means, for any date, a rate per annum equal to the sum of (i) the “Prime Rate” as published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), plus (ii) [REDACTED]

“Inverter Supplier” means one of the approved contractors listed under the Inverter Suppliers section of Exhibit AA.

“IRS” means the United States Internal Revenue Service.

[REDACTED]

“Known Breach Escrow Amount” means an amount as determined pursuant to Section 4.3(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- e) [REDACTED] prior to the expiration or termination date of a Letter of Credit, the Letter of Credit is not extended or replaced with a new Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced;
- f) the issuer of the Letter of Credit fails to honor a drawing under the Letter of Credit in accordance with its terms; or
- g) the issuer of the Letter of Credit fails to comply with or perform its obligations under the Letter of Credit and the failure continues after the lapse of any applicable grace period;

In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and external attorneys' fees) of establishing, renewing, substituting, canceling, increasing, and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by Seller.

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

“Lien Waiver” means a conditional lien waiver in the form of Exhibit I-1 or an unconditional lien waiver in the form of Exhibit I-2, as applicable.

“Loss” means [REDACTED]

“Made Available” means the respective materials were posted to the Electronic Data Room.

“Major Project Document Estoppels” means those estoppel certificates from the counterparties to each of the Major Project Documents (other than the Interconnection Agreements or the Interconnection Construction Services Agreements), in substantially the form attached hereto as Exhibit H.

“Major Project Documents” means the EPC Agreement, the HV Agreement, the Module Supply Agreement, the Transformer Supply Agreement, the Interconnection Agreements, the Interconnection Construction Service Agreements and any other Contract to which the Company is a Party, or which will be assigned to the Company, relating to the design, development, engineering, procurement, permitting, construction, installation, interconnection, testing or commissioning of the Project or any components thereof which has a value in excess of [REDACTED]

“Material Adverse Effect” means [REDACTED]

“Material Contracts” is defined in Section 6.13(a).

“MC Delay Liquidated Damages” is defined in Section 4.16(a).

“Mechanical Completion” is defined in Exhibit O.

“Mechanical Completion Certificate” means a certificate in the form attached hereto as Exhibit E-1 issued by Seller certifying as to the satisfaction or achievement of Mechanical Completion and attaching copies of each “Mechanical Completion Certificate” (as such term is defined in the EPC Contract and HV Agreement, as applicable) issued by the EPC Contractors.

“Mechanical Completion Date” means the date on which the Project shall have achieved Mechanical Completion and the Mechanical Completion Certificate with respect thereto shall have

been accepted by (or pursuant to this Agreement is deemed accepted by) Buyer in accordance with Exhibit O.

“Membership Interest Assignment” is defined in Section 8.1(a)(i).

[REDACTED]

[REDACTED]

“Module Supplier” means one of the approved contractors listed under the Module Suppliers section of Exhibit AA that will be a counterparty to the Module Supply Agreement.

“Module Supply Agreement” means the supply agreement to be entered into between Module Supplier and Company on terms and conditions consistent with [REDACTED] Exhibit J, the Scope of Work and Specifications, and this Agreement and as otherwise reasonably approved by Buyer pursuant to the terms and conditions of this Agreement.

“Moody’s” means Moody’s Investors Service, Inc., or a successor (if any).

“Mutual Firm Date CPs” is defined in Section 3.4.

“MW” means megawatt measured in alternating current (ac).

“Network Upgrades” means the Network Upgrades required to be paid for by the Company in connection with the Interconnection that are described in Schedule C to the Interconnection Construction Services Agreements.

[REDACTED]

[REDACTED]

[REDACTED]

“Notice of MBR Cancellation” is defined in Section 4.8(c).

“O&M Building” means the building used in the performance of operations and maintenance services for the Project and meeting the specifications therefor in Exhibit M to be located on property owned in fee by the Company.


“O&M Building Substantial Completion”

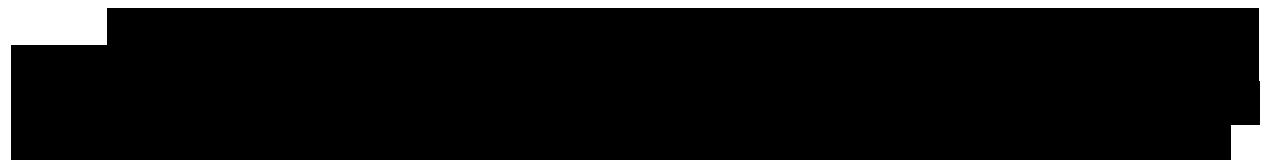


“O&M Building Substantial Completion Date” means the date on which O&M Building Substantial Completion has occurred.

“Order” means any settlement, stipulation, order, writ, judgment, injunction, decree, ruling, determination or award of any Authority.

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

“Outside Date” means 



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

“Payoff Amount” means the sum set forth in the Financing Parties’ payoff letter as the “Payoff Amount,” which payoff letter is delivered in accordance with Section 8.1.

“Permit” means (a) any license, consent, certificate (including permanent unconditional certificate of occupancy), approval, permit, authorization, determination, concurrence, franchise and similar written consents and Orders of any sort whatsoever by or from any Authority, for the design, development, engineering, procuring, construction, installation, testing, commissioning, ownership, maintenance, operation or transfer of the Project and (b) any required notice to, or declaration, filing, or registration with, any Authority, in each case in connection with the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance or operation of the Project, or the transfer of the Purchased Interests to Buyer.

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

“Permitted Encumbrances” means



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

“**Placed in Service**” means, with respect to the Project, that (a) the Project has obtained the necessary permits and licenses for operation; (b) critical preoperational testing has been completed for the generation of electric energy for sale to customers; (c) the Company has custody and control of the Project; (d) the Project is synchronized into a transmission power grid; and (e) the Project routinely supplies power to the transmission power grid for sale to customers.

“**Point of Interconnection**” shall have the meaning set forth in the Interconnection Agreements.

“**Post-Closing Adjustment**” is defined in Section 2.6(a).

[REDACTED]

“**Post-Closing Proration Amount**” is defined in Section 2.5(b).

[REDACTED]

“**Post-Closing Statement**” is defined in Section 2.6(a).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period.

[REDACTED]

[REDACTED]

“Preliminary Pro Forma Title Policy” is defined in Section 4.6(d).

“Preliminary Survey” is defined in Section 4.6(d).

[REDACTED]

“Prevailing Wage and Apprenticeship Requirements”

[REDACTED]

“Pro Forma Approval Notice” is defined in Section 4.6(d).

“Pro Forma Objection Notice” is defined in Section 4.6(d).

“Progress Report” is defined in Section 4.2(a).

“Project” is defined in Recital B.

“Project Document Credit Support Obligations” means any and all obligations relating to deposits, guaranties, letters of credit, bonds, indemnities, or other credit assurances of a comparable nature (including cash posted as credit support) made or issued by or on behalf of Seller or any of its Affiliates solely for the benefit of Company and which are intended to remain in effect after the Closing Date and listed on Schedule 6.33.

“Project Insurance Policies” is defined in Section 6.18.

“Property” means the real property interests held by Company under the Land Contracts.

“Property Agreements” means collectively the Land Contracts, Subordination Agreements and Crossing Agreements.

“Prudent Industry Practices” means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the solar generation industry for similar solar electric generation facilities in similar locations in the United States) that at a particular time in the exercise of good judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Laws, equipment manufacturer recommendations, safety,

environmental protection, economy and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“**PTC**” means the production tax credits under either Section 45 or Section 45Y of the Code for electricity generated by a solar facility.

“**Punch List**” means the list of Punch List Items. If the Parties are unable to agree upon whether an item should be included in the Punch List, the Independent Engineer shall make such determination.

“**Punch List Holdback Amount**” means [REDACTED] of the amount sufficient to pay the costs of completing the Punch List, as agreed by the Parties, or, if the Parties are unable to agree upon such amount, as determined by the Independent Engineer, which amount, in any event, shall not be less than the sum of all amounts owed to the counterparties to the Major Project Documents but that remain unpaid as of the Substantial Completion [REDACTED]

“**Punch List Holdback Release**” means with respect to any Punch List Item that has been completed, an amount in dollars equal to the portion of the Punch List Holdback Amount applicable to such Punch List Item. For the avoidance of doubt, the Punch List Holdback Release for a completed Punch List Item shall be equal to [REDACTED] of the amount withheld to pay the costs of completing such Punch List Item.

“**Punch List Items**” means each item of Work that (a) Seller or Buyer identifies as requiring completion or containing defects that is associated with, and were intended to have been completed in connection with Substantial Completion, (b) does not preclude the Facilities or any portion thereof from operating or functioning, (c) does not affect the operability or mechanical or electrical integrity of the Facilities and (d) does not create a safety risk for any Person to the extent such items have not been completed as of the Substantial Completion [REDACTED]

“**Purchase Price**” means [REDACTED]

“**Purchase Price Allocation Schedule**” is defined in Section 2.7.

“**Purchased Interests**” is defined in Recital A.

“**PWA Cure Liability**” [REDACTED]

“PWA Guidance” [REDACTED]

“PWA Requirements Certificate” is defined in Section 4.22.

“PWA Report” is defined in Section 4.2(b).

“Racking Supplier” means one of the approved contractors listed under the Racking Suppliers section of Exhibit AA.

“Real Property” means the real property interests held by Company under the Land Contracts, and any other real property interests necessary for the construction, ownership, operation and maintenance of the Project.

“RECs” means any credits, credit certificates, green tags, allowances, offsets, entitlements or similar environmental or green energy attributes (such as those for greenhouse reduction or the generation of green power or renewable energy) created by an Authority or independent certification board or group generally recognized in the electric power generation industry, and generated by or associated with the Project or electricity produced therefrom.

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

“Reports” is defined in Section 6.19.

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

“Required Credit Support” is defined in Section 5.6(d).

“Required FERC Approvals” means an Order or Orders issued by FERC accepting both of the Interconnection Agreements and/or both of the Interconnection Construction Service Agreements; provided, however, that if the Transmission Provider has determined that either such agreement is not required to be filed with FERC pursuant to 18 C.R.F. §35.1(g), then a FERC Order for such agreement shall no longer be considered a Required FERC Approval.

“Required Project Warranty” means [REDACTED]

“**S&P**” means Standard & Poor’s Global Ratings Group, or a successor (if any).

“**SC Delay Liquidated Damages**” is defined in Section 4.16(b).

“**Schedule B Exceptions**” means the exceptions to title as noted in the Title Reports, to the extent approved or deemed approved by Buyer as provided in Section 4.6(d).

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

“**Scope of Work and Specifications**” means the Scope of Work and Specifications set forth in Exhibit M.

[REDACTED]

[REDACTED]

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

“**Seller Commission Approvals**” means the final non-appealable Declination of Jurisdiction Order from the Indiana Utility Regulatory Commission.

“**Seller Confidential Information**” is defined in Section 10.3(a).

“**Seller Consents**” is defined in Section 6.4.

“**Seller Firm Date CPs**” is defined in Section 3.3.

“**Seller Indemnified Parties**” is defined in Section 11.2(b).

“**Seller Indemnifying Party**” is defined in Section 11.2(a).

“**Seller Parent**” means [REDACTED]

“**Seller Parent Guaranty**” means [REDACTED]
[REDACTED]

“**Seller Parent Guaranty Default**” means, from and after the date on which Seller is required to provide a Seller Parent Guaranty to satisfy its obligations under Section 5.6, the occurrence of any of the following events in respect of the Seller Parent Guaranty during the period that Seller is required to maintain Required Credit Support:

- a) the Seller Parent does not satisfy the conditions set forth in such definition;
- b) the Seller Parent disaffirms, disclaims, repudiates, or rejects in whole or in part, or challenges the validity of, such Seller Parent Guaranty;

- c) the Seller Parent Guaranty expires or terminates or ceases to be in full force and effect at any time Seller is required to maintain the Seller Parent Guaranty pursuant to Section 5.6(e), and such Seller Parent Guaranty has not been replaced by a Letter of Credit in an amount equal to the cap on the Seller Parent Guaranty;
- d) any bankruptcy or event analogous to a bankruptcy (i.e. receivership, assignment for the benefit of creditors, etc.) with respect to the Seller Parent;
- e) [REDACTED] prior to the expiration or termination date of the Seller Parent Guaranty, if any, such Seller Parent Guaranty is not extended or replaced with a new Seller Parent Guaranty or a Letter of Credit for an amount at least equal to that of the Seller Parent Guaranty being replaced;
- f) the Seller Parent fails to honor a drawing under the Seller Parent Guaranty in accordance with its terms;
- g) Seller fails to provide to Buyer the unaudited balance sheet and related statements of operations, shareholder's equity and cash follows as of the end of each fiscal year of Seller Parent [REDACTED] in each case prepared in accordance with IFRS, [REDACTED] or [REDACTED]
- g) the Seller Parent fails to comply with or perform its obligations under the Seller Parent Guaranty and the failure continues after the lapse of any applicable grace period.

In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and external attorneys' fees) of establishing, renewing, substituting, canceling, increasing, and reducing the amount of (as the case may be) one or more Seller Parent Guaranties shall be borne by Seller.

"Seller Responsibility Firm Date Conditions" means [REDACTED]

"Seller's Fundamental Representations" means [REDACTED]

"Seller's Knowledge" means [REDACTED]

"Settlement Agreement" is defined in Section 13.4(b).

“**Site**” means the site in Blackford County, Indiana, on which the Project (including the Facilities (including the gen-tie line from the Project substation to the Point of Interconnection and the land covered by the Land Contracts therefor)) will be constructed, which site shall be within the geographic boundaries of the Property.

“**Site Finalization Date**” means the date when the conditions set forth in Sections 4.6(a) and 4.6(b) have been satisfied by Seller or waived by Buyer.

“**Site Operating Plan**” means a document or set of documents setting forth the requirements for Buyer or the Company to operate and maintain the Project, including a physical description of the Project including drawings and pictures; a complete list of each EPC Contractor’s supplier contacts; a description of the solar module array indicating string voltages and appropriate safety procedures; final as-built electrical and structural drawings, commissioning test reports required to comply with this Agreement and all applicable Laws; equipment serial numbers; equipment warranty information; equipment tagging, location and identification; operation, maintenance and safety policies and procedures for the Project and any PPE requirements; instructions for startup, shutdown, operation and maintenance of all material equipment and components included in the Project; ‘ArcFlash’ analysis and stickers; and a complete bill of materials for the power & control building.

“**Site Plan**” means that certain site plan layout for the Project delivered by Seller as provided in Section 4.4(a), including the intended location of each of the Facilities, the intended location of the solar modules, gen-tie lines, whether overhead or underground, including all related facilities, such as guy wires, access roads, interior roads, electrical collector system, substation (collector, interconnection or any other substation), point of interconnection, communication lines, fences, detention basins, and set-backs from roads and other structures, any surrounding buildings or vegetation that could affect solar resources, the location of areas subject to Crossing Agreements, the boundaries of each tract or parcel of Property subject to each Land Contract, and which such layout shall overlay the Site and show the location of existing roads, buildings, other structures, all wetlands (if any), and areas of concern (if any) as identified in the then current Phase I environmental site assessment for the Project.

“**Solar Data**” is defined in Section 6.17.

“**Straddle Period**” means any Tax period that begins on or before the Closing Date and ends after the Closing Date.

“**Subcontractor**” means any vendor, supplier, consultant, or subcontractor, of any tier, materialman, professional, laborer or other Person providing materials, equipment or services, directly or indirectly, to any Contractor in connection with the performance of the Work.

“**Subordination Agreements**” means written agreements provided by the holder of each monetary lien that (without such Subordination Agreement) would have priority in interest in any portion of the real property that is subject to a Land Contract, which Subordination Agreement shall either subordinate the rights of such lien holder to the rights of Company under the applicable Land Contract, or in which Subordination Agreement the holder of each such monetary lien agrees

not to disturb Company's occupancy or name Company in a foreclosure procedure, which Subordination Agreements shall be in substance and form reasonable satisfactory to Buyer.

“Subsidiary” means, with respect to any Person of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons will be deemed to have a majority ownership interest in a limited liability company, partnership or association, or other business entity if such Person or Persons will be allocated a majority of limited liability company, partnership or association or other business entity gains or losses or will be or control any managing member or general partner of such limited liability company, partnership, association or other business entity.

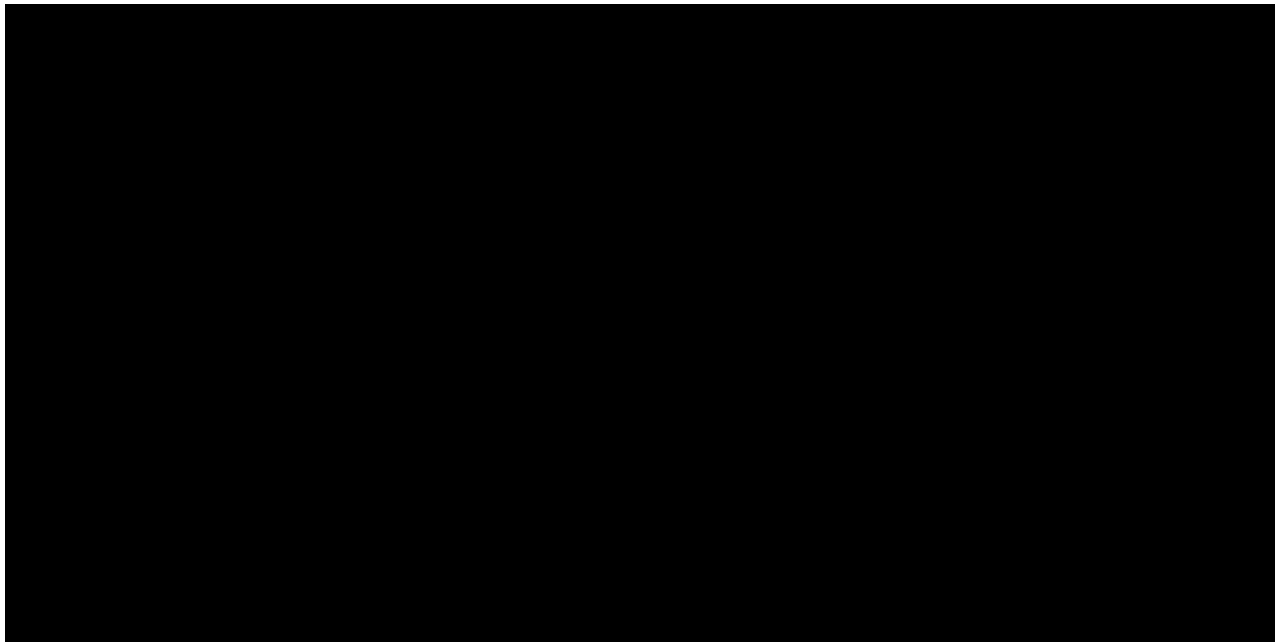
“Substantial Completion” is defined in Exhibit O.

“Substantial Completion Certificate” means a certificate in the form attached hereto as Exhibit E-2 issued by Seller, certifying as to the satisfaction or achievement of Substantial Completion and attaching copies of each “Substantial Completion Certificate” (as such term is defined in the EPC Contract and HV Agreement, as applicable) issued by the EPC Contractors .

“Substantial Completion Date” means the date on which the Project shall have achieved Substantial Completion and the Substantial Completion Certificate with respect thereto shall have been accepted by (or pursuant to this Agreement is deemed accepted by) Buyer in accordance with Exhibit O.

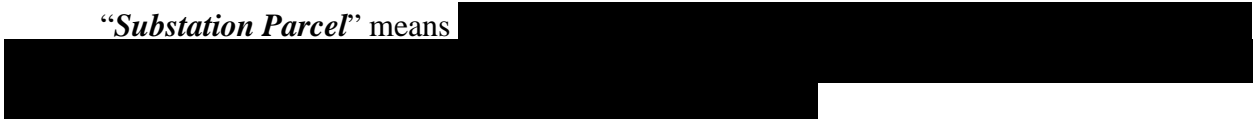
“Substantial Completion Payment”



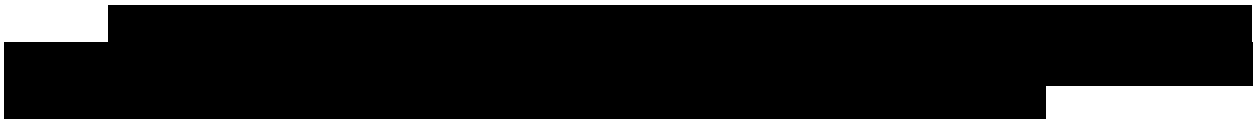
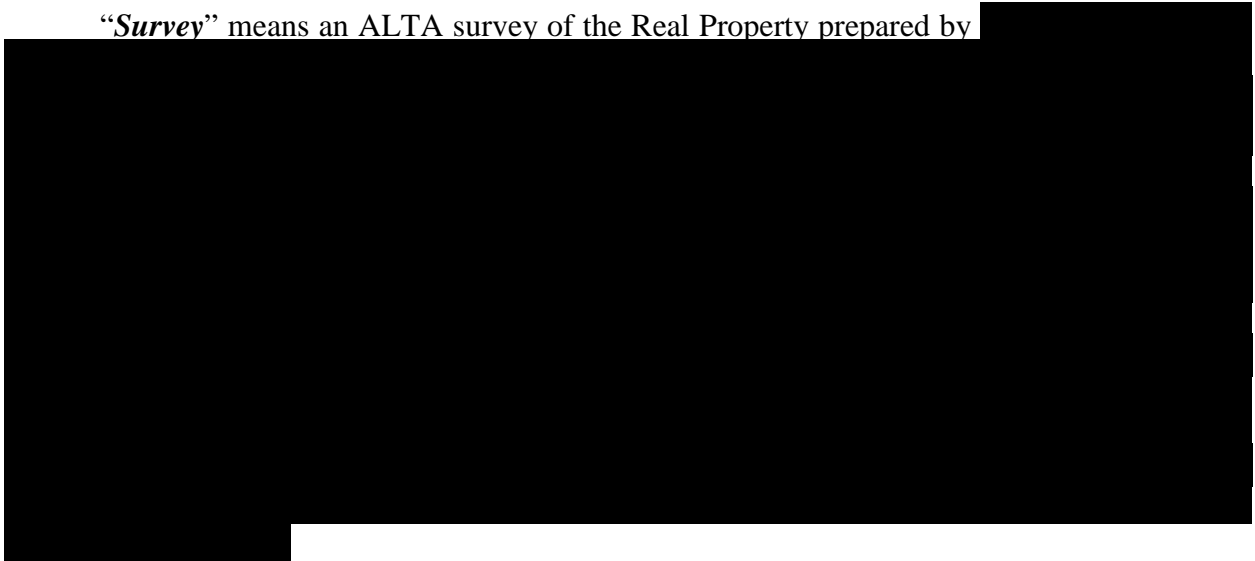


“Substantial Completion Permits” is defined in Section 6.14(a).

“Substation Parcel” means



“Survey” means an ALTA survey of the Real Property prepared by



[REDACTED]

[REDACTED]

“**Tax Authority**” means the IRS and any other domestic or foreign Authority responsible for the imposition and/or administration of any Taxes.

“**Tax Contests**” is defined in Section 10.4(a).

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

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

“**Technical Dispute**” is defined in Section 13.4(e).

“**Threshold Amount**” means [REDACTED]

“**Title Company**” means First American Title Company or another nationally recognized title company experienced with solar projects mutually acceptable to Buyer and Seller.

“**Title Policy**” has the meaning set forth in Section 8.1(h)(i).

[REDACTED]

“**Title Reports**” means preliminary title commitments or reports prepared by the Title Company with respect to the Real Property.

“**Total Capacity**” means the nameplate capacity (in kWac) of the Project as constructed at Mechanical Completion.

“Tracking Supplier” means one of the approved contractors listed under the Tracking Supplier section of Exhibit AA.

“Transfer Taxes” means all transfer, sales, use, goods and services, value added, documentary, stamp duty, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges.

“Transformer Supplier” means one of the approved contractors listed under the Transformer Suppliers section of Exhibit AA.

“Transformer Supply Agreement” means that certain Electrical Transformer Supply Agreement to be entered into between Transformer Supplier and Company for the purchase of on terms and conditions consistent with [REDACTED] Exhibit GG, the Scope of Work and Specifications, and this Agreement and as otherwise reasonably approved by Buyer pursuant to the terms and conditions of this Agreement. [REDACTED]

“Transmission Owner” means AEP Indiana Michigan Transmission Company, Inc. or one of its Affiliates or its or their successors.

“Transmission Provider” means PJM Interconnection, L.L.C. or its successors.

“Updated Property Burdens Adjustment” means an amount reflecting any increase in the aggregate rents and other payments under each Land Contract, over such aggregate amounts set forth in Schedule 1.1(e), determined as provided in Schedule 1.1(e).

“Wildlife Restrictions” means any requirement to avoid, minimize or mitigate impacts to any wildlife species adopted by Seller or the Company for the Project, or imposed on Seller, the Company or the Project by any Authority with jurisdiction over wildlife resources that imposes obligations with respect to or in any way restricts the Company’s ability to operate the Facilities.

“Work” means all work for the management of the construction of the Project, the design, development, engineering, procurement, permitting, construction, installing, interconnection, testing, commissioning, start-up and turnover of the Facilities, which work and services shall include all aspects of the work described in the Scope of Work and Specifications and the provision of all materials, equipment, machinery, tools, labor, transportation, administration and other actions, services and items required to complete and deliver the fully assembled, integrated, installed, tested and operational Facilities and the Project, all in accordance with the Material Contracts, the Property Agreements, the Company Permits, applicable Law, Prudent Industry Practices and this Agreement.

Section 1.2 Rules of Interpretation. Unless otherwise expressly provided or unless required by the context in which any term appears:

- (a) the singular shall include the plural and the plural shall include the singular;

(b) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” (if any) shall be to articles, sections, schedules or exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time;

(c) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns;

(d) 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;

(e) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;

(f) references to this Agreement shall include a reference to all Schedules and Exhibits hereto as the same may be amended, modified, supplemented or replaced from time to time;

(g) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(h) the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered;

(i) relative to the determination of any period of time, “from” means “including and after,” “to” means “to but excluding” and “through” means “through and including;”

(j) references to applicable Laws shall mean a reference to such applicable Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated thereunder;

(k) unless otherwise specified to the contrary, the word “or” shall be inclusive and shall have the meaning conveyed by “and/or”;

(l) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;

(m) any date specified for action that is not a Business Day shall mean the first Business Day after such date;

(n) a reference to any Contract is to that Contract as amended, novated, supplemented or replaced from time to time;

(o) all references in this Agreement to “dollars” or “\$” shall, in each case, be deemed to refer to United States currency unless otherwise specifically provided; and

(p) the phrase “to the extent” means “the degree by which” and not “if”.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE II PURCHASE AND SALE OF PURCHASED INTERESTS

Section 2.1 Purchase and Sale of Purchased Interests. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, convey, transfer, assign, and deliver to Buyer, free and clear of all Encumbrances, and Buyer shall purchase from Seller, the Purchased Interests, for the consideration specified in Section 2.2.

Section 2.2 Payment of Purchase Price. Upon the terms and subject to the conditions set forth in this Agreement, Buyer shall make payment to Seller by wire transfer of immediately available funds to the accounts specified in writing by Seller for such purpose, as follows:

(a) Closing Payment.

(i) On the Closing Date, Buyer shall pay the Closing Payment to Seller;
and

(ii) On the Closing Date, Buyer shall, on behalf of Seller, make payment of the Payoff Amount to the administrative agent on behalf of the Financing Parties and the other secured parties under the Construction Loan Agreement.

(b) [REDACTED]

(c) Punch List Holdback Release Payments. Within [REDACTED] following any [REDACTED] in which the completion of a Punch List Item occurs, Buyer shall pay Seller an amount equal to the Punch List Holdback Release for such Punch List Item.

(d) Final Completion Payment. Within [REDACTED] following the Final Completion Date, Buyer shall pay the Final Completion Payment to Seller.

Section 2.3 Reserved.

Section 2.4 Mechanics of Closing.

(a) No later than [REDACTED] before the projected Closing Date, Seller will prepare and deliver to Buyer a closing statement (the “*Closing Statement*”) setting forth Seller’s good faith calculation of the Closing Payment; provided, however, that with respect to items that arise after [REDACTED] prior to the projected Closing Date, Seller will prepare and deliver to Buyer an update to the Closing Statement solely with respect to such items (the “*Closing Statement Update*”). Unless Buyer objects in writing to the amounts set forth in the Closing

Statement within [REDACTED] of Buyer's receipt of the Closing Statement, or within [REDACTED] of Buyer's receipt of such Closing Statement Update, Buyer will be deemed to have accepted such amounts and such amounts shall be considered final. If Buyer objects to any amounts set forth in the Closing Statement, the Parties will resolve the dispute by following the dispute resolution procedures set forth in Section 13.4.

(b) The consummation of the purchase and sale of the Purchased Interests (the "**Closing**") will take place telephonically and/or electronically at a mutually acceptable date and time within [REDACTED] following the satisfaction (or waiver by the applicable Party) of the conditions set forth in Section 8.1 and Section 9.1 (other than those conditions that by their nature are to be satisfied at the Closing), or at such other place and on such other date and time as may be mutually agreed by Buyer and Seller (the date on which the Closing actually occurs being referred to as the "**Closing Date**"). For the avoidance of doubt the Parties agree that (i) the conditions set forth in Section 8.1 are for the benefit of Buyer only and Buyer may compel Closing upon the satisfaction (or waiver by Seller) of the conditions set forth in Section 9.1 whether or not the conditions set forth in Section 8.1 have been satisfied, and (ii) that the conditions set forth in Section 9.1 are for the benefit of Seller only and Seller may compel Closing upon the satisfaction (or waiver by Buyer) of the conditions set forth in Section 8.1 whether or not the conditions set forth in Section 9.1 have been satisfied. Any Closing shall be effective as of 12:01 AM prevailing eastern time on the Closing Date.

Section 2.5 Closing; Costs.

(a) Expenses. Except as otherwise specified herein, each Party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement, any Ancillary Agreement and to any action taken by such Party in preparation, negotiation, execution and performance of this Agreement and the Ancillary Agreements, including all expenses and costs incurred to obtain approvals required by such Party from Authorities. To the extent any such fees or expenses relating to the period prior to Closing are required to be paid by the Company after the Closing, Seller shall reimburse the Company within [REDACTED] of written notice to Seller.

(b) Prorations. All rent, insurance premiums and other costs and expenses of the Company, other than Taxes that are addressed in Section 10.4(b), but including (for the avoidance of doubt) any pre-Closing payments in lieu of Taxes, relating to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance and operation of the Project, including any payments due and owing under any Material Contract, Property Agreement or Permit shall be prorated between Seller and Buyer as of the Closing Date, so that Seller is responsible for the prorated amounts incurred during, or otherwise relating to, the period of time prior to the Closing Date, and Buyer is responsible for the prorated amounts incurred during, or otherwise relating to, the period of time from and after the Closing Date; provided, however, that in no event shall this Section 2.5 limit Seller's liability for costs and expenses under Section 4.1(c). For the avoidance of doubt, Buyer shall reimburse Seller for any pre-payments of rent, insurance premiums or other costs and expenses of the Company that are paid before the Closing Date but that are or will be applied to any period after the Closing Date (such amount the "**Post-Closing Proration Amount**"). Notwithstanding anything to the contrary in the foregoing, revenues from operation of the Project,

including sales of test power, if sold notwithstanding the prohibition in Section 4.13, shall be the property of the Company and [REDACTED]

[REDACTED] shall not be distributed out of the Company prior to the completion of Closing, and shall be transferred to Buyer at Closing;

[REDACTED]

(c) Independent Accountant and Independent Engineer Costs. [REDACTED]

[REDACTED]

(d) Real Property; Title and Survey. On or prior to the Closing Date, Seller shall pay for all Title Reports (including amendments, updates and supplements thereto), all Surveys (including amendments, updates and supplements thereto) and all recording charges and expenses incurred in connection with recording any Property Agreements (or amendments or memoranda thereof) prior to the Closing Date. On or prior to the Closing Date, Seller shall also pay for all premiums, fees and related charges incurred for the Title Policy and the Closing Title Endorsements. Seller shall also pay for all premiums, fees and related charges in connection with any bringdown of or modifications to the Title Policy in connection with the release of the Encumbrances related to the Construction Loan Agreement, if applicable.

Section 2.6 Post-Closing.

(a) Post-Closing Statement. Within [REDACTED] after the Closing Date, if Buyer reasonably believes that the Closing Statement is materially inaccurate, Buyer may prepare and deliver to Seller a closing statement (the "***Post-Closing Statement***") of the Closing Payment as of the close of business on the Closing Date, which statement shall deduct from Buyer's calculation of the Closing Payment any Excluded Liabilities retained by the Company, to Buyer's Knowledge, as of the preparation of the Post-Closing Statement. Seller will provide Buyer such information as Buyer may reasonably request in connection with its preparation of the Post-Closing Statement. If (i) the calculation of the Closing Payment as set forth in the Post-Closing Statement is greater than the calculation of the Closing Payment as set forth in the Closing Statement, then Buyer will pay to Seller an amount equal to the excess, and (ii) the calculation of the Closing Payment as set forth in the Closing Statement is greater than the calculation of the Closing Payment as set forth in the Post-Closing Statement, then Seller will pay to Buyer an amount equal to the excess (in either case, the "***Post-Closing Adjustment***").

(b) Payment of Adjustments. Unless Seller objects to the amounts set forth in the Post-Closing Statement in accordance with Section 2.6(c), payment of the Post-Closing Adjustment will be made within [REDACTED] after Seller's receipt of the Post-Closing Statement.

(c) Adjustment Disputes. Within [REDACTED] after delivery of the Post-Closing Statement by Buyer to Seller, Seller may object in writing to the amounts set forth in the Post-Closing Statement, stating in reasonable detail its objections and providing its good-faith calculation of the objectionable amount or amounts. Buyer will provide Seller such information as Seller may reasonably request in connection with its review of the Post-Closing Statement. If Seller fails to deliver notice of its objections within the [REDACTED] period, Seller will be deemed to have accepted Buyer's calculation set forth in the Post-Closing Statement. If Seller objects to any amounts set forth in the Post-Closing Statement, the Parties will attempt to resolve the dispute by negotiation in good faith. If the Parties are unable to resolve the dispute within [REDACTED] of the date of delivery of Seller's objection in writing, then either Party may refer the dispute to the Independent Accountant, and the Independent Accountant will settle the dispute as soon as practicable. The Independent Accountant will resolve any such objections and determine, in accordance with the criteria specified in the first sentence of Section 2.6(a) (however, such determination will not be limited by Buyer's Knowledge), the amounts to be included in the Post-Closing Statement. Each Party will provide the Independent Accountant with a definitive statement of the position of such Party with respect to each unresolved objection. Buyer will provide the Independent Accountant access to the books and records relating to the Project or the Company. The Independent Accountant will limit its review solely to matters in dispute and have [REDACTED] to carry out a review of the unresolved objections and prepare a written statement of its determination regarding each unresolved objection. The determination of the Independent Accountant will be set forth in writing and will be final and binding upon the Parties. Buyer will revise the Post-Closing Statement, as appropriate to reflect the resolution of any objections pursuant to this Section 2.6(c).

(d) Final Payment. Once any disputes in accordance with Section 2.6(c) have been resolved between the Parties or determined by the Independent Accountant, then the amount due pursuant to the Post-Closing Statement will be paid within [REDACTED] of such resolution to the Party entitled to receive it, together with interest at the Interest Rate from the Closing Date to the date of payment of the Post-Closing Adjustment.

Section 2.7 Purchase Price Allocation. No later than [REDACTED] following the Closing Date, Buyer shall deliver to Seller a proposed schedule (the "**Purchase Price Allocation Schedule**") allocating the Purchase Price paid at Closing among the Assets of the Company. Buyer, Seller, and the Company shall report for Tax purposes and file Tax Returns in a manner consistent with the final Purchase Price Allocation Schedule, unless Seller objects in writing to the Purchase Price Allocation Schedule within [REDACTED] days after Seller's receipt of the Purchase Price Allocation Schedule or otherwise required by a change in Law occurring after the date hereof, a closing agreement with an applicable Tax Authority or a final non-appealable judgment of a court of competent jurisdiction; provided, however, that (a) Buyer's cost for the interest in the Company that it is deemed to acquire may differ from the total amount allocated hereunder to reflect the inclusion in the total cost of items (for example, capitalized acquisition costs) not included in the amount so allocated, (b) the amount realized by Seller may differ from the total amount allocated hereunder to reflect transaction and other costs that reduce the amount realized for federal income tax purposes, and shall not include Buyer's acquisition costs described in subsection (a) of this proviso, and (c) neither Seller or any of its Affiliates nor Buyer or any of its Affiliates will be obligated to litigate any challenge to such allocation of the Purchase Price by an Authority. If Seller objects to the Purchase Price Allocation Schedule, the Parties will attempt

to resolve the objections by negotiation in good faith. If the Parties are unable to resolve Seller's objections within [REDACTED] of Buyer's receipt of Seller's objection notice, each of Seller and Buyer shall use its own allocation for all applicable Tax purposes. Any adjustments to the Purchase Price pursuant to this Agreement shall be allocated among the interests in the Company for purposes of the Purchase Price Allocation Schedule in accordance with this Section 2.7 except to the extent applicable Law requires otherwise.

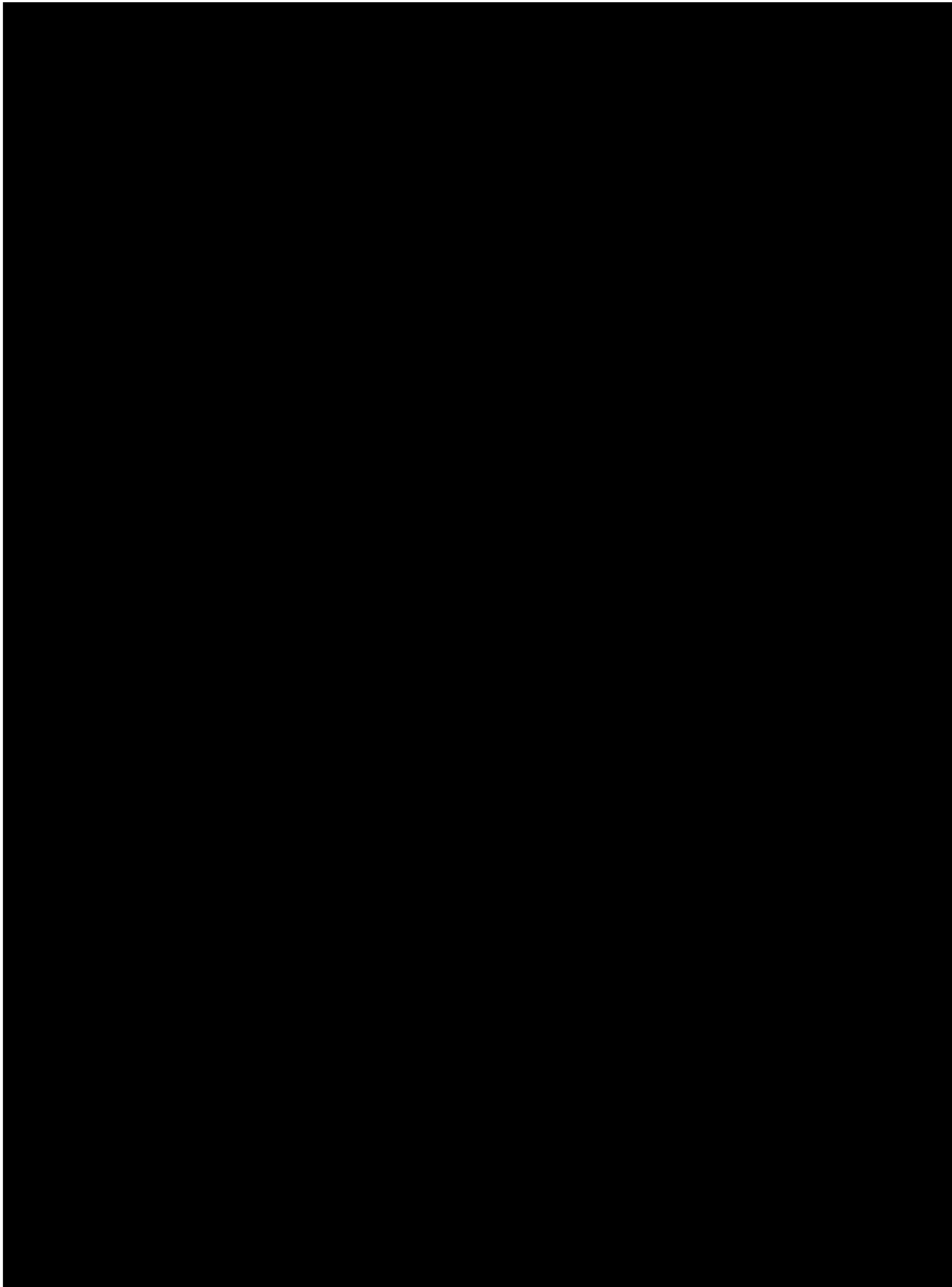
Section 2.8 Withholding Rights. The Parties acknowledge that, under current Tax law, no withholding from the consideration payable by Buyer pursuant to this Agreement shall be required if Seller delivers the certificate required by Section 8.1(a)(ii)(B). If, as a result of a change in Tax law, Buyer determines that an amount is required by Law to be withheld from a payment due hereunder to Seller, Buyer shall notify Seller as soon as reasonably practicable of such determination, with reasonable specificity; provided, however, that Seller acknowledges and agrees that Buyer will be obligated to withhold an amount under Section 1445 of the Code if Seller fails to comply with Section 8.1(a)(ii)(B). If after such notice and cooperation (taking into account any due date for deducting or withholding such amounts) Buyer continues to believe that any amount is required by Law to be withheld, then Buyer shall be entitled to withhold and deduct from the consideration otherwise payable pursuant to this Agreement such amounts which amounts shall be paid over to the appropriate Tax Authorities and Buyer shall provide Seller with evidence of such withholding and payment. To the extent that amounts are so withheld and paid over to the appropriate Tax Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made.

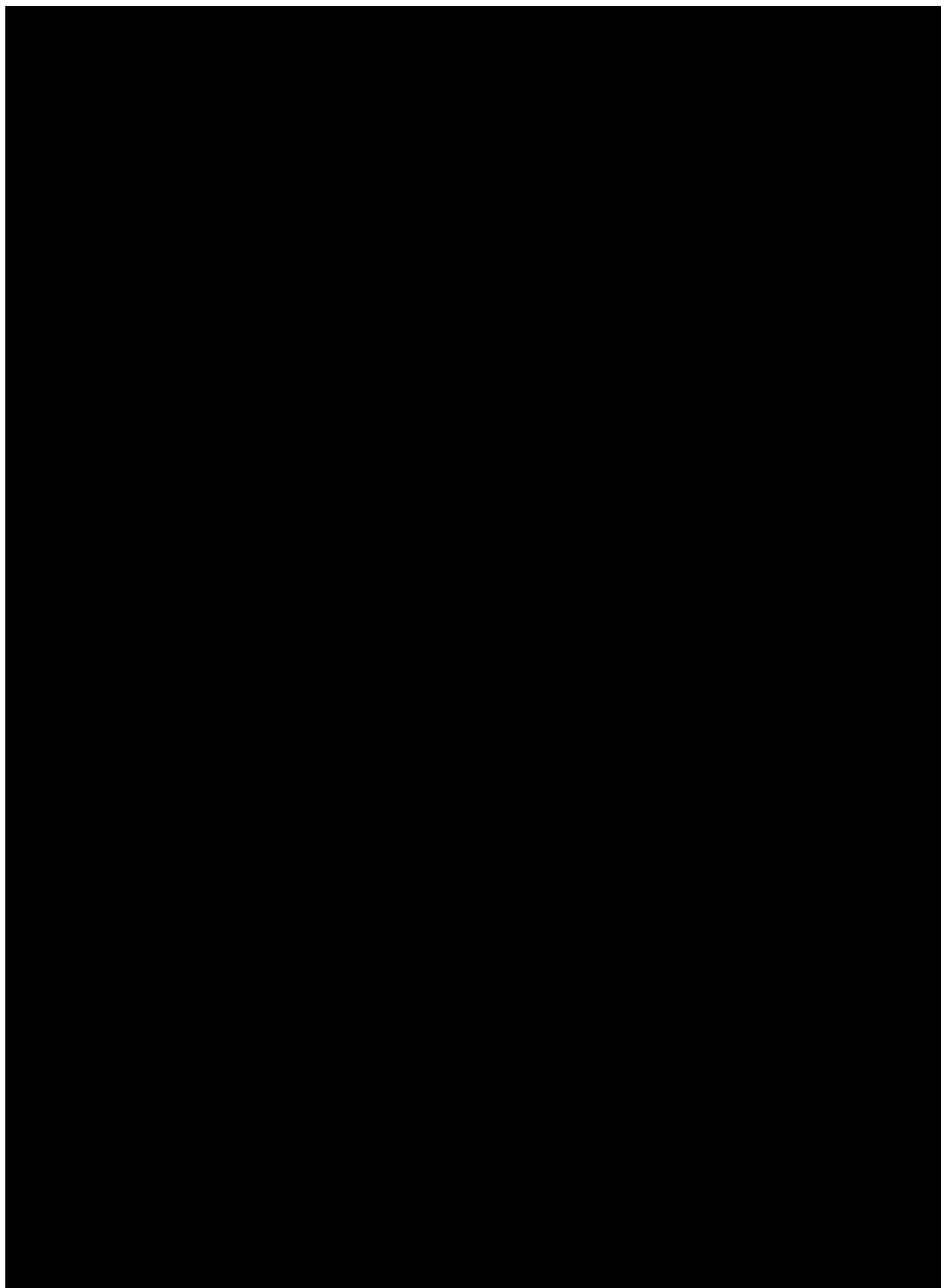
Section 2.9 [Reserved].

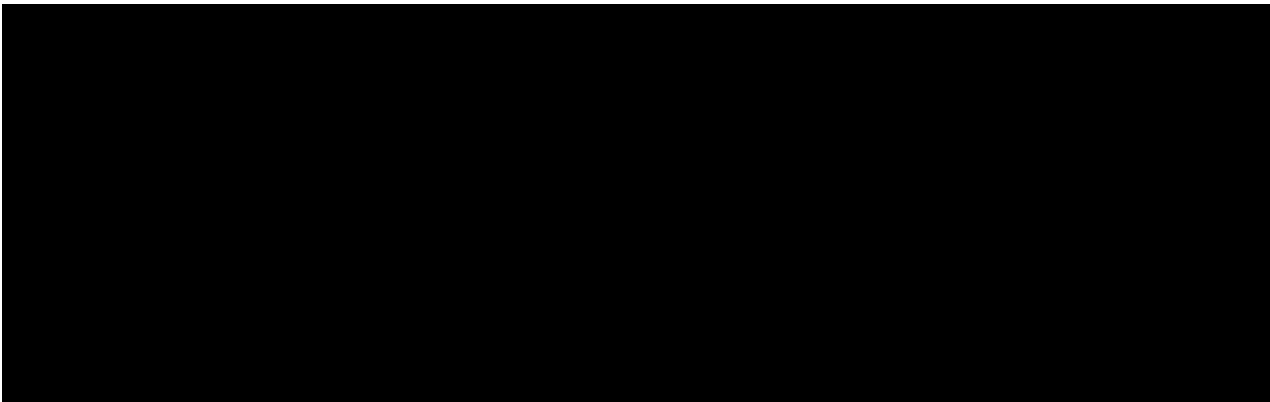
Section 2.10 Buyer's Agent. Buyer hereby appoints Buyer's Agent, an Affiliate of Buyer, to serve as its representative and agent for all purposes in connection with this Agreement and the Ancillary Agreements including: (i) the waiver and amendment of the rights and duties of Buyer under this Agreement and the Ancillary Agreements; (ii) the giving and receiving of notices and requests hereunder; (iii) the determination of the adjustments in Article II and the resolution of any dispute regarding such adjustments; (iv) the handling (including the election of any applicable Buyer remedies), negotiation, and resolution of any accounting matters; and (v) doing and receiving all things provided for concerning "Buyer" in this Agreement and the Ancillary Agreements and making all elections of Buyer under this Agreement and the Ancillary Agreements. Seller shall be entitled and obligated to act in reliance upon any and all acts and things done and performed by or agreements made with respect to all matters dealt with in this Agreement and the Ancillary Agreements by the Buyer Agent on behalf of Buyer, and the foregoing shall be binding on Buyer, as fully and effectively as though Buyer had done, performed, made or executed the same.

Section 2.11 [REDACTED]

[REDACTED]

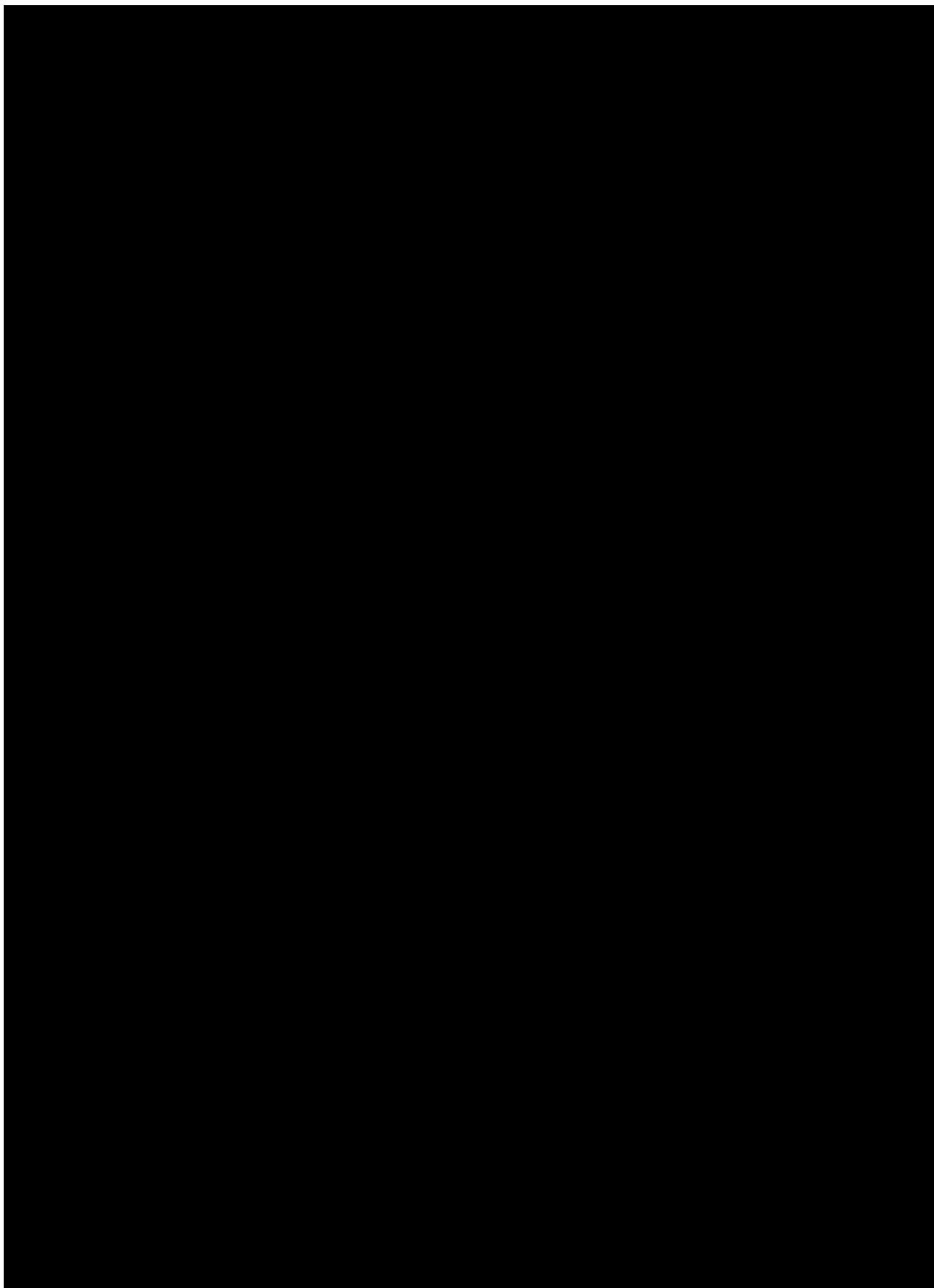






Section 2.12 



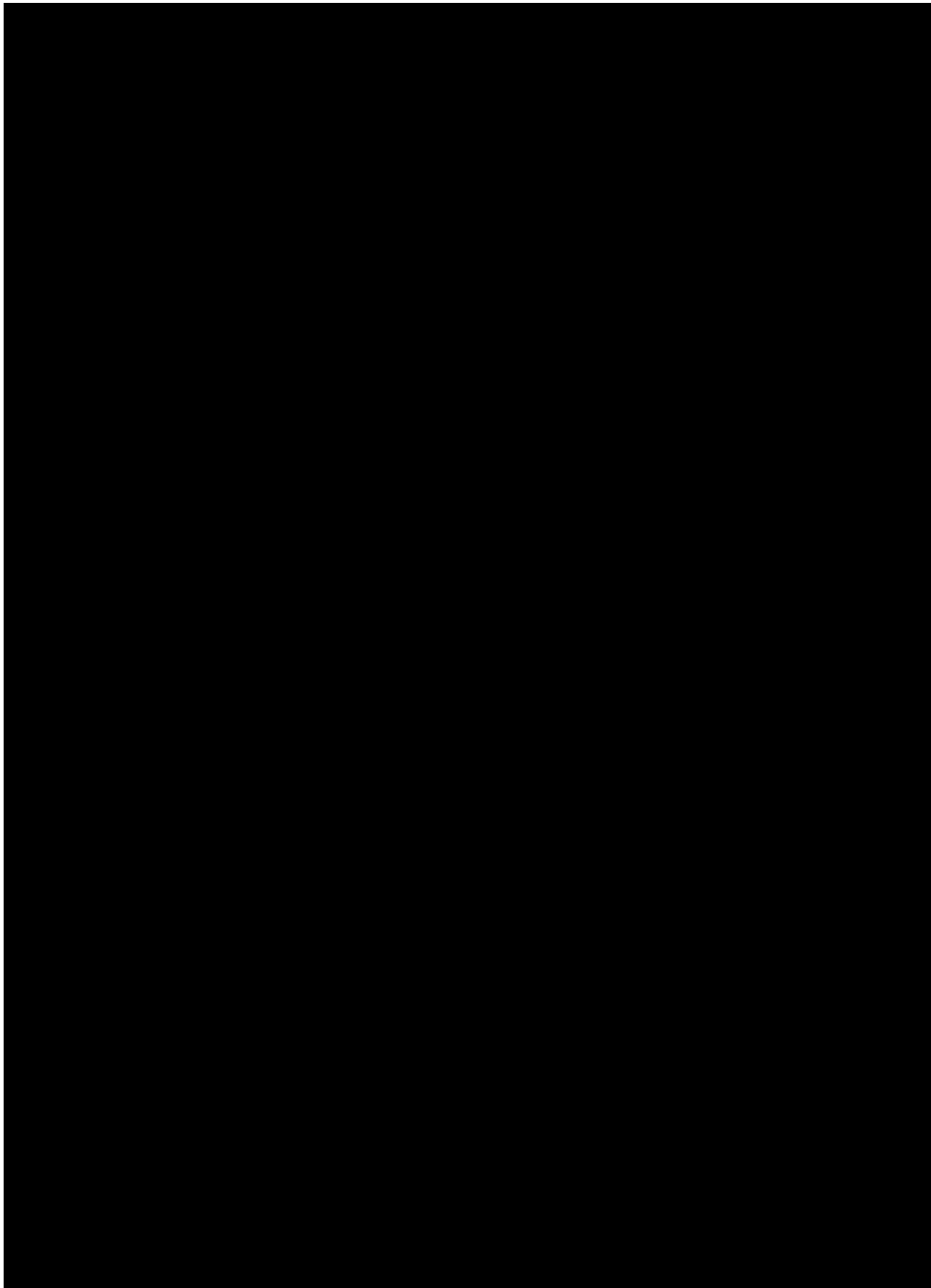


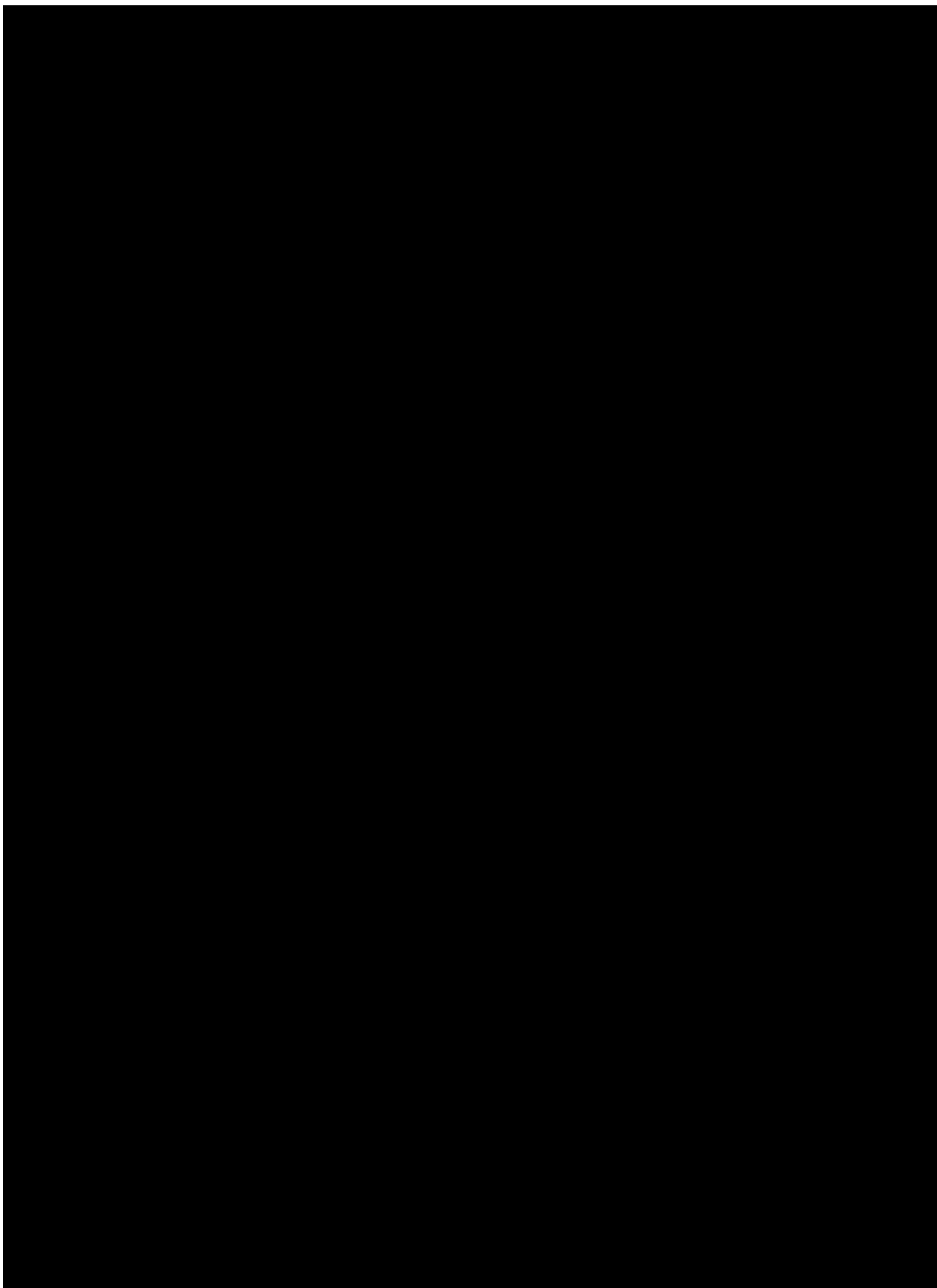
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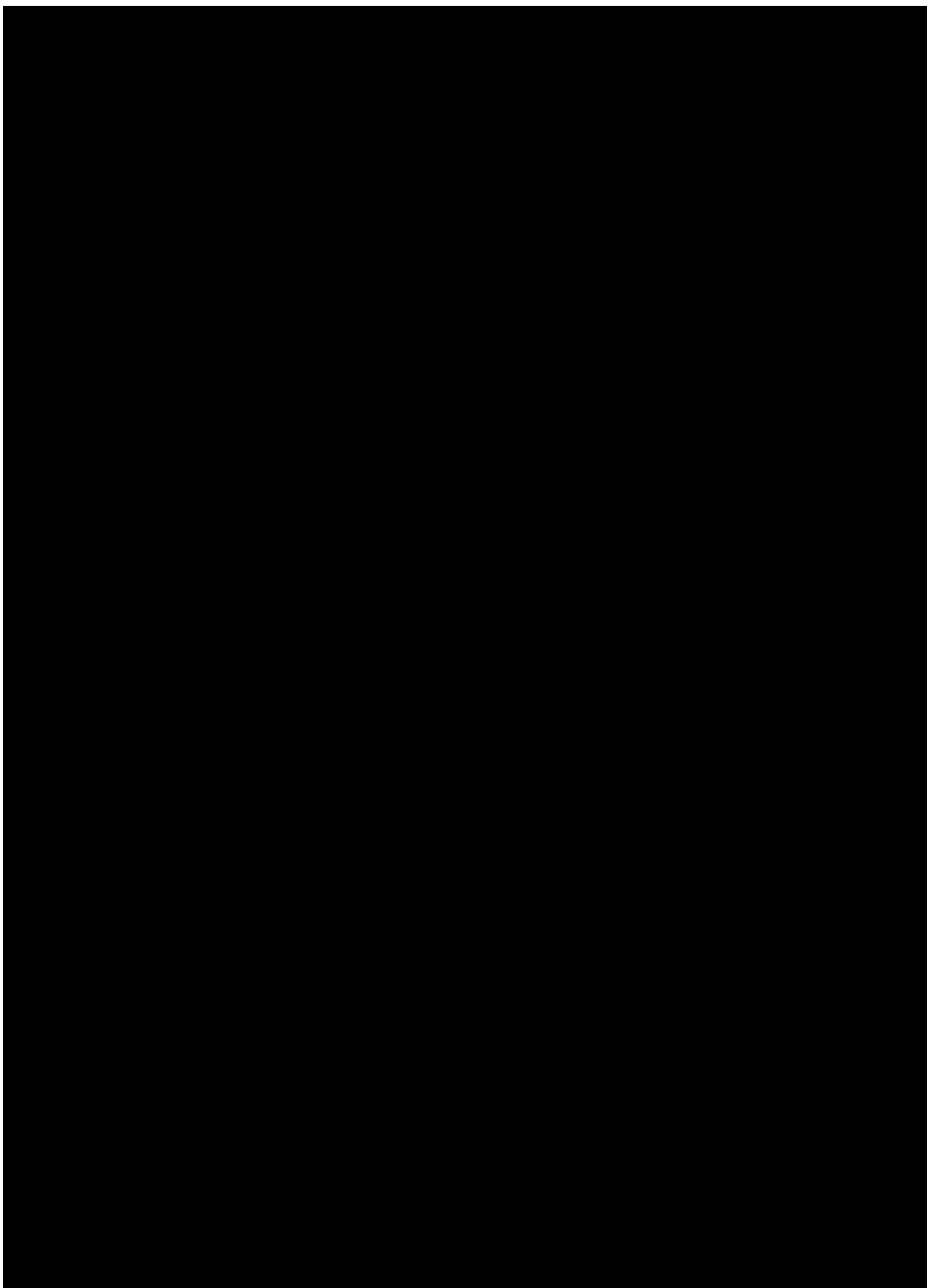
Section 2.13

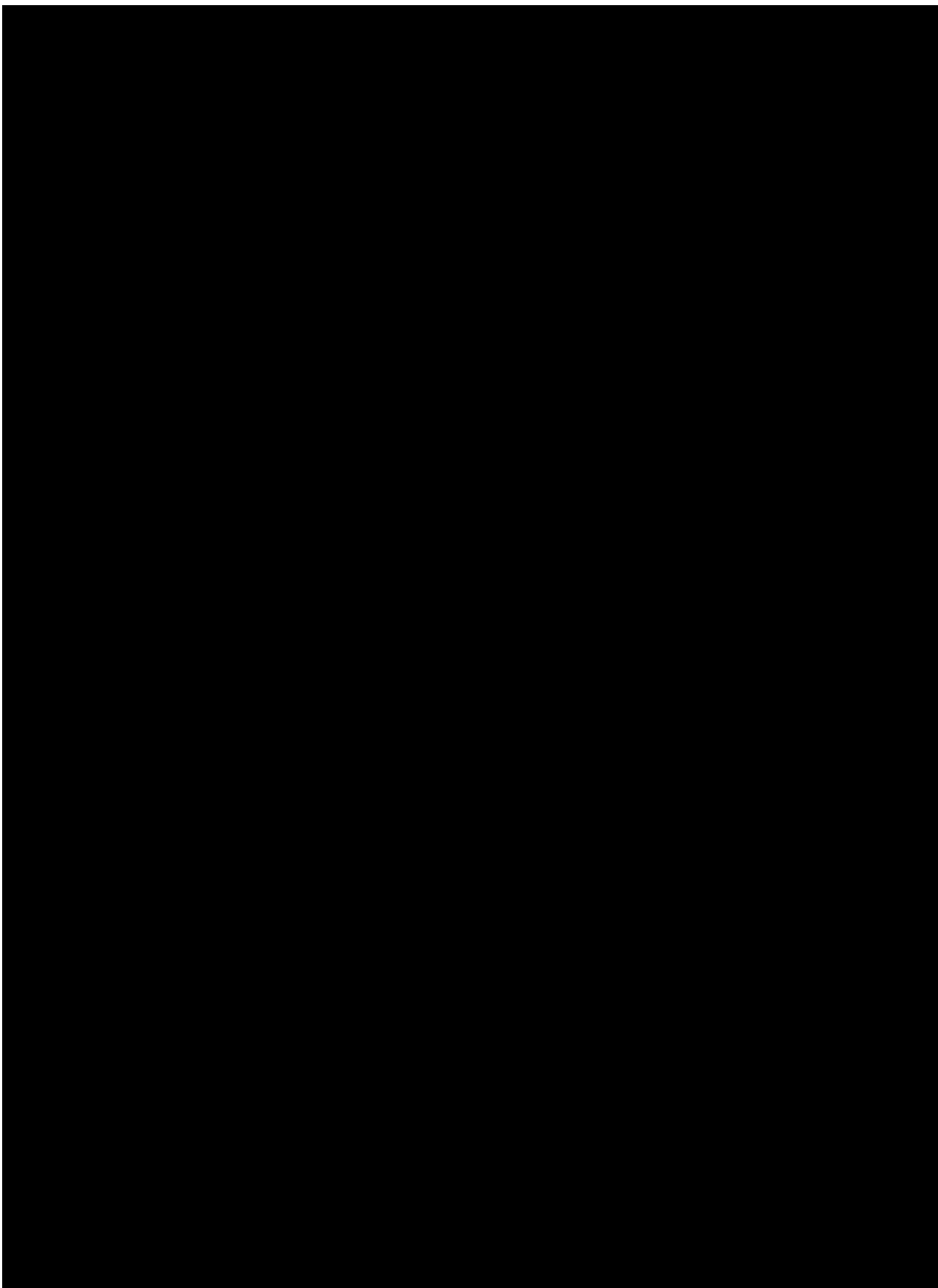
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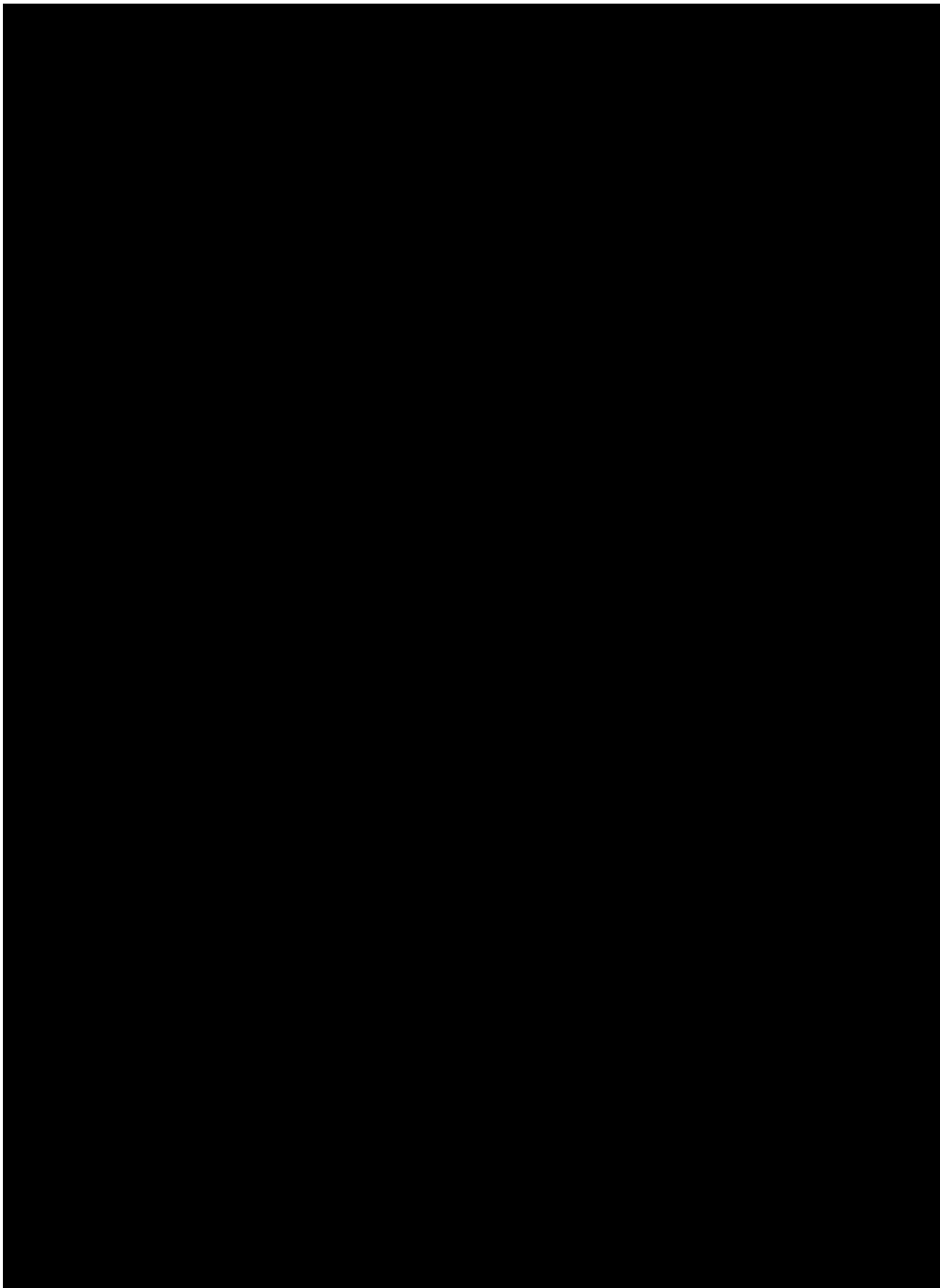
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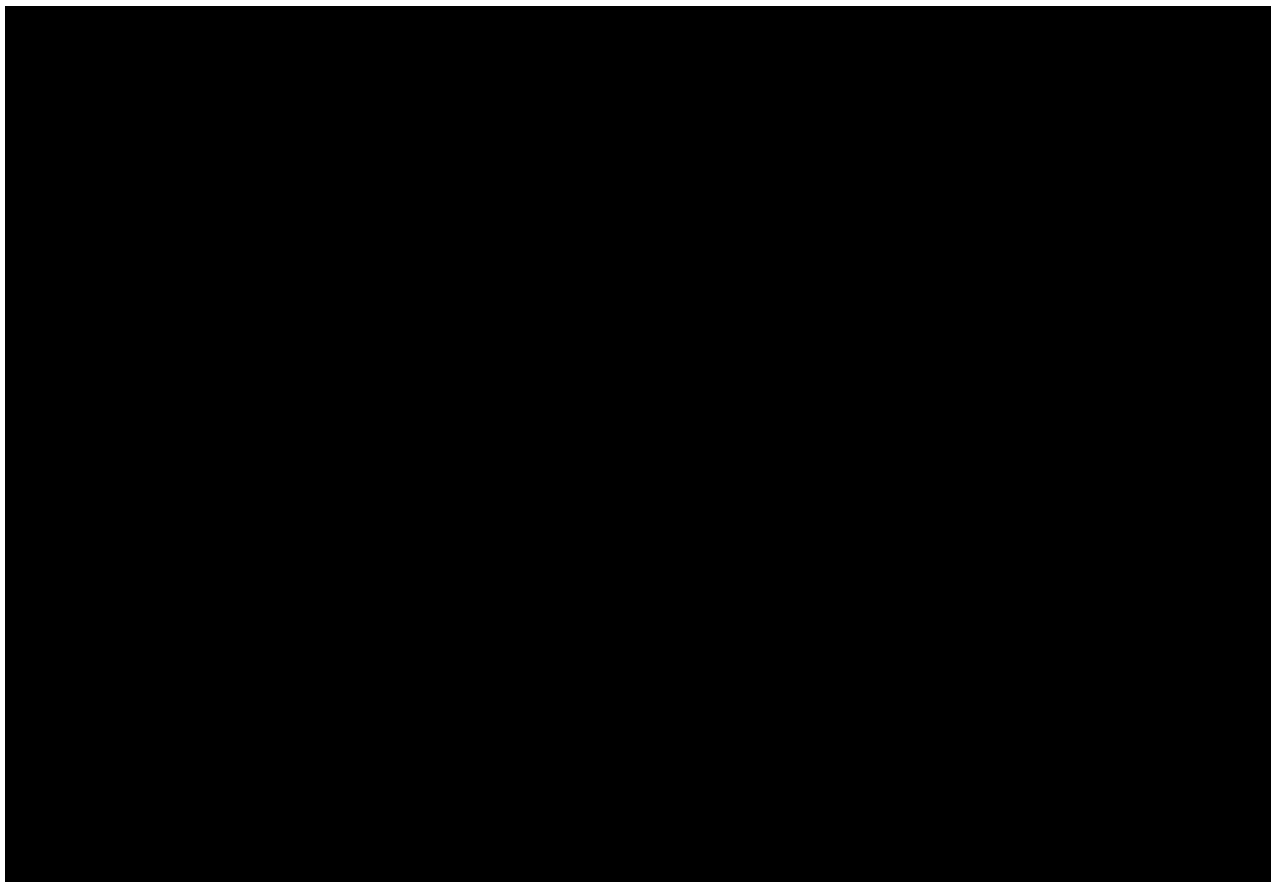




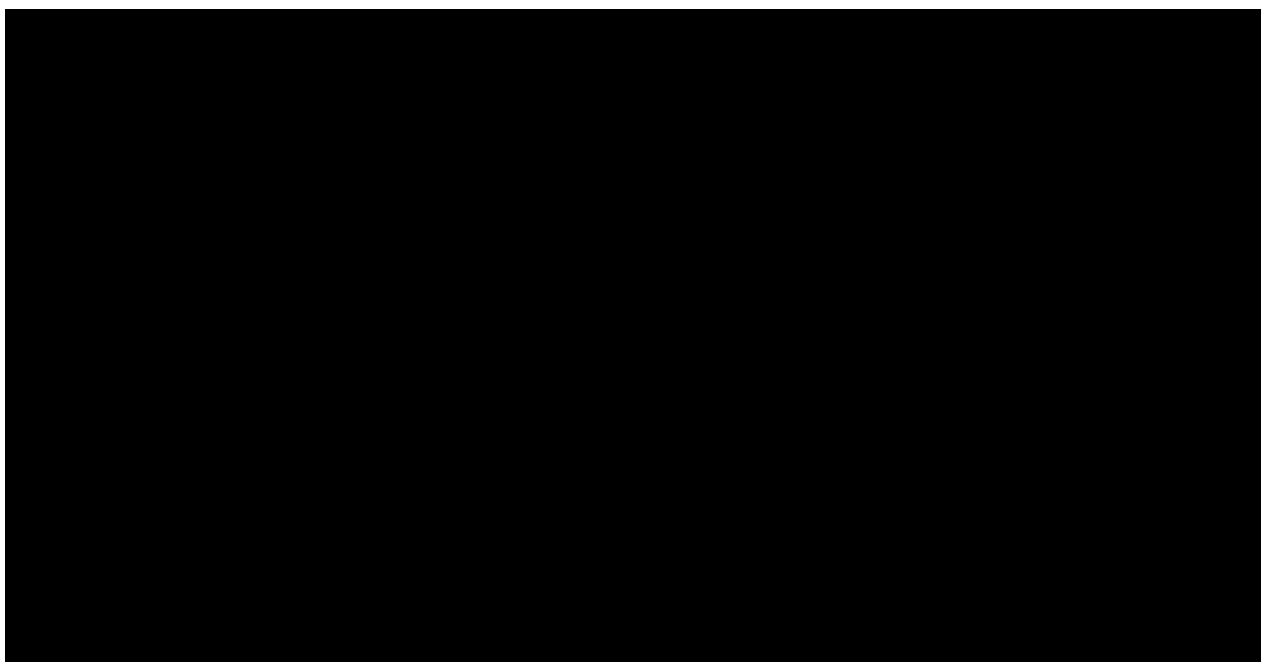


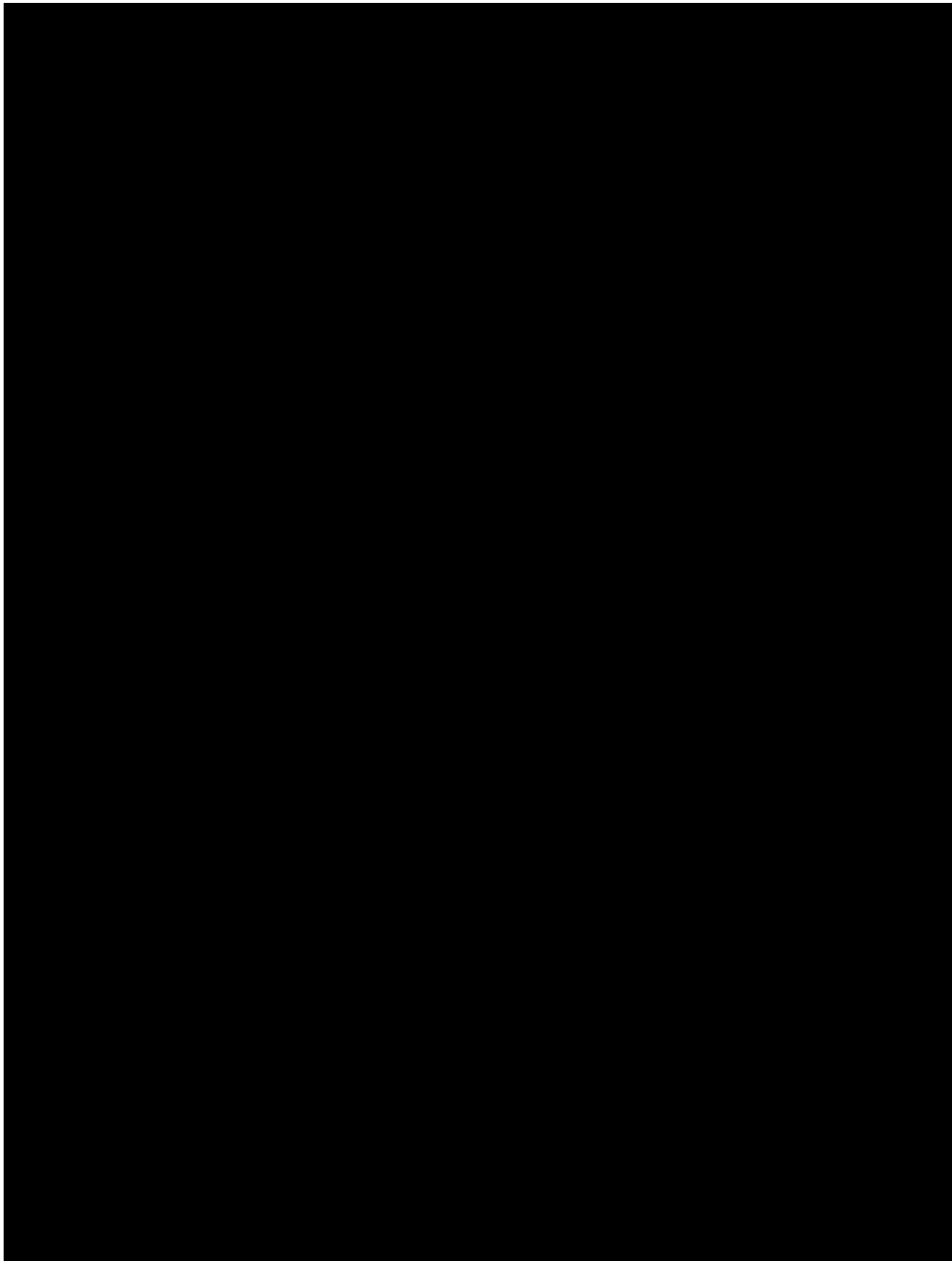


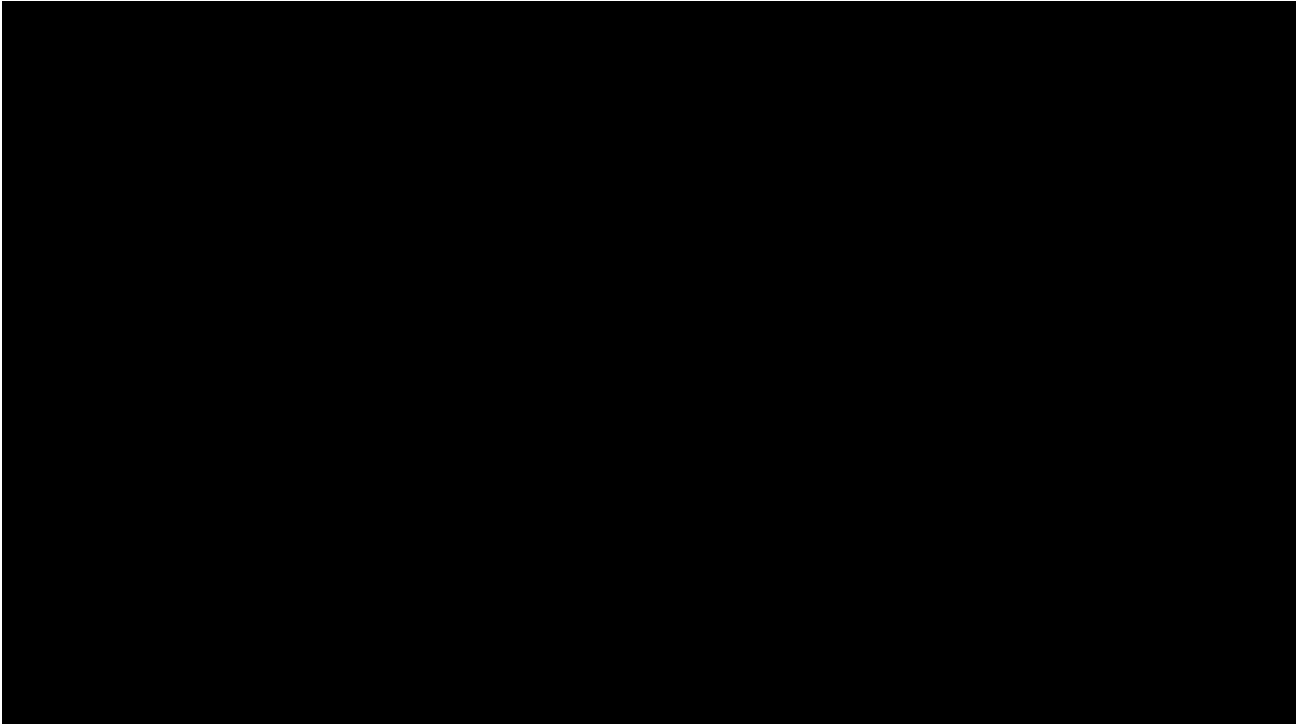
Section 2.14



Section 2.15




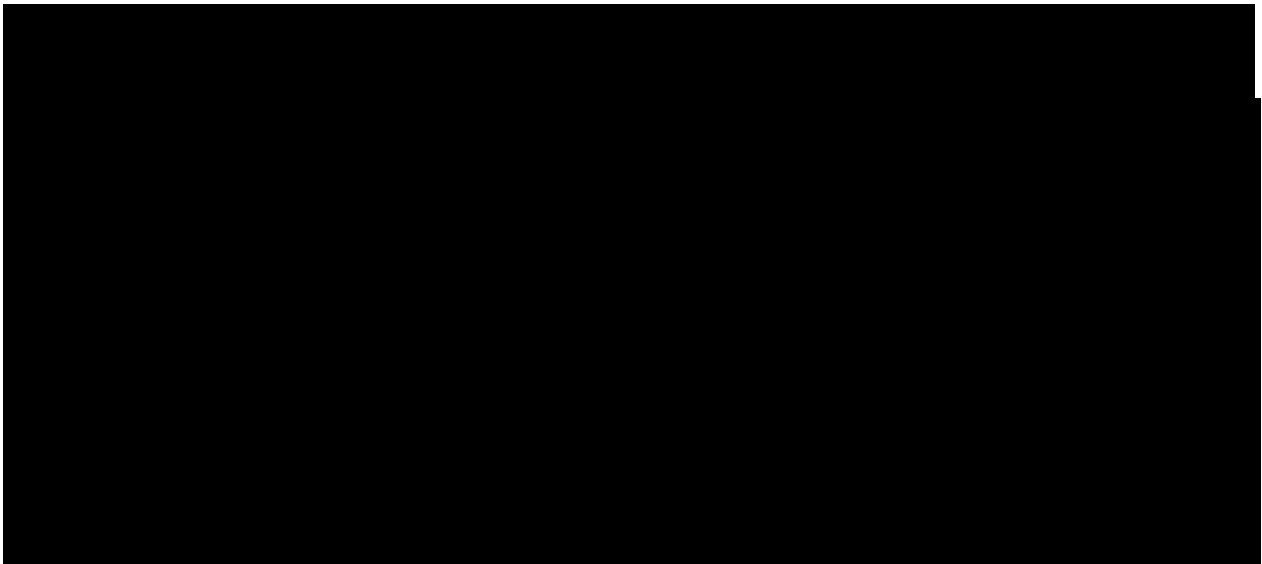


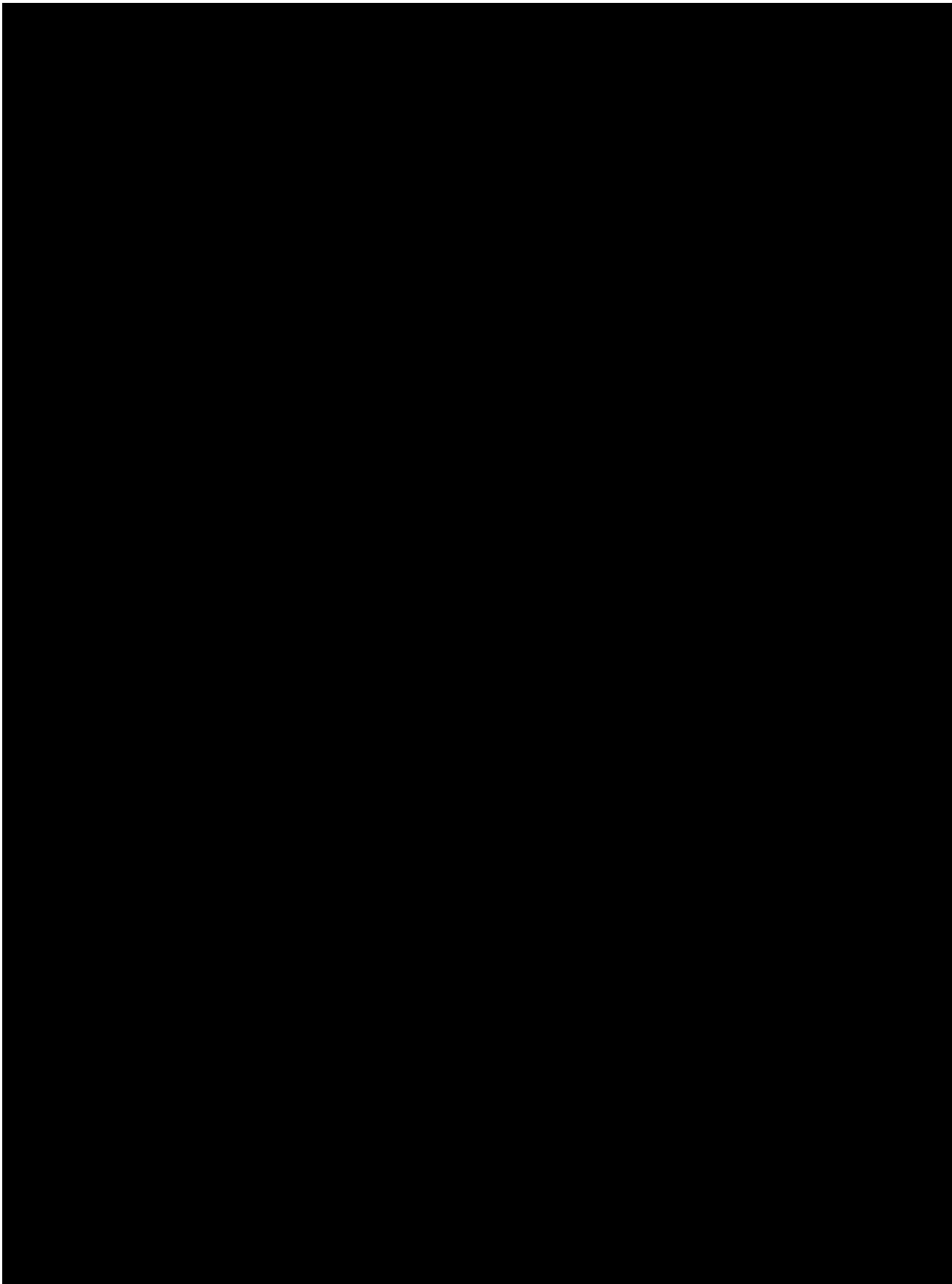


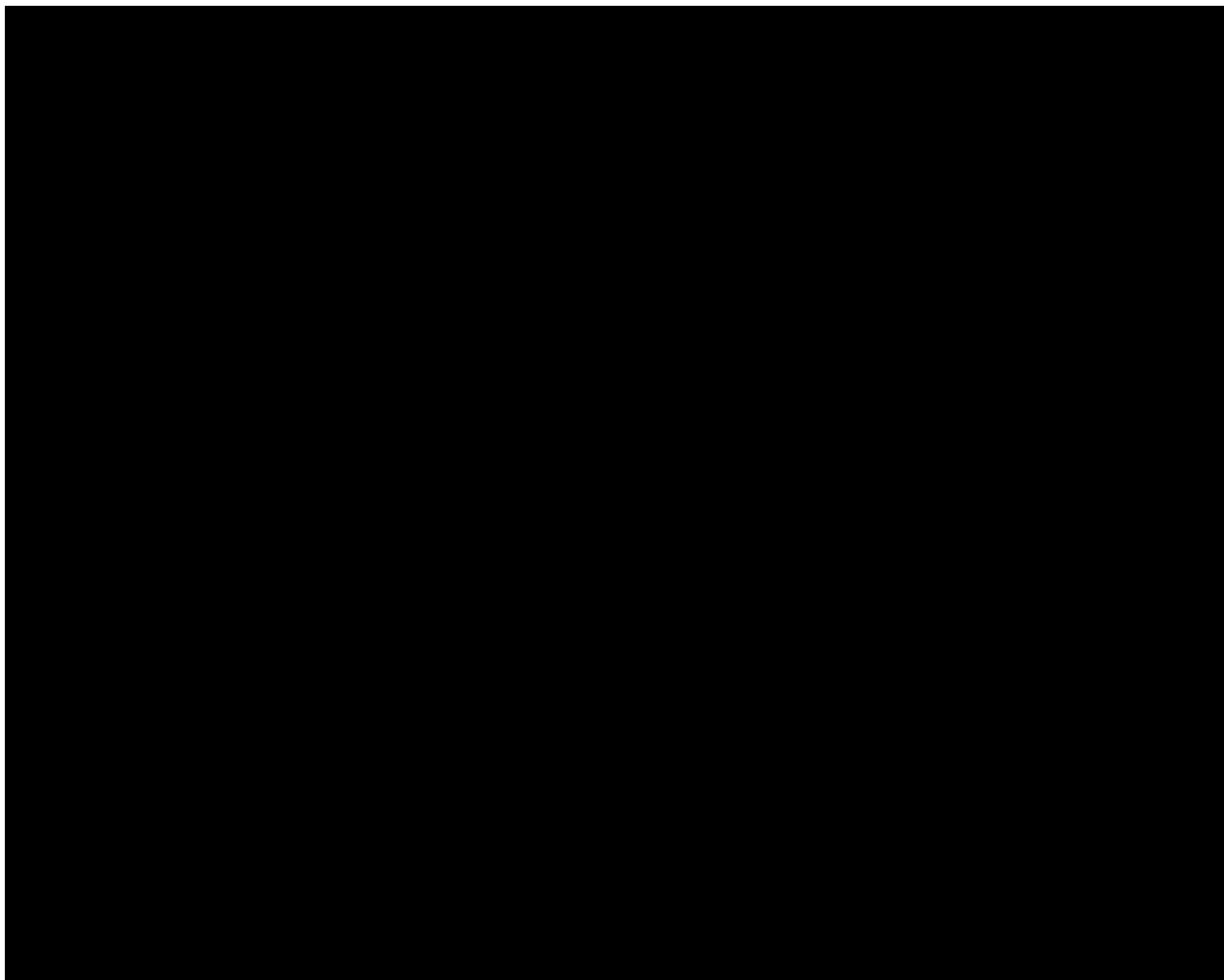
**ARTICLE III
CONDITIONS PRECEDENT; FIRM DATE**

Section 3.1 Effectiveness of Purchase and Sale Obligations. Notwithstanding anything to the contrary contained herein, unless and until all conditions set forth in Section 3.2, 3.3 and 3.4 (collectively, the “***Firm Date Conditions***”) have been satisfied (or waived in writing by (i) Buyer, in the case of Buyer Firm Date CPs or (ii) Seller, in the case of Seller Firm Date CPs), Buyer shall have no obligation to purchase the Purchased Interests or pay the Purchase Price or any other amounts to Seller hereunder, and Seller shall have no obligation to sell the Purchased Interests to Buyer.

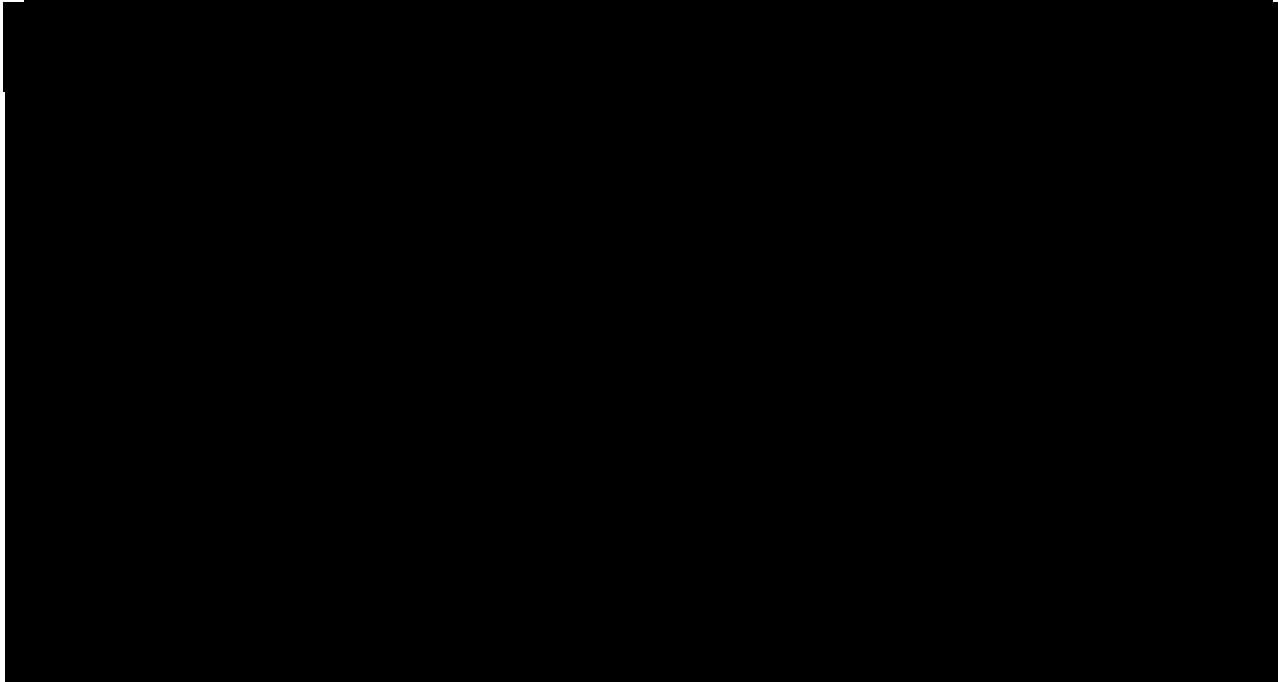
Section 3.2 Buyer Firm Date CPs. 

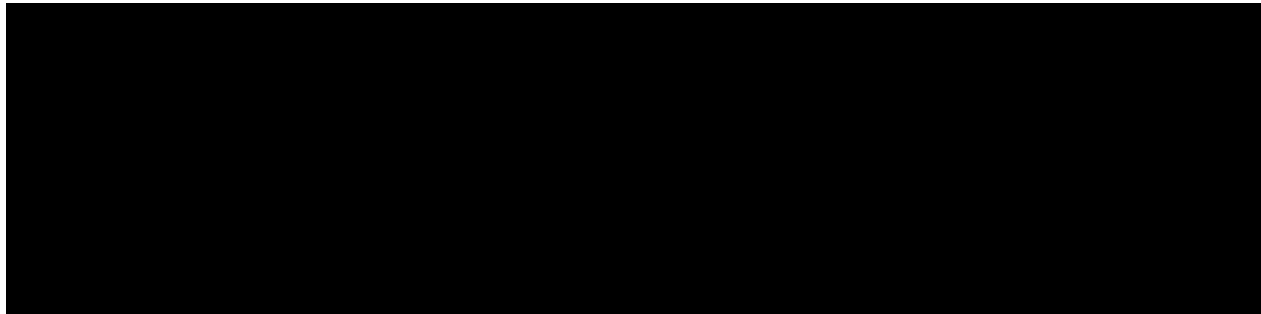




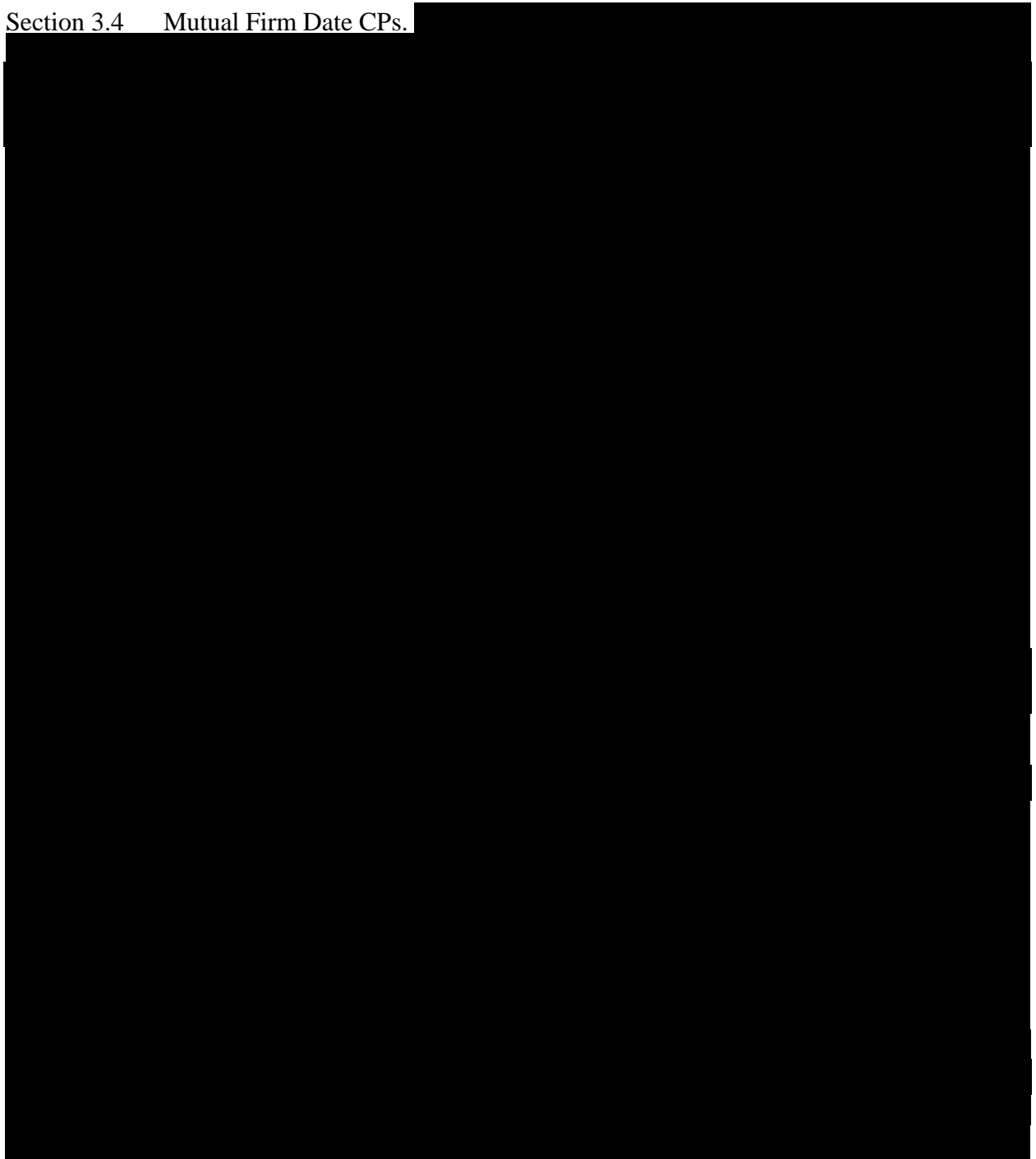


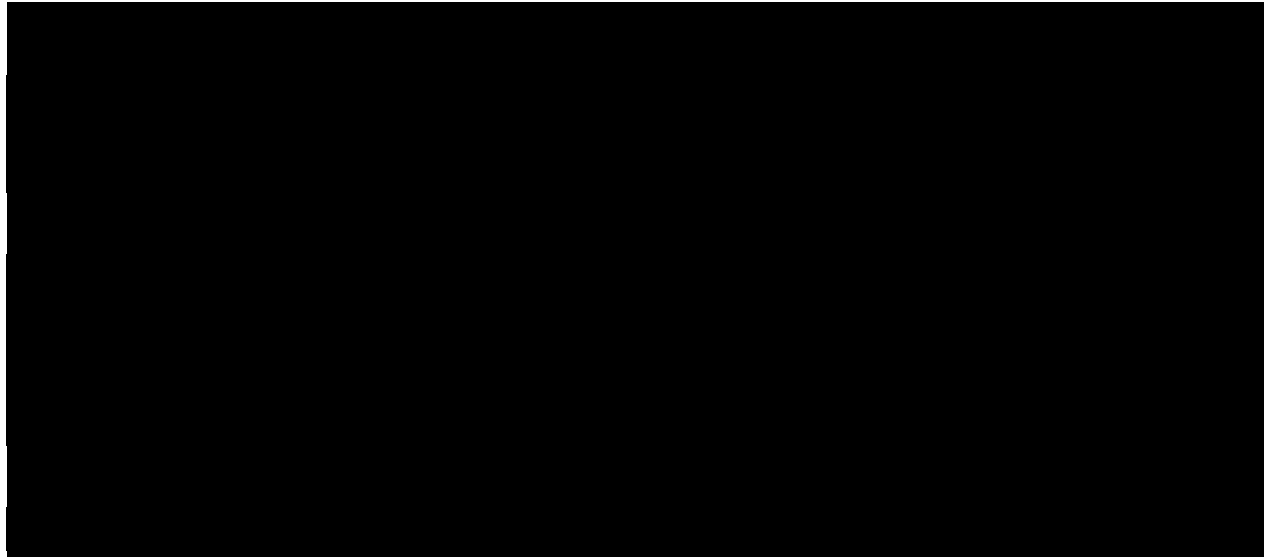
Section 3.3 Seller Firm Date CPs.





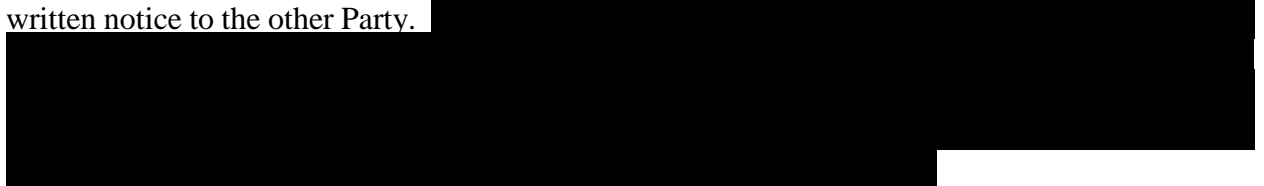
Section 3.4 Mutual Firm Date CPs.



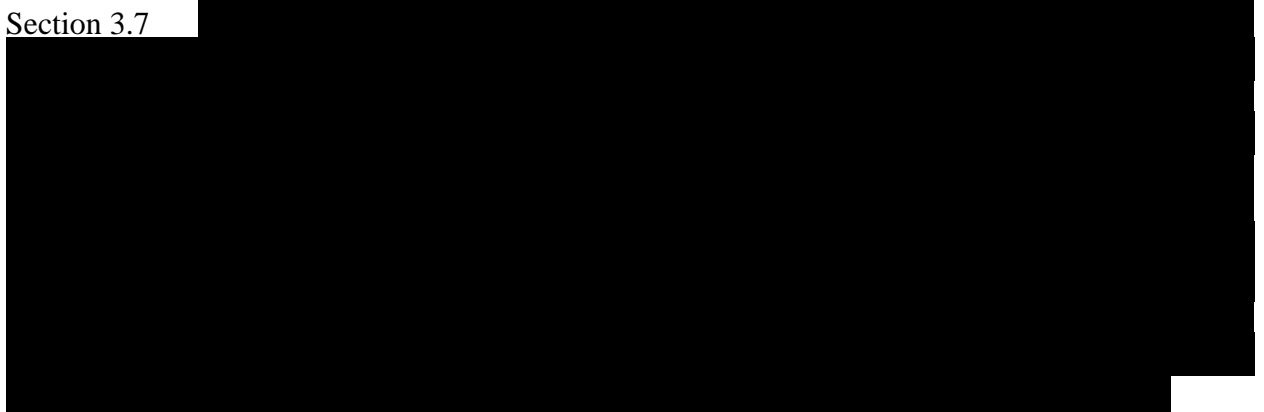


Section 3.5 Covenant. (a) Buyer shall use commercially reasonable efforts to satisfy each of the Buyer Responsibility Firm Date Conditions and (b) Seller shall use commercially reasonable efforts to satisfy each of the Seller Responsibility Firm Date Conditions, in each case, no later than the Firm Date Deadline.

Section 3.6 Termination for Failure to Achieve Firm Date. Either Party shall have the right to terminate this Agreement if (a) the Firm Date has not occurred on or before the Firm Date Deadline, or (b) Buyer provides notice to Seller that it reasonably believes a Buyer Responsibility Firm Date Condition cannot be satisfy by the Firm Date Deadline, in either case, by providing written notice to the other Party.



Section 3.7



**ARTICLE IV
DEVELOPMENT AND CONSTRUCTION COVENANTS**

Section 4.1 Development and Construction Generally.

(a) Seller shall (i) cause the Project to be designed, developed, engineered, procured, permitted, constructed, installed, interconnected, tested, commissioned, owned, operated and maintained in accordance with this Agreement, including the Scope of Work and Specifications, the Material Contracts, Property Agreements and Prudent Industry Practices and in compliance with all applicable Laws and Permits, (ii) use commercially reasonable efforts to cause the Project to achieve Mechanical Completion by the Guaranteed Mechanical Completion Date and (iii) [REDACTED] cause the Project to achieve Substantial Completion by the Guaranteed Substantial Completion Date.

(b) For all purposes of this Agreement, the date of achievement of a completion milestone shall be the date stated in the Completion Certificate delivered by Seller as to which such completion milestone is either accepted by (or pursuant to this Agreement is deemed accepted by) Buyer in accordance with Exhibit O or the date determined pursuant to the dispute resolution provisions set forth in Section 13.4(e) that such completion milestone was achieved (which date shall not be earlier than the date such certificate was delivered to Buyer).

(c) Seller shall be responsible for any and all costs, expenses and Liabilities associated with designing, developing, engineering, procuring, constructing, installing, testing, commissioning and financing the Project and operating and maintaining the Project prior to the Closing Date, including the Liabilities incurred under the Material Contracts, Property Agreements and the Company Permits. Notwithstanding anything in this Agreement to the contrary, Seller shall be solely responsible for any and all costs and expenses required for the Project to achieve (i) Mechanical Completion and (ii) [REDACTED] Substantial Completion and Final Completion [REDACTED]

Section 4.2 Communications; Progress Report; Buyer Site Representative.

(a) Seller shall regularly communicate and consult with Buyer regarding the continuing design, development, engineering, procuring, permitting, construction, installation, testing, commissioning and financing of the Project, and Seller shall in good faith consider Buyer's input and comment with respect to any matters that may arise in respect of such continued development. In furtherance of the foregoing, Seller shall furnish to Buyer a development and construction report in the form attached hereto as Exhibit P (the "**Progress Report**"), which shall be delivered [REDACTED] Seller shall promptly notify Buyer of any event of default under the Construction Loan Agreement or any of the Material Contracts or Property Agreements or any material violation of any Company Permit or applicable Law.

(b) In addition to the Progress Reports, for each applicable reporting period after the commencement of any construction, alteration or repair work on the Project, Seller shall furnish to Buyer a report (the "**PWA Report**") that [REDACTED]



(c) Seller shall permit Buyer to designate an individual or individuals with appropriate qualifications as its representative at the Site (“*Buyer’s Site Representative*”) under this Agreement. Buyer shall designate Buyer’s Site Representative within [REDACTED] after Firm Date. Buyer’s Site Representative shall be permitted to observe, on behalf of Buyer, the performance of the Work at the Site as set forth in more detail in Section 4.4(b). Buyer may substitute Buyer’s Site Representative with another qualified person at any time upon prior written notice to Seller.

Section 4.3 Other Seller Actions.

(a) Throughout the period prior to the Closing Date, Seller shall pursue, and shall cause the Company to pursue, diligently Project activities including those necessary to satisfy all Project-related conditions to the Closing and to the achievement of Substantial Completion and Final Completion (including the acquisition of Property not owned, held by easement or leased by the Company on the Execution Date necessary to cause the Company to own, hold by easement or lease Property covering the entire Site, including fee ownership of the sites for the Project substation(s) and the O&M Building and easements in accordance with Section 4.6(a) for any electric lines, including the gen-tie line from the Project substation to the Point of Interconnection, and all Interconnection facilities). Subject to redaction of any financial or other confidential information, Seller shall provide to Buyer, as promptly as practicable after receipt thereof, copies of (including material drafts) the following:

- (i) any Material Contracts and Property Agreements, and copies of any material notices or other communication delivered to or received from the other parties to the Material Contracts or Property Agreements that affect any such Material Contracts or Property Agreement;

(ii) any Permits obtained by the Company [REDACTED] or on behalf of the Company that pertain to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning ownership, maintenance or operation of the Project;

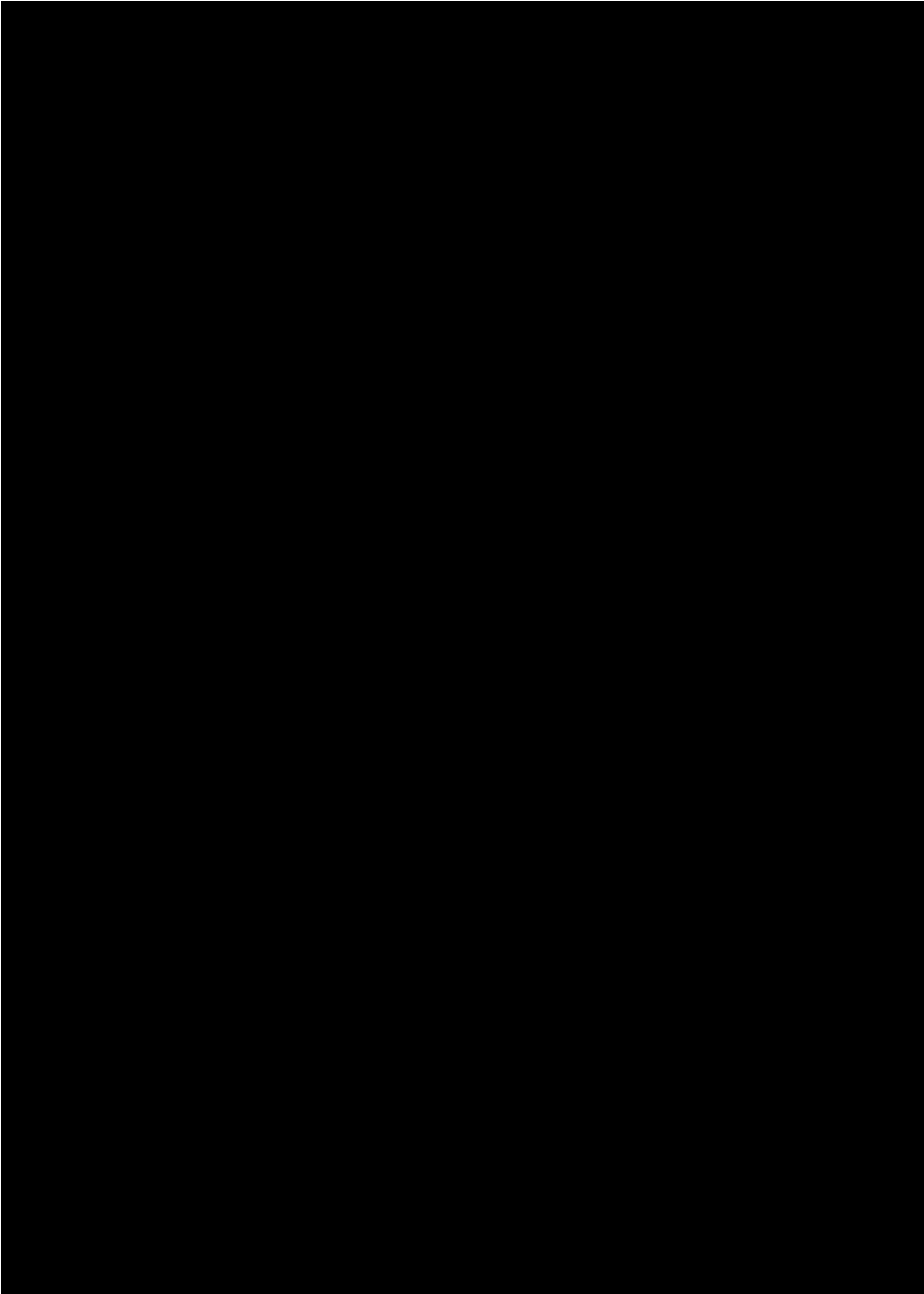
(iii) any final or issued-for-construction design drawings, specifications and other material construction documents that define the characteristics of the Project; and

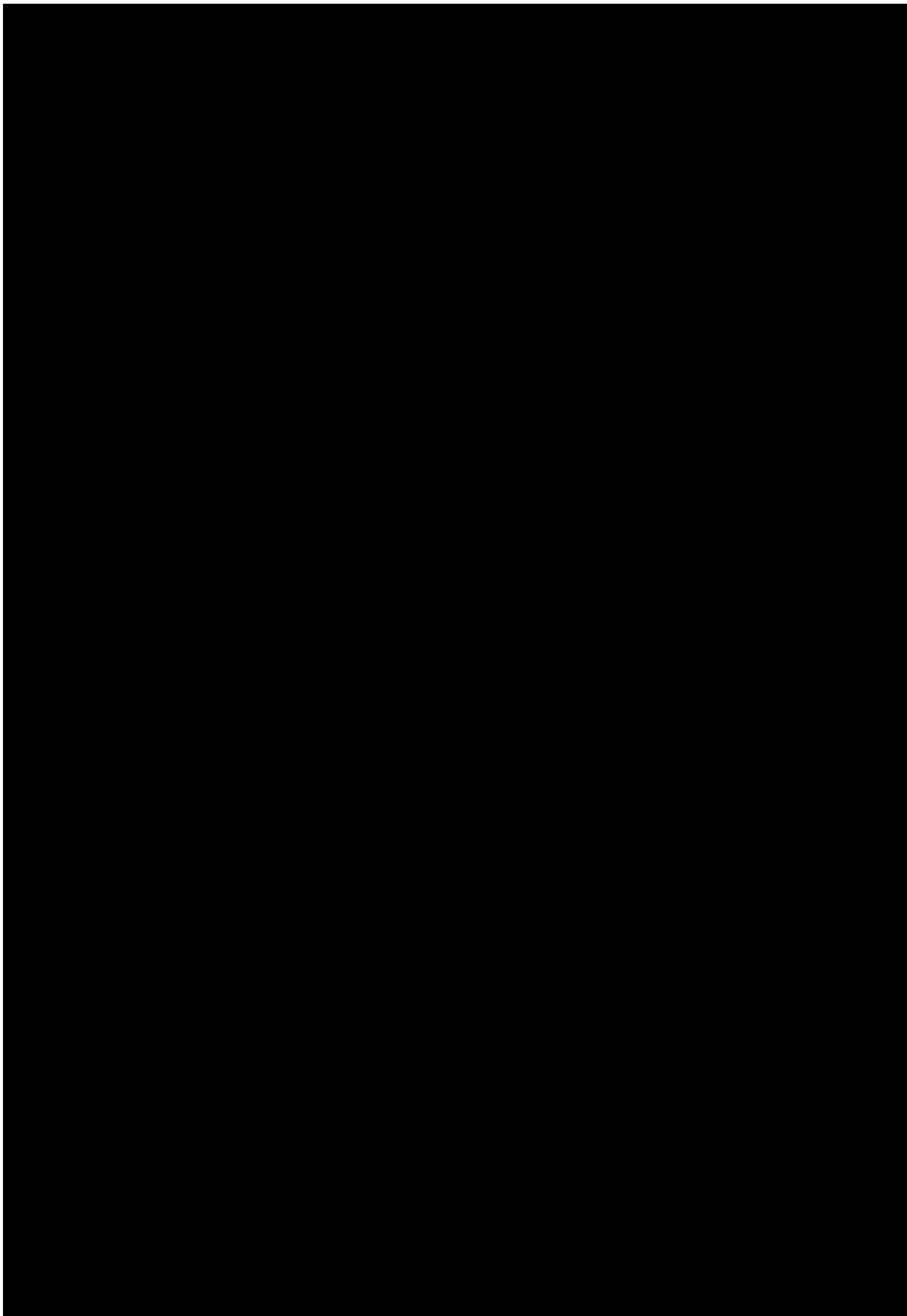
(iv) Solar Data with respect to periods after the periods covered by the Solar Data described in Schedule 6.17.

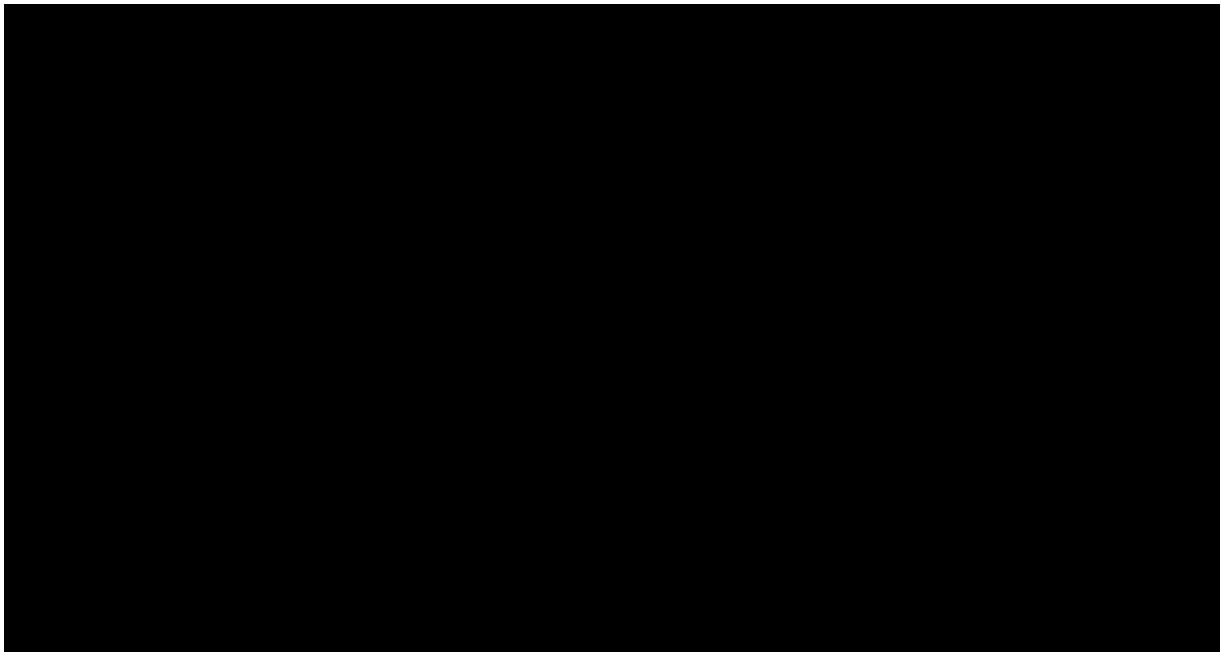
(b) [REDACTED]

[REDACTED]

[REDACTED]







Section 4.4 Site Plan; Access Rights; Document Review and Approval; Reporting.

(a) Review of Site Plan. At least [REDACTED] prior to the anticipated Firm Date, Seller shall deliver to Buyer the Site Plan for Buyer's review and comment. As of the Execution Date, Seller intends for the ultimate location of the Facilities on the Site Plan to be consistent with the Facilities location layout attached hereto as Schedule 4.4(a), as modified in accordance with Prudent Industry Practices and (subject to Buyer's review right set forth herein) the design and engineering process; it being acknowledged and agreed that, as of the Execution Date, Schedule 4.4(a) does not include the final boundaries of the Property subject to the Norfolk Southern Land Contract, but the Site Plan will reflect final boundaries of the Property subject to the Norfolk Southern Land Contract which shall be sufficient to support siting and operation of Facilities crossing and/or located thereon consistent with such Facilities depicted on the location layout attached hereto as Schedule 4.4(a). Within [REDACTED] following its receipt of the Site Plan, Buyer shall provide any comments it may have thereon. Seller shall not be required to consider any comments of Buyer that are not timely provided within such [REDACTED] period. Seller or the Company may revise the Site Plan prior to the Closing Date only with Buyer's prior written approval, not to be unreasonably withheld, conditioned or delayed.

(b) Inspection and Access Rights.

(i) During normal business hours and subject to reasonable prior notice to Seller, Seller shall grant Buyer and Buyer's Representatives, at Buyer's cost, access to the Site, including areas where gen-tie and Interconnection work is performed, to observe and inspect all aspects of the Work, including design and construction drawings and specifications, all Site work, and all design, development, engineering, procuring, permitting, construction, installation, testing and commissioning activities relating to the Project. Seller shall use commercially reasonable efforts to cause (A) the Module Supplier, and (B) the EPC Contractor (BOP) and the HV Contractor, to the extent the same is providing any equipment, with respect to any of its suppliers of components and equipment with a cost in excess of [REDACTED], to grant Buyer and Buyer's Representatives

access to their facilities to observe the manufacture and fabrication of components and to perform quality inspections. A representative of Seller shall have the right, but not the obligation, to be present during any visit by Buyer or its Representatives. Neither Buyer nor any of Buyer's Representatives shall interfere with the use or occupancy of Seller of the Site or the operation or maintenance of the Project. Buyer and Buyer's Representatives shall comply with Seller's reasonable health and safety policies and procedures, to the extent provided to Buyer in writing in advance, and comply with all federal, state, and local laws, rules, regulations, and ordinances which might in any way relate to Buyer's visit, in each case during any Site visit.

(ii) Seller shall furnish for use of Buyer's Representatives suitable space for a construction trailer on the Site with standard utilities.

(iii) Seller shall furnish or cause to be furnished to Buyer and its Representatives, at reasonable times and upon reasonable notice, such access, during normal business hours, as Buyer reasonably requests (A) to all business and operations of Seller, its Affiliates and the Company with respect to the Project and the Site, (B) to Seller's and its Affiliates' management personnel (and those of its and their Contractors and Subcontractors) involved with the Project or the Site, (C) to participate in monthly (or other regularly scheduled) meetings with Contractors and Subcontractors involved with the Site and otherwise to observe, to the extent reasonably practicable, key discussions between Seller, or its Affiliates, and any third parties relating specifically to the Project or the Site, and (D) to all books and records and other information in the possession or control of Seller or any of its Affiliates with respect to the Project or the Site, including communications to or from any Authority respecting the Project.

(iv) Seller shall give Buyer's Site Representative at least 48 hours' notice that any material part of the Work relating to a foundation, the substation or below ground cable splices, will be covered up or put out of view and shall afford full opportunity for Buyer's Site Representative or its designee to inspect any part of such Work which is about to be covered up or put out of view and to examine foundations before any part of the Work is placed thereon. If Seller has not given such notice timely, at Buyer's request, Seller shall cause the Company to uncover any part of such Work or make openings in or through the same as Buyer's Site Representative may from time to time direct and to reinstate and repair such part, at Seller's expense. In addition, Seller shall cause the Company or the applicable EPC Contractor to uncover any portion of the Work or make openings in or through the Work as Buyer's Site Representative may from time to time request (whether or not Buyer's Site Representative inspected the subject Work prior to such Work being covered), and the Company shall reinstate and repair such portion of the Work. The cost of such uncovering, repair, reinstatement and re-covering shall be borne by Seller unless the Scope of Work and Specifications with respect to the applicable portion of the Work have been satisfied and such portion of the Work was performed in accordance with this Agreement; provided that, if Buyer's Site Representative directs the Company or the applicable EPC Contractor to uncover any portion of the Work or make openings in or through the same after the Seller has given timely notice that such part of the Work will be covered up or put out of view, Seller shall be entitled to equitable schedule relief.

(v) Buyer shall have the right to videotape, photograph or otherwise record spot footage of the Work or the Site.

(vi) The exercise by Buyer of any of its inspection rights shall not be deemed to be an approval, authorization or acceptance of any aspect of the Work by Buyer, a waiver of Buyer's rights under this Agreement or a waiver or assumption of any of Seller's obligations under this Agreement.

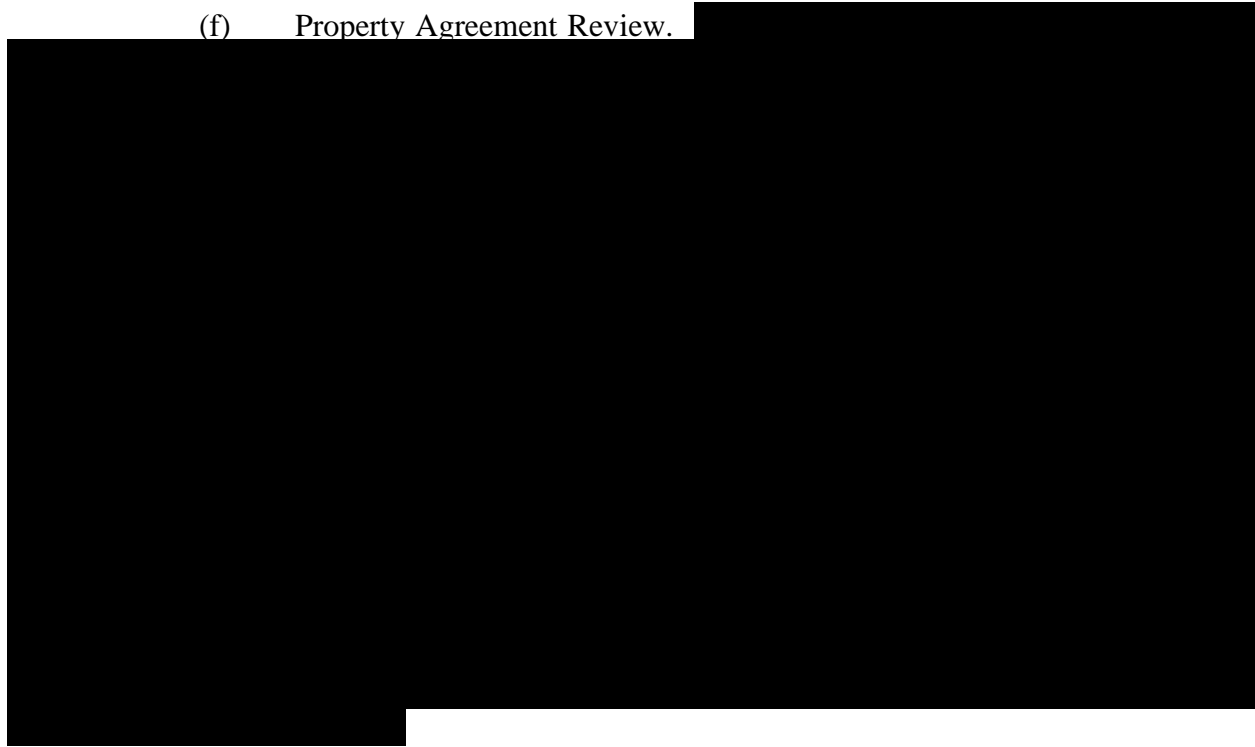
(c) Technical Document Review. All material preliminary and detailed plans, drawings and specifications for major equipment and components prepared or issued for review by or for the Company or by or for Seller with respect to the Project and all construction documents prepared or issued for review by or for the Company or by or for Seller with respect to the Project shall be submitted to Buyer for review and comment to confirm the same are consistent with the Scope of Work and Specifications (simultaneously with the review of such documentation conducted by the Company pursuant to the EPC Contract, the HA Agreement and the Module Supply Agreement) and before commencement of any fabrication, manufacture, assembly, packaging, shipment, construction, or installation with respect thereto. Review, comment and approval by Buyer shall not relieve Seller of any of its obligations hereunder or any of the Contractors' obligations under any Major Project Document.

(d) Site Operating Plan Review. At [REDACTED] Seller shall submit to Buyer the Site Operating Plan for review and approval, such review and approval not to be unreasonably withheld or delayed. Buyer shall have [REDACTED] after the receipt of documents to provide comments thereon. If Buyer fails to provide comments within such [REDACTED] period, such failure shall be deemed a waiver of Buyer's right to comment upon said documents pursuant to this Section 4.4(d). Review, comment and approval by Buyer shall not relieve Seller of any of its obligations hereunder or any of the Contractors' obligations under any Major Project Document.

(e) Major Project Document and Material Contract Review. [REDACTED]

[REDACTED]

(f) Property Agreement Review.



(g) Accident Reporting. Seller shall promptly provide Buyer notice of any material emergencies and recordable safety incidents on the Site and as soon as practicable or available a report regarding such occurrence.

(h) Wildlife. Seller shall conduct such wildlife studies with respect to the Site, the Facilities and the Project as required pursuant to applicable Law. Seller shall use its good faith efforts to utilize best practices to assess and avoid impacts to special status species. Seller shall provide to Buyer, promptly after issuance, a true and complete copy of any Wildlife Restrictions issued with respect to the Facilities.

(i) Status Reports. Promptly upon receipt thereof, Seller shall provide Buyer with all written, and all material oral, construction status reports at the same frequency they are received from the Contractors and Subcontractors, to include the following:

(i) Actual progress versus the planned progress, graphed by area (e.g. excavations, foundations, cable trenching, etc.); and

(ii) Material delivery updates and status; and

(iii) Actual work hours worked, including Subcontractor personnel.

(j) Landowner and Community Reporting. Seller shall provide Buyer with copies, no less than [REDACTED] (or more frequently if reasonably requested by Buyer), of Seller's site team's tracking log of complaints (including associated outcomes and resolutions) to and from any landowners and/or members of the local community prior to Substantial Completion.

Section 4.5 NERC Compliance Plan. Seller and Buyer, each acting reasonably, will jointly develop the NERC compliance program for the Project contemporaneously with the pre-construction project design and engineering Work as described more fully in the Scope of Work and Specifications. The NERC compliance program shall be finalized to Buyer's satisfaction and implemented by Seller not less than [REDACTED] prior to the Closing. The NERC compliance program will include, at a minimum, the items identified in the Renewable Project Deliverable Requirements for NERC Compliance Review (GEN-4601) set forth in the Scope of Work and Specifications.

Section 4.6 Site Finalization; Title and Survey.

(a) As soon as practicable after the Execution Date, but no later than [REDACTED] prior to the Firm Date, Seller shall cause the Company to obtain all additional Property rights not held by the Company on the Execution Date such that (i) the Property owned or leased by the Company covers the entire Site [REDACTED]

(b) As soon as practicable after the Execution Date but no later than [REDACTED] after the Execution Date, Seller shall promptly and diligently, at Seller's sole cost and expense, deliver to Buyer the following (such delivery to Buyer to be as soon as possible after Seller's receipt of same on a continuous rolling basis):

(i) [Reserved]

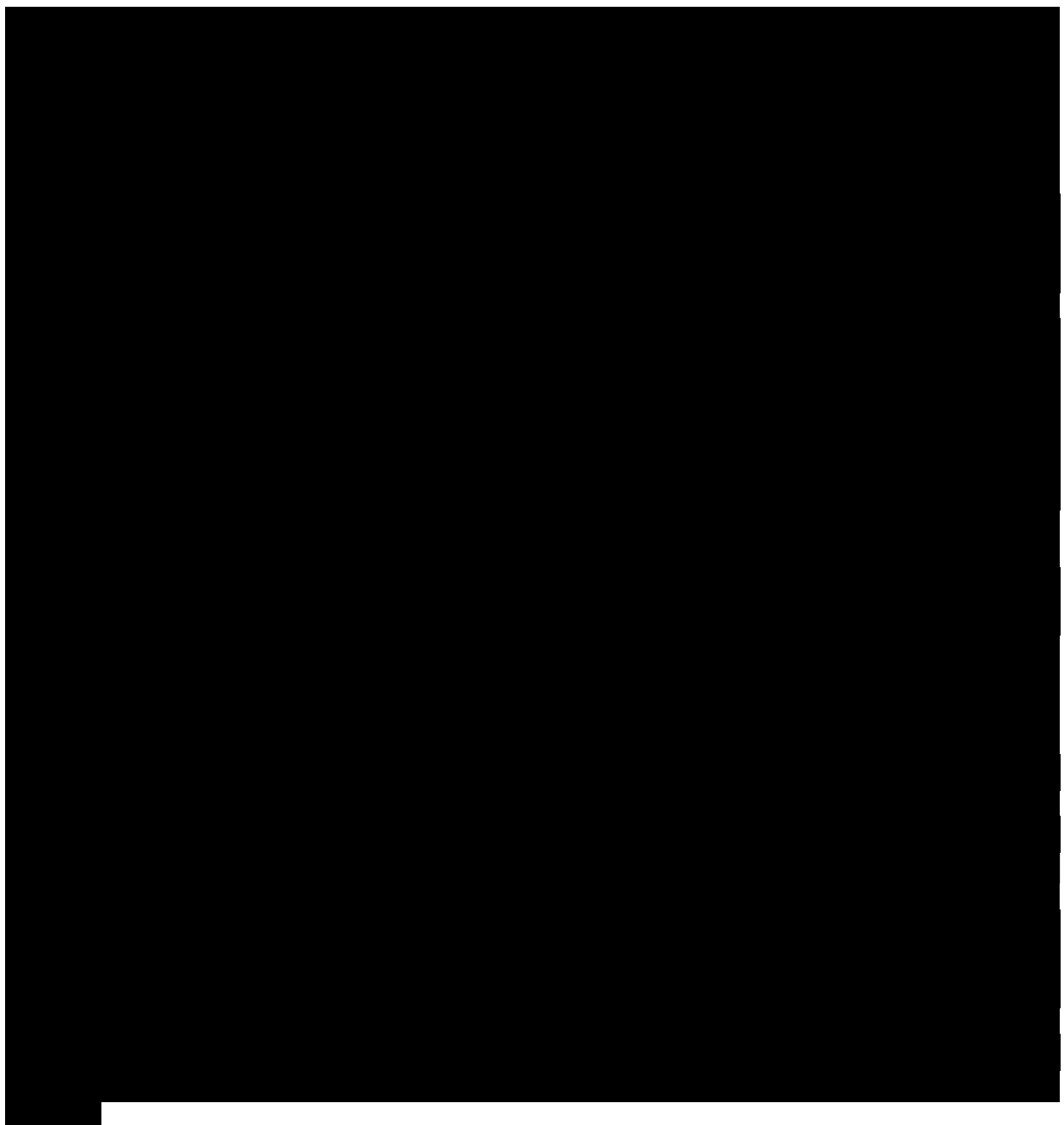
(ii) [Reserved]

(iii) the Title Reports (together with copies of any instruments that create or evidence exceptions to title to any of the Real Property or which the Title Reports require to be satisfied, released or terminated as a condition of issuing the Title Policy (the “*Exception Documents*”)) and a preliminary draft of the Survey, if one exists; and

(iv) [REDACTED] true and complete copies of all of the Property Agreements, and all Land Contracts constituting options or agreements to acquire leasehold, easement or fee title, and Seller shall deliver to Buyer true and complete copies of fully executed (A) leases (and recorded memoranda thereof), (B) easements and licenses (which shall have been recorded or a memorandum thereof recorded), and (C) recorded deeds.

(c) Buyer shall, within [REDACTED] provide a list of exceptions to Seller that Buyer expects Seller to address in the curative process; [REDACTED]

(d) [REDACTED]



(e)



[REDACTED]

(f)

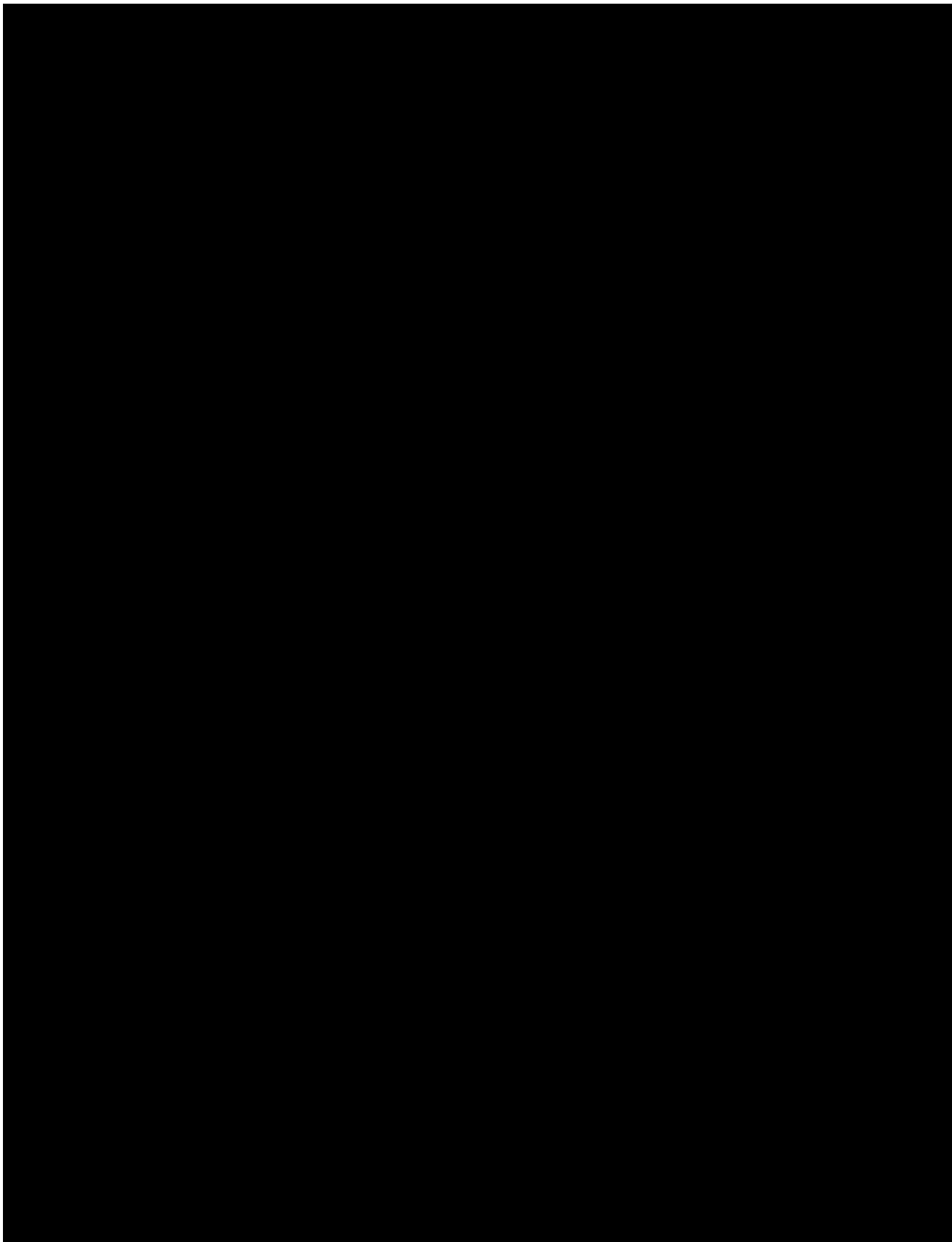
[REDACTED]

(g)

[REDACTED]

Section 4.7 State Commission Approvals.

[REDACTED]



Section 4.8 FERC Approvals.

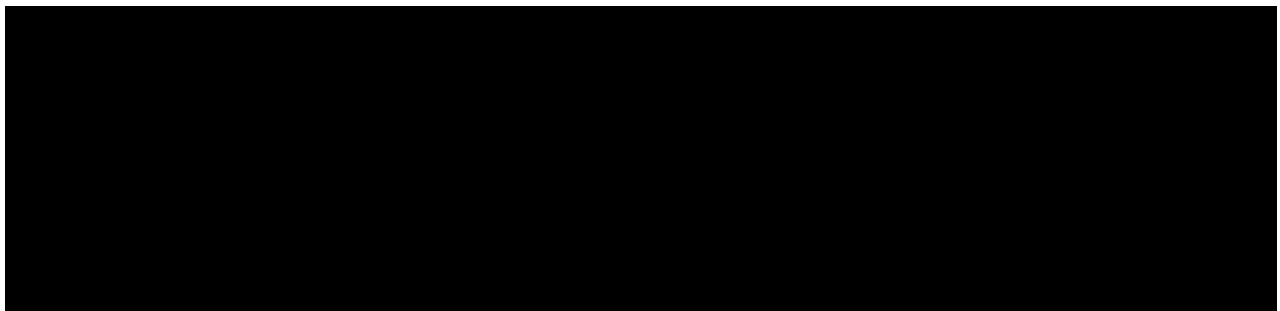
(a) Without limiting the provisions of Section 5.1, (a) subject to Buyer's review and approval rights hereunder, Seller shall use commercially reasonable efforts to cause the Company to enter into the Interconnection Agreements and the Interconnection Construction Service Agreements and (b) within [REDACTED] after the Company's receipt of the final, fully executed Interconnection Agreement or Interconnection Construction Service Agreement for the Project, Seller shall use commercially reasonable efforts to cause the Transmission Provider to file such agreements with FERC to the extent that Transmission Provider determines that it is required to file either such agreement pursuant to 18 C.F.R. §35.1(g).

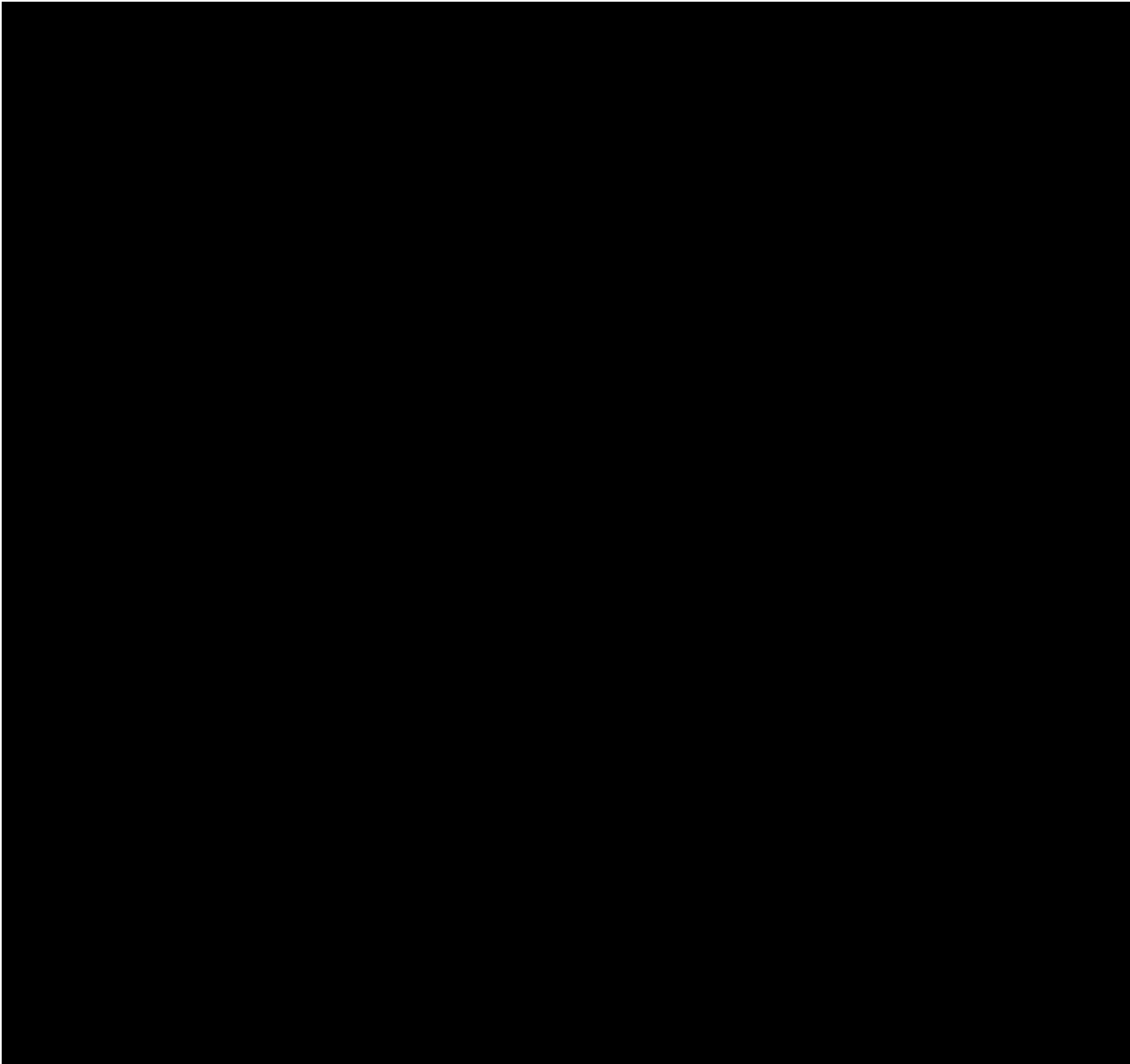
(b) Both before and after the Closing, Seller shall provide Buyer with such information with respect to the Project, including information concerning the cost of the Facilities and components thereof, that Buyer reasonably requests to support (i) Buyer's submission to FERC of a proposed rate schedule to receive payment for the capability to provide reactive power to Transmission Provider pursuant to Schedule 2 of Transmission Provider's Open Access Transmission Tariff (or any applicable successor or replacement Schedule or Tariff amount), which provides that Transmission Provider shall pay each generation resource owner an amount equal to the resource owner's [REDACTED] revenue requirement, as accepted or approved by FERC, and (ii) Buyer's prosecution to successful completion of the FERC proceedings related to such proposed rate schedule, including issuance by FERC of an Order accepting or approving a rate schedule authorizing such payments to Buyer.

(c) Immediately following the Company obtaining the market-based rate authorization under Section 205 of the Federal Power Act, Seller will provide Buyer with a draft Notice of Cancellation pursuant to 18 C.F.R. Section 35.15 to effectuate the termination of the Company's market-based rate authorization and tariff (the "**Notice of MBR Cancellation**") for Buyer's review and approval. Upon Buyer's review and approval of the draft Notice of MBR Cancellation, not to be unreasonably withheld, conditioned or delayed, Seller shall (i) file such Notice of MBR Cancellation with FERC no later than [REDACTED] prior to the Closing, with such cancellation to take effect upon the to be determined Closing Date, and (ii) upon Closing, make an informational filing advising FERC of the effective date of the Closing and the market-based rate authorization and tariff cancellation.

(d) [REDACTED] Seller shall provide Buyer with continuous access to the Company's eTariff database.

Section 4.9 Financing; Cooperation.





Section 4.10 [Reserved].

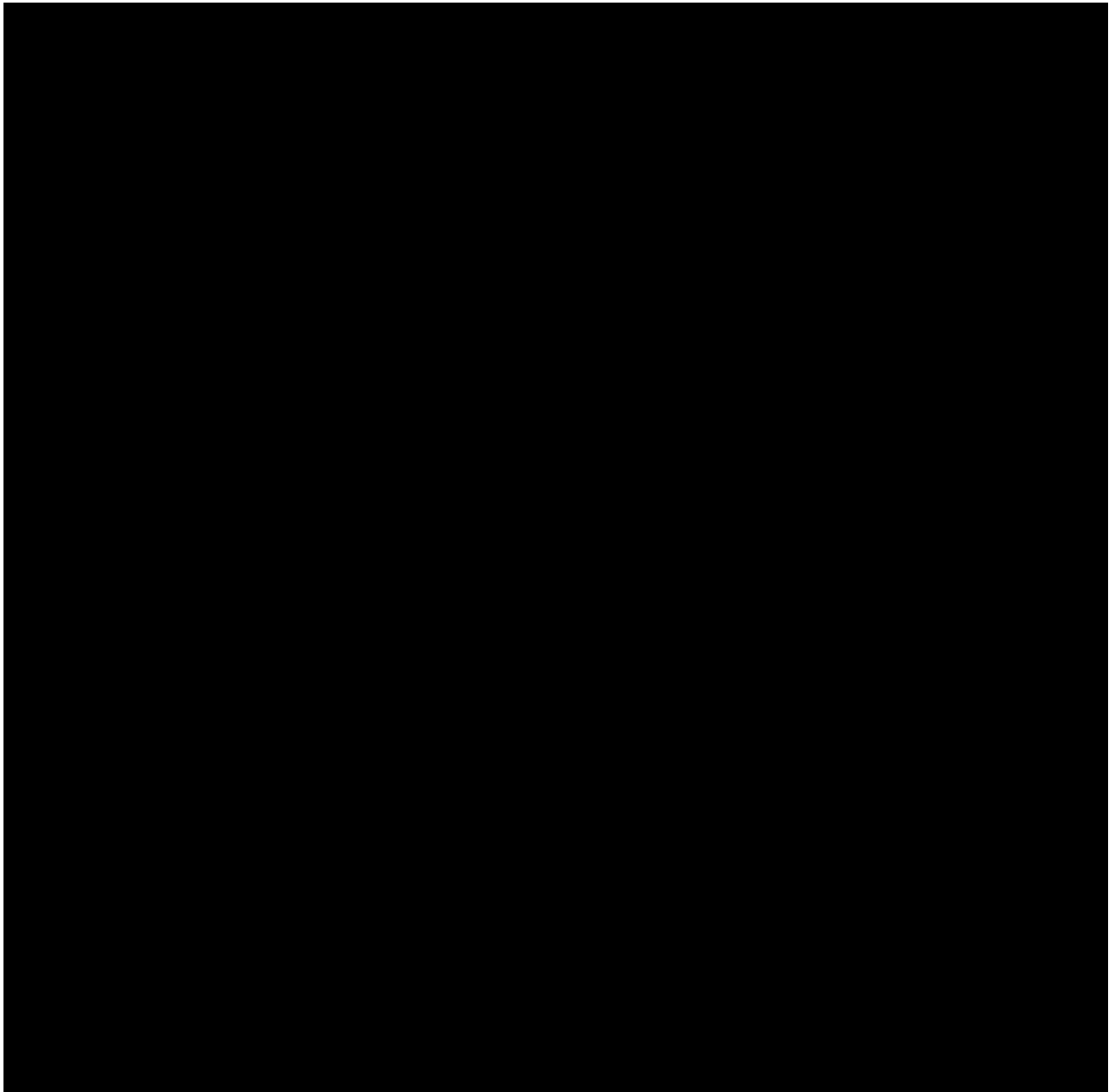
Section 4.11 Intended Tax Treatment.

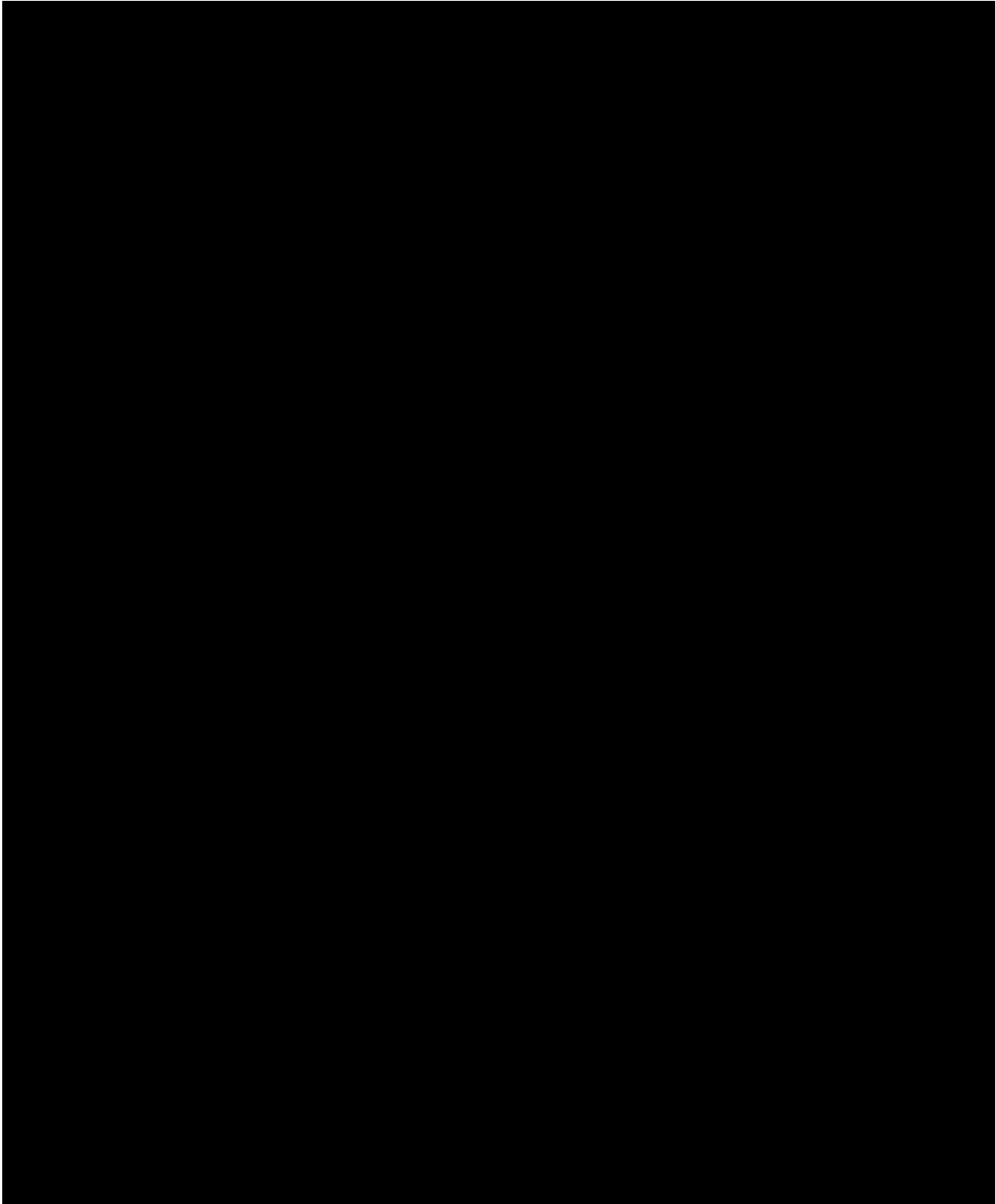
(a) Buyer and Seller intend for the Project to be treated as originally Placed in Service by Buyer for all federal, state and local income tax purposes and agree to file all federal, state and local income tax returns in a manner consistent with such intention, unless required by a final determination, within the meaning of Section 1313 of the Code, to the contrary. Consistent with the foregoing, neither Seller nor any Affiliate of Seller will (i) take a position on any Tax Return that is inconsistent with the Project being Placed In Service by Buyer and the “original use” (within the meaning of Section 48 of the Code) of the Project and any property that is part of the Project, including the Company Assets, commencing with Buyer, or (ii) claim on any Tax Return

any depreciation or amortization deductions, PTCs or any other tax credits or deductions that are available with respect to ownership or operation of the Project or any property that is part of the Project, including the Company Assets.

(b) Prior to the Closing Date, neither Seller nor any Affiliate of Seller will engage in any action or fail to take any action that it knows or reasonably should know would adversely affect the eligibility of the Project for, or the receipt by Buyer or any of its Affiliates of, the PTC.

Section 4.12





Section 4.13 No Sales of Test Power; Placement in Service. Notwithstanding anything in the Agreement to the contrary, prior to the Closing, the Company may perform testing solely to the extent required to achieve Mechanical Completion resulting in the generation of electric energy,

but otherwise (a) Seller shall not, and shall cause the Company to not, sell, transmit or otherwise deliver any power from the Project to any other Person, and (b) Seller shall not, and shall cause the Company and the EPC Contractors to not, permit the Project to be Placed in Service or synchronized to the transmission grid without Buyer's prior written approval, which may be withheld, conditioned or delayed in Buyer's sole discretion.

Section 4.14 Project Insurance Policies. Seller shall obtain and maintain in full force and effect through the Substantial Completion Date the insurance policies as provided in Schedule 6.18.

Section 4.15 O&M Building Substantial Completion. Seller shall ensure that the EPC Contract (BOP) conforms to the SOW designs and specifications with respect to the O&M Building. Buyer shall have the exclusive right to occupy and use the O&M Building from and after the O&M Building Substantial Completion Date; provided, that Buyer shall provide Seller and the applicable Contractors' reasonable access to the O&M Building for purposes of completing Punch List Items with respect to the O&M Building, or to perform work necessary to achieve Substantial Completion or Final Completion, so long as such access does not unreasonably interfere with Buyer's use of the building.

Section 4.16 Guaranteed Mechanical Completion; Guaranteed Substantial Completion Date; Liquidated Damages.

(a) In the event Mechanical Completion has not occurred on or before the Guaranteed Mechanical Completion Date, liquidated damages ("*MC Delay Liquidated Damages*") in favor of Buyer will accrue at the rate of [REDACTED]

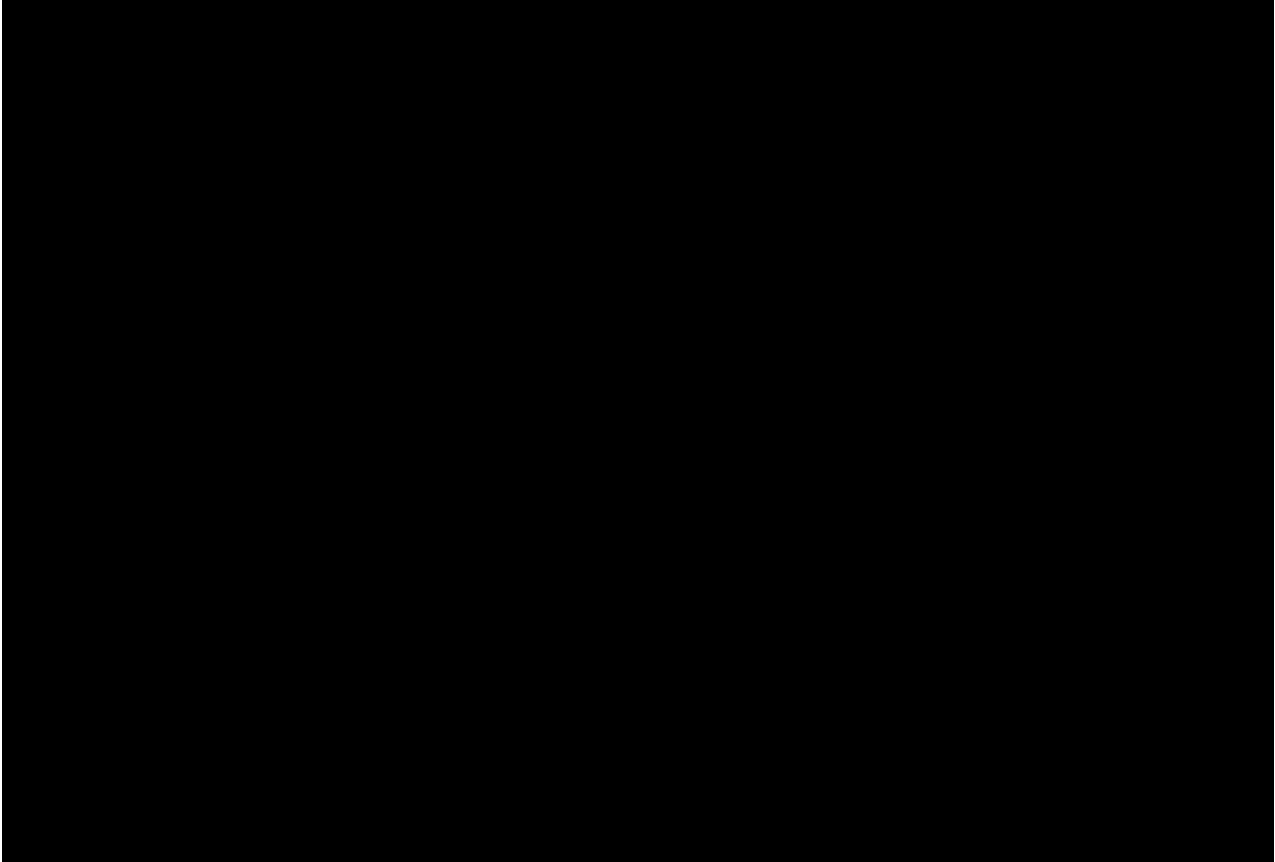
(b) In the event Substantial Completion has not occurred on or before the Guaranteed Substantial Completion Date, liquidated damages ("*SC Delay Liquidated Damages*") in favor of Buyer will accrue at the rate of [REDACTED]

(c) [REDACTED]

Section 4.17 Final Completion.

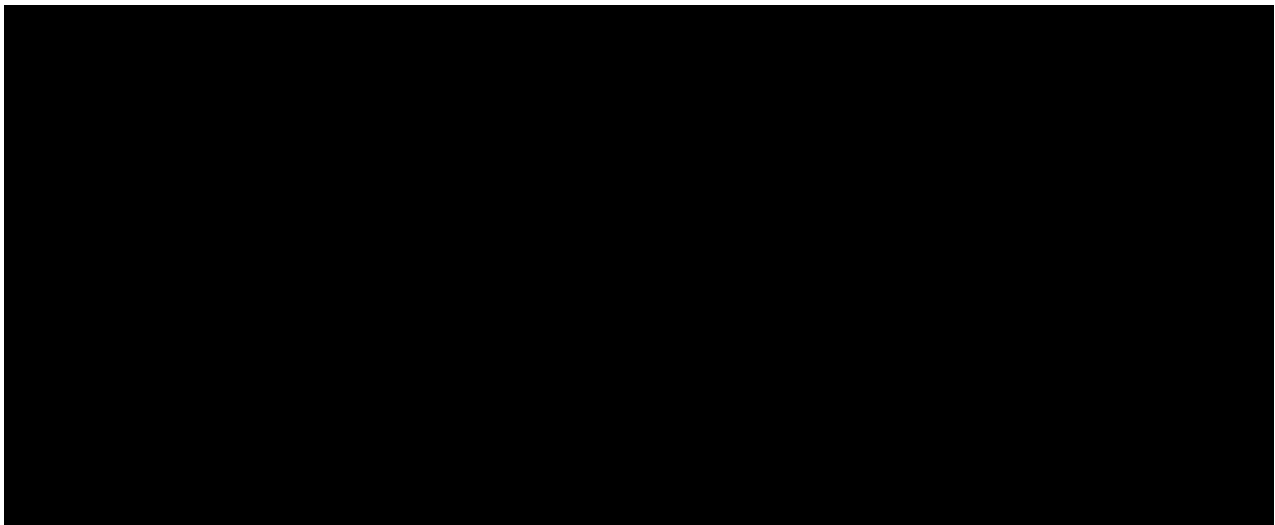
Seller shall cause Final Completion to occur no later than
days after the Substantial Completion Date.

Section 4.18 Warranty.



Section 4.19 [Reserved].

Section 4.20 AEP Supplier Code of Conduct.



[REDACTED]

Section 4.21

[REDACTED]

[REDACTED]

Section 4.22 Prevailing Wage and Apprenticeship Requirements.

[REDACTED]

**ARTICLE V
OTHER PRE-CLOSING COVENANTS**

Section 5.1 Consents and Reasonable Efforts. Buyer and Seller shall use their respective commercially reasonable efforts to obtain, or to assist in obtaining, all consents, approvals, transfers, permissions, waivers, orders, reissuances and authorizations of (and make all necessary filings or registrations with) all Authorities and other third parties which are required to be obtained or made by them in connection with the consummation of the transactions contemplated by this Agreement or in connection with the Project. At no cost to Seller, Seller shall assist Buyer in identifying and obtaining all consents, approvals, permissions and waivers necessary to facilitate Buyer's implementation of the Assets Distribution to Buyer or Merger post-Closing. The Parties do not contemplate that approval for the transactions contemplated hereby will be required under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, will be required; however, if a filing for approval thereunder is required the Parties shall share equally the filing fees therefor.

Section 5.2 Restrictions on Actions. Seller shall not, and shall cause the Company not to, take any of the following actions without the prior written consent of Buyer:

(a) sell, lease, license, assign, transfer or dispose of (including transfers to Seller or any Affiliate) any Company Assets other than (with respect only to this Section 5.2(a)) and without limiting the other consent requirements of this Section 5.2) in the Ordinary Course of Business in connection with any casualty, or to the extent obsolete or no longer needed;

(b) make any material change in the accounting methods used by Seller for the Company, except as required by GAAP;

(c) merge, combine or consolidate the Company with any other entity;

(d) permit Company to (i) create, incur or assume any Indebtedness other than that which is satisfied and released in full prior to the Closing; (ii) mortgage, pledge or otherwise encumber, incur or suffer to exist any Encumbrance on any of its properties or Assets, except for Permitted Encumbrances, (iii) create or assume any other Indebtedness, except accounts payable and other liabilities incurred in the Ordinary Course of Business, (iv) guaranty any Indebtedness of another Person or enter into any "keep well" or other agreement to maintain any financial condition of another Person, or (v) make any loans, advances or capital contributions to, or investments in, any other Person;

(e) redeem or repurchase, directly or indirectly, any Equity Securities of the Company or declare, set aside or pay any dividends or make any other distributions, except cash distributions, with respect to any Equity Interest in the Company;

(f) issue, sell or transfer any Equity Interest in the Company except (i) pursuant to, or in connection with, the pledge of any such Equity Interests to the Financing Parties as

collateral with respect to the Financing and (ii) pursuant to, or in connection with, the exercise of remedies by all or any of the Financing Parties with respect to the Financing;

(g) permit Company to acquire (by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof or collection of assets constituting all or substantially all of a business or business unit;

(h) make or change any method of accounting with respect to Taxes, make or change any income or other material Tax election, file any amended Tax Return (other than sales and use or personal property Tax Returns), enter into any closing or similar agreement, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, in each case, related to the Company or its Assets;

(i) change or authorize any change in the Corporate Documents of the Company;

(j) hire any employee, or adopt any Benefit Plan, or incur any Liability under any Benefit Plan, in each case, for the Company;

(k) undertake any recapitalization, reorganization, liquidation, dissolution or winding up on behalf of the Company, or not maintain the Company's existence as a limited liability company;

(l) permit Company to engage in any line of business other than the continued design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, operation and maintenance of the Project;

(m) (i) enter into any Contract that would be included in the definition of Material Contract if it had been entered into as of the Execution Date, or (ii) terminate or materially amend, modify or waive any material right under, any Material Contract, in each case, except as expressly permitted herein;

(n) (i) enter into any Contract that would be included in the definition of Property Agreement if it had been entered into as of the Execution Date, or (ii) terminate or materially amend, modify or waive any material right under, any Property Agreement, in each case, except as expressly permitted herein;

(o) enter into any Contract or accept the issuance of any Permit that requires the Company to have in place credit support (i.e. cash deposit, letter of credit, guaranty, etc.), in each case, that would remain outstanding after the Closing Date, except as expressly permitted herein;

(p) fail to obtain, maintain or renew all necessary Permits required for the Business of the Company;

(q) agree or accept any terms or conditions with respect to the issuance of any Permit for the Company or Project that would, or would reasonably be expected to, limit the operation of, or increase the costs of owning, operating or maintaining the Project;

- (r) with respect to the Company or the Project, fail to comply, in all material respects, (i) with all applicable Laws, or (ii) with the terms of all Material Contracts and Property Agreements.
- (s) fail to maintain all records of the Company consistent with past practice;
- (t) settle or initiate any Action with respect to the Company or the Project in a manner that would be contrary to Prudent Industry Practices;
- (u) sell, assign, or otherwise transfer any RECs or Environmental Attributes to any Person;
- (v) defer any payment obligations of the Company under the Interconnection Construction Services Agreements or Interconnection Agreements; or
- (w) commit or agree orally or in writing to do any of the foregoing.

Nothing in this Section 5.2 shall in any way restrict Seller or its Affiliates from causing the Company to (i) use cash for the purposes of effecting lawful payments as required in connection with the construction, development, operation and maintenance of the Project, (ii) settle obligations between the Company and any of their respective Affiliates in accordance with Section 5.4, (iii) comply with applicable Law or the requests of Authorities with respect to the Project or the Company, or (iv) take any other action required by this Agreement.

Section 5.3 Notification of Completion or Failure of Conditions. Each Party to this Agreement will promptly notify the other Party of any satisfaction or failure of conditions under this Agreement; and each Party shall keep the other Party reasonably apprised with respect to the status of satisfaction of the notifying Party's obligations hereunder.

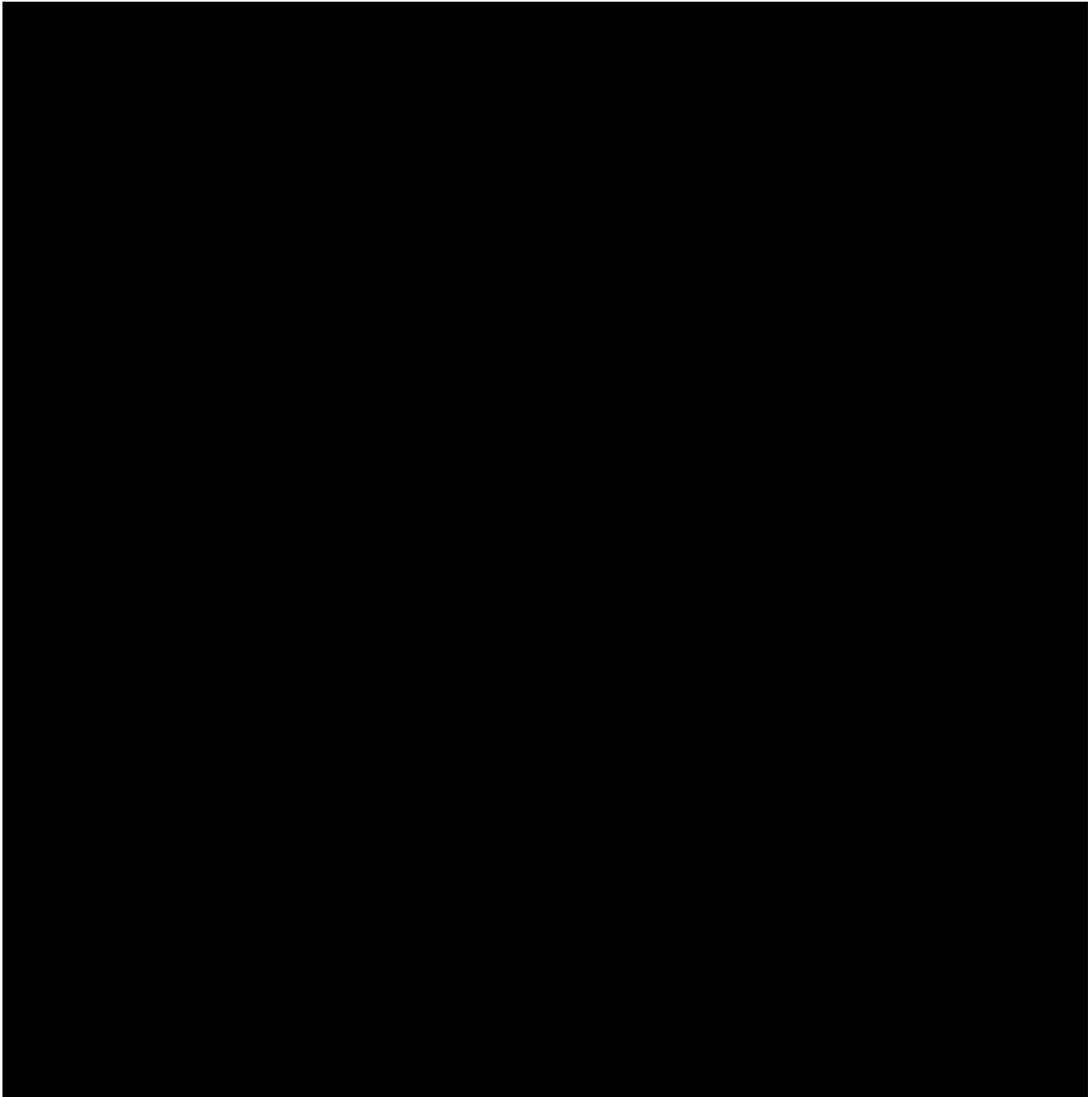
Section 5.4 Intercompany Obligations. At or prior to the Closing, Seller shall cause all intercompany account obligations (including Indebtedness) between the Company, on the one hand, and Seller or any of its Affiliates (other than the Company), on the other hand, to be settled by either causing such accounts and obligations to be (a) paid and discharged, including by netting of payables and receivables involving the same parties, or (b) cancelled without Seller or the Company paying any consideration therefor [REDACTED]

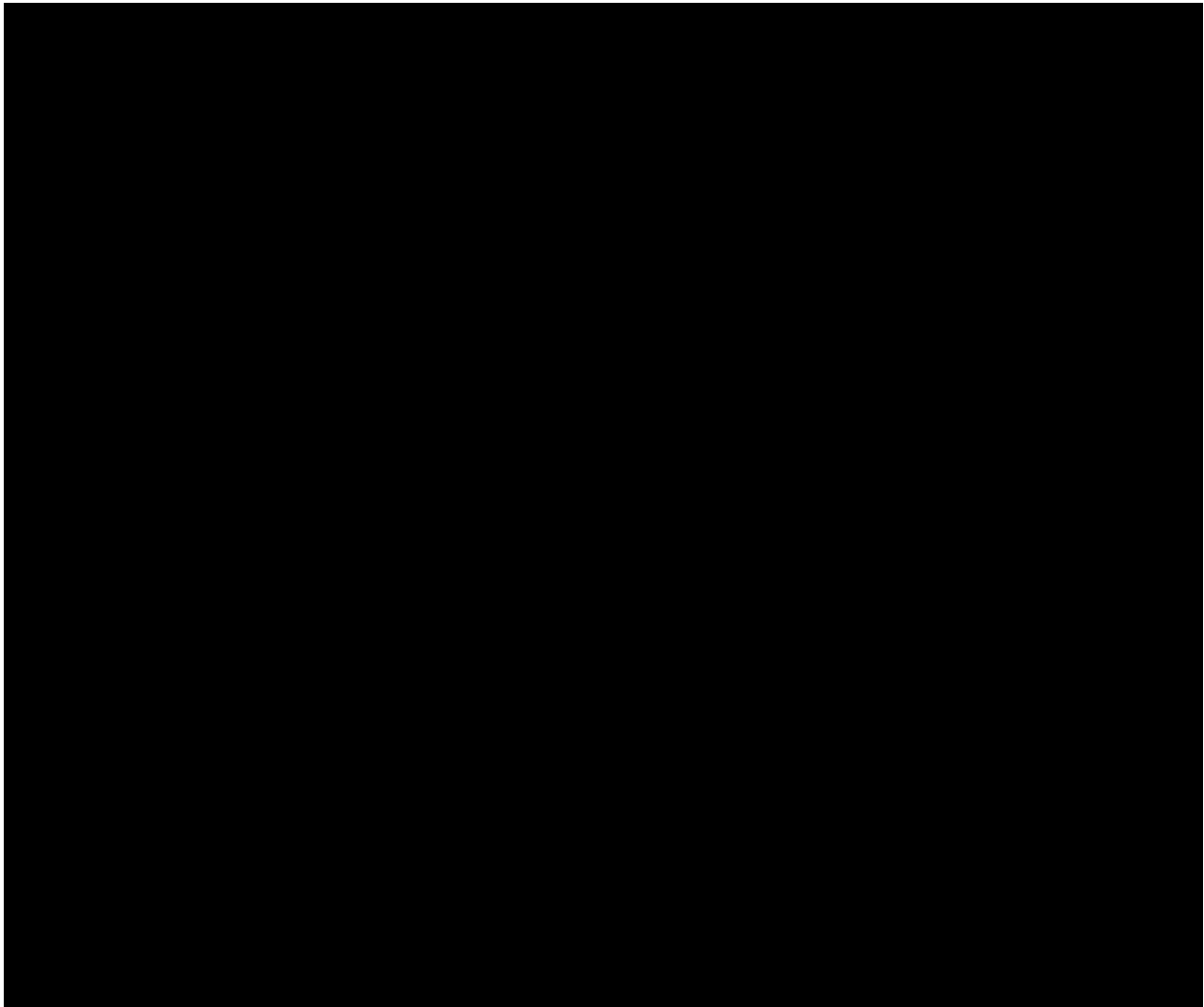
In addition, other than the Ancillary Agreements, any Contracts listed on Schedule 5.4, or as otherwise authorized by Buyer in writing prior to the Closing Date, Seller shall cause all intercompany Contracts between the Company, on the one hand, and Seller or any of its Affiliates (other than the Company), on the other hand, to be terminated and (i) neither Seller, nor any Affiliate of Seller, shall have any surviving rights or obligations under any Contract between the Company, on the one hand, and Seller or any other Affiliate of Seller (other than the Company) on the other hand and (ii) the Company shall not have any surviving obligations under any such Contract.

Section 5.5 No Negotiations. From and after the Execution Date and prior to the Closing, Seller shall not, and shall cause its Affiliates and Representatives not to, initiate or solicit, directly or indirectly, any inquiries or the making of any proposal with respect to, engage in negotiations concerning, provide any confidential information or data to any Person with respect to, have any

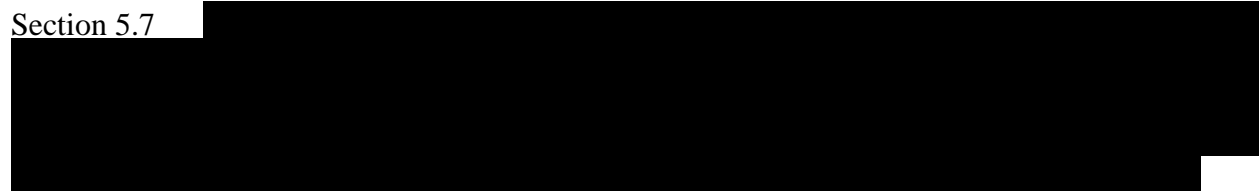
discussions with any Person (except with Buyer and the Financing Parties or any other Person following a default and exercise of remedies under the Construction Loan Agreement or security documents entered into in connection therewith) or enter into any letter of intent or similar document or any written agreement or commitment relating to, an Acquisition Proposal and shall immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person conducted prior to the date hereof with respect to any of the foregoing. If Seller or its Affiliates or Representatives receives any Acquisition Proposal from any Person, Seller will not engage in any discussions with such Person with regard to such Acquisition Proposal.

Section 5.6 Seller Credit Support.



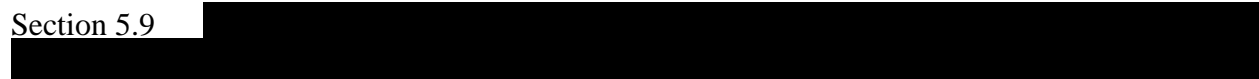


Section 5.7



Section 5.8 Project Document Credit Support Obligations. On or before the Closing Date, Buyer shall provide to the appropriate beneficiary replacement deposits, guaranties, letters of credit, bonds, indemnities or other credit assurance of a comparable and sufficient nature (including cash posted as credit support), in each case executed solely by Buyer as may be required, in substitution for those Project Document Credit Support Obligations, to the extent such Project Document Credit Support Obligations remain outstanding as of the Closing Date; provided that, with respect to any cash deposits posted as credit support, Buyer shall provide to Seller such replacement credit support.

Section 5.9



[REDACTED]

Section 5.10 [REDACTED]

[REDACTED]

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer, as of the Execution Date, the Firm Date, and as of the Closing Date, as follows; provided, however, that to the extent any representation and warranty is specified as being given only as of a specific date, such representation and warranty shall be deemed to be made only as of such date:

Section 6.1 Corporate Existence and Powers. Seller is a corporation validly existing and in good standing under the Laws of the State of Delaware, and is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it under this Agreement and the Ancillary Agreements to which it is a party make such qualification or licensing necessary. Seller has all the requisite corporate power and authority to conduct its business with respect to the ownership of the Purchased Interests and the ownership, leasing and operation of the Project. Seller's Corporate Documents are in full force and effect. Seller is not in material violation of any of its Corporate Documents.

Section 6.2 Company Existence and Powers. The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware, and has all the requisite limited liability company power and authority to conduct its Business as it is now being conducted and to design, develop, engineer, procure, permit, construct, install, test, commission, own, maintain and operate the Project. The Company is duly qualified or licensed to do Business in each jurisdiction in which the ownership or operation of the Company Assets makes such qualification or licensing necessary. The Company has been engaged in no other business since its formation other than the development of the Project. Seller has Made Available to Buyer true and complete copies of the Company's Corporate Documents and such Corporate Documents are in full force and effect and have been maintained in accordance with good business practice. The Company is not in violation of any of its Corporate Documents.

Section 6.3 Authority; Ownership of Company. Seller has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to be executed by it in connection with this Agreement and to perform the obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Seller has taken all corporate action necessary to execute and deliver this Agreement and the Ancillary Agreements, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder, and no other action or proceeding on the part of Seller is necessary to authorize this Agreement and the Ancillary Agreements and the transactions contemplated hereby

and thereby. This Agreement has been duly executed and delivered by Seller and, as of the Closing, the Ancillary Agreements to be executed by Seller will be duly executed and delivered by Seller. Assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by Buyer and each other party thereto, this Agreement and, as of the Closing, the Ancillary Agreements, as applicable, will constitute legally valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

Section 6.4 Consents and Approvals. Except for Company Permits, [REDACTED] any consent, approval or authorization obtained prior to the Execution Date or as otherwise set forth in Schedule 6.4 (such items listed on Schedule 6.4 are referred to herein as the "**Seller Consents**"), no consent, approval or authorization of, Permit from, declaration, filing or registration with, or notice to, any Authority or any other Person, is required to be made or obtained by (i) Seller in connection with the execution, delivery, performance and validity of this Agreement and the Ancillary Agreements to be executed by it and the consummation of the transactions contemplated hereby and thereby, or (ii) the Company in connection with the execution, delivery, performance and validity of this Agreement and the Ancillary Agreements to be executed by it and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 6.5 No Conflicts. Neither the execution, delivery and performance by Seller of this Agreement or the Ancillary Agreements to be executed by it nor the transfer of rights and consummation of the transactions contemplated hereby or thereby or the taking of any action contemplated to be taken by the Company under this Agreement and the Ancillary Agreements to be executed by it will result in (a) a violation or breach of or a conflict with (with our without notice or lapse of time, or both) any provision of Seller's or the Company's Corporate Documents; (b) a Default under any Material Contract, Property Agreement or Company Permit; (c) a material violation or breach (with or without notice or lapse of time, or both) by the Company or Seller of any applicable Laws or Permits, or (d) the creation or imposition of any Encumbrance on (i) the Company Assets (other than Permitted Encumbrances) or (ii) the Purchased Interests.

Section 6.6 Legal Proceedings. Other than as described in Schedule 6.6, there are no Actions, including with respect to labor relations, or material Orders pending or, to Seller's Knowledge, threatened in writing, against or affecting the Project, the Company, the Company Assets or the Purchased Interests or Seller's transfer of the Purchased Interests or consummation of the transactions contemplated hereby.

Section 6.7 Compliance with Law. Other than as set forth on Schedule 6.7, neither Seller nor the Company has received any written notification indicating any violation of, or non-compliance with, any applicable Law (including all applicable U.S. and international economic and trade sanctions, including any sanctions or regulations administered and enforced by the U.S. Department of State, the U.S. Department of the Treasury (including the Office of Foreign Assets Control) and any applicable executive orders, rules and regulations relating thereto, export control and trade sanctions or embargoes, anti-boycott prohibitions contained in 50 U.S.C. Sections 2401 et seq. and Section 999 of the Code), Order or Permit as such would apply to the Project, the

Company, the Company Assets, the Purchased Interests or the transactions contemplated hereby, nor to Seller's Knowledge are there any facts, events, circumstances or occurrences that would reasonably be expected to give rise to, or serve as a basis for, any notification of any material violation of, or material non-compliance with, any such Law, Order or Permit.

Section 6.8 Environmental Matters. Other than as set out in Schedule 6.8: (i) the Company is, and since its formation has been, in material compliance with applicable Environmental Laws; (ii) none of Seller, the Company or Seller's other Affiliates has any Liabilities, or is subject to any Order, under Environmental Laws relating to the Company Assets; (iii) there has not been a Release of Hazardous Materials by Seller, Company or, to Seller's Knowledge, any other Person on or otherwise affecting the Property or the Facilities and no Hazardous Materials are present in, on, about or migrating to or from such properties, nor have Seller, the Company, Seller's other Affiliates, or any of their respective contractors or subcontractors, generated, stored, disposed of or Released any Hazardous Materials at, on, from or under such properties, in any case with respect to which would reasonably be expected to give rise to any liability to the Company under any Environmental Law; (iv) no portion of the Property or the Facilities contains any above ground storage tank or, to Seller's Knowledge, any underground storage tank, landfill, surface impoundment or similar device used for the management of wastewater or any Hazardous Material; and (v) Seller has provided copies of all material documents related to compliance with Environmental Laws to Buyer. The inclusion of this Section 6.8 with respect to certain environmental matters shall in no event limit any other representation and warranty in this Article VI with respect to any environmental matters as to which such other representation and warranty may apply, including, those in Sections 6.5, 6.7, 6.10 and 6.14.

Section 6.9 Right and Title to Purchased Interests. On the Execution Date and the Firm Date, Seller is the direct owner, holder of record, and beneficial owner of, and has good, valid and marketable title to, all of the Purchased Interests, free and clear of all Encumbrances, other than Permitted Encumbrances. On the Closing Date, Seller is (and following the Closing, Buyer shall be) the direct owner, holder of record, and beneficial owner of, and has good, valid and marketable title to, all of the Purchased Interests, free and clear of all Encumbrances. On the Closing Date, other than the pledges of the Purchased Interests as collateral security pursuant to the terms of the Construction Loan Agreement, Seller has not done or suffered to be done anything whereby the Purchased Interests are or may be in any manner encumbered or charged by, through or under Seller or an Affiliate of Seller; provided that such pledges of the Purchased Interests (pursuant to the terms of the Construction Loan Agreement) and any Encumbrance related thereto shall have been fully terminated and discharged on or before the Closing Date. As of each of the Financial Closing Date (if applicable) and the Closing Date, there are no Equity Securities held by any third party in respect of the Purchased Interests and the Company has not granted to any Person (other than Buyer) any Equity Securities in respect of the Purchased Interests (other than solely as to the Financial Close Date, the pledge of the Purchased Interests as collateral security pursuant to the terms of the Construction Loan Agreement). On the Financial Closing Date (if applicable) and the Closing Date, Seller has the right, and corporate power and authority, to transfer and deliver to Buyer, and Buyer shall own (of record and beneficially) following the Closing, all direct and indirect right, title and interest in the Purchased Interests, free and clear of all Encumbrances. Except for the Purchased Interests, there are no outstanding Equity Securities in the Company. On the Financial Closing Date (if applicable) and the Closing Date, except for the security documents entered into concurrently with the Construction Loan Agreement, if applicable (any Encumbrance

related to which shall be discharged with respect to the Purchased Interests and the Company Assets on or before the Closing Date), and none of the Equity Securities in the Company is subject to any voting trust, member or partnership agreement or voting agreement or other agreement, right, instrument or understanding with respect to any purchase, sale, issuance, transfer, repurchase, redemption or voting of any Equity Securities in the Company.

Section 6.10 Right and Title to Company Assets. As of the Closing Date, the Company owns all valid and legal right, title and interest in, to and under the Company Assets (other than the Land Contracts to which Company owns all right, title and interest as of the Firm Date and the Closing Date), free and clear of all Encumbrances other than Permitted Encumbrances.

Section 6.11 Land Contracts. Schedule 6.11(a) contains a true, correct and complete list of all of the Land Contracts that exist as of the Execution Date. Seller has Made Available to Buyer, true, correct and complete copies of the then-effective Land Contracts together with all amendments, modifications, or supplements thereto and written notices issued pursuant or related thereto, all of which are listed and described on Schedule 6.11(a) attached hereto, as updated on the Firm Date and the Closing Date in accordance with Section 4.3(b). As of the Firm Date and the Closing Date (unless another date is specified, in which case, as of such date):

(a) each Land Contract is (i) in full force and effect, (ii) is legal, valid, binding and enforceable against Company in accordance with its terms, and (iii) to Seller's Knowledge, is an enforceable obligation of the other party or parties thereto, except (in the case of clauses (ii) and (iii)) as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally or by general equitable principles;

(b) (i) none of Seller, the Company, or Seller's other Affiliates, is in Default under any Land Contract to which it is a party, (ii) to Seller's Knowledge, no other party to any Land Contract is in Default, (iii) to Seller's Knowledge, no event has occurred which, with notice or lapse of time or both, would constitute a Default thereunder by Seller, the Company, Seller's other Affiliates or any other party thereunder, and (iv) none of Seller, the Company, or Seller's other Affiliates has received written notice of any such Default or event;

(c) none of Seller, the Company, or Seller's other Affiliates, has repudiated any provision of any Land Contract, and neither Seller nor the Company has received written notice from any party to any Land Contract that such other party has repudiated any provision thereof;

(d) none of Seller, the Company, or Seller's other Affiliates, has received (i) written notice of any unfulfilled duties under any Land Contract or (ii) written notice of termination, cancellation, or non-renewal as to any Land Contract, and to Seller's Knowledge, no party to any of the Land Contract has exercised or threatened to exercise any termination rights with respect thereto;

(e) no Land Contract has been (i) transferred or conveyed by Seller, the Company, or Seller's other Affiliates; (ii) amended, modified or supplemented except as disclosed in writing to Buyer; or (iii) as of the Closing Date, subjected to any Encumbrance, except for Permitted Encumbrances;

(f) as of the Firm Date [REDACTED] and as of as of the Closing Date, the Norfolk Southern Land Contract, all Subordination Agreements and all Crossing Agreements required pursuant to this Agreement have been obtained; and

(g) the Company is a party to each of the Land Contracts.

Section 6.12 Real Property.

(a) Except for the Company's rights under the Land Contracts and as set forth on Schedule 6.12(a), (i) the Company does not own real property, nor is the Company a lessor or sub-lessor of any real property, (ii) the Company is not a party to any Contract regarding real estate or an interest in real estate, other than the Land Contracts; and (iii) neither Seller nor any Affiliate of Seller or the Company owns any real property that is used in connection with the Project.

(b) As of (i) the Firm Date [REDACTED] and (iii) the Closing Date, the Company has obtained all other zoning and land use approvals from the applicable Authorities for each parcel of Property necessary to permit the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance and operation of the Project thereon in accordance with the terms of this Agreement, the Site Plan, and the Site Operating Plan. To Seller's Knowledge, there is no pending Action before any Authority to change the applicable zoning, land use or building ordinances or any other Laws or applicable land use approvals affecting the Property.

(c) As of the Firm Date [REDACTED] and as of the Closing Date, to Seller's Knowledge, no party has the right to use the surface of the Property for the exploration, development or extraction of minerals or any other subsurface substances, except to the extent (i) affirmatively insured against by the Title Policy (or which will be affirmatively insured against by the Title Policy at Closing and for which all underwriting requirements of the Title Company with respect to the issuance of applicable coverage have been satisfied as of the applicable date set forth in this clause (c)) with applicable coverage in form and substance reasonably satisfactory to Buyer, and (ii) if any such right is subject to a surface use, non-disturbance or accommodation agreement with Company or Seller, such agreement is in form and substance reasonably satisfactory to Buyer. There are no existing or, to Seller's Knowledge, proposed facilities or operations for extraction of oil, gas or other minerals that to Seller's Knowledge would reasonably be expected to adversely interfere with the construction, completion or operation of the Project in any material respect.

(d) Except as set forth on Schedule 6.12(a), neither Seller (as related to the Project or the Company Assets) nor the Company owns, holds, is obligated under, or is a party to, any option, right of first refusal, or other contractual right to purchase, acquire, sell, assign, or dispose of any real property or interest therein.

(e) Neither Seller, the Company, nor any of Seller's other Affiliates, has received any written notice of any pending condemnation action with respect to all or any portion

of the Real Property, and, to Seller's Knowledge, there are no existing condemnation or other legal proceedings affecting the use of the Real Property by an Authority with jurisdiction over or affecting all or any part of the Real Property.

(f) As of the Firm Date, the Site Plan that Seller has provided to Buyer represents a true, accurate, and complete depiction of the Project at the time it is provided. As of [REDACTED] and the Closing Date, the Site Plan that Seller has provided to Buyer represents a true, accurate and complete depiction of the Project. As of the Firm Date [REDACTED], as of the Mobilization Date [REDACTED], and as of the Closing Date: (i) the location and operation of the Facilities will be in material compliance with all applicable rules and regulations promulgated by the applicable equipment manufacturers (including but not limited to, any and all setback and capacity requirements), (ii) the Interconnection Rights pursuant to the Interconnection Agreements and the Interconnection Construction Service Agreements will be sufficient for the Company to transmit all of the power generated by the Project; (iii) the Project will have sufficient backfeed to complete start-up and commissioning activities required as of the Closing Date; (iv) the Project will have sufficient (including physical and legal) access to dedicated public road to meet all construction, repair, and operational needs of the Project (including but not limited to, transportation of equipment to the Site and access to each of the Facilities for purposes of installation, repair, and maintenance); (v) the Project (including any related transmission or distribution lines connected thereto) is or will be authorized to cross any existing exclusive easements (including but not limited to, existing oil and gas pipelines and existing utility transmission and distribution lines installed pursuant to exclusive rights) pursuant to existing Crossing Agreements and the Company will have obtained any other Crossing Agreements as may be required by the Title Company in order to issue an ALTA 36.6 endorsement to the Title Policy, and (vi) as of the Firm Date and the Closing Date, each land parcel subject to a Land Contract will be contiguous along at least one entire boundary to the boundary of another land parcel subject to a Land Contract.

(g) As of [REDACTED] after the Firm Date and as of the Closing Date, the Company will own the fee interests in the parcel on which the O&M Building will be located and the parcel on which the collector substation for the Project is to be located, and, in each case, will have paid the purchase price or other applicable consideration therefor.

(h) As of the Firm Date (other than as to the Substation Parcel, which will be acquired within [REDACTED] after the Firm Date) and the Closing Date, the Property held by the Company (i) covers the entire Site (including fee ownership of the parcels where the O&M Building and Project substation will be located), (ii) comprises all of the real property interests and other real property rights that are necessary in connection with the development, construction, installation, interconnection, completion, operation and to the extent reasonably foreseeable, the maintenance of the Project, as applicable, in accordance with all Laws, and (iii) is sufficient to enable the Project to be located, constructed, interconnected, and operated as contemplated hereunder; and provide legal and physical ingress and egress rights to and from a public right-of-way for the construction, operation and maintenance of the Project.

Section 6.13 Material Contracts.

(a) Schedule 6.13(a) contains a true, correct and complete list of all Contracts (other than the Land Contracts or Permits) to which the Company is a party or by which the Company is bound, which relate primarily to the Company Assets, or which are or shall be included in the Company Assets, including each of the following Contracts (each Contract required to listed on Schedule 6.13(a), whether in effect prior to, on or after the Execution Date, individually, a “**Material Contract**” and collectively, the “**Material Contracts**”), and Seller has Made Available to Buyer a correct and complete copy of each such then-effective Material Contract:

- (i) Major Project Documents;
- (ii) any Contract for the operation or maintenance of the Project or any of the individual Facilities after the Closing Date;
- (iii) any Contract relating to the interconnection of the Project, including the Interconnection Agreements and any Interconnection Construction Service Agreements;
- (iv) (x) any Contracts that are or evidence Indebtedness owed by the Company or to the Company or (y) any Contracts that provide for the Company to provide any surety, pledge, guarantee, bond, letter of credit or other credit support, in each case, which Indebtedness or other obligation will remain in effect after the Closing Date;
- (v) any Contracts for a commodity, currency or interest rate hedge, exchange or similar instrument, including any exchange traded, over-the-counter or other swap, cap, floor, collar, futures contract, forward contract, option or other derivative financial instrument, or Contract relating to emissions allowances, emission offsets or credits, renewable energy credits, production or investment tax credits, or other tax credits or benefits;
- (vi) Contracts governing a partnership, joint venture, joint development or limited liability company, setting forth arrangements between the members or partners thereto, other than the Corporate Documents of the Company;
- (vii) Contracts that are (a) power purchase or sale agreements (including sales of capacity, energy and ancillary services), renewable energy credit purchase and sale agreements or interconnection or transmission agreements or (b) module purchase agreements, design, engineering, procurement and construction agreements, agreements for the purchase of inverters, transformers and other material pieces of equipment, project management agreements, development agreements, warranty agreements, operation, maintenance and service agreements, agreements that provide for teaming or similar agreements in connection with the development of the Project and exclusivity agreements with any contractor, module manufacturer, inverter manufacturer, or other supplier, utility, contractor, or other third party, in each case of those Contracts in clause (b), which Contract will remain in effect after the Closing Date;

(viii) any Contract that includes a change in control clause (requiring consent to the transaction contemplated herein) and for which Seller has not obtained such consent from the applicable counterparty;

(ix) any Contract under which the consequences of a Default by the Company that is not waived or cured within the time, if any, provided in such Contract would reasonably be expected to have a Material Adverse Effect;

(x) any Contract the primary purpose of which is for the Company to indemnify, defend, hold harmless or reimburse any Loss incurred by another Person;

(xi) [reserved];

(xii) any Contract pursuant to which the Company is granting or being granted any material Intellectual Property license;

(xiii) any Contract not otherwise described in this Section 6.13 providing for an express undertaking by the Company to be responsible for (a) consequential or special damages, or (b) liquidated damages or other penalties [REDACTED]

(xiv) any Contract containing an effective power of attorney granted by the Company;

(xv) any Contract the primary purpose of which is the settlement, release, compromise or waiver by the Company of any material rights or claims it has against any other Person or any material Liabilities of any other Person to the Company;

(xvi) any Contract relating to the retention of any consultant of the Company that is performing ongoing services for the Company or with respect to which any amounts remain to be paid by the Company, which services will be performed after the Closing Date;

(xvii) any Contract not otherwise described in this Section 6.13 containing any obligation of confidentiality or nondisclosure between the Company, on the one hand, and any other Person, on the other hand, for the benefit of the Company or such other Person, which Contract will remain in effect after the Closing Date;

(xviii) Contracts that include non-competition, non-interference, non-solicitation, exclusivity or similar provisions which restrict the ability of the Company (or Buyer after the Closing) to conduct the Business;

(xix) Contracts for the sale of tax credits;

(xx) [reserved];

(xxi) any Contract with earn-out, payments, contingent payments or similar payment obligations owing from the Company, which payment obligation will not be satisfied as of the Closing Date;

(xxii) any Crossing Agreement and any Subordination Agreement;

(xxiii) Contracts, other than those set forth in the foregoing clauses (i) through (xvi), each of which expressly requires future payment after the Closing Date to or from the Company of [REDACTED] or more; and

(xxiv) any Contract constituting an amendment, supplement, or modification (whether oral or written) in respect of any of the foregoing clauses (i) through (xxii);

(b) Each Material Contract is (i) legal, valid, binding, and enforceable against Company in accordance with its terms, (ii) in full force and effect, and (iii) to Seller's Knowledge, each Material Contract is an enforceable obligation of the other party or parties thereto, except (in the case of clauses (i) and (iii)) as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(c) (i) There is no Default by Seller or the Company under any Material Contract, (ii) to Seller's Knowledge, there is no Default any other party to any Material Contract, (iii) to Seller's Knowledge, no event has occurred which, with notice or lapse of time or both, would constitute a Default thereunder by Seller, the Company or any other party thereunder, and (iv) neither Seller, the Company, nor any of Seller's other Affiliates has received written notice of any such Default or event.

(d) Neither Seller, the Company, nor any of Seller's other Affiliates has repudiated any provision of any Material Contract and neither Seller, the Company, nor any of Seller's other Affiliates has received written notice that any other party has repudiated any provision of any Material Contract.

(e) Neither Seller, the Company, nor any of Seller's other Affiliates has received written notice of any termination, cancellation, or non-renewal as to any Material Contract, and to Seller's Knowledge, no other party to any of the Material Contracts has exercised or threatened to exercise any termination rights with respect thereto, in each case, which Material Contract (i) was expected to be in effect after the Closing Date and (ii) has not been replaced by the Closing Date.

(f) [Reserved].

(g) Except as set forth on Schedule 6.13(g), neither Seller, the Company, nor any of Seller's other Affiliates has a material outstanding claim or cause of action (including relating to availability), whether for liquidated damages or other monetary damages or otherwise, under any Material Contract. As of the Firm Date and the Closing Date, neither Seller, the Company, nor any of the Seller's other Affiliates has received written notice of any claim or cause of action (including relating to availability) against it, whether for liquidated damages or other monetary damages, under any Material Contract, which claim or cause of action creates any outstanding obligation of the Company after the Closing Date.

(h) As of the Firm Date and the Closing Date, no Material Contract has been (i) transferred or conveyed by the Company to another Person, except for any Material Contract that has been replaced, (ii) amended, modified, or supplemented, except as disclosed in writing to Buyer, (iii) subjected to any Encumbrance, except for Permitted Encumbrances.

(i) Neither Seller, the Company, nor any of Seller's other Affiliates has received written notice of any disputes in effect as to any Material Contract except as set forth on Schedule 6.13(i).

(j) There are no outstanding indemnification claims or payments, purchase price payments or purchase price adjustments (including earn-outs and similar post-closing adjustments) to be made to or by any Person with respect to the Project or Project assets for which the Company is liable.

Section 6.14 Permits.

(a) Schedule 6.14(a) is a true and complete list of all Permits needed by Company to design, develop, engineer, procure, permit, construct, install, test, commission, own, maintain and operate the Project through the Substantial Completion Date (collectively, the "**Company Permits**") and [REDACTED], provided the Company Permits shall not include Permits which Buyer may need by nature of Buyer being a public utility or which may be obtained only by Buyer for itself or for the Company with respect to the ownership or operation of the Project after the Closing (collectively, the "**Buyer Permits**"), or Seller Consents. Part A of Schedule 6.14(a) is a true and complete list of all Company Permits and [REDACTED] required under Law to be obtained on or before the Execution Date. Part B of Schedule 6.14(a) is a true and complete list of all Company Permits and [REDACTED] required under Law to be obtained after the Execution Date, but on or prior to the Firm Date. Part C of Schedule 6.14(a) is a true and complete list of all Company Permits and [REDACTED] required under Law to be obtained after the Firm Date, but on or prior to the Closing Date. Part D of Schedule 6.14(a) is a true and complete list of all Company Permits and [REDACTED] required under Law to be obtained after the Closing Date, but on or prior to the Substantial Completion Date (the "**Substantial Completion Permits**"). As of the Execution Date, all Company Permits and [REDACTED] listed on Part A of Schedule 6.14(a), have been obtained and Made Available to Buyer. As of the Firm Date, all Company Permits and [REDACTED] listed on Part B of Schedule 6.14(a), have been obtained and Made Available to Buyer. As of the Closing Date, all Company Permits and [REDACTED] listed on Part C of Schedule 6.14(a), have been obtained and Made Available to Buyer. As of the Firm Date, all the Company Permits and [REDACTED] listed on Part C of Schedule 6.14(a) are reasonably expected to be issued and in full force and effect as of the Closing Date. As of the Closing Date, all the Company Permits and [REDACTED] listed on Part D of Schedule 6.14(a) are reasonably expected to be issued and in full force and effect as of the Substantial Completion Date.

(b) As of the Execution Date, with respect to each Company Permit listed on Part A of Schedule 6.14(a), as of the Firm Date, with respect to each Company Permit listed on Part B of Schedule 6.14(a) and as of the Closing Date, with respect to each Company Permit listed

on Part C of Schedule 6.14(a), except for [REDACTED] and as set forth on Schedule 6.14(b):

(i) each Company Permit required at the applicable stage of design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance or operation is, to Seller's Knowledge, valid, binding and enforceable against the applicable issuing Authority in accordance with its terms, in full force and effect and final and unappealable.

(ii) Company and the Project are in material compliance with the terms and conditions of each Company Permit, and, to Seller's Knowledge, all other parties to each Company Permit are in material compliance with the terms and conditions of such Company Permit, and, to Seller's Knowledge, no event has occurred which with notice, lapse of time or both would constitute non-compliance with such terms and conditions or cause any material and adverse modification, revocation, suspension or termination of any Company Permit.

(iii) No Action, deficiency notice, demand or notice of any challenge is pending or, to Seller's Knowledge, threatened, which challenges the legality, validity, or enforceability of any Company Permit, or that attempts to modify in any material and adverse manner the requirements pertaining to any obtained Company Permit or application for a Company Permit.

Section 6.15 Finders. Except as set forth in Schedule 6.15, Seller has not engaged any broker or finder in connection with this transaction and no Person has any claim against Seller or the Company for a finder's fee, brokerage commission or similar payment directly or indirectly in connection with the transactions contemplated by this Agreement.

Section 6.16 Intellectual Property. As of the Closing Date, the Company owns or possesses sufficient rights to use all Intellectual Property used in connection with the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, operation and maintenance of the Project, free and clear of all Encumbrances other than Permitted Encumbrances, and, to Seller's Knowledge, the utilization of such Intellectual Property does not infringe upon or violate the Intellectual Property rights of any other Person. Other than as set forth in Schedule 6.16, all material Company Assets are free of any third party rights relating to Intellectual Property, and, to Seller's Knowledge, the utilization by the Company of the Company Assets does not infringe upon or violate the Intellectual Property rights of any other Person.

Section 6.17 Solar Data. Schedule 6.17 contains a true and complete list of all of the solar resource data in the possession of the Company in respect of the Project ("**Solar Data**"). A true, correct and complete copy of such Solar Data has been Made Available to Buyer. With respect to each item of Solar Data identified on Schedule 6.17:

(a) the Company possesses all right, title, and interest in and to the item, free and clear of any lien, security interest, encumbrance, claim, license, or other restriction;

(b) the Company has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in such item;

(c) there are no disputes, oral agreements, or forbearance programs in effect as to such item that, if not resolved in favor of Company, would reasonably be expected to have an Adverse Effect;

(d) the item is not subject to any outstanding injunction, judgment, order, decree, ruling or charge preventing, or that would reasonably be expected to prevent, Company to use such Solar Data;

(e) no Action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or, to Seller's Knowledge, is threatened that challenges the legality, validity, enforceability, use, or ownership of the item that, if not resolved in favor of Company, would reasonably be expected to have an Adverse Effect.

Section 6.18 Insurance. Schedule 6.18 sets forth a true and complete list of all insurance policies maintained by Seller or the Company that insure the Company, the Project or the Company Assets (the "**Project Insurance Policies**"). Such Project Insurance Policies are (a) all of the insurance policies required to be obtained or maintained by or on behalf of Seller or the Company under any Material Contract, Property Agreement, Company Permit, or applicable Law; (b) in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and (c) no notice of cancellation or termination has been received by the owner or holder of any such Project Insurance Policy with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. None of Seller or the Company nor any of Seller's Affiliates, has Defaulted in any respect with respect to the obligations under any Project Insurance Policies to the extent any such Default could materially and adversely affect insurance proceeds or insurance available to the Project. No pending claims exist under any such policies of insurance covering the Company or the Company Assets. Except as set forth on Schedule 6.18, no Project Insurance Policy provides for any retrospective premium adjustment or other experience-based liability on the part of Seller or the Company.

Section 6.19 Reports. Seller has Made Available to Buyer true, correct and complete copies of all then-available final material reports, studies, and tests (and all amendments and supplements thereto) related to the Project prepared, commissioned by, or delivered to, the Company, Seller or any Affiliate of Seller that address any of the following matters: Permits, Solar Data, the Real Property, design studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, wildlife studies, the environmental condition of the Property, mitigation and conservation plans, compliance with Environmental Law, Federal Aviation Administration analyses, state department of transportation analyses, zoning studies, noise assessments, radio facilities studies, visual impact or flicker studies or wetlands studies (collectively, the "**Reports**").

Section 6.20 Tax Matters.

(a) There are no Encumbrances for Taxes on the Purchased Interests or the Company Assets (other than Permitted Encumbrances). No proceedings are pending, and to Seller's Knowledge, no proceedings have been threatened in writing with respect to Taxes of the Company or relating to the Project or the Company Assets. There are no ongoing or pending or

threatened (in writing) Tax audits, examinations, claims, assessments or proposed deficiencies against the Company or with respect to the Project. No extensions of the statute of limitations have either been requested or granted with respect to Taxes of the Company or relating to the Purchased Interests or the Company Assets except as have not had and could not reasonably be expected to have a Material Adverse Effect. Neither Seller (with respect to the Business, the Project or the Company) nor the Company has applied to any Tax Authority for any Tax ruling, closing agreement, technical advice memorandum or similar agreement, including any application for a private letter ruling that has been withdrawn.

(b) All Tax Returns required to be filed by the Company or with respect to the Project or Company Assets have been filed on a timely basis and all such Tax Returns are correct and complete in all material respects. All material Taxes of the Company or with respect to the Project or the Company Assets that are due and payable have been timely paid in full. Seller is not a foreign person (as that term is defined in Section 1445 of the Code and the Treasury Regulations promulgated thereunder). Since formation, the Company is and has been classified at all times as an entity disregarded as an entity separate from its owner for U.S. federal, state and local Tax purposes, and no election has been filed to treat the Company as an association taxable as a corporation for U.S. federal, state or local Tax purposes. Seller has Made Available to Buyer true and complete copies of all Tax Returns filed by or on behalf of the Company (other than any consolidated Tax Returns of Seller).

(c) The Company has complied in all material respects with all Tax laws relating to the payment, reporting and withholding of Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, or other Person. The Company has retained all required Tax exemption certificates and other documentation in respect of any material payments made by the Company for which an exemption to withholding was claimed.

(d) No more than a *de minimis* portion of the Company Assets have been previously used, except in the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, operation and maintenance activities required by the terms of this Agreement.

(e) None of the Project or any property that is part of the Project has been Placed In Service and there has been no "original use" (within the meaning of Section 48 of the Code) of the Project or any property that is part of the Project.

(f) The Company (i) has never been a member of any consolidated, combined, unitary or similar group and (ii) has no Liability for the Taxes of any Person (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of Law) or (ii) as a transferee or successor.

(g) None of the Company, the Project or the Company Assets are subject to any closing agreements, private letter rulings or similar agreements or rulings with or from by any Authority with respect to Taxes.

(h) No notice has been received in writing from any Authority in any jurisdiction in which the Company does not file a Tax Return that the Company may be subject to taxation by that jurisdiction.

(i) The Company has not filed a power of attorney with any Authority with respect to Tax matters that remains currently in force.

(j) The Company is not a party to a Tax allocation, Tax sharing agreement or Tax indemnity agreement or similar arrangement.

(k) Neither the Project nor any other Company Asset is:

(i) subject to the alternative depreciation system within the meaning of Section 168(g) of the Code;

(ii) “tax-exempt use property” within the meaning of Section 168(h) of the Code;

(iii) imported property of the kind described in Section 168(g)(6) of the Code; or

(iv) “public utility property” within the meaning of Section 168(f)(2) of the Code.

(l) No grants or proceeds of any rebate programs have been provided by the United States, a state, a political subdivision of a state, or any other Authority for use in the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning or financing of the Project or with respect to which Seller or the Company is the beneficiary and no application with respect to any such grant or rebate has been filed or submitted. No proceeds of any issue of state or local government obligations have been used (directly or indirectly) to provide financing for the Project. Neither the Project nor the Company has benefited (directly or indirectly) from any government grants, tax-exempt financing or subsidized energy financing that was issued prior to January 1, 2009 within the meaning of Section 48(a)(4)(C) of the Code.

(m) None of Seller, the Company, nor any Affiliate of Seller has applied for, claimed or received any PTC, investment tax credit or other federal, state, local or other grant, financing, tax credit, or similar incentive, including any investment tax credit, production tax credit, or financing described in Section 45(b)(3) of the Code, with respect to the Project.

(n) Neither Seller nor any Affiliate of Seller has taken, nor does Seller or any Affiliate of Seller intend to take, a position on any Tax Return that is inconsistent with the Project, including the Company Assets, being Placed in Service by Buyer and the “original use” (within the meaning of Section 48 of the Code) of the Project and any property that is part of the Project, including the Company Assets, commencing with Buyer. Neither Seller nor any Affiliate of Seller has claimed, nor does Seller or any Affiliate of Seller intend to claim, on any Tax Return any depreciation or amortization deductions, PTCs or any other tax credits or deductions that are available with respect to ownership or operation of the Project or any property that is part of the Project, including the Company Assets.

(o) [reserved]

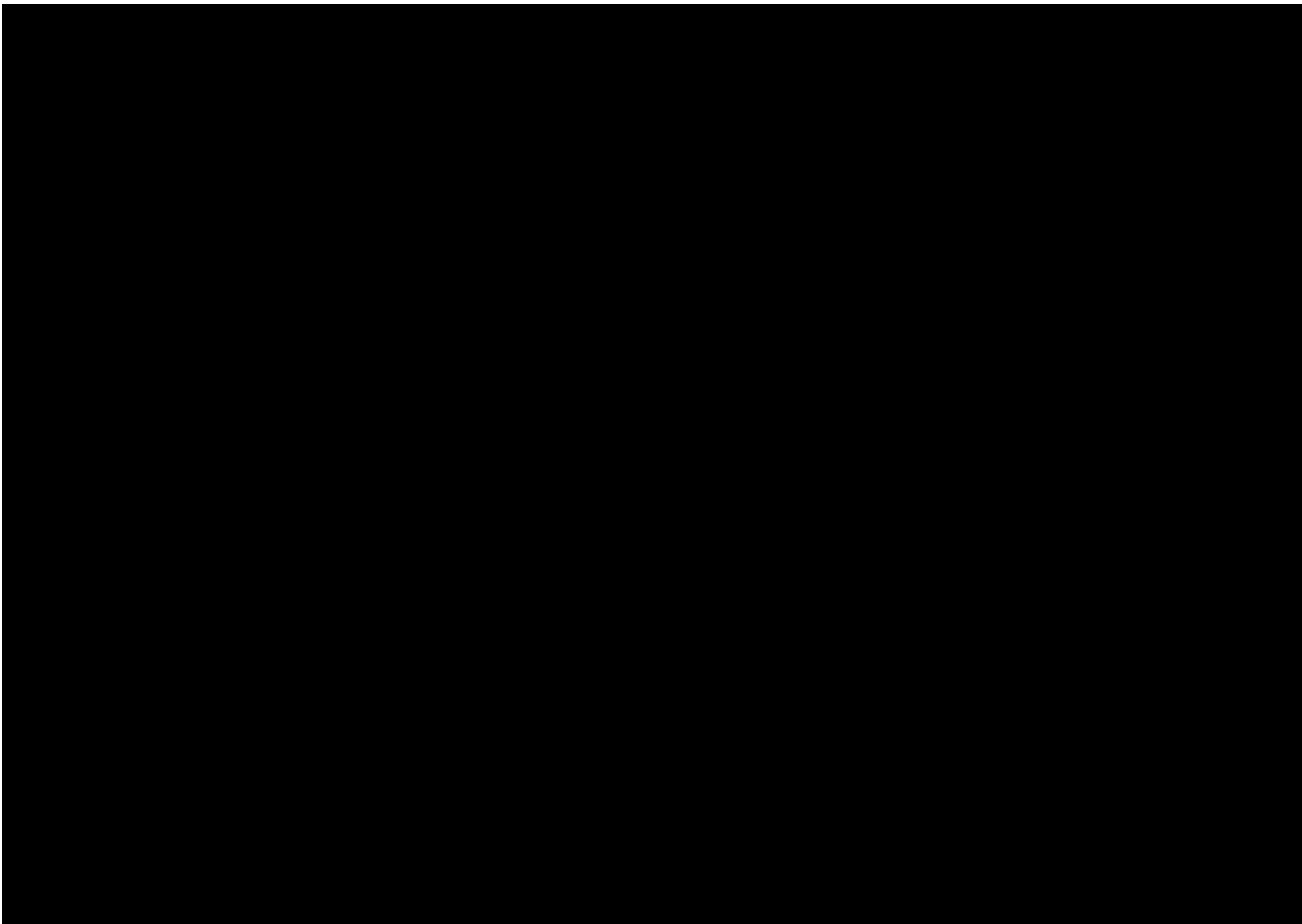
(p) [reserved]

(q) The Company has not been a party to, or a promotor of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(r) Neither Seller (with respect to the Company) nor the Company is a party to or has any liability under any Tax sharing, indemnification or similar agreement (in each case, other than an agreement entered into in the Ordinary Course of Business of the parties thereto, the principal purpose of which is not Tax-related, such as a customary lease, license or financing agreement).

(s) Seller (or, if Seller is a disregarded entity for U.S. federal income tax purposes, its owner for U.S. federal income tax purposes) is a “United States person” within the meaning of Section 7701(a)(30) of the Code.

Section 6.21 Tax Credit Qualification.



Section 6.22 Substantially Complete Project; No Other Business.

(a) As of the Closing Date, the Company Assets shall constitute all of the material Contracts, equipment, buildings, facilities, licenses, permits, approvals, land rights and

other material assets necessary for the Company to own, and subject to the achievement of Substantial Completion [REDACTED]

[REDACTED], maintain and operate the Project in accordance with the terms and conditions of the Material Contracts, Land Contracts, Company Permits, applicable Law and Prudent Industry Practices.

(b) The Company has held the Company Assets (other than the Excluded Assets) solely for the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project.

Section 6.23 Sufficient Funds.

From and after the Financial Close Date, and at all times prior to the Closing Date, Seller will have sufficient funds available, or will maintain sources for sufficient funding capacity, to meet the financial requirements from time to time required (as and when the same become due and owing, and subject to any applicable grace periods or cure periods) to continue the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project to Mechanical Completion pursuant to this Agreement (and Substantial Completion and Final Completion [REDACTED]) and to otherwise consummate the transactions contemplated by this Agreement as and when so required thereby.

Section 6.24 Financial Statements; No Undisclosed Liabilities; Absence of Certain Changes.

(a) Financial Statements. Attached as Schedule 6.24(a) are true and correct copies of the Company's unaudited balance sheet (the "**Balance Sheet**") as of the Balance Sheet Date, and the related unaudited statement of income and cash flows for the year-to-date period then ended, each certified by an officer or authorized representative of the Company (together with the Balance Sheet, the "**Financial Statements**"). The Financial Statements (i) have been prepared in accordance with GAAP (or are accompanied by GAAP reconciliations, other than footnotes), using the same accounting principles, policies and methods as have been historically used in connection with the calculation of the items reflected thereon, and (ii) present fairly in all material respects the financial condition and operations of the Company as of the Balance Sheet Date.

(b) No Undisclosed Liabilities. The Company has no Liability that would be required to be disclosed in a balance sheet prepared in accordance with GAAP, except Liabilities (i) which have been incurred since the Balance Sheet Date under Material Contracts, (ii) reflected in the Financial Statements, (iii) incurred pursuant to this Agreement or permitted to be incurred by this Agreement, (iv) Taxes which are not yet due and payable or (v) disclosed on Schedule 6.24(b).

(c) Absence of Certain Changes. Except as set forth on Schedule 6.24(c) or as disclosed to Buyer in writing as of the Execution Date, since the Balance Sheet Date, the Company has conducted its Business and operated the Project in the Ordinary Course of Business [REDACTED]

(d) No Indebtedness. Except for the Construction Loan Agreement, to extent Seller obtains Financing, which shall be paid in full and terminated at or prior to the Closing, Company does not have any Indebtedness.

Section 6.25 Employees; Employee Benefits. The Company has never (a) had any employees or (b) sponsored, maintained or contributed to any Benefit Plan. There do not exist now, nor do any circumstances exist that reasonably could be expected to impose, any Liability on the Company with respect to any Benefit Plan that any Person maintains or in the past maintained (or to which such Person ever contributed or was required to contribute) if such Person, together with the Company, could be deemed a single employer within the meaning of Section 4001(b) of ERISA.

Section 6.26 Labor Matters. Except as set forth in Schedule 6.26:

(a) The Company is not nor has ever been a party to any collective bargaining agreement or other labor Contract.

(b) As of the Closing Date, there is not now pending or existing, and, to Seller's Knowledge, there is not threatened, any strike, slowdown, picketing, work stoppage, or other material labor dispute involving the Project, or the Company.

Section 6.27 Investment Company Act. The Company is not an "investment company" required to be registered under, or a company controlled by an "investment company" required to be registered under, the Investment Company Act of 1940.

Section 6.28 Bankruptcy. No Bankruptcy Event has occurred and is continuing with respect to Seller or the Company. Neither the signing of this Agreement nor the Closing of the transactions contemplated by this Agreement and the Ancillary Agreements requires the approval of any trustee in bankruptcy or bankruptcy court with jurisdiction of any reorganization or any bankruptcy Action affecting Seller or the Company.

Section 6.29 Affiliate Transactions. Except as set forth on Schedule 6.29, as of the Closing Date, none of Seller or any of its Affiliates (other than the Company) or any officer, director, manager, member shareholder, employee or agent of Seller or any of its Affiliates (other than the Company) (a) is a party to any Contract with the Company, other than bills of sale and assignment agreements transferring right, title and interest in certain Company Assets to the Company or (b) has any interest in any Company Asset used in or pertaining to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance or operation of the Project or the Business of the Company.

Section 6.30 Subsidiaries. The Company does not have any Subsidiaries or own Equity Securities in any Person.

Section 6.31 Bank Accounts. Schedule 6.31 contains a correct and complete list of (a) the bank accounts and safe deposit boxes of the Company, if any, and (b) the Persons authorized to sign checks drawn on such accounts. As of the Closing Date, Seller shall have taken all actions necessary to cause all of the Company's bank accounts to be closed on or before the Closing Date

or as soon as possible after the Closing Date and, except as provided in Section 2.4(b), any funds in any such bank accounts will be paid to Seller or its designee.

Section 6.32 [Reserved].

Section 6.33 Credit Support. Schedule 6.33 sets forth a true and complete list of all equity contribution agreements, letters of credit and other such guaranties, comfort letters, “*keep whole*” agreements, bonds or other financial security arrangements, or credit support arrangements that have been or will be posted by Seller or its Affiliates in connection with the Project.

Section 6.34 [Reserved].

Section 6.35 Consents. As of the Closing Date, there are no outstanding material third party consents, approvals, authorizations, waivers, filings, notices, registrations, declarations or similar actions of, with or by any Person which have not been previously obtained and delivered to the Company or Buyer, including those involving Real Property, Facilities, Material Contracts, Land Contracts or Company Permits, which are required for the Project to achieve Mechanical Completion or Substantial Completion, as applicable, or the completion of the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 6.36 [Reserved].

Section 6.37 Foreign Corrupt Practices Act; Export Control; Anti-Boycott Laws.

(a) Neither Seller, the Company nor any of their respective officers, directors or employees acting on behalf of Company or the Project has (i) violated any provision of any applicable anti-bribery or anti-corruption law including the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the U.K. Bribery Act 2010 or (ii) directly or indirectly offered, paid, promised to pay, or authorized the offer, payment or promise of any advantage, financial or otherwise, or thing of value to any Authority or to another party while knowing or having reason to know that all or a portion of such advantage or thing of value would be offered, given, or promised to an Authority for the purposes of (A) (1) influencing any act or decision of such Authority in his or her official capacity or (2) rewarding the improper performance by any Person of its business or official activities; (B) assisting Seller or any member of Seller in obtaining or retaining business or a business advantage for Seller or any member of Seller with respect to the Company or the Project or (C) assisting the Company in obtaining or retaining business or a business advantage for the Company.

Section 6.38 Solvency.

(a) Seller (i) has and, after giving effect to the transaction contemplated by this Agreement and the Ancillary Agreements, shall have Assets which, fairly valued, exceed its Indebtedness, Liabilities or obligations, (ii) is not engaged in any business or transaction which, after giving effect to the transactions contemplated by this Agreement and the Ancillary Agreements, will leave it with capital or Assets which are unreasonably small in relation to the business or transactions engaged in by it, and (iii) does not intend to incur, nor does it believe that it shall incur, debts beyond its ability to repay such debts as they mature.

(b) As of the date of any transfer by Seller or by any Affiliate of Seller of any Assets to the Company, such transferor (i) had Assets which, fairly valued, exceeded its Indebtedness, Liabilities or obligations, (ii) was not engaged in any business or transaction which, left it with capital or Assets which were unreasonably small in relation to the business or transactions engaged in by it, and (iii) did not intend to incur, nor did it believe that it would incur, debts beyond its ability to repay such debts as they mature.

ARTICLE VII REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller, as of the Execution Date and as of the Closing Date, as follows:

Section 7.1 Corporate Existence and Powers. Buyer is a corporation validly existing and in good standing under the Laws of the State of Indiana, and is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it under this Agreement and the Ancillary Agreements to which it is a party make such qualification or licensing necessary. Buyer has all the requisite corporate power and authority to conduct its business as it is now being conducted and to own, lease and operate its Assets. Buyer's Corporate Documents are in full force and effect. Buyer is not in material violation of its Corporate Documents.

Section 7.2 Authority. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to be executed by it in connection with this Agreement and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Buyer has taken all corporate action necessary to execute and deliver this Agreement and the Ancillary Agreements, as applicable, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder, and no other action or proceeding on the part of Buyer is necessary to authorize this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements to be executed by Buyer have been duly executed and delivered by Buyer. Assuming the due authorization, execution and delivery by Seller of this Agreement and the Ancillary Agreements, this Agreement and, as of the Closing, the Ancillary Agreements constitute legally valid and binding obligations of Buyer, enforceable against it in accordance with the respective terms thereof, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally or by equitable principles.

Section 7.3 No Conflicts. Neither the execution, delivery and performance by Buyer of this Agreement or the Ancillary Agreements nor the consummation of the transactions contemplated hereby or thereby or the taking of any action contemplated to be taken by Buyer under this Agreement and the Ancillary Agreements will result in (a) a violation or breach of or a conflict with (with or without notice or lapse of time, or both) any material provision of Buyer's Corporate Documents; or (b) a material violation or material breach (with or without notice or lapse of time, or both) by Buyer of any applicable Laws.

Section 7.4 Consents and Approvals. Other than as set out in Schedule 7.4 (such items listed on Schedule 7.4 are referred to herein as the "**Buyer Consents**"), no consent, approval or

authorization of, Permit from, declaration, filing or registration with, or notice to, any Authority or any other Person, is required to be made or obtained by Buyer in connection with Buyer's execution, delivery, performance and validity of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

Section 7.5 Legal Proceedings. Other than as described in Schedule 7.5, there are no Actions or material Orders pending or, to Buyer's Knowledge, threatened in writing, against or affecting the acquisition of the Purchased Interests by Buyer or the consummation of the transactions contemplated hereby, at law or in equity, or before or by any Authority and, to Buyer's Knowledge, there is no valid basis for any such Action.

Section 7.6 Finders. Buyer has not engaged any broker or finder in connection with this transaction and no Person has any claim against Buyer or any other Person for a finder's fee, brokerage commission or similar payment directly or indirectly in connection with the transactions contemplated by this Agreement.

Section 7.7 Sufficient Funds. At Closing, Buyer will have sufficient funds available, or will have sources for sufficient funding capacity, to consummate the transactions contemplated hereby, including to purchase the Purchased Interests and to pay the Purchase Price.

Section 7.8 Compliance With Laws. Buyer has not received any written notification indicating any violation of, and there is no violation of, or non-compliance with, any applicable Law, Order or Permit applicable to the transactions contemplated hereby or that would have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby, nor to Buyer's Knowledge are there any facts, events, circumstances or occurrences that would reasonably be expected to give rise to, or serve as a basis for, any such notification.

ARTICLE VIII BUYER'S CONDITIONS PRECEDENT TO CLOSING

Section 8.1 Buyer's Conditions Precedent to Closing. The obligation of Buyer to consummate the transactions contemplated by this Agreement to occur on the Closing Date shall be subject to fulfillment at or prior to the Closing of each of the following conditions, except to the extent Buyer waives such fulfillment in writing:

(a) Deliveries by Seller at Closing. Upon the terms and subject to the conditions set forth in this Section 8.1, on or before the Closing Date, Seller covenants to deliver, or to cause to be delivered, to Buyer the following:

(i) Assignment of Purchased Interests. An original counterpart of the Membership Interest Assignment in substantially the form of Exhibit Q hereto (the "**Membership Interest Assignment**"), conveying to Buyer all of Seller's right, title and interest in and to the Purchased Interests, executed by Seller.

(ii) Certificates. The following certificates:

(A) A certificate executed by an officer of Seller, certifying as of the Closing Date (I) a true and correct copy of the resolutions of Seller

authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Seller, Company or any of Seller's other Affiliates is a party, and the consummation of the transactions contemplated hereby and thereby, (II) incumbency matters, (III) Seller's and the Company's good standing and (IV) the Company's Corporate Records.

(B) An affidavit from Seller, stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, for purposes of Section 1445(b)(2) of the Code and Treasury Regulation § 1.1445-2(b)(2)(iv)(B).

(C) A certificate executed by an officer of Seller, certifying as to the matters set forth in Section 8.1(b).

(D) PWA Requirements Certificates [REDACTED]

(iii) Resignations. Letters of resignation executed by each of the managers and officers of the Company, if any, effective as of the Closing.

(iv) Release. A release in the form attached hereto as Exhibit R, executed by Seller.

(v) Excluded Assets. The Excluded Assets and Liabilities Assignment Agreement with respect to the Excluded Assets, if any, in accordance with Section 10.9, executed by Seller and Company.

(vi) Ancillary Agreements. Each of the Ancillary Agreements, executed by Seller or an Affiliate if applicable.

(vii) Books and Records. Physical possession of all business records, financial books and records, files and other files, books and records owned or controlled by, or otherwise in the possession of, Seller or its Affiliates, to the extent (and only to the extent) such books and records are related to the Company or the Project, and in the case of such books and records that are maintained in electronic format, such books and records shall, to the extent practicable, be delivered in an electronic format reasonably requested by Buyer.

(b) Representations, Warranties and Covenants of Seller. The representations and warranties made by Seller in Article VI hereof shall be true and correct [REDACTED]

[REDACTED], and Seller shall have performed [REDACTED] all covenants required by this Agreement to be performed by Seller at or before the Closing Date.

(c) Company Permits. Seller shall have, or caused the Company to have, obtained all of the Company Permits set forth in Part B of Schedule 6.14(a), and all such Company Permits shall have either been obtained in the name of the Company or validly assigned to the Company in each case in accordance with applicable Laws, and all such Company Permits shall be final, nonappealable and in full force and effect.

(d) Consent. Other than the consents obtained pursuant to Section 3.4(g), (i) Seller shall have, or caused the Company to have, obtained or delivered, as applicable, all of the Seller Consents, which Seller Consents shall be final, nonappealable and in full force and effect and true and correct copies of which shall have been received by Buyer, and (ii) Buyer shall have obtained all of the Buyer Consents, which Buyer Consents shall be final, nonappealable and in full force and effect.

(e) [REDACTED]

(f) No Electricity Transmission. Except as permitted pursuant to Section 4.13, the Project has not generated and transmitted electricity to transmission grid at any time prior to Closing.

(g) Required Credit Support. The Required Credit Support (or any renewal thereof) shall be in full force and effect and shall not have been modified, rescinded or revoked and there shall have not occurred and be continuing any Seller Parent Guaranty Default or Letter of Credit Default.

(h) Real Property.

(i) Title Policy. Seller shall have (A) caused the Title Company to irrevocably commit to issue to the Company, at Seller's expense, an ALTA 2021 form extended coverage owner's policy of title insurance (the "***Title Policy***"), dated effective as of the Closing Date, in the form of the Final Pro Forma Title Policy approved or deemed approved by Buyer pursuant to Section 4.6(d); and (B) delivered to Title Company, with a copy to Buyer, such instruments and documents required by Title Company in order to irrevocably commit to issue such Title Policy, including certificates, affidavits and indemnities (provided that such indemnities shall not be executed by Company), and landowner instruments, such as authority documents.

(ii) Survey. Seller shall have caused the surveyor to issue the final Survey showing the as-built Facilities consistent in all material respects with the Site Plan, certified to the Company, Buyer, the Title Company and such other Persons as Buyer may reasonably direct.

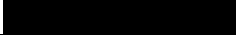

(iii) Real Property Interests. [REDACTED] the Real Property shall comprise all of the real property interests necessary for the construction, ownership, operation and maintenance of the Project, as applicable.

(iv) Land Contract Estoppels. Seller (1) shall have delivered to Buyer executed Land Contract Estoppels [REDACTED]




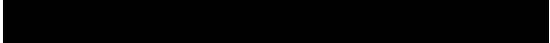
(i) Payoff Amount. The Baseline Amount shall be greater than or equal to the Payoff Amount, if applicable.

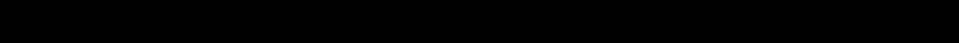
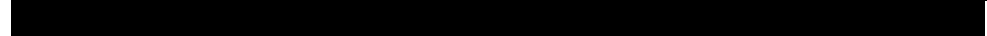
(j) Lenders Payoff Letter and Releases. If Seller undertakes a Financing, on the Closing Date, Buyer shall have received a payoff letter and release from the administrative agent and collateral agent of the Financing Parties under the Construction Loan Agreement in form and substance satisfactory to Buyer in its sole discretion, along with delivery of the membership certificates for the Purchased Interests and such other documentation as is reasonably necessary to release any Encumbrances of the applicable Financing Parties on the Purchased Interests and/or the Company Assets securing the loans under the Construction Loan Agreement.

(k) Prevailing Wage and Apprenticeship Requirements. 


(l) No Violation. The consummation of the transactions contemplated at the Closing shall not violate any applicable Law or Order.

(m) No Proceeding or Litigation. No Action shall have been instituted or threatened that questions or challenges the validity of, or seeks to impair, restrain, prohibit, invalidate or enjoin, the consummation of the transactions contemplated by this Agreement at the Closing.

(n) Major Project Document Estoppels. Seller shall have delivered to Buyer not later than  prior to the Closing Date the executed Major Project Document Estoppels, which shall not be dated more than 

(o) 


**ARTICLE IX
SELLER'S CONDITIONS PRECEDENT TO CLOSING**

Section 9.1 Seller's Conditions Precedent to Closing. The obligation of Seller to consummate the transactions contemplated by this Agreement to occur on the Closing Date shall be subject to fulfillment at or prior to the Closing of each of the following conditions, except to the extent Seller waives such fulfillment in writing:

(a) Deliveries by Buyer at Closing. Upon the terms and subject to the conditions set forth in this Section 9.1, on or before the Closing Date, Buyer shall deliver, or shall cause to be delivered to Seller, the following:

(i) Consideration. The Closing Payment (if it is a positive number) in accordance with Section 2.2(a)(i) and evidence of payment of the Payoff Amount.

(ii) Certificates.

(A) A certificate executed by an officer of Buyer, certifying as of the Closing Date (I) a true and correct copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement and the other Ancillary Agreements to be executed by it, and the consummation of the transactions contemplated hereby and thereby, (II) incumbency matters, (III) Buyer's good standing and (IV) Buyer's Corporate Documents; and

(B) A certificate from Buyer executed by an officer, certifying as to the matters set forth in Section 9.1(b).

(iii) Ancillary Agreements. Each of the Ancillary Agreements to which Buyer or the Company is a party shall be executed by Buyer or the Company and delivered to Seller.

(iv) [Reserved].

(b) Representations, Warranties and Covenants of Buyer. The representations and warranties made by Buyer in Article VII hereof shall be true and correct

[REDACTED] and Buyer shall have performed [REDACTED] all covenants required by this Agreement to be performed by Buyer at or before the Closing Date.

(c) [Reserved].

(d) No Violation. The consummation of the transactions contemplated at the Closing shall not violate any applicable Law or Order that would have a material adverse effect on Seller's ability to consummate the transaction contemplated hereby.

(e) No Proceeding or Litigation. No Action shall have been instituted or threatened that questions or challenges the validity of, or seeks to impair, restrain, prohibit, invalidate or enjoin, the consummation of the transactions contemplated by this Agreement at the Closing.

(f) Replacement of Project Document Credit Support Obligations. Buyer shall have delivered to Seller evidence of the replacement of the Project Document Credit Support Obligations set forth on Schedule 6.33 in accordance with Section 5.8.

ARTICLE X POST-CLOSING COVENANTS

Section 10.1 Records. Seller and Buyer agree that each will cooperate with and make available to the other Party, during normal business hours after reasonable advance notice, Corporate Records relating to the Project or the Company retained and remaining in existence after the Closing Date that are necessary in connection with any Tax inquiry, audit, investigation or dispute, any Action or any other matter requiring any such books and records. The Party requesting any such books and records shall bear all of the out-of-pocket costs and expenses (including attorneys' fees) reasonably incurred in connection with providing such books and records. Notwithstanding anything to the contrary contained in this Section 10.1, if the Parties are in an adversarial relationship in litigation or arbitration, the furnishing of any documents or information in accordance with this Section 10.1 shall be solely subject to applicable rules relating to discovery.

Section 10.2 Buyer Confidential Information. Subject to the conditions and limitations acknowledged in Section 4.7 and Section 4.8, after the Closing Date:

(a) Buyer Confidential Information. Seller acknowledges that Buyer Confidential Information is valuable and proprietary to the Project and Seller agrees not to, directly or indirectly, publish, disseminate, describe or otherwise disclose any Buyer Confidential Information in respect of the Project without the prior written consent of Buyer. For purposes of this Agreement, "***Buyer Confidential Information***" shall mean (a) any and all information provided by Buyer to Seller in writing and identified by Buyer as confidential and (b) any and all information with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Buyer Confidential Information if (i) it has become generally known or available within the industry or the public through no act or omission of Seller; (ii) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (iii) it was rightfully received by Seller from a third party who became aware of it through no act or omission of Seller and who is not under an obligation of confidentiality to Buyer, or (iv) Seller can demonstrate it was independently developed by employees or consultants of Seller.

(b) Duty to Maintain Confidentiality. Seller shall, and shall cause its Affiliates to, maintain any Buyer Confidential Information in confidence and shall not disclose it or cause it to be disclosed by them or any third party without Buyer's prior written consent; provided, however, that Seller may disclose Buyer Confidential Information to Persons who provide financial analysis, banking, legal, accounting, or other services to Seller or its Affiliates in connection with Seller's evaluation or implementation of the transactions contemplated by this Agreement (including the Financing), so long as such Persons have first been provided with a copy of Section 10.2 of this Agreement and have been informed of the duties required hereby.

(c) Permitted Disclosure. Notwithstanding Section 10.2(b), Buyer Confidential Information may be disclosed (i) if required by any Authority or by applicable Law

(including FERC and Commission filings) or stock exchange rule, (ii) in connection with seeking the Commission Approvals and the Required FERC Approvals and (iii) [REDACTED];
[REDACTED];
provided, however, that in each case under (i) and (ii) above, such Buyer Confidential Information is submitted under any and all applicable provisions for confidential treatment and in each case under (i) above (other than with respect to FERC and Commission filings and disclosures made in connection with seeking the Required FERC Approvals or the Commission Approvals), Seller exercises commercially reasonable efforts to notify Buyer of such disclosure.

(d) Limited Use. Seller agrees that it will not make any use of any Buyer Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement and the Ancillary Agreements, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Seller to utilize Buyer Confidential Information except for such purposes.

(e) Return or Destruction. Upon Buyer's request (after expiration or termination of the Construction Management Completion Agreement), Seller shall return to Buyer or destroy as promptly as practicable, but in a period not to exceed [REDACTED] (a) all Buyer Confidential Information provided to Seller, including all copies of such Buyer Confidential Information, and (b) all notes or other documents in digital or other format in its possession or in the possession of other Persons to whom Buyer Confidential Information was properly provided by Seller. Non-destruction of electronic copies of materials or summaries containing or reflecting Buyer Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel shall not be deemed to violate this Agreement, so long as Buyer Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

(f) Specific Performance. Seller acknowledges that a breach of the covenants contained in this Section 10.2 will cause irreparable damage to Buyer, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if Seller breaches any of the covenants contained in this Section 10.2, in addition to any other remedy that may be available at law or in equity, Buyer shall be entitled to specific performance and injunctive relief, without posting bond or other security. In the event of any conflict between the terms of any non-disclosure or other confidentiality agreement between the Parties or their Affiliates, the terms of this Agreement shall control.

Section 10.3 Seller Confidential Information. Subject to the conditions and limitations acknowledged in Section 4.7 and Section 4.8, after the Closing Date:

(a) Seller's Confidential Information. Buyer acknowledges that Seller Confidential Information is valuable and proprietary to Seller and Buyer agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Seller Confidential Information without the prior written consent of Seller. For purposes of this Agreement, "***Seller Confidential Information***" shall mean (a) any and all information provided by Seller to Buyer in writing and identified by Seller as confidential and (b) any and all information with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Seller

Confidential Information if (i) the Closing has occurred and such information is also a Company Asset under this Agreement (which information shall include the Company's books and records); (ii) it has become generally known or available within the industry or the public through no act or omission of Buyer; (iii) Buyer can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Buyer; (iv) it was rightfully received by Buyer from a third party who became aware of it through no act or omission of Buyer and who is not under an obligation of confidentiality to Seller; or (v) Buyer can demonstrate it was independently developed by employees or consultants of Buyer.

(b) Duty to Maintain Confidentiality. Buyer shall, and shall cause its Affiliates to, maintain any Seller Confidential Information in confidence and shall not disclose it or cause it to be disclosed by Buyer or any third party without Seller's prior express written consent; provided, however, that Buyer may disclose Seller Confidential Information to Persons who provide financial analysis, banking, legal, accounting, or other services to Buyer or any potential lenders to Buyer in connection with Buyer's evaluation or implementation of the transactions contemplated by this Agreement, so long as such Persons have first been provided with a copy of Section 10.3 of this Agreement and have been informed of the duties required hereby.

(c) Permitted Disclosure. Notwithstanding Section 10.3(b), (i) Seller Confidential Information may be disclosed if required by any Authority or by applicable Law (including FERC and Commission filings) or stock exchange rule, and (ii) in connection with seeking the Commission Approvals and the Required FERC Approvals; provided, however, that in each case under (i) and (ii) above such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment and in each case under (i) above (other than with respect to FERC and Commission filings and disclosures made in connection with seeking the Required FERC Approvals or the Commission Approvals), Buyer exercises commercially reasonable efforts to notify Seller of such disclosure.

(d) Limited Use. Buyer agrees that it will not make any use of any Seller Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement and the Ancillary Agreements, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Buyer to utilize Seller Confidential Information except for such purposes.

(e) Return or Destruction. Upon Seller's request, Buyer shall return or destroy as promptly as practicable, but in a period not to exceed [REDACTED] (a) all Seller Confidential Information provided to Buyer, including all copies of such Seller Confidential Information, and (b) all notes or other documents in digital or other format in its possession or in the possession of other Persons to whom Seller Confidential Information was properly provided by Buyer. Non-destruction of electronic copies of materials or summaries containing or reflecting Seller Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel shall not be deemed to violate this Agreement, so long as Seller Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

(f) Specific Performance. Buyer acknowledges that a breach of the covenants contained in this Section 10.3 will cause irreparable damage to Seller, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Buyer agrees that if Buyer breaches any of the covenants contained in this Section 10.3, in addition to any other remedy that may be available at law or in equity, Seller shall be entitled to specific performance and injunctive relief, without posting bond or other security. In the event of any conflict between the terms of any non-disclosure or other confidentiality agreement between the Parties or their Affiliates, the terms of this Agreement shall control.

Section 10.4 Tax Matters.

(a) Buyer shall inform Seller of the commencement of any audit, examination or proceeding relating in whole or in part to Taxes for which Seller is responsible to indemnify any Buyer Indemnified Party pursuant to this Agreement. With respect to any such Tax, Seller will have the right, at its sole cost and expense, to control (in the case of Tax period ending on or before the Closing Date) or participate in (in the case of a Straddle Period) the prosecution, settlement or compromise of any proceeding involving the Tax, provided that Seller shall have promptly notified Buyer in writing of its intention to control or participate in such prosecution, settlement or compromise (the "***Tax Contests***"). Notwithstanding anything in this Agreement to the contrary, Seller shall have no rights under this Agreement to control or participate in (i) any Tax Contest of Buyer or its Affiliates (other than the Company) or (ii) any Tax Contest of the Company with respect to any Tax period that begins on or after the Closing Date. To the extent Seller is controlling the proceeding, Buyer will (and will cause the Company to) take such action in connection with any such proceeding that Seller reasonably requests, including the selection of counsel and experts and the execution of powers of attorney. The controlling Party shall keep the other Party reasonably informed of the developments and status of any Tax Contest, shall permit the non-controlling Party to participate (at its own expense) in any Tax Contest and shall not settle or compromise any Tax Contest without the non-controlling Party's consent, which shall not be unreasonably withheld, conditioned or delayed. To the extent that there is an inconsistency between Sections 11.2(c) or 11.2(d) and this Section 10.4 as it relates to a Tax Contest, the provisions of this Section 10.4 shall govern.

(b) In the case of any Straddle Period, the amount of any Taxes based on or measured by income, receipts, or payroll of the Company for the pre-Closing portion of such Tax period shall be determined based on an interim closing of the books as of the close of business on the Closing Date. All real property Taxes, personal property Taxes and other Taxes and similar obligations of the Company that are due or become due for Straddle Periods shall be apportioned to Seller for the pre-Closing portion of such Tax period of such Straddle Period, and the amount of such Taxes and obligations of the Company that relate to the pre-Closing portion of such Tax period shall be deemed to be the amount of such Taxes and obligations for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date, and the denominator of which is the number of days in such Straddle Period. If any refund, rebate or similar payment is received by the Company, and/or Buyer for any Taxes, such refund, rebate or similar payment shall be for the benefit of Seller to the extent such refund, rebate or similar payment relates to a Pre-Closing Tax Period (or the pre-Closing portion of a Straddle Period), as determined in accordance with the same principles provided for in this Section 10.4(b) of the Company, as applicable, and the Company or Buyer, as applicable, shall pay over

the amount of such refund, rebate or similar payment (including interest thereon paid by the relevant Authority or other Tax Authority) to Seller within [REDACTED] following receipt thereof.

(c) Buyer and Seller shall provide each other with such assistance as may reasonably be requested by the other in connection with the preparation of any Tax Return, any audit or other examination by any Tax Authority, or any judicial or administrative proceedings relating to liabilities for Taxes relating to the Company. Such assistance shall include making employees available on a mutually convenient basis to provide additional information or explanation of material provided hereunder and shall include providing copies of relevant Tax Returns, taxpayer identification numbers, and supporting material, and the execution of any Tax Returns where reasonably requested by the other Party. The Party requesting assistance hereunder shall reimburse the assisting Party for reasonable out-of-pocket expenses incurred in providing assistance. Buyer and Seller will retain for the full period of any statute of limitations (including any extensions thereof) and provide the others with any records or information which may be relevant to such preparation, audit, examination, proceeding or determination. Buyer shall not (and, after the Closing, shall cause the Company not to) file any amended Tax Returns or make, change or revoke any elections, seek any ruling or other similar determination from a Authority, enter into any closing agreement, in each case, with respect to the Company for any taxable period (or portion thereof) ending on or before the Closing Date, without the prior written consent of Seller, which Seller shall not unreasonably withhold, unless otherwise required by Law.

(d) Seller shall report any gain recognized on the sale of the Purchased Interests as gain from the sale of property described in Section 1221(a)(1) of the Code for all federal, state and local income tax purposes.

(e) [REDACTED]

[REDACTED]

Section 10.5 [Reserved].

Section 10.6 Confidentiality Regarding This Agreement. Subject to the conditions and limitations acknowledged in Section 4.7 and Section 4.8: (i) the Parties each acknowledge and agree that the terms of this Agreement shall be considered Seller Confidential Information and Buyer Confidential Information, and (ii) neither Buyer nor Seller shall issue any public announcement, press release or other statement with respect to this Agreement or the transactions contemplated hereby that identifies the other Party, without the prior consent of the other Party (which consent shall not be unreasonably withheld), unless required by applicable Law or stock exchange rule (including in connection with obtaining the necessary approvals of this Agreement and the transactions contemplated hereby from any Authority) [REDACTED]

[REDACTED] provided, however, that both Buyer and Seller shall have the right without obtaining such consent to include public information concerning the Project in such Party's marketing materials following the initial public announcement by the other Party. In the event a Party breaches this Section 10.6, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, the non-breaching Party may, in its sole discretion, issue public announcements that the non-breaching Party shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the breaching Party.

Section 10.7 Further Assurances. Following Closing, each of the Parties shall use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement, including the delivery of such certificates, documents and instruments that either Party reasonably requests for the purpose of (i) evidencing the accuracy of representations and warranties, (ii) evidencing the performance and compliance by the other Party with the agreements contained in this Agreement, (iii) evidencing the satisfaction of any condition referred to in Section 8.1 or Section 9.1, or (iv) otherwise facilitating the consummation of the transactions contemplated by this Agreement. Without limiting the foregoing, Seller shall provide Buyer and Company, and any third party operator of all or any portion of the Facilities, with such assistance as Buyer may from time to time reasonably request for purposes of ensuring that Buyer, its Affiliates, or such third party operator(s), will be able to operate and maintain the Facilities in accordance with Prudent Industry Practices and the Site Operating Plan following the Closing Date.

Section 10.8 Transfer Taxes. All Transfer Taxes, if any, arising out of or in connection with the transactions effected pursuant to this Agreement, including any Transfer Taxes resulting from any reorganization or restructuring of Seller or its Affiliates (including the Company) prior to the Closing, shall be borne by Seller. Tax Returns that must be filed in connection with such Transfer Taxes shall be prepared and filed by the Party primarily or customarily responsible under applicable local Law for filing such Tax Returns, and such party will use commercially reasonable efforts to provide such Tax Returns to the other Party at least [REDACTED] prior to the date such Tax Returns are due to be filed.

Section 10.9 Removal of Excluded Assets. On or before the Closing Date (or, if an Excluded Asset was retained by the Company after the Closing, then [REDACTED] of receiving notice thereof), Seller shall at its sole cost and expense, disconnect and remove from the Site all Excluded Assets and, if no other Company Assets are located on the Real Property on which such Excluded Assets were located, restore such Real Property in accordance with the requirements of the Land Contracts that apply in the case of termination of such Land Contract. With respect to all Excluded Asset retained by the Company after the Closing, Seller shall, and Buyer shall cause the Company to, execute and deliver an assignment and assumption agreement, in form and substance substantially similar to the Excluded Assets and Liabilities Assignment Agreement, with respect to such Excluded Assets. Such removal shall be undertaken in such manner as to avoid any damage to the Company Assets and any disruption of the business operations of the Company after the Closing Date. The cost of any damage to the Company Assets resulting from such removal shall be promptly paid by Seller upon receipt of an invoice for same (together with a reasonably detailed accounting therefor) from Buyer. Should Seller fail to remove the Excluded Assets as required by this Section 10.9, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Seller's sole cost and expense; (b) to store the Excluded Assets and to charge Seller all reasonable and documented out-of-pocket storage costs associated therewith; (c) if not removed by, or the storage costs assumed by, Seller within [REDACTED] after the Closing Date (with respect to Excluded Assets known as of the Closing Date) or [REDACTED] after the date on which Buyer provides notice of the Excluded Assets identified post-Closing (with respect to such later-identified Excluded Assets), as applicable, to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the Laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity other than termination of this Agreement. Seller shall promptly reimburse Buyer for all reasonable and documented costs and expenses incurred by Buyer in connection with the actions in the immediately preceding sentence.

Section 10.10 Seller's Post-Closing Covenants. [REDACTED]

[REDACTED] Seller shall, as promptly as is reasonably practicable, diligently and in good faith assist Buyer in matters in which Seller was involved prior to the Closing as developer of the Project, and to coordinate and cooperate with Buyer in providing such information and supplying such assistance as may be reasonably requested by Buyer in connection with:

(a) any interfaces with Authorities, landowners, Interconnection Construction Services Agreements counterparty(ies) and the Interconnection Agreements counterparty(ies) with respect to matters related to completion of the unfinished portion of the Project; and

(b) causing the Project to achieve Substantial Completion and Final Completion.

Section 10.11 Insurance.

(a) Commencing no later than the date that any Contractor commences any work on the Site and continuing through the Substantial Completion Date, Seller shall maintain in full force and effect the Project Insurance Policies as provided in Schedule 6.18; provided, however, that Seller shall maintain in full force and effect commercial general liability coverage

for products and completed operations as set forth on Schedule 6.18 for a period of [REDACTED] following the Final Completion Date.

(b) From and after the Closing Date, Buyer shall have the right to submit to Seller any claims (together with a reasonable description thereof and back-up therefor) for any documented, out-of-pocket Losses or Liabilities of the Company that are covered by the Project Insurance Policies arising out of insured incidents to the extent occurring from the date coverage thereunder first commenced until the Final Completion Date for all liability claims and from the date coverage thereunder first commenced until the Substantial Completion Date for all Builders All Risk property claims. With respect to any such claim, Seller shall submit such claim and use its commercially reasonable efforts to administer such claims on behalf of the Company, as applicable, and to seek reasonable recovery under the applicable insurance provisions of such insurance policies covering a Loss of the Company, as applicable, to the same extent as it would if such Loss were a Loss of Seller and to the extent that the terms and conditions of any such policies so allow (it being understood that (i) Seller shall have the right to administer and control such claims and (ii) such claims shall be subject to any and all applicable deductibles, retentions, self-insurance provisions or any payment or reimbursement obligations in respect thereof, and the exhaustion of existing aggregate limits), and Seller shall pay to Buyer the amount of such recovery within a reasonable time after receipt thereof not to exceed [REDACTED] net of any out-of-pocket costs and expenses of Seller (including the reasonable fees, disbursements and expenses of legal counsel).

(c) With respect to any claims that may be brought after the Closing with respect to occurrences prior to Substantial Completion (i) ensure that the Company, Buyer, its Affiliates and Representatives, will be endorsed to Seller's policies as additional insureds on Seller's general liability, auto liability, pollution liability and umbrella liability policies, and (ii) provide that Seller waives, and causes its insurers to waive, subrogation rights against Buyer and its Affiliates and Representatives with respect to general liability, auto liability, umbrella liability, workers compensation and employer's liability policies.

(d) Losses recovered by the Company pursuant to Section 10.11(b) shall be subject to the provisions of Section 11.2(g).

Section 10.12 Post-Closing Completion of the Project.

(a) From time to time following the Closing Date until the Final Completion Date, Buyer shall reasonably cooperate with Seller to enable Seller to complete construction of the Project in accordance with this Agreement and the schedule and deadlines set forth herein, including affording Seller and all Contractors (and their subcontractors) access to the Project and cooperating with Seller to assert the rights of the Company under the Material Contracts.

(b) The Parties agree that, between the Closing Date and Final Completion, all energy produced from the Facilities will be sold at wholesale by the Company or Buyer, as applicable, into the energy markets administered by the Transmission Provider.

(c)

[REDACTED] Seller shall remain liable for all payments due to counterparties under

Material Contracts following the Closing for work and services performed to achieve Mechanical Completion, Substantial Completion and Final Completion.

(d) Following the Assets Distribution to Buyer or Merger, the provisions of this Section 10.12 shall apply, mutatis mutandis, to Seller (or its Affiliate) acting as Buyer's limited agent for the same purposes and with the same scope as it had served as the Company's limited agent described above.

Section 10.13 Assets Distribution to Buyer or Merger.

(a) Until such time as the Assets Distribute to Buyer or Merger is consummated, after Closing, Buyer shall cause Company to comply with all obligations arising under this Article X [REDACTED]

Section 10.14 [REDACTED]

[REDACTED]

ARTICLE XI INDEMNIFICATION

Section 11.1 Survival.

(a) Fundamental Representations. No claim under Section 11.2(a)(i) or Section 11.2(b)(i) may be made by the applicable Party unless such claim is delivered to the other Party prior to [REDACTED]

(b) Other Representations and Warranties. No claim under Section 11.2(a)(ii) or Section 11.2(b)(ii) may be made by either Party unless such claim is delivered to the other Party prior to [REDACTED]

(c) Covenants. All covenants and agreements of the Parties contained in this Agreement shall survive in accordance with their respective terms or until such covenant or agreement has been performed.

Section 11.2 Indemnifications.

(a) By Seller. From and after Closing, subject to Section 4.3(b) and Section 11.3, Seller (“***Seller Indemnifying Party***”) shall indemnify, defend, save and hold harmless, Buyer, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “***Buyer Indemnified Parties***”) from and against any and all Losses (whether or not arising out of third-party claims, unless expressly restricted to third party claims below) incurred in connection with or arising out of or resulting from (i) any breach of any of Seller’s Fundamental Representations, (ii) (A) any breach of any of Seller’s representation or warranties under Article VI, other than Seller’s Fundamental Representations or (B) certifications made in any certificate delivered by an officer of Seller to Buyer, (iii) any breach of Seller’s covenants or agreements set forth in this Agreement, (iv) property damage or personally injury asserted by a third party caused by the gross negligence, willful, reckless or other tortious act or omission of Seller, (v) any failure by Seller to pay, perform or discharge any Excluded Liability as and when due, or (vi) without duplication [REDACTED]

the PWA Cure Liability

[REDACTED] Notwithstanding anything to the contrary contained in this Agreement, except in the case of fraud, bad faith, intentional breach or misrepresentation, gross negligence or willful misconduct on the part of Seller, in which case the following limitation shall not apply, no claim for indemnification shall be brought against Seller pursuant to Section 11.2(a)(ii) until the aggregate amount of Losses for such breaches in the aggregate for which Seller would be liable pursuant to Section 11.2(a)(ii) exceeds the Threshold Amount, and, once the Threshold Amount is exceeded, indemnification may be sought for the amount of such Losses, inclusive of amounts less than the Threshold Amount; provided, however, that Seller’s liability shall be limited as set forth in Section 11.3.

(b) By Buyer. From and after Closing, subject to Section 11.3, Buyer (“**Buyer Indemnifying Party**”) shall indemnify, defend, save and hold harmless, Seller, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “**Seller Indemnified Parties**”) from and against any and all Losses (whether or not arising out of third-party claims, unless expressly restricted to third party claims below) incurred in connection with or arising out of or resulting from (i) any breach of any of Buyer’s Fundamental Representations, (ii) any breach of any of Buyer’s representations or warranties under Article VII other than Buyer’s Fundamental Representations, (iii) any breach of Buyer’s covenants or agreements set forth in this Agreement, (iv) property damage or personal injury asserted by a third party caused by the gross negligence, willful, reckless or other tortious act or omission of Buyer, or (v) any failure of Buyer to pay, discharge or perform any Liabilities (other than Excluded Liabilities) of the Company to the extent relating to the period from and after the Closing Date as and when due, except to the extent they are subject to Seller’s obligations under Section 11.2(a). Notwithstanding anything to the contrary contained in this Agreement, except in the case of fraud, bad faith, intentional breach or misrepresentation, gross negligence or willful misconduct on the part of Buyer, in which case the following limitation shall not apply, no claim for indemnification shall be brought against Buyer pursuant to Section 11.2(b)(ii) until the aggregate amount of Losses for such breaches in the aggregate for which Buyer would be liable pursuant to Section 11.2(b)(ii) exceeds the Threshold Amount, and, once the Threshold Amount is exceeded, indemnification may be sought for the amount of such Losses, inclusive of amounts less than the Threshold Amount; provided, however, that Buyer’s liability shall be limited as set forth in Section 11.3.

(c) Procedure for Indemnification of Third Party Claims.

(i) Whenever any claim by a third party shall arise for indemnification under this Article XI, the Indemnified Party shall promptly notify the Indemnifying Party of the claim and, when known, the facts constituting the basis for such claim and, if known, the notice shall specify the amount or an estimate of the amount of the liability arising therefrom. The Indemnified Party shall provide to the Indemnifying Party copies of all material notices and documents (including court papers) received or transmitted by the Indemnified Party relating to such claim. The failure or delay of the Indemnified Party to deliver prompt written notice of a claim shall not affect the indemnity obligations of the Indemnifying Party hereunder, except to the extent the Indemnifying Party was actually disadvantaged by such failure or delay in delivery of notice of such claim.

(ii) Settlement of Losses. If the Indemnified Party has assumed the defense of any claim by a third party which may give rise to indemnity hereunder pursuant to Section 11.2(d), the Indemnified Party shall not settle, consent to the entry of a judgment of or compromise such claim without the prior written consent (which consent shall not be unreasonably withheld or delayed) of the Indemnifying Party.

(d) Rights of Indemnifying Party in the Defense of Third Party Claims.

(i) Right to Assume the Defense. In connection with any claim by a third party which may give rise to indemnity hereunder, the Indemnifying Party shall have

██████████ after the date the Indemnifying Party is notified of such claim by the Indemnified Party to assume the defense of any such claim, which defense shall be prosecuted by the Indemnifying Party to a final conclusion or settlement in accordance with the terms hereof; provided, however, that the Indemnifying Party shall not have the right to assume the defense of any claim unless the Indemnifying Party acknowledges to the Indemnified Party in writing the obligation of the Indemnifying Party to indemnify the Indemnified Party with respect to all elements of such claim.

(ii) Procedure. If the Indemnifying Party assumes the defense of any such claim, the Indemnifying Party shall (i) select counsel reasonably acceptable to the Indemnified Party to conduct the defense of such claim and (ii) take all steps necessary in the defense or settlement thereof, at its sole cost and expense. The Indemnified Party shall be entitled to participate in (but not control) the defense of any such claim, with its own counsel and at its sole cost and expense; provided, that, if the claim includes allegations for which the Indemnifying Party both would and would not be obligated to indemnify the Indemnified Party, the Indemnifying Party and the Indemnified Party shall in that case jointly assume the defense thereof. The Indemnified Party and the Indemnifying Party shall fully cooperate with each other and their respective counsel in the defense or settlement of such claim. The Party in charge of the defense shall keep the other Party apprised at all times as to the status of the defense or any settlement negotiations with respect thereto.

(iii) Settlement of Losses. The Indemnifying Party shall not consent to a settlement of or the entry of any judgment arising from, any such claim or legal proceeding, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed).

(iv) Decline to Assume the Defense. The Indemnified Party may defend against any such claim, at the sole cost and expense of the Indemnifying Party, in such manner as it may deem reasonably appropriate, including settling such claim in accordance with the terms hereof if (i) the Indemnifying Party does not assume the defense of any such claim resulting therefrom ██████████ after the date the Indemnifying Party is notified of such claim by the Indemnified Party or (ii) the Indemnified Party reasonably concludes that the Indemnifying Party is (A) not diligently defending the Indemnified Party, (B) not contesting such claim in good faith through appropriate proceedings or (C) has not taken such action (including the posting of a bond, deposit or other security) as may be necessary to prevent any action to foreclose an Encumbrance against or attachment of any asset or property of the Indemnified Party for payment of such claim.

(e) Direct Claims. In the event that any Indemnified Party has a claim against any Indemnifying Party which may give rise to indemnity hereunder that does not involve a claim brought by a third party, the Indemnified Party shall promptly notify the Indemnifying Party of the claim and the facts constituting the basis for such claim and, if known, the amount or an estimate of the amount of the liability arising therefrom. If the Indemnifying Party does not notify the Indemnified Party within ██████████ from receipt of such claim notice that the Indemnifying Party disputes such claim, the amount of such claim shall be conclusively deemed a liability of the Indemnifying Party hereunder; however if the Indemnifying Party does notify the Indemnified

Party that it disputes such claim within the required [REDACTED] period, the Parties shall attempt in good faith to agree upon the rights of the respective Parties with respect to such claim. If the Parties should so agree, a memorandum setting forth such agreement shall be prepared and signed by both Parties. If such Parties shall not agree, the Indemnified Party shall be entitled to take any action in law or in equity as such Indemnified Party shall deem necessary to enforce the provisions of this Article XI against the Indemnifying Party.

(f) Exclusive Remedy. Notwithstanding anything in this Agreement to the contrary and subject to the following sentence, from and after Closing, the indemnification obligations of the Parties contained in this Section 11.2 (and subject to the limitations set forth in Section 11.3) shall be the sole and exclusive remedy of the Parties hereto, their Affiliates, successors and assigns with respect to any and all claims for Losses sustained or incurred arising out of or relating to any breach of any representation or warranty in Article VI or Article VII, or any covenant or agreement contained in this Agreement, including any claims with respect to environmental, health and safety matters; and each Party hereby expressly waives and disclaims, and agrees that it shall not assert, any right, remedy (including the remedy of rescission) or claim in respect of any such breach or Losses based on any cause or form of action whatsoever, except as and to the extent permitted in this Section 11.2; provided, however, that (i) the Parties may seek to enforce the provisions of this Agreement by injunction, specific performance or other equitable relief, (ii) either Party may seek any and all judicial relief with respect to any Default by the other Party of any of its obligations to pay any amounts due and owing to such Party under this Agreement, and (iii) such limitation shall not affect the remedies available to the parties under the Required Credit Support (in the case of Buyer) and any security provided by or on behalf of Buyer pursuant to Section 5.7 (in the case of Seller), which remedies shall be governed by the terms of such Ancillary Agreements, and (iv) this provision shall not limit any available remedy of the Party seeking indemnification for any Losses resulting from, or related to, the fraud, bad faith, intentional breach or misrepresentation, gross negligence or willful misconduct of the other Party. Nothing in this Section 11.2(f) is intended to constitute a waiver or limitation of any rights that any Party (or their respective Affiliates) may have to assert claims against third parties.

(g) Insurance Recoveries; Tax Costs. Losses for which any Indemnified Party will be reimbursed hereunder will be decreased (but not below \$0) by insurance proceeds or payments from any other responsible parties actually received by such Indemnified Party (after deducting costs and expenses incurred in connection with recovery of such proceeds, including reasonable and foreseeable premium increases) and will be increased to take account of any net Tax cost incurred by the Indemnified Party arising from the receipt of any such payment hereunder (grossed up for such increase).

(h) Tax Treatment. Any indemnity payment made pursuant to this Agreement will be treated as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by applicable Law.

(i) No Contribution. Seller will not have any right of contribution, right of indemnity or other right or remedy against the Company in connection with any indemnification obligation or any other Liability to which Seller may become subject under or in connection with this Agreement or otherwise.

(j) Reliance; Knowledge. Seller and Buyer each acknowledge that (i) only representations, warranties, covenants or agreements expressly made in this Agreement will be deemed to be representations, warranties, covenants or agreements for purposes of this Agreement, and (ii) neither Party has relied on any representation, warranty, covenant or agreement not expressly made in this Agreement in consummating the transactions described herein. The right to indemnification, payment, reimbursement, or other remedy based upon any representation, warranty, covenant, or agreement will not be affected by any investigation (including any environmental investigation or assessment) conducted or any knowledge acquired at any time, whether before or after the Closing Date, with respect to the accuracy or inaccuracy of, or compliance with, such representation, warranty, covenant, or agreement.

(k) No Materiality. Any determination of the dollar amount of damages suffered by an Indemnified Party as a result of any such breach, shall be made without regard to any materiality, Material Adverse Effect or material adverse qualifiers set forth in the applicable representation, warranty, covenant or agreement.

(l) Set off. In addition to all other remedies provided herein, each Party shall have the sole and absolute right to set off any Losses that are or may be owed by such Party to the other Party's Indemnified Party under this Article XI against any Liability owed by such party or its Affiliates to the other Party or its Affiliates.

Section 11.3 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement:

(a) If Delay Liquidated Damages accrue, then Buyer's retention of the Delay Liquidated Damages or Seller's payment of the Delay Liquidated Damages, as the case may be, shall in each case constitute liquidated damages for the delay. The Parties acknowledge and agree that actual damages, costs or expenses of any such event would be difficult to ascertain and that the liquidated damages remedy provided for hereunder is a fair and equitable amount to reimburse Buyer for damages sustained due to such event and is not a penalty.

(b) SUBJECT TO THE NEXT SENTENCE, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY

THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY

(c) The Parties' indemnification obligations under Section 11.2 shall be limited as follows:

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

provided, however, that the limitations of liability set forth above is unrelated to and shall not apply in respect of claims for fraud, bad faith, intentional breach or misrepresentation, gross negligence or willful misconduct.

**ARTICLE XII
TERMINATION**

Section 12.1 Termination.

(a) Termination by Buyer. This Agreement may be terminated prior to the Closing by Buyer upon written notice to Seller of such termination as follows:

(i) in the event the Required Credit Support required to be delivered to Buyer under Section 5.6(a) is not delivered within [REDACTED] after the Execution Date, effective immediately upon Seller's receipt of notice from Buyer;

(ii) in the event the Required Credit Support required to be delivered to Buyer under Section 5.6(b) is not delivered within [REDACTED] after the Firm Date, effective immediately upon Seller's receipt of notice from Buyer;

(iii) in the event the conditions precedent to Closing set forth in Section 8.1 have not been fulfilled or waived, on or before the Outside Date [REDACTED]

[REDACTED] provided, however, that Buyer may not terminate this

Agreement pursuant to this Section 12.1(a)(iii) if Buyer's failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the occurrence of the Closing or failure of any such conditions precedent to be fulfilled on or prior to such date;

(iv) upon the occurrence of a Bankruptcy Event with respect to Seller or the Company, effective immediately upon Seller's receipt of notice from Buyer;

(v) the material breach of any representation or warranty by Seller on or as of the Execution Date or the Firm Date, or the material breach of any covenant by Seller, in each case, if such breach has not been cured within [REDACTED] after notice from Buyer; and

(vi) [REDACTED] as Buyer is permitted in accordance with [REDACTED]

(b) Termination by Seller. This Agreement may be terminated prior to the Closing by Seller upon written notice to Buyer of such termination as follows:

(i) in the event the conditions precedent to Closing set forth in Section 9.1 have not been fulfilled or waived, on or before the Outside Date, effective immediately upon Buyer's receipt of notice from Seller; provided, however, that Seller may not terminate this Agreement pursuant to this Section 12.1(b)(i) if Seller's failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the occurrence of the Closing or failure of any such conditions precedent to be fulfilled on or prior to such date;

(ii) upon the occurrence of a Bankruptcy Event with respect to Buyer, effective immediately upon Buyer's receipt of notice from Seller;

(iii) the material breach of any representation or warranty by Buyer on or as of the Execution Date or the Firm Date, or the material breach of any covenant by Buyer, in each case, if such breach has not been cured within [REDACTED] after notice from Seller; and

(iv) [REDACTED] as Seller is permitted in accordance with [REDACTED]

Section 12.2 Effect of Termination. [REDACTED]

[REDACTED]

**ARTICLE XIII
MISCELLANEOUS**

Section 13.1 Payment Instructions. All amounts payable under this Agreement shall be made pursuant to the payment instructions provided by the payee of such amount to the payor thereof in writing at least [REDACTED] before the date on which such payment is due.

Section 13.2 Assignment. Seller may not assign any of its rights or obligations under this Agreement without the prior written consent of Buyer; provided, however, that no such consent shall be required with respect to the assignment or collateral assignment of this Agreement by Seller to, or for the benefit of, the Financing Parties. [REDACTED]

Section 13.3 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement, including all documents delivered pursuant to this Agreement, shall be in writing (which may include electronic mail) and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express or UPS); upon receipt, if sent by certified or registered mail, return receipt requested; and upon transmission by the sender to the correct electronic mail address, if sent by electronic mail. In each case notice shall be sent to:

If to Seller, to:

[REDACTED]

With a copy to (which copies shall not constitute notice hereunder):

[REDACTED]

If to Buyer, to:

Indiana Michigan Power Company
c/o American Electric Power Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215
Attn: Matthew D. Fransen, Vice President
Phone: (614) 716-6162
Email: mdfransen@aep.com

With a copy to (which copy shall not constitute notice hereunder):

Indiana Michigan Power Company
c/o American Electric Power Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215
Attn: Jack Gravelle, Assistant General Counsel
Phone: (614) 716-2954
Email: jjgravelle@aep.com

or to such other place and with such other copies as a Party may designate as to itself by written notice to the other Party.

Section 13.4 Choice of Law; Consent to Jurisdiction; Service of Process.

(a) Governing Law. This Agreement shall be construed, interpreted and the rights of the Parties determined in accordance with the Laws of the State of New York without reference to its choice of law provisions.

(b) Executive Dispute Resolution. Except with respect to any Technical Disputes, which are to be resolved solely in connection with Section 13.4(e), upon a Party's written notification to the other Party of a dispute, which notification must include a written explanation of the dispute and the material particulars of the notifying Party's position as to the dispute, each Party shall nominate one (1) executive representative with the authority to bind such Party. The nominated representatives shall meet not later than [REDACTED] thereafter to attempt in good faith to resolve the dispute and to produce written terms of settlement for the dispute (a "**Settlement Agreement**"). A Settlement Agreement executed by each executive representative shall serve as conclusive evidence of the resolution of such dispute. If the executive representatives do not produce and execute the Settlement Agreement within [REDACTED] after the date of the first meeting or within a longer period agreed to by each executive representative, then, either Party may upon written notice to the other Party, pursue all its rights and remedies provided at law or equity or otherwise in this Agreement.

(c) Jurisdiction. The Parties hereto hereby irrevocably submit to the exclusive jurisdiction of the federal or state courts located in the State of New York over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby; and each Party hereby irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard


and determined in such federal courts unless such federal courts do not have jurisdiction in which event such dispute or proceeding shall be heard and determined in such state courts. Each Party hereby 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 such dispute brought in such court or any defense of inconvenient forum.

(d) Service of Process. Each of the Parties hereto hereby consents to process being served by the other Party to this Agreement in any suit, action or proceeding of the nature specified in Section 13.4(c) by mailing of a copy thereof in accordance with the provisions of Section 13.3 hereof.

(e)



Section 13.5 Waiver of Jury Trial. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.6 Entire Agreement; Amendments and Waivers. This Agreement  contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. No supplement, modification or waiver of this Agreement or waiver of any breach of or failure to comply with any representation, warranty, covenant, agreement or condition herein shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement or waiver of any breach of or failure to comply with any representation, warranty, covenant, agreement or condition herein shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) or any other breach of or failure to comply with any representation, warranty, covenant, agreement or condition herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 13.7 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13.8 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein (other than a requirement to make payments hereunder), shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

Section 13.9 Titles. The recitals to this Agreement and the titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Section 13.10 Third Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Buyer Indemnified Parties and Seller Indemnified Parties shall be third party beneficiaries of this Agreement, provided that only Seller or Buyer may enforce the provisions hereof on behalf of their respective Indemnified Parties. Except as provided in this Section 13.10, there shall be no third-party beneficiaries of this Agreement.

Section 13.11 Cumulative Remedies. Subject to the terms of this Agreement, all rights and remedies of either Party hereto are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

Section 13.12 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 any Ancillary Agreement or otherwise.

Section 13.13 No Merger. This Agreement is a fully integrated complete agreement and is not merged with or extinguished by any other agreement.

Section 13.14




[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

EDF RENEWABLES DEVELOPMENT, INC.

By: _____

Name: Tristan Grimbart

Title: President & CEO

BUYER:

INDIANA MICHIGAN POWER COMPANY

By: _____

Name: Steven F. Baker

Title: President & COO

BUYER AGENT:

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

By: _____

Name: Antonio P. Smyth

Title: Senior Vice President - Grid Solutions

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

EDF RENEWABLES DEVELOPMENT, INC.

By: _____

Name: Tristan Grimbert

Title: President & CEO

BUYER:

INDIANA MICHIGAN POWER COMPANY

DocuSigned by:
Steven F. Baker
By: _____

Name: Steven F. Baker

Title: President & COO

BUYER AGENT:

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

DocuSigned by:
Antonio P. Smyth
By: _____

Name: Antonio P. Smyth

Title: Senior Vice President - Grid Solutions

DISCLOSURE SCHEDULES

These disclosure schedules (“*Schedules*”) are made and given pursuant to that certain Purchase and Sale Agreement, dated as of March 24, 2023 (the “*Agreement*”), by and between EDF Renewables Development, Inc., a Delaware corporation (“*Seller*”), and Indiana Michigan Power Company, an Indiana Corporation (“*Buyer*”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

These Schedules are qualified in their entirety by reference to specific provisions of the Agreement and are not intended to constitute, and shall not be construed as constituting, representations of Seller, except and to the extent provided in the Agreement. Inclusion of an item herein as an exception to a representation, warranty, covenant or agreement shall not be deemed an admission that such item represents a material fact, event or circumstance or that such item could reasonably be expected to result in a Material Adverse Effect. Disclosures included in these Schedules shall relate to the corresponding section of the Agreement identified thereon and to all other sections to which their significance is reasonably apparent.

Headings and summary descriptions have been inserted for convenience of reference only, and shall to no extent have the effect of amending or changing the express description of the sections as set forth in the Agreement. Any description of any document included in these Schedules is qualified in all respects by reference to such document.

Nothing contained in these Schedules shall be construed as an admission of liability or responsibility in connection with any pending, threatened or future matter or proceeding.

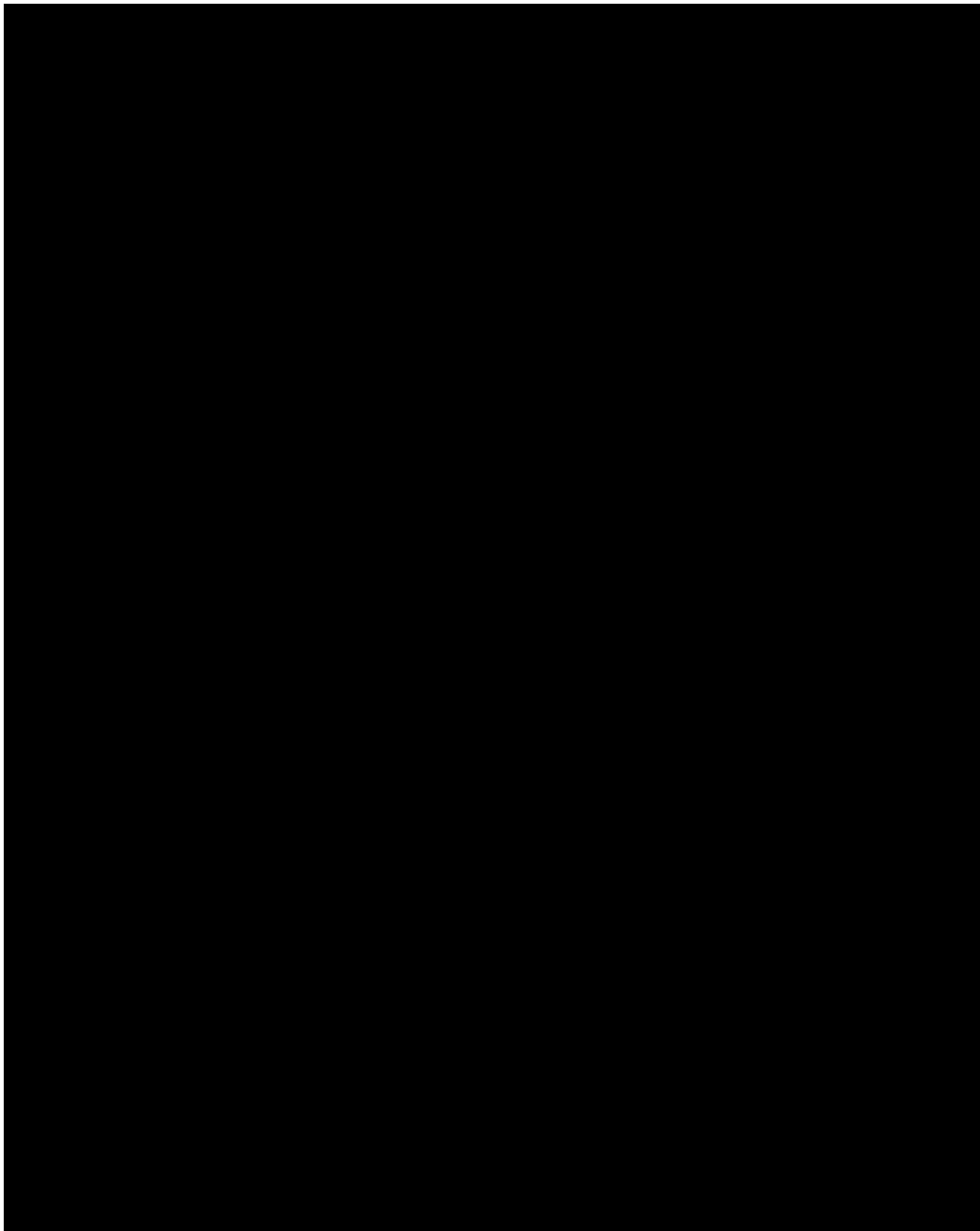
SCHEDULES INDEX

<u>Schedule</u>	<u>Name</u>
Schedule 1.1(b)	Excluded Assets
Schedule 1.1(c)	Project and Facilities
Schedule 1.1(d)	Seller's Knowledge
Schedule 1.1(e)	Calculation of Updated Property Burdens Adjustment
Schedule 1.1(f)	Permitted Encumbrances
Schedule 4.4(a)	Facilities Location Layout
Schedule 5.4	[REDACTED]
Schedule 6.4	Seller Consents and Approvals
Schedule 6.6	Seller Litigation
Schedule 6.7	Compliance with Law
Schedule 6.8	Environmental Matters
Schedule 6.11(a)	Land Contracts
Schedule 6.12(a)	Real Property Exceptions
Schedule 6.12(b)	[REDACTED]
Schedule 6.13(a)	Material Contracts
Schedule 6.13(g)	Liquidated Damages Claims under Material Contracts
Schedule 6.13(i)	Notice of Disputes under Material Contracts
Schedule 6.14(a)	Company Permits
Schedule 6.14(b)	Exceptions to Company Permits
Schedule 6.15	Finders
Schedule 6.16	Third-Party Intellectual Property Rights
Schedule 6.17	Solar Data
Schedule 6.18	Insurance
Schedule 6.24(a)	Financial Statements
Schedule 6.24(b)	Undisclosed Liabilities
Schedule 6.24(c)	Certain Changes
Schedule 6.26	Labor Matters
Schedule 6.29	Affiliate Transactions
Schedule 6.31	Bank Accounts
Schedule 6.33	Credit Support

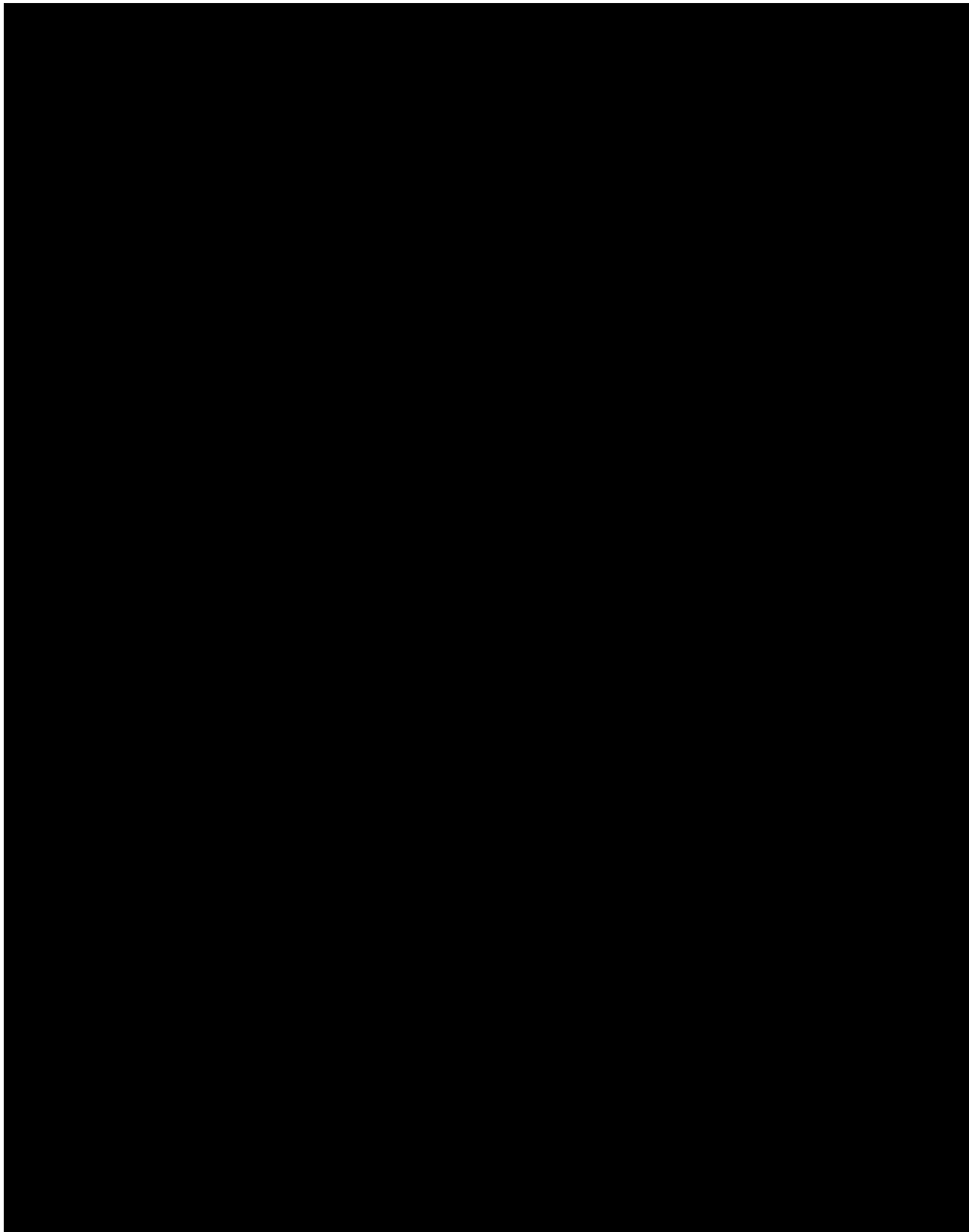
Schedule 1.1(b)
Excluded Assets

None.

Schedule 1.1(c)
Project and Facilities

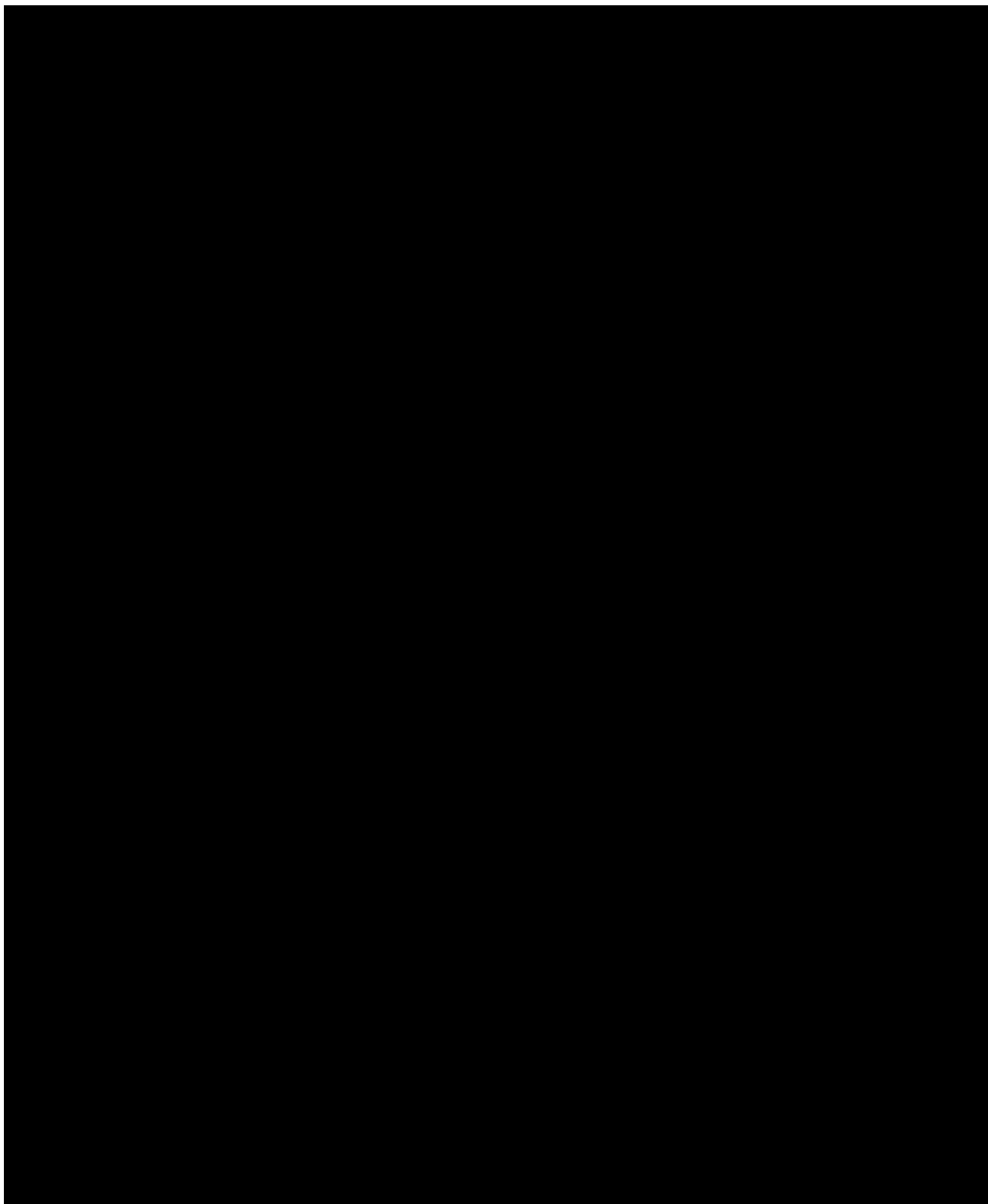


Schedule 1.1(d)
Seller's Knowledge



Schedule 1.1(e)

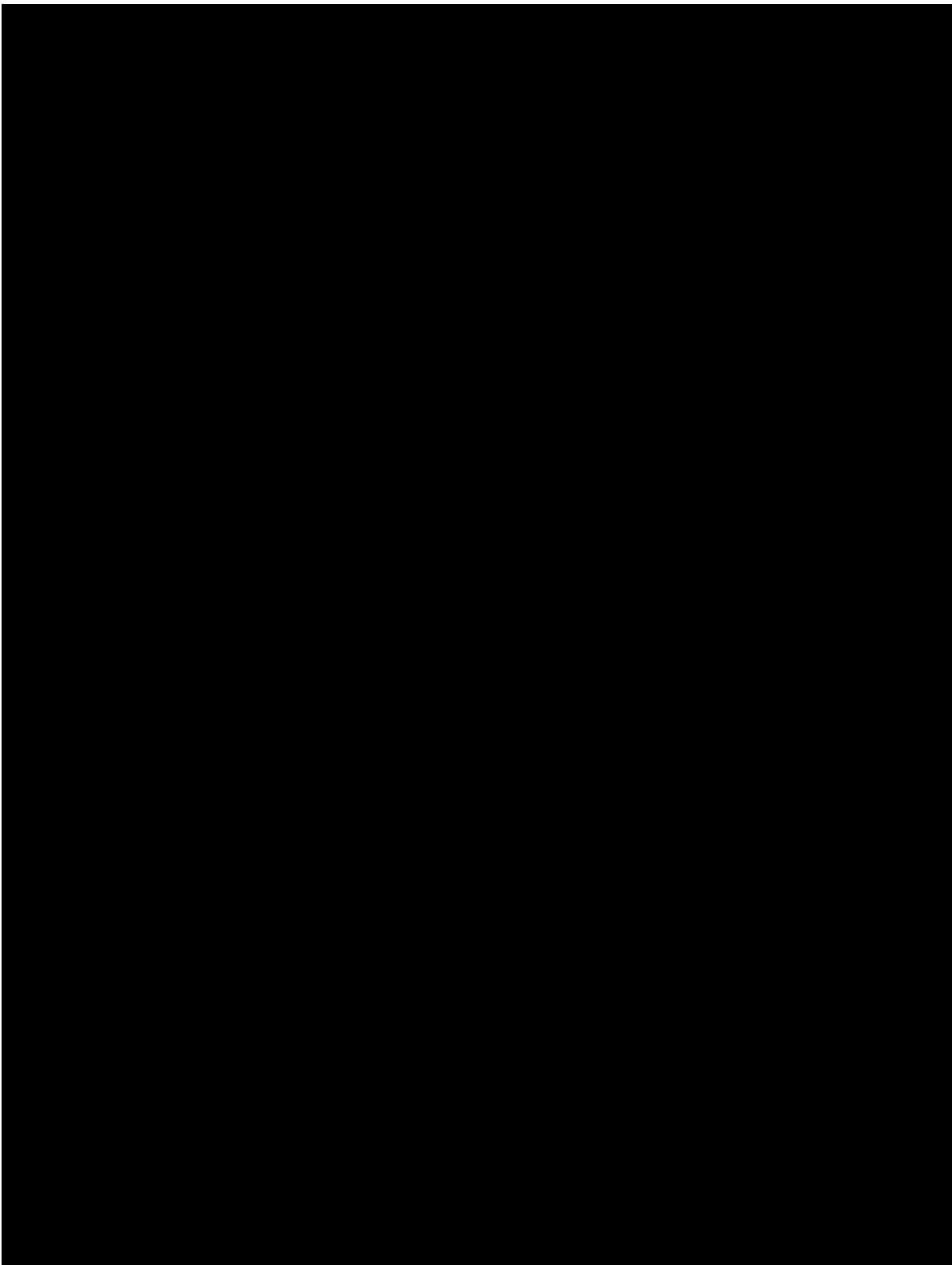
Calculation of Updated Property Burdens Adjustment



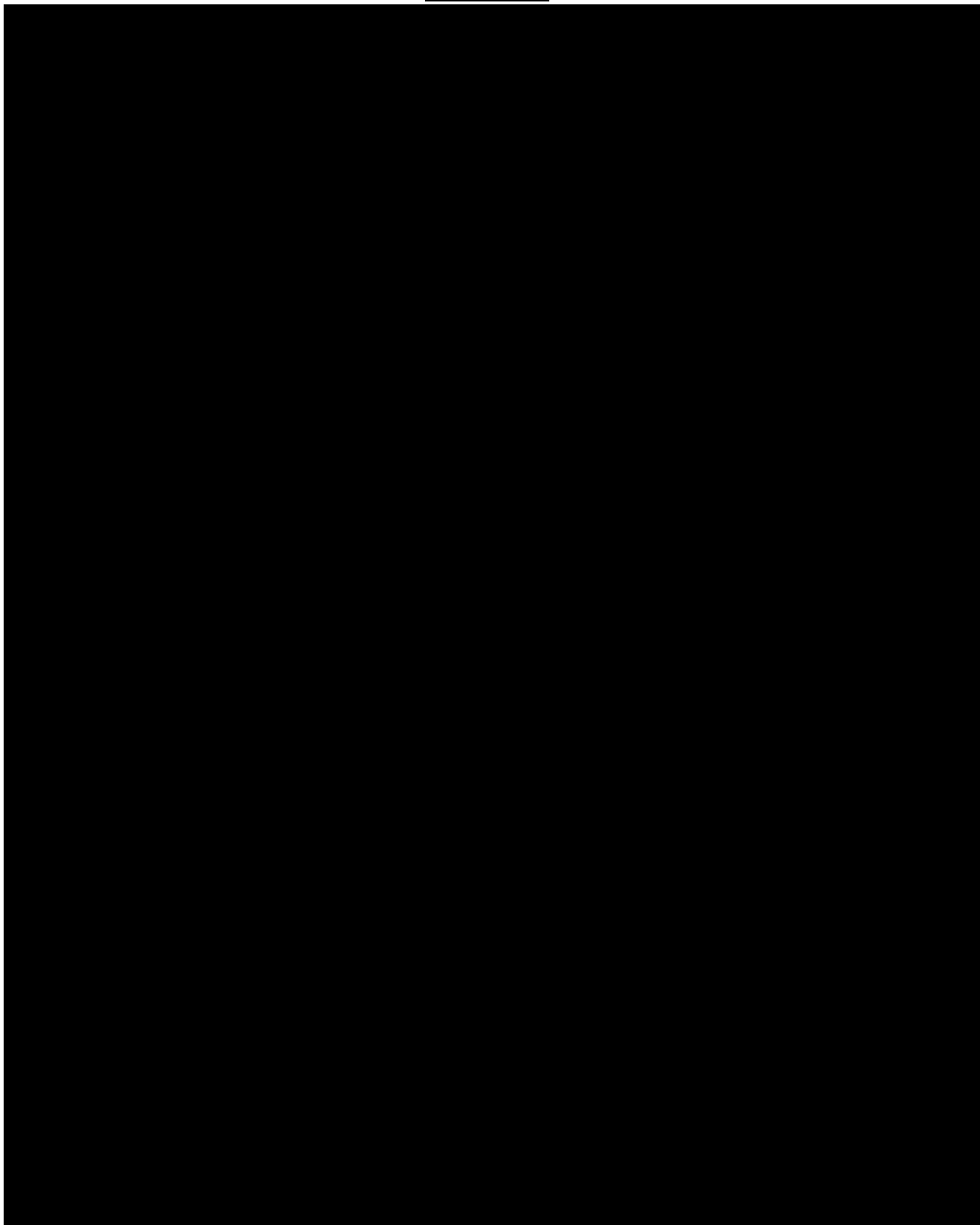
Schedule 1.1(f)
Permitted Encumbrances

None.

Schedule 4.4(a)
Facilities Location Layout

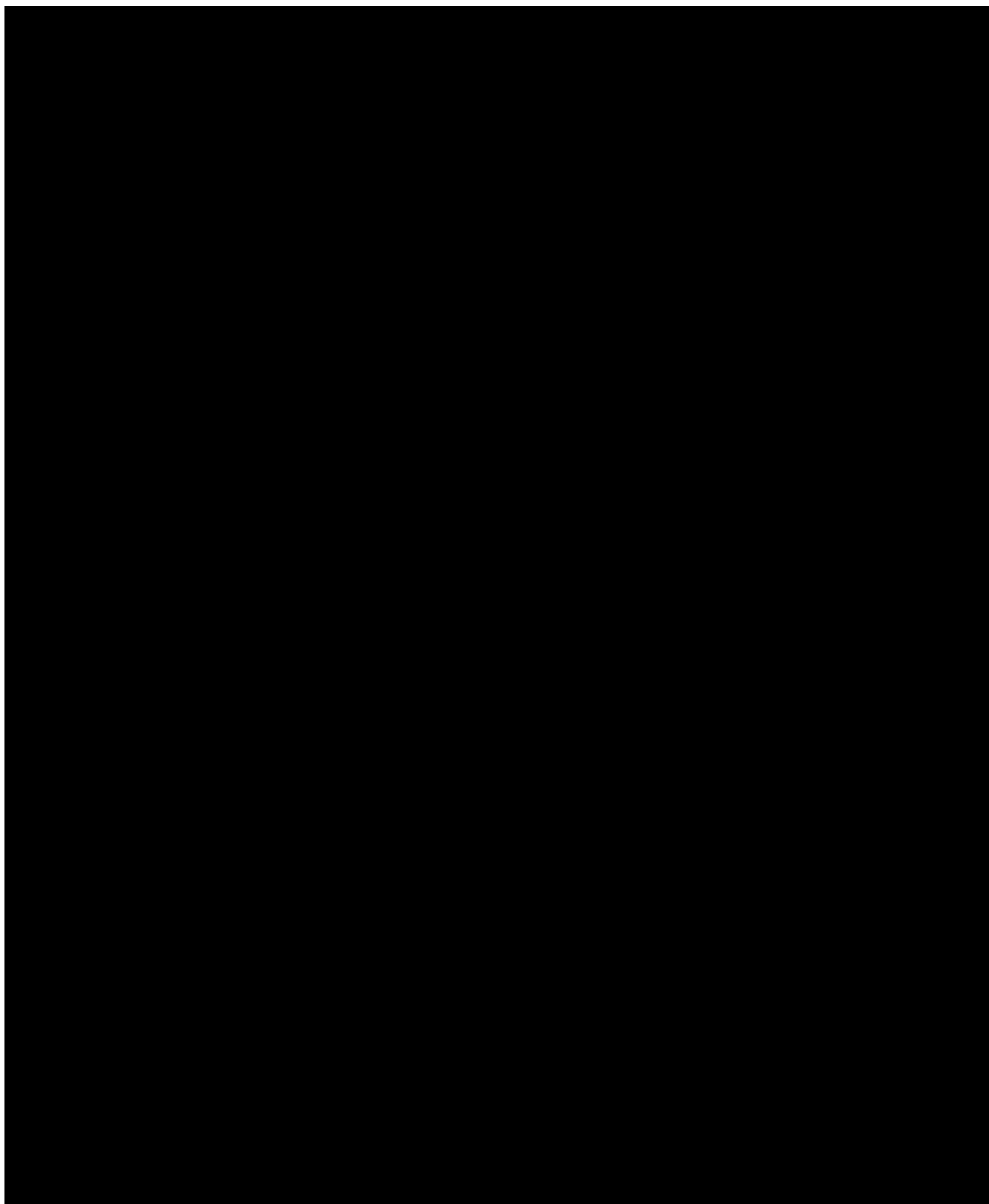


Schedule 5.4



Schedule 6.4

Seller Consents and Approvals



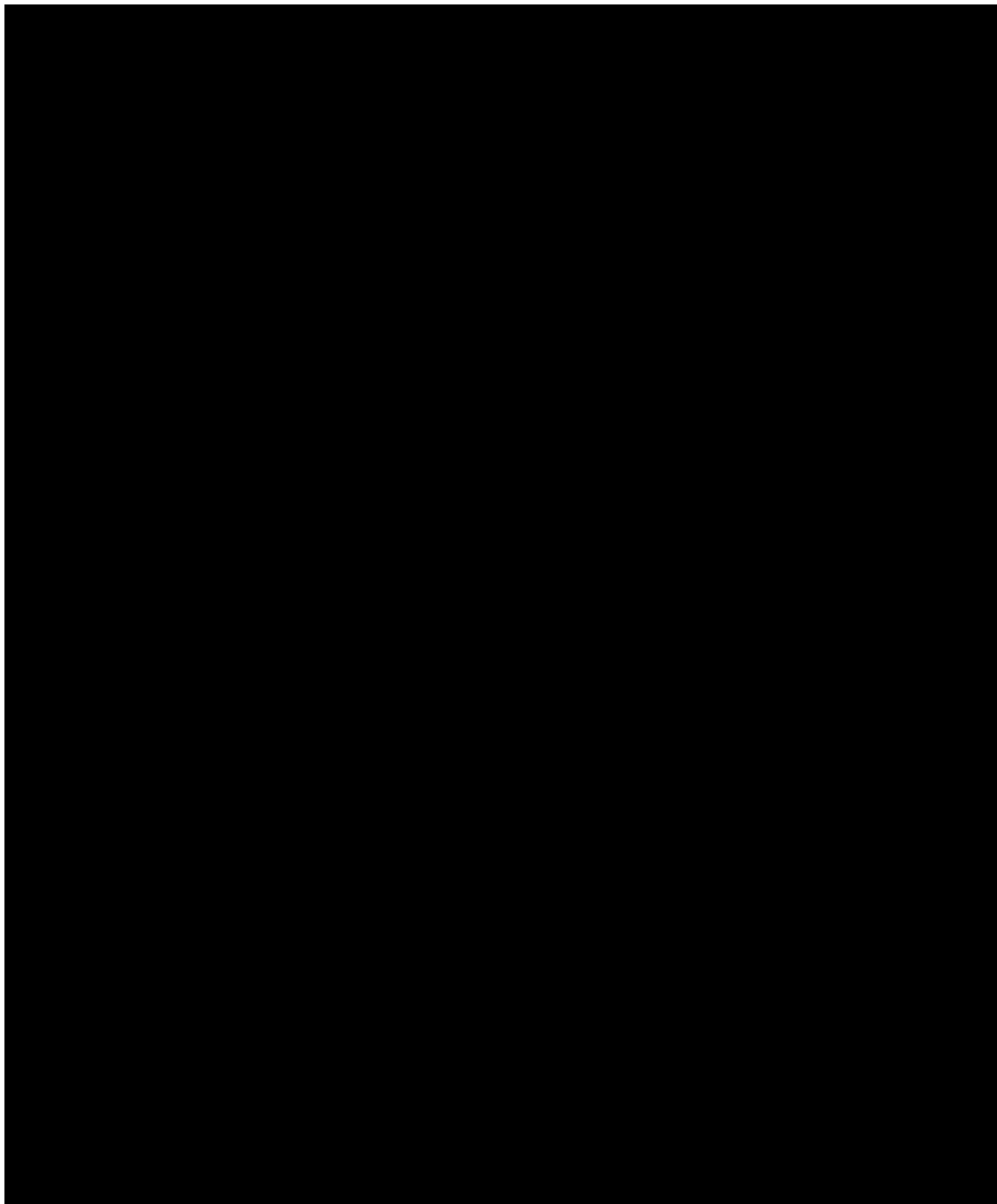
Schedule 6.6
Seller Litigation

None.

Schedule 6.7
Compliance with Law

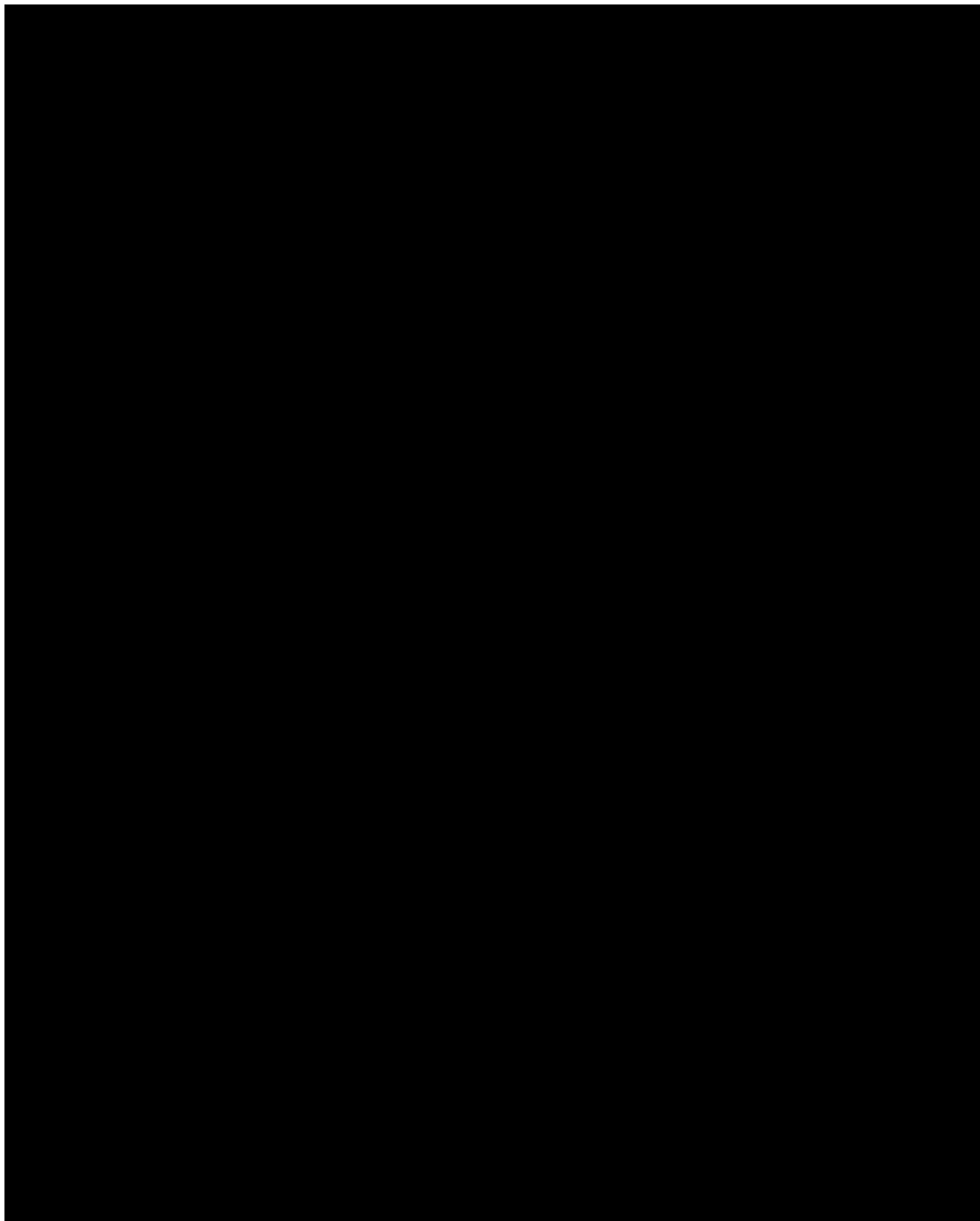
None.

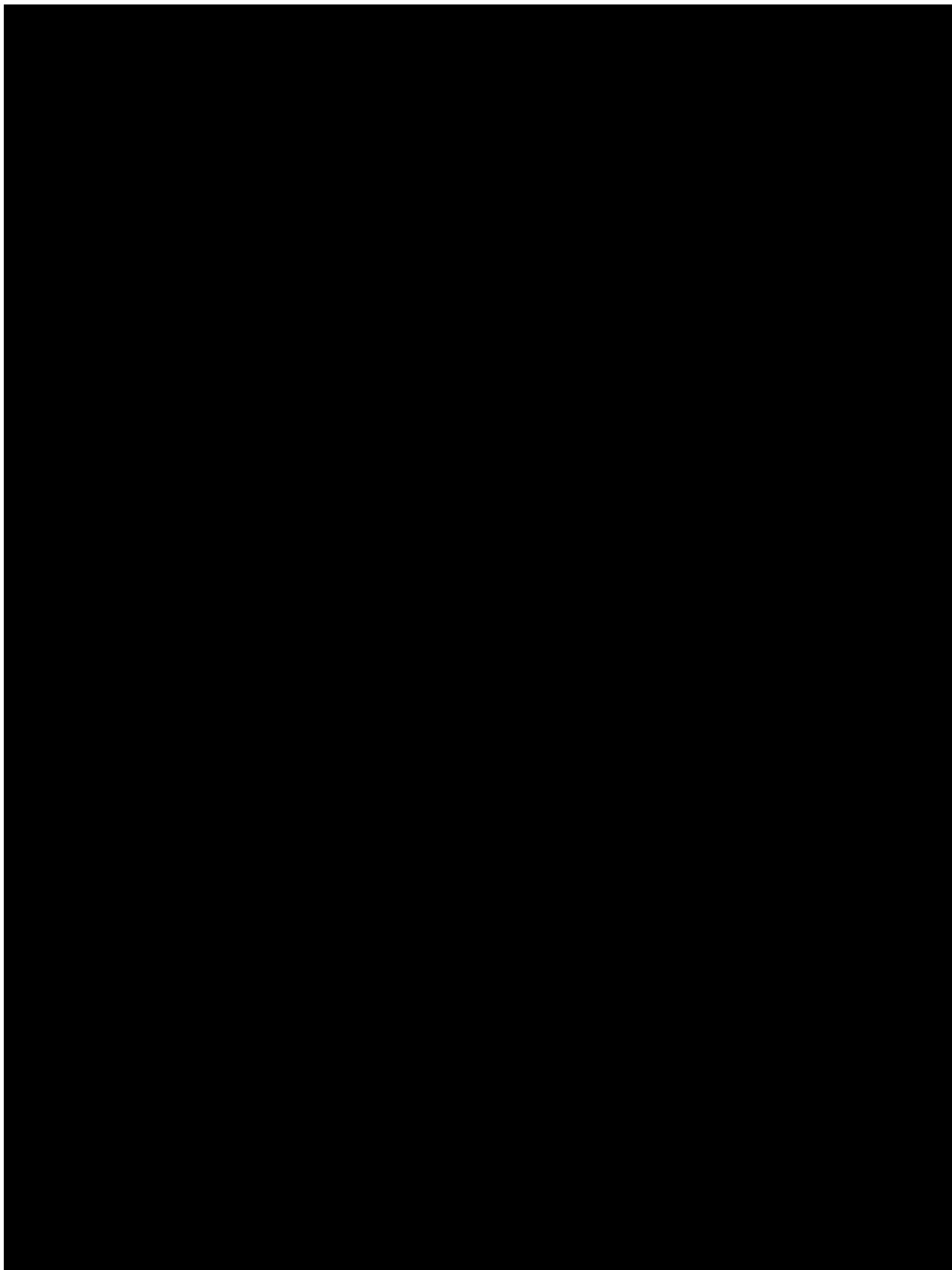
Schedule 6.8
Environmental Matters

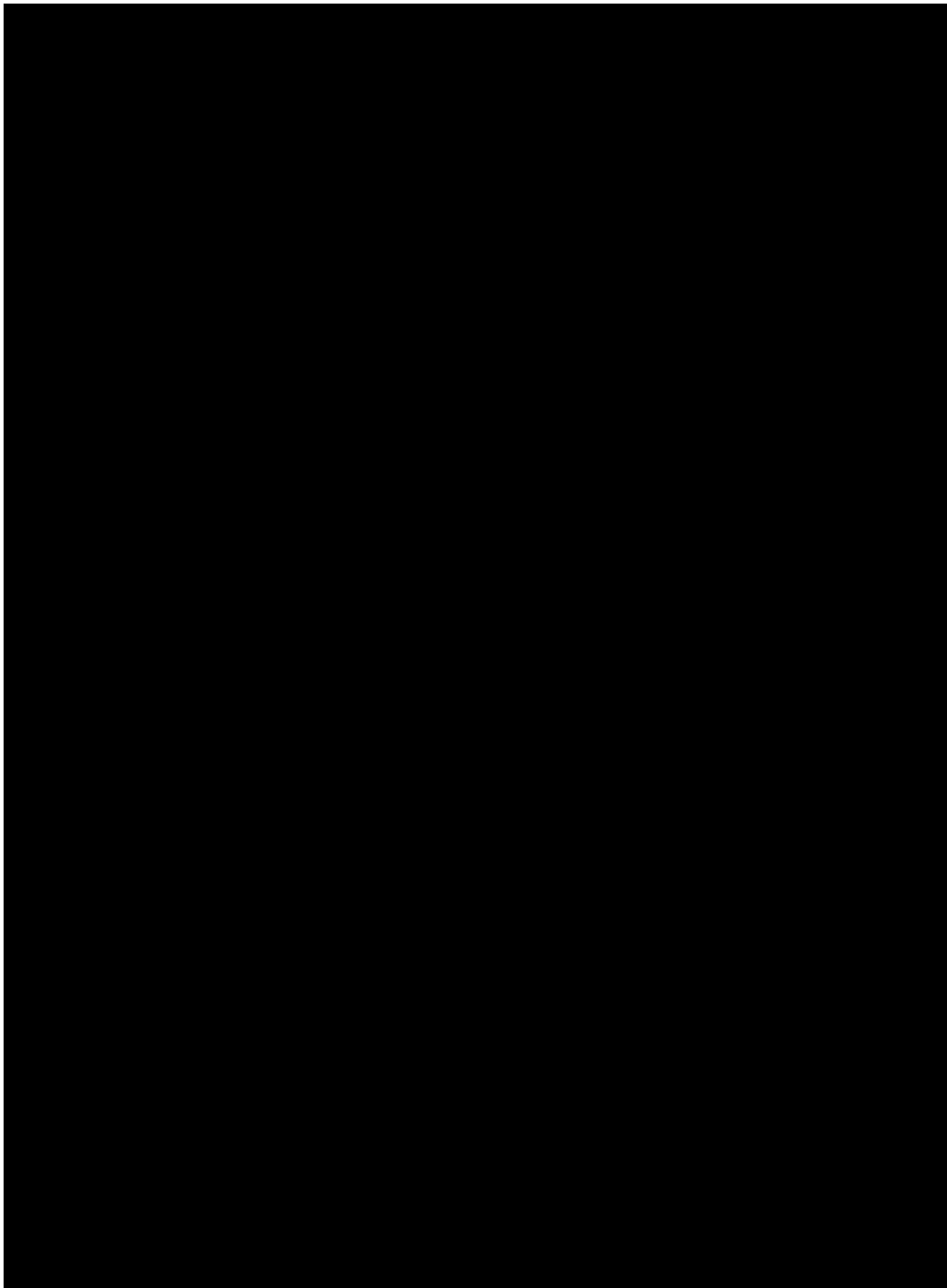


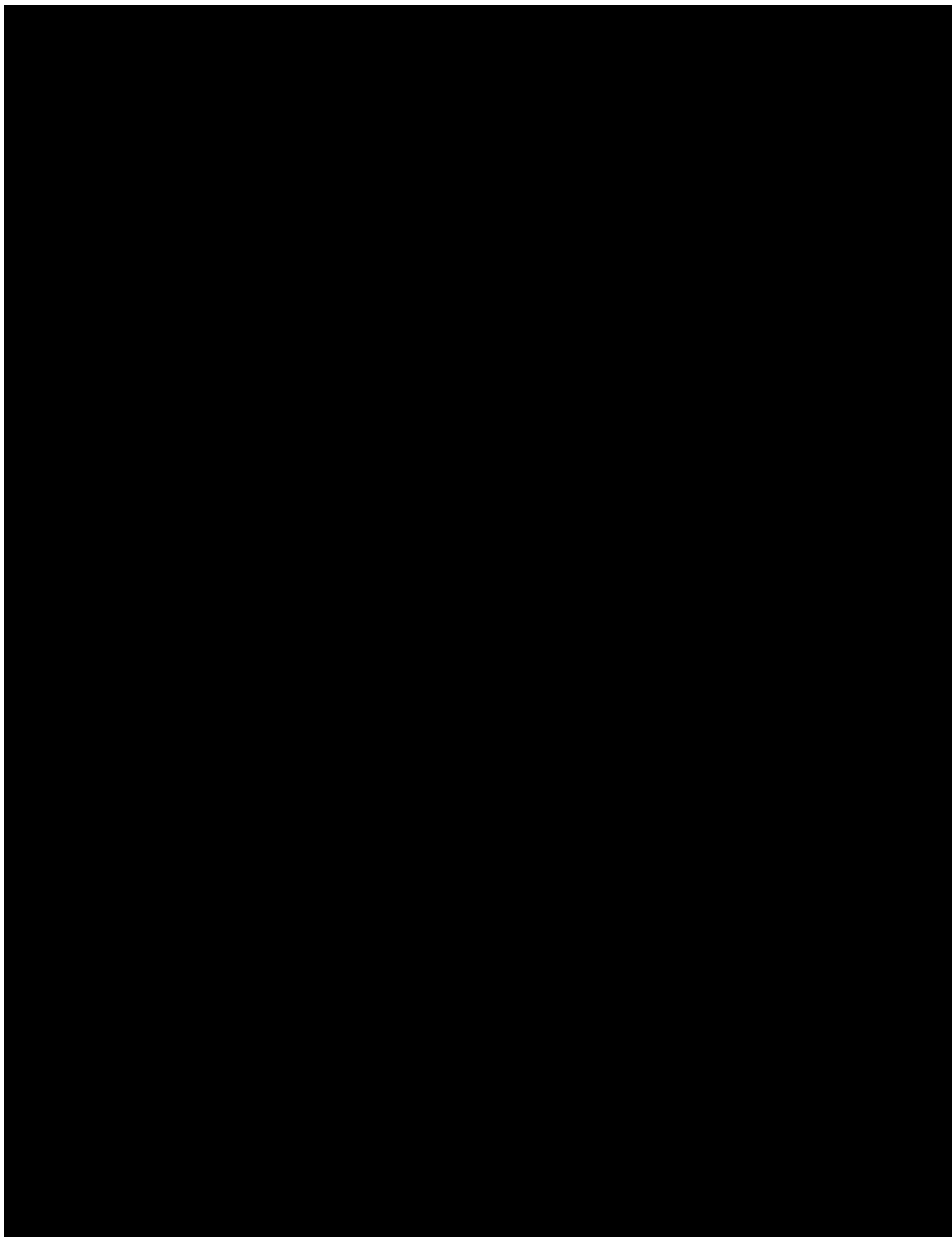
Schedule 6.11(a)

Land Contracts

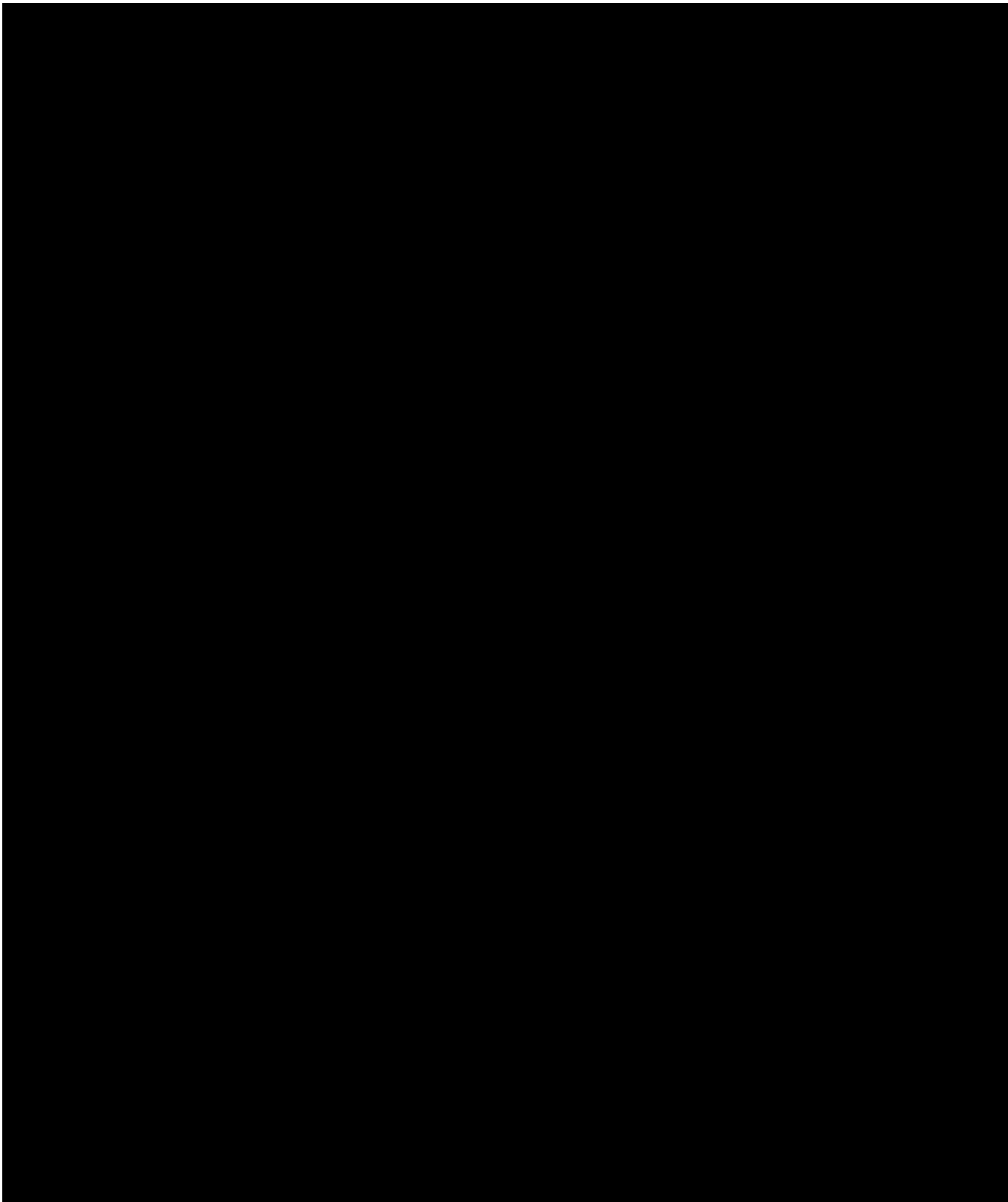




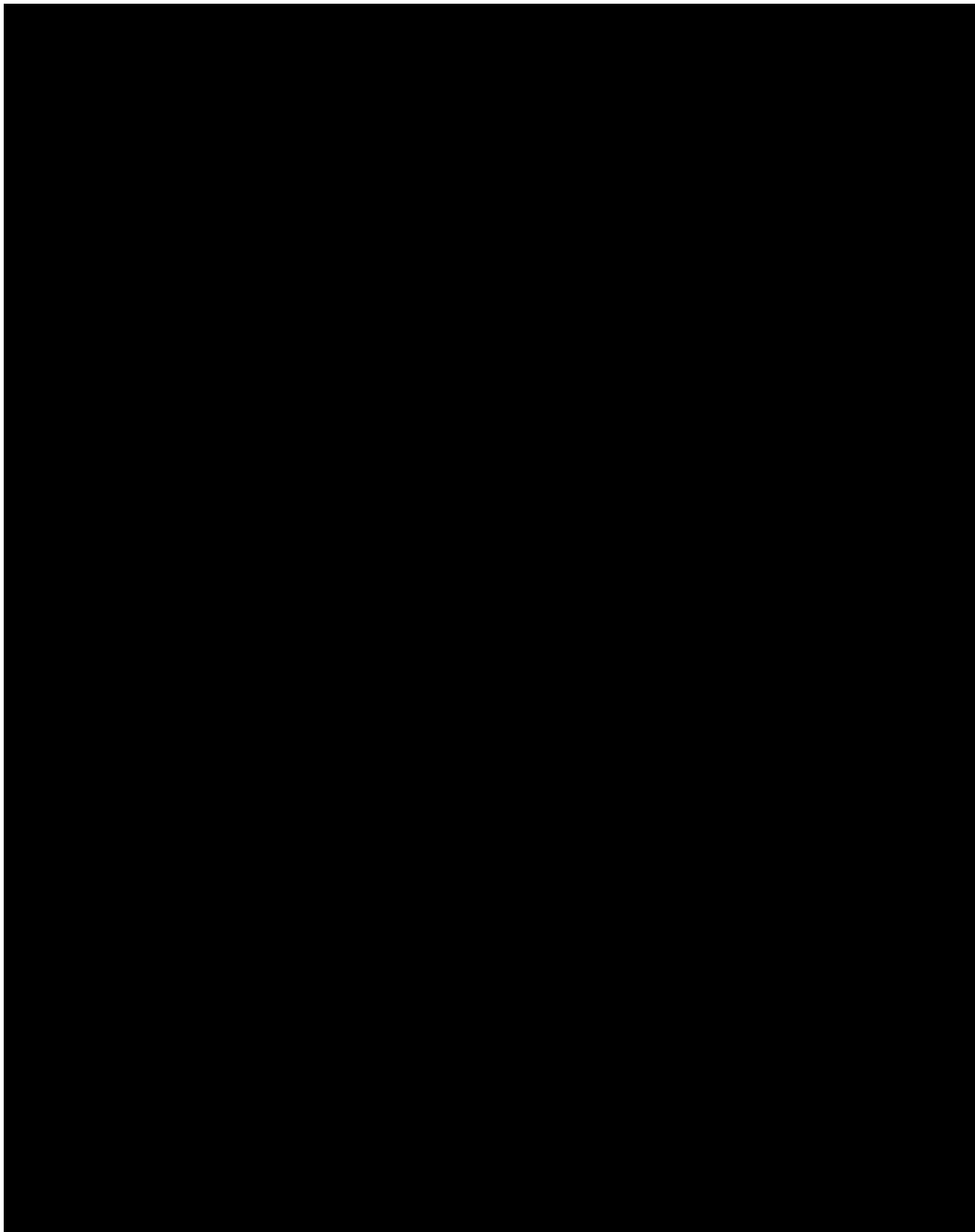




Schedule 6.12(a)
Real Property Exceptions

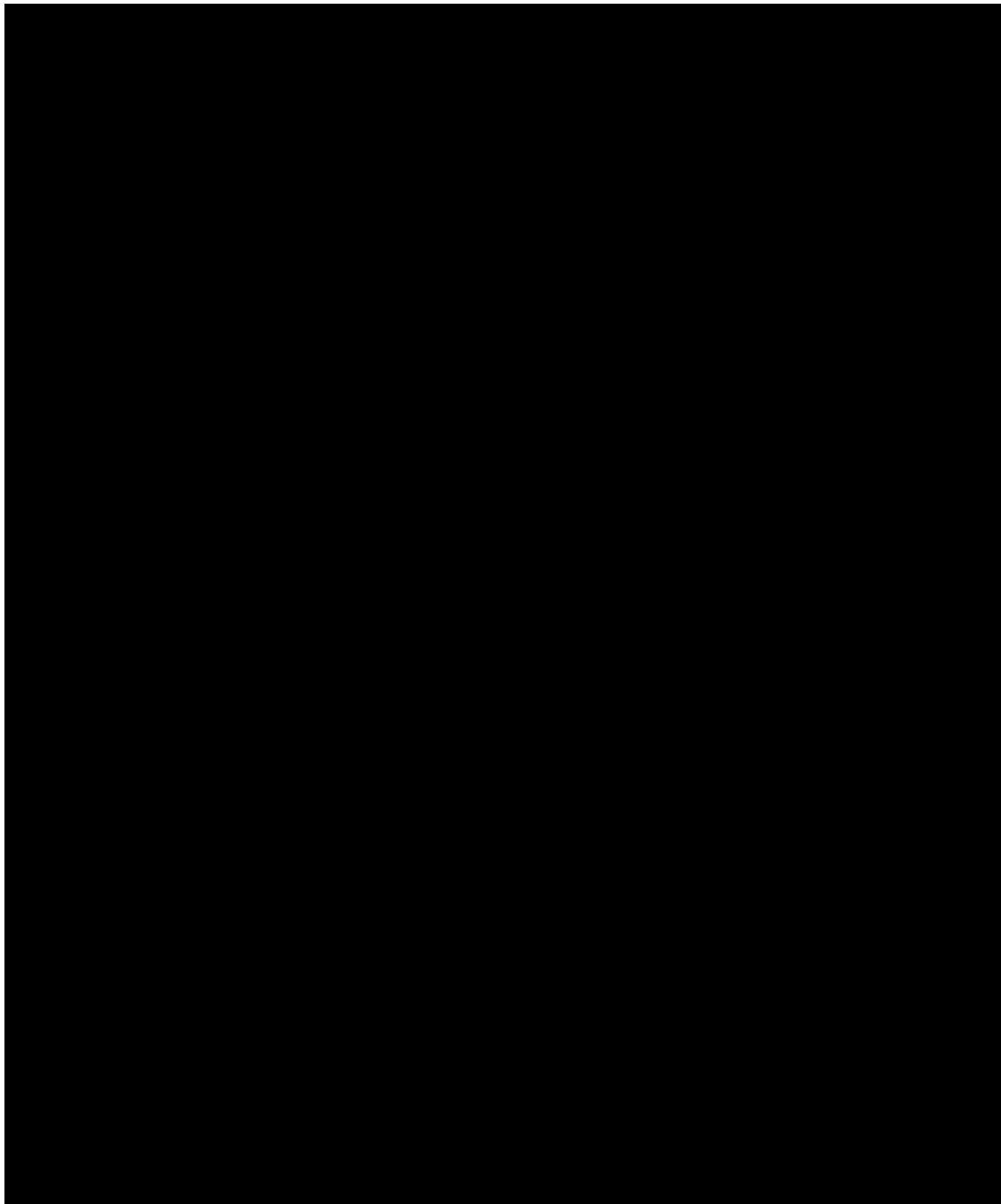


Schedule 6.12(b)



Schedule 6.13(a)

Material Contracts



Schedule 6.13(g)

Liquidated Damages Claims under Material Contracts

None.

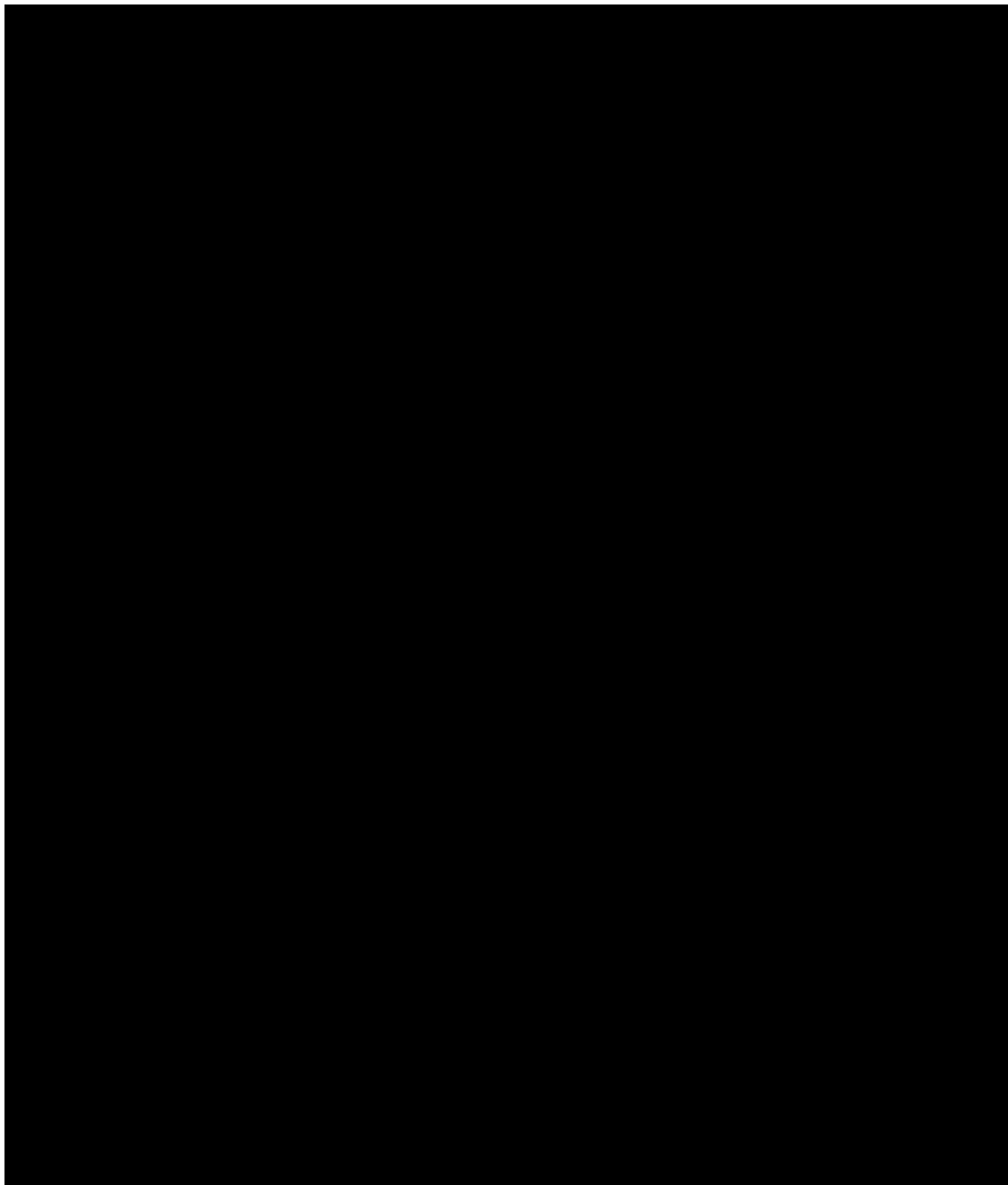
Schedule 6.13(i)

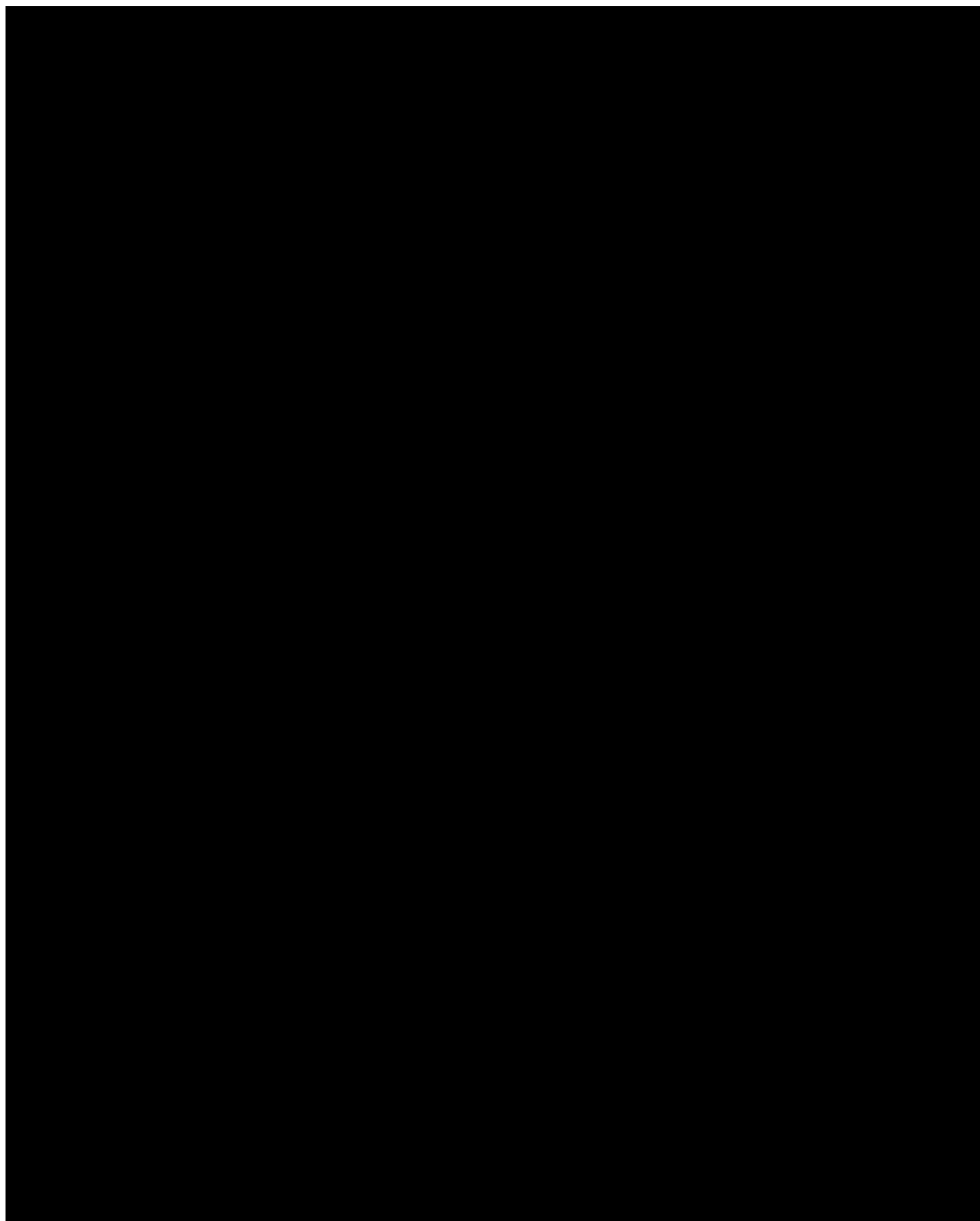
Notice of Disputes under Material Contracts

None.

Schedule 6.14(a)

Company Permits





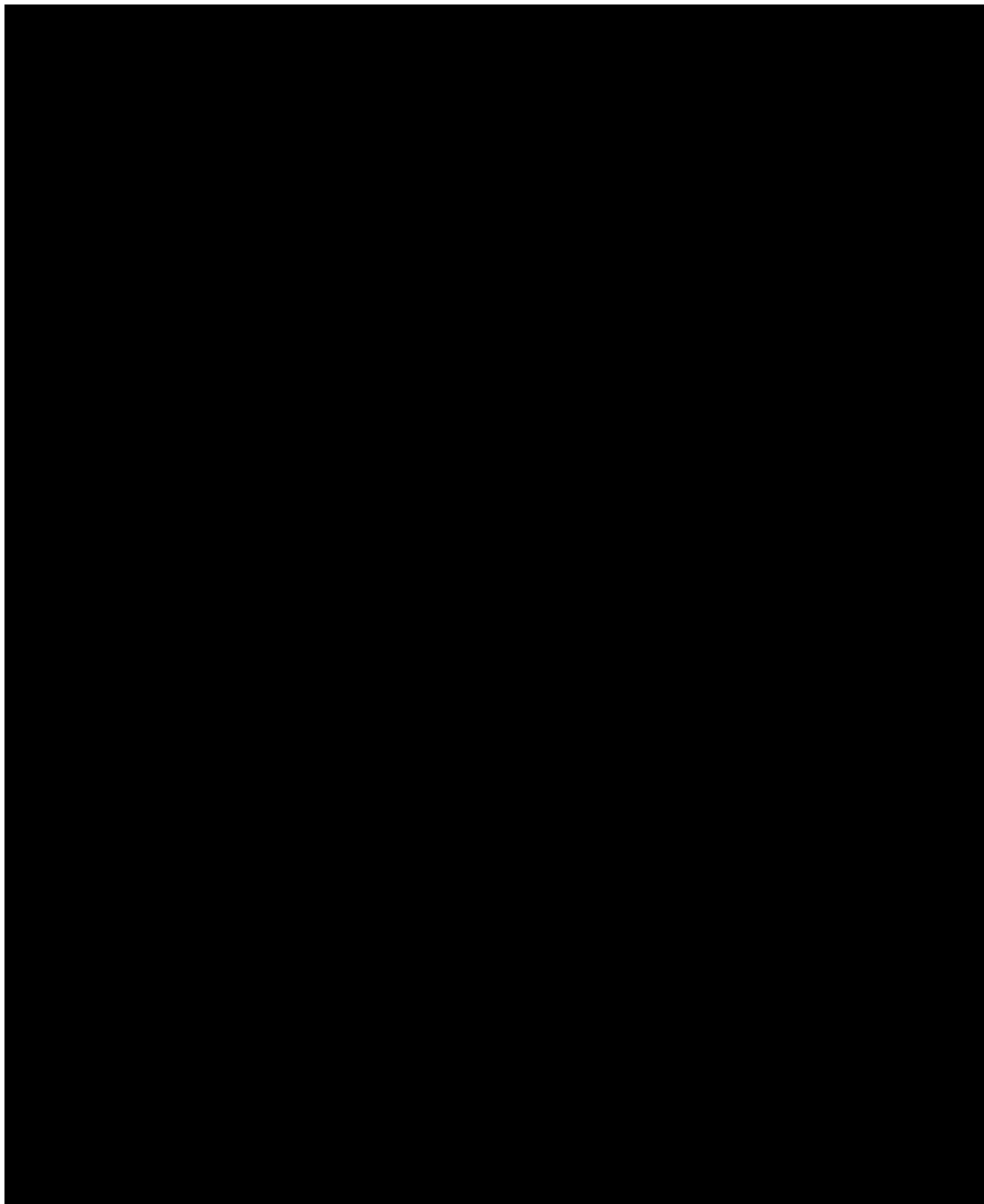
Schedule 6.14(b)

Exceptions to Company Permits

None.

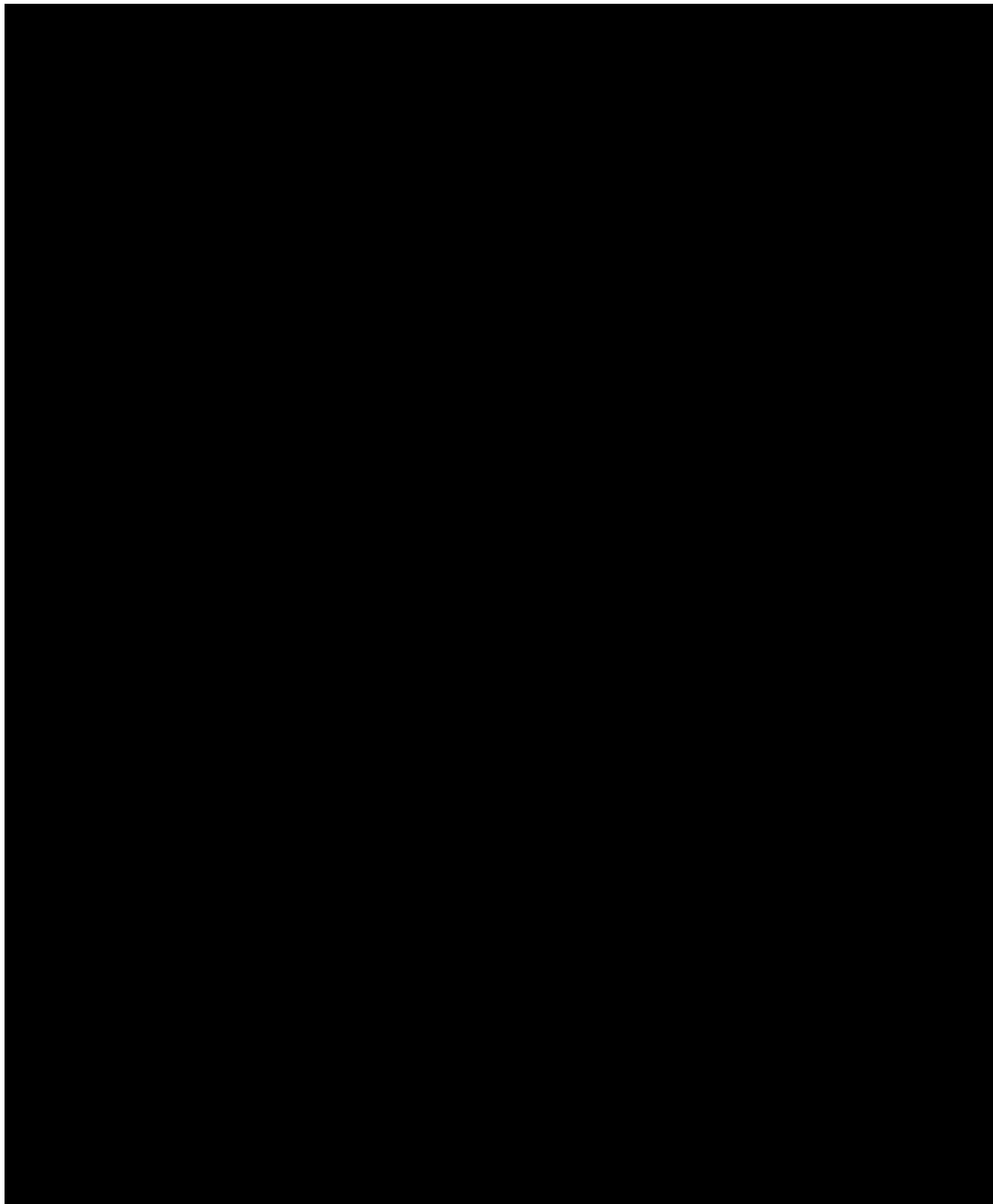
Schedule 6.15

Finders



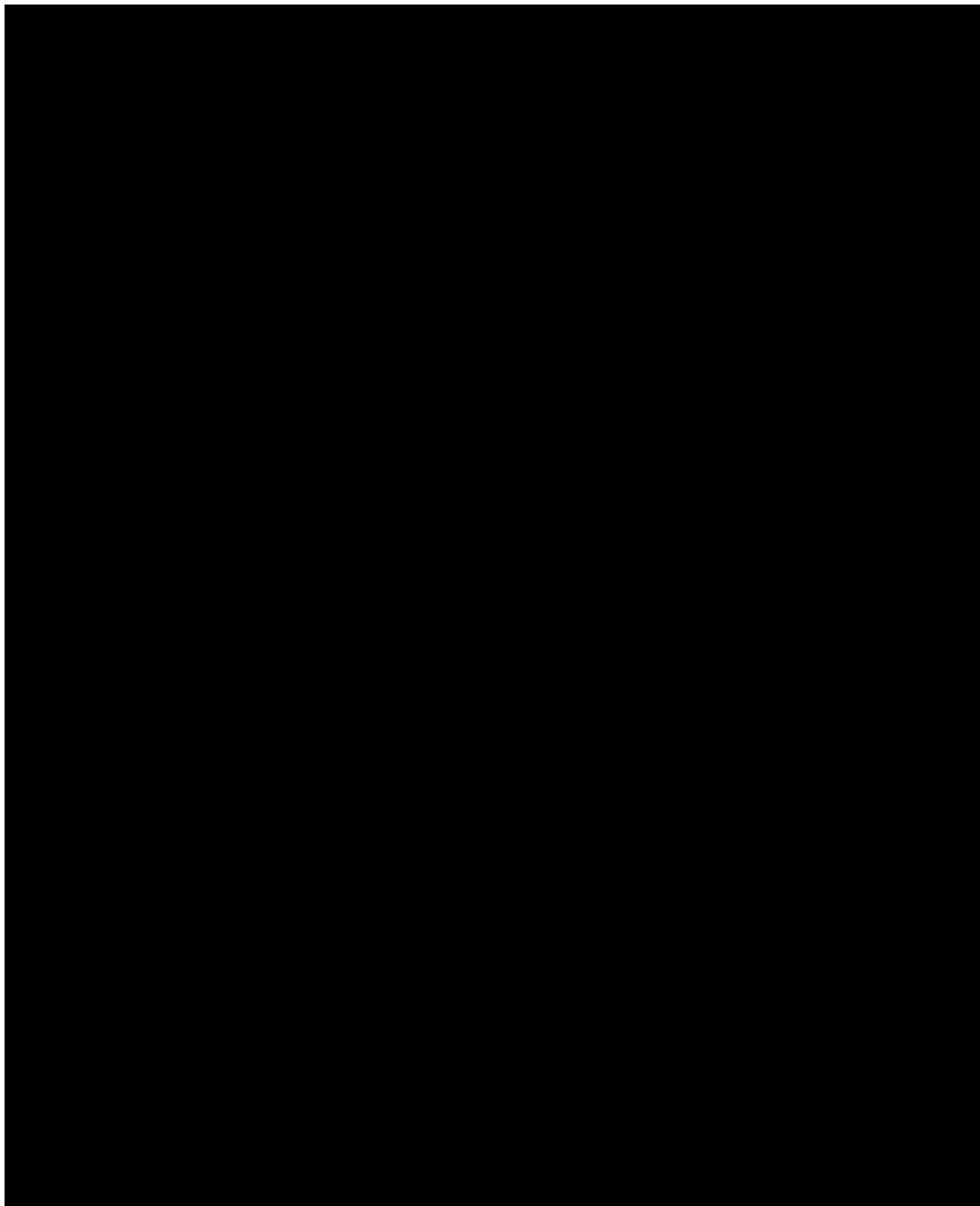
Schedule 6.16

Third-Party Intellectual Property Rights



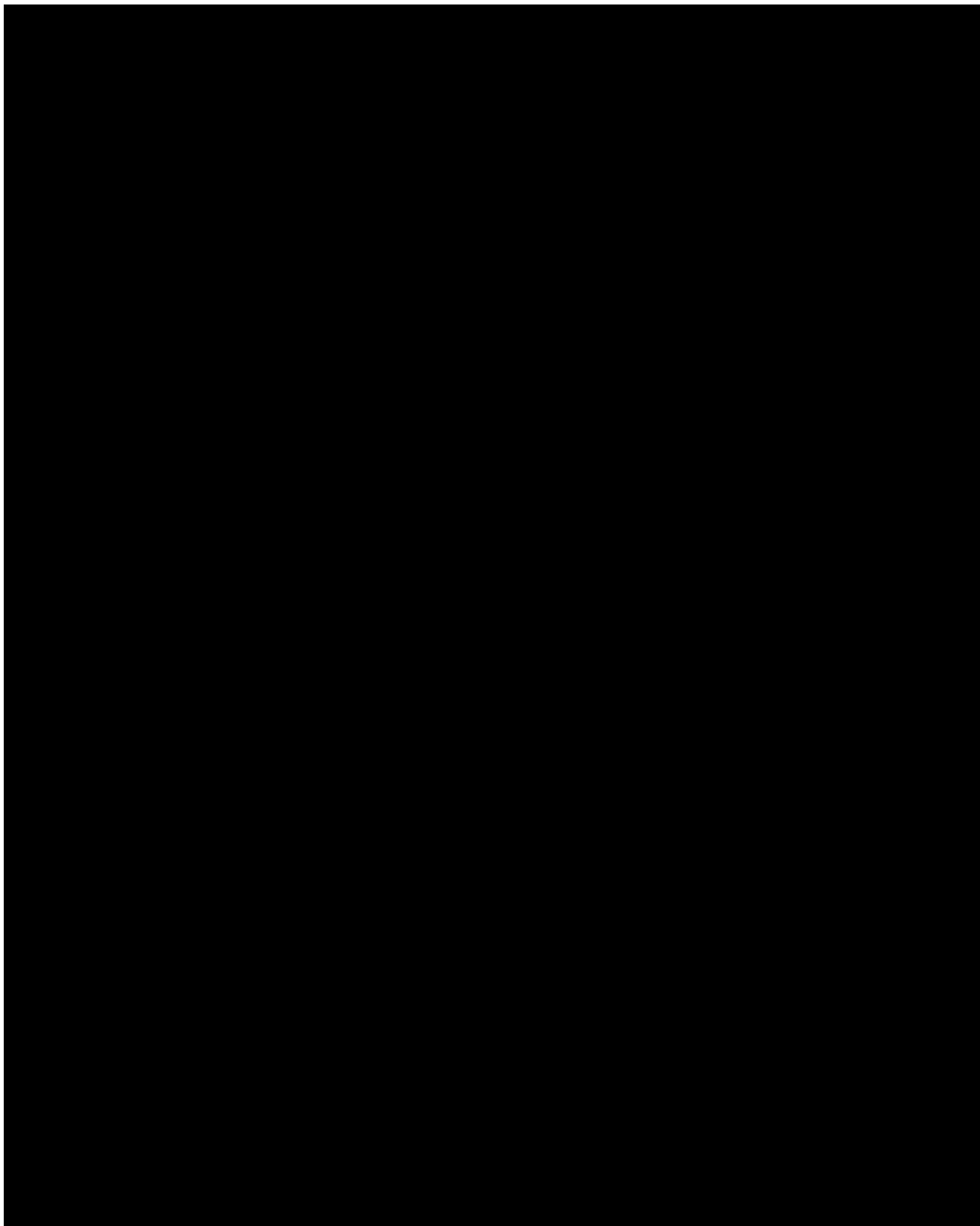
Schedule 6.17

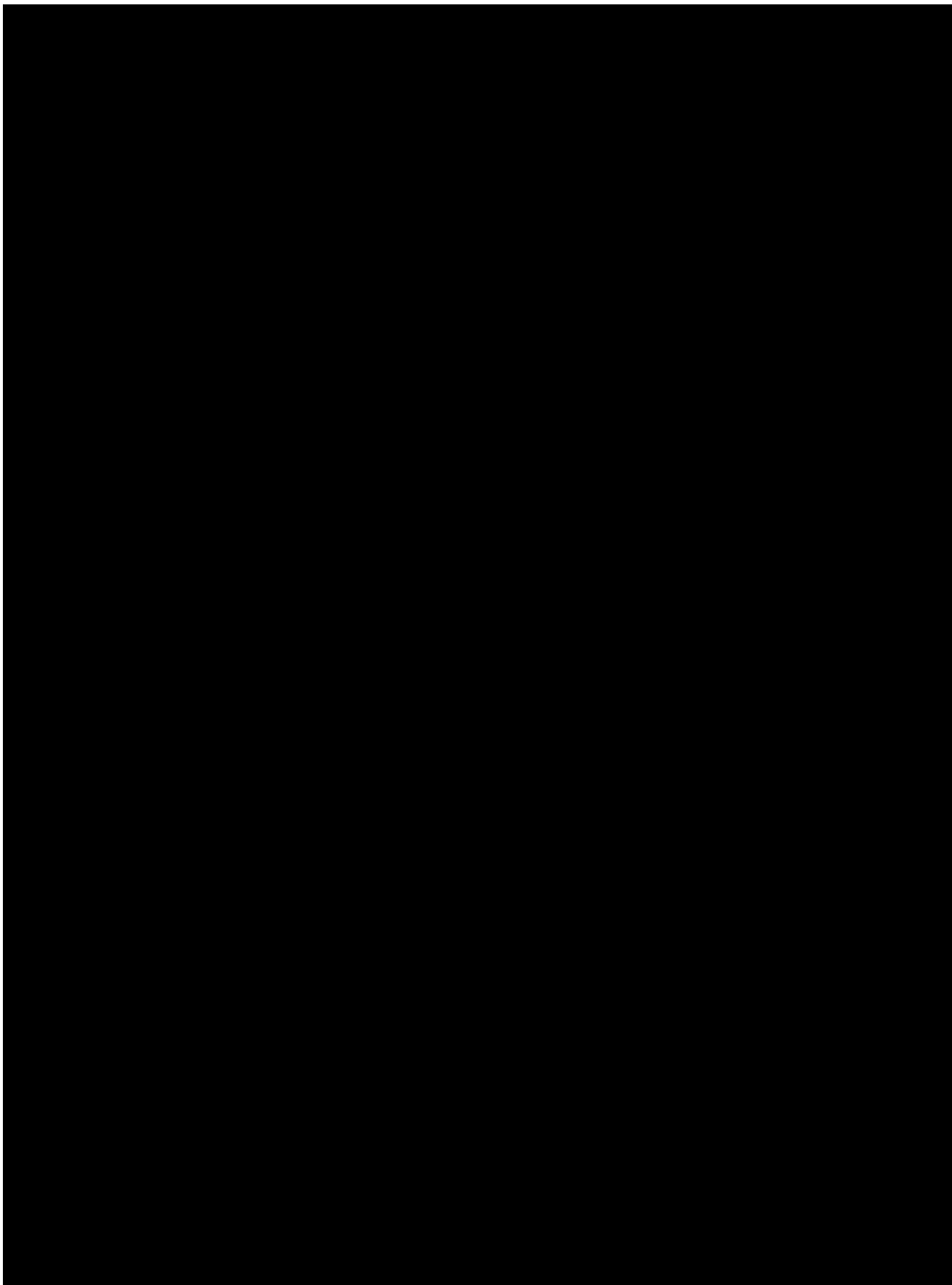
Solar Data



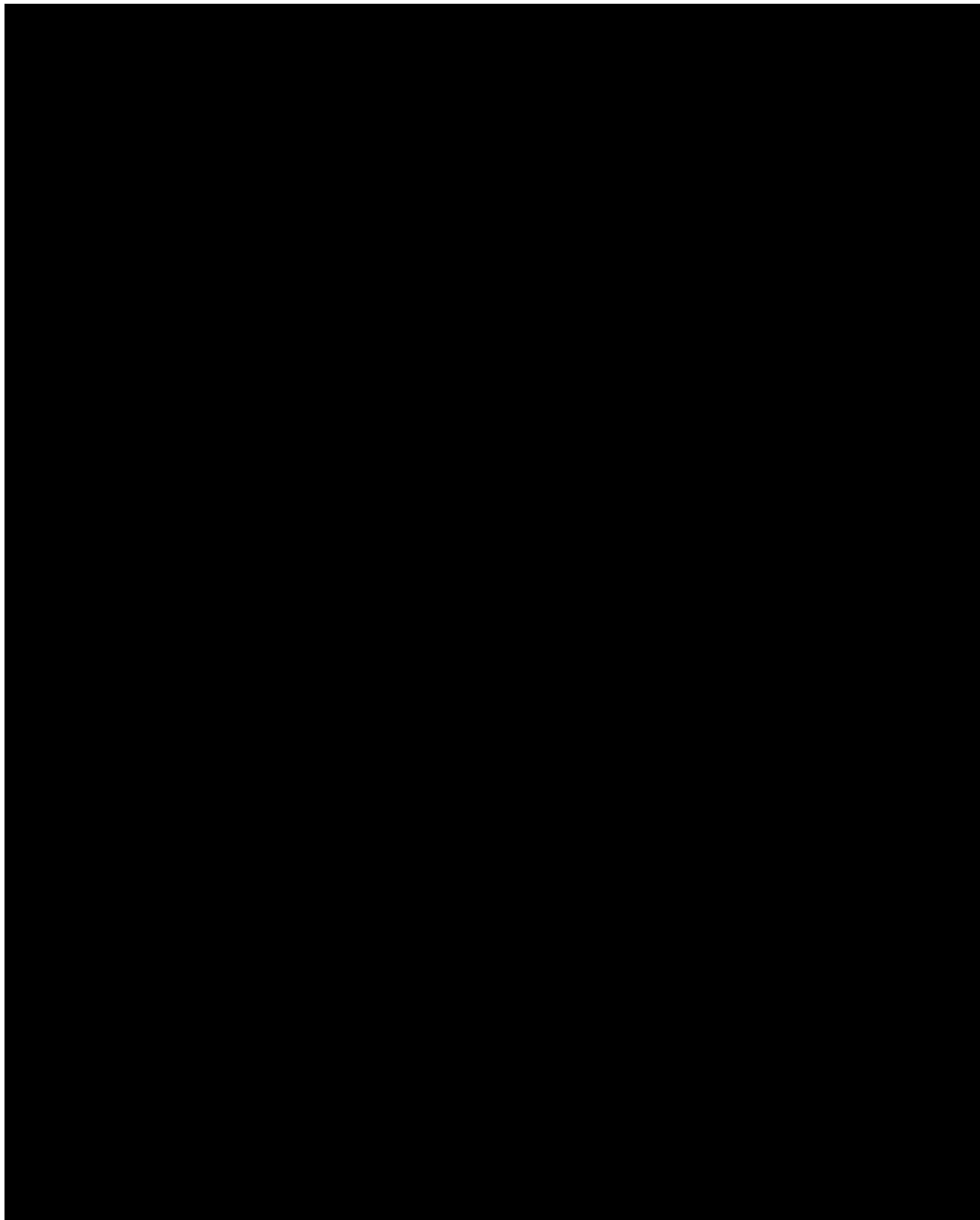
Schedule 6.18

Insurance





Schedule 6.24(a)
Financial Statements



Schedule 6.24(b)

Undisclosed Liabilities

None.

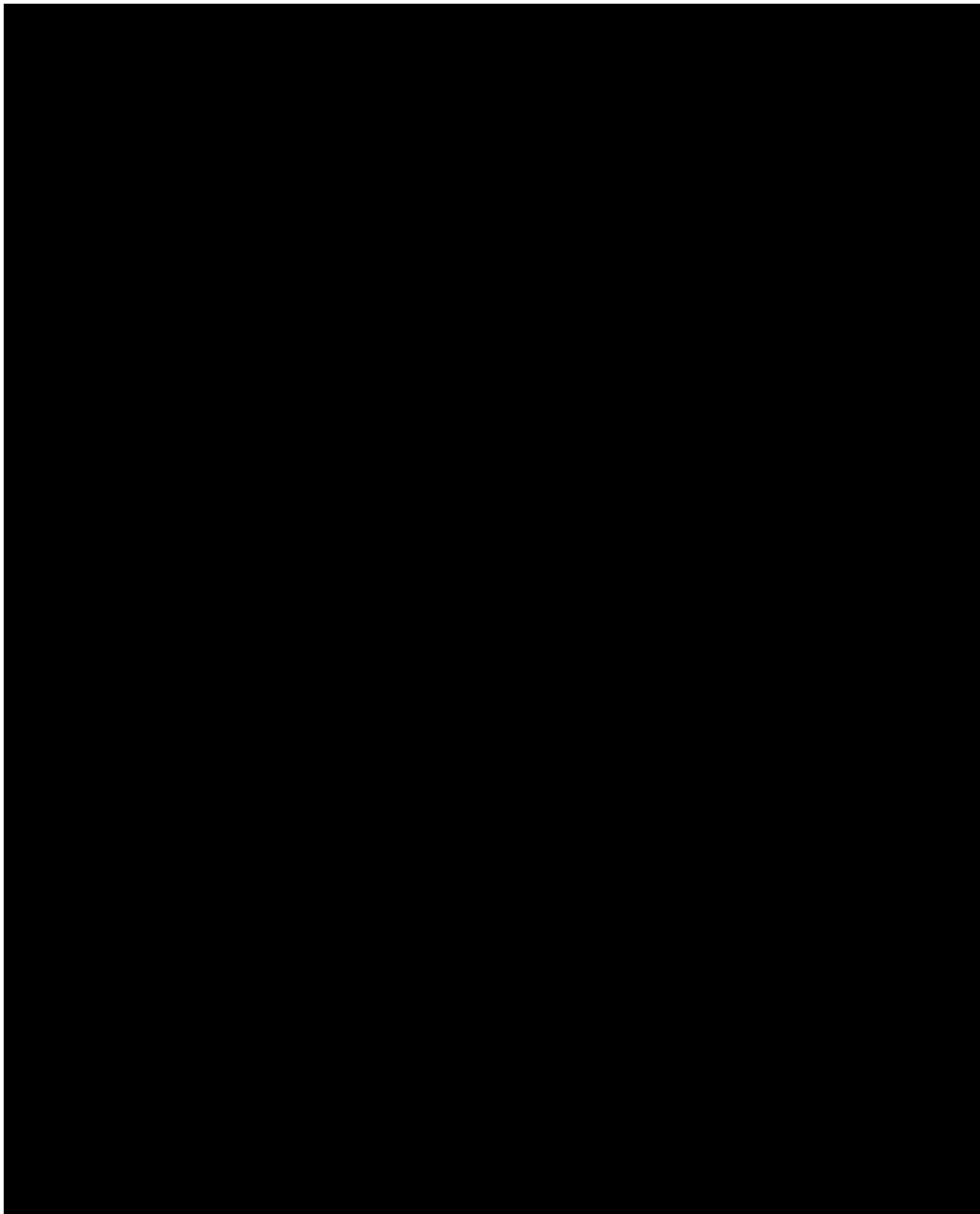
Schedule 6.24(c)
Certain Changes

None.

Schedule 6.26
Labor Matters

None.

Schedule 6.29
Affiliate Transactions

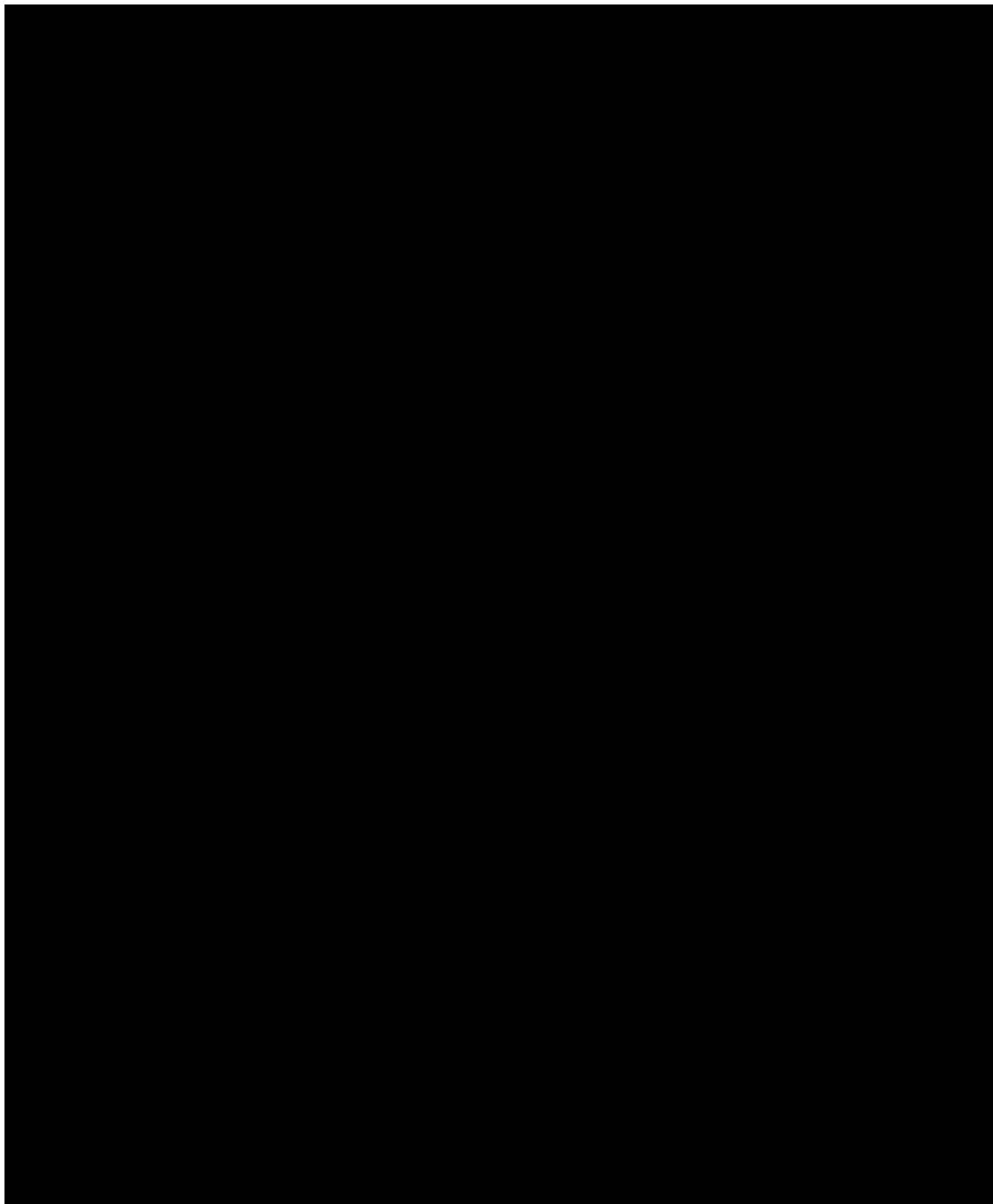


Schedule 6.31
Bank Accounts

None.

Schedule 6.33

Credit Support



Schedule 1.1(a)
Buyer's Knowledge

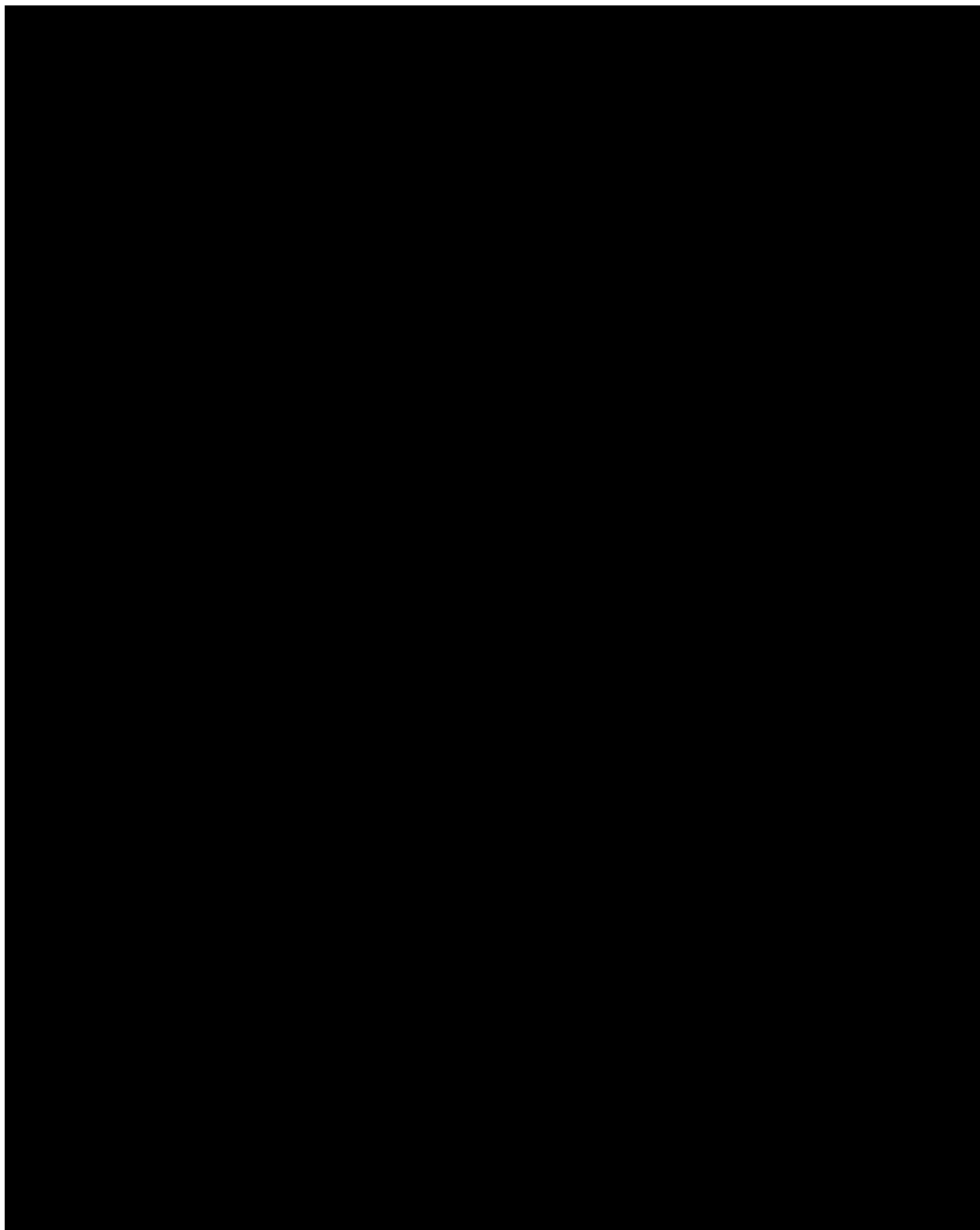


Schedule 4.7

Buyer Commission Approvals

1. Issuance of the Certificate of Public Convenience and Necessity pursuant to Section 8-1-8.5-2 of the Indiana Code.
2. Determination that the Project is eligible for financial incentives applicable to clean energy projects under Section 8-1-8.8-11 of the Indiana Code.
3. Issuance of the Certificate of Need under Section 460.6s of the Michigan Compiled Laws.

Schedule 7.4
Buyer Consents and Approvals



Schedule 7.5
Buyer Litigation

None.

EXHIBIT A

CLOSING TITLE ENDORSEMENTS

[REDACTED IN ITS ENTIRETY]

EXHIBIT B
FORM OF EASEMENT ESTOPPEL
[REDACTED IN ITS ENTIRETY]

EXHIBIT C

[REDACTED] EPC CONTRACT

[REDACTED IN ITS ENTIRETY]

EXHIBIT D

FORM OF EXCLUDED ASSETS AND LIABILITIES ASSIGNMENT AGREEMENT

[REDACTED IN ITS ENTIRETY]

EXHIBIT E-1

FORM OF MECHANICAL COMPLETION CERTIFICATE

Date:[_____]

Re: Lake Trout Solar Project

This Mechanical Completion Certificate (the “Certificate”) is provided in accordance with the Purchase and Sale Agreement by and between Indiana Michigan Power Company, an Indiana corporation (“Buyer”), EDF Renewables Development, Inc., a Delaware corporation (“Seller”), and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation, dated as of [●], 2023 (the “Agreement”).

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings specified in the Agreement.

Seller hereby certifies that all requirements of Mechanical Completion set forth in the definition in Exhibit O to the Agreement have been satisfied.

Attached hereto are copies of each “Mechanical Completion Certificate” (as such term is defined in the EPC Contract and HV Agreement, as applicable) issued by the EPC Contractors.

[Signature Page to Follow]

EDF Renewables Development, Inc.,
a Delaware corporation

By: _____

Name: _____

Title: _____

Accepted By:

Indiana Michigan Power Company,
an Indiana corporation

By: _____

Name: _____

Title: _____

EXHIBIT E-2

FORM OF SUBSTANTIAL COMPLETION CERTIFICATE

Date:[_____]

Re: Lake Trout Solar Project

This Substantial Completion Certificate (the “Certificate”) is provided in accordance with the Purchase and Sale Agreement by and between Indiana Michigan Power Company, an Indiana corporation (“Buyer”), EDF Renewables Development, Inc., a Delaware corporation (“Seller”), and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation, dated as of [●], 2023 (the “Agreement”).

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings specified in the Agreement.

Seller hereby certifies that all requirements of Substantial Completion set forth in the definition in Exhibit O to the Agreement have been satisfied.

Attached hereto are copies of each “Substantial Completion Certificate” (as such term is defined in the EPC Contract and HV Agreement, as applicable) issued by the EPC Contractors.

[Signature Page to Follow]

EDF Renewables Development, Inc.,
a Delaware corporation

By: _____

Name: _____

Title: _____

Accepted By:

Indiana Michigan Power Company,
an Indiana corporation

By: _____

Name: _____

Title: _____

EXHIBIT E-3

FORM OF FINAL COMPLETION CERTIFICATE

Date: [_____]

Re: Lake Trout Solar Project

This Final Completion Certificate (the “Certificate”) is provided in accordance with the Purchase and Sale Agreement by and between Indiana Michigan Power Company, an Indiana corporation (“Buyer”), EDF Renewables Development, Inc., a Delaware corporation (“Seller”), and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation, dated as of [●], 2023 (the “Agreement”).

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings specified in the Agreement.

Seller hereby certifies that all requirements of Final Completion set forth in the definition in Exhibit O to the Agreement have been satisfied.

Attached hereto are copies of each “Final Completion Certificate” (as such term is defined in the EPC Contract and HV Agreement as applicable) issued by the EPC Contractors.

[Signature Page to Follow]

EDF Renewables Development, Inc.,
a Delaware corporation

By: _____

Name: _____

Title: _____

Accepted By:

Indiana Michigan Power Company,
an Indiana corporation

By: _____

Name: _____

Title: _____

EXHIBIT F
FORM OF LANDLORD ESTOPPEL
[REDACTED IN ITS ENTIRETY]

EXHIBIT G

FORM OF LETTER OF CREDIT

[REDACTED IN ITS ENTIRETY]

EXHIBIT H

FORM OF MAJOR PROJECT DOCUMENT ESTOPPELS

[REDACTED IN ITS ENTIRETY]

EXHIBIT I-1

FORM OF CONDITIONAL LIEN WAIVER

[REDACTED IN ITS ENTIRETY]

EXHIBIT I-2

FORM OF UNCONDITIONAL LIEN WAIVER

[REDACTED IN ITS ENTIRETY]

EXHIBIT J

**[REDACTED] MODULE SUPPLY
AGREEMENT**

[REDACTED IN ITS ENTIRETY]

EXHIBIT K



[REDACTED IN ITS ENTIRETY]

EXHIBIT L
REQUIRED PROJECT WARRANTY
[REDACTED IN ITS ENTIRETY]

EXHIBIT M

SCOPE OF WORK AND SPECIFICATIONS

[REDACTED IN ITS ENTIRETY]

EXHIBIT N
FORM OF SELLER PARENT GUARANTY
[REDACTED IN ITS ENTIRETY]

EXHIBIT O

MECHANICAL, SUBSTANTIAL AND FINAL COMPLETION

[REDACTED IN ITS ENTIRETY]

EXHIBIT P
FORM OF PROGRESS REPORT
[REDACTED IN ITS ENTIRETY]

EXHIBIT Q

FORM OF MEMBERSHIP INTEREST ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTERESTS

This ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTERESTS (this “Assignment”), effective as of _____ (the “Effective Date”), is by and between EDF Renewables Development, Inc., a Delaware corporation (“Assignor”), and Indiana Michigan Power Company, an Indiana corporation (“Assignee”).

RECITALS

A. Assignee, Assignor, and solely with respect to its agency relationship with Assignee thereunder, American Electric Power Service Corporation, entered into a Purchase and Sale Agreement, dated as of [■], 2023 (the “Purchase Agreement”), pursuant to which, among other things, Assignor has agreed to transfer to Assignee 100% of its membership interests (the “Membership Interests”) in Lake Trout Solar LLC, a Delaware limited liability company (the “Company”), which constitute 100% of the equity interests in the Company.

B. To effect the sale and purchase of the Membership Interests, Assignor and Assignee are executing and delivering this Assignment.

C. All persons who must consent to or ratify the transfer of the Membership Interests have consented to or ratified such transfer, and all other actions prerequisite to the validity of such transfer have been taken.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby act and agree as follows:

AGREEMENTS

1. Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

2. Transfer of Interests. Assignor hereby sells, assigns, transfers, sets over, conveys and delivers to Assignee (a) all of Assignor’s right, title and interest in and to the Membership Interests and (b) all of Assignor’s rights and obligations under the limited liability company or operating agreement of the Company.

3. Assumption of Assignee. Assignee hereby accepts the sale, assignment, transfer and delivery of the Membership Interests, and assumes (a) the Membership Interests and (b) all

rights and obligations of the Assignor under the limited liability company or operating agreement of the Company.

4. Withdrawal of Assignor. As of the Effective Date, Assignor shall be deemed to have withdrawn as a member of the Company and Assignee shall be deemed admitted as a member of the Company. For purposes of the limited liability company or operating agreement of the Company, the withdrawal of Assignor and the admission of Assignee shall be deemed to have occurred simultaneously.

5. Counterparts. This Assignment may be executed in separate counterparts with separate signature pages, all of which when taken together shall constitute one instrument. Delivery by facsimile or other electronic transmission of an executed original or the retransmission of any executed facsimile or other electronic transmission shall be deemed to be the same as delivery of an executed original.

6. Further Assurances. The parties hereto agree to take all such further actions and execute, acknowledge and deliver all such further documents that are necessary or useful in carrying out the purposes of this Assignment. Without limiting the foregoing, (a) Assignor agrees to execute, acknowledge and deliver to Assignee all such other additional instruments, notices, and other documents and to do all such other and further acts and things as may be reasonably necessary to more fully and effectively sell, assign, transfer and deliver to Assignee the Membership Interests and (b) Assignee agrees to execute, acknowledge and deliver to Assignor all such other additional instruments, notices, and other documents and to do all such other and further acts and things as may be reasonably necessary to more fully and effectively accept and assume the Membership Interests.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the Laws of the State of New York, without giving effect to any conflict or choice of law provision that would result in the application of another state's Law.

8. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and permitted assigns.

9. Controlling Agreement. To the extent there is any conflict between this Agreement and the Purchase Agreement, the terms and provisions of the Purchase Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, each party has caused this Assignment to be executed on its behalf by its duly authorized officer, as of the day and year first above written.

ASSIGNOR:

EDF RENEWABLES DEVELOPMENT, INC.

By: _____

Name:

Title:

ASSIGNEE:

INDIANA MICHIGAN POWER COMPANY

By: _____

Name:

Title:

[Signature Page to Membership Interest Assignment Agreement]

EXHIBIT R

FORM OF SELLER RELEASE

[REDACTED IN ITS ENTIRETY]

EXHIBIT T

AEP SUPPLIER CODE OF CONDUCT

(Attached)



SUPPLIER CODE OF CONDUCT

At AEP, we believe in doing the right thing every time for our customers, each other and our future. We expect all employees to uphold the highest of ethical standards and that management is one of uncompromising integrity. We expect the same from our suppliers.

AEP values its relationships with our suppliers, energy providers, and other organizations looking to do business with us and we want to be as transparent as possible in our expectations of them. The Code of Conduct will act as a guide for suppliers in carrying out their responsibilities and defines both the ethical and legal standards by which they must operate. No matter the role or responsibilities, the expectation is to act in accordance with only the highest standards of business. Nothing less should be accepted.

Our Supplier Code of Conduct is our guidepost as we strive to build a diverse pool of suppliers focused on inclusion of others and powering a new and brighter future for our customers and communities.

Nicholas K. Akins
Chairman, President & Chief Executive Officer

Craig T. Rhoades
Chief Procurement Officer

INTRODUCTION

Corporate integrity, responsible sourcing for goods and services, equitable treatment and the safety and wellbeing of workers, being good stewards of the environment, and the security and safety of the electric grid are of paramount importance to American Electric Power (“AEP”).

These principles are reflected in this Supplier Code of Conduct, which establishes the minimum standards that must be met by a vendor, manufacturer, contractor, seller, consultant or other supplier (each a “Supplier” and collectively “Suppliers”) that sells goods or services to or does business with AEP.

This Supplier Code of Conduct complements and sets the minimum standards for the more detailed requirements of a Supplier as stated in the terms and conditions (“Terms and Conditions”) of a contract, agreement, or order between Supplier and AEP.

APPLICABILITY

This Supplier Code of Conduct is intended to provide clarity regarding AEP’s expectations of Suppliers supplying goods or services to or performing work for or on behalf of AEP. AEP expects all Suppliers, to take reasonable steps to ensure that their suppliers and subcontractors act in accordance with this Supplier Code of Conduct or similar principles. AEP Suppliers are expected to self-monitor and demonstrate their compliance with this Supplier Code of Conduct.

SAFETY & HEALTH

AEP is committed to continuous improvement of its safety, health and environmental performance. We listen to and respond to concerns raised by our stakeholders and we are transparent about our specific goals and progress toward meeting those goals. AEP recognizes that it has responsibility to manage its business sustainably and with integrity. Accordingly, we have set high standards for the way we conduct business in the areas of social and environmental responsibility. At AEP, our top priority is safety and health. We believe in Zero Harm – that all injuries are preventable – and we expect Suppliers to ensure safe working conditions.

1. Suppliers will provide a safe and healthy working environment, including appropriate controls, training, work procedures and personal protective equipment.
2. Suppliers will comply with all applicable laws and regulations regarding working conditions outlined in the Terms and Conditions of their contract, even if they are more stringent than what laws and regulations require.
3. Poor safety performance and/or the failure to adhere to AEP’s safety and health policies may result in a request for the Supplier to develop a safety and health performance improvement plan. It may also put the Supplier’s business relationship with AEP at risk.

SUPPLIER DIVERSITY

Supplier diversity is integral to AEP’s commitment to diversity, equity and inclusion. AEP’s goal is to develop a pool of diverse, strategic Suppliers and business partners that mirror the customers we serve, and we set a target of 13% diverse spend by 2023, including Tier 1 (prime Suppliers) and Tier 2 (subcontractors to Suppliers).

1. Supplier Diversity is a strategic element of both our approach to doing business as well as building a diverse cross-section of Suppliers of materials, equipment, goods, and services used by AEP. We value competitive access in our supply chain to deliver the best value to AEP. AEP's Supplier Diversity program proactively seeks to reflect the diversity of our communities and customers we serve. More information can be found at <https://www.aep.com/b2b/suppliers>.
2. AEP expects suppliers to support AEP's strategic objective by actively engaging and subcontracting with diverse suppliers and participating in our data collection and reporting practices related to this strategy.

ETHICAL & LEGAL REQUIREMENTS

Ethical performance and following all laws, regulations, and legal requirements is of the utmost importance to and an integral part of the way AEP conducts its business.

1. Suppliers will conduct their business in a legal and ethical manner and act with integrity.
2. Suppliers will comply with all applicable laws and regulations and in compliance with AEP requirements, which may exceed local legal requirements. In all cases in which AEP requirements are more stringent than local legal requirements, Suppliers are required to meet the more stringent AEP requirements.
3. Suppliers will avoid any conflict of interest when interacting with AEP employees.
4. Suppliers will not engage in any form of commercial bribery with any political, regulatory, or other government official and shall comply with the U.S. Foreign Corrupt Practices Act and all other applicable laws related to bribery of government officials.
5. Suppliers must avoid any business, financial or other relationship in which personal interests conflict with, or appear to conflict with, the interests of AEP and its shareholders.
6. Suppliers will comply with all applicable laws regarding fair competition and antitrust.
7. Suppliers will exercise good judgment when deciding to offer or accept a gift or business-related entertainment (including meals). Small gifts and business-related entertainment can build goodwill and help develop business relationships. They can also call personal integrity into question and appear to create an unfair business advantage.
8. Suppliers will provide a means for their employees to report concerns or potentially unlawful activities in the workplace. Suppliers will treat such reports in a confidential manner, investigate such reports and take corrective action, if appropriate.

HUMAN DIGNITY & LABOR

The dignity, wellbeing, and fair treatment of workers performing work for or on behalf of AEP is a guiding principal of AEP.

1. Suppliers are expected to treat their employees with dignity and respect.
2. Suppliers shall not discriminate against any employee based on race, religion, gender, age, national origin, citizenship status, marital status, sexual orientation, gender identity, disability, pregnancy, veteran status or other legally protected status.

3. AEP is committed to diverse and gender balanced work teams at all levels, including senior leadership. We encourage our Suppliers to actively demonstrate their commitment to diverse and gender balance through all aspects of workplace operations and management.
4. Suppliers will demonstrate their commitment to improving diversity and inclusion at all levels of the business, including within their own supply chains. This is important to AEP to ensure our Suppliers reflect the diversity of the communities we serve.
5. Suppliers will ensure that sexual harassment of their employees will not be tolerated.
6. Suppliers will not tolerate the trafficking or involuntary servitude of any worker.
7. In accordance with local laws, Suppliers will respect the rights of their employees to associate freely, join (or not join) organizations of their choice, and bargain collectively without interference, discrimination, retaliation, or harassment.

SECURITY OF OUR ASSETS & DATA PROTECTION

Maintaining the security of AEP's data and of the electric grid are guiding Principles of AEP as we conduct our business.

1. Suppliers will undergo a third party risk assessment, to ensure AEP's ability to protect its assets from cybersecurity threats and breaches from third party suppliers.
2. When indicated by AEP's Third Party Risk Governance process Suppliers must, in good faith, negotiate the AEP Security Supplement with AEP.
3. AEP is subject to the North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Standards. These Reliability standards include extensive requirements for securing utility infrastructure and implementing specific information management policies.
4. Suppliers will adhere to protections in place when collecting, using, retaining, disclosing or destroying Personally Identifiable Information ("PII").
5. Suppliers are required to safeguard AEP's confidential and proprietary information, trade secrets and other intellectual property (which includes copyrights, trademarks and patents). AEP also will respect the intellectual property rights of its Suppliers. Suppliers may not intercept, duplicate or gain the intellectual property of others through any means, unless given permission by the intellectual property right holder.
6. Limited personal use of certain AEP-owned assets is permissible. The use of company-owned assets for outside personal business purposes is prohibited.

ENVIRONMENT

AEP is fully committed to being a good steward of the environment.

1. AEP's commitment to sustainability includes efficient use of resources and respect for the environment. Suppliers are encouraged to collaborate with AEP to eliminate waste and cost from our supply chain. Suppliers will strive to reduce emissions and waste, and use energy and natural resources efficiently.
2. Suppliers must comply with all applicable environmental laws, regulations and standards and demonstrate they are doing such.

3. Suppliers must have a risk management program to prevent, mitigate and account for the identified environmental risks and impacts.

QUESTIONS & CONCERNS

Please refer to the following for more information and questions regarding the Supplier Code of Conduct or to report misconduct.

[Principles of Business Conduct](#)

Concerns Line Web address: www.aepconcernsline.com

Ethics & Compliance Hotline: 1-800-750-5001

Ethics & Compliance Office Line: 614-716-6226



EXHIBIT U



[REDACTED IN ITS ENTIRETY]

EXHIBIT V



[REDACTED IN ITS ENTIRETY]

EXHIBIT W



[REDACTED IN ITS ENTIRETY]

EXHIBIT Y



[REDACTED IN ITS ENTIRETY]

EXHIBIT Z

FORM OF LAND CONTRACT AMENDMENT

[REDACTED IN ITS ENTIRETY]

EXHIBIT AA
LIST OF APPROVED CONTRACTORS
[REDACTED IN ITS ENTIRETY]

EXHIBIT BB



HV AGREEMENT

[REDACTED IN ITS ENTIRETY]

EXHIBIT CC

FORM OF PWA REQUIREMENTS CERTIFICATE

[REDACTED IN ITS ENTIRETY]

EXHIBIT DD



[REDACTED IN ITS ENTIRETY]

EXHIBIT EE



[REDACTED IN ITS ENTIRETY]

EXHIBIT GG



TRANSFORMER AGREEMENT

[REDACTED IN ITS ENTIRETY]

EXHIBIT HH



[REDACTED IN ITS ENTIRETY]

PURCHASE AND SALE AGREEMENT

Dated as of March 24, 2023

by and between

Indiana Michigan Power Company

as Buyer

American Electric Power Service Corporation

as Buyer Agent

and

Mayapple Solar Holdings, LLC

as Seller

TABLE OF CONTENTS

ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION 1

 Section 1.1 Defined Terms1

 Section 1.2 Rules of Interpretation30

ARTICLE II PURCHASE AND SALE OF PURCHASED INTERESTS 32

 Section 2.1 Purchase and Sale of Purchased Interests32

 Section 2.2 Purchase Price32

 Section 2.3 Mechanics of Closing33

 Section 2.4 Closing; Costs.33

 Section 2.5 Post-Closing.....34

 Section 2.6 Purchase Price Allocation35

 Section 2.7 Withholding Rights35

 Section 2.8 [REDACTED]36

 Section 2.9 [REDACTED]39

 Section 2.10 [REDACTED]40

 Section 2.11 Buyer Agent41

 Section 2.12 [REDACTED]41

ARTICLE III DEVELOPMENT AND CONSTRUCTION COVENANTS 42

 Section 3.1 Development and Construction Generally42

 Section 3.2 Communications; Monthly Report; Buyer Site Representative.....43

 Section 3.3 Other Seller Actions.....43

 Section 3.4 Site Plan; Access Rights; Document Review and Approval;
Reporting.....44

 Section 3.5 [Reserved]49

 Section 3.6 Site Finalization; Title and Survey.49

 Section 3.7 State Commission Approvals.....51

 Section 3.8 FERC Approvals.53

 Section 3.9 Financing; Cooperation.....54

 Section 3.10 Notice to Proceed.....54

 Section 3.11 Production Tax Credits56

 Section 3.12 Events of Force Majeure.56

 Section 3.13 Project Insurance Policies57

 Section 3.14 [Reserved]57

 Section 3.15 Guaranteed Substantial Completion Date; Liquidated Damages.....57

 Section 3.16 [Reserved]58

 Section 3.17 [REDACTED]58

 Section 3.18 [REDACTED]58

 Section 3.19 [REDACTED]58

 Section 3.20 [REDACTED]60

ARTICLE IV OTHER PRE-CLOSING COVENANTS 61

 Section 4.1 Consents and Reasonable Efforts.....61

 Section 4.2 Restrictions on Actions61

 Section 4.3 Notification of Completion or Failure of Conditions63

 Section 4.4 Intercompany Obligations.....64

 Section 4.5 No Negotiations64

 Section 4.6 Seller Credit Support.....64

 Section 4.7 Replacement of Support Obligations66

 Section 4.8 Cooperation with Buyer.....66

 Section 4.9 Market Accounts.....66

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER 66

 Section 5.1 Corporate Existence and Powers66

 Section 5.2 Company Existence and Powers67

 Section 5.3 Authority; Ownership of Company67

 Section 5.4 Consents and Approvals67

 Section 5.5 No Conflicts68

 Section 5.6 Legal Proceedings.....68

 Section 5.7 Compliance with Law68

 Section 5.8 Environmental Matters.....68

 Section 5.9 Right and Title to Purchased Interests69

 Section 5.10 Right and Title to Company Assets69

 Section 5.11 Property Agreements69

 Section 5.12 Real Property70

 Section 5.13 Material Contracts.....72

 Section 5.14 Permits75

 Section 5.15 Finders.....76

 Section 5.16 Intellectual Property.....76

 Section 5.17 Solar Data.....76

 Section 5.18 Insurance77

 Section 5.19 Reports77

 Section 5.20 Tax Matters77

 Section 5.21 Substantially Complete Project; No Other Business79

 Section 5.22 Financial Statements; No Undisclosed Liabilities; Absence of
Certain Changes79

 Section 5.23 Employees; Employee Benefits80

 Section 5.24 Labor Matters.....80

 Section 5.25 Investment Company Act81

 Section 5.26 Bankruptcy81

 Section 5.27 Affiliate Transactions.....81

 Section 5.28 Subsidiaries81

 Section 5.29 Bank Accounts81

 Section 5.30 No Damage81


 Section 5.31 Credit Support.....82

 Section 5.32 No Other Agreements to Sell the Company Assets82


Section 5.33	Consents	82
Section 5.34	Corporate Records	82
Section 5.35	Foreign Corrupt Practices Act; Sanctions Export Control.....	82
ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER.....		83
Section 6.1	Corporate Existence and Powers	83
Section 6.2	Authority	83
Section 6.3	No Conflicts	83
Section 6.4	Consents and Approvals	83
Section 6.5	Legal Proceedings.....	84
Section 6.6	Finders.....	84
Section 6.7	Sufficient Funds; No Bankruptcy	84
Section 6.8	Compliance With Laws.....	84
Section 6.9	Acquisition Intent.....	84
Section 6.10	Foreign Corrupt Practices Act; Sanctions.....	84
ARTICLE VII BUYER’S CONDITIONS PRECEDENT TO CLOSING.....		84
Section 7.1	Buyer’s Conditions Precedent to Closing	84
ARTICLE VIII SELLER’S CONDITIONS PRECEDENT TO CLOSING		88
Section 8.1	Seller’s Conditions Precedent to Closing	88
ARTICLE IX POST-CLOSING COVENANTS.....		89
Section 9.1	Records	89
Section 9.2	Buyer Confidential Information.....	89
Section 9.3	Seller Confidential Information	91
Section 9.4	Tax Matters	93
Section 9.5	Non-Interference	94
Section 9.6	Confidentiality Regarding This Agreement.....	94
Section 9.7	Further Assurances.....	95
Section 9.8	Transfer Taxes	95
Section 9.9	Removal of Excluded Assets	95
Section 9.10	Seller’s Post-Closing Covenants.....	96
Section 9.11	Insurance.....	96
Section 9.12	Post-Closing Completion of the Project	97
Section 9.13	Mechanic’s Lien Exception	98
ARTICLE X INDEMNIFICATION.....		98
Section 10.1	Survival.....	98
Section 10.2	Indemnifications.	99
Section 10.3	Limitation of Liability.....	103
Section 10.4	No Duplication.....	103
Section 10.5	Non-Recourse	104

ARTICLE XI TERMINATION.....	104
Section 11.1 Termination.....	104
Section 11.2 Effect of Termination.....	107
ARTICLE XII MISCELLANEOUS.....	108
Section 12.1 Payment Instructions.....	108
Section 12.2 Disclaimer	108
Section 12.3 Assignment	108
Section 12.4 Notices	108
Section 12.5 Choice of Law; Consent to Jurisdiction; Service of Process.	109
Section 12.6 Waiver of Jury Trial.....	110
Section 12.7 Entire Agreement; Amendments and Waivers	110
Section 12.8 Multiple Counterparts	111
Section 12.9 Invalidity	111
Section 12.10 Titles	111
Section 12.11 Third Party Beneficiaries	111
Section 12.12 Cumulative Remedies	111
Section 12.13 No Partnership or Joint Venture	111
Section 12.14 No Merger.....	111

Schedules and Exhibits

Schedule 1.1(a)	Buyer's Knowledge
Schedule 1.1(b)	Excluded Assets
Schedule 1.1(c)	Project and Facilities
Schedule 1.1(d)	Seller's Knowledge
Schedule 1.1(e)	
Schedule 1.1(f)	Permitted Liens
Schedule 3.4(a)	Facilities Location Layout
Schedule 3.13	Pre-Closing Required Insurance Policies
Schedule 4.4	Post-Closing Intercompany Contracts
Schedule 5.4	Seller Consents and Approvals
Schedule 5.6	Seller Litigation
Schedule 5.7	Compliance with Law
Schedule 5.8	Environmental Matters
Schedule 5.11(a)	Property Agreements
Schedule 5.11(h)	Rents
Schedule 5.12(a)	Real Property Exceptions
Schedule 5.12(b)	Property Pending Actions
Schedule 5.12(c)	Mineral Rights
Schedule 5.12(d)	Option Exceptions
Schedule 5.12(e)	Condemnation
Schedule 5.12(f)	Access Exceptions
Schedule 5.12(g)	Fee Interests
Schedule 5.13(a)	Material Contracts
Schedule 5.13(b)(iii)	Material Contract Defaults
Schedule 5.13(b)(v)	Material Contract Termination Notices
Schedule 5.13(b)(viii)	Material Contract Indemnification Claims
Schedule 5.13(c)	Material Contract Claims
Schedule 5.14(a)	Company Permits

Schedule 5.14(b)	Exceptions to Company Permits
Schedule 5.15	Finders
Schedule 5.17	Solar Data
Schedule 5.18	Insurance
Schedule 5.22(b)	Undisclosed Liabilities
Schedule 5.22(c)	Certain Changes
Schedule 5.24	Labor Matters
Schedule 5.27	Affiliate Transactions
Schedule 5.29	Bank Accounts
Schedule 5.31	Credit Support
Schedule 6.4	Buyer Consents and Approvals
Schedule 6.5	Buyer Litigation
Exhibit A	Closing Title Endorsements
Exhibit B	Form of Property Agreement Estoppel
Exhibit C	Form of EPC Contract
Exhibit D	Form of Excluded Assets and Liabilities Assignment Agreement
Exhibit E-1	Form of Mechanical Completion Certificate
Exhibit E-2	Form of Substantial Completion Certificate
Exhibit E-3	Form of Final Completion Certificate
Exhibit F	[Reserved]
Exhibit G	Form of Letter of Credit
Exhibit H	Form of Major Project Document Estoppels
Exhibit I	Form of Project Finance Letter
Exhibit J	Form of Module Supply Agreement
Exhibit K	Form of Notice to Proceed
Exhibit L	[Reserved]
Exhibit M	Scope of Work and Specifications
Exhibit N	Form of Seller Parent Guaranty
Exhibit O	Mechanical, Substantial, and Final Completion

Exhibit P	Form of Monthly Report
Exhibit Q	Form of Membership Interest Assignment
Exhibit R	Form of Seller Release
Exhibit S	New Solar Energy Land Contract
Exhibit T	
Exhibit U	Approved Contractor List
Exhibit V	Form of Consent and Recognition Agreement
Exhibit W	Form of Lease Amendment
Exhibit X	[Reserved]
Exhibit Y	Initial PVSyst Report Assumptions

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT dated as of March 24, 2023 (the "**Execution Date**"), is made and entered into by and among Mayapple Solar Holdings, LLC, a Delaware limited liability company (the "**Seller**"), Indiana Michigan Power Company, an Indiana corporation (the "**Buyer**"), and solely with respect to its agency relationship with Buyer hereunder, American Electric Power Service Corporation, a New York corporation ("**Buyer Agent**").

RECITALS

- A. Seller is the owner of one hundred percent (100%) of the Equity Interests of Mayapple Solar, LLC, a Delaware limited liability company (the "**Company**") (such interests, the "**Purchased Interests**"), which owns all of the rights and assets with respect to the Project (defined below).
- B. The Company is developing and constructing an approximately 224 MW solar electric generating facility located in Pulaski County, Indiana known as the Mayapple Solar project (as more particularly described in Schedule 1.1(c), Schedule 3.4(a) and Exhibit M, the "**Project**").
- C. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, one hundred percent (100%) of the Purchased Interests, including ownership of the Project [REDACTED] pursuant to the terms and subject to the conditions of this Agreement.
- D. At or immediately following the Closing (defined below), Buyer intends to either cause the Company to distribute the Project and related assets to Buyer or merge the Company with and into Buyer, with Buyer surviving the merger (the "**Assets Distribution to Buyer or Merger**").

AGREEMENT

NOW THEREFORE, in consideration of the sums to be paid to Seller by Buyer hereunder and the mutual representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Defined Terms. For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"**Abnormal Weather Conditions**" means storms and other weather conditions that are abnormally severe for the period of time when, and for the area where, such storms or weather conditions occur, based on, in the case of the Project or the Site, conditions that exceed the most recent [REDACTED] average of accumulated record mean values from climatological data compiled by the National Weather Service at the National Oceanic and Atmospheric Administration for the monitoring location closest to the Site; *provided*, that to the extent that past weather data is not available for the Site for the historical periods described above, historical weather data for Pulaski County, Indiana shall be used as a substitute.

“Acquisition Proposal” means any proposal for a merger, consolidation or other business combination involving the Company or the Project, or, other than in connection with the Financing, any proposal or offer to acquire, (a) directly or indirectly, the Equity Interests in the Company resulting in [REDACTED] no longer controlling (as defined in the definition of “Affiliate”) the Company or (b) substantially all of the Company Assets.

“Action” means any legal, administrative, arbitral, mediation or other alternative dispute resolution procedure or enforcement action, or proceeding, by or before an Authority, unless related to the ordinary course application for and process to obtain Permits (other than contested applications or protests or disputes related to the same).

[REDACTED]

“Adverse Project Effect” means [REDACTED]

“AEP Supplier Code of Conduct” means the American Electric Power Supplier Code of Conduct attached hereto as Exhibit T; *provided*, that if Buyer hereafter provides Seller with an updated version of such code of conduct, **“AEP Supplier Code of Conduct”** shall mean the most recent version of the American Electric Power Supplier Code of Conduct provided by Buyer to Seller (an **“Updated AEP Supplier Code of Conduct”**).

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

“Agreement” means this Purchase and Sale Agreement, including all Exhibits and Schedules hereto, as the same may be modified, amended or supplemented from time to time in accordance with Section 12.7.

“Ancillary Agreements” means the Membership Interest Assignment, the Excluded Assets and Liabilities Assignment Agreement, the Seller Parent Guaranty, the Consent and Recognition Agreement, and any other agreement or instrument executed and delivered by the Parties or by either Party or any Affiliate of such Party to the other Party pursuant to this Agreement.

“Approved Contractor List” is defined in Section 3.4(c).

“As-Built Defects” is defined in Section 3.6(d).

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

“**Assets Distribution to Buyer or Merger**” is defined in Recital D.

[REDACTED]

“**Authority**” means any federal, state, tribal, municipal, national or other government, quasi-governmental, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof, regional transmission organization, independent system operator, or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States or the United States and having legal jurisdiction over the matter or Person in question.

“**Balance Sheet**” is defined in Section 5.22(a).

“**Balance Sheet Date**” means the last day of the most-recent calendar quarter ending at least [REDACTED] prior to the Closing Date.

“**Bankruptcy Event**” shall be deemed to occur, with respect to any Person, if (a) such Person shall commence any voluntary case under any applicable bankruptcy or similar Law; (b) such Person shall consent to the appointment of a receiver, administrator, administrative receiver, liquidator, trustee or other official with similar powers for itself or all or substantially all of its assets; (c) such Person shall make a general assignment for the benefit of its creditors, other than a collateral assignment permitted under this Agreement; (d) an involuntary case shall be commenced seeking liquidation or reorganization of such Person under any bankruptcy or similar Law and (i) such Person consents to the institution of the involuntary case against it, (ii) such involuntary case shall remain undismissed, unbonded or unstayed for a period of [REDACTED], or (iii) an order for relief shall have been issued or entered therein; (e) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, trustee or other official having similar powers, over such Person or all or substantially all of its property shall have been entered; or (f) such Person shall be unable to, or shall admit in writing its inability to, pay its debts generally as they become due.

“**Benefit Plan**” means “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, or other pension, bonus, profit sharing, stock option or other agreement or arrangement providing for employee remuneration or benefits, including a “multiemployer plan,” as that term is defined in Section 4001(a)(3) of ERISA.

“**Building and Construction Trade Unions**” [REDACTED]

[REDACTED]

[REDACTED]

“**Business**” means the ownership of the Company Assets and the design, development, engineering, procuring, permitting, financing, construction, installation, testing, commissioning, ownership, operation and maintenance of the Project and the conduct of other activities by the Company related or incidental to the foregoing, all as currently conducted or to be conducted.

“**Business Day**” means any day other than Saturday, Sunday or any day on which banks located in New York, New York, or Columbus, Ohio, are authorized or obligated, in each case pursuant to applicable Law, to close.

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

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

[REDACTED]

“**Buyer Confidential Information**” is defined in Section 9.2(a).

“**Buyer Consents**” is defined in Section 6.4.

“**Buyer Indemnified Parties**” is defined in Section 10.2(a).

“**Buyer Indemnifying Party**” is defined in Section 10.2(b).

“**Buyer Permits**” is defined in Section 5.14(a).

“**Buyer’s Final Survey Objection Notice**” is defined in Section 3.6(d).

“**Buyer’s Fundamental Representations**” means the representations and warranties contained in [REDACTED]

“**Buyer’s Knowledge**” means the actual knowledge of any of the individuals listed on Schedule 1.1(a) after reasonable inquiry by such individuals of those employees of Buyer who are responsible for the subject matter of the representation and warranty or other matter involved.

“**Buyer’s Site Representative**” is defined in Section 3.2(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Change in Permit Requirement” means any enactment, adoption, promulgation, issuance of any Law, change, modification, amendment, or interpretation by any Authority in respect of any Permit, or the requirements of any Permit, for the development, construction or operation of the Project; *provided, however*, that it shall not be a Change in Permit Requirement if any Authority places conditions in connection with the issuance of any Permit that are expected and within the customary conditions on Permits issued for utility-scale solar projects in the State of Indiana.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“*Closing*” is defined in Section 2.3.

“*Closing Date*” is defined in Section 2.3.

“*Closing Payment*” means the following amount in dollars, which will not, in any event, be less than zero dollars:

(a) [REDACTED] % of the Purchase Price, minus

(b) The sum of

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

(vi) [REDACTED]

(c) plus the sum of:

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

“*Closing Title Endorsements*” means the title insurance endorsements covering the Real Property in substantially the forms attached hereto as Exhibit A.

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

[REDACTED]
[REDACTED]
“*Commission Approval Deadline*” means [REDACTED].

“*Commission Approvals*” means (a) any and all final non-appealable order(s) from the Commissions that are necessary for the Buyer’s acquisition of the Purchased Interests, and (b) any and all final, non-appealable order(s) from the Commissions approving (i) the recovery of all of the costs associated with the Purchased Interests, or (ii) a recovery mechanism for implementation on or after the date of acquisition of the Purchased Interests, in each case of clauses (a) and (b) that are acceptable to Buyer in its sole discretion.

“*Commissions*” means the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

“*Company*” is defined in Recital A.

“*Company Assets*” means, unless otherwise provided herein, all of the Assets of the Company, including:

- (a) the Solar Data;
- (b) the Facilities;
- (c) the Material Contracts;
- (d) the Property Agreements;
- (e) the Permit Applications and the Company Permits;
- (f) all RECs and Environmental Attributes of the Project;
- (g) the Corporate Records;
- (h) the Interconnection Rights;
- (i) the portion of the Real Property owned in fee simple by the Company;
- (j) the design layout of the Facilities;
- (k) all emissions allowances or credits, renewable energy credits, green tags, or other environmental or financial attributes of the Facilities, if any; and
- (l) all investment tax credits, production tax credits, and other federal or state tax credits, deductions, or exemptions, and federal or state cash payments or outright grants of money, in each case relating to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, operation or maintenance of the Facilities.

“**Company Permits**” is defined in Section 5.14(a).

“**Completion Certificate**” means the Mechanical Completion Certificate, Substantial Completion Certificate and Final Completion Certificate, as applicable.

“**Completion Milestone**” means Mechanical Completion, Substantial Completion and Final Completion, as applicable.

“**Consent and Recognition Agreement**” means an agreement between Buyer and the Financing Agent containing a consent to collateral assignment to the Financing Parties during the period prior to Closing and recognition by the Financing Parties of this Agreement, substantially in the form attached as Exhibit V or otherwise in form and substance reasonably satisfactory to Buyer, Seller and the Financing Agent.

“**Construction Loan Agreement**” means (a) the loan or credit agreement to be entered into among the Seller (or its Affiliates), as Borrower, and the Financing Parties from time to time party thereto, with respect to the Financing, and (b) the other documents, instruments and agreements entered into in connection with the Financing.

“**Construction Period**” means the period from the Execution Date through the earlier of Final Completion or the termination of this Agreement in accordance with ARTICLE XI.

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

“**Contractor Financial and Safety Information**” means, with respect to any potential contractor that Seller wishes to cause the Company to enter into a Major Project Document (other than the Interconnection Agreement, the Interconnection Construction Service Agreement or any other Agreement with Transmission Owner or Transmission Provider) with, (i) the most recent [REDACTED] of audited financial statements of such potential contractor (and/or the relevant credit support provider(s)), (ii) the most recent quarterly unaudited financial statements of such potential contractor (and/or the relevant credit support provider(s)), (iii) safety metrics of such potential Contractor, and (iv) such other financial or safety information with respect to such potential contractor that may be reasonably requested by Buyer consistent with past practices of the Buyer and its Affiliates in approving contractors for similar projects.

“**Contractors**” means the EPC Contractor, the Module Supplier and each other counterparty to a Major Project Document.

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

“**Corporate Records**” means the minute books, membership interest certificates (if any), membership interest transfer ledgers and Corporate Documents of the Company.

“**Credit Rating**” means, for any Person, the lower of the senior unsecured and non-credit-enhanced long-term debt rating of such Person by Moody’s or S&P, or if such Person does not have such a senior unsecured and non-credit-enhanced long-term debt rating, the issuer rating of such Person by Moody’s or S&P.

[REDACTED]

“**Crossing Agreements**” means written agreements or consents made for the benefit of Company and issued by all necessary parties that authorize the installation, maintenance or operation of the Facilities in, over or with respect to (as applicable) rights-of-way, easements or other areas that require consent or approval for the installation, maintenance or operation of the Facilities located on the subject real property.

“**Default**” means any circumstance, event or condition that, with or without notice or the passage of time or both, would constitute a violation, breach or event of default, or give rise to any penalty or right of termination, cancellation, acceleration or modification, or require any consent or waiver.

“**Delay Liquidated Damages**” is defined in Section 3.15(a).

“**Electronic Data Room**” means the Box website hosted by Buyer in the folder named [REDACTED] to which Seller and certain of its Representatives have been provided access.

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

“**Enforceable**” means, with respect to any Contract stated to be enforceable by or against any Person, that such Contract is a legal, valid and binding obligation enforceable by or against such Person in accordance with its terms, except to the extent that enforcement of the rights and remedies created thereby is subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors and general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, related to the Project (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program), but excluding any Tax benefits or credits associated with the Project. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United States Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.

“Environmental Laws” means all Laws relating to the environment, human health, safety, natural resources, plant and animal species, cultural and archaeological resources, or the use of or Release into the environment of any Hazardous Materials, including the Clean Air Act (42 U.S.C. §7401 et seq.), the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Safe Drinking Water Act (42 U.S.C. §300f et seq.), the U.S. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.) (solely with respect to the use of and exposure to Hazardous Materials), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. §668 et seq.), the Migratory Bird Treaty Act (16 U.S.C. §703 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 to 4370h), the National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), and Title 14 Code of Federal Regulations Part 77, and 49 U.S.C. § 44718, and any similar or analogous state and local statutes or regulations promulgated thereunder, as each of the foregoing has been or may be amended or supplemented from time to time in the future.

“EPC Contract” means one or more engineering, procurement and construction agreements to be entered into between EPC Contractor and Company in accordance with Section 3.4(f).

“EPC Contractor(s)” means a contractor approved by Buyer in accordance with Section 3.4(c).

“Equity Interests” means capital stock, partnership, membership or trust interests, shares or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

“Equity Securities” means (a) Equity Interests, (b) subscriptions, calls, warrants, options or commitments of any kind or character legally entitling any Person to acquire, any Equity Interests and (c) securities convertible into or exercisable or exchangeable for Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974.

[REDACTED]

“*Exception Documents*” is defined in Section 3.6(b)(iii).

[REDACTED]

“*Excluded Assets*” means those Assets listed on Schedule 1.1(b).

“*Excluded Assets and Liabilities Assignment Agreement*” means an assignment agreement to convey Excluded Assets and Excluded Liabilities from the Company to Seller or one of its Affiliates, in the form attached hereto as Exhibit D.

[REDACTED]

(h) any Liabilities arising out of or related to the Company’s employment of any [REDACTED]

[REDACTED]

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

“Exhibits” means the exhibits attached to, and expressly contemplated in, this Agreement, including those to be delivered at the Execution Date or at the Closing Date.

“Expected Interconnection Agreement Date” [REDACTED]

“Expected Interconnection Construction Service Agreement Date” [REDACTED]

“Facilities” means the solar modules, inverters, power stations, O&M building, electrical collector system, substation, racking and tracking systems, communication lines, civil works, roads, fences, gates, foundations, project substation, transmission and gen-tie lines, whether overhead or undergrounds, laydown areas, work areas and other temporary and permanent fixtures, and all other equipment, components, materials, improvements and assets relating to the Project, including those set forth on Schedule 1.1(c).

“FERC” means the Federal Energy Regulatory Commission, including its staff acting under delegated authority.

“Final Completion” is defined in Exhibit O.

“Final Completion Certificate” means a certificate in the form attached hereto as Exhibit E-3 issued by Seller certifying as to the satisfaction or achievement of Final Completion, or in such other form reasonably approved by Buyer.

“Final Completion Date” means the date on which the Project shall have achieved Final Completion and the Final Completion Certificate with respect thereto shall have been accepted by Buyer in accordance with Exhibit O.

“Final Completion Payment” means an amount in dollars, which will not be less than zero dollars, equal to the remaining unpaid Punch List Holdback Release as of the date of the Final Completion Payment.

[REDACTED]

“*Final Survey*” is defined in Section 3.6(d).

“*Financial Close*” means execution and delivery of the Construction Loan Agreement by the Company and Financing Parties and initial drawdown of funds thereunder.

“*Financial Close Date*” means the date on which Financial Close occurs.

“*Financing*” is defined in Section 3.9(a).

“*Financing Agent*” means any single trustee, administrative agent, collateral agent or similar representative acting on behalf of the Financing Parties or such other single representative designated in writing by Seller.

“*Financing Parties*” means the lenders and/or equity investors (including any trustee or agent on behalf of such lenders (and other secured parties) and/or equity investors) providing equity and/or debt financing or refinancing or letters of credit to Seller or any of its Affiliates, successors or assigns, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

[REDACTED]

“*Force Majeure*” is defined in Section 3.12(a).

“*FPA*” means the Federal Power Act.

“*GAAP*” means generally accepted accounting principles in the United States of America as recognized by the American Institute of Certified Public Accountants, consistently applied for a Person throughout the specified periods and maintained on a consistent basis for a Person throughout the period or periods indicated and consistent with such Person’s prior financial practice; *provided, however*, that with respect to Lightsource bp Renewable Energy Investments Limited, “GAAP” shall mean either (a) the generally accepted accounting principles in the United Kingdom, or (b) International Financial Reporting Standards.

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

[REDACTED]

“*Hazardous Materials*” means any substances, pollutants, contaminants, wastes, or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive material, hazardous wastes, toxic substances, asbestos or any materials containing

asbestos, urea formaldehyde, polychlorinated biphenyls, per and polyfluoralkyl substances, perfluorooctanoic acid, and perfluorooctane sulfate) designated, regulated, or defined under or with respect to which any requirement or Liability may be imposed pursuant to any Environmental Law.

“Indebtedness” means, with respect to any Person, any indebtedness, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or representing the deferred and unpaid balance of the purchase price of any purchased property (including pursuant to capital leases), including any such deferred and unpaid balance that constitutes an accrued expense or a trade payable, and shall also include, to the extent not otherwise included, the guaranty of items which would be included within this definition. For sake of clarity, Indebtedness excludes property purchased (including pursuant to a capital lease) after the Closing and trade payables that are not more than [REDACTED] past due incurred in the Ordinary Course of Business.

“Indemnified Party” or **“Indemnified Parties”** shall mean, as applicable, the Buyer Indemnified Parties, the Seller Indemnified Parties or both the Buyer Indemnified Parties and the Seller Indemnified Parties.

“Indemnifying Party” shall mean, as applicable, the Buyer Indemnifying Party, the Seller Indemnifying Party or both the Buyer Indemnifying Party and the Seller Indemnifying Party.

“Indemnity Cap” means an amount equal to [REDACTED]
[REDACTED]

“Independent Accountant” means a nationally recognized firm of independent certified public accountants that is mutually acceptable to Seller and Buyer.

“Independent Engineer” means (i) [REDACTED] or (ii) another nationally recognized engineering firm that is mutually acceptable to Seller and Buyer, that possesses substantial expertise with solar energy projects.

“Independent Solar Engineer” means [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

“Intellectual Property” means all intellectual property rights, including rights in: (a) patents, inventions, discoveries, processes, designs, techniques, developments, technology, and related improvements and know-how, whether or not patented or patentable; (b) copyrights and works of authorship in any media, including computer hardware, software, firmware, applications, files, systems, networks, databases and compilations, documentation and related textual works, graphics, advertising, marketing and promotional materials, photographs, artwork, drawings, articles, textual works, and Internet site content; (c) trademarks, service marks, trade dress, logos,

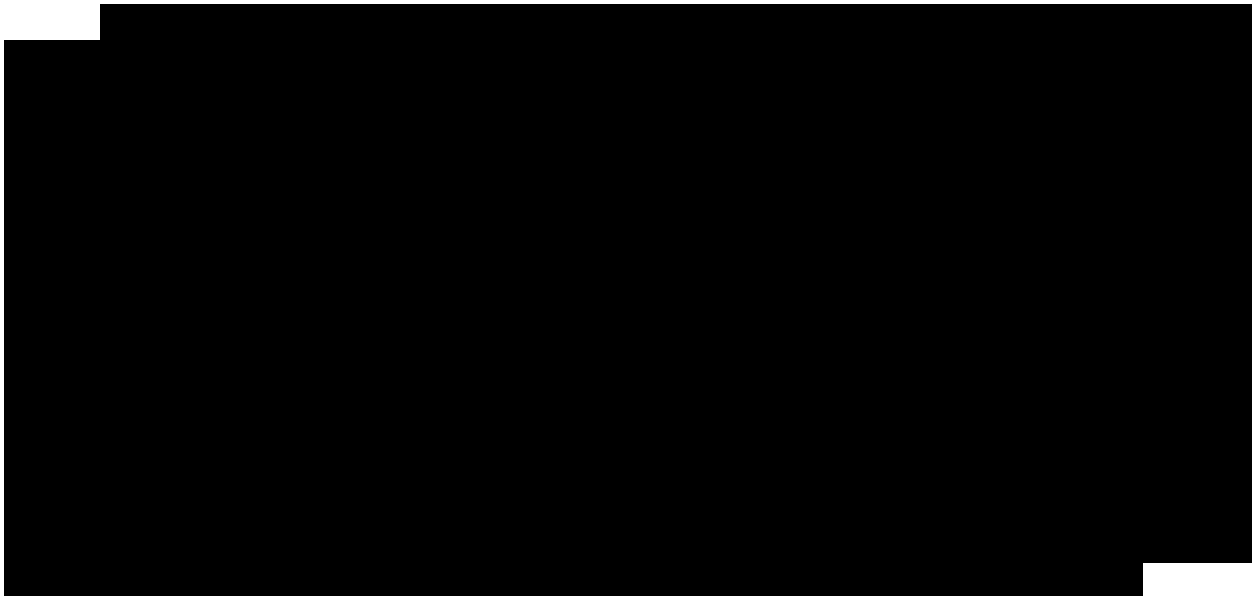
Internet domain names, any and all common law rights thereto, and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing; and (d) trade secrets and confidential information, including the ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

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


“Interconnection Agreement” means the Interconnection Service Agreement entered into by and among Company, Transmission Provider and Transmission Owner with respect to the Interconnection, in the form required by the Transmission Provider and the Transmission Owner. For sake of clarity, the Interconnection Agreement does not include any interim or provisional Contract (including any engineering and procurement agreement, interim interconnection agreement, or other Contract that is made for purposes of commencing a limited scope of work in connection with the Interconnection or provides only provisional interconnection rights) entered into with respect to the Interconnection.

“Interconnection Construction Service Agreement” means an Interconnection Construction Service Agreement, if any, to be entered into by and among the Company, the Transmission Provider and the Transmission Owner with respect to the Interconnection, in the form required by the Transmission Provider and the Transmission Owner. For sake of clarity, the Interconnection Construction Service Agreement does not include any interim or provisional Contract (including any engineering and procurement agreement, interim interconnection agreement, or other Contract that is made for purposes of commencing a limited scope of work in connection with the Interconnection or provides only provisional interconnection rights) entered into with respect to the Interconnection.

[REDACTED]



“Interconnection Rights” means any and all of the Company’s or Seller’s rights and interests in the Project’s Interconnection under the Interconnection Agreement and the Interconnection Construction Service Agreement, and any subsequent studies, reports or other documents provided by Transmission Provider and/ or Transmission Owner. For sake of clarity, Interconnection Rights do not include provisional or interim interconnection rights that provide Interconnection for less than the full capacity of the Project for the entire term of the Interconnection Agreement.

“Interest Rate” means, for any date, a rate per annum equal to the sum of (i) the “Prime Rate” as published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), plus (ii)  .

“**IRS**” means the United States Internal Revenue Service.

“**Known Breach**” means any breach by Seller of representations and warranties in ARTICLE V or of covenants hereunder that were to be performed prior to Closing, in each case that Buyer has Buyer’s Knowledge of prior to or at the Closing; *provided* that, if Buyer has Buyer’s Knowledge of the breach at [REDACTED] prior to the Closing, Buyer promptly gave Seller written notice of such breach and Seller has not cured such breach in all material respects within [REDACTED] following such written notice.

[REDACTED]

[REDACTED]

“**Land Contracts**” means all easement agreements, lease agreements, deeds or other agreements (excluding Crossing Agreements and Subordination Agreements) granting rights with respect to the occupancy, use or ownership of any portion of the Project real property (including the Site), including all options or agreements for real property interests (including options or agreements to acquire real property in fee, leasehold or easement estates), and all amendments, supplements and agreements, and memoranda or notices intended to give record notice, in connection therewith.

“**Law**” means any law (including common law), statute, rule, regulation, ordinance, standard, code, Order, judgment, binding decision, writ, injunction, or decree issued or enforced by any Authority.

“**Lease Amendment**” has the meaning set forth in Section 3.6(f).

“**Letter of Credit**” shall mean an irrevocable, transferable, standby letter of credit issued by a Creditworthy Bank substantially in the form attached hereto as Exhibit G.

“**Letter of Credit Default**” means the occurrence of any of the following events in respect of a Letter of Credit:

- a) the issuer of the Letter of Credit is no longer a Creditworthy Bank;
- b) the issuer of the Letter of Credit disaffirms, disclaims, repudiates, or rejects in whole or in part, or challenges the validity of, such Letter of Credit;
- c) the Letter of Credit expires or terminates or ceases to be in full force and effect at any time during the term of this Agreement;
- d) any Bankruptcy Event with respect to the issuer of the Letter of Credit;

- e) [REDACTED] prior to the expiration or termination date of a Letter of Credit, the Letter of Credit is not extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced;
- f) the issuer of the Letter of Credit fails to honor a drawing under the Letter of Credit in accordance with its terms; or
- g) the issuer of the Letter of Credit fails to comply with or perform its obligations under the Letter of Credit and the failure continues after the lapse of any applicable grace period;

In all cases, the costs and expenses (including the reasonable costs, expenses, and external attorneys' fees) of establishing, renewing, substituting, canceling, increasing, and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller, and all costs of assigning, transferring, or changing the beneficiary under a Letter of Credit shall be borne by Buyer.

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

[REDACTED]

“Loss” [REDACTED]

[REDACTED]

“Made Available” means the respective materials were posted to the Electronic Data Room.

“Major Project Document Estoppels” means those estoppel certificates from the counterparties to each [REDACTED]

[REDACTED] in substantially the form attached hereto as Exhibit H or with changes thereto reasonably approved by Buyer.

“Major Project Documents” means the

[REDACTED]

“Material Adverse Effect”

[REDACTED]

[REDACTED]

“**Material Contracts**” is defined in Section 5.13(a).

“**Mechanical Completion**” is defined in Exhibit O.

“**Mechanical Completion Certificate**” means a certificate in the form attached hereto as Exhibit E-1 issued by Seller certifying as to the satisfaction or achievement of Mechanical Completion, or in such other form reasonably approved by Buyer.

“**Mechanical Completion Date**” means the date on which the Project shall have achieved Mechanical Completion and the Mechanical Completion Certificate with respect thereto shall have been accepted by Buyer in accordance with Exhibit O.

“**Membership Interest Assignment**” is defined in Section 7.1(a)(i).

“**MISO**” means the Midwest Independent Transmission System Operator, Inc. or a successor (if any).

“**Module Supplier**” [REDACTED]

“**Module Supply Agreement**” means the module supply agreement or purchase order to be entered into between Module Supplier and Company in the form attached hereto as Exhibit J.

“**Moody’s**” means Moody’s Investors Service, Inc., or a successor (if any).

“**MW**” means megawatt measured in alternating current (ac).

“**Nameplate Capacity**” means the sum of the ratings for all inverters in the Project in MWac.

[REDACTED]

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

“**Notice of MBR Cancellation**” is defined in Section 3.8(f).

“**Notice to Proceed**” means that full notice to proceed with the construction of the Project in the form of the Notice to Proceed attached hereto as Exhibit K.

“**Notice to Proceed Date**” means the date that the Notice to Proceed is issued.

“**Notice to Proceed Outside Date**” means [REDACTED]

[REDACTED]

[REDACTED]

“**O&M Building**” means the building used in the performance of operations and maintenance services for the Project and meeting the specifications therefor in Attachment 15 (O&M Building Design and Specifications) of Exhibit M to be located on property owned in fee by the Company.

“**Order**” means any settlement, stipulation, order, writ, judgment, injunction, decree, ruling, determination or award of any Authority.

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

“**Outside Date**” means [REDACTED]

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

“**Permit**” means any license, consent, certificate (including permanent unconditional certificate of occupancy), approval, permit, authorization, determination, concurrence, or franchise by or from any Authority, for the design, development, engineering, procuring, construction, installation, testing, commissioning, ownership, maintenance, operation or transfer of the Project.

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

“**Permitted Encumbrances**” means, collectively: (a) inchoate statutory-created Encumbrances for current property Taxes that are either not yet delinquent or for which an appropriate reserve has been established therefor in the Balance Sheet in accordance with GAAP, (b) Encumbrances granted to the Financing Parties under the Financing in respect of the development or construction of the Project (so long as such Encumbrances are fully released at or prior to the Closing), (c) the Schedule B Exceptions, (d) any other Encumbrance created by or approved in writing by Buyer, (e) Encumbrances deemed to be “Permitted Encumbrances” pursuant to Section 3.6(b)(iii), Section 3.6(d), or Section 3.6(e), (f) Encumbrances affirmatively insured against under the terms of the Title Policy in a manner reasonably acceptable to Buyer, (g) Encumbrances consisting of mortgages or similar instruments affecting an interest in land superior to the interest of the Company in the Land Contracts, but only if such Encumbrance is the subject of a subordination agreement or non-disturbance agreement reasonably satisfactory in substance and form to Buyer, other than any Encumbrance consisting of mortgages or similar instruments affecting any Real Property to which Company owns fee title which shall not be a Permitted Encumbrance except as set forth in (b) above, (h) inchoate or statutory liens of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others in

respect of the construction, maintenance, repair or operation of the Project, *provided* that such liens (i) are related to obligations not yet due or delinquent or (ii) are being contested in good faith by appropriate proceedings for which adequate reserves have been made as required by GAAP, are identified on Schedule 1.1(f), and are paid in full and released at or prior to the Closing, bonded over by Seller or an Affiliate of Seller in accordance with applicable Law or otherwise affirmatively insured against in the Title Policy as of the Closing Date in a manner acceptable to Buyer, (i) any mechanics' liens associated with the Punch List Holdback provided cash reserves are earmarked and available to pay for any work for which mechanics' liens have been filed, (j) liens arising in favor of an Authority under any Permit held by Seller or Company under applicable Laws for which adequate accruals have been made by GAAP, (k) Permitted Equity Encumbrances, and (l) the obligation for Company to transfer to Transmission Owner a fee simple interest in the Switchyard Property pursuant to the Interconnection Agreement and/or Interconnection Construction Service Agreement.

“Permitted Equity Encumbrances” means, with respect to the Company, any (a) restriction or transfer imposed by applicable securities Laws, (b) restriction arising under this Agreement, any Ancillary Agreement or any applicable Corporate Documents of the Company, (c) Encumbrance arising by, through or under Buyer or (d) prior to the Closing Date, any pledges granted to the Financing Parties under the Financing (so long as such Encumbrances are fully released at or prior to the Closing).

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

“Placed in Service” means, with respect to the Project, that (a) the Project has obtained the necessary permits and licenses for operation; (b) critical preoperational testing has been completed for the generation of electric energy for sale to customers; (c) the Company has custody and control of the Project; (d) the Project is synchronized into a transmission power grid; and (e) the Project is capable of supplying power to the transmission power grid for sale to customers.

“Point of Interconnection” shall have the meaning set forth in the Interconnection Agreement.

“Post-Closing Adjustment” is defined in Section 2.5(a).

“Post-Closing Statement” is defined in Section 2.5(a).

“Post-Closing Work” is defined in Section 9.12(b).

“Pre-Closing Period” means the period from the Execution Date through the earlier of the Closing Date or the termination of this Agreement in accordance with ARTICLE XI.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period.



[REDACTED]

“**Project**” is defined in Recital B.

“**Project Insurance Policies**” is defined in Section 5.18.

“**Property**” means the real property that is covered by the Land Contracts.

“**Property Agreement Estoppels**” means the estoppel certificates from (i) the grantors under the Land Contracts and (ii) the counterparties to the Crossing Agreements, only to the extent provided in Section 3.6(c), in each case in substantially the form attached hereto as Exhibit B or with changes thereto reasonably approved by Seller, Buyer, and the counterparty to each such Property Agreement Estoppel.

“**Property Agreements**” means collectively the Land Contracts, Subordination Agreements and Crossing Agreements.

“**Prudent Industry Practices**” means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the solar generation industry for similar solar electric generation facilities in similar locations as the Project in the United States) that at a particular time in the exercise of good judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Laws, equipment manufacturer recommendations, safety, environmental protection, economy and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“**PTC**” means the production tax credit under Section 45 or Section 45Y of the Code, as applicable.

“**Punch List**” means the list of Punch List Items. If the Parties are unable to agree upon whether an item should be included in the Punch List, the Independent Engineer shall make such determination.

“**Punch List Holdback Amount**” means [REDACTED] of the amount sufficient to pay the costs of completing the Punch List, as agreed by the Parties, or, if the Parties are unable to agree upon such amount, as determined by the Independent Engineer, which amount, in any event, shall not be less than the sum of all undisputed amounts owed to the counterparties to the Major Project Documents as (to the extent undisputed) reflected in the lien waivers related to Major Project Document but that remain unpaid as of the Closing Date.

“**Punch List Holdback Release**” means with respect to any Punch List Item that has been completed, an amount in dollars equal to the portion of the Punch List Holdback Amount applicable to such Punch List Item.

“**Punch List Items**” means each item of Work that (a) Seller or Buyer identifies as requiring completion or containing defects that is associated with, and were intended to have been completed

in connection with Substantial Completion, (b) that does not preclude the Facilities or any portion thereof from operating or functioning, (c) does not affect the operability or mechanical or electrical integrity of the Facilities and (d) does not create a safety risk for any Person to the extent such items have not been completed as of the Closing Date.

“Purchase Price” means [REDACTED]

“Purchase Price Allocation Schedule” is defined in Section 2.6.

“Purchased Interests” is defined in Recital A.

[REDACTED]

[REDACTED]

“Real Property” means the Property and the Facilities (to the extent the same are deemed to be real property by the law of the jurisdiction in which such Facilities are located).

“RECs” means any credits, credit certificates, green tags, allowances, offsets, entitlements or similar environmental or green energy attributes (such as those for greenhouse reduction or the generation of green power or renewable energy) created by an Authority or independent certification board or group generally recognized in the electric power generation industry, and generated by or associated with the Project or electricity produced therefrom.

[REDACTED]

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

“Rental Payments” means option payments and rental payments due pursuant to the Land Contracts, [REDACTED].

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

“**Required Credit Support**” is defined in Section 4.6(d).

“**Required FERC Approvals**” means (i) an order issued by FERC approving the Section 203 Application, and (ii) an order or orders issued by FERC accepting the Interconnection Agreement and/or the Interconnection Construction Service Agreement for filing; *provided, however,* that if the Transmission Provider has determined that either such agreement is not required to be filed with FERC pursuant to 18 C.R.F. §35.1(g), then a FERC order for such agreement shall no longer be considered a Required FERC Approval.

“**S&P**” means Standard & Poor’s Global Ratings Group, or a successor (if any).

“**Schedule B Exceptions**” means the exceptions to title as noted in the Title Reports, to the extent approved or deemed approved by Buyer as provided in Section 3.6(b)(iii).

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

“**Scope of Work and Specifications**” means the Scope of Work and Specifications set forth in Exhibit M.

[REDACTED]

[REDACTED]

“**Section 203 Application**” is defined in Section 3.8(b).

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

“**Seller Confidential Information**” is defined in Section 9.3(a).

“**Seller Consents**” is defined in Section 5.4.

“**Seller Indemnified Parties**” is defined in Section 10.2(b).

“**Seller Indemnifying Party**” is defined in Section 10.2(a).

“**Seller Parent**” means [REDACTED]

“**Seller Parent Credit Requirements**” means [REDACTED]

“**Seller Parent Guaranty**” means that guaranty from Seller Parent substantially in the form of Exhibit N or such other form reasonably acceptable to Buyer, Seller, and Seller Parent party thereto.

“***Seller Parent Guaranty Default***” means the occurrence of any of the following events in respect of the Seller Parent Guaranty:

- a) the Seller Parent does not satisfy the Seller Parent Credit Requirements; [REDACTED]
- b) the Seller Parent disaffirms, disclaims, repudiates, or rejects in whole or in part, or challenges the validity of, such Seller Parent Guaranty;
- c) the Seller Parent Guaranty expires or terminates or ceases to be in full force and effect at any time while the Seller Parent Guaranty is required to be in effect pursuant to its terms;
- d) any Bankruptcy Event with respect to the Seller Parent;
- e) the Seller Parent fails to honor a drawing under the Seller Parent Guaranty in accordance with its terms; or
- f) the Seller Parent fails to comply with or perform its material obligations under the Seller Parent Guaranty and the failure continues after the lapse of any applicable grace period.

“***Seller’s Fundamental Representations***” means the representations and warranties contained in [REDACTED]

“***Seller’s Knowledge***” means the actual knowledge of any of the individuals listed on Schedule 1.1(d) after reasonable inquiry by such individuals of those employees of Seller who are responsible for the subject matter of the representation and warranty or other matter involved and which shall be deemed to include knowledge of the information and materials Made Available.

[REDACTED]

“***Site***” means the site in Pulaski County, Indiana, on which the Project, including the Facilities (including the gen-tie line from the Project substation to the Switchyard Property), will be constructed, which site shall be within the geographic boundaries of the Property.

“***Site Finalization Date***” means the date when the conditions set forth in Section 3.6(a) and Section 3.6(b) have been satisfied by Seller or waived by Buyer.

“***Site Operating Plan***” means the document or set of documents setting forth certain requirements in respect of the operation and maintenance of the Project, including a physical description of the Project including drawings and pictures; a complete list of the EPC Contractor’s supplier contacts; a description of the solar module array indicating string voltages and appropriate safety procedures provided by the EPC Contractor or equipment manufacturer; final as-built electrical and structural drawings, commissioning test reports required to comply with this

Agreement and all applicable Laws; equipment serial numbers; equipment warranty information; equipment tagging, location and identification; operation, maintenance and safety policies and procedures for the Project and any PPE requirements provided by the EPC Contractor or equipment manufacturer; instructions for startup, shutdown, operation and maintenance of all material equipment and components included in the Project; ‘ArcFlash’ analysis and stickers; and a complete bill of materials for the power & control building.

“**Site Plan**” means that certain site plan layout for the Project delivered by Seller as provided in Section 3.4(a), including the intended location of each of the Facilities, the intended location of the solar modules, gen-tie lines, whether overhead or underground, including all related facilities, such as guy wires, access roads, interior roads, electrical collector system, substation (collector, interconnection or any other substation), point of interconnection, communication lines, fences, detention basins, and set-backs from roads and other structures, any surrounding buildings or vegetation that could affect solar resources, the location of areas subject to Crossing Agreements, the boundaries of each tract or parcel of Property subject to each Land Contract, and which such layout shall overlay the Site and show the location of existing roads, buildings, other structures, all wetlands (if any), and areas of concern (if any) as identified in the then current Phase I environmental site assessment for the Project.

“**Solar Data**” is defined in Section 5.17.



“**Straddle Period**” means any Tax period that begins on or before the Closing Date and ends after the Closing Date.

“**Subcontractor**” means any vendor, supplier, consultant, or subcontractor, of any tier, materialman, professional, laborer or other Person providing materials, equipment or services, directly or indirectly, to Contractor in connection with the performance of the Work.

“**Subordination Agreements**” means written agreements provided by the holder of each monetary lien that (without such Subordination Agreement) would have priority in interest in any portion of the real property that is subject to a Land Contract, which Subordination Agreement shall subordinate the rights of such lien holder to, or provide that any foreclosure under, or exercise of, such lien rights shall not disturb, the rights of Company under the applicable Land Contract.

“**Subsidiary**” means, with respect to any Person of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons will be deemed to have a majority ownership interest in a limited liability company, partnership or association, or other business entity if such Person or Persons will be allocated a majority of limited liability company, partnership or association or other business entity gains or losses or will be or control

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

“**Technical Dispute**” is defined in Section 12.5(e).

[REDACTED]

[REDACTED]

“**Threshold Amount**” means [REDACTED].

“**Title Company**” means [REDACTED] or another nationally recognized title company experienced with solar projects mutually acceptable to Buyer and Seller.

“**Title Policy**” is defined in Section 7.1(g)(i).

“**Title Reports**” means preliminary title commitments or reports prepared by the Title Company with respect to the Real Property.

“**Total Capacity**” means the aggregate Nameplate Capacity (measured in MWs) for the Project.

“**Transfer Taxes**” means all transfer, sales, use, goods and services, value added, documentary, stamp duty, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges.

“**Transformer Supplier**” means [REDACTED].

“**Transmission Operator**” means [REDACTED], or its successors.

“**Transmission Owner**” means [REDACTED], or its successors.

“Transmission Owner Interconnection Facilities” has the meaning set forth in the Interconnection Agreement.

“Transmission Provider” means PJM Interconnection, L.L.C., or its successors.

“Treasury Regulations” means the regulations promulgated under the Code.

[REDACTED]

“Updated Survey” is defined in Section 3.6(d).

“Updated Title Objections” is defined in Section 3.6(d).

“Updated Title Reports” is defined in Section 3.6(d).

“Updating Information” is defined in Section 3.3(b).

“Wildlife Restrictions” means any requirement to avoid, minimize or mitigate impacts to any wildlife species adopted by Seller or the Company for the Project, or imposed on Seller, the Company or the Project by any Authority with jurisdiction over such wildlife resources.

“Work” means all work for the management of (a) the construction of the Project, (b) the design, development, engineering, procurement, permitting, construction, installing, interconnection, testing, commissioning, start-up and turnover of the Facilities, which work and services shall include all aspects of the work described in the Scope of Work and Specifications and (c) the provision of all materials, equipment, machinery, tools, labor, transportation, administration and other actions, services and items required to complete and deliver the fully assembled, integrated, installed, tested and operational Facilities and the Project.

Section 1.2 Rules of Interpretation. Unless otherwise expressly provided or unless required by the context in which any term appears:

- (a) the singular shall include the plural and the plural shall include the singular;
- (b) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” (if any) shall be to articles, sections, schedules or exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time;

(c) all references to a particular entity shall include a reference to such entity's successors and permitted assigns;

(d) 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;

(e) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;

(f) references to this Agreement shall include a reference to all Schedules and Exhibits hereto as the same may be amended, modified, supplemented or replaced from time to time;

(g) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(h) the use of the word "including" (and its variants) in this Agreement to refer to specific examples shall be construed to mean "including, without limitation" or "including but not limited to" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;

(i) relative to the determination of any period of time, "from" means "including and after," "to" means "to but excluding" and "through" means "through and including;"

(j) references to applicable Laws shall mean a reference to such applicable Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated thereunder;

(k) unless otherwise specified to the contrary, the word "or" shall be inclusive and shall have the meaning conveyed by "and/or";

(l) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;

(m) any date specified for action that is not a Business Day shall mean the first Business Day after such date;

(n) all accounting terms used herein and not expressly defined herein shall have the meanings given to them in GAAP;

(o) a reference to any Contract is to that Contract as amended, novated, supplemented or replaced from time to time;

(p) all references in this Agreement to "dollars" or "\$" shall, in each case, be deemed to refer to United States currency unless otherwise specifically provided; and

(q) the phrase "to the extent" means "the degree by which" and not "if".

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE II PURCHASE AND SALE OF PURCHASED INTERESTS

Section 2.1 Purchase and Sale of Purchased Interests. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date Seller shall sell, convey, transfer, assign, and deliver to Buyer, free and clear of all Encumbrances other than the Permitted Equity Encumbrances, and Buyer shall purchase from Seller, all of Seller's rights title and interest in and to the Purchased Interests, which rights, title and interest in and to the Purchased Interests shall be sold, conveyed, transferred, assigned and delivered to Buyer for the consideration specified in Section 2.2.

Section 2.2 Purchase Price. Upon the terms and subject to the conditions set forth in this Agreement, Buyer shall make payment to Seller by wire transfer of immediately available funds to the accounts specified in writing by Seller for such purpose, as follows:

(a) Closing Payment. On the Closing Date, Buyer shall pay the Closing Payment to Seller.

(b) Punch List Holdback Release Payments. Within [REDACTED] following the end of each month in which Punch List Items are completed, Seller shall provide Buyer with a statement identifying the Punch List Items completed during that month. Buyer's Site Representative shall have [REDACTED] to review the statement and either countersign such statement, thereby approving such statement and the underlying Work described therein (and in which case Buyer shall pay to Seller an amount equal to the Punch List Holdback Release for the completed Punch List Items within [REDACTED] of such approval), or provide Seller with comments thereon. If Buyer's Site Representative provides comments on such statement and if Seller and Buyer are unable to agree on a resolution of any comments raised by Buyer's Site Representative with respect to such statement within [REDACTED] of Buyer's Site Representative providing such comments to Seller, the Parties will refer such dispute to the Independent Engineer, whose resolution of such issues shall be binding on the Parties. Within [REDACTED] following acceptance by Buyer of the Final Completion Certificate or if applicable, a determination of the Independent Engineer that the Punch List Items statement is acceptable, Buyer shall pay Seller an amount equal to the Punch List Holdback Release for the completed items.

(c) Final Completion Payment. Within [REDACTED] following the Final Completion Date, Buyer shall pay the Final Completion Payment to Seller. Any portion of the Punch List Holdback Amount that is not eligible to be released on such date as a result of the remaining Punch List Items not being completed as provided in Section 2.2(b) shall be retained by Buyer.

(d) Known Breach Escrow Holdback Amount Release. Within [REDACTED] following the Seller's cure of a Known Breach, to Buyer's reasonable satisfaction, Buyer shall pay to Seller an amount equal to the Known Breach Escrow Holdback Release for such cured breach.

Section 2.3 Mechanics of Closing. The consummation of the purchase and sale of the Purchased Interests (the "**Closing**") will take place telephonically and/or electronically at a mutually acceptable date and time within [REDACTED] following the satisfaction (or waiver by the applicable Party) of the conditions set forth in Section 7.1 and Section 8.1 (other than those conditions that by their nature are to be satisfied at the Closing), or at such other place and on such other date and time as may be mutually agreed by Buyer and Seller (the date on which the Closing actually occurs being referred to as the "**Closing Date**"). For the avoidance of doubt the Parties agree that (a) the conditions set forth in Section 7.1 are for the benefit of Buyer only and Buyer may compel Closing upon the satisfaction (or waiver by Seller) of the conditions set forth in Section 8.1 whether or not the conditions set forth in Section 7.1 have been satisfied, and (b) the conditions set forth in Section 8.1 are for the benefit of Seller only and Seller may compel Closing upon the satisfaction (or waiver by Buyer) of the conditions set forth in Section 7.1 whether or not the conditions set forth in Section 8.1 have been satisfied. Any Closing shall be effective as of 12:01 AM prevailing eastern time on the Closing Date.

Section 2.4 Closing; Costs.

(a) Expenses. Except as otherwise specified herein, each Party shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement, any Ancillary Agreement and to any action taken by such Party in preparation, negotiation, execution and performance of this Agreement and the Ancillary Agreements, including all expenses and costs incurred to obtain approvals required by such Party from Authorities. To the extent any such fees or expenses relating to the period prior to Closing are required to be paid by the Company after the Closing, Seller shall reimburse the Company within [REDACTED] of written notice to Seller containing reasonable back-up documentation and support that such amounts are owed by Seller hereunder and have been paid by the Company after Closing.

(b) Prorations. Except as otherwise specified herein, all rent, insurance premiums and other costs and expenses of the Company, other than Taxes that are addressed in Section 9.4(b), but including (for the avoidance of doubt) any pre-Closing payments in lieu of Taxes, relating to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance and operation of the Project, including any payments due and owing under any Material Contract, Property Agreement or Permit and other income or expenses that would typically be prorated as of the Closing Date for transactions of a type and size similar to this transaction, shall be prorated between Seller and Buyer as of the Closing Date, so that Seller is responsible for the prorated amounts incurred during, or otherwise relating to, the period of time prior to the Closing Date, and Buyer is responsible for the prorated amounts incurred during, or otherwise relating to, the period of time from and after the Closing Date; *provided, however*, that in no event shall this Section 2.4 limit Seller's liability for costs and expenses required for the Project to achieve Mechanical Completion, Substantial Completion and Final Completion.

(c) [REDACTED]

(d) Real Property; Title and Survey. On or prior to the Closing Date, Seller shall pay all costs and expenses related to the bringdown of the Title Reports (including amendments, updates and supplements thereto), all Surveys and Final Surveys (including amendments, updates and supplements thereto) and all recording charges and expenses incurred in connection with recording any Property Agreements (or amendments or memoranda thereof) prior to the Closing Date; [REDACTED]

[REDACTED]. On or prior to the Closing Date, Seller shall also pay for all premiums, fees and related charges incurred for the Title Policy and the Closing Title Endorsements. Seller shall pay for all fees and related charges in connection with the release of the Encumbrances related to the Construction Loan Agreement.

Section 2.5 Post-Closing.

(a) Post-Closing Statement. Within [REDACTED] after the Closing Date, Buyer will prepare and deliver to Seller a closing statement (together with reasonable supporting documentation thereto) (the “*Post-Closing Statement*”) of the Company as of the close of business on the Closing Date setting forth Buyer’s calculation of (i) proration amounts payable by either Party pursuant to Section 2.4(b) and (ii) any Excluded Liabilities to Buyer’s Knowledge as of the preparation of the Post-Closing Statement. Seller will provide Buyer such information as Buyer may reasonably request in connection with its preparation of the Post-Closing Statement. Subject to Section 2.5(c), if the amounts payable to Seller under clause (i) above exceed the aggregate amount of the amounts payable to Buyer under clause (i) above plus such Excluded Liabilities under clause (ii), then Buyer will pay to Seller an amount equal to the excess, and if the aggregate amount of the amounts payable to Buyer under clause (i) above plus such Excluded Liabilities under clause (ii) exceeds the amounts payable to Seller under clause (i) above, then Seller will pay to Buyer an amount equal to the excess (in either case, the “*Post-Closing Adjustment*”).

(b) Payment of Adjustments. Unless Seller objects to the amounts set forth in the Post-Closing Statement in accordance with Section 2.5(c), payment of the Post-Closing Adjustment will be made within [REDACTED] after Seller’s receipt of the Post-Closing Statement.

(c) Adjustment Disputes. Within [REDACTED] after delivery of the Post-Closing Statement by Buyer to Seller, Seller may object in writing to the amounts set forth in the Post-Closing Statement, stating in reasonable detail its objections and providing its good-faith calculation of the objectionable amount or amounts. Buyer will provide Seller such information as Seller may reasonably request in connection with its review of the Post-Closing Statement. If Seller fails to deliver notice of its objections within the [REDACTED], Seller will be deemed to have accepted Buyer’s calculation set forth in the Post-Closing Statement. If Seller objects to any amounts set forth in the Post-Closing Statement, the Parties will attempt to resolve the dispute by negotiation in good faith. If the Parties are unable to resolve the dispute within [REDACTED] of the date of delivery of Seller’s objection in writing, then either Party may refer

the dispute to the Independent Accountant, and the Independent Accountant will settle the dispute as soon as practicable. The determination of the Independent Accountant will be final and binding on the Parties. The Independent Accountant will resolve any such objections and determine, in accordance with the criteria specified in the first sentence of Section 2.5(a) (however, such determination will not be limited by Buyer's Knowledge), the amounts to be included in the Post-Closing Statement. Each Party will provide the Independent Accountant with a definitive statement of the position of such Party with respect to each unresolved objection. Buyer will provide the Independent Accountant access to the books and records relating to the Project or the Company. The Independent Accountant will limit its review solely to matters in dispute and have [REDACTED] to carry out a review of the unresolved objections and prepare a written statement of its determination regarding each unresolved objection. The determination of the Independent Accountant will be set forth in writing and will be conclusive and binding upon the Parties. Buyer will revise the Post-Closing Statement, as appropriate to reflect the resolution of any objections pursuant to this Section 2.5(c).

(d) Final Payment. Once any disputes in accordance with Section 2.5(c) have been resolved between the Parties or determined by the Independent Accountant, then the amount due pursuant to the Post-Closing Statement will be paid within [REDACTED] of such resolution to the Party entitled to receive it, together with interest at the Interest Rate from the Closing Date to the date of payment of the Post-Closing Adjustment.

Section 2.6 Purchase Price Allocation. No later than [REDACTED] following the Closing Date, Buyer shall deliver to Seller a proposed schedule (the "***Purchase Price Allocation Schedule***") allocating the Purchase Price paid at Closing among the assets of the Company in accordance with Section 1060 of the Code and the Treasury regulations promulgated thereunder (and any similar provision of state, local or foreign law, as appropriate). [REDACTED]

Section 2.7 Withholding Rights. The Parties acknowledge that, under current Tax law, no withholding from the consideration payable by Buyer pursuant to this Agreement shall be required if Seller delivers the certificate required by Section 7.1(a)(ii)(B). If, as a result of a change in Tax law, Buyer determines that an amount is required by Law to be withheld from a payment due hereunder to the Seller, Buyer shall notify the Seller as soon as reasonably practicable of such

determination, with reasonable specificity; *provided, however*, that Seller acknowledges and agrees that Buyer will be obligated to withhold an amount under Section 1445 of the Code if Seller fails to comply with Section 7.1(a)(ii)(B). If after such notice and cooperation (taking into account any due date for deducting or withholding such amounts) Buyer reasonably and in good faith continues to believe that any amount is required by Law to be withheld, then Buyer shall be entitled to withhold and deduct from the consideration otherwise payable pursuant to this Agreement such amounts which amounts shall be paid over to the appropriate Tax Authority and Buyer shall provide Seller with evidence of such withholding and payment. To the extent that amounts are so withheld and paid over to the appropriate Tax Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made.

Section 2.8

(a)



(b)



(c)



[REDACTED]

(d)

[REDACTED]

(e)

[REDACTED]

(f)

[REDACTED]

[REDACTED]

(g)

[REDACTED]

(h)

[REDACTED]

Section 2.9

[REDACTED]

[REDACTED]

(b)

[REDACTED]

(c)

[Redacted]

(d)

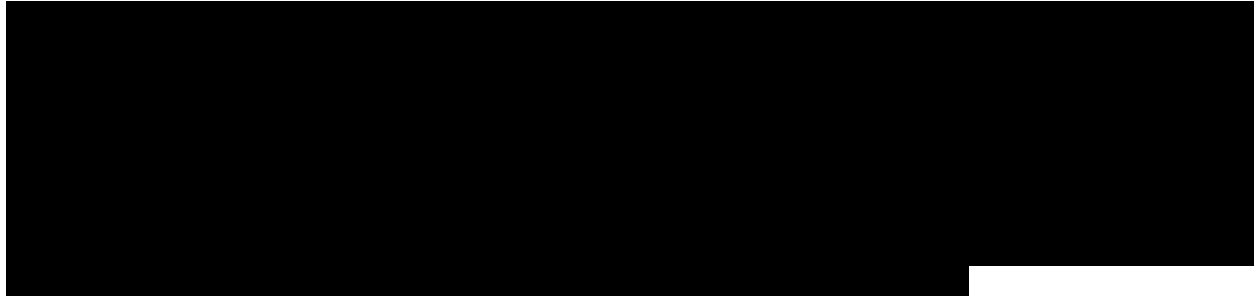
[Redacted]

(e)

[Redacted]

Section 2.10

[Redacted]



Section 2.11 Buyer Agent. Buyer hereby appoints Buyer Agent, an Affiliate of Buyer, to serve as its representative and agent for all purposes in connection with this Agreement and the Ancillary Agreements including: (a) the waiver and amendment of the rights and duties of Buyer under this Agreement and the Ancillary Agreements; (b) the giving and receiving of notices and requests hereunder; (c) the determination of the adjustments in ARTICLE II and the resolution of any dispute regarding such adjustments; (d) the handling (including the election of any applicable Buyer remedies), negotiation, and resolution of any accounting matters; and (e) doing and receiving all things provided for concerning “Buyer” in this Agreement and the Ancillary Agreements and making all elections of Buyer under this Agreement and the Ancillary Agreements. Seller shall be entitled and obligated to act in reliance upon any and all acts and things done and performed by or agreements made with respect to all matters dealt with in this Agreement and the Ancillary Agreements by the Buyer Agent on behalf of Buyer, and the foregoing shall be binding on Buyer, as fully and effectively as though Buyer had done, performed, made or executed the same, without any obligation for Seller to notify or inform Buyer of any of the actions or inactions of Buyer Agent.

Section 2.12



ARTICLE III DEVELOPMENT AND CONSTRUCTION COVENANTS

Section 3.1 Development and Construction Generally.

(a) Seller shall (i) subject to the last sentence of Section 10.2(f), cause the Company to cause the Project to be designed, developed, engineered, procured, permitted, constructed, installed, interconnected, tested, commissioned, owned, operated and maintained in accordance with this Agreement, including the Scope of Work and Specifications, the Material Contracts, Property Agreements and Prudent Industry Practices and in compliance with all applicable Laws and Permits, (ii) use commercially reasonable efforts to cause the Project to achieve Mechanical Completion by the Target Mechanical Completion Date and (iii) use commercially reasonable efforts to cause the Project to achieve Substantial Completion by the Guaranteed Substantial Completion Date.

(b) For all purposes of this Agreement, the date of achievement of a Completion Milestone shall be the date stated in the Completion Certificate delivered by Seller as to which such Completion Milestone is either accepted by Buyer in accordance with Exhibit O or the date determined pursuant to the dispute resolution provisions set forth in Section 12.5(e) that such Completion Milestone was achieved (which date shall not be earlier than the date such certificate was delivered to Buyer).

(c) Except as expressly provided herein to the contrary, Seller shall be responsible for any and all costs, expenses and Liabilities associated with designing, developing, engineering, procuring, constructing, installing, testing, commissioning and financing the Project and operating and maintaining the Project due and owing (or, if not due and owing, for which an invoice is validly submitted and received) during the Pre-Closing Period, including the associated Liabilities due and owing (or, if not due and owing, for which an invoice is validly submitted and received) under the Material Contracts, Property Agreements and the Company Permits during the Pre-Closing Period. Notwithstanding anything in this Agreement to the contrary, Seller shall be solely responsible for any and all construction costs and expenses required for the Project to achieve Mechanical Completion, Substantial Completion and Final Completion.

(d) The Parties acknowledge that neither Seller nor the Company is licensed construction contractor, and neither Seller nor the Company holds (or will maintain) a license (or other similar Permit) required by applicable Authorities of construction contractors to design, engineer, construct, install, interconnect, test, and/or commission solar generating facilities such as the Project. Buyer is aware and agrees that the design, engineering, construction, installation, interconnection, testing and commissioning obligations will be carried out for Seller by Contractors and Subcontractors that will hold (or maintain) the applicable license (or other similar Permit) required by applicable Authorities of construction contractors to design, engineer, construct, install, interconnect, test, and/or commission solar generating facilities such as the Project. Buyer shall not raise the Seller's lack of such license in its name as a reason for refusing to pay Seller, in whole or in part. From after the Closing, other than costs, expenses and Liabilities, including payments owing to counterparties under the Major Project Documents, to achieve Mechanical Completion, Substantial Completion and Final Completion, and without limiting Seller's indemnification obligations under Section 10.2(a), Buyer shall be solely responsible for

all costs, expenses and Liabilities (other than Excluded Liabilities) under Material Contracts, Property Agreements, Company Permits and/or associated with operating and maintaining the Project.

Section 3.2 Communications; Monthly Report; Buyer Site Representative.

(a) During the Construction Period, Seller shall regularly communicate and consult with Buyer regarding the continuing design, development, engineering, procuring, permitting, construction, installation, testing, commissioning and the closing of the Financing of the Project, and Seller shall in good faith consider Buyer's input and comment with respect to any matters that may arise in respect of such continued development. In furtherance of the foregoing, until Substantial Completion, Seller shall furnish to Buyer a monthly development and construction report in the form attached hereto as Exhibit P. During the Construction Period, Seller shall promptly notify Buyer of any event of default under any of the Material Contracts or Property Agreements or the receipt of any written notice of any violation of any Company Permit or applicable Law.

(b) During the Construction Period, Seller shall permit Buyer to designate an individual or individuals with appropriate qualifications as its representative at the Site ("**Buyer's Site Representative**") under this Agreement. Buyer shall designate Buyer's Site Representative within [REDACTED] after issuance of the Notice to Proceed. Buyer's Site Representative shall be permitted to observe, on behalf of Buyer, the performance of the Work at the Site as set forth in more detail in Section 3.4(b). Buyer may substitute Buyer's Site Representative with another qualified person at any time upon prior written notice to Seller.

Section 3.3 Other Seller Actions.

(a) During the Construction Period, Seller shall provide to Buyer, as promptly as practicable after receipt thereof and subject to Buyer's consent rights herein, copies of any material final documents that are obtained, produced, generated or entered into by Seller or the Company in connection with the Project including the following:

(i) any Material Contracts, Property Agreements and all other contracts (other than the Construction Loan Agreement) entered into by Seller, the Company or any of Seller's other Affiliates in connection with the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance or operation of the Project or the acquisition of Property, and copies of any material notices or other material communication delivered to or received from the other parties to the Material Contracts or Property Agreements that affect any such Material Contracts or Property Agreement;

(ii) any Permits obtained by the Company or on behalf of the Company that pertain to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning ownership, maintenance or operation of the Project;

(iii) any final or issued-for-construction design drawings, specifications and other material construction documents that define the characteristics of the Project; and

(iv) to the extent Buyer obtains a license to receive such Solar Data, Solar Data with respect to periods after the periods covered by the Solar Data described in Schedule 5.17.

(b) During the Pre-Closing Period, Seller may supplement, modify or amend the information required to be set forth on the Schedules as to representations made by Seller with respect to any matters that is the result of an occurrence or circumstance first arising after the Execution Date, which if existing on the Execution Date, would have been required to have been set forth on the Schedules (such information and additional schedules collectively being called the “**Updating Information**”), in each case, so long as the Updating Information is made promptly following Seller becoming aware of such change, event, effect, occurrence or inaccuracy.

(c) If the Updating Information disclose facts or circumstances that (i) would constitute a breach of representation or warranty in ARTICLE V such that the condition to Closing in Section 7.1(b) cannot be satisfied, then such breach may be the basis for termination of this Agreement pursuant to Section 11.1(a)(iv) or (ii) constitute a Material Adverse Effect such that the condition to Closing in Section 7.1(m) cannot be satisfied, then such Material Adverse Effect may be the basis for termination of this Agreement pursuant to Section 11.1(a)(iii); *provided that*, in each case, if Buyer does not exercise such termination right within [REDACTED] after receipt of such Updating Information and the Closing occurs (for the avoidance of doubt, at [REDACTED] after receipt of such Updating Information), then, notwithstanding anything to the contrary in this Agreement, (A) if such Updating Information constitutes a Known Breach, the Parties shall establish a Known Breach Escrow Holdback Amount for such Known Breach, (B) Seller shall be permitted to update the applicable Schedule(s) prior to Closing to properly reflect the Updating Information, and (C) the applicable representations and warranties of Seller set forth in this Agreement made following such update shall be subject to the Schedules attached hereto, as modified or amended by such Updating Information for all purposes herein. If the Updating Information would constitute a breach of representation or warranty in ARTICLE V, but such breach would not cause the condition to Closing in Section 7.1(b) to fail to be satisfied, then the failure of a representation and warranty made by Seller in this Agreement shall not be grounds for Buyer to refuse to perform its obligations to effect the Closing, and if the Closing occurs and Seller has not otherwise cured such breach before Closing, and if the new facts in any Updating Information do not constitute a Known Breach for which a Known Breach Escrow Holdback Amount is established, such new facts in any Updating Information may be the basis for indemnification by Seller pursuant to Section 10.2(a)(i), (ii) or (iii), as applicable.

Section 3.4 Site Plan; Access Rights; Document Review and Approval; Reporting.

(a) Review of Site Plan. At least [REDACTED] prior to the anticipated Notice to Proceed Date, Seller shall deliver to Buyer the Site Plan for Buyer’s review and comment. Except as otherwise approved or deemed approved by Buyer, the location of the Facilities on the Site Plan will be materially consistent with the Facilities location layout attached hereto as Schedule 3.4(a). Within [REDACTED] following its receipt of the Site Plan, Buyer shall

provide any comments it may have thereon. If (i) Seller requests from Buyer a written follow-up no sooner than [REDACTED] prior to the end of such [REDACTED] period and (ii) Buyer fails to approve or provide comments within [REDACTED] after such follow-up, the Site Plan shall be deemed acceptable to Buyer for all purposes hereunder. Seller shall not be required to consider any comments of Buyer that (i) do not relate to material deviations from the Facility location layout attached hereto as Schedule 3.4(a) or (ii) are not timely provided by Buyer in accordance with this Section 3.4(a). Seller or the Company may revise the Site Plan in any material respect prior to the Closing Date only with Buyer's prior written approval, not to be unreasonably withheld, conditioned or delayed.

(b) Inspection and Access Rights.

(i) Subject to the terms of this Agreement and the safety rules and regulations of Seller (which may limit unescorted access without proper training and other customary requirements), Seller shall, during the Pre-Closing Period, grant Buyer and Buyer's Representatives, at Buyer's cost, access to the Site, including areas where gen-tie and Interconnection work is performed, to observe and inspect all aspects of the Work, including design and construction drawings and specifications, all Site work, and all design, development, engineering, procuring, permitting, construction, installation, testing and commissioning activities relating to the Project.

(ii) During the Pre-Closing Period, Seller shall furnish for the use of Buyer's Representatives suitable space for a construction trailer on or in the vicinity of the Site with standard utilities.

(iii) During the Construction Period, Seller shall furnish or cause to be furnished to Buyer and its Representatives, at reasonable times and upon reasonable notice, such access, during normal business hours, as Buyer reasonably requests (A) to all business and operations of the Company with respect to the Project and the Site, (B) to Seller's and its Affiliates' management personnel involved with the Project or the Site, (C) to participate in meetings agreed by Contractors and Subcontractors involved with the Site and otherwise to observe, to the extent reasonably practicable and agreed by third parties, key discussions between Seller, or its Affiliates, and any third parties relating specifically to the Project or the Site, and (D) to all books and records and other information in the possession or control of Seller or any of its Affiliates relating specifically to the Project or the Site, including material communications to or from any Authority respecting the Project, subject to redaction or withholding of confidential or proprietary information, *provided, however*, that Buyer shall not have access to such books and records if providing such access would violate any applicable Law, result in a breach of a legally enforceable obligation of Seller or its Affiliates, constitute attorney work product or attorney-client protected information or relate to an on-going dispute under this Agreement, and *provided, further*, that Seller shall be entitled to redact or withhold such books and records for confidential information and pricing (except for any dollar or price caps on warranty coverages that are applicable post-Closing which shall be disclosed to Buyer), profit and other proprietary material.

(iv) During the Pre-Closing Period, Seller shall give Buyer's Site Representative at least 48 hours advance notice of the Project schedule with respect to any material part of the Work relating to a foundation, the substation or below ground cable splices, will be covered up or put out of view and shall afford full opportunity for Buyer's Site Representative or its designee to inspect any part of such Work which is about to be covered up or put out of view and to examine foundations before any part of the Work is placed thereon. Neither Seller, the Company, nor any EPC Contractor shall be required to delay the performance or completion of the Work to accommodate the schedule of Buyer's Site Representative.

(v) Buyer and Buyer's Representatives, including Buyer's Site Representative, shall (A) comply with all Laws and all Site safety rules of which Seller makes Buyer aware in writing or has posted at the Site; and (B) not interfere with Seller's the Company's or any contractor's or subcontractor's performance of the Work. Buyer shall have the right to videotape, photograph or otherwise record spot footage of the Work or the Site for the purpose of collaboration and coordination between the Parties, *provided* that any videotaping shall be upon reasonable prior notice and at a reasonable frequency and *provided further* that Buyer shall promptly provide Seller access to (and the ability to make a copy of) any videotaped footage.

(vi) The exercise by Buyer of any of its inspection rights shall not be deemed to be an approval, authorization or acceptance of any aspect of the Work by Buyer, a waiver of Buyer's rights under this Agreement or a waiver or assumption of any of Seller's obligations under this Agreement.

(c) Approved Contractor List; Amendments to Major Project Documents. Attached as Exhibit U hereto is a list of contractors that Buyer approves as contractors under Major Project Documents

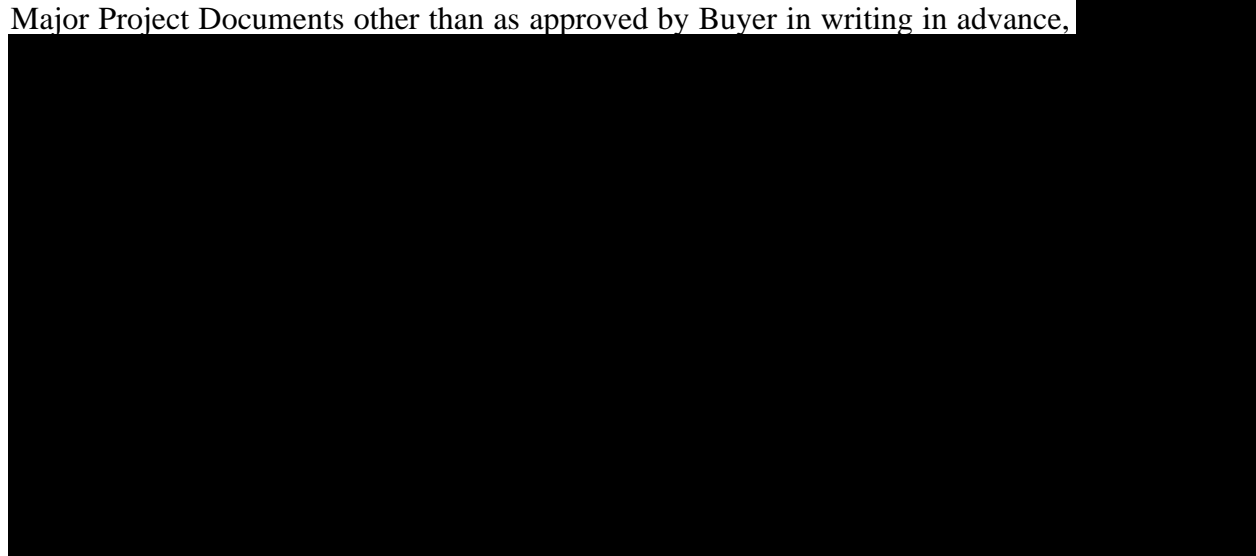
[REDACTED] (the "Approved Contractor List"). If Seller wishes to cause the Company to enter into a Major Project Document with a contractor not on the Approved Contractor List, it may do so only with Buyer's prior written consent, not to be unreasonably withheld or delayed, after such time as Seller has delivered to Buyer the Contractor Financial and Safety Information, or such other information as Buyer may reasonably request with respect to any contractor that is not on the Approved Contractor List, with respect to such potential contractor. Buyer shall respond to Seller's request for consent within [REDACTED] after receipt of the Contractor Financial and Safety Information (*provided*, that if in any [REDACTED] period Seller Contractor Financial and Safety Information for more than three potential contractors, the period shall be [REDACTED] with respect to all such potential contractors). Promptly upon the full execution thereof, Seller shall provide Buyer with copies of all Major Project Documents and any change order, amendment, settlement agreement or other similar agreement related thereto.

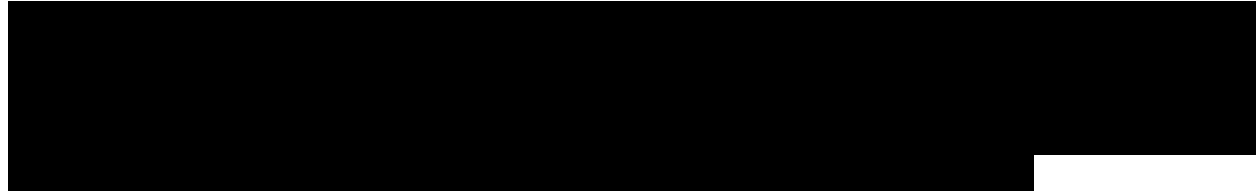
(d) Design Document Review. All material preliminary and detailed design documents prepared or issued for review by or for the Company or by or for Seller with respect to

the Project shall be submitted to Buyer for review and comment to confirm the same are consistent with the Scope of Work and Specifications (reasonably concurrently with the review of such documentation conducted by the Company pursuant to the EPC Contract) and before commencement of any fabrication, manufacture, assembly, packaging, shipment, construction, or installation with respect thereto. Seller shall take into account Buyer's comments in good faith; *provided* that review and comment by Buyer shall not relieve Seller of any of its obligations hereunder or any of the Contractors' obligations under any Major Project Document. If (x) Buyer does not provide written notice of comments to any design documents within [REDACTED] after receipt thereof, and (y) Seller requests from Buyer a written follow-up no sooner than [REDACTED] prior to the end of such [REDACTED], then Buyer shall be deemed to have no comments to such design documents. For the avoidance of doubt, if Buyer provides partial comments to any design documents within such [REDACTED], it shall not be deemed to have no comments to such design documents; *provided* that Seller shall not be obligated to accept any comments provided by Buyer more than [REDACTED] after such design document was received by Buyer.

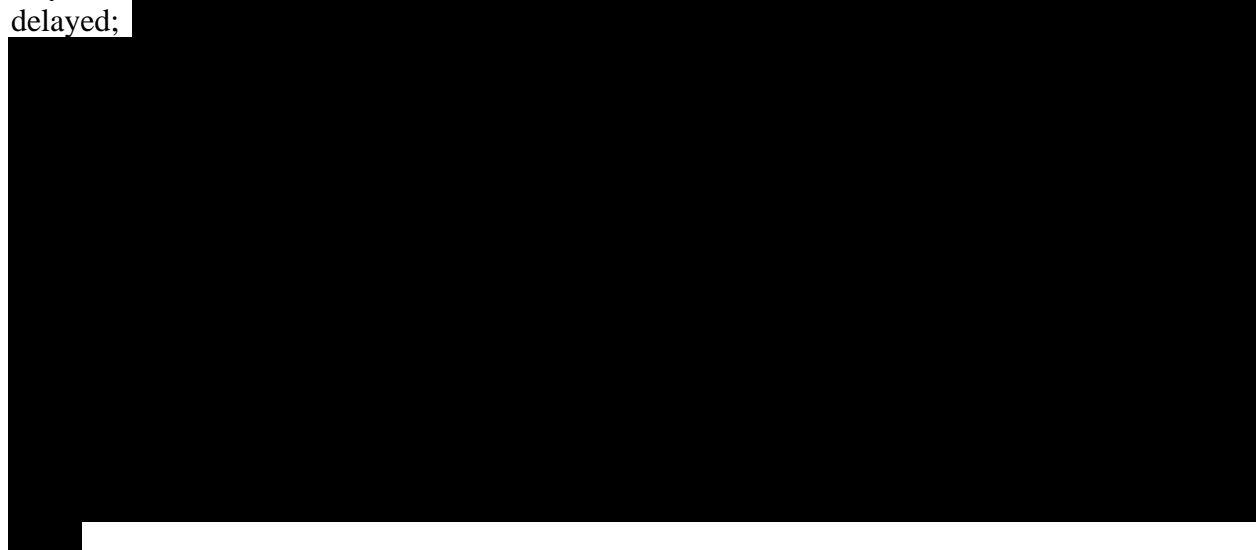
(e) Site Operating Plan Review. At least [REDACTED] days prior to the anticipated Closing Date, Seller shall submit to Buyer the Site Operating Plan for review and approval, such review and approval not to be unreasonably withheld or delayed. Buyer shall have [REDACTED] after the receipt of documents to provide comments thereon. If (i) Seller requests from Buyer a written follow-up for comments no sooner than [REDACTED] prior to the end of such [REDACTED] period, and (ii) Buyer fails to approve or provide comments within [REDACTED] following such follow up, such failure shall be deemed a waiver of Buyer's right to comment upon said documents pursuant to this Section 3.4(e). Review, comment and approval by Buyer shall not relieve Seller of any of its obligations hereunder or any of the Contractors' obligations under any Major Project Document.

(f) Material Contract Review. During the Pre-Closing Period, Seller shall not, and shall cause the Company not to, enter into any new, or terminate, amend or modify any existing, Material Contract (excluding the Major Project Documents) in each case that is reasonably likely to result in an Adverse Project Effect. During the Pre-Closing Period, Seller shall not, and shall cause the Company not to, (i) enter into any new, or terminate any existing Major Project Documents other than as approved by Buyer in writing in advance, [REDACTED]





(g) Property Agreement Review. During the Pre-Closing Period, Seller shall not, and shall cause the Company not to, enter into any new, or terminate, amend or modify any existing, Property Agreement except for any such new Property Agreement or termination, amendment or modification of any existing Property Agreement that is otherwise approved by Buyer in writing in advance, such approval not to be unreasonably withheld, conditioned or delayed;



(h) Accident Reporting. During the Construction Period, Seller shall promptly provide Buyer notice received by Seller from the EPC Contractor or otherwise known to Seller of any material emergencies and recordable safety incidents on the Site and as soon as practicable or available a report regarding such occurrence.

(i) Wildlife. Seller shall conduct such wildlife studies with respect to the Site, the Facilities and the Project as required pursuant to applicable Law. Seller shall provide to Buyer, promptly after issuance, a true and complete copy of any Wildlife Restrictions issued with respect to the Facilities.

(j) Status Reports. During the Pre-Closing Period, promptly upon receipt thereof, Seller shall provide Buyer with construction status reports at the same frequency they are received from the Contractors and Subcontractors, to include the following:

- (i) Actual progress versus the planned progress, graphed by area (e.g. excavations, foundations, cable trenching, etc.); and
- (ii) Material delivery updates and status; and
- (iii) Actual work hours worked, including Subcontractor personnel.

(k) Landowner and Community Reporting. During the Pre-Closing Period, Seller shall provide Buyer with copies, no less than monthly (or more frequently if reasonably requested by Buyer), of Seller's site team's tracking log of complaints (including associated outcomes and resolutions) to and from any landowners and/or members of the local community prior to Substantial Completion.

Section 3.5 [Reserved].

Section 3.6 Site Finalization; Title and Survey.

(a) As soon as practicable after the Execution Date, but no later than the Notice to Proceed Date, Seller shall cause the Company to obtain all additional Property rights not held by the Company on the Execution Date such that (i) the Property covers the entire Site (including fee ownership of the parcels where the O&M Building and Project substation(s) will be located and easements with a term of not less than the terms of the lease Land Contracts (inclusive of any extension right)), (ii) the Company holds good and valid easements for any electric line and all Interconnection facilities; *provided* that easements for electric lines with a capacity in excess of [REDACTED], the gen-tie line from the Project substation to the Point of Interconnection and all Interconnection facilities shall have a term (inclusive of any extension right) not less than the terms of the latest in time lease Land Contracts then in effect (inclusive of any extension right), and (iii) such property interests will be sufficient to enable the Project to be located, constructed, interconnected, and operated, in accordance with all Laws, as contemplated hereunder, and provide legal and physical ingress and egress rights to and from a public right-of-way for the construction, operation and maintenance of the Project.

(b) As soon as practicable after the Execution Date but no later than [REDACTED] before the Notice to Proceed Date, Seller shall promptly and diligently, at Seller's sole cost and expense, deliver to Buyer the following (such delivery to Buyer to be as soon as possible after Seller's receipt of same on a continuous rolling basis):

(i) Site Plan approved or deemed approved by Buyer in accordance with Section 3.4(a).

(ii) one or more Phase I environmental site assessments for the Site performed in accordance with ASTM E2247-16 and ASTM E1527-13, along with reliance letters reasonably acceptable to Buyer or naming Buyer as a recipient of such assessments, and either (A) such assessments shall confirm that no recognized environmental conditions exist that would materially impact performance of Seller's obligations under this Agreement or (B) Seller shall have provided to Buyer a remediation plan for removal of such recognized environmental conditions reasonably acceptable to Buyer;

(iii) the Title Reports (together with legible and complete copies of any instruments that create or evidence exceptions to title to any of the Real Property (the "**Exception Documents**")) and a preliminary draft of the Survey (reflecting that the Property covers the entire Site), neither of which shall disclose any Encumbrances other than Permitted Encumbrances (and for which purpose

(A) Buyer shall, within [REDACTED] following Buyer's receipt of the Title Reports, the Exception Documents, and the preliminary draft of the Survey, inform Seller in writing of the matters, if any, disclosed in the Title Reports and the preliminary draft of the Survey that, in Buyer's commercially reasonable opinion, constitute Encumbrances other than Permitted Encumbrances and to which Buyer objects, and (B) any matters disclosed in the Title Reports, the Exception Documents, and the preliminary draft of the Survey and not so specifically objected to by Buyer shall be deemed Permitted Encumbrances approved by Buyer); and

(iv) true and complete copies of all of the Property Agreements and recorded memoranda thereof (where applicable).

(c) Buyer and Seller shall cooperate to identify, prior to the Notice to Proceed Date, any Crossing Agreements for which estoppels would be customarily obtained in transactions similar to the transaction contemplated by this Agreement pursuant to Prudent Industry Practice. The estoppels for any such Crossing Agreements shall constitute "Property Agreement Estoppels".

(d) On or before [REDACTED] prior to the Closing Date, Seller shall, at Buyer's sole cost and expense, deliver to Buyer (i) an update of the Title Reports (together with legible copies of any new Exception Documents) ("**Updated Title Reports**"), and (ii) an updated Survey ("**Updated Survey**") to reflect such new Exception Documents; *provided, however*, that the Updated Survey shall reflect the conditions of the Property as of a date prior to the Notice to Proceed Date. If and to the extent that the Updated Title Reports or the Updated Survey identify one or more Encumbrances (other than Permitted Encumbrances) that were not reflected on the Title Reports or on the draft Survey, Buyer may identify the same (collectively, "**Updated Title Objections**") to Seller in writing within [REDACTED] days after Buyer's receipt of the Updated Title Report or Updated Survey, as applicable, and any Encumbrances not identified by Buyer in the Updated Title Objections shall be deemed Permitted Encumbrances approved by Buyer hereunder. Seller will use its commercially reasonable efforts to cause the Title Company to remove or (to the extent reasonably acceptable by Buyer to cure the subject objection item) affirmatively insure over the Updated Title Objections as exceptions to the Title Policy. On or before one hundred eighty (180) days after the Closing Date, Seller shall, at Seller's sole cost and expense, deliver to Buyer a draft "as-built" update to the Updated Survey which shall include all as-built Facilities, whether above ground or underground ("**Final Survey**"). Buyer shall, within [REDACTED] following Buyer's receipt of the Final Survey, notify Seller in writing (the "**Buyer's Final Survey Objection Notice**") of any defects in the Final Survey that were not present in the Updated Survey as of the Closing Date to which Buyer reasonably objects ("**As-Built Defects**"). Seller shall use commercially reasonable efforts to cause all As-Built Defects objected to by Buyer to be cured or satisfied (as applicable), within [REDACTED] of Seller's receipt of Buyer's objections, and Buyer shall reasonably cooperate with Seller's efforts to cure or satisfy such As-Built Defects, including (subject to the last sentence of this Section 3.6(d)) by causing the Company to enter into agreements with third parties that are necessary to cure such or satisfy such As-Built Defects. Seller shall cause the Title Company to reflect the Final Survey in the Title Policy within [REDACTED] of Seller's receipt of Buyer's Final Survey Objection Notice. Seller will pay all costs incurred in connection with obtaining the Final Survey and the Title Policy and to cure or satisfy the As-Built Defects. Seller will coordinate its curative efforts with Buyer and furnish Buyer with a weekly summary of its curative activities. Buyer's approval, not to be

unreasonably withheld, conditioned or denied, will be required for Seller to enter into any agreement relating to curing As-Built Defects that will bind or burden the Company or Buyer.

(e) Without limiting Section 3.6(b), Seller shall use commercially reasonable efforts to cause all Encumbrances which are not Permitted Encumbrances to be released, subordinated to the Company's interest, cured or satisfied (as applicable) at or prior to Closing; *provided, however*, Buyer acknowledges that any Encumbrance (other than a Permitted Encumbrance) that is susceptible to cure by the payment of money shall in any event constitute a Permitted Encumbrance if, on or before the Closing Date, Seller (i) bonds over such Encumbrance in accordance with applicable Law or otherwise in a manner reasonably satisfactory to the Buyer and the Title Company and the Title Company agrees to insure over such Encumbrance, or (ii) provides cash or furnishes a letter of credit (in form, and from a bank, satisfactory to Buyer in its sole discretion) in an amount equal to one [REDACTED] of the amount claimed by the underlying claimant and the Title Company agrees to insure over such Encumbrance. If applicable, the letter of credit described in clause (ii) above will remain in place until Seller has cured such Encumbrance or satisfies the requirements of clause (i); *provided, however*, if Seller has not released, subordinated, cured or satisfied such Encumbrance or satisfied the requirements of clause (i) above as of the earlier of (x) the date which is twelve (12) months following the Closing Date, or (y) the date which is [REDACTED] following the commencement of an action by such claimant to foreclose or enforce such Encumbrance, Buyer may apply such security towards satisfying the claim (including costs of investigation, reasonable attorneys' fees and the costs or expenses to which such claimant may be entitled), and including any additional Losses incurred by the Company or Buyer with respect to such Encumbrance, and after satisfaction of all of the foregoing, with the remainder, if any, returned to Seller.

(f) Seller shall use commercially reasonable efforts to obtain a fully executed lease amendment in the form set forth on Exhibit W attached hereto (each a "***Lease Amendment***") for each lease Land Contract for which it is applicable with modifications thereto as reasonably approved by Seller, Buyer, and the applicable counterparty thereto; *provided, however*, that Seller shall have no obligation to make any monetary payment, or incur any monetary obligation, to any counterparty to a Land Contract as consideration for such a Lease Amendment. If any counterparty to a Land Contract demands such a monetary payment, Seller shall inform Buyer of such demand. Buyer may, in its discretion, elect to either (i) direct Seller to make or incur such payment, and execute such Lease Amendment, in which case Buyer shall promptly reimburse Seller the amount of any such payments as and when they become due, or (ii) decline to reimburse or be responsible for any such payments, in which case Seller shall have no further obligation to pursue such Lease Amendment.

Section 3.7 State Commission Approvals.

(a) Without limiting the provisions of Section 4.1, Buyer shall file this Agreement with the Commissions together with a request for confidential treatment and shall diligently and in good faith and using all commercially reasonable efforts pursue the Commission Approvals. Buyer shall deliver to Seller a draft of the application and relevant portions of the testimony to be included in the filing at least [REDACTED] prior to filing. Within [REDACTED] following its receipt of such draft filing materials (which may be redacted by Buyer to remove information relating to projects other than the Project), Seller may provide reasonable

comments to the draft filing materials to be incorporated by Buyer; *provided* that if Seller fails to approve or provide comments within such [REDACTED] period, Seller shall be deemed to have no comments to the draft filing materials. Subject to the requirements of Section 3.7(c), Buyer shall reasonably consult with Seller with respect to proceedings related to the Commission Approvals, including the redactions to this Agreement for the form hereof that will be publicly available, any public statements, meetings with stakeholder groups, settlement or appeals, related to or arising from such filings. Buyer shall promptly provide Seller a copy of such filings and copies of all material orders and other rulings provided to or received from the Commissions or any other Authority with respect to such filings and the Commission Approvals. Buyer shall keep Seller reasonably informed of any material developments, meetings, discussions or other communications with a Commission or with any other Authority with respect to such filings and the Commission Approvals; *provided, however*, that Seller shall not make any public statements regarding such filings, engage in discussions with any Commission or stakeholder groups, participate in meetings with any Commission or stakeholder groups, or intervene in related proceedings, in each case, without Buyer's consent, with respect to the Commission Approvals. Seller shall provide such information and assistance in the filings and review process as is reasonably requested by Buyer. Buyer shall furnish Seller with the docket information for such proceedings where Seller may access publicly available filings in such proceedings.

(b) Seller, at its own cost, shall within [REDACTED] after Buyer's filing with the Commissions described in Section 3.7(a), file an application for declination of jurisdiction (with supporting testimony and exhibits) with the Commissions. Seller shall deliver to Buyer a draft of such application (and supporting testimony and exhibits) prior to filing. Within five [REDACTED] following its receipt of such draft application, Buyer may provide reasonable comments to the draft application to be incorporated by Seller; *provided* that if Buyer fails to approve or provide comments within such [REDACTED] period, Buyer shall be deemed to have no comments to the draft filing. Seller shall keep Buyer reasonably informed of any material developments, meetings, discussions or other communications with the Commissions and parties to the Commission proceedings with respect to such filings. Seller shall not agree to any conditions or limitations (other than customary conditions or limitations applicable to utility-scale solar projects in the State of Indiana) on the declination of jurisdiction without Buyer's advance consent, which such consent shall not be unreasonably withheld, conditioned, or delayed. Buyer shall provide review and assist in the filing as is reasonably requested by Seller.

(c) Buyer and Seller acknowledge that, in the course of the regulatory proceedings contemplated by this Section 3.7 and Section 3.8, as well as in other State and Federal regulatory proceedings, it will be necessary to share Buyer Confidential Information and Seller Confidential Information with regulatory authorities and parties to regulatory proceedings. Buyer consents to such disclosure of Buyer Confidential Information, and Seller consents to such disclosure of Seller Confidential Information, *provided* that each of Seller and Buyer takes reasonable steps to seek protection of all such Buyer Confidential Information and all such Seller Confidential Information, as applicable. Notwithstanding the provisions of the preceding sentence, Buyer and Seller acknowledge that the rulings of the regulatory Authorities (or, as applicable, courts of competent jurisdiction) will be determinative of whether, and the extent to which, such information is protected from public disclosure. Any information that any regulatory Authority decides should not be, or is not, protected from public disclosure shall no longer be

considered Buyer Confidential Information or Seller Confidential Information (as applicable) for the purposes of this Agreement.

Section 3.8 FERC Approvals.

(a) Without limiting the provisions of Section 4.1, on or prior to the Notice to Proceed Date, and subject to Buyer's review and approval rights hereunder, Seller shall use commercially reasonable efforts to cause the Company to enter into the Interconnection Agreement and the Interconnection Construction Service Agreement.

(b) Seller shall cause the Company to, and the Buyer shall, file with FERC a joint application to obtain an order from FERC pursuant to Section 203 of the FPA and Part 33 of FERC's regulations (18 C.F.R. Part 33) authorizing Buyer's acquisition of the Purchased Interests and the Assets Distribution to Buyer or Merger (the "**Section 203 Application**").

(c) Neither Party shall (and each Party shall cause its Affiliates not to) take any action that could reasonably be expected to adversely affect the approval by FERC of the Section 203 Application or to affect the Parties' ability to rely on such Required FERC Approvals once issued.

(d) Each Party shall reasonably cooperate with the other Party in connection with the Section 203 Application and the seeking of the Required FERC Approvals related thereto including by providing all information reasonably requested by the other Party in connection with the filing of the Section 203 Application or the seeking of the applicable Required FERC Approvals.

(e) Both before and for a period of [REDACTED] after the Closing, Seller shall, at no material expense to Seller, provide Buyer with such information with respect to the Project, including information concerning the cost of the Facilities and components thereof, that Buyer reasonably requests to support (i) Buyer's submission to FERC following the Closing of a proposed rate schedule to receive payment for the capability to provide reactive power, and (ii) following the Closing, Buyer's prosecution to successful completion of the FERC proceedings related to such proposed rate schedule, including issuance by FERC of an order accepting or approving a rate schedule authorizing such payments to Buyer; *provided, however*, in no event shall Seller or its Affiliates be a party to such FERC proceedings or have any Liability in connection therewith.

(f) Promptly following the Company obtaining the market-based rate authorization under Section 205 of the Federal Power Act, Seller will provide Buyer with a draft Notice of Cancellation pursuant to 18 C.F.R. Section 35.15 to effectuate the termination of the Company's market-based rate authorization and tariff (the "**Notice of MBR Cancellation**") for Buyer's review and approval. Upon Buyer's review and approval of the draft Notice of MBR Cancellation, not to be unreasonably withheld, conditioned or delayed, Seller shall (i) file such Notice of MBR Cancellation with FERC no later than [REDACTED] prior to the Closing, with such cancellation to take effect following the Closing upon the to be determined Closing Date, and (ii) [REDACTED] following the Closing, make an informational filing advising FERC of the effective date of the Closing and the market-based rate authorization and tariff

cancellation. In the event this Agreement is terminated prior to the Closing, Seller may, in its sole discretion, file a notice of withdrawal of the Notice of MBR Cancellation with FERC, and if requested by Seller, Buyer shall cooperate with Seller in connection with such withdrawal.

Section 3.9 Financing; Cooperation.

(a) Seller shall use commercially reasonable efforts to obtain construction debt financing (the “*Financing*”) in aggregate amounts (together with contributions required of Seller under the Construction Loan Agreement), and on terms and conditions, sufficient for the Seller to complete, or cause the Company to complete, the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project in accordance with its obligations to Buyer under this Agreement. Seller shall provide to Buyer a letter from the Financing Agent under the Construction Loan Agreement stating that there are sufficient funds available to the Company to design, develop, engineer, procure, permit, construct, install, test and commission the Project substantially in the form of Exhibit I.

(b) Seller shall keep Buyer reasonably informed of any material developments with respect to the Financing which would reasonably be expected to materially adversely affect the Buyer’s rights and interests in and to this Agreement and the Project. Seller shall promptly, but in any event within [REDACTED] of receipt, provide Buyer with copies of any written notices from any Financing Party of Seller’s default (i) that Seller reasonably believes cannot be cured during the applicable cure period under the Construction Loan Agreement or (ii) for which the cure period has elapsed or there is no applicable cure period.

(c) From and after the Execution Date until the earlier of the Financial Close Date or the termination of this Agreement in accordance ARTICLE XI, Buyer shall use its commercially reasonable efforts to cooperate with Seller in connection with the arrangement of the Financing (or any replacements thereof) as and to the extent provided in, and subject to Seller’s rights in this Section 3.9, including (i) the negotiation, execution and delivery of the Consent and Recognition Agreement, (ii) execution and delivery of estoppel certificate and (iii) providing Buyer’s Credit Rating and quarterly unaudited and annual audited financing statements if reasonably requested by a Financing Party; *provided*, that in responding to any request by the Financing Agent for documents, Buyer shall have no obligation to provide any document that adversely affects any of Buyer’s rights, benefits, risks or obligations under this Agreement or any Ancillary Agreement.

Section 3.10 Notice to Proceed. So long as no Material Adverse Effect shall have occurred and be continuing, Buyer shall deliver to Seller the Notice to Proceed on the date that all of the following conditions precedent have been satisfied or waived by Buyer; [REDACTED]

[REDACTED] :

(a) the Commission Approvals shall have been obtained and have become final and non-appealable;

(b) all Required FERC Approvals shall have been obtained and shall be in full force and effect, without any material condition or restriction on either of the Parties or otherwise affecting the operation or use of the Facilities in any material respect that is unacceptable to Buyer;

(c) all of the Major Project Documents and the Property Agreements have been executed and delivered and shall be in full force and effect;

(d) the Site Finalization Date shall have occurred;

(e) Buyer shall have received a certificate executed by an officer of Seller certifying that (i) the representations and warranties made by Seller in ARTICLE V as of the Notice to Proceed Date are true and correct in all material respects as of the Notice to Proceed Date (except, in each case, to the extent that any of representations or warranties are expressly made hereunder as of an earlier or other specific date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier or other specific date), *provided* that any such representations or warranties that are qualified by materiality or Material Adverse Effect shall be true and correct in all respects, and (ii) Seller shall have performed in all material respects all covenants required by this Agreement to be performed by Seller at or before the Notice to Proceed Date;

(f) Seller shall have received a certificate executed by an officer of Buyer certifying that (i) the representations and warranties being made by Buyer in ARTICLE VI as of the Notice to Proceed Date are true and correct in all material respects as of the Notice to Proceed Date (except, in each case, to the extent that any of representations or warranties are expressly made hereunder as of an earlier or other specific date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier or other specific date), *provided* that any such representations or warranties that are qualified by materiality or Material Adverse Effect shall be true and correct in all respects, and (ii) Buyer shall have performed in all material respects all covenants required by this Agreement to be performed by Buyer at or before the Notice to Proceed Date;

(g)



(h)



(i) the Required Credit Support (or any renewal thereof) shall be in full force and effect and shall not have been modified, rescinded or revoked;

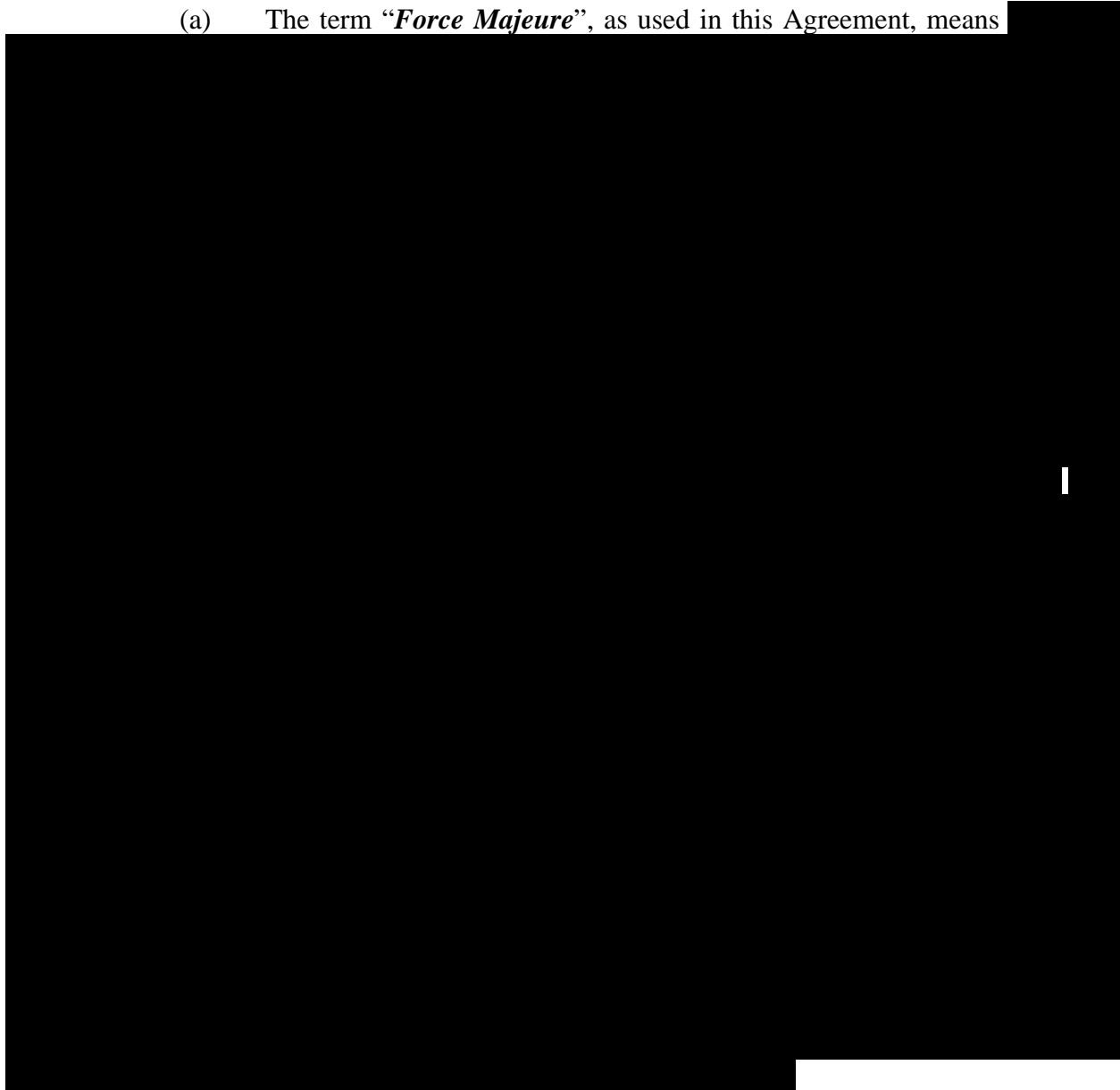
(j) all insurance policies required to be obtained and maintained in accordance with Section 3.13 shall be in full force and effect and Seller shall have delivered to Buyer certificates of insurance with respect thereto; and

(k) the Financial Close Date shall have occurred.

Section 3.11 Production Tax Credits. Neither Seller nor any Affiliate of Seller will engage in any action or fail to take any action that it knows or reasonably should know would adversely affect the eligibility of the Project for, or the receipt by Buyer or any of its Affiliates of, the PTC.

Section 3.12 Events of Force Majeure.

(a) The term “*Force Majeure*”, as used in this Agreement, means



(b)

Section 3.13 Project Insurance Policies. Commencing on the Notice to Proceed Date, Seller shall obtain and maintain in full force and effect through the Final Completion Date the insurance policies as provided in Schedule 3.13.

Section 3.14 [Reserved].

Section 3.15 Guaranteed Substantial Completion Date; Liquidated Damages.

(a) In the event Substantial Completion has not occurred on or before the Guaranteed Substantial Completion Date, liquidated damages ("***Delay Liquidated Damages***") in favor of Buyer will accrue at the rate of

Such Delay Liquidated Damages shall be payable from Seller to Buyer on the Closing Date as a reduction in the Closing Payment paid from Buyer to Seller on the Closing Date (or paid by Seller to Buyer on the Closing Date, to the extent the Delay Liquidated Damages are not fully recovered by Buyer through a reduction in the Closing Payment).

(b) The Parties acknowledge and agree that (i) it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Buyer as a result of Seller's failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date, (ii) Buyer shall be damaged by Seller's failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date, (iii) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (iv) any sums which would be creditable or payable under this Section 3.15 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (v) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from each such failure.

(c) Other than as set out in Section 11.1, the payment of Delay Liquidated Damages shall, without duplication, constitute the sole and exclusive remedy of Buyer and the

sole and exclusive liability and measure of damages of Seller with respect to Seller's failure, if any, to achieve Substantial Completion by the Guaranteed Substantial Completion Date. After payment of such liquidated damages has been made, Seller shall be relieved of any and all further liability in respect thereof. Seller's aggregate liability for any and all Delay Liquidated Damages as set forth in this Section 3.15 shall be limited to [REDACTED].

Section 3.16 [Reserved].

Section 3.17 Project Labor Agreement. [REDACTED]

Section 3.18 [REDACTED]

Section 3.19 [REDACTED]

(a) [REDACTED]

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

(e)

[REDACTED]

[REDACTED]

(f)

[REDACTED]

(g)

[REDACTED]

Section 3.20

(a)

(b)

[REDACTED]

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

ARTICLE IV OTHER PRE-CLOSING COVENANTS

Section 4.1 Consents and Reasonable Efforts. Buyer and Seller shall use their respective commercially reasonable efforts to obtain, or to assist in obtaining, all consents, approvals, transfers, permissions, waivers, orders, reissuances and authorizations of (and make all necessary filings or registrations with) all Authorities and other third parties which are required to be obtained or made by them in connection with the consummation of the transactions contemplated by this Agreement or in connection with the Project. Seller shall use good faith efforts to assist Buyer in obtaining all consents, approvals, permissions and waivers identified by Buyer as necessary to effectuate the Assets Distribution to Buyer or Merger post-Closing. The Parties do not contemplate that approval for the transactions contemplated hereby will be required under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, will be required; however, if a filing for approval thereunder is required the Parties shall share equally the filing fees therefor. No later than [REDACTED] prior to Closing, Seller shall provide Buyer filing authority in the Company's eTariff database; *provided, however*, Buyer shall not utilize such filing authority until after Closing.

Section 4.2 Restrictions on Actions. Prior to Closing, Seller shall not, and shall cause the Company not to, take any of the following actions without the prior written consent of Buyer

(which, unless otherwise indicated below, shall not be unreasonably withheld, conditioned or delayed):

(a) sell, lease, license, assign, transfer or dispose of (including transfers to Seller or any Affiliate) any Company Assets other than (with respect only to this Section 4.2(a) and without limiting the other consent requirements of this Section 4.2) (i) in the Ordinary Course of Business, (ii) in connection with any casualty, (iii) to the extent obsolete or no longer needed, or (iv) as to the Switchyard Property, as contemplated by the terms of the Interconnection Construction Service Agreement and/or Interconnection Agreement;

(b) make any material change in the accounting methods used by Seller for the Company, except as required by GAAP or applicable Law;

(c) merge, combine or consolidate with any other entity;

(d) (i) create, incur or assume any Indebtedness for borrowed money by the Company other than that which will be satisfied and released in full on or prior to the Closing, (ii) mortgage, pledge or otherwise encumber, incur or suffer to exist any Encumbrance on any of the Company's properties or assets, except for Permitted Encumbrances, (iii) create or assume any other Indebtedness of the Company, except accounts payable and other liabilities incurred in the Ordinary Course of Business, (iv) guaranty by the Company any Indebtedness of another Person or enter into any "keep well" or other agreement obligating the Company to maintain any financial condition of another Person other than in connection with the Financing to the extent satisfied and released in full on or prior to the Closing, or (v) make any loans, advances or capital contributions by the Company to, or investments by the Company in, any other Person;

(e) redeem or repurchase, directly or indirectly, any Equity Securities of the Company or declare, set aside or pay any dividends or make any other distributions, except cash distributions or distributions of Excluded Assets, with respect to any Equity Interest in the Company;

(f) issue, sell or transfer any Equity Interest in the Company except (i) pursuant to, or in connection with, the pledge of any such Equity Interests to the Financing Parties as collateral with respect to the Financing and (ii) pursuant to, or in connection with, the exercise of remedies by all or any of the Financing Parties with respect to the Financing;

(g) acquire (by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof or collection of assets constituting all or substantially all of a business or business unit;

(h) except as required by GAAP or applicable Law, make or change any method of accounting with respect to Taxes of the Company, make or change any income or other material Tax election with respect to the Company, file any amended Tax Return (other than sales and use or personal property Tax Returns) with respect to the Company or its Assets, enter into any closing or similar agreement, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment against the Company or its Assets;

- (i) change or authorize any change in the Corporate Documents of the Company, other than immaterial changes;
- (j) hire any employee of the Company or adopt any Benefit Plan or incur any Liability under any Benefit Plan with regards to which the Company would be liable;
- (k) undertake any recapitalization, reorganization, liquidation, dissolution or winding up, or not maintain the Company's existence as a limited liability company;
- (l) engage in any line of business other than the continued design, development, engineering, procuring, permitting, financing construction, installation, testing, commissioning, ownership, operation and maintenance of the Project;
- (m) accept the issuance of any Contract that requires the Company to have in place credit support (i.e. cash deposit, letter of credit, guaranty, etc.), in each case, that would remain outstanding after the Closing Date; *provided that*, (a) Buyer shall reasonably respond to any request for consent from Seller under this Section 4.2(m) within [REDACTED] following such request, and (b) if Buyer fails to respond to any such request for consent within such [REDACTED] period, Buyer shall be deemed to have consented;
- (n) fail to obtain, maintain or renew all necessary and material Permits required for the business of the Company;
- (o) fail to maintain all material records of the Company in a manner that is materially consistent with past practice;
- (p) settle or initiate any material Action against the Company that would give rise to a post-Closing Liability in a manner that would be contrary to Prudent Industry Practices, other than in respect of any Actions for Permits required for the business of the Company;
- (q) sell, assign, or otherwise transfer any RECs or Environmental Attributes to any Person;
- (r) defer any payment obligations of the Company due and owing under the Interconnection Construction Service Agreement or Interconnection Agreement to a date that is on or after the Closing Date; or
- (s) commit or agree orally or in writing to do any of the foregoing.

Nothing in this Section 4.2 shall in any way restrict Seller or its Affiliates from causing the Company to (i) use cash for the purposes of effecting lawful payments as required in connection with the construction, development, operation and maintenance of the Project, (ii) settle obligations between the Company and any of their respective Affiliates in accordance with Section 4.4, (iii) comply with applicable Law or the requests of Authorities with respect to the Project or the Company, or (iv) take any other action required or expressly permitted by this Agreement.

Section 4.3 Notification of Completion or Failure of Conditions. Prior to Closing, each Party to this Agreement will promptly notify the other Party of any satisfaction or failure of

conditions under this Agreement; and each Party shall keep the other Party reasonably apprised with respect to the status of satisfaction of the notifying Party's obligations hereunder.

Section 4.4 Intercompany Obligations. At or prior to the Closing, Seller shall cause all intercompany account obligations (including Indebtedness) between the Company, on the one hand, and Seller or any of its Affiliates (other than the Company), on the other hand, to be settled by either causing such accounts and obligations to be (a) paid and discharged, including by netting of payables and receivables involving the same parties, or (b) cancelled without Seller or the Company paying any consideration therefor. In addition, other than the Ancillary Agreements, any Contracts listed on Schedule 4.4, or as otherwise authorized by Buyer in writing prior to the Closing Date, Seller shall cause all intercompany Contracts between the Company, on the one hand, and Seller or any of its Affiliates (other than the Company), on the other hand, to be terminated and (i) neither the Seller, nor any Affiliate of Seller, shall have any surviving rights or obligations under any Contract between the Company, on the one hand, and Seller or any other Affiliate of Seller (other than the Company) on the other hand and (ii) the Company shall not have any surviving obligations under any such Contract.

Section 4.5 No Negotiations. From and after the Execution Date and prior to the earlier of the Closing or termination of this Agreement, Seller shall not, and shall cause its Affiliates and Representatives not to, initiate or solicit, directly or indirectly, any inquiries or the making of any proposal with respect to, engage in negotiations concerning, provide any confidential information or data to any Person with respect to, have any discussions with any Person (except with Buyer and the Financing Parties or any other Person following a default and exercise of remedies under the Construction Loan Agreement or security documents entered into in connection therewith) or enter into any letter of intent or similar document or any written agreement or commitment relating to, an Acquisition Proposal and shall immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person conducted prior to the date hereof with respect to any of the foregoing. If, following the Execution Date and prior to the earlier of the Closing or termination of this Agreement, Seller or its Affiliates or Representatives receives any Acquisition Proposal from any Person, Seller will not engage in any discussions with such Person with regard to such Acquisition Proposal. The Parties agree that this Section 4.5 is intended to prohibit the solicitation and negotiation of solely the direct sale substantially all of the Company Assets and the direct or indirect sale of Equity Interests in the Company which result in Lightsource Renewable Energy US, LLC no longer Controlling (as defined in the definition of "Affiliate" above) the Company.

Section 4.6 Seller Credit Support.

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

(e)

[REDACTED]

(f)

[REDACTED]

(g)

[REDACTED]

(h)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer, as of the Execution Date, the Notice to Proceed Date, and as of the Closing Date, as follows; *provided, however*, that to the extent any representation and warranty is specified as being given only as of a specific date, such representation and warranty shall be deemed to be made only as of such date:

Section 5.1 Corporate Existence and Powers. Seller is a limited liability company validly existing and in good standing under the Laws of the State of Delaware, and is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it under this Agreement and the Ancillary Agreements to which it is a party make such qualification or licensing necessary. Seller has all the requisite limited liability company power and authority to

conduct its business with respect to the ownership of the Purchased Interests. Seller's Corporate Documents are in full force and effect, and Seller has Made Available to Buyer true and complete copies of the Seller's Corporate Documents. Seller is not in material violation of any of its Corporate Documents.

Section 5.2 Company Existence and Powers. The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware, and has all the requisite limited liability company power and authority to conduct its business as it is now being conducted and to design, develop, engineer, procure, permit, construct, install, test, commission, own, maintain and operate the Project. The Company is duly qualified or licensed to do business in each jurisdiction in which the ownership or operation of the Company Assets makes such qualification or licensing necessary. The Company has been engaged in no other business since its formation other than the design, development, engineering, procurement, permitting, construction, installation, interconnection, testing and/or commissioning of the Project. Seller has made available to Buyer true and complete copies of the Company's Corporate Documents and such Corporate Documents are in full force and effect and have been maintained in accordance with good business practice. The Company is not in violation of any of its Corporate Documents.

Section 5.3 Authority; Ownership of Company. Seller has all requisite limited liability company power and authority to execute, deliver, and perform this Agreement and each Ancillary Agreement to be executed by it in connection with this Agreement and to perform the obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Seller has taken all limited liability company action necessary to execute and deliver this Agreement and the Ancillary Agreements, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder, and no other limited liability company action or proceeding on the part of Seller is necessary to authorize this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Seller and, as of the Closing, the Ancillary Agreements to be executed by Seller will be duly executed and delivered by Seller. Assuming the due authorization, execution and delivery by Buyer of this Agreement and of the Ancillary Agreements, this Agreement is and, as of the Closing, the Ancillary Agreements, as applicable, will be Enforceable against Seller.

Section 5.4 Consents and Approvals. Except as set forth in Schedule 5.4 (such items listed on Schedule 5.4 are referred to herein as the "***Seller Consents***"), no consent, approval or authorization of, Permit from, declaration, filing or registration with, or notice to, any Authority, or any other Person, is required to be made or obtained by (a) Seller in connection with the execution, delivery, performance and validity of this Agreement and the Ancillary Agreements to be executed by it and the consummation of the transactions contemplated hereby and thereby, or (b) the Company in connection with the execution, delivery, performance and validity of any Ancillary Agreements to be executed by it and the consummation of the transactions contemplated thereby. For avoidance of doubt, as such terms are used in this Section 5.4, "performance of," and "consummation of the transactions contemplated by," this Agreement and the Ancillary Agreements are in reference to the (i) execution of this Agreement and the Ancillary Agreements and (ii) the consummation at Closing of a change in the ownership of the Company, and

specifically are not in reference to the construction, installation, testing, commissioning, ownership of, routine maintenance of, and operation of the Project.

Section 5.5 No Conflicts. Neither the execution, delivery and performance by Seller of this Agreement or the Ancillary Agreements to be executed by it nor the transfer of rights and consummation of the transactions contemplated hereby or thereby or the taking of any action contemplated to be taken by the Company under this Agreement and the Ancillary Agreements to be executed by it will result in (a) a violation or breach of or a conflict with (with or without notice or lapse of time, or both) any provision of Seller's or the Company's Corporate Documents; (b) a material Default under any Material Contract, Property Agreement or Company Permit; (c) a material violation or material breach (with or without notice or lapse of time, or both) by the Company or Seller of any applicable Laws or Permits, or (d) the creation or imposition of any Encumbrance on (i) the Company Assets (other than Permitted Encumbrances) or (ii) the Purchased Interests (other than Permitted Equity Encumbrances).

Section 5.6 Legal Proceedings. Other than as described in Schedule 5.6, (a) there are no Actions pending or, to Seller's Knowledge, threatened in writing, against the Company, including in connection with Seller's transfer of the Purchased Interests or consummation of the transactions contemplated hereby, (b) there are no Actions pending or, to Seller's Knowledge, threatened in writing affecting the Project, the Real Property, the Company, the Company Assets, the Purchased Interests or Seller's transfer of the Purchased Interests or consummation of the transactions contemplated hereby, and (c) there are no material Orders binding upon or affecting the Project, the Real Property, the Company, the Company Assets or the Purchased Interests.

Section 5.7 Compliance with Law. Other than as set forth on Schedule 5.7, neither Seller nor the Company has received any written notification indicating any material violation of, and there is no material violation of, or material non-compliance with, any applicable Law, Order or Permit as such would apply to the Project, the Real Property, the Company, the Company Assets, the Purchased Interests or the transactions contemplated hereby.

Section 5.8 Environmental Matters. Other than as set out in Schedule 5.8, as of the Notice to Proceed Date and the Closing Date, (a) the Company is, and except as has been fully resolved with no remaining obligations, has been in material compliance with applicable Environmental Laws; (b) the Company, or its agents and Affiliates, has obtained all Permits (other than any Buyer Permits) necessary under Environmental Law at the applicable stage of development, construction, commissioning, ownership, maintenance or operation for the Project as of the date that this representation is made for (i) the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project and (ii) the ownership, operation and maintenance of the Project on the Closing Date in accordance with Prudent Industry Practices; (c) none of Seller, the Company or Seller's other Affiliates has any Liabilities, or is subject to any Order, under Environmental Laws relating to the Company Assets and they are in material compliance with all Environmental Laws applicable to the Project and the Company Assets; (d) none of Seller, the Company or Seller's other Affiliates has received any written notice of, nor to Seller's Knowledge have there been any written allegations of, a violation of Environmental Laws pertaining to the Project or the Company Assets; (e) there are no pending Actions or written notice of intent to sue and, to Seller's Knowledge, there are no facts, circumstances, conditions or occurrences relating to the Project or the Company Assets that could

reasonably be expected to form the basis of any such Action or written notice; (f) to Seller's Knowledge, there has not been a Release of Hazardous Materials on or otherwise affecting the Property or the Real Property, and no Hazardous Materials are present in, on, about or migrating to or from such properties, in any case with respect to which could give rise to any material liability to the Company under any Environmental Law; (g) to Seller's Knowledge, the Property and the Real Property are not subject to any Encumbrance imposed by any Authority in connection with any Hazardous Material; (h) to Seller's Knowledge, no portion of the Property or the Real Property contains any above ground or underground storage tank, landfill, surface impoundment or similar device used for the management of any Hazardous Material; and (i) Seller has provided copies of all documents related to any unresolved material, non-compliance with Environmental Laws to Buyer.

Section 5.9 Right and Title to Purchased Interests. Seller is the direct owner, holder of record, and beneficial owner of, and has good, valid and marketable title to, all of the Purchased Interests, free and clear of all Encumbrances (other than Permitted Equity Encumbrances). On the Closing Date, other than the Permitted Equity Encumbrances, Seller has not done or suffered to be done anything whereby the Purchased Interests are or may be in any manner encumbered or charged by, through or under Seller or an Affiliate of Seller. As of the Closing Date, there are no Equity Securities held by any third party in respect of the Purchased Interests and the Company has not granted to any Person (other than Buyer) any Equity Securities in respect of the Purchased Interests other than the Permitted Equity Encumbrances (and, for clarity, prior to the occurrence of the Assets Distribution to Buyer or Merger). On the Closing Date, Seller has the right, and limited liability company power and authority, to transfer and deliver to Buyer all of Seller's right, title and interest in the Purchased Interests, free and clear of all Encumbrances (other than the Permitted Equity Encumbrances). Except for the Purchased Interests, there are no outstanding Equity Securities in the Company. On the Closing Date, except for the security documents entered into concurrently with the Construction Loan Agreement (any Encumbrance related to which shall be discharged with respect to the Purchased Interests and the Company Assets on or before the Closing Date), none of the Equity Securities in the Company is subject to any voting trust, member or partnership agreement or voting agreement or other agreement, right, instrument or understanding with respect to any purchase, sale, issuance, transfer, repurchase, redemption or voting of any Equity Securities in the Company.

Section 5.10 Right and Title to Company Assets. As of the Closing Date, the Company owns all valid and legal right, title and interest in, to and under the Company Assets (other than the Land Contracts, which are addressed in Section 5.12), which are free and clear of all Encumbrances other than Permitted Encumbrances.

Section 5.11 Property Agreements. Schedule 5.11(a) contains a true, correct and complete list of all of the Property Agreements that exist as of the Execution Date. As of the Execution Date, Seller has Made Available to Buyer, and as of the Notice to Proceed Date and the Closing Date, Seller shall have Made Available to Buyer, true, correct and complete copies of the Property Agreements together with all amendments, modifications, or supplements thereto and written notices issued pursuant or related thereto, all of which are listed and described on Schedule 5.11(a) attached hereto, as updated on the Notice to Proceed Date and the Closing Date in accordance with Section 3.3(b). Except as otherwise noted below, as of (x) the Execution Date,

solely with respect to Property Agreements executed and effective as of the Execution Date, (y) the Notice to Proceed Date and (z) the Closing Date:

(a) each Property Agreement, is in full force and effect and is Enforceable against the Company and, to Seller's Knowledge, the other party or parties thereto;

(b) except as disclosed on Schedule 5.11(a) none of Seller, the Company, or Seller's other Affiliates, in each case, that is a party to any Property Agreement is in Default under any Property Agreement and, to Seller's Knowledge, no other party to any Property Agreement is in Default, and to Seller's Knowledge, no event has occurred which, with notice or lapse of time or both, would constitute a Default thereunder by the Company, or, to Seller's Knowledge, any other party thereunder;

(c) none of Seller, the Company, or Seller's other Affiliates, in each case, that is a party to any Property Agreement, has repudiated any provision of any Property Agreement, and neither Seller nor the Company has received notice from any party to any Property Agreement that such other party has repudiated any provision thereof;

(d) except as disclosed on Schedule 5.11(a), none of Seller, the Company, or Seller's other Affiliates, in each case, that is a party to any Property Agreement, has received notice of any termination, cancellation, or non-renewal as to any Property Agreement, and to Seller's Knowledge, no party to any of the Property Agreement has exercised or threatened to exercise any termination rights with respect thereto;

(e) except as disclosed on Schedule 5.11(a), no Property Agreement has been (i) transferred or conveyed by the Company; (ii) amended, modified or supplemented except as disclosed in writing to Buyer; or (iii) subjected to any Encumbrance by Seller, the Company, or Seller's other Affiliates that is a party to any Property Agreement, except for Permitted Encumbrances;

(f) as of the Notice to Proceed Date and the Closing Date, all Subordination Agreements and all Crossing Agreements have been obtained;

(g) the Company is a party to, directly or as an assignee, each of the Property Agreements; and

(h) Schedule 5.11(h) is a true and correct list, on a Land Contract by Land Contract basis, and in the aggregate for the Project, reflecting all Rental Payments under each Land Contract.

Section 5.12 Real Property.

(a) As of the Execution Date (solely with respect to Property Agreements executed and effective as of the Execution Date), the Notice to Proceed Date, and the Closing Date, except for the Company's rights under the Property Agreements and as set forth on Schedule 5.12(a), (i) the Company does not own real property, nor is the Company a lessor or sub-lessor of any real property, (ii) the Company is not a party to any Contract regarding real estate or

an interest in real estate, and (iii) neither Seller nor any Affiliate of Seller or the Company owns any real property that is used in connection with the Project.

(b) As of the Notice to Proceed Date and the Closing Date, the Company has obtained all the zoning and land use approvals (other than Buyer Permits) from applicable Authorities for each parcel of Property necessary, at the applicable stage of design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance and operation for the Project as of the date this representation is made, to permit the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance and operation of the Project thereon in accordance with the terms of this Agreement, the Site Plan, and except as set forth in Schedule 5.12(b), the Site Operating Plan, and Seller has not received any notice of any violation of Laws with respect to the Facilities or the Property. To Seller's Knowledge, as of the Notice to Proceed Date and the Closing Date, except as set forth in Schedule 5.12(b), there is no pending Action before any Authority to change the applicable zoning, land use or building ordinances or any other Laws or applicable land use approvals affecting the Property that would have an adverse impact to the operation of the Project.

(c) Except as set forth on Schedule 5.12(c), as of the Execution Date, the Notice to Proceed Date and the Closing Date to Seller's Knowledge, no party has the right to use the surface of the Property for the exploration, development or extraction of minerals or any other subsurface substances, except to the extent affirmatively insured against by the Title Policy. As of the Notice to Proceed Date and the Closing Date, to Seller's Knowledge, there are no existing or proposed facilities or operations for extraction of oil, gas or other minerals that to Seller's Knowledge would reasonably be expected to adversely interfere with the construction, completion or operation of the Project in any material respect.

(d) Except as set forth on Schedule 5.12(d), neither the Seller (as related to the Project or the Company Assets) nor the Company owns, holds, is obligated under, or is a party to, any option, right of first refusal, or other contractual right to purchase, acquire, sell, assign, or dispose of any real property or interest therein.

(e) Except as set forth on Schedule 5.12(e), neither the Seller, the Company, nor any of the Seller's other Affiliates, has received any written notice of any pending condemnation Action with respect to all or any portion of the Real Property, and to Seller's Knowledge, there are no existing condemnation or other legal proceedings affecting the use of the Real Property by an Authority with jurisdiction over or affecting all or any part of the Real Property that would reasonably be expected to adversely interfere with the construction, completion or operation of the Project in any respect.

(f) The Site Plan that Seller has provided to Buyer as of the Execution Date represents a true, accurate, and complete depiction of the Project in all material respects as of the Execution Date, and as of the Notice to Proceed Date and the Closing Date: (i) the location and operation of the Facilities are in material compliance with all applicable rules and regulations promulgated by the applicable equipment manufacturers (including but not limited to, any and all setback and capacity requirements); (ii) the Interconnection Rights pursuant to the Interconnection Agreement and the Interconnection Construction Service Agreement will be sufficient for the

Company to transmit all of the power generated by the Project; (iii) the Project will have sufficient backfeed to meet the operational needs of the Project; (iv) except as set forth in Schedule 5.12(f), as of the Notice to Proceed Date and the Closing Date, the Project has sufficient (including physical and legal) access to dedicated public road to meet all construction, repair, and operational needs of the Project (including but not limited to, transportation of equipment to the Site and access to each of the Facilities for purposes of installation, repair, and maintenance); (v) as of the Notice to Proceed Date and the Closing Date, the Project (including any related transmission or distribution lines connected thereto) is or will be authorized to cross any existing easements (including but not limited to, existing oil and gas pipelines and existing utility transmission and distribution lines) pursuant to existing Crossing Agreements and (vi) each land parcel subject to a Land Contract is either (A) contiguous, in whole or in part, along the boundary of another land parcel subject to a Land Contract or (B) is connected to another land parcel subject to a Land Contract by an easement.

(g) Except as set forth on Schedule 5.12(g), as of the Closing Date, the Company will own the fee interests in the parcel on which the O&M Building will be located and the parcel on which the collector substation for the Project is to be located, and, in each case, will have paid the purchase price or other applicable consideration therefor.

(h) As of the Notice to Proceed Date and the Closing Date, the Company's interests in the Property (i) cover the entire Site, (ii) comprise all of the real property interests and other real property rights that are necessary in connection with (A) the development, construction, installation, interconnection and completion of the Project, and (B) the operation and to the extent reasonably foreseeable, the maintenance of the Project, as applicable, in each case, in accordance with all Laws, and (iii) are sufficient to enable the Project to be located, constructed, interconnected, and operated as contemplated hereunder; and provide legal and physical ingress and egress rights to and from a public right-of-way for the construction, operation and maintenance of the Project.

Section 5.13 Material Contracts.

(a) Schedule 5.13(a) contains a true, correct and complete list of each of the following Contracts (other than the Property Agreements or Permits) to which the Company is a party as of the Execution Date (each individually, a "**Material Contract**" and collectively, the "**Material Contracts**", in each case, such defined terms shall include any such Contracts entered into after the Execution Date in accordance with the terms and conditions of this Agreement):

(i) Major Project Documents;

(ii) any Contract for the operation or maintenance of the Project or any of the individual Facilities following the Closing;

(iii) any Contract relating to the Interconnection of the Project, including the Interconnection Agreement and any Interconnection Construction Service Agreement;

(iv) (x) any Contracts that are or evidence Indebtedness owed by the Company or to the Company or (y) any Contracts that provide for the Company to provide any surety, pledge, guarantee, bond, letter of credit or other credit support,

in each case, other than the Construction Loan Agreement and any Contracts entered into in connection therewith;

(v) any Contracts for a commodity, currency or interest rate hedge, exchange or similar instrument, including any exchange traded, over-the-counter or other swap, cap, floor, collar, futures contract, forward contract, option or other derivative financial instrument, or Contract relating to emissions allowances, emission offsets or credits, renewable energy credits, production or investment tax credits, or other tax credits or benefits, in each case other than such Contracts entered into in connection with the Construction Loan Agreement;

(vi) Contracts governing a partnership, joint venture, joint development or limited liability company, setting forth arrangements between the members or partners thereto, other than the Corporate Documents of the Company;

(vii) Contracts that are power purchase or sale agreements (including sales of capacity, energy and ancillary services), renewable energy credit purchase and sale agreements, interconnection or transmission agreements, module purchase agreements, design, engineering, procurement and construction agreements, agreements for the purchase of inverters, transformers and other material pieces of equipment, project management agreements, development agreements, warranty agreements, operation, maintenance and service agreements, agreements that provide for teaming or similar agreements in connection with the development of the Project and exclusivity agreements with any contractor, module manufacturer, inverter manufacturer, or other supplier, utility, contractor, or other third party;

(viii) all Contracts that require consent of the counterparty in the event of the sale of the Equity Interests of the Company;

(ix) any Contract the primary purpose of which is for the Company to indemnify, defend, hold harmless or reimburse any Loss after Closing incurred by another Person;

(x) any Contract that was not entered into in the Ordinary Course of Business of the Company;

(xi) any Contract pursuant to which the Company is granting or being granted any material Intellectual Property license;

(xii) any Contract not otherwise described in this Section 5.13 providing for an express undertaking by the Company to be responsible for consequential, or special damages or penalties;

(xiii) any Contract containing an effective power of attorney granted by the Company;

(xiv) any Contract the primary purpose of which is the settlement, release, compromise or waiver by the Company of any material rights or claims it has

against any other Person or any material Liabilities of any other Person to the Company that exceed \$ [REDACTED];

(xv) any Contract relating to the retention of any consultant of the Company that is performing ongoing services for the Company or with respect to which any amounts remain to be paid by the Company after the Closing;

(xvi) Contracts that include non-competition, non-interference, non-solicitation, exclusivity or similar provisions which restrict the ability of the Company (or Buyer after the Closing) to conduct the Business;

(xvii) Contracts for the sale of tax credits;

(xviii) any Contract with earn-out, payments, contingent payments or similar payment obligations owing from the Company;

(xix) Contracts, other than those set forth in the foregoing clauses (i) through (xviii) and other than Permits and Property Agreements, each of which expressly requires payment to or from the Company of [REDACTED]; and

(xx) any Contract constituting an amendment, supplement, or modification (whether oral or written) in respect of any of the foregoing clauses (i) through (xix).

(b) As of the Execution Date to the extent such Material Contract was entered into prior to the Execution Date, as of the Notice to Proceed Date to the extent such Material Contract was entered into prior to the Notice to Proceed Date and as of the Closing Date to the extent such Material Contract was entered into prior to the Closing Date:

(i) Seller has Made Available to Buyer a correct and complete copy of each Material Contract;

(ii) each Material Contract is in full force and effect and Enforceable against the Company, and to Seller's Knowledge, the other party or parties thereto;

(iii) except as disclosed on Schedule 5.13(b)(iii), there is no material Default by the Company or, to Seller's Knowledge, any other party to any Material Contract, and no event has occurred which, with notice or lapse of time or both, would constitute a material Default thereunder by the Company or, to Seller's Knowledge, any other party thereunder, and neither the Seller nor the Company has received written notice of any such Default or event;

(iv) the Company has not repudiated any provision of any Material Contract that would reasonably be expected to result in an Adverse Project Effect, and neither Seller nor the Company has received written notice that any other party has repudiated any provision of any Material Contract that would reasonably be expected to result in an Adverse Project Effect;

(v) except as disclosed in Schedule 5.13(b)(v), neither Seller nor the Company has received written notice of any termination, cancellation, or non-renewal as to any Material Contract that would reasonably be expected to result in an Adverse Project Effect, and to Seller's Knowledge, no party to any of the Material Contracts has exercised or threatened to exercise any termination rights with respect thereto. that would reasonably be expected to result in an Adverse Project Effect;

(vi) except as expressly permitted pursuant to Section 3.4 or Section 4.2, no Material Contract has been (A) transferred or conveyed, (B) amended, modified, or supplemented, except as disclosed in writing to Buyer, (C) subjected to any Encumbrance, except for Permitted Encumbrances;

(vii) neither Seller nor the Company, has received written notice of any significant disputes in respect to any Material Contract except as disclosed in writing to Buyer; and

(viii) except as set forth on Schedule 5.13(b)(viii), there are no outstanding indemnification claims made by any Person with respect to the Project for which Seller or its Affiliates, including the Company is liable.

(c) As of the Closing Date, except in respect of the Punch List or as disclosed on Schedule 5.13(c), Company does not have a material outstanding claim or cause of action (including relating to availability), whether for liquidated damages or other monetary damages or otherwise, under any Material Contract, and neither Seller nor the Company has received written notice of any claim or cause of action (including relating to availability) against it, whether for liquidated damages or other monetary damages, under any Material Contract;

Section 5.14 Permits.

(a) Schedule 5.14(a) is a true and complete list of all material Permits needed to develop, construct, own, maintain and operate the Project that are required under Law prior to the Closing Date (collectively, the "**Company Permits**"), *provided* the Company Permits shall not include Permits which Buyer may need by nature of Buyer being a public utility or which may be obtained only by Buyer for itself or for the Company with respect to the ownership, maintenance or operation of the Project after the Closing (collectively, the "**Buyer Permits**"). As of the Closing Date, all Company Permits have been obtained and Made Available to Buyer.

(b) As of the Closing Date, except as set forth on Schedule 5.14(b):

(i) Each Company Permit required prior to the Closing Date at the applicable stage of development, construction, commissioning, ownership, maintenance or operation of the Project is valid, binding and enforceable in accordance with its terms, in full force and effect and final not subject to any pending appeal and all periods provided under the Law pursuant to which each Company Permit was issued has expired.

(ii) Company is in material compliance with the terms and conditions of each Company Permit to which the Company is a party, and, to Seller's Knowledge, all other parties to each Company Permit are in material compliance with the terms and conditions of such Company Permit, and, to Seller's Knowledge, no event has occurred which with notice, lapse of time or both would constitute non-compliance with such terms and conditions of any Company Permit.

(iii) No Action, deficiency notice, demand or notice of any challenge is pending or, to Seller's Knowledge, threatened, which challenges the legality, validity, or enforceability of any Company Permit, or that attempts to modify in any material and adverse manner the requirements pertaining to any obtained Company Permit or application for a Company Permit.

Section 5.15 Finders. Except as set forth in Schedule 5.15, no Person has any claim against the Seller or the Company for a finder's fee, brokerage commission or similar payment directly or indirectly in connection with the transactions contemplated by this Agreement.

Section 5.16 Intellectual Property. As of the Closing Date, to Seller's Knowledge, the Company owns or possesses sufficient rights to use all Intellectual Property used in connection with (a) the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project, and (b) the ownership, operation and maintenance of the Project on the Closing Date, and, to Seller's Knowledge, the utilization of such Intellectual Property does not infringe upon or violate the Intellectual Property rights of any other Person. As of the Closing Date, to Seller's Knowledge, the utilization by the Company of the Company Assets does not infringe upon or violate the Intellectual Property rights of any other Person.

Section 5.17 Solar Data. Schedule 5.17 contains a true and complete list of all of the solar resource data in the possession of the Company or Seller in respect of the Project that is owned by (and not licensed from a third party) the Company, Seller or its Affiliates ("**Solar Data**"). With respect to each item of Solar Data identified on Schedule 5.17:

(a) the Company possesses all right, title, and interest in and to such item, free and clear of any Encumbrance other than Permitted Encumbrances;

(b) the Company has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in such item other pursuant to Permitted Encumbrances;

(c) there are no disputes, oral agreements, or forbearance programs in effect as to such item;

(d) such item is not subject to any outstanding Order;

(e) no Action is pending or, to Seller's Knowledge, is threatened that challenges the use or ownership of such item; and

(f) the Company has not agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

Section 5.18 Insurance. Schedule 5.18 sets forth a true and complete list of all insurance policies maintained by, or on behalf of, Seller or the Company with respect to the Project or the Company Assets (the “***Project Insurance Policies***”). As of the Notice to Proceed Date and as of the Closing Date, such Project Insurance Policies are (a) all of the insurance policies required to be obtained or maintained by or on behalf of the Seller or the Company under any Material Contract, Property Agreement, Company Permit, or applicable Law, as of the Notice to Proceed Date or Closing Date, as applicable, (b) in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and (c) no notice of cancellation or termination has been received by the owner or holder of any such Project Insurance Policy with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation; *provided, however*, that Seller may cancel or terminate the Project Insurance Policies at the Closing. As of the Notice to Proceed Date and as of the Closing Date, none of Seller or the Company nor any of Seller’s Affiliates, has Defaulted in any respect with respect to the obligations under any Project Insurance Policies to the extent any such Default could materially and adversely affect insurance proceeds or insurance available to the Project. Except as set forth on Schedule 5.18, as of the Notice to Proceed Date and as of the Closing Date, no pending claims exist under any such policies of insurance covering the Company or the Company Assets. Except as set forth on Schedule 5.18, as of the Notice to Proceed Date and as of the Closing Date, no Project Insurance Policy provides for any retrospective premium adjustment or other experience-based liability on the part of Seller or the Company.

Section 5.19 Reports. As of the Notice to Proceed Date and as of the Closing Date, Seller has Made Available to Buyer true, correct and complete copies of all final material reports, studies, and tests (and all amendments and supplements thereto) related to the Project prepared, commissioned by, or delivered to, the Company, Seller or any Affiliate of Seller that address any of the following matters: Solar Data, the Real Property, design studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, wildlife studies, the environmental condition of the Property, mitigation and conservation plans, compliance with Environmental Law, Federal Aviation Administration analyses, state department of transportation analyses, zoning studies, noise assessments, radio facilities studies, visual impact or flicker studies or wetlands studies.

Section 5.20 Tax Matters. Seller makes the representations and warranties in this Section 5.20 only as of the Closing Date.

(a) There are no Encumbrances for Taxes on the Purchased Interests or the Company Assets (other than Permitted Encumbrances). No proceedings are pending, and to Seller’s Knowledge, no proceedings have been threatened in writing with respect to Taxes of the Company or relating to the Project or the Company Assets. There are no ongoing or pending or threatened (in writing) Tax audits, examinations, claims, assessments or proposed deficiencies against the Company or with respect to the Project. No extensions of the statute of limitations have either been requested or granted with respect to Taxes of the Company or relating to the Purchased Interests or the Company Assets except as have not had and could not reasonably be expected to have a Material Adverse Effect. Neither Seller (with respect to the Business, the Project or the Company) nor the Company has applied to any Tax Authority for any Tax ruling, closing agreement, technical advice memorandum or similar agreement, including any application for a private letter ruling that has been withdrawn.

(b) All material Tax Returns required to be filed by the Company or with respect to the Project or Company Assets have been filed on a timely basis and all such Tax Returns are correct and complete in all material respects. All material Taxes of the Company or with respect to the Project or the Company Assets that are due and payable have been timely paid in full. Since formation, the Company is and has been classified at all times as disregarded as an entity separate from its owner for U.S. federal, state and local income Tax purposes, and no election has been filed to treat the Company as an association taxable as a corporation for U.S. federal, state or local Tax purposes. Seller has made available to Buyer true and complete copies of all Tax Returns filed by or on behalf of the Company.

(c) The Company has complied in all material respects with all Tax laws relating to the payment, reporting and withholding of Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, or other Person. The Company has retained all required Tax exemption certificates and other documentation in respect of any material payments made by the Company for which an exemption to withholding was claimed.

(d) No more than [REDACTED] of the Company Assets have been previously used, except in the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, operation and maintenance activities required by the terms of this Agreement.

(e) The Company (i) has never been a member of any consolidated, combined, unitary or similar group and (ii) has no Liability for the Taxes of any Person (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of Law) or (ii) as a transferee or successor.

(f) No notice has been received in writing from any Authority in any jurisdiction in which the Company does not file a Tax Return that the Company may be subject to taxation by that jurisdiction.

(g) The Company has not filed a power of attorney with any Authority with respect to Tax matters that remains currently in force.

(h) No grants or proceeds of any rebate programs have been provided by the United States, a state, a political subdivision of a state, or any other Authority for use in the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning or financing of the Project or with respect to which Seller or the Company is the beneficiary and no application with respect to any such grant or rebate has been filed or submitted. No proceeds of any issue of state or local government obligations have been used (directly or indirectly) to provide financing for the Project.

(i) None of Seller, the Company, nor any Affiliate of Seller has applied for, claimed or received any investment tax credit, production tax credit or other federal, state, local or other grant, financing, tax credit, or similar incentive, including any investment tax credit, production tax credit, or financing described in Section 45(b)(3) of the Code, with respect to the Project.

(j) The Company has held the Company Assets (other than the Excluded Assets) and the Project solely for sale to customers in the ordinary course of a trade or business.

(k) The Company has not been a party to, or a promotor of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(l) The Company is a not party to, and does not have, any liability under any Tax sharing, indemnification or similar agreement (in each case, other than an agreement entered into in the Ordinary Course of Business of the parties thereto, the principal purpose of which is not Tax-related, such as a customary lease, license or financing agreement).

(m) Seller (or, if Seller is a disregarded entity for U.S. federal income tax purposes, its owner for U.S. federal income tax purposes) is a “United States person” within the meaning of Section 7701(a)(30) of the Code.

(n)

Section 5.21 Substantially Complete Project; No Other Business. Seller makes the representations and warranties in this Section 5.21 only as of the Closing Date.

(a) As of the Closing Date, the Company Assets shall constitute all of the material Contracts, equipment, spare parts, buildings, facilities, licenses, permits, approvals, land rights and other material assets necessary and sufficient for the Company to own, maintain and operate the Project on the Closing Date in accordance with Prudent Industry Practices in all material respects, and no other equipment, buildings, facilities, Contracts, licenses, permits, approvals, land rights or other assets will be required in order to own, maintain and operate such portion of the Project on the Closing Date in accordance with Prudent Industry Practices, except to the extent replacement equipment, including spare parts, are not required to be provided under the EPC Contract or the Module Supply Agreement, and except for Buyer Permits.

(b) The Company has since its formation been engaged solely in the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project and has held (i) the Company Assets (other than the Excluded Assets) solely for the design, development, engineering, procuring, permitting, construction, installation, testing and commissioning of the Project, and (ii) the Project solely for resale.

Section 5.22 Financial Statements; No Undisclosed Liabilities; Absence of Certain Changes. Seller makes the representations and warranties in this Section 5.22 only as of the Closing Date.

(a) Financial Statements. Seller has Made Available a true and correct copy of the Company’s unaudited balance sheet (the “*Balance Sheet*”) as of the Balance Sheet Date certified by an officer or authorized representative of the Company. The Balance Sheet (i) has been prepared in accordance with GAAP (or are accompanied by GAAP reconciliations, other than footnotes and other normal year-end adjustments), using the same accounting principles, policies and methods as have been historically used in connection with the calculation of the items reflected thereon, and (ii) presents fairly in all material respects the financial condition and operations of the Company as of the Balance Sheet Date.

(b) No Undisclosed Liabilities. The Company has no Liability that would be required to be disclosed in a balance sheet prepared in accordance with GAAP, except Liabilities (i) which have been incurred since the Balance Sheet Date under Major Project Documents, Property Agreements, and other Material Contracts, applicable Law or Permits, in each case, in the Ordinary Course of Business, (ii) reflected in the Balance Sheet, (iii) incurred pursuant to this Agreement or permitted to be incurred by this Agreement (iv) incurred pursuant to the Construction Loan Agreement, or (v) disclosed on Schedule 5.22(b).

(c) Absence of Certain Changes. Except as set forth on Schedule 5.22(c) or as disclosed to Buyer in writing as of the Execution Date, since the Balance Sheet Date, the Company has conducted its business and operated the Project in the Ordinary Course of Business and there has not been any Material Adverse Effect.

(d) No Indebtedness. Except for the Construction Loan Agreement, which shall be paid in full and fully satisfied at or prior to the Closing, the Company does not have any Indebtedness.

Section 5.23 Employees; Employee Benefits. The Company has never (a) had any employees or (b) sponsored, maintained or contributed to any Benefit Plan. There do not exist now, nor do any circumstances exist that reasonably could be expected to impose, any Liability on the Company with respect to any Benefit Plan that any Person maintains or in the past maintained (or to which such Person ever contributed or was required to contribute) if such Person, together with the Company, could be deemed a single employer within the meaning of Section 4001(b) of ERISA.

Section 5.24 Labor Matters. Except as set forth in Schedule 5.24:

(a) The Company is not nor has ever been a party to any collective bargaining agreement or other labor Contract.

(b) There has not been, there is not now pending or existing, and, to Seller's Knowledge, there is not threatened, any strike, slowdown, picketing, work stoppage, employee grievance process, organizational activity, or other material labor dispute involving the Project, or the Company.

(c) To Seller's Knowledge, no event has occurred or circumstance exists that would reasonably be expected to provide the basis for any work stoppage or other material labor dispute with respect to the Project.

(d) There has not been, and there is not now pending or, to Seller's Knowledge, threatened against the Company, any material Action relating to the alleged violation of any applicable Law pertaining to labor relations, employment matters, discrimination or sexual harassment, including any charge or complaint filed with the National Labor Relations Board, the Equal Employment Opportunity Commission or any other similar Authority, and to Seller's Knowledge, no event has occurred or circumstances exist that would reasonably be expected to provide the basis for any such material Action.

(e) No application or petition for an election, request for recognition, or for certification of a collective bargaining agent is pending with respect to the Project.

(f) There has not been, there is not now pending or existing, and to Seller's Knowledge there is not threatened, jurisdictional claim or dispute with respect to work performed on the Project.

Notwithstanding anything to the contrary in this Agreement, the representations and warranties contained in this Section 5.24 shall not be deemed representations and warranties relating to Taxes

Section 5.25 Investment Company Act. The Company is not an "investment company" required to be registered under, or a company controlled by an "investment company" required to be registered under, the Investment Company Act of 1940.

Section 5.26 Bankruptcy. No Bankruptcy Event has occurred and is continuing with respect to Seller or the Company. Neither the signing of this Agreement nor the Closing of the transactions contemplated by this Agreement and the Ancillary Agreements requires the approval of any trustee in bankruptcy or bankruptcy court with jurisdiction of any reorganization or any bankruptcy Action affecting Seller or the Company.

Section 5.27 Affiliate Transactions. Except as set forth on Schedule 5.27, none of Seller or any of its Affiliates (other than the Company) or any officer, director, manager, member shareholder, employee or agent of Seller or any of its Affiliates (other than the Company) (a) is a party to any Contract with the Company or (b) has any interest in any Asset used in or pertaining to the design, development, engineering, procuring, permitting, construction, installation, testing, commissioning, ownership, maintenance or operation of the Project or the Business of the Company.

Section 5.28 Subsidiaries. The Company does not have any Subsidiaries or own Equity Securities in any Person.

Section 5.29 Bank Accounts. Seller makes the representations and warranties in this Section 5.29 only as of the Closing Date. Schedule 5.29 contains a correct and complete list of (a) the bank accounts and safe deposit boxes of the Company, if any, and (b) the Persons authorized to sign checks drawn on such accounts, other than any such accounts that are created pursuant to the terms of the Construction Loan Agreement. As of the Closing Date, Seller shall have taken all actions necessary to cause all of the Company's bank accounts to be closed on or before the Closing Date or as soon as possible after the Closing Date and, except as provided in Section 2.4(b), any funds in any such bank accounts will be paid to Seller or its designee.

Section 5.30 No Damage. On the Closing Date, there has been no material damage to or destruction of the Project unless such damage or destruction has been repaired or is contracted to be repaired to the extent that the Project satisfies the requirements applicable to achieving Substantial Completion.

Section 5.31 Credit Support. As of the Closing Date, Schedule 5.31 sets forth a true and complete list of all Support Obligations that have been posted by Seller or its Affiliates in connection with the Project and that must be replaced by Buyer in connection with the Closing.

Section 5.32 No Other Agreements to Sell the Company Assets. As of the Closing Date, other than as set forth in this Agreement, the Ancillary Agreements to which Seller is a party, the Interconnection Construction Service, the Interconnection Agreement, and Contracts for the sale of unusable or immaterial Company Assets not necessary for (a) the design, development, engineering, procuring, permitting, construction, installation, testing or commissioning of the Project, or (b) the ownership, maintenance or operation of the Project on the Closing Date, Seller has no Liability to any other Person or any nonbinding agreement in principle, letter of intent or similar understanding with any Person to sell or effect a sale of all or any portion of the Purchased Interests or the Company Assets or to enter into any agreement or cause the entering into of any agreement with respect to the foregoing.

Section 5.33 Consents. As of the Closing Date, there are no outstanding material third party consents, approvals, authorizations, waivers, filings, notices, registrations, declarations or similar actions of, with or by any Person which have not been previously obtained and delivered to the Company or Buyer, including those involving Real Property, Material Contracts, Property Agreements, or Company Permits, which are required for the Project to achieve Substantial Completion.

Section 5.34 Corporate Records. Seller has made available to Buyer a true, complete and correct copy of the Corporate Records of the Company. Such Corporate Records contain true, correct and complete copies of the Corporate Documents.

Section 5.35 Foreign Corrupt Practices Act; Sanctions Export Control.

(a) Neither Seller, Company nor any of their respective directors or officers, nor, to the knowledge of Seller, any of their respective employees or agents has (i) violated, in any material respect, any provision of any applicable anti-bribery or anti-corruption law including the U.S. Foreign Corrupt Practices Act of 1977, as amended, or (ii) directly or indirectly offered, paid, promised to pay, or authorized the offer, payment or promise of any advantage, financial or otherwise, or thing of value to any “government official” (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) or to another party while knowing or having reason to know that all or a portion of such advantage or thing of value would be offered, given, or promised to a government official for the purposes of (A) (1) influencing any act or decision of such government official in his or her official capacity or (2) rewarding the improper performance by any Person of its business or official activities; or (B) assisting Seller, any member of Seller or the Company in obtaining or retaining business or a business advantage for Seller, any member of Seller or the Company, in each case in violation of any applicable anti-bribery or anti-corruption law.

(b) Seller and Company have complied with all U.S. and applicable international economic and trade sanctions in all material respects, including any sanctions or

regulations administered and enforced by the U.S. Department of State, the U.S. Department of the Treasury (including the Office of Foreign Assets Control) and any executive orders, rules and regulations relating thereto. Neither Seller nor the Company has engaged in any dealings or transaction with any Person that is on the Office of Foreign Assets Control's Specially Designated Nations and Blocked Persons List.

(c) Company has at all times complied in all material respects with all applicable Laws relating to export controls.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller, as of the Execution Date, the Notice to Proceed Date, and as of the Closing Date, as follows:

Section 6.1 Corporate Existence and Powers. Buyer is a corporation validly existing and in good standing under the Laws of the State of Indiana. Buyer has all the requisite corporate power and authority to conduct its business as it is now being conducted and to own, lease and operate its assets. Buyer's Corporate Documents are in full force and effect. Buyer is not in violation of its Corporate Documents in any manner that would have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

Section 6.2 Authority. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to be executed by it in connection with this Agreement and to perform its obligations hereunder and thereunder. Buyer has taken all action necessary to execute and deliver this Agreement and the Ancillary Agreements, as applicable, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder, and no other action or proceeding on the part of Buyer is necessary to authorize this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements to be executed by Buyer have been duly executed and delivered by Buyer. Assuming the due authorization, execution and delivery by Seller of this Agreement and the Ancillary Agreements, this Agreement and the Ancillary Agreements are Enforceable against Buyer.

Section 6.3 No Conflicts. Neither the execution, delivery and performance by Buyer of this Agreement or the Ancillary Agreements nor the consummation of the transactions contemplated hereby or thereby or the taking of any action contemplated to be taken by the Buyer under this Agreement and the Ancillary Agreements will result in (a) a violation or breach of or a conflict with (with or without notice or lapse of time, or both) any material provision of Buyer's Corporate Documents; or (b) a material violation or material breach (with or without notice or lapse of time, or both) by Buyer of any applicable Laws.

Section 6.4 Consents and Approvals. Other than as set out in Schedule 6.4 (such items listed on Schedule 6.4 are referred to herein as the "**Buyer Consents**"), no consent, approval or authorization of, permit from, declaration, filing or registration with, or notice to, any Authority or any other Person, is required to be made or obtained by Buyer in connection with Buyer's

execution, delivery, performance and validity of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

Section 6.5 Legal Proceedings. Other than as described in Schedule 6.5, there are no material Actions pending or, to Buyer's Knowledge, threatened in writing, against or affecting the acquisition of the Purchased Interests by Buyer or the consummation of the transactions contemplated hereby, at law or in equity, or before or by any Authority and, to Buyer's Knowledge, there is no valid basis for any such Action.

Section 6.6 Finders. Buyer has not engaged any broker or finder in connection with this transaction and no Person has any claim against Buyer for a finder's fee, brokerage commission or similar payment directly or indirectly in connection with the transactions contemplated by this Agreement.

Section 6.7 Sufficient Funds; No Bankruptcy. At Closing, Buyer will have sufficient funds available, or will have sources for sufficient funding capacity, to consummate the transactions contemplated hereby, including to purchase the Purchased Interests and to pay the Purchase Price. No Bankruptcy Event has occurred and is continuing with respect to Buyer. Neither the signing of this Agreement nor the Closing of the transactions contemplated by this Agreement and the Ancillary Agreements requires the approval of any trustee in bankruptcy or bankruptcy court with jurisdiction of any reorganization or any bankruptcy Action affecting Buyer.

Section 6.8 Compliance With Laws. Buyer has not received any written notification indicating any material violation of, and there is no material violation of, or material non-compliance with, any applicable Law, Order or Permit applicable to the transactions contemplated hereby or that would have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

Section 6.9 Acquisition Intent. Buyer is acquiring the Purchased Interests for its or its Affiliate's own account as an investment without the present intent to sell, transfer or otherwise distribute the same to any other Person. Buyer acknowledges that the Purchased Interests are not registered pursuant to the 1933 Act and that none of the Purchased Interests may be transferred, except pursuant to an effective registration statement under, or an applicable exception from registration under, the 1933 Act. Buyer is an "accredited investor" as defined under Rule 501 promulgated under the 1933 Act.

Section 6.10 Foreign Corrupt Practices Act; Sanctions. Buyer is in compliance with that certain Anti-Corruption Policy, dated January 1, 2021, published and adopted by Buyer Agent.

ARTICLE VII BUYER'S CONDITIONS PRECEDENT TO CLOSING

Section 7.1 Buyer's Conditions Precedent to Closing. The obligation of Buyer to consummate the transactions contemplated by this Agreement to occur on the Closing Date shall be subject to fulfillment at or prior to the Closing of each of the following conditions, except to the extent Buyer waives such fulfillment in writing:

(a) Deliveries by Seller at Closing. Upon the terms and subject to the conditions set forth in this Section 7.1, on or before the Closing Date, Seller shall deliver, or shall cause to be delivered, to Buyer the following:

(i) Assignment of Purchased Interests. An original counterpart of the Membership Interest Assignment in substantially the form of Exhibit Q hereto (the “*Membership Interest Assignment*”), conveying to Buyer all of Seller’s right, title and interest in and to the Purchased Interests, executed by Seller.

(ii) Certificates. The following certificates:

(A) A certificate executed by an officer of Seller, certifying as of the Closing Date (I) a true and correct copy of the resolutions of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Seller, Company or any of Seller’s other Affiliates is a party, and the consummation of the transactions contemplated hereby and thereby, (II) incumbency matters, (III) Seller’s and the Company’s good standing in their states of organization and, with respect to Company only, Indiana and (IV) Seller’s and the Company’s Corporate Documents;

(B) An IRS form W-9 from Seller (or if Seller is a disregarded entity, the entity treated as the owner of Seller’s assets for federal income tax purposes); and

(C) A certificate executed by an officer of Seller, certifying as to the matters set forth in Section 7.1(b).

(iii) Resignations. Letters of resignation executed by each of the managers and officers of the Company, if any, effective as of the Closing.

(iv) Release. A release in favor of the Company in the form attached hereto as Exhibit R, executed by Seller.

(v) Excluded Assets and Excluded Liabilities. The Excluded Assets and Liabilities Assignment Agreement executed by Seller.

(vi) Ancillary Agreements. Each of the Ancillary Agreements to which Seller or an Affiliate of Seller is a party, executed by Seller or an Affiliate if applicable.

(vii) PWA Compliance. Copies of the last quarterly PWA Requirements Certificate from each EPC Contractor.

(b) Representations, Warranties and Covenants of Seller. The representations and warranties made by Seller in ARTICLE V shall be true and correct in all material respects as of the Closing Date (except, in each case, to the extent that any of such representations or warranties relate to an earlier or other specific date, in which case, such representations and

warranties shall be true and correct in all material respects as of such earlier or other specific date), *provided* that any such representations or warranties that are qualified by materiality or Material Adverse Effect shall be true and correct in all respects, and Seller shall have performed in all material respects all covenants required by this Agreement to be performed by Seller at or before the Closing Date.

(c) Company Permits. Seller shall have, or caused the Company to have, obtained all of the Company Permits set forth in Schedule 5.14(a) which are effective and continuing on and after the Closing, and all such Company Permits shall be final, not be subject to any pending appeal and all periods to appeal such Permits pursuant to the Law under which the Permits were issued have expired and in full force and effect.

(d) Consent. Seller shall have, or caused the Company to have, obtained or delivered, as applicable, all of the Seller Consents, which Seller Consents shall be final, nonappealable and in full force and effect and true and correct copies of which shall have been received by Buyer.

(e)

[REDACTED]

[REDACTED]

(f) Required Credit Support. The Required Credit Support (or any renewal thereof) shall be in full force and effect and shall not have been modified, rescinded or revoked.

(g) Real Property.

(i) Title Policy. Seller shall have (A) caused the Title Company to issue to the Company, at Seller's expense, a date down endorsement to the existing ALTA 2006 form extended coverage owner's policy of title insurance for the Project (such existing owner's policy of title insurance, as modified by such date down endorsement, the "***Title Policy***") (deleting the arbitration clause) which Title Policy shall (i) name the Company as the insured, (ii) delete (or provide coverage over via title endorsement) all standard title exceptions, including any mechanic's lien exception, (iii) not include in Schedule B thereof or elsewhere any exceptions other than Permitted Encumbrances, (iv) be issued in the amount of not less than the Purchase Price, (v) show the Company as being vested with all leasehold, easement and fee interests created by the Land Contracts free and clear of Encumbrances on or superior to such interests other than Permitted Encumbrances, (vi) reference any and all Subordination Agreements and any recorded Crossing Agreements in connection with each of the applicable Schedule B Exceptions, and (vii) include the Closing Title Endorsements without exception, and (B) delivered to Title Company, with a copy to Buyer, such instruments and documents reasonably required by Title Company in order to issue such date down endorsement to the Title Policy, including certificates, affidavits and indemnities, and landowner instruments, such as authority documents.

(ii) Survey. Seller shall have caused the surveyor to issue the final version of the Updated Survey showing the Site Plan, certified to the Company, Buyer, the Title Company and such other Persons as Buyer may direct.

(iii) Real Property Interests. The Real Property shall comprise all of the real property interests necessary for the construction, ownership, operation and maintenance of the Project, as applicable.

(iv) Property Agreement Estoppels. Seller shall have delivered to the Buyer executed Property Agreement Estoppels, which shall not be dated more than [REDACTED] prior to the Closing Date.

(v) Lease Amendments. Seller shall have delivered to Buyer all executed Lease Amendments obtained prior to the Closing Date pursuant to Section 3.6(f).

(h) Release of Collateral; Membership Interest Certificates. On the Closing Date, Buyer shall have received (i) reasonable evidence that any Encumbrances granted to the Financing Parties on the Purchased Interests and/or the Company Assets securing the loans under the Construction Loan Agreement have been, or will be as of the Closing, terminated and/or released, and (ii) the membership certificates for the Purchased Interests delivered free and clear of all other Encumbrances (other than Permitted Encumbrances).

(i) FERC Approvals. Seller shall have filed with FERC the Notice of MBR Cancellation.

(j) No Violation. The consummation of the transactions contemplated at the Closing shall not violate any applicable Law or Order that would have a material adverse effect on Buyer's ability to consummate the transaction contemplated hereby.

(k) No Proceeding or Litigation. No Action shall have been instituted or threatened in writing that questions or challenges the validity of, or seeks to impair, restrain, prohibit, invalidate or enjoin, the consummation of the transactions contemplated by this Agreement at the Closing that would have a material adverse effect on Buyer's ability to consummate the transaction contemplated hereby.

(l) Major Project Document Estoppels. Seller shall have delivered to Buyer not later than [REDACTED] prior to the anticipated Closing Date the executed Major Project Document Estoppels, which shall not be dated more than [REDACTED] prior to the Closing Date.

(m) [REDACTED]

(n) [REDACTED]

ARTICLE VIII
SELLER'S CONDITIONS PRECEDENT TO CLOSING

Section 8.1 Seller's Conditions Precedent to Closing. The obligation of Seller to consummate the transactions contemplated by this Agreement to occur on the Closing Date shall be subject to fulfillment at or prior to the Closing of each of the following conditions, except to the extent Seller waives such fulfillment in writing:

(a) Deliveries by Buyer at Closing. Upon the terms and subject to the conditions set forth in this Section 8.1, on or before the Closing Date, Buyer shall deliver, or shall cause to be delivered to Seller, the following:

(i) Consideration. The Closing Payment (if it is a positive number) in accordance with Section 2.2(a).

(ii) Assignment of Purchased Interests. An original counterpart of the Membership Interest Assignment executed by Buyer.

(iii) Certificates.

(A) A certificate executed by an officer of Buyer, certifying as of the Closing Date (I) a true and correct copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement and the other Ancillary Agreements which Buyer or any of its Affiliates is a party, and the consummation of the transactions contemplated hereby and thereby, (II) incumbency matters, (III) Buyer's good standing and (IV) Buyer's Corporate Documents; and

(B) A certificate executed by an officer of Buyer, certifying as to the matters set forth in Section 8.1(b).

(iv) Excluded Assets and Excluded Liabilities. The Excluded Assets and Liabilities Assignment Agreement executed by Buyer and the Company.

(v) Ancillary Agreements. Each of the Ancillary Agreements to which Buyer or the Company is a party shall be executed by Buyer or the Company and delivered to Seller.

(vi) Support Obligations. All Support Obligations have been replaced by Buyer or its Affiliates as provided in Section 4.7.

(b) Representations, Warranties and Covenants of Buyer. (i) The representations and warranties made by Buyer in ARTICLE VI shall be true and correct

and (ii) Buyer shall

have performed in all material respects all covenants required by this Agreement to be performed by Buyer at or before the Closing Date.

(c) No Violation. The consummation of the transactions contemplated at the Closing shall not violate any applicable Law or Order that would have a material adverse effect on Seller's ability to consummate the transaction contemplated hereby.

(d) No Proceeding or Litigation. No Action shall have been instituted or threatened in writing that questions or challenges the validity of, or seeks to impair, restrain, prohibit, invalidate or enjoin, the consummation of the transactions contemplated by this Agreement at the Closing that would have a material adverse effect on Seller's ability to consummate the transaction contemplated hereby.

ARTICLE IX POST-CLOSING COVENANTS

Section 9.1 Records. Seller and Buyer agree that each will cooperate with and make available to the other Party, during normal business hours after reasonable advance notice, Corporate Records relating to the Project or the Company retained and remaining in existence after the Closing Date that are necessary in connection with any Tax inquiry, audit, investigation or dispute, any Action or any other matter requiring any such books and records. The Party requesting any such books and records shall bear all of the out-of-pocket costs and expenses (including attorneys' fees) reasonably incurred in connection with providing such books and records. Notwithstanding anything to the contrary contained in this Section 9.1, if the Parties are in an adversarial relationship in litigation or arbitration, the furnishing of any documents or information in accordance with this Section 9.1 shall be solely subject to applicable rules relating to discovery. Seller shall cause to be delivered to Buyer all material business records (other than email correspondence), financial books and records, files, books and records owned or controlled by, or otherwise in the possession of, Seller or its Affiliates, to the extent (and only to the extent) such books and records are related to the Company or the Project, and in the case of such books and records that are maintained in electronic format, such books and records shall, to the extent practicable, be delivered in an electronic format reasonably requested by Buyer. Seller shall maintain all material email correspondence relating to the Project, and shall, at the request of Buyer, promptly provide such email correspondence as requested from time to time.

Section 9.2 Buyer Confidential Information. Subject to the conditions and limitations acknowledged in Section 3.7 and Section 3.8:

(a) Buyer Confidential Information. Seller acknowledges that Buyer Confidential Information is valuable and proprietary to the Project and Seller agrees not to, directly or indirectly, publish, disseminate, describe or otherwise disclose any Buyer Confidential Information in respect of the Project without the prior written consent of Buyer; *provided, however,* that Seller may provide information about the Project that is Buyer Confidential Information in connection with the design, development, engineering, procurement, permitting, financing, construction, installation, interconnection, testing or commissioning of the Project to such Persons that have a need to know such information or in connection with the Project, and that are bound by customary obligations or duties of confidentiality with respect to such information.

For purposes of this Agreement, “**Buyer Confidential Information**” shall mean (a) any and all information provided by Buyer to Seller in writing and identified by Buyer as confidential and (b) unless this Agreement is terminated prior to the Closing, any and all information with respect to the Project, or (c) any and all information with respect to the transactions contemplated hereby. Information shall not be deemed to be Buyer Confidential Information if (i) it has become generally known or available within the industry or the public through no act or omission of Seller; (ii) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (iii) it was rightfully received by Seller from a third party who became aware of it through no act or omission of Seller and who is not under an obligation of confidentiality to Buyer, or (iv) Seller can demonstrate it was independently developed by employees or consultants of Seller.

(b) Duty to Maintain Confidentiality. Seller shall, and shall cause its Affiliates to, maintain any Buyer Confidential Information in confidence and shall not disclose it or cause it to be disclosed by them or any third party without Buyer’s prior written consent; *provided, however,* that Seller may disclose Buyer Confidential Information to Persons (i) who provide financial analysis, banking, legal, accounting, or other services to Seller or its Affiliates in connection with Seller’s evaluation or implementation of the transactions contemplated by this Agreement (including the Financing), so long as such Persons have first been informed of the confidentiality obligations in this Section 9.2, and (ii) in connection with the design, development, engineering, procurement, permitting, financing, construction, installation, interconnection, testing or commissioning of the Project that have a need to know such information in order to perform services constituting Work or in connection with the Project, and that are bound by customary obligations or duties of confidentiality with respect to such information.

(c) Permitted Disclosure. Notwithstanding Section 9.2(b), Buyer Confidential Information may be disclosed by Seller (i) if required by any Authority or by applicable Law (including FERC and Commission filings) or stock exchange rule, and (ii) in connection with seeking the Commission Approvals and the Required FERC Approvals; *provided, however,* that in each case under (i) and (ii) above (A) such Buyer Confidential Information is submitted under any and all applicable provisions for confidential treatment and (B) if Seller is permitted to do so, Buyer is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure; (iii) in an Action brought by Seller in pursuit of its rights or in the exercise of its remedies under this Agreement, and (iv) to its Affiliates and Representatives and its and its Affiliates’ current and prospective financing parties and investors (but Seller shall be liable for any breach by such Person). Nothing herein shall restrict the Parties or their Affiliates from disclosing their investment in or disposition of, or information with respect to the performance of, their investment in the Project or the Company.

(d) Limited Use. Seller agrees that it will not make any use of any Buyer Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement or in connection with the design, development, engineering, procurement, permitting, financing, construction, installation, interconnection, testing or commissioning of the Project, unless specifically authorized to do so in writing, and this

Agreement shall not be construed as a license or authorization to Seller to utilize Buyer Confidential Information except for such purpose.

(e) Return or Destruction. Upon Buyer's request, Seller shall return to Buyer or destroy as promptly as practicable, but in a period not to exceed [REDACTED], (a) all Buyer Confidential Information provided to Seller, including all copies of such Buyer Confidential Information, and (b) all notes or other documents in digital or other format in its possession or in the possession of other Persons to whom Buyer Confidential Information was properly provided by Seller. Non-destruction of electronic copies of materials or summaries containing or reflecting Buyer Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel shall not be deemed to violate this Agreement, so long as Buyer Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

(f) Specific Performance. Seller acknowledges that a breach of the covenants contained in this Section 9.2 will cause irreparable damage to Buyer, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if Seller breaches any of the covenants contained in this Section 9.2, in addition to any other remedy that may be available at law or in equity, Buyer shall be entitled to specific performance and injunctive relief, without posting bond or other security.

Section 9.3 Seller Confidential Information. Subject to the conditions and limitations acknowledged in Section 3.7 and Section 3.8:

(a) Seller's Confidential Information. Buyer acknowledges that Seller Confidential Information is valuable and proprietary to Seller and Buyer agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Seller Confidential Information in respect of the Project without the prior written consent of Seller. For purposes of this Agreement, "***Seller Confidential Information***" shall mean (a) any and all information provided by Seller to Buyer in writing and identified by Seller as confidential, (b) prior to the Closing Date, any and all information with respect to the Project or (c) any and all information with respect to the transactions contemplated hereby. Information shall not be deemed to be Seller Confidential Information if (i) the Closing has occurred and such information is also a Company Asset under this Agreement (which information shall include the Company's books and records); (ii) it has become generally known or available within the industry or the public through no act or omission of Buyer; (iii) Buyer can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Buyer; (iv) it was rightfully received by Buyer from a third party who became aware of it through no act or omission of Buyer and who is not under an obligation of confidentiality to Seller; or (v) Buyer can demonstrate it was independently developed by employees or consultants of Buyer.

(b) Duty to Maintain Confidentiality. Buyer shall, and shall cause its Affiliates to, maintain any Seller Confidential Information in confidence and shall not disclose it or cause it to be disclosed by Buyer or any third party without Seller's prior express written consent; *provided, however,* that Buyer may disclose Seller Confidential Information to Persons who provide financial analysis, banking, legal, accounting, or other services to Buyer or any potential lenders

to Buyer in connection with Buyer's evaluation or implementation of the transactions contemplated by this Agreement, so long as such Persons have first been provided with a copy of Section 9.3 of this Agreement and have agreed, in writing, to be bound by the duties required hereby.

(c) Permitted Disclosure. Notwithstanding Section 9.3(b), Seller Confidential Information may be disclosed by Buyer (i) if required by any Authority or by applicable Law (including FERC and Commission filings) or stock exchange rule, and (ii) in connection with seeking the Commission Approvals and the Required FERC Approvals; *provided, however*, that in each case under (i) and (ii) above (A) such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment and (B) other than with respect to FERC and Commission filings and disclosures made in connection with seeking the Required FERC Approvals or the Commission Approvals if Buyer is permitted to do so, Seller is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure; (iii) in an Action brought by Buyer in pursuit of its rights or in the exercise of its remedies under this Agreement, and (iv) to its Affiliates and Representatives and its and its Affiliates' current and prospective financing parties and investors (but Buyer shall be liable for any breach by such Person). Nothing herein shall restrict the Parties or their Affiliates from disclosing their investment in or disposition of, or information with respect to the performance of, their investment in the Project or the Company.

(d) Limited Use. Buyer agrees that it will not make any use of any Seller Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Buyer to utilize Seller Confidential Information except for such purpose.

(e) Return or Destruction. Upon Seller's request, Buyer shall return or destroy as promptly as practicable, but in a period not to exceed ten (10) days, (a) all Seller Confidential Information provided to Buyer, including all copies of such Seller Confidential Information, and (b) all notes or other documents in digital or other format in its possession or in the possession of other Persons to whom Seller Confidential Information was properly provided by Buyer. Non-destruction of electronic copies of materials or summaries containing or reflecting Seller Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel shall not be deemed to violate this Agreement, so long as the Seller Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

(f) Specific Performance. Buyer acknowledges that a breach of the covenants contained in this Section 9.3 will cause irreparable damage to Seller, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Buyer agrees that if Buyer breaches any of the covenants contained in this Section 9.3, in addition to any other remedy that may be available at law or in equity, Seller shall be entitled to specific performance and injunctive relief, without posting bond or other security.

Section 9.4 Tax Matters.

(a) Buyer shall inform Seller of the commencement of any audit, examination or proceeding relating in whole or in part to Taxes for which Seller is responsible to indemnify any Buyer Indemnified Party pursuant to this Agreement. With respect to any such Tax, Seller will have the right, at its sole cost and expense, to control (in the case of Tax period ending on or before the Closing Date) or participate in (in the case of a Straddle Period) the prosecution, settlement or compromise of any proceeding involving the Tax, *provided* that Seller shall have promptly notified Buyer in writing of its intention to control or participate in such prosecution, settlement or compromise (the “*Tax Contests*”). Notwithstanding anything in this Agreement to the contrary, Seller shall have no rights under this Agreement to control or participate in (i) any Tax Contest of Buyer or its Affiliates (other than the Company) or (ii) any Tax Contest of the Company with respect to any Tax period that begins on or after the Closing Date. To the extent Seller is controlling the proceeding, Buyer will (and will cause the Company to) take such action in connection with any such proceeding that Seller reasonably requests, including the selection of counsel and experts and the execution of powers of attorney. The controlling Party shall keep the other Party reasonably informed of the developments and status of any Tax Contest, shall permit the non-controlling Party to participate (at its own expense) in any Tax Contest and shall not settle or compromise any Tax Contest without the non-controlling Party’s consent, which shall not be unreasonably withheld, conditioned or delayed. To the extent that there is an inconsistency between Section 10.2(d) or Section 10.2(e) and this Section 9.4 as it relates to a Tax Contest, the provisions of this Section 9.4 shall govern.

(b) In the case of any Straddle Period, the amount of any Taxes based on or measured by income, receipts, or payroll of the Company for the pre-Closing portion of such Tax period shall be determined based on an interim closing of the books as of the close of business on the Closing Date. All real property Taxes, personal property Taxes and other Taxes and similar obligations of the Company that are due or become due for Straddle Periods shall be apportioned to Seller for the pre-Closing portion of such Tax period of such Straddle Period, and the amount of such Taxes and obligations of the Company that relate to the pre-Closing portion of such Tax period shall be deemed to be the amount of such Taxes and obligations for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date, and the denominator of which is the number of days in such Straddle Period. If any refund, rebate or similar payment is received by the Company, and/or Buyer for any Taxes, such refund, rebate or similar payment shall be for the benefit of Seller to the extent such refund, rebate or similar payment relates to a Pre-Closing Tax Period (or the pre-Closing portion of a Straddle Period, as determined in accordance with the same principles provided for in this Section 9.4(b)) of the Company, as applicable, and the Company or Buyer, as applicable, shall pay over the amount of such refund, rebate or similar payment (including interest thereon paid by the relevant Authority or other Tax Authority) to Seller within [REDACTED] following receipt thereof.

(c) Buyer and Seller shall provide each other with such assistance as may reasonably be requested by the other in connection with the preparation of any Tax Return, any audit or other examination by any Tax Authority, or any judicial or administrative proceedings relating to liabilities for Taxes relating to the Company. Such assistance shall include making employees available on a mutually convenient basis to provide additional information or

explanation of material provided hereunder and shall include providing copies of relevant Tax Returns, taxpayer identification numbers, and supporting material, and the execution of any Tax Returns where reasonably requested by the other Party. The Party requesting assistance hereunder shall reimburse the assisting Party for reasonable out-of-pocket expenses incurred in providing assistance. Buyer and Seller will retain for the full period of any statute of limitations (including any extensions thereof) and provide the others with any records or information which may be relevant to such preparation, audit, examination, proceeding or determination. Buyer shall not (and, after the Closing, shall cause the Company not to) file any amended Tax Returns or make, change or revoke any elections, seek any ruling or other similar determination from an Authority, enter into any closing agreement, in each case, with respect to the Company for any taxable period (or portion thereof) ending on or before the Closing Date, without the prior written consent of the Seller, which Seller shall not unreasonably withhold, unless otherwise required by Law.

(d) Seller shall report any gain recognized on the sale of the Purchased Interests as gain from the sale of property described in Section 1221(a)(1) of the Code for all federal, state and local income tax purposes.

Section 9.5 Non-Interference. From the Execution Date until the [REDACTED], neither Seller nor its Affiliates shall construct, acquire or operate any electric generating facility or energy storage facility within two miles of the Project that will commence operations following the Closing Date (each an “*Other Project*”), unless (i) Seller has provided evidence reasonably satisfactory to Buyer prior to commencement of construction and promptly after commercial operation that such Other Project would not result in a reduction of [REDACTED] of the generation of the Project (including curtailment effects) or increase in transmission losses at any point between the Project and its Point of Interconnection (as such term is defined in the Interconnection Agreement), in each case, as a result of (A) such Other Project being granted access to and use of the Project’s substation or any transmission line or transmission facility located on the Project’s side of its Point of Interconnection or (B) downtime at the Project related to the Other Project’s construction or interconnection prior to the Other Project commencing commercial operations, or (ii) Seller or its applicable Affiliate enters into a customary build-out agreement in form and substance reasonably satisfactory to the Buyer and Seller or its applicable Affiliate addressing the effects of the reduced generation of the Project in [REDACTED] as a result of clauses (i)(A) or (i)(B) of this Section 9.5.

Section 9.6 Confidentiality Regarding This Agreement. Subject to the conditions and limitations acknowledged in Section 3.7 and Section 3.8: (i) the Parties each acknowledge and agree that the terms of this Agreement shall be considered Seller Confidential Information and Buyer Confidential Information, and (ii) neither Buyer nor Seller shall issue any public announcement, press release or other statement with respect to this Agreement or the transactions contemplated hereby that identifies the other Party, without the prior consent of the other Party (which consent shall not be unreasonably withheld), unless required by applicable Law or stock exchange rule (including in connection with obtaining the necessary approvals of this Agreement and the transactions contemplated hereby from any Authority); *provided, however*, that both Buyer and Seller shall have the right without obtaining such consent to include public information concerning the Project in such Party’s marketing materials following the initial public announcement by the other Party. In the event a Party breaches this Section 9.6, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, the non-breaching

Party may, in its sole discretion, issue public announcements that the non-breaching Party shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the breaching Party.

Section 9.7 Further Assurances. Following the Closing, each of the Parties shall use commercially reasonable efforts to take all action and to do all things reasonably necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement, including the delivery of such certificates, documents and instruments that either Party reasonably requests for the purpose of facilitating the consummation of the transactions contemplated by this Agreement. Without limiting the foregoing, Seller shall, at no material expense to Seller, provide Buyer and Company with such assistance as Buyer may from time to time reasonably request for purposes of ensuring that Buyer or one of its Affiliates will be able to operate and maintain the Facilities in accordance with Prudent Industry Practices and the Site Operating Plan following the Closing Date.

Section 9.8 Transfer Taxes. All Transfer Taxes, if any, arising out of or in connection with the transactions effected pursuant to this Agreement, shall be borne equally by Seller and Buyer; *provided* that (a) any Transfer Taxes resulting from any reorganization or restructuring of Seller or its Affiliates (including the Company) prior to the Closing shall be borne by Seller and (b) any Transfer Taxes resulting from any reorganization or restructuring of Buyer or its Affiliates (including the Company) at and after the Closing, including any Assets Distribution to Buyer or Merger, shall be borne by Buyer. Accordingly, if any Party (or its Affiliates) is required by Law to pay more than its share of any such Transfer Taxes, the other Party will promptly reimburse it for the excess, which shall be, solely for tax purposes, treated as an adjustment to the Purchase Price. Tax Returns that must be filed in connection with such Transfer Taxes shall be prepared and filed by the Party primarily or customarily responsible under applicable local Law for filing such Tax Returns, and such Party will use commercially reasonable efforts to provide such Tax Returns to the other Party at least [REDACTED] prior to the date such Tax Returns are due to be filed. For the avoidance of doubt, the Parties shall reasonably cooperate in executing any appropriate tax exemption certificates in connection with the transactions effected pursuant to this Agreement with respect to any potential Transfer Taxes.

Section 9.9 Removal of Excluded Assets. On or before the Closing Date or, if only identified following the Closing Date then within [REDACTED] of receiving notice thereof, Seller shall at its sole cost and expense, disconnect and remove from the Site all Excluded Assets and restore the real property on which such Excluded Assets were located in accordance with the requirements of the Land Contracts that apply in the case of termination of such Land Contract. Seller shall, and Buyer shall cause the Company to, execute and deliver the Excluded Assets and Liabilities Assignment Agreement with respect to such Excluded Assets. Such removal shall be undertaken in such manner as to avoid any damage to the Company Assets and any disruption of the business operations of the Company after the Closing Date. The cost of any damage to the Company Assets resulting from such removal shall be promptly paid by Seller upon receipt of an invoice for same (together with a reasonably detailed accounting therefor) from Buyer. Should Seller fail to remove the Excluded Assets as required by this Section 9.9, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Seller's sole cost and expense; (b) to store the Excluded Assets and to charge Seller all reasonable and documented out-of-pocket storage costs associated therewith; (c) if not removed by, or the storage costs assumed by, Seller

within [REDACTED] after the Closing Date, or the date on which Buyer provides notice of the Excluded Assets identified post-Closing, as applicable, to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the Laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity other than termination of this Agreement. Seller shall promptly reimburse Buyer for all reasonable and documented costs and expenses incurred by Buyer in connection with the actions in the immediately preceding sentence.

Section 9.10 Seller's Post-Closing Covenants. Seller shall, at no additional material cost to Seller, as promptly as is reasonably practicable, use commercially reasonable efforts to assist Buyer in matters in which Seller was involved prior to the Closing as developer of the Project, and to coordinate and cooperate with Buyer in providing such information and supplying such assistance as may be reasonably requested by Buyer in connection with:

(a) any interfaces with Authorities, landowners, Interconnection Construction Service Agreement counterparty and the Interconnection Agreement counterparty with respect to matters related to completion of the unfinished portion of the Project; and

(b) causing the Project to achieve Substantial Completion and Final Completion.

Section 9.11 Insurance.

(a) Commencing with the Closing Date and continuing through the Final Completion Date, Seller shall maintain in full force and effect the Project Insurance Policies that are identified on Schedule 3.13 as continuing following the Closing Date through the Final Completion Date; *provided, however*, that Seller shall maintain in full force and effect commercial general liability coverage for products and completed operations as set forth on Schedule 3.13 for a period of [REDACTED] following the Final Completion Date. Seller shall have the option of procuring insurance required under this Agreement directly, or indirectly through one or more of its Contractors.

(b) From and after the Closing Date, Buyer shall have the right to submit to Seller any claims (together with a reasonable description thereof and back-up therefor) for any documented, out-of-pocket Losses of the Company that are covered by the Project Insurance Policies arising out of insured incidents to the extent occurring from the date coverage thereunder first commenced until the Final Completion Date. With respect to any such claim, Seller shall submit such claim and use its commercially reasonable efforts to administer such claims on behalf of the Company, as applicable, and to seek reasonable recovery under the applicable insurance provisions of such insurance policies covering a Loss of the Company, as applicable, to the same extent as it would if such Loss were a Loss of Seller and to the extent that the terms and conditions of any such policies so allow (it being understood that (i) Seller shall have the right to administer and control such claims and (ii) such claims shall be subject to any and all applicable deductibles, retentions, self-insurance provisions or any payment or reimbursement obligations in respect thereof, and the exhaustion of existing aggregate limits which amounts shall be paid by the Buyer), and Seller shall pay to Buyer the amount of such recovery within a reasonable time after receipt

thereof not to exceed [REDACTED], net of any out-of-pocket costs and expenses of Seller (including the reasonable fees, disbursements and expenses of legal counsel).

(c) With respect to any claims that may be brought after the Closing with respect to occurrences prior to Final Completion (i) ensure that the Company, Buyer, its Affiliates and Representatives, will be endorsed to Seller's policies as additional insureds on Seller's general liability, auto liability, pollution liability and umbrella liability policies, and (ii) provide that Seller waives, and causes its insurers to waive, subrogation rights against Buyer and its Affiliates and Representatives with respect to general liability, auto liability, umbrella liability, workers compensation and employer's liability policies.

(d) Losses recovered by the Company pursuant to Section 9.11 shall be subject to the provisions of Section 10.2(g).

Section 9.12 Post-Closing Completion of the Project.

(a) From time to time following the Closing Date until the Final Completion Date, Buyer shall enable Seller, any EPC Contractor, and any Subcontractors to complete construction of the Project in accordance with this Agreement and the schedule and deadlines set forth herein, including affording Seller, any EPC Contractor and any Subcontractors access to the Project and the Site, and cooperating with Seller to assert any rights under the Major Project Documents, Property Agreements, and/or Material Contracts, or enter into any new Material Contract, as may be reasonably required. Buyer shall execute, acknowledge and deliver any documents reasonably requested by Seller to effectuate the foregoing.

(b)



(c)



[REDACTED]

(d) [REDACTED]

[REDACTED]

Section 9.13 Mechanic's Lien Exception. Within [REDACTED], Seller shall provide to the Title Company all required documents and information required for the Title Company to issue an endorsement to the Title Policy to restore mechanic's lien coverage and cause the Title Company to issue such endorsement, pending Buyer's payment to Title Company of all costs thereof.

ARTICLE X INDEMNIFICATION

Section 10.1 Survival.

(a) Fundamental Representations. No claim under Section 10.2(a)(i) or Section 10.2(b)(i) may be made by the applicable Party unless such claim is delivered to the other Party prior [REDACTED] constituting a breach of a Seller's Fundamental Representation or a Buyer's Fundamental Representation.

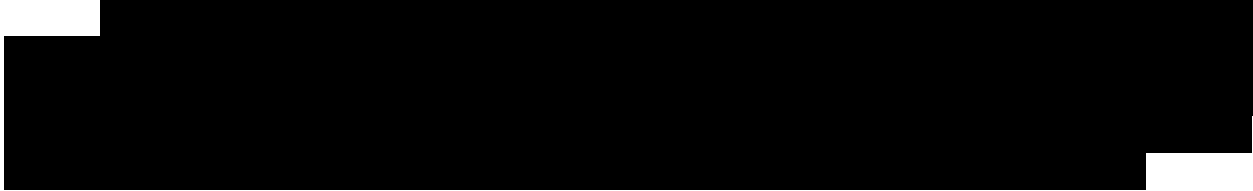
(b) Tax Representations. No claim under Section 10.2(a)(ii) may be made by the Buyer unless such claim is delivered by the other Party prior to the [REDACTED].

(c) Other Representations and Warranties. No claim under Section 10.2(a)(iii) or Section 10.2(b)(ii) may be made by either Party unless such claim is delivered to the other Party prior [REDACTED].

(d) Pre-Closing Covenants. No claim under Section 10.2(a)(iv) or Section 10.2(b)(iii) may be made by either Party with respect to any covenant or agreement required to be performed on or prior to the Closing unless such claim is delivered to the other Party prior [REDACTED].

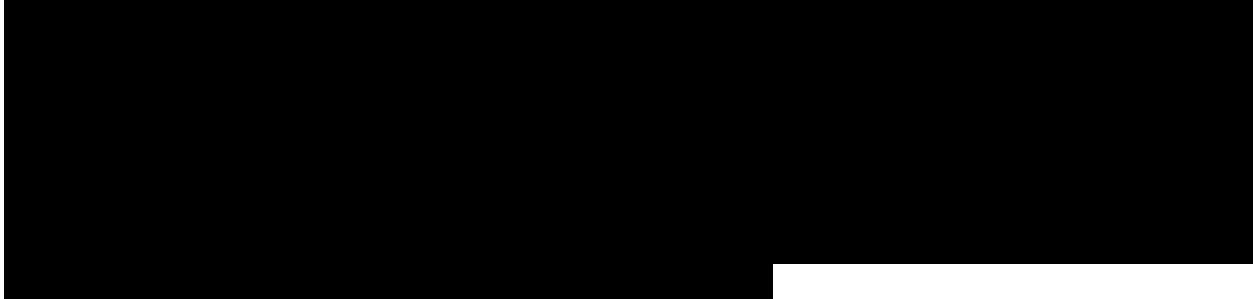
(e) Post-Closing Covenants. No claim under Section 10.2(a)(iv) or Section 10.2(b)(iii) may be made by either Party with respect to any covenant or agreement required to be performed after the Closing unless such claim is delivered to the other Party prior [REDACTED].

(f) Other Indemnities. No claim under Section 10.2(a)(v) or Section 10.2(a)(iv) may be made by either Party unless such claim is delivered to the other Party prior [REDACTED].



Section 10.2 Indemnifications.

(a) By Seller. From and after Closing, subject to Section 10.3, Seller (“***Seller Indemnifying Party***”) shall indemnify, defend, save and hold harmless, Buyer, its Affiliates, and their respective Representatives (collectively, the “***Buyer Indemnified Parties***”) from and against any and all Losses (whether or not arising out of third-party claims) incurred in connection with or arising out of or resulting from (i) any breach of any of Seller’s Fundamental Representations, (ii) any breach of any Tax Representations, (iii) any breach of any of Seller’s representation or warranties under ARTICLE V other than Seller’s Fundamental Representations or Tax Representations, (iv) any breach of Seller’s covenants or agreements set forth in this Agreement, or (v) any failure by Seller to pay, perform or discharge any Excluded Liability as and when due.



(b) By Buyer. From and after Closing, subject to Section 10.3, Buyer (“***Buyer Indemnifying Party***”) shall indemnify, defend, save and hold harmless, Seller, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “***Seller Indemnified Parties***”) from and against any and all Losses (whether or not arising out of third-party claims) incurred in connection with or arising out of or resulting from (i) any breach of any of Buyer’s Fundamental Representations, (ii) any breach of any of Buyer’s representations or warranties under ARTICLE VI other than Buyer’s Fundamental Representations, (iii) any breach of Buyer’s covenants or agreements set forth in this Agreement, or (iv) any failure of Buyer to pay, discharge or perform any Liabilities of the Company to the extent relating to the period from and after the Closing Date, other than Excluded Liabilities, as and when due, except to the extent they are subject to Seller’s obligations under Section 10.2(a).



(c) Procedure for Indemnification of Third-Party Claims.

(i) Notice of Claims. Whenever any claim by a third party shall arise for indemnification under this ARTICLE X, the Indemnified Party shall promptly notify the Indemnifying Party of the claim and, when known, the facts constituting the basis for such claim and, if known, the notice shall specify the amount or an estimate of the amount of the liability arising therefrom. The Indemnified Party shall provide to the Indemnifying Party copies of all material notices and documents (including court papers) received or transmitted by the Indemnified Party relating to such claim. The failure or delay of the Indemnified Party to deliver prompt written notice of a claim shall not affect the indemnity obligations of the Indemnifying Party hereunder, except to the extent the Indemnifying Party was actually prejudiced by such failure or delay in delivery of notice of such claim.

(ii) Settlement of Losses. If the Indemnified Party has assumed the defense of any claim by a third party which may give rise to indemnity hereunder pursuant to Section 10.2(d), the Indemnified Party shall not settle, consent to the entry of a judgment of or compromise such claim without the prior written consent (which consent shall not be unreasonably withheld or delayed) of the Indemnifying Party unless such settlement or judgment (A) fully, finally and unconditionally releases the Indemnified Party from all Liability with respect to such claim or legal proceeding, (B) does not require injunctive or other equitable relief and (C) does not result in any monetary payment not paid in full by such Indemnifying Party.

(d) Rights of Indemnifying Party in the Defense of Third-Party Claims.

(i) Right to Assume the Defense. In connection with any claim by a third party which may give rise to indemnity hereunder, the Indemnifying Party shall have [REDACTED] after the date the Indemnifying Party is notified of such claim by the Indemnified Party to assume the defense of any such claim, which defense shall be prosecuted by the Indemnifying Party to a final conclusion or settlement in accordance with the terms hereof.

(ii) Procedure. If the Indemnifying Party assumes the defense of any such claim, the Indemnifying Party shall (i) select counsel reasonably acceptable to the Indemnified Party to conduct the defense of such claim and (ii) take all steps necessary in the defense or settlement thereof, at its sole cost and expense. The Indemnified Party shall be entitled to participate in (but not control) the defense of any such claim, with its own counsel and at its sole cost and expense; *provided*, that, if the claim includes allegations for which the Indemnifying Party both would and would not be obligated to indemnify the Indemnified Party, the Indemnifying Party and the Indemnified Party shall in that case jointly assume the defense thereof. The Indemnified Party and the Indemnifying Party shall fully cooperate with each other and their respective counsel in the defense or settlement of such claim. The Party in charge of the defense shall keep the other Party apprised at all times as to the status of the defense or any settlement negotiations with respect thereto.

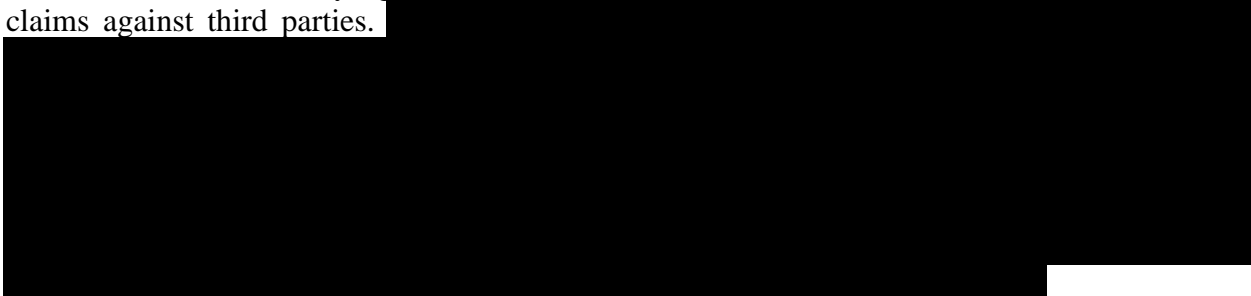
(iii) Settlement of Losses. The Indemnifying Party shall not consent to a settlement of or the entry of any judgment arising from, any such claim or legal proceeding, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) unless such settlement or judgment (A) fully, finally and unconditionally releases the Indemnified Party from all Liability with respect to such claim or legal proceeding, (B) does not require injunctive or other equitable relief and (C) does not result in any monetary payment not paid in full by such Indemnifying Party.

(iv) Decline to Assume the Defense. The Indemnified Party may defend against any such claim, at the sole cost and expense of the Indemnifying Party, in such manner as it may deem reasonably appropriate, including settling such claim in accordance with the terms hereof if (i) the Indemnifying Party does not assume the defense of any such claim resulting therefrom within [REDACTED] after the date the Indemnifying Party is notified of such claim by the Indemnified Party or (ii) the Indemnified Party reasonably concludes that the Indemnifying Party is (A) not diligently defending the Indemnified Party, (B) not contesting such claim in good faith through appropriate proceedings or (C) has not taken such action (including the posting of a bond, deposit or other security) as may be necessary to prevent any action to foreclose an Encumbrance against or attachment of any asset or property of the Indemnified Party for payment of such claim.

(e) Direct Claims. In the event that any Indemnified Party has a claim against any Indemnifying Party which may give rise to indemnity hereunder that does not involve a claim brought by a third party, the Indemnified Party shall promptly notify the Indemnifying Party of the claim and the facts constituting the basis for such claim and, if known, the amount or an estimate of the amount of the liability arising therefrom. If the Indemnifying Party does not notify the Indemnified Party within [REDACTED] from receipt of such claim notice that the Indemnifying Party disputes such claim, the amount of such claim shall be conclusively deemed a liability of the Indemnifying Party hereunder; however if the Indemnifying Party does notify the Indemnified Party that it disputes such claim within the required [REDACTED] period, the Parties shall attempt in good faith to agree upon the rights of the respective Parties with respect to such claim. If the Parties should so agree, a memorandum setting forth such agreement shall be prepared and signed by both Parties. If such Parties shall not agree, the Indemnified Party shall be entitled to take any action in law or in equity as such Indemnified Party shall deem necessary to enforce the provisions of this ARTICLE X against the Indemnifying Party.

(f) Exclusive Remedy from and after Closing. Notwithstanding anything in this Agreement to the contrary and subject to the following sentence, the indemnification obligations of the Parties contained in this Section 10.2 (and subject to the limitations set forth in Section 10.3) shall be the sole and exclusive remedy of the Parties, their Affiliates, successors and assigns with respect to any and all claims for Losses sustained or incurred arising out of or relating to any breach of any representation or warranty in ARTICLE V or ARTICLE VI made at Closing, or any covenant or agreement contained in this Agreement from and after Closing, including any claims with respect to environmental, health and safety matters; and each Party hereby expressly waives and disclaims, and agrees that it shall not assert, any right, remedy (including the remedy of rescission) or claim in respect of any such breach or Losses based on any cause or form of action

whatsoever, except as and to the extent permitted in this Section 10.2; *provided, however*, that (i) the Parties may seek to enforce the provisions of this Agreement by injunction, specific performance or other equitable relief, (ii) either Party may seek any and all judicial relief with respect to any default by the other Party of any of its obligations to pay any amounts due and owing to such Party under this Agreement, and (iii) such limitation shall not affect the remedies available to the parties to the Ancillary Agreements, which remedies shall be governed by the terms of the Ancillary Agreements, and (iv) this provision shall not limit any available remedy of the Party seeking indemnification for any Losses resulting from, or related to, the fraud, gross negligence or willful misconduct of the other Party. Nothing in this Section 10.2(f) is intended to constitute a waiver or limitation of any rights that any Party (or their respective Affiliates) may have to assert claims against third parties.



(g) Insurance Recoveries; Tax Costs. Losses for which any Indemnified Party will be reimbursed hereunder will be decreased (but not below \$0) by insurance proceeds or payments from any other responsible parties actually received by such Indemnified Party (after deducting costs and expenses incurred in connection with recovery of such proceeds, including reasonable and foreseeable premium increases) and will be increased to take account of any net Tax cost incurred by the Indemnified Party arising from the receipt of any such payment hereunder (grossed up for such increase).

(h) Tax Treatment. Any indemnity payment made pursuant to this Agreement will be treated as a non-taxable adjustment to the Purchase Price for Tax purposes, unless otherwise required by applicable Law.

(i) No Contribution. Seller will not have any right of contribution, right of indemnity or other right or remedy against the Company in connection with any indemnification obligation or any other Liability to which Seller may become subject under or in connection with this Agreement or otherwise.

(j) Reliance. Without limiting Section 12.2, Seller and Buyer each acknowledge that (i) only representations, warranties, covenants or agreements expressly made in this Agreement will be deemed to be representations, warranties, covenants or agreements for purposes of this Agreement, and (ii) neither Party has relied on any representation, warranty, covenant or agreement not expressly made in this Agreement in consummating the transactions described herein.

(k) Set off. In addition to all other remedies provided herein, each Party shall have the sole and absolute right to set off any Losses that are or may be owed by such Party to the other Party's Indemnified Party under this ARTICLE X against any Liability owed by such Party or its Affiliates to the other Party or its Affiliates.

(l) Mitigation. Each Indemnified Party will act in good faith to take commercially reasonable efforts to mitigate all Losses that may be subject to indemnity hereunder.

Section 10.3 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement:

(a) Without modification of other limits of liability set forth herein, in no event shall Seller or any of its Affiliates be liable, alone or in the aggregate, for any Losses under or arising out of or in connection with this Agreement in excess of [REDACTED].

(b) SUBJECT TO THE NEXT SENTENCE, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, REMOTE, UNFORESEEABLE, SPECIAL, SPECULATIVE OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE), INCLUDING LOSS OF PROFIT OR REVENUES, UNDER OR IN RESPECT TO THIS AGREEMENT. THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY (I) FOR LIQUIDATED DAMAGES CONTEMPLATED PURSUANT TO SECTION 3.15, (II) UNDER ANY INDEMNITY IN ARTICLE X TO THE EXTENT THAT INDEMNIFICATION OBLIGATIONS IN RESPECT OF THIRD-PARTY CLAIMS COULD BE DEEMED TO BE LIMITED BY THE FOREGOING OR [REDACTED].

(c) The Parties' indemnification obligations under Section 10.2 shall be limited as follows:

(i) the aggregate Losses to which Buyer Indemnified Parties shall be entitled under Section 10.2(a)(i) and Section 10.2(a)(iv) shall not exceed [REDACTED], and the aggregate Losses to which the Seller Indemnified Parties shall be entitled under Section 10.2(b)(i) and Section 10.2(b)(iii) shall not exceed [REDACTED]; and

(ii) the aggregate Losses to which Buyer Indemnified Parties shall be entitled under Section 10.2(a)(ii) and Section 10.2(a)(iii) shall not exceed [REDACTED], and the aggregate Losses to which the Seller Indemnified Parties shall be entitled under Section 10.2(b)(ii), shall not exceed the [REDACTED].

provided, however, that the limitations of liability set forth in Section 10.3(c)(i) and Section 10.3(c)(ii) above are unrelated to and shall not apply in respect of claims for fraud, gross negligence or willful misconduct.

Section 10.4 No Duplication. Any liability for indemnification under this ARTICLE X shall be determined without duplication of recovery. Without limiting the generality of the prior sentence, if a statement of facts, condition or event constitutes a breach of more than one

representation, warranty, covenant or agreement which is subject to the indemnification obligation under this Agreement, only one recovery of any Losses shall be allowed.

Section 10.5 Non-Recourse. Except as expressly set forth in this ARTICLE X, no Party shall have recourse whatsoever under this Agreement against any of the Representatives of the other Party (including for such purposes, the Representatives of any Affiliate of a Party). Without limiting the generality of the foregoing, each Party, on behalf of itself and its Affiliates, hereby fully and irrevocably waives any right, claim or entitlement whatsoever against such Representatives relating to any and all Liabilities suffered or incurred by any of them arising from, based upon, related to, or associated with this Agreement or the transactions contemplated hereby (including any breach, termination or failure to consummate such transactions) in each case whether based on contract, tort, strict liability, other laws or otherwise and whether by piercing of the corporate veil, by claim on behalf of or by a Party or other Person or otherwise.

ARTICLE XI TERMINATION

Section 11.1 Termination.

(a) Termination by Buyer. This Agreement may be terminated prior to the Closing by Buyer upon written notice to Seller of such termination as follows:

(i) in the event the Commission Approvals have not been received by the applicable Commission Approval Deadline, or if Buyer determines in its sole discretion (based on responses from the Commission(s), their staffs, other state officials, or other credible information upon which it is reasonable for Buyer to rely) at any time prior to the Commission Approval Deadline that it is unlikely that the Commission Approvals will be obtained by the applicable Commission Approval Deadline, effective immediately upon Seller's receipt of notice from Buyer;



(ii) in the event the Letter of Credit required to be delivered to Buyer on the Notice to Proceed Date under Section 4.6(b) is not delivered within [REDACTED] after Seller's receipt of the Notice to Proceed, effective immediately upon Seller's receipt of notice from Buyer;

(iii) in the event the conditions precedent to Closing set forth in Section 7.1 have not been fulfilled or waived, on or before the Outside Date, effective immediately upon Seller's receipt of notice from Buyer; *provided, however*, that Buyer may not terminate this Agreement pursuant to this Section 11.1(a)(iii) if (x) Buyer's failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the occurrence of the Closing or failure of any such conditions precedent to be fulfilled on or prior to the Outside Date, or

(y) [REDACTED] solely until the date that is [REDACTED], an event of Force Majeure has been the cause of, resulting in, the failure of the occurrence of the Closing or failure of any such condition precedent to be fulfilled on or prior to the Outside Date;

(iv) if Seller has materially breached any of its representations, warranties, covenants or agreements of Seller under this Agreement, where the effect of such breach would be to cause the conditions contained in Section 7.1 to be incapable of fulfillment by [REDACTED] provided, that Buyer has given Seller at least [REDACTED] prior notice of the breach and Seller has not cured such breach in all material respects during such [REDACTED], provided further, however, that if, at the end of such [REDACTED], Seller is endeavoring in good faith, and proceeding diligently, to cure such breach, Seller shall have an additional [REDACTED] in which to effect such cure;

(v) upon the occurrence of a Bankruptcy Event with respect to Seller or the Company, effective immediately upon Seller's receipt of notice from Buyer;

(vi) in the event the Notice to Proceed Date has not occurred on or before the Notice to Proceed Outside Date, effective immediately upon Seller's receipt of notice from Buyer; [REDACTED]

(vii) if any Authority shall have issued an Order or taken any other action materially restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order or other action shall have become final and nonappealable; or

(viii) [REDACTED]

(b) Termination by Seller. This Agreement may be terminated prior to the Closing by Seller upon written notice to Buyer of such termination as follows:

(i) in the event the conditions precedent to Closing set forth in Section 8.1 have not been fulfilled or waived, on or before the Outside Date, effective immediately upon Buyer's receipt of notice from Seller; *provided, however,* that Seller may not terminate this Agreement pursuant to this Section 11.1(b)(i) if (x) Seller's failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the occurrence of the Closing or failure of any such conditions precedent to be fulfilled on or prior to such date or (y) solely

until the date that is [REDACTED], an event of Force Majeure has been the cause of, or resulting in, the failure of the occurrence of the Closing or failure of any such condition precedent to be fulfilled on or prior to such date;

(ii) if Buyer has materially breached any of its representations, warranties, covenants or agreements of Buyer under this Agreement, where the effect of such breach would be to cause the conditions contained in Section 8.1 incapable of fulfillment by [REDACTED] provided, that (other than with respect to a breach of Buyer's obligation to pay the Purchase Price in accordance with the terms of ARTICLE II) Seller has given Buyer at least [REDACTED] prior notice of the breach and Buyer has not cured such breach in all material respects during such [REDACTED], provided, however, that if, at the end of such [REDACTED], Buyer is endeavoring in good faith, and proceeding diligently, to cure such breach, Buyer shall have an additional [REDACTED] in which to effect such cure;

(iii) upon the occurrence of a Bankruptcy Event with respect to Buyer, effective immediately upon Buyer's receipt of notice from Seller;

(iv) in the event the Notice to Proceed Date has not occurred on or before the Notice to Proceed Outside Date, effective immediately upon Buyer's receipt of notice from Seller; provided, however, that Seller may not terminate this Agreement pursuant to this Section 11.1(b)(iv) if the failure of the conditions to issuance of Notice to Proceed set forth in Section 3.10 to be fulfilled by the Notice to Proceed Outside Date resulted from Seller's material breach of this Agreement;

(v) all of the conditions to Closing set forth in ARTICLE VII have been satisfied (other than such closing conditions that by their nature are to be satisfied by a Party at the Closing) or waived in writing by the applicable Party, Seller indicates to Buyer by written notice that Seller is ready, willing and able to consummate the transactions contemplated hereby (subject to Buyer performing at the Closing) and Buyer fails to consummate the transactions contemplated hereby within [REDACTED];

(vi) if any Authority shall have issued an Order or taken any other action materially restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order or other action shall have become final and nonappealable;

(vii) [REDACTED]

(viii) if the Commission Approvals are not received by the Commission Approval Deadline or Commission Approvals are denied and, in either case, Buyer has not exercised its termination right under Section 11.1(a)(i) [REDACTED]



Section 11.2 Effect of Termination. Upon termination, the Parties shall have no further liabilities or obligations under this Agreement, except that

(a) the applicable provisions of ARTICLE X and ARTICLE XI shall continue to apply following any such termination,

(b) each Party shall continue to be liable for any material breach by such Party of its representations, warranties or covenants contained in this Agreement occurring prior to such termination,

(c) if this Agreement is validly terminated by Buyer pursuant to (i) Section 11.1(a)(ii) (Letter of Credit), (ii) Section 11.1(a)(iii) (Closing) as a result of the failure of the Closing conditions to be satisfied is due to Seller's material breach of this Agreement, (iii) Section 11.1(a)(iv) (Seller Breach), (iv) Section 11.1(a)(v) (Seller Bankruptcy), or (v) Section 11.1(a)(vi) (Notice to Proceed) and such failure to deliver Notice to Proceed is not due to failure of the conditions set forth in Section 3.10(a), (b), (f), or (k) to have been satisfied, and is due to Seller's material breach of this Agreement, then Seller shall pay a termination payment to Buyer, as liquidated damages and as Buyer's sole and exclusive remedy for the failure of Notice to Proceed to occur, in an amount equal to all reasonable and documented costs and expenses incurred by Buyer in connection with the negotiation of this Agreement and pursuit of the transactions contemplated hereby prior to the date of such termination, in an amount not to exceed \$ [REDACTED]; and

(d) if this Agreement is validly terminated by Seller pursuant to (i) Section 11.1(b)(i) (Closing) as a result of the failure of the Closing conditions to be satisfied is due to Buyer's material breach of this Agreement, (ii) Section 11.1(b)(ii) (Buyer Breach), (iii) Section 11.1(b)(iii) (Buyer Bankruptcy), (iv) Section 11.1(b)(iv) (Notice to Proceed) and such failure to deliver Notice to Proceed is due to a failure of Buyer to satisfy the condition set forth in Section 3.10(f) or a material breach by Buyer of any of its representations, warranties and covenants herein, or (v) Section 11.1(b)(v) (Refusal to Close) Buyer shall pay a termination payment to Seller, as liquidated damages and as Seller's sole and exclusive remedy for the failure of Notice to Proceed to occur, in an amount equal to all reasonable and documented costs and expenses incurred by Seller in connection with the negotiation of this Agreement and pursuit of the transactions contemplated hereby prior to the date of such termination, in an amount not to exceed \$ [REDACTED].

(e) except as set forth in Section 11.2(c) and Section 11.2(d), if this Agreement is validly terminated by Buyer pursuant to Section 11.1(a) or by Seller pursuant to Section 11.1(b), no termination payment shall be due and payable by either Party.

ARTICLE XII MISCELLANEOUS

Section 12.1 Payment Instructions. All amounts payable under this Agreement shall be made pursuant to the payment instructions provided by the payee of such amount to the payor thereof in writing at least [REDACTED] before the date on which such payment is due.

Section 12.2 Disclaimer. THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN ARTICLE V AND THE ANCILLARY AGREEMENTS TO WHICH SELLER IS A PARTY ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER STATUTORY, WRITTEN OR ORAL, EXPRESS OR IMPLIED. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V AND THE ANCILLARY AGREEMENTS TO WHICH SELLER IS A PARTY, AND SELLER PROVIDES NO OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PURCHASED INTERESTS, COMPANY, THE COMPANY ASSETS, OR THE PROJECT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE ANCILLARY AGREEMENTS TO WHICH SELLER IS A PARTY, SELLER MAKES NO REPRESENTATION OR WARRANTY TO BUYER, INCLUDING WITH RESPECT TO ANY FINANCIAL PROJECTIONS, FORECASTS OR FORWARD LOOKING STATEMENTS OF ANY KIND OR NATURE WHATSOEVER, INCLUDING IN RELATION TO COMPANY, THE PURCHASED INTERESTS, THE COMPANY, THE COMPANY ASSETS, OR THE PROJECT.

Section 12.3 Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; *provided, however*, that no such consent shall be required with respect to (a) the assignment or collateral assignment of this Agreement by Seller to, or for the benefit of, the Financing Parties, or any assignment by the Financing Parties following a default and exercise of remedies under the Construction Loan Agreement or security documents entered into in connection therewith and (b) the assignment by Buyer to an Affiliate operating company that is authorized to own energy generation projects in the PJM territory so long as such Affiliate operating company has a Credit Rating that is equal to or better than Buyer's Credit Rating as of the Execution Date or Buyer or such Affiliate operating company provides Seller performance security acceptable to Seller in its sole discretion.

Section 12.4 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement, including all documents delivered pursuant to this Agreement, shall be in writing (which may include electronic mail) and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express or UPS); upon receipt, if sent by certified or registered mail, return receipt requested; and upon transmission by the sender to the correct electronic mail address, if sent by electronic mail. In each case notice shall be sent to:

If to Seller, to:

Mayapple Solar Holdings, LLC

[REDACTED]
Attn: [REDACTED]
Email: [REDACTED]

If to Buyer, to:

Indiana Michigan Power Company
c/o American Electric Power Service Corporation

[REDACTED]
Attn: [REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

With a copy to (which copy shall not constitute notice hereunder):

Indiana Michigan Power Company

[REDACTED]
Attn: [REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

or to such other place and with such other copies as a Party may designate as to itself by written notice to the other Party.

Section 12.5 Choice of Law; Consent to Jurisdiction; Service of Process.

(a) Governing Law. This Agreement shall be construed, interpreted and the rights of the Parties determined in accordance with the Laws of the State of New York without reference to its choice of law provisions.

(b) Executive Dispute Resolution. [REDACTED]

[REDACTED]

[REDACTED]

(c) Jurisdiction. The Parties hereby irrevocably submit to the exclusive jurisdiction of the federal or state courts located in the State of New York over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby; and each Party hereby irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such federal courts unless such federal courts do not have jurisdiction in which event such dispute or proceeding shall be heard and determined in such state courts. Each Party hereby 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 such dispute brought in such court or any defense of inconvenient forum.

(d) Service of Process. Each of the Parties hereby consents to process being served by the other Party to this Agreement in any suit, action or proceeding of the nature specified in Section 12.5(c) by mailing of a copy thereof in accordance with the provisions of Section 12.4 hereof.

(e)

[REDACTED]

Section 12.6 Waiver of Jury Trial. EACH OF THE PARTIES WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.7 Entire Agreement; Amendments and Waivers. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all

prior agreements and commitments with respect thereto. No supplement, modification or waiver of this Agreement or waiver of any breach of or failure to comply with any representation, warranty, covenant, agreement or condition herein shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement or waiver of any breach of or failure to comply with any representation, warranty, covenant, agreement or condition herein shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) or any other breach of or failure to comply with any representation, warranty, covenant, agreement or condition herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 12.8 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.9 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein (other than a requirement to make payments hereunder), shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

Section 12.10 Titles. The recitals to this Agreement and the titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Section 12.11 Third Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Buyer Indemnified Parties and Seller Indemnified Parties shall be third party beneficiaries of this Agreement, *provided* that only Seller or Buyer may enforce the provisions hereof on behalf of their respective indemnified parties. Except as provided in this Section 12.11, there shall be no third-party beneficiaries of this Agreement.

Section 12.12 Cumulative Remedies. Subject to the terms of this Agreement, all rights and remedies of either Party hereto are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

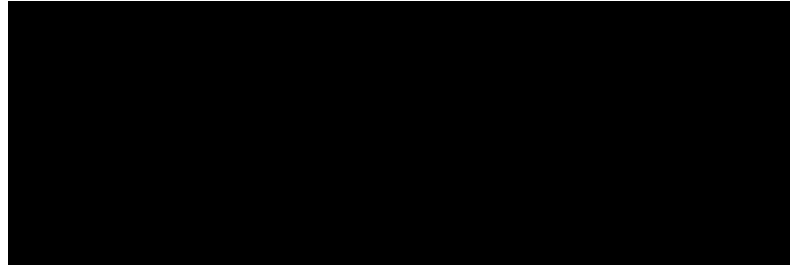
Section 12.13 No Partnership or Joint Venture. The Parties do not intend to create a partnership or joint venture by virtue of this Agreement. No Party shall owe any fiduciary duty to any other Party by virtue of this Agreement or any Ancillary Agreement or otherwise.

Section 12.14 No Merger. This Agreement is a fully integrated complete agreement and is not merged with or extinguished by any other agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:



BUYER:

[REDACTED]

[REDACTED] _____

BUYER AGENT:

[REDACTED]

[REDACTED] _____

SCHEDULES

to the

PURCHASE AND SALE AGREEMENT

BY AND AMONG

INDIANA MICHIGAN POWER COMPANY,
as Buyer

AND,

solely with respect to its agency relationship with Buyer,

AMERICAN ELECTRIC POWER SERVICE CORPORATION,
as Buyer Agent

AND

MAYAPPLE SOLAR HOLDINGS, LLC,

as Seller.

DATED AS OF MARCH 24, 2023

General Terms

These Schedules are being delivered in accordance with, and are incorporated into and made part of the Purchase and Sale Agreement (the “**Agreement**”) entered into as of March 24, 2023, by and between Mayapple Solar Holdings, LLC, a Delaware limited liability company (the “**Seller**”), Indiana Michigan Power Company, an Indiana corporation (the “**Buyer**”), and solely with respect to its agency relationship with Buyer hereunder, American Electric Power Service Corporation, a New York corporation (“**Buyer Agent**”). Capitalized terms used in the Schedules but not otherwise defined herein will have the meaning given to such terms in the Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

Schedule 1.1(a)
Buyer's Knowledge

[Redacted]

Schedule 1.1(b)
Excluded Assets

[Redacted]

Schedule 1.1(c)
Project and Facilities

[Redacted]

Schedule 1.1(d)
Seller's Knowledge

[Redacted]

Schedule 1.1(e)
Calculation of Updated Property Burdens Adjustment

[Redacted]

Attachment 1 to Schedule 1.1(e)

[Redacted]

Schedule 1.1(f)
Permitted Liens

[Redacted]

Schedule 3.4(a)
Facilities Location Layout

[Redacted]

Schedule 3.13
Pre-Closing Required Insurance Policies

[Redacted]

Schedule 4.4
Post-Closing Intercompany Contracts

[Redacted]

Schedule 5.4
Seller Consents and Approvals

[Redacted]

Schedule 5.6
Seller Litigation

[Redacted]

Schedule 5.7
Compliance with Law

[Redacted]

Schedule 5.8
Environmental Matters

[Redacted]

Schedule 5.11(a)
Property Agreements

[Redacted]

Schedule 5.11(h)

Rents

[Redacted]

Schedule 5.12(a)
Real Property Exceptions

[Redacted]

Schedule 5.12(b)
Litigation

[Redacted]

Schedule 5.12(c)
Surface Rights

[Redacted]

Schedule 5.12(d)
Option Exceptions

[Redacted]

Schedule 5.12(e)
Condemnation

[Redacted]

Schedule 5.12(f)
Access Exceptions

[Redacted]

Schedule 5.12(g)
Fee Interests

[Redacted]

Schedule 5.13(a)
Material Contracts

[Redacted]

Schedule 5.13(b)(iii)
Material Defaults

[Redacted]

Schedule 5.13(b)(v)
No Notice of Termination, Cancellation or Non-Renewal

[Redacted]

Schedule 5.13(b)(viii)
No Outstanding Indemnification Claims

[Redacted]

Schedule 5.13(c)
Material Contract Claims

[Redacted]

Schedule 5.14(a)
Company Permits

[Redacted]

Schedule 5.14(b)
Exceptions to Company Permits

[Redacted]

Schedule 5.15
Finders

[Redacted]

Schedule 5.17
Solar Data

[Redacted]

Schedule 5.18
Insurance

[Redacted]

Schedule 5.22(b)
Undisclosed Liabilities

[Redacted]

Schedule 5.22(c)
Certain Changes

[Redacted]

Schedule 5.24
Labor Matters

[Redacted]

Schedule 5.27
Affiliate Transactions

[Redacted]

Schedule 5.29
Bank Accounts

[Redacted]

Schedule 5.31
Credit Support

[Redacted]

Schedule 6.4
Buyer Consents and Approvals

[Redacted]

Schedule 6.5
Buyer Litigation

[Redacted]

Exhibit B

Form of Property Agreement Estoppel

[Redacted]

Exhibit C
Form of EPC Contract
[Redacted]

Exhibit D

Form of Excluded Assets and Liabilities

Assignment Agreement

[Redacted]

Exhibit E-1

Form of Mechanical Completion Certificate

Date: [•], 202[•]

This Mechanical Completion Certificate (the “Certificate”) is provided in accordance with that certain Purchase and Sale Agreement by and between Mayapple Solar Holdings, LLC, a Delaware limited liability company (the “Seller”), Indiana Michigan Power Company, an Indiana corporation (the “Buyer”) and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation (“Buyer Agent”), dated as of March 24, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”).

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings specified in the Agreement.

Seller and [_____] (the “EPC Contractor”) hereby certify to Buyer that Mechanical Completion has been achieved.

SELLER:

MAYAPPLE SOLAR HOLDINGS, LLC

By: _____
Name: _____
Title: _____

EPC CONTRACTOR:

[_____]

By: _____
Name: _____
Title: _____

Accepted By:

BUYER:

INDIANA MICHIGAN POWER COMPANY

By: _____
Name: _____
Title: _____

Exhibit E-2

Form of Substantial Completion Certificate

Date: [•], 202[•]

This Substantial Completion Certificate (the “Certificate”) is provided in accordance with that certain Purchase and Sale Agreement by and between Mayapple Solar Holdings, LLC, a Delaware limited liability company (the “Seller”), Indiana Michigan Power Company, an Indiana corporation (the “Buyer”) and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation (“Buyer Agent”), dated as of March 24, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”).

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings specified in the Agreement.

Seller and [_____] (the “EPC Contractor”) hereby certify to Buyer that Substantial Completion has been achieved.

SELLER:

MAYAPPLE SOLAR HOLDINGS, LLC

By: _____
Name: _____
Title: _____

EPC CONTRACTOR:

[_____]

By: _____
Name: _____
Title: _____

Accepted By:

BUYER:

INDIANA MICHIGAN POWER COMPANY

By: _____
Name:
Title:

Exhibit E-3
Form of Final Completion Certificate

This Final Completion Certificate (the “Certificate”) is provided in accordance with that certain Purchase and Sale Agreement by and between Mayapple Solar Holdings, LLC, a Delaware limited liability company (the “Seller”), Indiana Michigan Power Company, an Indiana corporation (the “Buyer”) and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation (“Buyer Agent”), dated as of March 24, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”).

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings specified in the Agreement.

Seller and [_____] (the “EPC Contractor”) hereby certify to Buyer that Final Completion has been achieved.

SELLER:

MAYAPPLE SOLAR HOLDINGS, LLC

By: _____
Name: _____
Title: _____

EPC CONTRACTOR:

[_____]

By: _____
Name: _____
Title: _____

Accepted By:

BUYER:

INDIANA MICHIGAN POWER COMPANY

By: _____
Name: _____
Title: _____

Exhibit F

[Reserved]

Exhibit G

Form of Letter of Credit

[Redacted]

Exhibit H

Form of Major Project Document Estoppels

[Redacted]

Exhibit I

Form of Project Finance Letter

[Redacted]

Exhibit J

Form of Module Supply Agreement

[Redacted]

Exhibit K
Form of Notice to Proceed

NOTICE TO PROCEED (dated _____, 20__)

TO: Mayapple Solar Holdings, LLC

[REDACTED]

Attn: [REDACTED]

Contract: That certain Purchase and Sale Agreement, dated as of March 24, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “PSA”), between Mayapple Solar Holdings, LLC (“Seller”), Indiana Michigan Power Company, an Indiana corporation (the “Buyer”), and solely with respect to its agency relationship with Buyer thereunder, American Electric Power Service Corporation, a New York corporation (“Buyer Agent”).

Project: Mayapple Solar Project (the “*Project*”).

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the PSA. Pursuant to Section 3.10 of the PSA, this notice shall constitute the Notice to Proceed under the PSA and you are hereby notified to continue the Work on the Project in compliance with all obligations, covenants, terms and conditions contained herein and in the PSA.

Sincerely,

INDIANA MICHIGAN POWER COMPANY

By: _____

Name:

Title:

Exhibit L

[Reserved]

Exhibit M
Scope of Work and Specifications
[Redacted]

Exhibit N
Form of Seller Parent Guaranty
[Redacted]

Exhibit O

Mechanical, Substantial, and Final Completion

[Redacted]

Exhibit P

Form of Monthly Report

[Redacted]

Exhibit Q

Form of Membership Interest Assignment Agreement

[Redacted]

Exhibit R

Form of Seller Release

[Redacted]

Exhibit S

New Solar Energy Land Contract

[Redacted]

Exhibit T

AEP Supplier Code of Conduct

[Redacted]

Exhibit U

Approved Contractor List

[Redacted]

Exhibit V

Form of Consent and Recognition Agreement

[Redacted]

Exhibit W

Form of Lease Amendment

[Redacted]

Exhibit X

[Reserved]

Exhibit Y

Initial PVSyst Report Assumptions

[Redacted]

**RENEWABLE ENERGY PURCHASE AGREEMENT
FOR
SOLAR ENERGY RESOURCES**

BETWEEN

SCULPIN SOLAR LLC

AND

INDIANA MICHIGAN POWER COMPANY

March 24, 2023

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION	1
1.1 Rules of Construction.	1
1.2 Interpretation with Interconnection Agreement.	2
1.3 Interpretation of Arrangements for Electric Supply to the Facility.	3
1.4 Definitions.....	3
ARTICLE 2 TERM AND TERMINATION	21
ARTICLE 3 FACILITY DESCRIPTION	21
3.1 Summary Description.	21
3.2 Location.....	21
3.3 General Design of the Facility.....	22
3.4 [REDACTED]	22
ARTICLE 4 COMMERCIAL OPERATION	22
4.1 Commercial Operation.....	22
4.2 Wildlife Studies and Siting.	23
4.3 Environmental Site Assessment.	23
4.4 Facility Contracts.....	23
4.5 Progress Reports.....	24
4.6 Purchaser's Rights During Construction.	24
4.7 Conditions to Commercial Operation.....	24
4.8 Pre-Delivery Period Renewable Energy Production.	27
4.9 QF Waiver.	27
4.10 [REDACTED]	27
4.11 [REDACTED]	27
4.12 [REDACTED]	28
ARTICLE 5 DELIVERY AND METERING	29
5.1 Seller's and Purchaser's Obligations.	29
5.2 Required Operation.	29
5.3 Delivery Arrangements.	29
5.4 Electric Metering Devices.	30
5.5 Adjustment for Inaccurate Meters.....	31

TABLE OF CONTENTS
(continued)

	Page
5.6 Scheduling Arrangements.	32
ARTICLE 6 CONDITIONS PRECEDENT.....	34
6.1 Purchaser Conditions Precedent.....	34
6.2 [REDACTED]	35
ARTICLE 7 SALE AND PURCHASE OF RENEWABLE ENERGY	35
7.1 Sale and Purchase.	35
7.2 Guaranteed Availability.....	36
7.3 Title and Risk of Loss.	36
7.4 Curtailments.	37
7.5 Renewable Energy Incentives.	38
ARTICLE 8 PAYMENT CALCULATIONS	38
8.1 Payments at Contract Rate.	38
8.2 No Payment Obligation.....	38
ARTICLE 9 BILLING AND PAYMENT.....	39
9.1 Billing Invoices.....	39
9.2 Payments.	39
9.3 Billing Disputes.	39
ARTICLE 10 OPERATIONS AND MAINTENANCE	40
10.1 Facility Operation.....	40
10.2 Outage and Performance Reporting.....	40
10.3 Contract Administration Committee and Contract Administration Procedures.	41
10.4 Access to Facility.....	41
10.5 Reliability Standards.....	41
10.6 Beneficial Environmental Interests.	41
10.7 Forecasts.....	42
10.8 Planned Maintenance Schedule.....	42
10.9 REC Certification.	43
10.10 Public Statements/Other Use.	44
10.11 Real-Time Information.	44

TABLE OF CONTENTS
(continued)

	Page
10.12 Web-Based Operational Reporting.....	44
ARTICLE 11 SECURITY FOR PERFORMANCE.....	45
11.1 Seller Security Fund.....	45
11.2 [REDACTED].....	48
ARTICLE 12 DEFAULT AND REMEDIES.....	48
12.1 Events of Default of Seller.....	48
12.2 Facility Financiers' Right to Cure Default of Seller.....	50
12.3 Events of Default of Purchaser.....	50
12.4 Damages Prior to Termination.....	51
12.5 [REDACTED].....	51
12.6 [REDACTED].....	52
12.7 [REDACTED].....	52
12.8 [REDACTED].....	54
12.9 [REDACTED].....	54
12.10 Waiver and Exclusion of Other Damages.....	54
12.11 Payment of Damages.....	55
12.12 Duty to Mitigate.....	55
ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES.....	55
13.1 Notices in Writing.....	55
13.2 Representative for Notices.....	55
13.3 Authority of Representatives.....	56
13.4 Operating Records.....	56
13.5 Operating Log.....	56
13.6 Billing and Payment Records.....	56
13.7 Examination of Records.....	56
13.8 Exhibits.....	57
13.9 Dispute Resolution.....	57
ARTICLE 14 FORCE MAJEURE.....	59
14.1 Definition of Force Majeure.....	59
14.2 Applicability of Force Majeure.....	60

TABLE OF CONTENTS
(continued)

	Page
14.3 Limitations on Effect of Force Majeure	61
ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS	61
15.1 Seller's Representations, Warranties and Covenants	61
15.2 Purchaser's Representations, Warranties and Covenants	63
ARTICLE 16 INSURANCE	64
16.1 Evidence of Insurance	64
16.2 Term and Modification of Insurance	64
ARTICLE 17 [REDACTED]	65
17.1 [REDACTED]	65
17.2 [REDACTED]	65
17.3 [REDACTED]	66
17.4 [REDACTED]	66
ARTICLE 18 LEGAL AND REGULATORY COMPLIANCE	66
18.1 Compliance with Laws	66
18.2 Cooperation	66
18.3 Removal of Facility	67
ARTICLE 19 ASSIGNMENT, SUBCONTRACTING, AND FINANCING	67
19.1 No Assignment Without Consent	67
19.2 Right of First Offer	68
19.3 [REDACTED]	69
19.4 Accommodation of Facility Financiers	71
19.5 Notice of Facility Financier Action	71
19.6 Transfer Without Consent is Null and Void	71
ARTICLE 20 MISCELLANEOUS	72
20.1 Waiver	72
20.2 Taxes	72
20.3 Fines and Penalties	73
20.4 Rate Changes	73
20.5 Disclaimer of Third Party Beneficiary Rights	73
20.6 Relationship of the Parties	74

TABLE OF CONTENTS
(continued)

	Page
20.7 Equal Employment Opportunity Compliance Certification.	74
20.8 Survival of Obligations.	74
20.9 Severability.	74
20.10 Complete Agreement; Amendments.	75
20.11 Binding Effect.	75
20.12 Headings.	75
20.13 Counterparts.	75
20.14 Governing Law.	75
20.15 Confidentiality.	75
20.16 Forward Contract.	76

TABLE OF CONTENTS

EXHIBIT A	FACILITY DESCRIPTION AND SITE MAP
EXHIBIT B	CONTRACT RATE
EXHIBIT C	NOTICE ADDRESSES
EXHIBIT D	INSURANCE COVERAGE
EXHIBIT E	CALCULATION OF ANNUAL PERFORMANCE RATIO
EXHIBIT F	POINT OF DELIVERY
EXHIBIT G	[REDACTED]
EXHIBIT H	CALCULATION OF [REDACTED]
EXHIBIT I	FORM OF AVAILABILITY NOTICE
EXHIBIT J	FORM OF LETTER OF CREDIT
EXHIBIT K	FORM OF GUARANTY
EXHIBIT L	FORM OF CONSENT AND AGREEMENT
EXHIBIT M	DESIGN STANDARDS
EXHIBIT N	FORM OF PROGRESS REPORT

RENEWABLE ENERGY PURCHASE AGREEMENT
BETWEEN
SCULPIN SOLAR LLC
AND
INDIANA MICHIGAN POWER COMPANY

This Renewable Energy Purchase Agreement (the "REPA") is made this 24th day of March 2023 (the "Effective Date"), by and between Sculpin Solar LLC ("Seller"), a Delaware limited liability company, with a principal place of business at 15445 Innovation Drive, San Diego, California 92128 and Indiana Michigan Power Company ("Purchaser"), an Indiana corporation, with a principal place of business at c/o American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2355. Seller and Purchaser are hereinafter referred to individually as a "Party" and collectively as the "Parties".

INTRODUCTION

WHEREAS Seller desires to develop, design, construct, own or lease and operate a solar photovoltaic electric generating facility with a total nameplate capacity of 180 MW AC, and which is further defined below as the "Facility"; and

WHEREAS Seller intends to locate the Facility in DeKalb County, Indiana, and to interconnect the Facility with the Transmission Provider's System; and

WHEREAS Seller desires to sell and deliver to Purchaser at the Point of Delivery all of the Renewable Energy Products generated by the Facility, and Purchaser desires to buy the same from Seller; and

WHEREAS Purchaser has accepted Seller's offer to sell such Renewable Energy Products in accordance with the terms and conditions set forth in this REPA.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS AND RULES OF INTERPRETATION

1.1 Rules of Construction.

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this REPA, whether in the singular or the plural or in the present or past tense. Other terms used in this REPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and

generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter.
- (B) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this REPA.
- (C) The Exhibits attached hereto are incorporated in and are intended to be a part of this REPA; provided, that in the event of a conflict between the terms of any Exhibit and the terms of Articles 1 through 20 of this REPA, the terms of Articles 1 through 20 of this REPA shall take precedence.
- (D) This REPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this REPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this REPA or any part hereof.
- (E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this REPA. Unless expressly provided otherwise in this REPA, (i) where this REPA requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever this REPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.
- (F) Each reference in this REPA to any agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time.
- (G) Each reference in this REPA to applicable laws and to terms defined in, and other provisions of, applicable laws (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
- (H) Each reference in this REPA to a Person includes its successors and permitted assigns and, in the case of a Governmental Authority, any Person or Persons succeeding, in whole or in part, to its functions and capacities.
- (I) In this REPA, the words "include," "includes" and "including" are to be construed as being at all times followed by the words "without limitation."

1.2 Interpretation with Interconnection Agreement.

(A) The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider and the Transmission Operator.

(B) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this REPA are not binding upon the Interconnection Provider or the Transmission Operator.

(C) Except as expressly stated in this REPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the Interconnection Provider or the Transmission Operator.

(D) Seller expressly recognizes that, for purposes of this REPA, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Purchaser or an Affiliate of Purchaser.

1.3 Interpretation of Arrangements for Electric Supply to the Facility.

(A) The Parties recognize that this REPA does not provide for the supply of any electric service by Purchaser to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility, including the supply of start-up and shutdown house power and Energy.

(B) The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements and that the terms of this REPA are not binding upon the supplier of such electric services.

(C) Notwithstanding any other provision in this REPA, nothing in the arrangements for the supply of retail electric services to the Facility shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the supplier of such retail electric services.

(D) Seller expressly recognizes that, for purposes of this REPA, the supplier of retail electric services to the Facility shall be deemed to be a separate entity and separate contracting party whether or not the arrangements for the supply of retail electric services to the Facility is entered into with Purchaser or an Affiliate of Purchaser.

1.4 Definitions.

The following terms shall have the meanings set forth below when used herein:

“AAA” shall have the meaning set forth in Section 13.9(A)(1).

"Abandonment" means, on and after the Commercial Operation Date, the relinquishment of all possession and control of the Facility by Seller, other than a transfer permitted under this REPA.

“AC” means alternating current.

“Acceptable Credit Rating” means a Credit Rating of (a) BBB- or better from Standard & Poor’s Rating Services and (b) Baa3 or better from Moody’s Investors Service, Inc.

"Acceptable Issuing Bank" means a United States commercial bank or a foreign bank with a United States branch, which United States commercial bank or United States branch has at the applicable time a Credit Rating of (a) A- or better from Standard & Poor’s Rating Services and (b) A3 or better from Moody’s Investors Service, Inc.

“Actual Availability” shall have the meaning set forth in Exhibit H.

"Affiliate" of any Person means any other Person that Controls, is under the Control of, or is under common Control with, the named entity.

“Alternate Tracking Program” shall have the meaning set forth in Section 10.9(B).

"Ancillary Services" means regulation and frequency response services, energy imbalance services, automatic generating control, spinning reserve, non-spinning reserve, replacement reserve, reactive power, voltage support and any other services that support the transmission of capacity and energy or the reliable operation of the Transmission Provider's System, all to the extent included as ancillary services in the Transmission Operator's open access transmission tariff, in each case, to the extent commonly sold or saleable.

“Applicable Law” means (a) any treaty, constitution, law, statute, ordinance, rule, judgment, injunction, writ, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority, (b) requirements of permits that apply to either or both of the Parties or their Affiliates, the Facility, the terms of this REPA or otherwise to the Person or matter in question and (c) the PJM Manuals and Agreements, state utility commission rules, and the requirements of NERC and any applicable regional reliability entity.

“Arbitration Notice” shall have the meaning set forth in Section 13.9(A)(1).

"Availability" means, [REDACTED]

[REDACTED]

"Availability Notice" shall have the meaning set forth in Section 10.7.

[REDACTED]

[REDACTED]

[REDACTED]

"Back-Up Metering" shall have the meaning set forth in Section 5.4(C).

"Beneficial Environmental Interests" means all Non-Power Attributes associated in any way, directly or indirectly, with the Facility and all RECs associated with such Non-Power Attributes, excluding Renewable Energy Incentives.

[REDACTED]

"Business Day" means any calendar day that is not a Saturday, a Sunday, or a NERC Holiday.

"Calculation Period" means [REDACTED]

"Capacity" means the output level, expressed in MW AC, that the Facility, or the components of equipment thereof, is capable, as of a given moment, of continuously producing and making available at the Point of Delivery, taking into account the operating condition of the equipment at that time, the auxiliary loads and other relevant factors. Capacity includes all installed capacity and unforced capacity attributed to the Facility by the Transmission Operator, RFC or any Governmental Authority, or that is commonly sold or saleable to third parties.

"Capacity Resource" shall have the meaning set forth in the OATT.

[REDACTED]

[REDACTED]

"Cash" shall have the meaning set forth in Section 11.1(C)(2).

"Change of Control" means

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Clock Hour" means sixty-minute increments commencing at the top of the hour on the clock (i.e., 12 o'clock).

"Close of the Business Day" means 5:00 PM EPT on a Business Day.

"Commercial Operation Date" or "COD" means the date that Seller provides notification to Purchaser, pursuant to Section 4.7, of Seller's declaration that all of the Conditions specified in Section 4.7 have occurred or otherwise been satisfied.

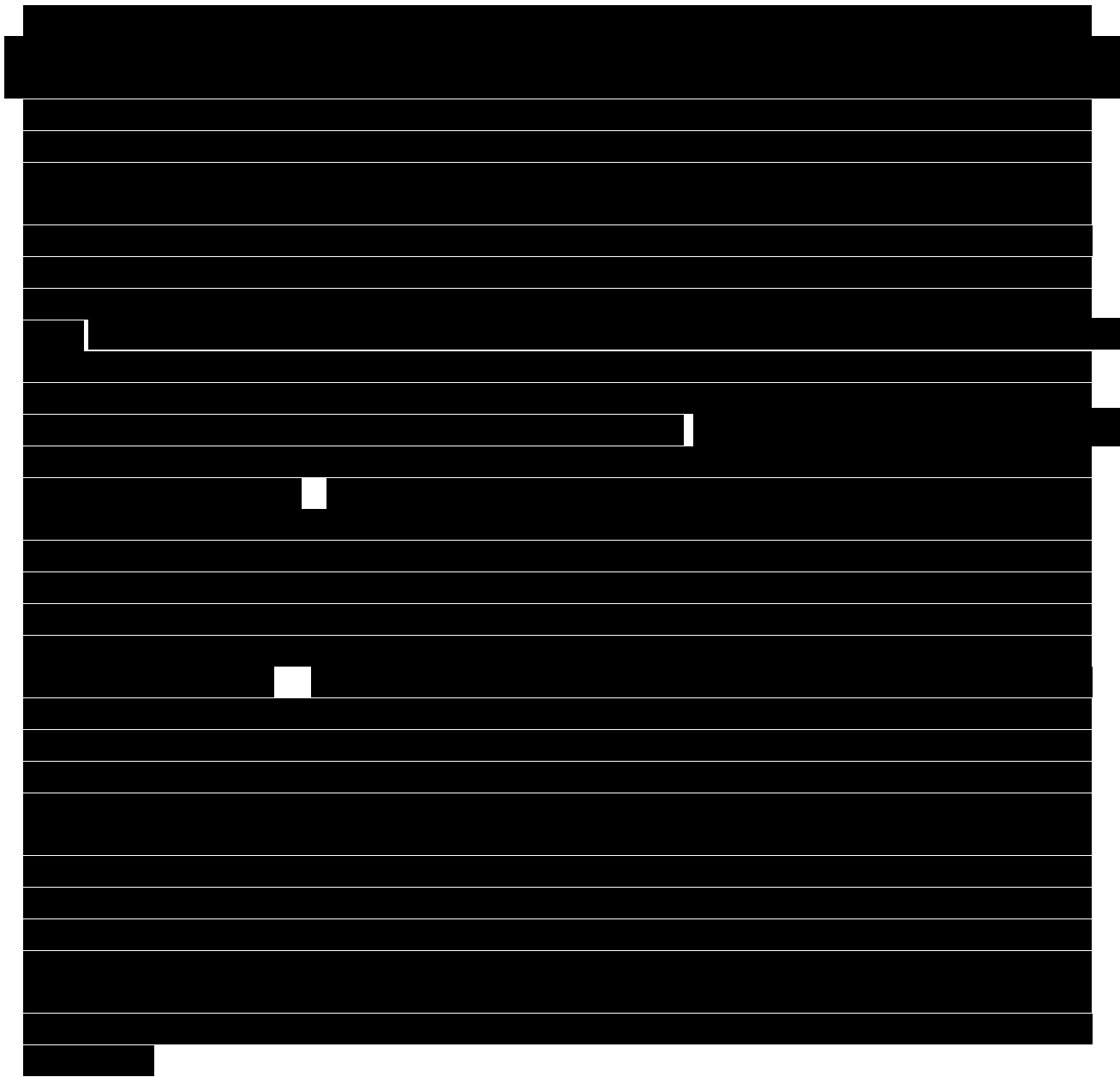
"Commercial Operation Milestone" means the anticipated Commercial Operation Date for the Facility. The Commercial Operation Milestone is specified as no later than December 15, 2025;

[REDACTED]

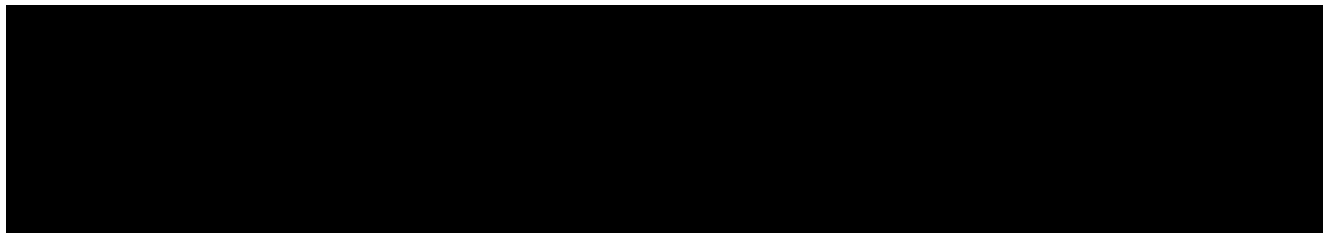
[REDACTED]

[REDACTED]

[REDACTED]



"Communications Equipment" means the communication circuits from the Facility to Purchaser for the purpose of telemetering, supervisory control and data acquisition and transmittal of real time data as described in Exhibit G and voice communications as reasonably required by Purchaser.





"Conditions" shall have the meaning set forth in Section 4.7.

"Consent and Agreement" means a Consent and Agreement in substantially the form of Exhibit L.

"Contract Administration Committee" means one representative each from Purchaser and Seller pursuant to Section 10.3.

"Contract Administration Procedures" means the contract administration procedures developed by Purchaser and Seller pursuant to Section 10.3.

"Contract Rate" means the applicable rate set forth in Exhibit B.

"Contract Year" means each full calendar year of the Term, whether such calendar year is comprised of 365 or 366 Days.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management of policies of a Person, whether through ownership interest, by contract or otherwise.

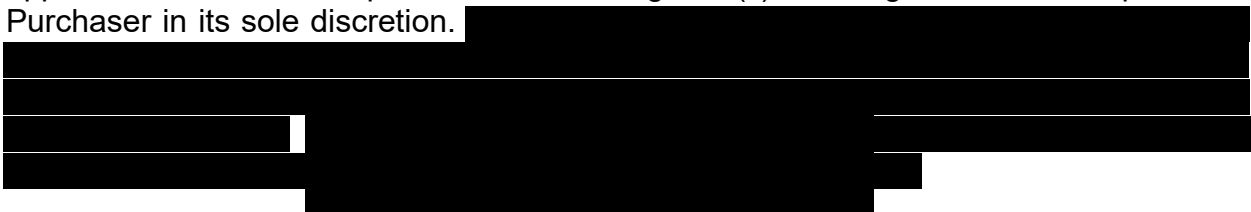
"Control Area" means the system of electrical generation, distribution, and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

"COVID-19" means the disease designated as COVID-19 or 2019-nCoV acute respiratory disease or the virus designated as SARS-CoV-2, 2019 novel coronavirus or 2019-nCoV, and variants.

"COVID-19 Effect" means any event of circumstance caused by, or resulting from, COVID-19. COVID-19 Effects may include, without limitation, work slowdown or stoppage, labor or material shortage, national, state or local emergency, and quarantine.

"Credit Rating" means, for any Person, the senior unsecured and non-credit-enhanced long term debt rating of such Person or, if such Person does not have a senior unsecured and non-credit-enhanced long term debt rating, the issuer rating of such Person.

"Creditworthy Entity" means (i) a United States Person having at the applicable time an Acceptable Credit Rating, or (ii) a foreign Person acceptable to Purchaser in its sole discretion.



[REDACTED]

"Day" means a calendar day.

"Daylight Minute" means [REDACTED]

"DC" means direct current.

[REDACTED]

"Delivery Period" means the period that commences at 0000 hours on the Commercial Operation Date and continues through the remainder of the Term.

"Design Requirements" shall have the meaning set forth in Section 3.3.

"Design Standards" means Seller's design standards attached hereto as Exhibit M.

"Dispute" shall have the meaning set forth in Section 13.9(A).

"Dispute Notice" shall have the meaning set forth in Section 13.9(A).

"Due Diligence Period" shall have the meaning set forth in Section 19.3(B).

[REDACTED]

"Effective Date" shall have the meaning set forth in the preamble of this REPA.

"Electric Metering Device(s)" means all meters, submeters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Renewable Energy from the Facility.

"Emergency" means an emergency condition as defined under the Interconnection Agreement or the OATT.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in MWh.

"Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character,

as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this REPA.

"EPT" means Eastern Prevailing Time.

"Event of Default" shall have the meaning set forth in Article 12.

"Expected Generation" means, with respect to the period in question, the total Renewable Energy that would have been generated by the Facility and delivered to the Point of Delivery, [REDACTED]

[REDACTED]

"Facility" means Seller's electric generating facility and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this REPA, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the generation facilities, including panels, inverters, step-up transformers, output breakers, facilities necessary to connect to the Point of Delivery, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy Products subject to this REPA.

"Facility Capacity" means [REDACTED]

"Facility Financing" means the obligations of Seller or its Affiliates to any Facility Financier pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, return of equity invested, return on equity invested, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Facility Financing Representative" means, during any period when there is only one Facility Financier, the Facility Financier, and during any period when there is more than one Facility Financier, any trustee or agent on behalf of the Facility Financiers or such other single representative designated in writing by Seller.

"Facility Financiers" means, collectively, any lenders, tax equity investors or any other financiers providing any Facility Financing.

"Failure to Extend Condition" shall have the meaning set forth in Section 11.1(C)(1).

"Failure to Replace Condition" shall have the meaning set forth in Section 11.1(D).

"Federal Funds Effective Rate" means the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H. 15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"FERC" means the Federal Energy Regulatory Commission.

"Final Non-Appealable Orders" means with respect to Indiana, a final non-appealable order from the Indiana Utility Regulatory Commission and, with respect to Michigan, a final non-appealable order from the Michigan Public Service Commission, in both cases (i) approving without modification this REPA, (ii) authorizing Purchaser to enter into this REPA, (iii) authorizing Purchaser to recover all of the Indiana or Michigan, as applicable, jurisdictional share of the costs associated with this REPA through an appropriate recovery mechanism(s) and (iv) otherwise acceptable to Purchaser in its sole discretion.

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, equity contribution or subscription agreements, partnership or limited liability agreements and other documents relating to the development, bridge, tax equity, construction or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, letter of credit facilities, and all such documents or agreements related to any refinancing or replacement of any of the foregoing, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

"Force Majeure" shall have the meaning set forth in Section 14.1(A).

"Forced Outage" means any condition at the Facility that requires unplanned removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from, among other things, immediate mechanical, electrical or other control system trips and operator-initiated trips in response to Facility conditions or alarms.

"Forecast" means either (a) a set of hourly generation volumes (in MWh – 24 one-hour incremental volumes) for the following day (day ahead market), or set of days for the day ahead market or (b) the real-time generation volume (in MWh), in each case, produced by Purchaser along with Purchaser's offer curve (\$/MWh) which is to be offered into PJM by Seller, throughout the Delivery Period.

"GATS" means the Generation Attribute Tracking System administered by PJM Environmental Information Services, Inc. ("PJM-EIS") and providing environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by Governmental Authorities. GATS tracks generation attributes and the ownership of the attributes as they are traded or used to meet standards of Governmental Authorities. GATS includes any successor tracking system or systems with the same or similar purpose administered by PJM-EIS.

"GATS Certificates" means certificates recognized by GATS and associated with the generation of electricity from the Facility.

"Good Utility Practice(s)" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the solar power generation industry, the Transmission Operator or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices are not intended to be the optimal practice, method or act to the exclusion of all others, but rather are intended to be any of the practices, methods or acts generally accepted for facilities similar to the Facility in the region in which the Facility is located during the relevant time period. With respect to the Facility, Good Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available in commercially reasonable quantities to meet the Facility's needs;

(B) sufficient operating personnel are available to operate the Facility on a 24 hour basis in accordance with reasonable solar industry operating practices for solar power generation equipment and are adequately experienced and trained and licensed as necessary to operate the Facility properly, efficiently, and in coordination with Purchaser and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that enables, to a commercially reasonable extent, reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to determine that equipment is functioning in compliance with this REPA;

(E) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or in violation of Applicable Law; and

(F) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations of this type in the region in which the Site is located and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site (which are not Force Majeure events) and under both normal and reasonably anticipated Emergency conditions (which are not Force Majeure events).

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Guaranteed Availability" shall have the meaning set forth in Section 7.2(A).

"Hazardous Materials" means any substance, material or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of nonhuman forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Independent Engineer" means an independent engineering firm that is nationally-recognized and mutually agreed by the Parties.

"Interconnection Agreement" means the separate generation interconnection agreement between Seller, the Interconnection Provider and the Transmission Operator for interconnection of the Facility to the Transmission Provider's System, as such agreement may be amended from time to time.

"Interconnection Facilities" means the facilities necessary to connect Transmission Provider's System to the Point of Delivery, including breakers, bus work, bus relays, and associated equipment installed by the Interconnection Provider for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Interconnection Facilities shall be governed by the Interconnection Agreement.

"Interconnection Provider" means the Transmission Operator or any Transmission Provider responsible for the operation of the Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Point of Delivery.

"Investment Tax Credits" means the investment tax credit under Section 38 of the Code and determined under Sections 46 and 48 of the Code.

"Issuer" means (a) with respect to a Security Fund in the form of a letter of credit or Cash, an Acceptable Issuing Bank, or (b) with respect to a Security Fund in the form of a payment guaranty, a Creditworthy Entity that is not engaged in any material dispute or litigation with Purchaser or any of its Affiliates.

"Locational Marginal Price" or "LMP" means the hourly or sub-hourly, as applicable, integrated market clearing marginal price for Energy, including losses and congestion, at or closest to the Point of Delivery.

"Market Participant" shall have the meaning set forth in the OATT.

[REDACTED]

[REDACTED]

"MW" means megawatt, an amount of power equal to 1,000 kilowatts or 1,000,000 watts.

"MWh" means megawatt-hour, an amount of power equal to 1,000 kilowatt-hours or 1,000,000 watt-hours.

"NERC" means the North American Electric Reliability Corporation.

"NERC Holiday" means every Day other than a Saturday or Sunday which the NERC declares to be a holiday for power scheduling purposes.

"Non-Power Attributes" means any characteristic of the Facility related to its benefits to the environment, including any avoided, reduced, displaced or off-set emissions of pollutants to the air, soil or water such as sulfur dioxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), mercury (Hg), particulates, and any other pollutant that is now or may in the future be regulated under federal, state or local pollution control laws, regulations or ordinances or any voluntary rules, guidelines or programs; and further include any avoided emissions of carbon dioxide (CO₂) and any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere. Non-Power Attributes do not include Renewable Energy Incentives.

"OATT" means the FERC filed Open Access Transmission Service Tariff of the Transmission Operator, as it may be amended and approved by FERC.

"Operating Records" means operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Party" or "Parties" shall have the meaning set forth in the preamble of this REPA.

"Party Representative" and "Parties' Representatives" shall have the meaning set forth in Section 13.9.

"Penalties" means penalties imposed by Governmental Authorities.

"Performance Ratio" means the Renewable Energy generated by the Facility divided by the total theoretical generation from the Facility that would be expected under Standard Test Conditions, taking into account the measured global horizontal irradiance incident on the collector plane, the module efficiency at Standard Test Conditions, and the total module collector area. The Performance Ratio for the first Contract Year and any partial calendar year following the Commercial Operation Date prior to the first Contract Year shall be calculated using acceptance testing data. The Performance Ratio for the second and each subsequent Contract Year shall be calculated by Seller at its cost as described in Exhibit E.

"Person" means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, Governmental Authority, or other entity.

"PJM" means PJM Interconnection, LLC.

"PJM Manuals and Agreements" means, collectively, (i) all instructions, rules, procedures and guidelines established by PJM, (ii) all documents and protocols issued by PJM and (iii) all agreements to which Seller, Purchaser or any Affiliates of Purchaser, on the one hand, and PJM, on the other hand, are parties, either bilaterally or in concert with other entities, as may be in effect from time to time, in each case for the operation, planning, and accounting requirements of PJM and the PJM Interchange Energy Market, including the OATT.

"PJM Node" means a pricing node established by PJM that represents the Facility or the closest PJM pricing node to the Facility.

"PJM Amounts" means any scheduling, imbalance or other penalties, fees or charges as are now or at any time in the future assessed or imposed by PJM for failure to satisfy requirements of the PJM Manuals and Agreements.

"Point of Delivery" means a line tap on the Varner to Sowers 138 kV line, as shown on Exhibit F, at which point the quantities of Renewable Energy and Ancillary Services delivered by the Facility are recorded and measured by the Interconnection Provider's revenue meters and corresponding pricing node.

"Power Station" means each of those structures within the Facility containing an inverter, a step-up transformer, internal switchgear and monitoring equipment.

"Pre-Delivery Period Renewable Energy Production" means all Renewable Energy Products which are produced by the Facility prior to the commencement of the Delivery Period.

"Pre-FNAO Security Fund" shall have the meaning set forth in Section 11.1(A).

"Project Assets" means the Facility, Seller's interest in the Site (including, without limitation, all fee and leasehold interests in properties and easements) and all of Seller's engineering, procurement, construction, operations, maintenance, environmental, regulatory and financial books and records related to the Facility and the Site, together with all other tangible and intangible assets owned, leased or otherwise held by Seller.

[REDACTED]

"Purchaser Representative" shall have the meaning set forth in Section 19.3(B).

"Qualified Operator" means a Person that has (i) substantial experience in operating and maintaining solar photovoltaic generation facilities in the United States and (ii) met all applicable requirements under Applicable Law for operating and maintaining the Facility, including the requirements of the Transmission Operator. A Person will be deemed to have such substantial experience if it is a Person who (a) together with its Affiliates, has, or (b) has entered into contracts for the operation of the Facility with a Person who has, in each case, at least [REDACTED] of experience in operating and maintaining solar photovoltaic electric generation facilities in the United States.

"Reliability Curtailment" means any real time curtailment of delivery of Renewable Energy resulting from (i) an Emergency, (ii) any other order or directive of the Interconnection Provider, the Transmission Provider, the Transmission Operator or the RFC, which order or directive may be directly communicated to Seller by the Interconnection Provider, the Transmission Provider, the Transmission Operator or the RFC or indirectly to Seller by Purchaser promptly upon receipt thereof, (iii) Seller's failure to maintain in full force and effect any permit, consent, license, approval, or authorization from any Governmental Authority required by law to construct or operate the Facility, or (iv) Seller's operation of the Facility in a manner inconsistent with Good Utility Practices.

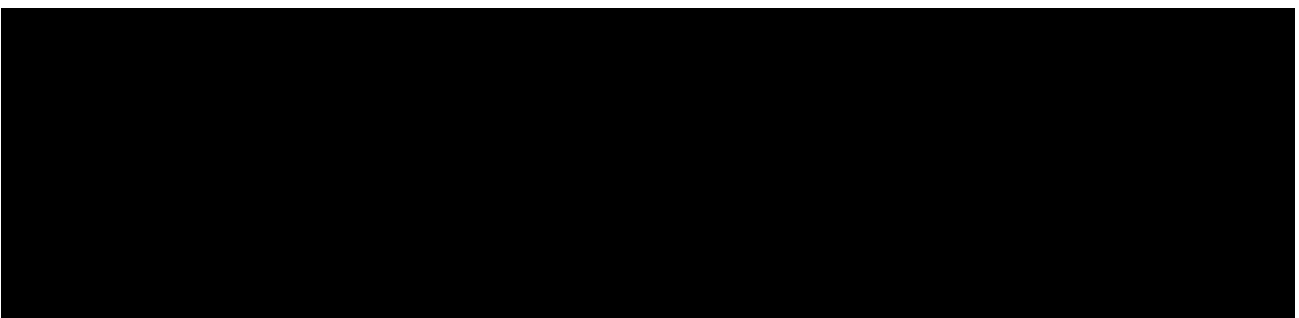
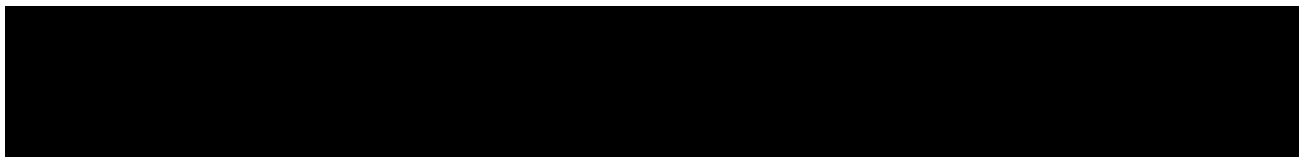
"Renewable Energy" means the net electric Energy generated exclusively by the Facility from the sun and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.4. Renewable Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

"Renewable Energy Certificate" or "REC" means any credit, certificate, allowance or similar right that evidences the amount of Renewable Energy generated by the Facility, whether arising pursuant to law, regulation, certification, markets, trading, off-set, private transaction, renewable portfolio standards, voluntary programs or otherwise. "RECs" excludes (i) any local, state or federal investment tax credit, depreciation deductions or other tax benefit to Seller based on ownership of, or Renewable Energy production from, any portion of the Facility, including the Renewable Energy Incentives, and (ii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Renewable Energy Incentive" means: (a) federal, state, and local tax credits or other tax incentives associated with the construction, ownership, or production of electricity from the Facility (including Investment Tax Credits, and credits under Sections 38 and 45 of the Internal Revenue Code as in effect from time to time during the Term and any grants paid in lieu thereof); (b) any federal, state, and local governmental or nongovernmental payments, grants or other negotiable attributes relating in any way to the Facility or the output thereof; and (c) any other form of incentive that is not a Non-Power Attribute or Beneficial Environmental Interest that is available with respect to the Facility.

"Renewable Energy Products" means, collectively, the Renewable Energy and Ancillary Services produced by the Facility and all of the associated Capacity, RECs and other Beneficial Environmental Interests.

"REPA" means this Renewable Energy Purchase Agreement between Seller and Purchaser, including the Exhibits attached hereto.



[REDACTED]

"RFC" means the ReliabilityFirst Corporation, one of the eight regional reliability councils approved by the North American Electric Reliability Corporation (NERC), and any successor regional reliability organization having jurisdiction over the Facility.

"ROFO Notice" shall have the meaning set forth in Section 19.2(A).

"ROFO Period" shall have the meaning set forth in Section 19.2(A).

"Rules" shall have the meaning set forth in Section 13.9(A)(1).

"Scheduled Outage" means a planned interruption or reduction of the Facility's generation by Seller that both (i) has been coordinated in advance with Purchaser, with a mutually agreed start date and duration in accordance with Section 10.8, and (ii) is required for inspection, or preventive or corrective maintenance.

"Security Fund" means the performance security that Seller is required to establish and maintain, pursuant to Section 11.1, as security for its performance under this REPA.

[REDACTED]

[REDACTED]

"Seller's Interconnection Facilities" means the equipment between the high side disconnect of the step-up transformer and the Point of Delivery, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's System at the Point of Delivery, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the high side of the step-up transformer it includes Seller's load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Site and is conceptually depicted in Exhibit A to this REPA.

[REDACTED]

[REDACTED]

[REDACTED]

"Site" means the parcel or parcels of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Section 3.2 and Exhibit A to this REPA.

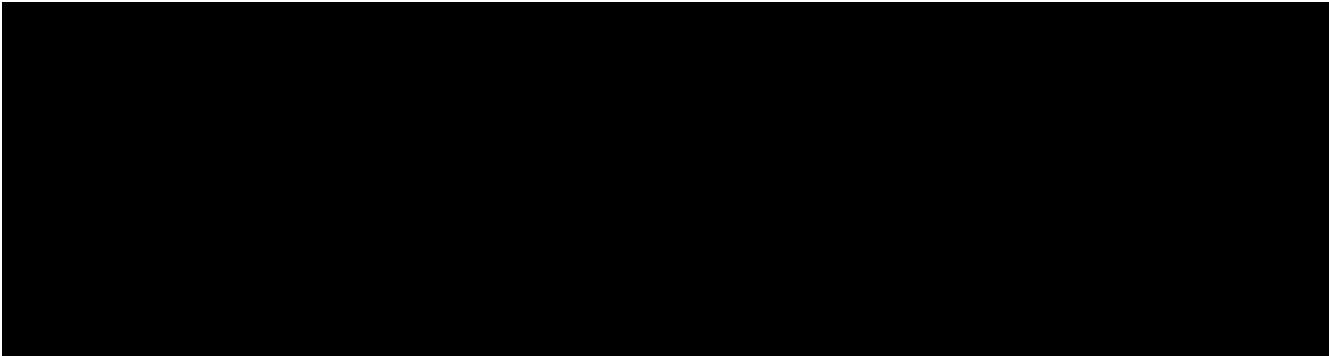
"Solar Unit" means each unit of devices for collecting sunlight and generating electricity at the Facility, consisting of photovoltaic modules, a Power Station, and associated racking systems, collection lines, circuits and related equipment.

"Standard Test Conditions" means the conditions at which the photovoltaic (PV) modules comprising the Facility are tested to determine the module nominal power output and performance characteristics. The Standard Test Conditions are defined to be 1000 W/m², a relative air mass of 1.5, and 25°C (77°F) cell temperature.

"Target Facility Capacity" means 180 MW AC.

"Tax" or "Taxes" shall have the meaning set forth in Section 20.2(B).

"Term" means the period of time during which this REPA shall remain in full force and effect, and which is further defined in Article 2.



"Transmission Operator" means PJM or any successor independent system operator, regional transmission operator or other transmission operator from time to time having authority to control the transmission Control Area to which the Facility is interconnected.

"Transmission Provider" means any Person or Persons that owns, operates or controls facilities used for the transmission of Energy from the Facility in interstate commerce.

"Transmission Provider's System" means the contiguously interconnected electric transmission facilities, including Interconnection Provider's Interconnection Facilities, over which the Transmission Provider has rights to manage the bulk transmission of Capacity and Energy from the Point of Delivery.



“Weather Station” shall have the meaning set forth in Section 3.3(D).

“Wildlife Permit Restrictions” means any (i) incidental take permit issued to Seller or (ii) avian, bat or other wildlife mitigation plan imposed on Seller, by the United States Fish and Wildlife Service, in either case that restricts Seller’s ability to lawfully operate the Facility.

ARTICLE 2 TERM AND TERMINATION

This REPA shall become effective as of the date of its execution, and shall remain in full force and effect until the end of the Contract Year in which the thirtieth (30th) anniversary of the Commercial Operation Date occurs (the “Term”), unless terminated earlier in accordance with the terms and conditions hereof. Applicable provisions of this REPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this REPA, repayment of principal and interest associated with the Security Fund, the indemnifications specified in this REPA, and the resolution of Disputes between the Parties.

ARTICLE 3 FACILITY DESCRIPTION

3.1 Summary Description.

Seller shall construct, own, operate, and maintain the Facility, which shall consist of solar modules and associated equipment having a total nameplate capacity of up to the Target Facility Capacity. [REDACTED]

[REDACTED] If Seller installs one or more additional phases at the Site, Seller shall enter into a separate interconnection agreement such that Renewable Energy delivered under this REPA is delivered, metered and scheduled separately from the renewable energy generated by any such additional phase. Exhibit A to this REPA provides a detailed description of the Facility, including identification of the expected major equipment and components, which make up the Facility. The aggregate nameplate MW rating of the Facility shall not exceed 180 MW AC [REDACTED]

3.2 Location.

The Facility shall be located on the Site and shall be identified as Seller’s Sculpin Facility. The Facility is located in DeKalb County, Indiana. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery and the location of the important ancillary facilities and Interconnection Facilities is included in Exhibit A to this REPA.

3.3 General Design of the Facility.

Seller shall construct the Facility in accordance with Good Utility Practice(s), the Design Standards, the Interconnection Agreement and rules of the Transmission Operator, including the PJM Manuals and Agreements (collectively, the “Design Requirements”). Seller shall maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the design of the Facility shall at all times include:

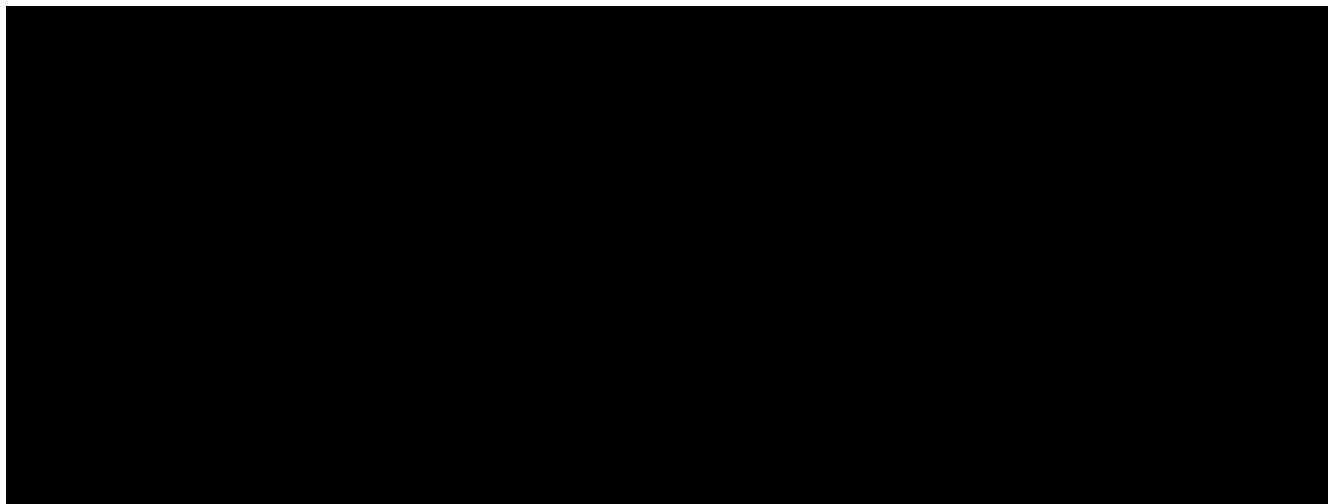
(A) metering accuracy current transformers and voltage transformers located at the Point of Delivery (or some other point mutually agreed to by the Parties) as required to connect to the Electric Metering Devices;

(B) the required panel space and 125V DC battery supplied voltage to accommodate Purchaser's metering, telemetering equipment and Communications Equipment;

(C) the Communications Equipment; and

(D) suitable solar irradiation and meteorological meters of the types necessary to monitor and measure the solar resource and ambient conditions at the Site to support calculations under this REPA, including the estimation of the quantity of Renewable Energy designated as Economic Curtailment Energy under Section 7.4 (each, a “Weather Station”). Such Weather Stations shall be calibrated by Seller at its cost annually in accordance with Good Utility Practice(s) and the standards described in item 1 of Exhibit G to this REPA.

3.4



ARTICLE 4 COMMERCIAL OPERATION

4.1 Commercial Operation.

Subject to Section 4.10, the Facility shall achieve the Commercial Operation Date, and shall be fully capable of reliably producing the Renewable Energy Products to be provided under this REPA and delivering such Renewable Energy Products to Purchaser at the Point of Delivery, no later than the Commercial Operation Milestone.

4.2 Wildlife Studies and Siting.

Seller shall conduct such wildlife studies with respect to the Site and the Facility as may be required pursuant to Applicable Law (including, if applicable, studies regarding the Indiana Bat (*Myotis sodalis*)). Seller shall provide to Purchaser, promptly after issuance, a true and complete copy of any Wildlife Permit Restrictions issued with respect to the Facility.

4.3 Environmental Site Assessment.

Seller shall conduct a Phase I environmental investigation of the Site no later than the date that the Seller Conditions Precedent are satisfied (or waived by Seller). If such site assessment identifies any recognized environmental conditions that could reasonably be expected to materially impact the construction, operation or maintenance of the Facility, then Seller shall promptly conduct a Phase II environmental assessment of the Site and promptly provide a copy thereof to Purchaser.

4.4 Facility Contracts.

Seller shall provide to Purchaser, no later than three hundred and sixty-five (365) Days before the Commercial Operation Milestone, a certificate of an officer of Seller, in a form reasonably acceptable to Purchaser, stating that Seller or its Affiliate has sufficient Solar Units under contract to satisfy its obligations hereunder. [REDACTED]

[REDACTED]

[REDACTED] Information that is commercially sensitive, confidential or proprietary, as reasonably determined by Seller, may be redacted from the documents provided to Purchaser pursuant to this paragraph. All such information shall be treated as confidential information subject to Section 20.15 hereof. Seller shall provide sufficient information for Purchaser to be reasonably assured that Seller has contracted with financially responsible vendors; [REDACTED]



4.5 Progress Reports.

Commencing upon the execution of this REPA, Seller shall submit to Purchaser, within the first fifteen (15) Days of each calendar quarter until the commencement of construction of the Facility at the Site and within the first fifteen (15) Days of each calendar month thereafter until the Commercial Operation Date is achieved, reports regarding development and construction progress in the form of Exhibit N. These progress reports shall describe the status of the development and construction of the Facility as of the end of the preceding reporting period, including (a) a description of the progress of development and construction based on a comprehensive list of all of Seller's deliverables required under this REPA (including the Conditions to COD set forth in Section 4.7), (b) an explanation of any material changes in the development and construction schedule and (c) an estimate of the Commercial Operation Date. Commencing upon the date that is two months prior to the estimated Commercial Operation Date, Seller will additionally advise Purchaser bi-weekly on the status of Solar Unit commissioning until the Commercial Operation Date is achieved.

4.6 Purchaser's Rights During Construction.

Purchaser shall have the right to monitor the construction, start-up and testing of the Facility during normal business operating hours for the purpose of confirming Seller's compliance with the terms of this REPA, and Seller shall comply with all reasonable requests of Purchaser with respect to the monitoring of these events, provided, however, that Purchaser provides Seller reasonable, and in no event less than forty-eight (48) hours, advance written notice, and such monitoring shall not unreasonably interfere with or disrupt the activities of Seller or the construction, start-up or testing of the Facility. Subject to the foregoing, Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Purchaser during and after completion of construction. All persons visiting the Facility on behalf of Purchaser shall comply with all of Seller's applicable safety and health rules and requirements.

4.7 Conditions to Commercial Operation.

Seller shall notify Purchaser when the Facility has achieved the Commercial Operation Date with an installed capacity of at least the Minimum Facility Capacity, which notice shall not be unreasonably withheld or delayed by Seller. This notification is contingent upon Seller providing evidence reasonably acceptable to Purchaser of the satisfaction or occurrence of all of the conditions set forth in this Section 4.7 ("Conditions") and shall include a certification by Seller to that effect. The Parties agree that review and approval of such Conditions may occur on an ongoing and incremental basis, pending resolution of any Dispute, as such Conditions are satisfied. The Conditions are:

- (A) Seller has completed all testing of the Facility that is required by the Facility's permits issued by Governmental Authorities applicable to the operation of

the Facility, the Interconnection Agreement, Seller's module supply and balance of plant construction contracts for the Facility and manufacturers' warranties for the commencement of commercial operations at the Facility;

(B) An officer of Seller familiar with the Facility has provided a list of the Facility's major equipment, including the make and model of all photovoltaic modules, inverters, step-up transformers, switchgear and Weather Stations;

(C) the Facility has achieved initial synchronization with the Transmission Provider's System;

(D) Independent Engineer's certification stating (i) that the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this REPA, (ii) the Facility has been constructed in accordance with the Design Requirements and (iii) the installed nameplate capacity and designed maximum output of the entire Facility, which total shall not exceed the Target Facility Capacity;

(E) the interconnection of the Facility to the Transmission Provider's System has been completed in accordance with the Interconnection Agreement and has operated at a generation level acceptable to the Interconnection Provider in accordance with the operating requirements of the Interconnection Agreement;

(F) Seller has made all arrangements and executed all agreements required to deliver the Renewable Energy from the Facility to the Point of Delivery in accordance with the provisions of this REPA;

(G) Seller can reliably transmit real time data and measurements to Purchaser (i) in accordance with the requirements of the Interconnection Agreement and (ii) in accordance with the requirements of Exhibit G, including the data and measurements from the Weather Stations [REDACTED]

(H) all arrangements for the local supply of required electric services to the Facility (e.g., station power), including the supply of start-up and shutdown power and Energy, house power and maintenance power have been completed by Seller separate from this REPA, are in effect, and are available for the supply of such electric services to the Facility;

(I) the Security Fund meeting the requirements of Article 11 has been established;

(J) certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to Purchaser;

(K) a certificate of an officer of Seller familiar with the Facility has been submitted to Purchaser stating that (i) all permits, consents, licenses, approvals and authorizations required to be obtained by Seller from any Governmental Authority to construct and operate the Facility in compliance with Applicable Law and this REPA have been obtained and are in full force and effect; (ii) Seller or, if applicable, a third party engaged by Seller to perform scheduling with PJM is a PJM member; and (iii) Seller is otherwise in compliance with the terms and conditions of this REPA in all material respects;

(L) Seller has made all necessary filings and applications with Governmental Authorities for accreditation and participation in GATS and in any other applicable federal and state REC certification program pursuant to Section 10.9;

(M) Seller shall have provided to Purchaser, at least sixty (60) Days prior to the Commercial Operation Date, a non-binding, good faith 12 month x 24 hour forecast of net Energy production from the Facility and available historical solar data for the Site;

(N) Seller shall have provided Purchaser with a copy of the final Phase I environmental report referred to in Section 4.3 and either (i) such report shall confirm that no conditions involving Environmental Contamination exist at or under the Site that would materially impact performance of Seller's obligations under this REPA or (ii) Seller shall have provided to Purchaser prior to the Commercial Operation Date a remediation plan for removal of such Environmental Contamination;

(O) Seller shall have provided Purchaser with a copy of the final wildlife studies referred to in Section 4.2 and either (i) such studies shall confirm that no endangered species or other legally protected wildlife (including, if applicable, the Indiana bat (*Myotis sodalis*)) exists at, under or above the Site that would materially impact performance of Seller's obligations under this REPA or (ii) Seller shall have provided to Purchaser prior to the Commercial Operation Date copies of all applicable Wildlife Permit Restrictions;

(P) Seller shall have established with PJM the PJM Node and sub-account in accordance with Section 5.3(A);

(Q) Seller shall have demonstrated that it is a Qualified Operator or that Seller has engaged a Qualified Operator to operate and maintain the Facility, consistent with its representation in Section 10.1;

(R) Seller shall have completed applications, registrations or filings required by PJM in order to effectuate the delivery of the Capacity of the Facility to Purchaser in accordance with Section 5.6(D); and

(S)

[REDACTED]

4.8 Pre-Delivery Period Renewable Energy Production.

Provided that the Facility has achieved the Minimum Facility Capacity, Purchaser agrees to accept and purchase all Pre-Delivery Period Renewable Energy Production generated at the Facility and delivered to Purchaser at the Point of Delivery at the Contract Rate. Any Renewable Energy Products produced prior to the Facility achieving the Minimum Facility Capacity may be sold at Seller's discretion and for its sole economic benefit.

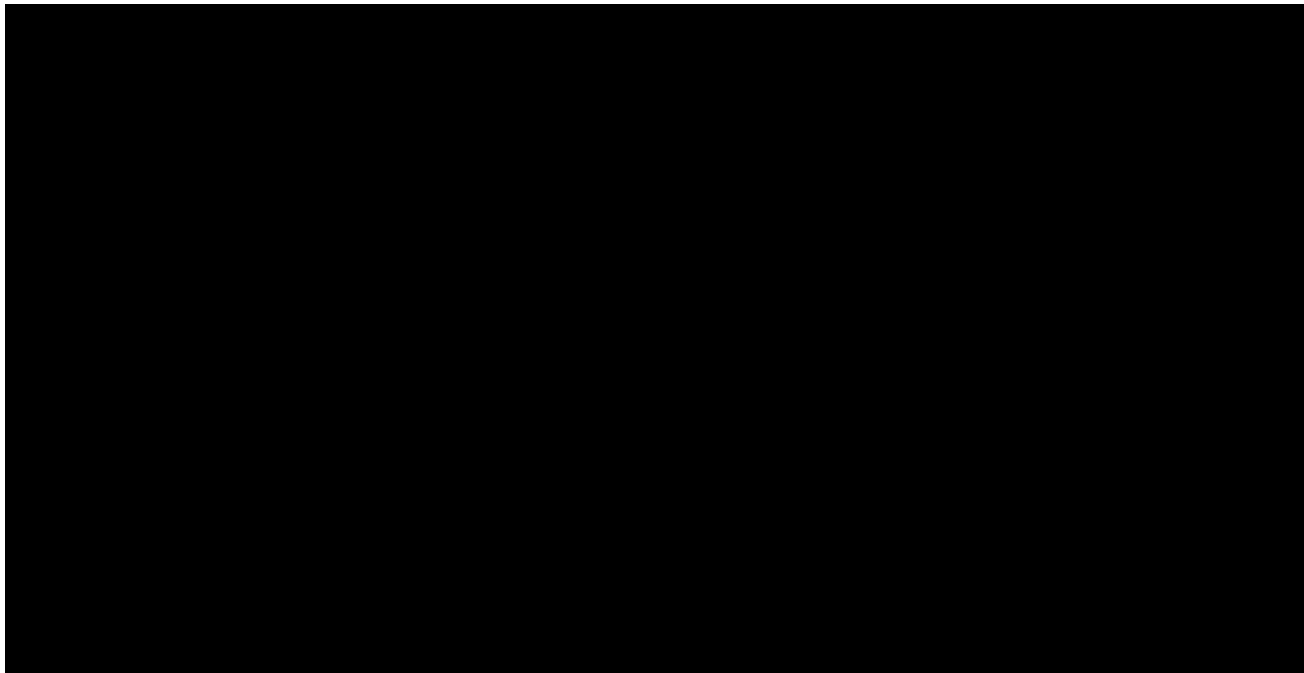
Seller shall notify Purchaser in writing at least fifteen (15) Days prior to the initial delivery of such Pre-Delivery Period Renewable Energy Production; and Seller shall coordinate the production and delivery of Pre-Delivery Period Renewable Energy Production with the Transmission Operator and be responsible for all scheduling activities.

Purchaser shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to satisfy the Conditions set forth in Section 4.7.

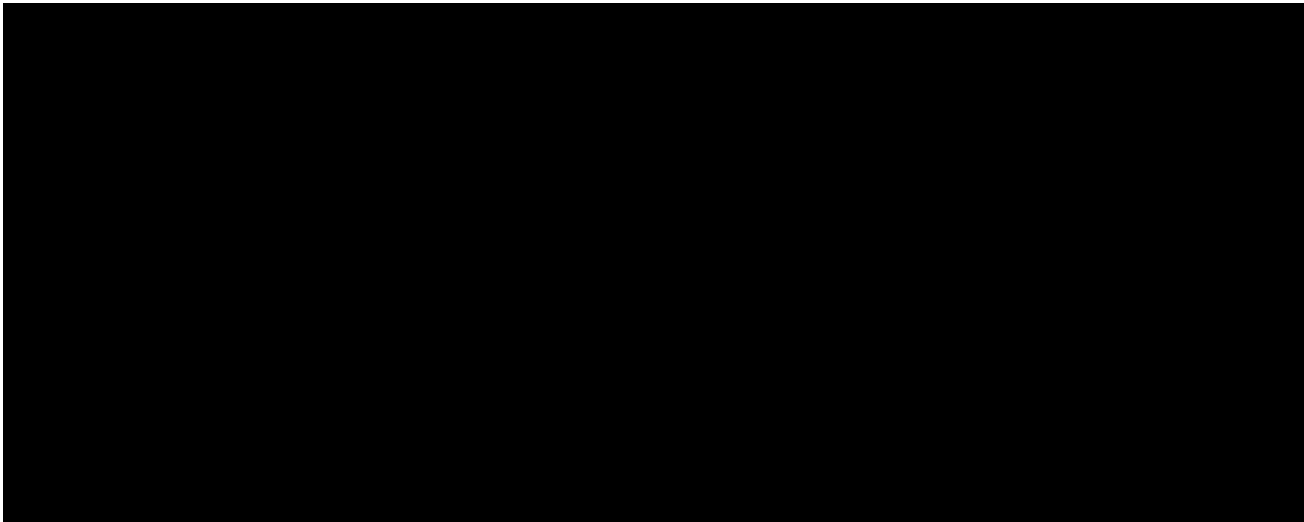
4.9 QF Waiver.

For so long as this REPA is in effect, Seller waives, and agrees not to assert, the rights Seller may have against Purchaser to cause Purchaser to purchase or transmit energy or capacity pursuant to 18 C.F.R. Section 292.303 or Section 292.304 by virtue of the status of the Facility as a qualifying cogeneration facility as defined in the Public Utility Regulatory Policies Act of 1978, as amended.

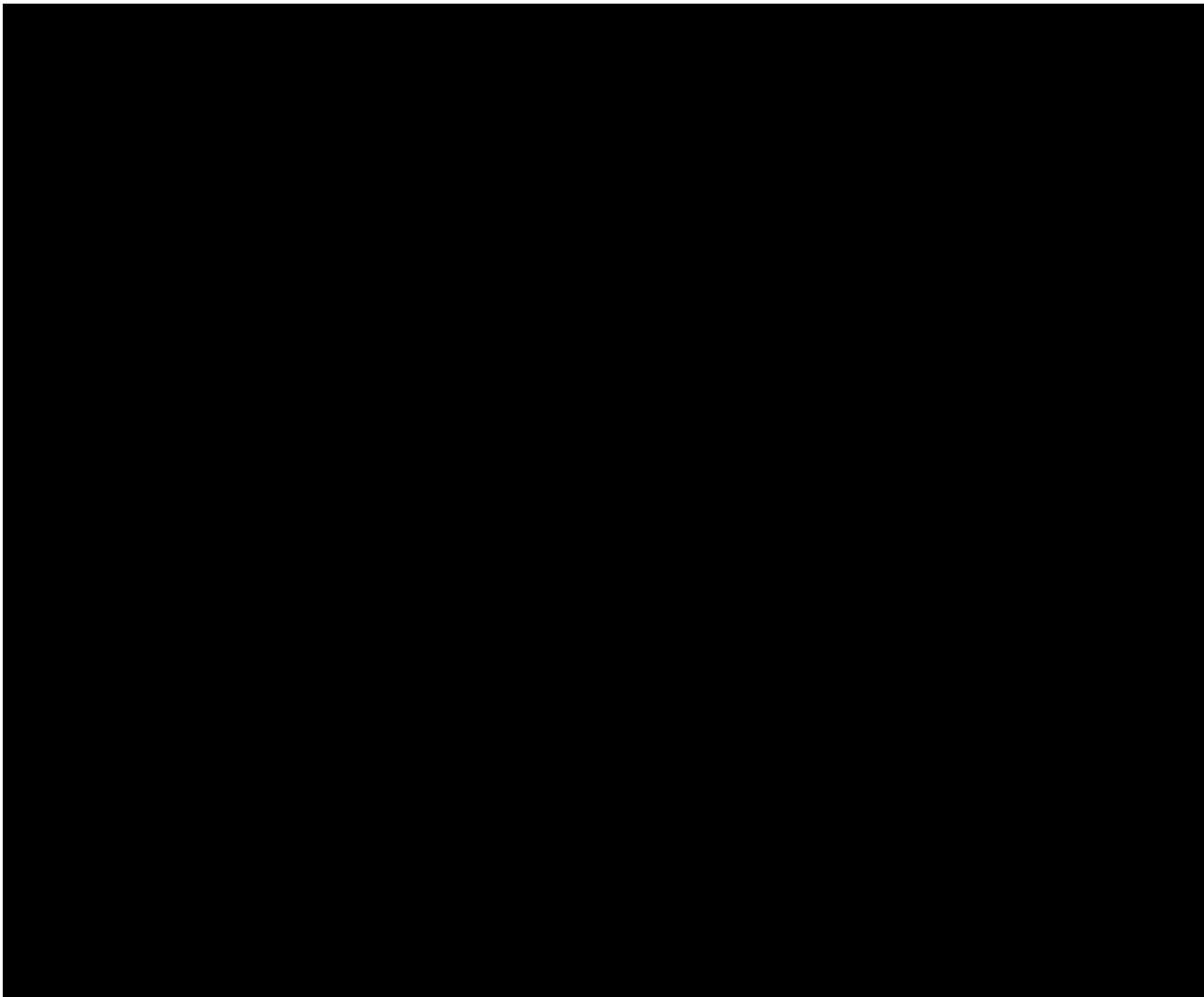
4.10 [REDACTED]



4.11 [REDACTED]



4.12 [REDACTED].



ARTICLE 5
DELIVERY AND METERING

5.1 Seller's and Purchaser's Obligations.

Subject to, and in accordance with, the terms and conditions of this REPA, Purchaser does hereby agree to purchase and pay for, and Seller does hereby agree to sell and deliver, or cause to be delivered, all of the Renewable Energy Products generated by the Facility during the Delivery Period. Purchaser shall have the exclusive right to purchase and receive all of such Renewable Energy Products during the Delivery Period, with the exception of (i) Energy produced by Seller for its own use at the Facility for station power and (ii) Renewable Energy Products generated [REDACTED] the continuation of an Event of Default by Purchaser hereunder.

5.2 Required Operation.

Except to the extent the Facility is actually unavailable or limited (including in accordance with Good Utility Practice(s), or periods of Reliability Curtailment [REDACTED] Seller shall operate the Facility to provide the Renewable Energy Products to Purchaser in all daylight hours of the Delivery Period. Seller agrees that, notwithstanding anything herein to the contrary, Seller will not curtail or otherwise reduce deliveries of Renewable Energy Products in order to sell such Renewable Energy Products to other purchasers. Seller, or a third party engaged by Seller to perform scheduling, will be the Market Participant with respect to the Facility.

5.3 Delivery Arrangements.

(A) Prior to the Commercial Operation Date, Seller shall establish and shall maintain throughout the Term with PJM, the PJM Node for purposes of identification of the Facility with PJM.

(B) Prior to the Commercial Operation Date, Seller shall establish a separate sub-account to Seller's main PJM account for purposes of (i) identification of the Renewable Energy Products, (ii) Seller's scheduling obligations under Section 5.6, and (iii) the settlement of operating reserves and other charges and credits for which Purchaser is responsible under Section 5.6.

(C) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver the Renewable Energy from the Facility to Purchaser at the Point of Delivery. Purchaser shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to receive the Renewable Energy at the Point of Delivery and deliver such Energy to points beyond the Point of Delivery.

(D) Seller shall be responsible for paying any and all transmission upgrade costs identified by the Transmission Operator as Seller's responsibility in order to designate the Facility as a Capacity Resource.

5.4 Electric Metering Devices.

Seller will comply with the terms and conditions of the Interconnection Agreement. The following provisions on Electric Metering Devices shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(A) All Electric Metering Devices used to measure the Renewable Energy made available to Purchaser by Seller under this REPA and to monitor and coordinate operation of the Facility shall be owned, installed, and maintained by Seller according to Good Utility Practice. Such Electric Metering Devices shall measure only the Renewable Energy delivered to Purchaser from the Solar Units commissioned under this REPA and not from any other solar units installed on the Site, which solar units shall not comprise the Facility even though they may share the same Point of Delivery or revenue meter with the Solar Units commissioned under this REPA. If the Electric Metering Devices are sub-meters, the amount of Renewable Energy delivered to Purchaser and measured by such Electric Metering Devices shall be reduced to account for the losses of Renewable Energy between the Point of Delivery and such Electric Metering Devices. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Article. Seller shall specify the number, type, and location of such Electric Metering Devices.

(B) Seller, at its own expense, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, inspections and tests of the Electric Metering Devices, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller or the Facility and shall comply with all of Seller's safety standards. If Purchaser has reason to believe that the Electric Metering Devices are registering inaccurately, upon request by Purchaser, Seller shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Purchaser to inspect or witness the testing of any Electric Metering Device, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller or the Facility and shall comply with all of Seller's safety standards. The actual

expense of any such requested additional inspection of testing shall be borne by Purchaser, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in Section 5.5, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Purchaser in writing, Seller shall provide copies of any inspection or testing reports to Purchaser.

(C) Purchaser and Seller each may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices. Each Party, at its own expense, shall inspect and test its Back-Up Metering upon installation and at least annually thereafter. Each Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party or the Facility and shall comply with all of the testing Party's safety standards. If a Party has reason to believe that the Back-Up Metering installed by the other Party is registering inaccurately, upon request by such Party, the other Party shall perform additional inspections or tests of its Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of such Back-Up Metering, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party or the Facility and shall comply with all of the testing Party's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the requesting Party, unless, upon such inspection or testing, the Back-Up Metering is found to register inaccurately by more than the allowable limits established in Section 5.5, in which event the expense of the requested additional inspection or testing shall be borne by the testing Party. If requested by the requesting Party in writing, the testing Party shall provide copies of any inspection or testing reports to the requesting Party.

(D) If any Electric Metering Devices, or any Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense. The Party discovering such defect or inaccuracy shall promptly notify the other Party of such discovery.

5.5 Adjustment for Inaccurate Meters.

The following provisions on adjustment for inaccurate meters shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(A) If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than [REDACTED] from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering

Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the manner set forth in Sections 5.5(B), (C) and (D) below.

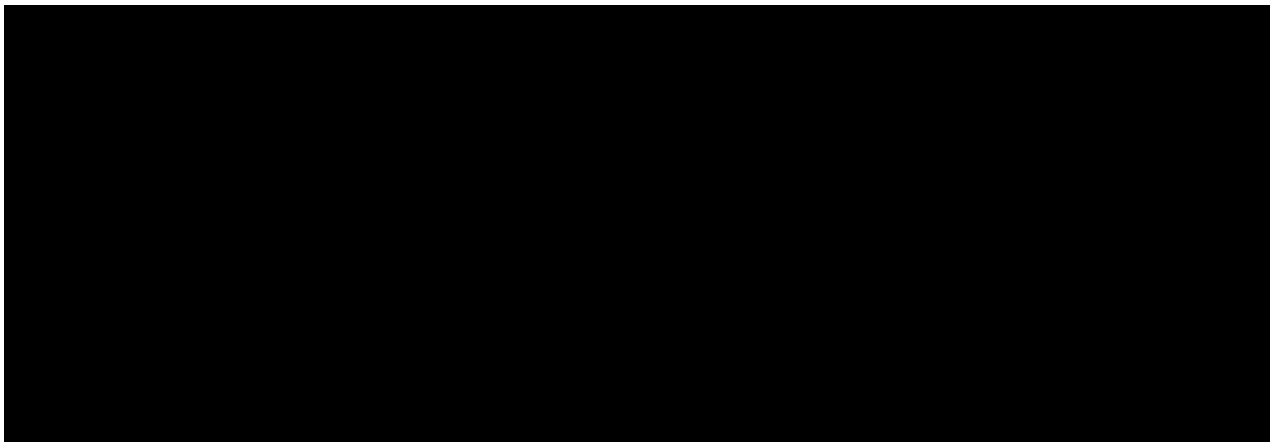
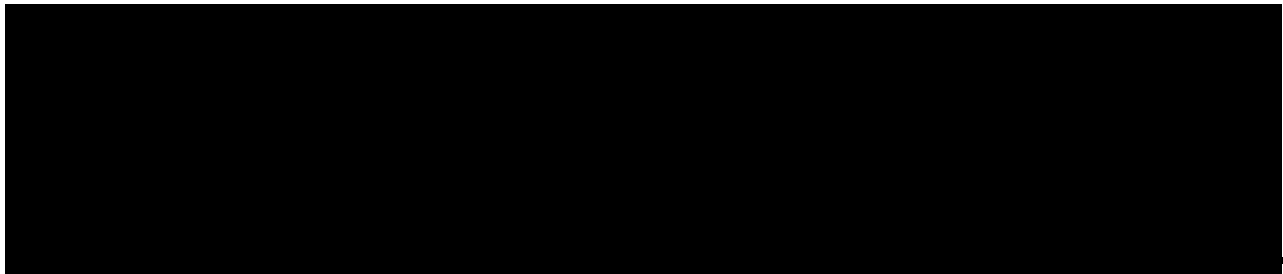
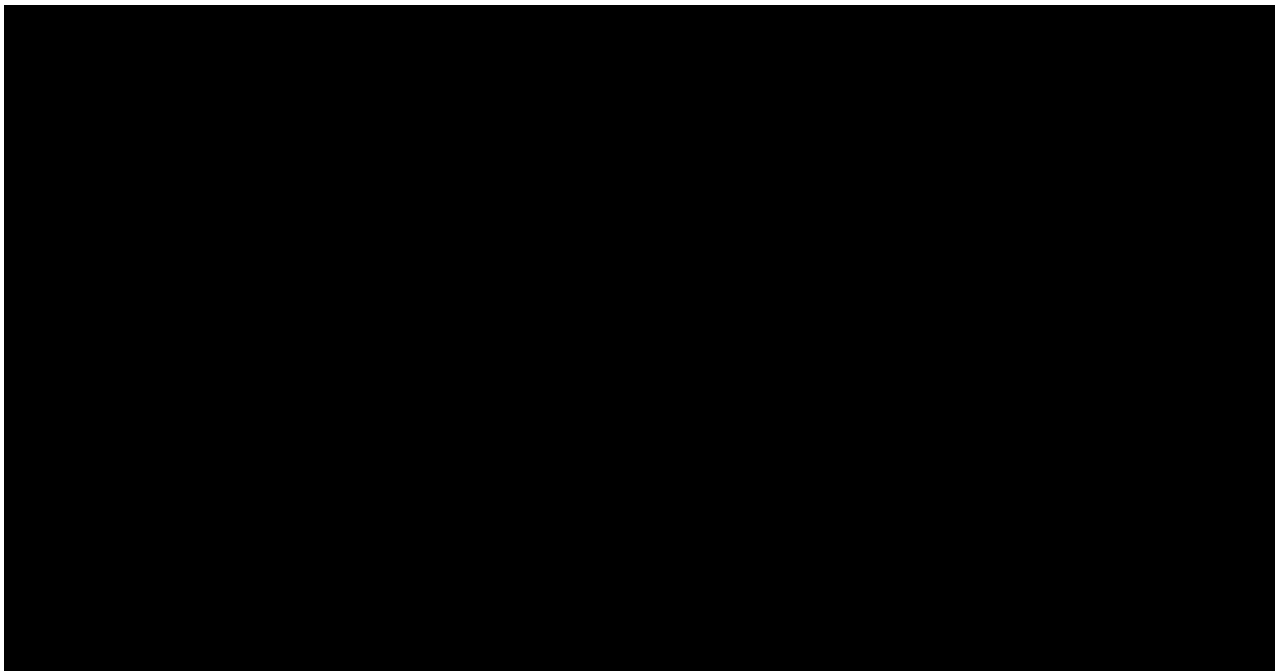
(B) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use the Back-Up Metering, if installed, to determine the amount of such inaccuracy, provided that the Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If both Parties have installed Back-Up Metering, and the Back-Up Metering of both Parties is inaccurate by not more than [REDACTED] from the measurements made by the standard meter used in the test, the readings from the Back-Up Metering whose readings most closely conform with the measurements made by the standard meter shall be used. If both Parties have installed Back-Up Metering, and the Back-Up Metering of one Party is inaccurate by not more than [REDACTED] from the measurements made by the standard meter used in the test (but the Back-Up Metering of the other Party is inaccurate by [REDACTED] or more from the measurements made by the standard meter used in the test), the readings from the Back-Up Metering installed by the first Party shall be used. In the event that neither Party has installed Back-Up Metering, or all Back-Up Metering is also found to be inaccurate by more than [REDACTED] from the measurement made by the standard meter used in the test, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Renewable Energy from the Facility during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(C) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(D) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Purchaser, Purchaser shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Purchaser for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Purchaser to Seller; if the difference is a negative number, that difference shall be paid by Seller to Purchaser, or at the discretion of Purchaser, may take the form of an offset to payments due Seller by Purchaser (or by payment to Purchaser, if sufficient payments do not remain to offset). Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Purchaser elects payment via an offset.

5.6 Scheduling Arrangements.

The Parties will effectuate delivery and receipt of Renewable Energy Products at the Point of Delivery as follows:



(D) Seller shall be responsible for all costs related to delivery of Renewable Energy to the Point of Delivery or to the extent any such costs are incurred as a result of the failure by Seller to curtail deliveries in connection with a Reliability Curtailment [REDACTED]. To the extent either Party (or its agent) incurs

costs or expenses which are the responsibility of the other Party under this Section 5.6, such costs or expenses shall be added to or shall be netted against the invoice for Renewable Energy. In the event that after the date of execution of this REPA, the PJM Manuals and Agreements governing costs and expenses to be paid by schedulers of Renewable Energy Products are modified resulting in a material effect on the allocation of the PJM charges or credits incurred by Seller (or Seller's agent) in connection with scheduling the Renewable Energy or Capacity that Purchaser would have incurred if Purchaser was scheduling and effecting settlements with respect to the Renewable Energy or Capacity or any credits associated therewith, the Parties hereby agree to amend this REPA to effectuate the intent of this Section 5.6, notwithstanding such modification of the PJM Manuals and Agreements.

(E) The parties will effectuate the delivery and receipt of Capacity from the Facility by timely making and confirming appropriate unit specific, bilateral transactions in PJM's Capacity Exchange system of "Unoffered Capacity" (as defined in PJM Manual 18, PJM Capacity Market, Revision: 45, Effective: May 28, 2020).

ARTICLE 6 CONDITIONS PRECEDENT

6.1 Purchaser Conditions Precedent

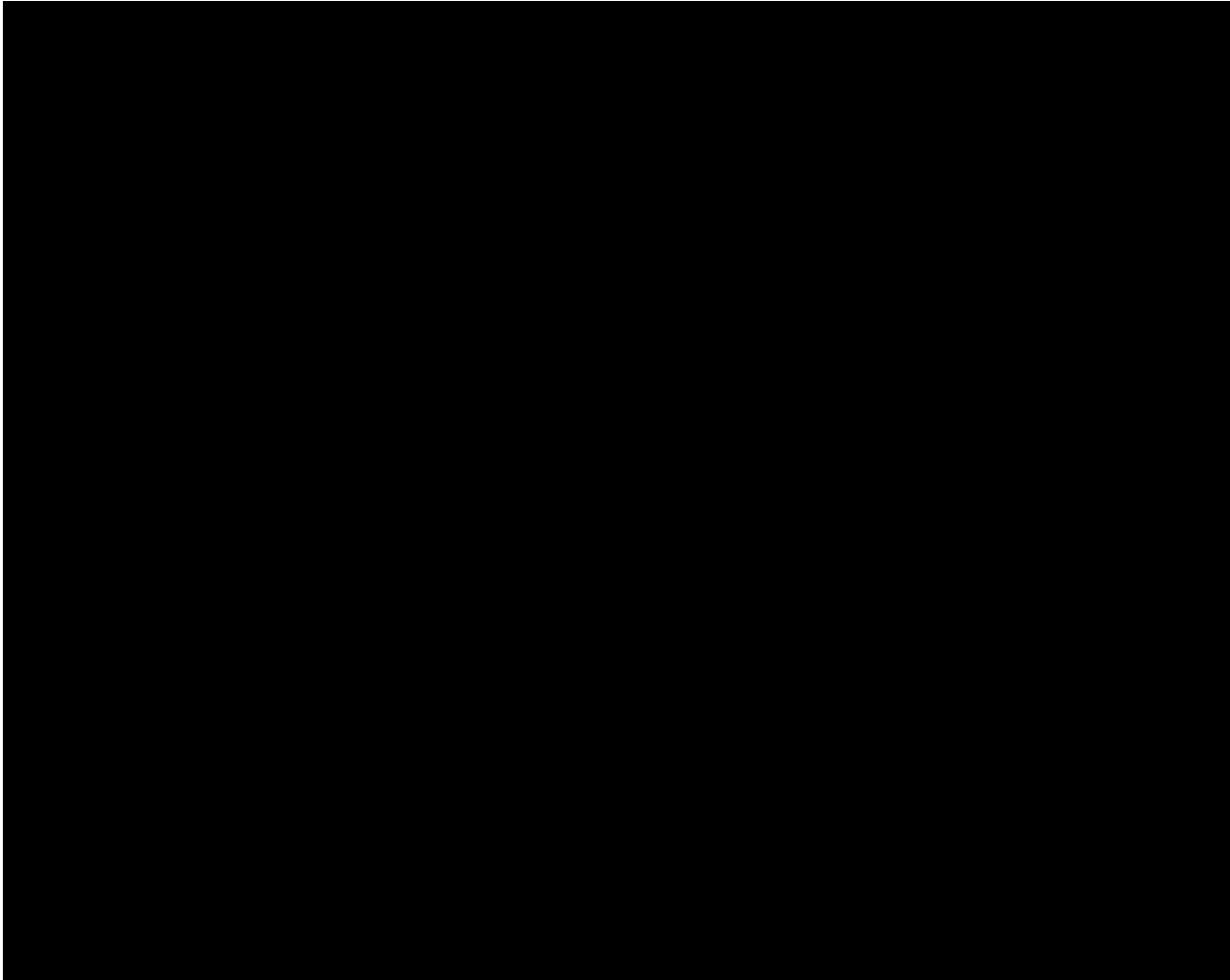
(A) Unless waived by Purchaser in writing or deemed waived pursuant to the provisions of this Section 6.1, it shall be a condition precedent to Purchaser's obligation under this REPA to buy the Renewable Energy Products that Purchaser has obtained the Final Non-Appealable Orders.

(B) No later than ninety (90) Days after execution of this REPA, Purchaser may, but shall not be obligated to, initiate the process to obtain the Final Non-Appealable Orders from the Indiana Utility Regulatory Commission and the Michigan Public Service Commission; provided that, Purchaser shall promptly notify Seller (and in no event later than one hundred (100) Days after execution of this REPA) if Purchaser elects not to initiate the process to obtain the Final Non-Appealable Orders. Seller acknowledges and agrees that the form of Purchaser's approval application to the Indiana Utility Regulatory Commission and the Michigan Public Service Commission for the Final Non-Appealable Orders, including cost recovery, and the conduct by Purchaser of any proceedings, including any settlement or appeal, related to or arising from such approval application shall be determined in the sole discretion of Purchaser. If Purchaser fails to notify Seller that it elects not to initiate the process to obtain the Final Non-Appealable Orders within one hundred (100) Days after the execution of this REPA, the condition precedent in Section 6.1 shall be deemed waived and this REPA shall remain in full force and effect thereafter.

(C) After Purchaser initiates the process to obtain the Final Non-Appealable Orders during such ninety (90) Day period, Purchaser shall use its commercially reasonable efforts to obtain such Final Non-Appealable Order as soon as reasonably practicable, but if despite commercially reasonable efforts, Purchaser is

unable to obtain the Final Non-Appealable Orders on or before December 8, 2023, Purchaser, by notice to Seller delivered on or prior to twenty (20) Days thereafter, may terminate this REPA, without any financial or other obligation by either Party arising out of such termination except that Purchaser shall return the Security Fund to Seller. If Purchaser fails to deliver such a notice of termination during such twenty (20) Day period, the condition precedent in Section 6.1 shall be deemed waived and this REPA shall remain in full force and effect thereafter.

6.2 [REDACTED]



ARTICLE 7
SALE AND PURCHASE OF RENEWABLE ENERGY

7.1 Sale and Purchase.

Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Purchaser, and Purchaser shall purchase and pay for, at the Contract Rate, all Renewable Energy Products generated by the Facility.

Purchaser shall have no obligation to pay for any Energy that has not actually been generated by the Facility, measured by the Electric Metering Device(s) and delivered to Purchaser at the Point of Delivery, [REDACTED]

[REDACTED]

7.2 Guaranteed Availability.

(A) Seller guarantees an Availability of the Facility for each Calculation Period during the Term [REDACTED] Calculation Periods (the "Guaranteed Availability").

(B) If the [REDACTED]

(C) [REDACTED]

(D) Within thirty (30) Days after the end of the Calculation Period, Seller shall deliver to Purchaser a statement showing Seller's computation of the [REDACTED], if any, for the prior Calculation Period. To the extent required, Seller shall true up any such statement as promptly as practicable following its receipt of actual results for the relevant Calculation Period. Based on such statement, Purchaser shall calculate and issue a statement to Seller for the amount due Purchaser for [REDACTED] pursuant to Section 7.2(C) in respect thereof. Seller shall pay the amounts due under each such invoice within thirty (30) Days of receipt thereof.

(E) Each Party agrees and acknowledges that (i) the damages that Purchaser would incur due to the Facility's failure to achieve the [REDACTED] would be difficult or impossible to predict with certainty, (ii) the [REDACTED] contemplated by this provision are a fair and reasonable calculation of such [REDACTED], and (iii) the required payment by Seller of such [REDACTED] shall be Purchaser's sole remedy for such [REDACTED]

7.3 Title and Risk of Loss.

As between the Parties, Seller shall be deemed to be in control of the Renewable Energy output from the Facility up to the Point of Delivery, and Purchaser shall be deemed to be in control of such Renewable Energy output from and after the Point of Delivery. Title to and risk of loss of the Renewable Energy delivered by Seller to Purchaser hereunder shall transfer from Seller to Purchaser at the Point of Delivery. Title to and risk of loss of the Renewable Energy Certificates shall pass from Seller to Purchaser as provided in the rules governing GATS.

7.4 Curtailments.

(A) Seller shall at all times during the Term comply with the directives of the Transmission Operator, the Transmission Provider and the Interconnection Provider given pursuant to the Interconnection Agreement. In addition, Purchaser shall have the right to notify Seller, by telephonic communication (followed by written notice) or other method as reasonably determined by Purchaser and Seller, of a Reliability Curtailment directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider [REDACTED]. In all cases of Reliability Curtailment, Seller shall reduce the net Energy delivered by the Facility at the Point of Delivery to the level directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider, as applicable. If Purchaser receives any such directive of Reliability Curtailment, Purchaser shall promptly notify Seller of the maximum amount of Renewable Energy, if any, during such Reliability Curtailment that Seller may continue to deliver and the duration thereof, and Seller shall ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed such amount for such duration. If Seller receives any such directive of Reliability Curtailment, Seller shall (i) promptly (and in any event within thirty (30) minutes) notify Purchaser by phone (followed by electronic mail) of the maximum amount of Renewable Energy, if any, during such Reliability Curtailment that Seller may continue to deliver and the duration thereof, if such duration is known to Seller, (ii) promptly (and in any event within thirty (30) minutes) notify Purchaser of any change to such amount or duration, if any, and (iii) ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed any such amount for any such duration. Except as provided in Section 7.1, no compensation shall be due from Purchaser to Seller as a result of any curtailment of the Facility's generation arising from any Reliability Curtailment directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider.

(B) [REDACTED]

[REDACTED]

[REDACTED]

(C) Each Party agrees and acknowledges that (i) the damages that [REDACTED] be difficult or impossible to predict with certainty, (ii) the amounts contemplated by Section 7.4(B) are a fair and reasonable calculation of such damages, and (iii) the required payment by Purchaser of such amounts shall be [REDACTED] sole remedy [REDACTED].

7.5 Renewable Energy Incentives.

(A) If, for any reason [REDACTED] or as a result of an Event of Default by Purchaser of its obligations under this REPA), Seller does not receive the Renewable Energy Incentives for any period, the cost of Renewable Energy Products delivered to Purchaser under this REPA shall not be affected, and the risk of not obtaining the Renewable Energy Incentives shall be borne solely by Seller.

(B) Seller shall be entitled to all Renewable Energy Incentives, and Purchaser acknowledges that Seller has the right to sell or transfer the Renewable Energy Incentives, at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Purchaser shall have no claim, right or interest in such Renewable Energy Incentives or in any amount that Seller realized from the sale of such incentives.

ARTICLE 8
PAYMENT CALCULATIONS

8.1 Payments at Contract Rate.

Commencing on the first Day of the Delivery Period, Purchaser shall pay Seller for (i) Renewable Energy delivered to Purchaser by Seller to the Point of Delivery and for other Renewable Energy Products associated therewith [REDACTED]

8.2 No Payment Obligation.

For avoidance of doubt, Purchaser shall not be obligated to make any payment to Seller under Section 8.1 for any Energy which, regardless of reason or event of Force Majeure affecting either Party, (i) does not qualify as Renewable Energy, (ii) is not measured by the Electric Metering Device(s) installed pursuant to Section 5.4, as such measurement may be adjusted pursuant to Section 5.5, or (iii) is delivered to Purchaser at a location other than the Point of Delivery.

ARTICLE 9 BILLING AND PAYMENT

9.1 Billing Invoices.

The monthly billing period shall be the calendar month. No later than ten (10) Business Days after the end of each calendar month, Seller shall provide to Purchaser, by first-class mail or electronically, an invoice for the amount due Seller by Purchaser for the services provided by Seller and purchased by Purchaser, under this REPA, for each monthly billing period. In each case, Seller's invoice will show: (a) with respect to the previous calendar month, all billing parameters, the Contract Rate, any adjustments (including those made pursuant to Sections 5.5 and 9.3), and any other data reasonably pertinent to the calculation of monthly payments due to Seller; [REDACTED]

[REDACTED]

9.2 Payments.

Unless otherwise specified herein, payments due under this REPA for undisputed amounts shall be due and payable on or before the later of (i) the twentieth (20th) Day of the month following the month to which such payment relates and (ii) the tenth (10th) Business Day following receipt of the billing invoice. Unless Seller directs Purchaser otherwise, all payments by Purchaser to Seller shall be made by electronic funds transfer. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated using an annual interest rate equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two percent (2%). If the due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 Billing Disputes.

Purchaser may dispute invoiced amounts on or prior to the second (2nd) anniversary of the issuance of the invoice related to such invoiced amounts, but shall pay to Seller the undisputed portion of invoiced amounts on or before the date set forth in Section 9.2. To resolve any billing Dispute, the Parties shall use the procedures set forth in Section 13.9.

When the billing Dispute is resolved, the Party owing shall pay the amount owed within ten (10) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.2 from the date such amount was originally due. Undisputed portions of amounts invoiced under this REPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.2.

ARTICLE 10 OPERATIONS AND MAINTENANCE

10.1 Facility Operation.

Seller hereby represents that it is and will remain a Qualified Operator during the Delivery Period or that Seller will engage a Qualified Operator to operate and maintain the Facility during the Delivery Period. Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Contract Administration Procedures developed pursuant to Section 10.3. Personnel capable of starting, operating, and stopping the Facility shall be available, either at the Facility or capable of remotely starting, operating and stopping the Facility within ten (10) minutes' notice. In all cases, personnel capable of starting, operating, and stopping the Facility shall be continuously reachable by phone or pager. Seller shall maintain the Communications Equipment in good operating order at all times during the Term.

10.2 Outage and Performance Reporting.

(A) Seller shall comply with all NERC, RFC and the Transmission Operator generating unit outage and performance reporting requirements, including GATS reporting requirements, as they may be revised from time to time, and as they apply to the Facility.

(B) When Forced Outages of [REDACTED] or greater of the Facility Capacity occur that Seller reasonably expects to continue into the next Day, Seller shall (i) notify Purchaser by phone (followed by electronic mail) of the existence, nature, and expected duration of the Forced Outage as soon as practical, and (ii) update the Availability Notice as soon as practicable. Seller shall thereafter inform Purchaser on a daily basis by phone (followed by electronic mail) of changes in the expected extent or duration of the Forced Outage unless relieved of this obligation by Purchaser.

(C) When Forced Outages of [REDACTED] or greater of the Facility Capacity occur that are expected to be of a duration exceeding one hour and be resolved within the same Day of the Forced Outage, Seller shall update the Availability Notice as soon as practical.

(D) Seller shall provide Purchaser with prompt notice by telephone of any malfunction or other failure of the Communications Equipment.

10.3 Contract Administration Committee and Contract Administration Procedures.

Purchaser and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this REPA and to develop operating arrangements for the generation, delivery and receipt of Renewable Energy hereunder. Such representatives shall constitute the Contract Administration Committee, and shall be as specified on Exhibit C. The Contract Administration Committee shall act in accordance with the Contract Administration Procedures. The Parties shall notify each other in writing of such appointments and any changes thereto. The Contract Administration Committee shall have no authority to modify the terms or conditions of this REPA.

Prior to the Commercial Operation Date, the Contract Administration Committee shall develop mutually agreeable written Contract Administration Procedures, which shall include, but not be limited to, method of day-to-day communications; curtailment, outage and performance reporting; metering, telemetering, telecommunications and data acquisition procedures; key personnel list for applicable Purchaser and Seller operating centers; operations and maintenance scheduling and reporting; Renewable Energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties.

10.4 Access to Facility.

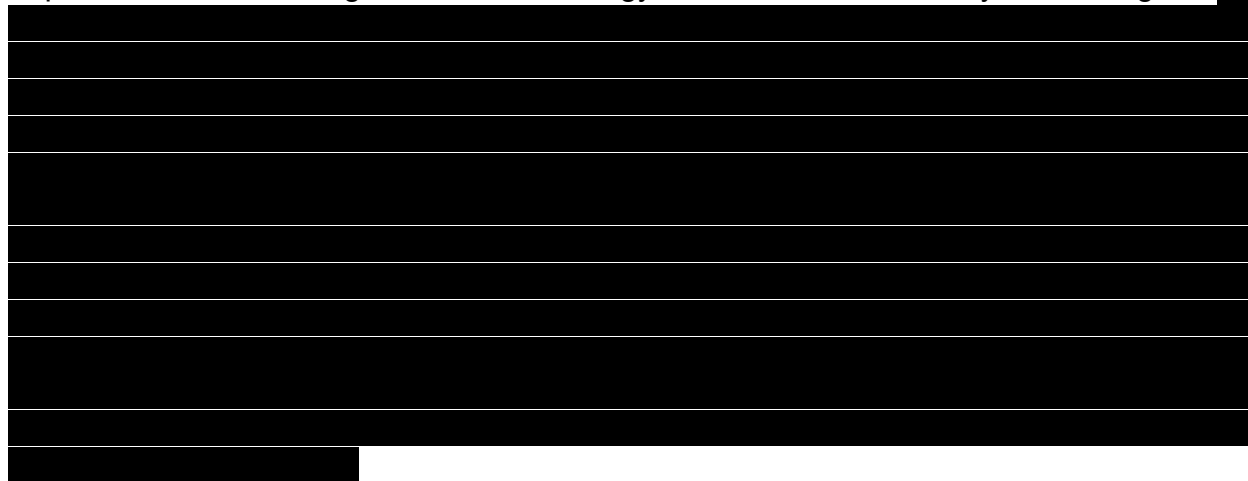
Appropriate representatives of Purchaser shall at all reasonable times during normal business operating hours, with reasonable, and in no event less than forty-eight (48) hours', prior written notice, have access to the Facility to read and maintain Purchaser-owned meters and to perform all inspections and operational reviews as may be reasonably necessary to facilitate the performance of this REPA; provided that Purchaser does not unreasonably interfere with or disrupt the activities of Seller or the Facility and causes all persons visiting the Facility on its behalf to comply with all of Seller's applicable safety, health and similar rules and requirements (including being accompanied at all times by authorized representatives of Seller).

10.5 Reliability Standards.

Seller shall operate the Facility in a manner that complies in all material respects with all national and regional reliability standards, including standards set by the Transmission Operator, RFC, NERC and FERC, or any successor agencies setting reliability standards for the operation of generation facilities. To the extent that Seller does not operate the Facility in accordance with such standards that result in monetary penalties being assessed to Purchaser by the Transmission Operator, RFC, NERC, or FERC, Seller shall reimburse Purchaser for its share of such monetary penalties.

10.6 Beneficial Environmental Interests.

The Parties acknowledge that future or existing legislation or regulation may create value in the ownership, use or allocation of the Beneficial Environmental Interests of the Facility. Purchaser shall own or be entitled to claim all Beneficial Environmental Interests to the extent they may exist during the Term; it being understood and agreed that Seller shall not be required to make any material changes to the Facility that would result in an expected reduction in generation of Energy, to cause the Facility to be eligible



10.7 Forecasts.

Seller shall furnish to Purchaser a notice substantially in the form attached hereto as Exhibit I (an "Availability Notice") at or before 9:00 a.m. EPT on the Business Day immediately prior to the first Day to which such Availability Notice shall relate that shall set forth the Facility Capacity that Seller anticipates will actually be available in each hour through the next Business Day and each subsequent Business Day to which such Availability Notice relates. Seller also shall furnish to Purchaser a revised Availability Notice promptly after the occurrence of any Force Majeure event, Forced Outage, unscheduled outage or other unplanned maintenance, derating, or other event that would reduce or interrupt Renewable Energy or Ancillary Services associated with Facility Capacity or cause the controlling Availability Notice to be inaccurate or incomplete in any material respect, with a description of the circumstances thereof. Each such Availability Notice shall be effective until delivery of a subsequent Availability Notice. Seller does not guarantee the accuracy of said Availability Notices, and said Availability Notices are only intended to be its good faith estimate of the projected availability of the Facility at the time such notice is given.

10.8 Planned Maintenance Schedule.

No later than (a) two (2) months prior to the Commercial Operation Date and (b) two (2) months prior to each calendar year thereafter during the Term, Seller shall submit to Purchaser a schedule of planned maintenance for the following calendar year for the Facility. Such schedule shall be consistent with the requirements of Good Utility Practice and the Interconnection Agreement, and otherwise in accordance with this REPA. Seller shall revise such schedule throughout the year to reflect any changes to its actual expected planned maintenance activities, including any cancellation, postponement, or

addition of planned maintenance activities. No planned maintenance of the Facility substation or any other portion of the Facility that would affect the availability of [REDACTED] of the Facility Capacity at any one time may be scheduled in the daylight hours during the [REDACTED] during the Delivery Period or during non-daylight hours of such months where the work cannot be completed prior to the next daylight period; provided, however, that planned maintenance may be scheduled during such period to the extent (i) required by or necessary to preserve any equipment warranties, (ii) such outage is connection with Force Majeure events that would otherwise prevent the operation of the Facility during such periods, (iii) the Parties otherwise agree in writing, (iv) the failure to perform such planned maintenance is contrary to operation in accordance with Good Utility Practice(s), or (v) required by Applicable Law, or the requirements of PJM or the applicable connecting utility. Such schedule shall indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility. If Purchaser desires to change the scheduled commencement or duration of planned maintenance, Purchaser shall notify Seller of the requested change and Seller shall use reasonable efforts to accommodate the requested change. At least one (1) week prior to any planned maintenance, Seller shall notify Purchaser via e-mail and telephonically of the expected commencement date of such planned maintenance, the affected portion(s) of the Facility during such planned maintenance and the expected completion date of such planned maintenance.

10.9 REC Certification.

(A) Subject to Section 10.9(B) below, (i) Seller shall be responsible for causing the GATS Certificates delivered under this REPA to meet all requirements for entry into GATS, (ii) Seller shall be responsible for registering and maintaining compliance during the duration of this REPA with GATS and, subject to Purchaser maintaining a current account with GATS, will be responsible for timely delivery as allowed by GATS, [REDACTED]

(B) Seller shall take all actions necessary to register for and maintain participation in an applicable system or program established by the federal or state Governmental Authority in Indiana or Michigan to monitor, track, certify or trade RECs, in addition to Seller's obligations under Section 10.9(A). [REDACTED]

[REDACTED] Upon the request of Purchaser from time to time, (i) Seller shall deliver or cause to be delivered to Purchaser such attestations/certifications of RECs as may be required to comply with such federal or applicable state certification system or program, and (ii) Seller shall provide full cooperation in connection with Purchaser's registration

and certification of RECs. [REDACTED]

10.10 Public Statements/Other Use.

Without the written consent of Purchaser, Seller shall not (i) make any public statement or representation that is inconsistent with Purchaser's entitlement to the Renewable Energy Products (or any portion thereof), (ii) use the Facility's Beneficial Environmental Interests to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable energy portfolio standard or other renewable energy mandate, or (iii) advertise, market, sell, retire, convey or otherwise transfer or seek to transfer the Facility's Beneficial Environmental Interests, which rights are expressly reserved to Purchaser during the Term.

10.11 Real-Time Information.

Seller will use commercially reasonable efforts on and after the Commercial Operation Date to continuously and reliably transmit real-time data and measurements to Purchaser in compliance with Exhibit G. Purchaser and Seller shall each bear the cost of and responsibilities for their respective systems, equipment and communications links required for receipt of such real-time information. Seller shall notify Purchaser by phone or electronic mail of the existence, nature, and expected duration of any Weather Station outage (partial or full) as soon as practical, but in no event later than two (2) hours after the Weather Station outage occurs. In the event that Seller fails to continuously transmit real-time data to Purchaser in compliance with Exhibit G, [REDACTED]

10.12 Web-Based Operational Reporting.

Purchaser may at its option make available to Seller on the Internet a web-based reporting system which will provide the Parties with the capability to generate and submit standardized reports for purposes of satisfying the requirements of the Parties contained in Sections 10.2, 10.7 and 10.8. Purchaser will develop user requirements for such reporting system in consultation with Seller.

ARTICLE 11
SECURITY FOR PERFORMANCE

11.1 Seller Security Fund.

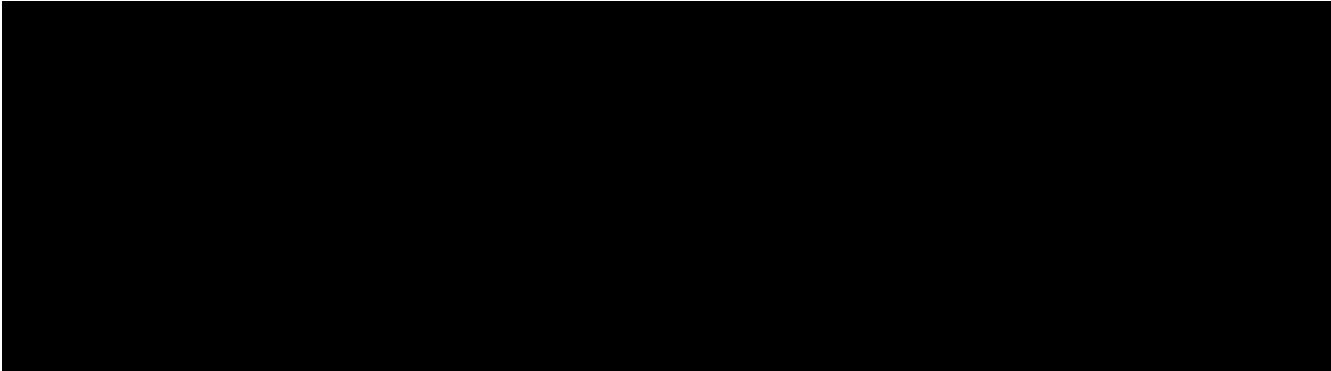
(A) Seller shall establish the Security Fund [REDACTED]

[REDACTED]

(B) If an Event of Default or a material breach of Seller's obligations under this REPA has occurred and is continuing, then in addition to any other remedy available to it, Purchaser may, before or after termination of this REPA and so long as the Security Fund is required to be outstanding after termination of this REPA pursuant to this Section 11.1, draw from the Security Fund. Purchaser may, in its sole discretion, draw all or any part of such amounts due to it from any form of Security Fund, and from all such forms, and in any sequence Purchaser may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to Purchaser shall not prejudice Purchaser's rights to recover such damages or amounts in any other manner.

(C) The Security Fund shall be maintained at Seller's expense, shall be issued by or deposited in an Issuer (as applicable), and shall be in the form of one or more of the following instruments. Seller may replace the form of the Security Fund at any time and from time to time upon reasonable prior notice to Purchaser, but the Security Fund must at all times be comprised of one or any combination of the following:

(1) An irrevocable standby letter of credit in substantially the form of Exhibit J (or otherwise in form and substance commercially satisfactory to Purchaser in its sole discretion) from an Issuer that is an Acceptable Issuing Bank. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the period described

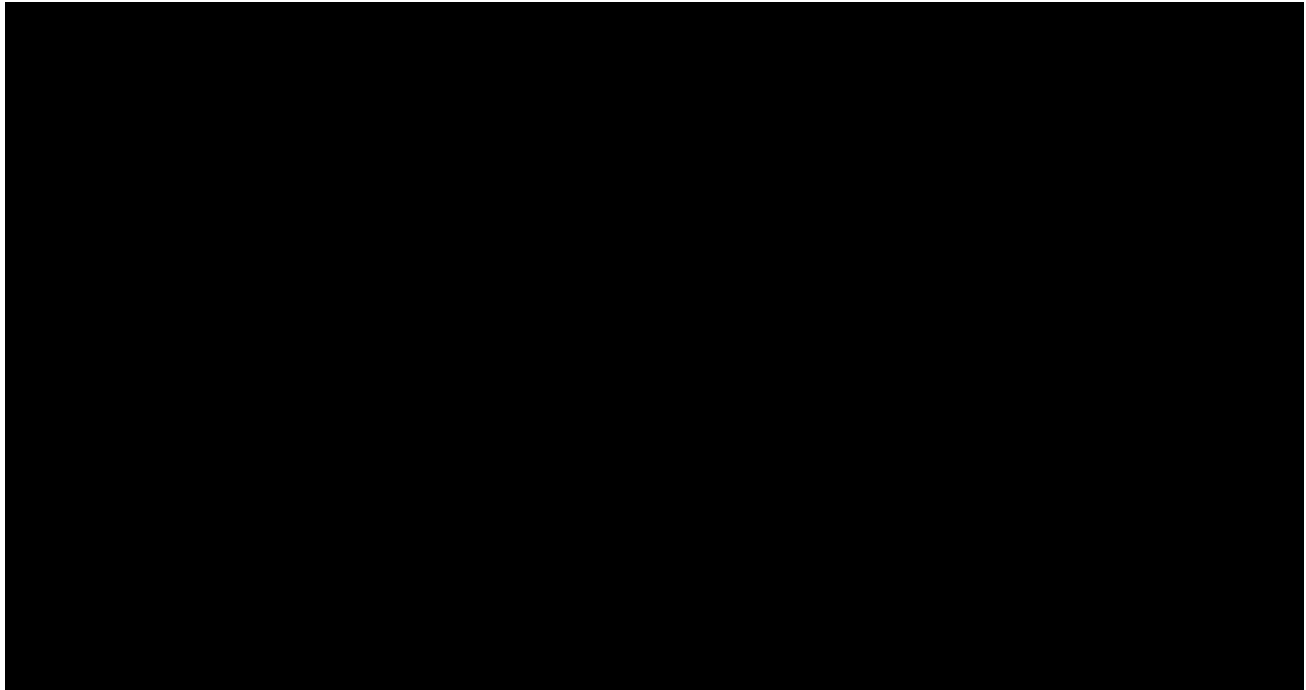


(D) If the Issuer of any Security Fund instrument ceases to be at the relevant time an Acceptable Issuing Bank (in the case of a letter of credit Issuer or holder of Cash) or a Creditworthy Entity (in the case of an Issuer of a payment guaranty) or any Security Fund instrument ceases to be in full force and effect, then Seller shall be required to replace the affected Security Fund instrument with another Security Fund instrument meeting the criteria set forth in Section 11.1(E) no later than ten (10) Days after receiving notice from Purchaser that such replacement of the Security Fund instrument is required pursuant to this Section 11.1(D). If the Security Fund instrument is a letter of credit and is not replaced as required herein (such condition, the "Failure to Replace Condition"), Purchaser shall have the right to draw immediately upon the letter of credit and be entitled to hold the amounts so drawn as security pursuant to Section 11(C)(2). If Purchaser does not meet the conditions of Section 11(C)(2)(i), Purchaser will place the amounts so drawn, in an interest bearing account or escrow in accordance with Section 11.1(C)(2)(ii), until and unless Seller provides a substitute form of such security meeting the requirements of this Section 11.1. Such amounts shall constitute part of the security pursuant to Section 11.1(C)(2) for all purposes of this REPA (including for the return of such Cash to Seller according to Section 11(E)).

(E) If any Security Fund instrument being replaced in accordance with Section 11.1(C) or 11.2(D), (i) if the Security Fund instrument replaced is Cash, Purchaser shall immediately return the Cash (including any interest earned thereon) to Seller, or (ii) if the Security Fund instrument being replaced is not Cash, the Issuer shall be deemed released from all obligations under such Security Fund instrument solely in excess of the amount Seller is required to maintain in the Security Fund as of such date, and Purchaser shall execute any documents reasonably requested by Seller or the Issuer thereof to confirm such release. If there is a reduction of the Facility Capacity as contemplated by Section 4.11 and Seller has paid the applicable Capacity Shortfall Damages, if the Security Fund is higher than the required amount of the Security Fund based on the Facility Capacity, the Purchaser will otherwise cooperate to size the Security Fund off of the Facility Capacity and return any excess Cash amounts (if applicable) under clause (i) or through an amendment to the Security Fund instrument under clause (ii).

(F) On the later of (i) ninety eighty (90) Days after the termination or expiration of this REPA or (ii) the resolution of all then-pending Disputes under this

REPA, (a) if Cash is part of the Security Fund, Purchaser shall immediately return to Seller such Cash (together with any interest earned thereon), and (b) if a letter of credit or guaranty is part of the Security Fund, the Issuer(s) that provided or issued such Security Fund instrument shall be deemed released from all obligations under such Security Fund instrument, and Purchaser shall execute any documents reasonably requested by Seller or the Issuer thereof to confirm such release.



ARTICLE 12
DEFAULT AND REMEDIES

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an "Event of Default" of Seller upon its occurrence:

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this REPA or any of its rights hereunder for the benefit of creditors (except for an assignment to the Facility Financing Representative as security under the Financing Documents as permitted by this REPA);
- (3) Seller's voluntary filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United

States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise;

(4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller or the Issuer providing a guaranty pursuant to Section 11(C)(3) hereof as debtor, and such case or proceeding has not been dismissed within sixty (60) Days;

(5) The sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy Products committed to Purchaser by Seller, except to the extent permitted by this REPA;

(6) Seller's failure to comply with its obligations under Section 11.1, if not cured within [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1;

(7) Seller's failure to make any payment required under this REPA, if not cured within [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1;

(8) Any of the following events, if not cured within [REDACTED] [REDACTED] in the case of an Event of Default that can be cured solely by the payment of money) after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1:

a. Abandonment;

b. Seller's failure to maintain in effect or replace any material agreements required to deliver the Renewable Energy committed to Purchaser hereunder to the Point of Delivery pursuant to Section 5.3, including the Interconnection Agreement;

c. Seller's failure to comply with any material obligation under this REPA, other than as expressly specified in this Article 12, which would result in a material adverse impact on Purchaser;

d. Seller's assignment of this REPA, or Seller's sale or transfer of its interest, or any part thereof, in the Facility or any Project Assets, except as permitted in accordance with Article 19; or

e. Any representation or warranty made by Seller in this REPA shall prove to have been false in any material respect when made, except to the extent expressly limited to the time when made, if such cessation would reasonably be expected to result in a material adverse impact on Purchaser.

(9) Seller's failure to meet the Commercial Operation Milestone, if not cured within [REDACTED] after the date of written notice from

Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1; provided, however, that Seller shall have an [REDACTED] to achieve the Commercial Operation Date, provided that, on or before the expiration of the [REDACTED], (i) Seller pays to Purchaser all [REDACTED] payable with respect to such initial period and (ii) an Independent Engineer paid for by Seller, provides a written opinion to Purchaser stating that Seller's plan for achieving the Commercial Operation Date is reasonably achievable within such [REDACTED]. This provision would allow for a total cure period of [REDACTED]; or

(10) If (A) the Availability of the Facility is less than [REDACTED] and (B) Seller does not, prior to [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1 (the "Shortfall Notice Date"), initiate commercially reasonable efforts to attempt to increase Availability of the Facility such that, for the [REDACTED] beginning on the [REDACTED], the Availability of the Facility exceeds [REDACTED] of the [REDACTED] provided, however, that, even if Seller does initiate such commercially reasonable efforts prior to [REDACTED] after the [REDACTED] Date, then if, at the end of the [REDACTED] beginning on the [REDACTED] Date, the Availability of the Facility for such period does not exceed [REDACTED] of the [REDACTED] for such period, it shall constitute an Event of Default of Seller. Purchaser may require the retention of a mutually agreeable Independent Engineer by Seller, at Seller's cost, to confirm that Seller's efforts to increase Availability of the Facility such that, for the [REDACTED] period beginning on the Shortfall Notice Date, the Availability of the Facility exceeds [REDACTED] of the [REDACTED], is reasonably achievable.

12.2 Facility Financiers' Right to Cure Default of Seller.

Seller shall provide Purchaser with a notice identifying the Facility Financing Representative and the Parties shall use commercially reasonable efforts to enter into a Consent and Agreement in substantially the form of Exhibit L attached hereto with such Facility Financing Representative. Following execution of a Consent and Agreement, Purchaser shall provide notice of any default of Seller under Section 12.1 to the Facility Financing Representative, and Purchaser will accept a cure to such Default of Seller performed by the Facility Financing Representative, in accordance with the terms of the applicable Consent and Agreement.

12.3 Events of Default of Purchaser.

(A) Any of the following shall constitute an "Event of Default" of Purchaser upon its occurrence:

- (1) Purchaser's dissolution or liquidation;

(2) Purchaser's assignment of this REPA or any of its rights hereunder for the benefit of creditors;

(3) Purchaser's voluntary filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or Purchaser voluntarily taking advantage of any such law or act by answer or otherwise;

(4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Purchaser (or, if Purchaser provides a guaranty in accordance with Section 11.2, the Issuer providing such guaranty), and such case or proceeding is not dismissed within sixty (60) Days;

(5) Purchaser's failure to comply with its obligations under Section 11.2;

(6) Purchaser's assignment of this REPA, except as permitted in accordance with Article 19;

(7) Purchaser's failure to make any payment due hereunder, if not cured within [REDACTED] after the date of written notice from Seller to Purchaser as provided for in Section 13.1;

(8) Purchaser's failure to comply with any material obligation under this REPA, other than as otherwise expressly specified in this Article 12, which would result in a material adverse impact on Seller, if not cured within [REDACTED] after the date of written notice from Seller to Purchaser as provided for in Section 13.1; or

(9) Any representation or warranty made by Purchaser in this REPA shall prove to have been false in any material respect when made, except to the extent expressly limited to the time when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller, and shall constitute an Event of Default of Purchaser if not cured within thirty (30) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

12.4 Damages Prior to Termination.

For all breaches or Events of Default (other than those in respect of any [REDACTED], for which Sections 4.10, 4.11 and 7.2 of this REPA provide a remedy that is stated to be an exclusive remedy of Purchaser), the non-breaching or non-defaulting Party shall be entitled to receive from the breaching or defaulting Party its actual, direct damages resulting from such breach or Event of Default.

12.5 Termination.

Upon the occurrence of an Event of Default which has not been cured within the applicable cure period and is continuing, the non-defaulting Party shall have the right to declare, by giving notice to the defaulting Party (and, if the defaulting Party is Seller, to the Facility Financing Representative), a date no less than one (1) Day and no more than thirty (30) Days after the date of such notice upon which this REPA shall terminate.

[REDACTED]

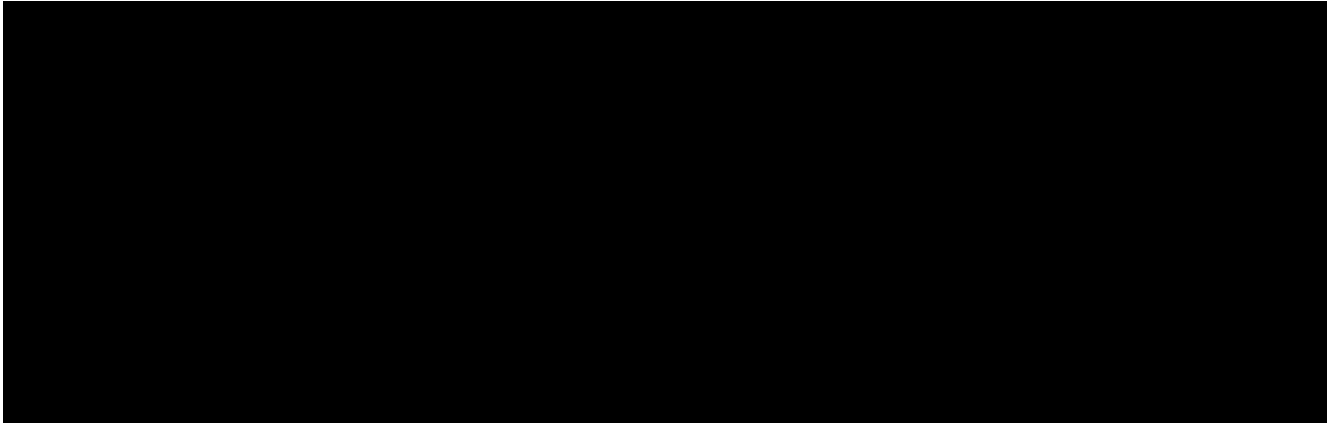
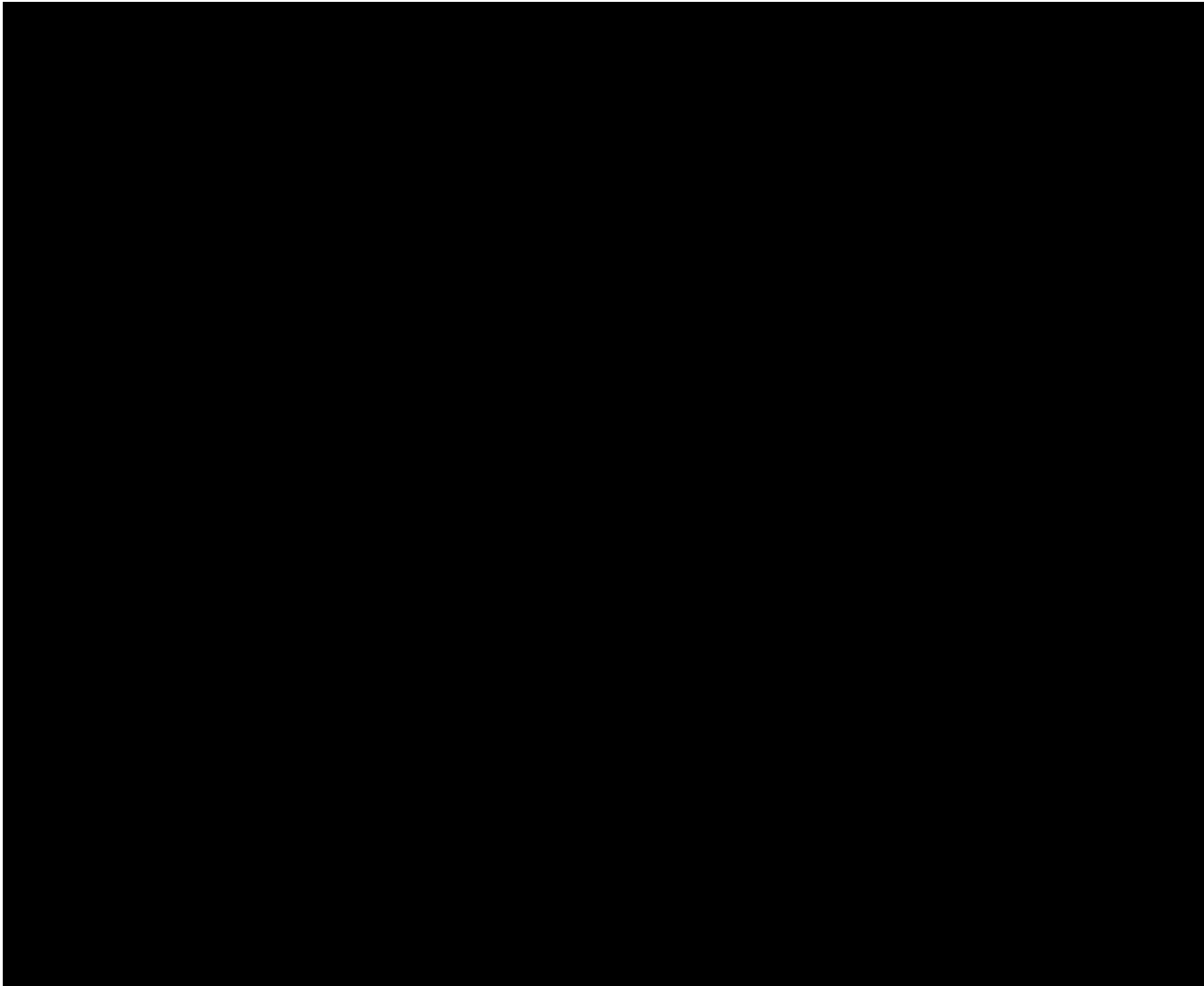
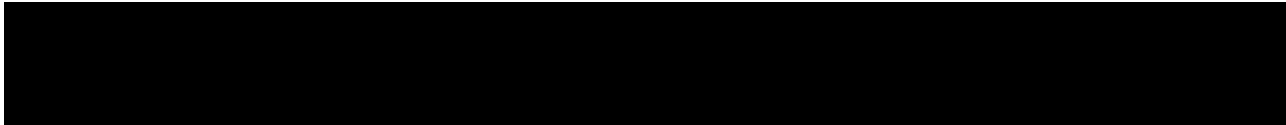
[REDACTED]

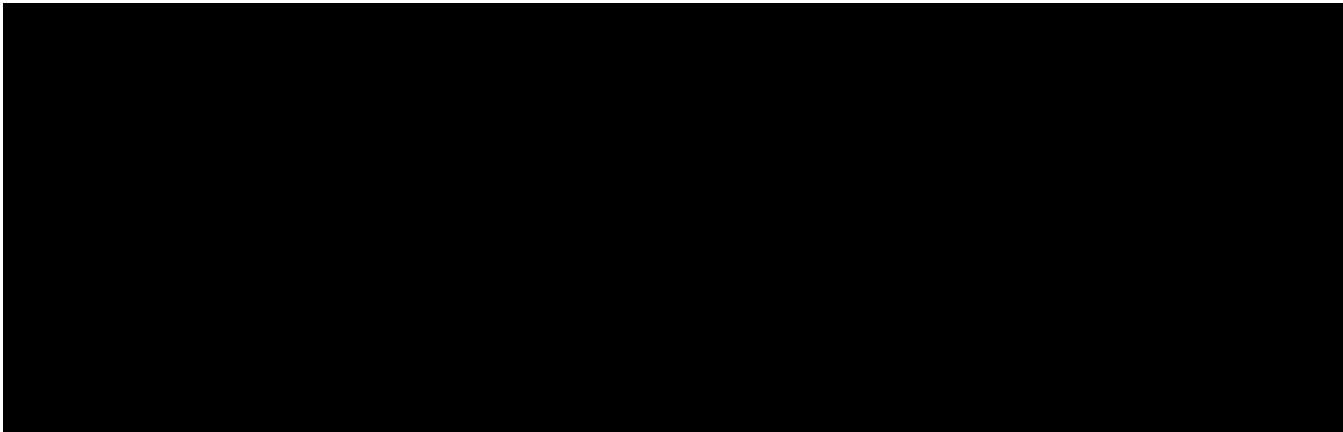
12.6 [REDACTED]

[REDACTED]

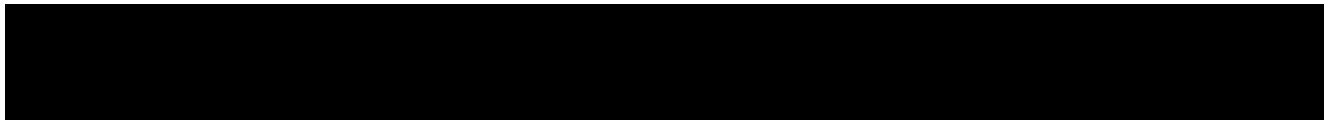
12.7 [REDACTED]

[REDACTED]





12.8 [REDACTED].



12.9 [REDACTED].



12.10 Waiver and Exclusion of Other Damages.

The Parties confirm that the express remedies and measures of damages provided in this REPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN); PROVIDED, THAT (A) IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFORE FROM THE OTHER PARTY HERETO, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES AND (B) NOTHING IN THIS SECTION 12.9 SHALL LIMIT SELLER'S RIGHT TO RECOVER LOST PROFIT AS CALCULATED PURSUANT TO THE "RESALE COSTS" DEFINITION OR PURCHASER'S RIGHT TO SEEK REPLACEMENT COST RATE

AMOUNTS. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.11 Payment of Damages.

Without limiting any other provisions of this Article 12 and at any time before or after termination of this REPA, the non-defaulting Party may send the other Party an invoice for such damages (including, if applicable, [REDACTED] or other amounts as are due to the non-defaulting Party at such time from the defaulting Party under this REPA and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. In the case of damages owed by Seller to Purchaser, Purchaser may, subject to the provisions of Section 11.1, withdraw funds from the Security Fund, as needed to provide payment for such invoice if the invoice is not paid by Seller on or before the tenth (10th) Business Day following the invoice due date.

12.12 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages (and such Party shall not seek double recovery of any damages) and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this REPA; [REDACTED]

ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES

13.1 Notices in Writing.

Notices required by this REPA shall be addressed to the other Party, including the other Party's representative on the Contract Administration Committee, at the addresses noted in Exhibit C as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this REPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the Close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations, including communications specified in Section 7.4 and Section 10.2, shall be exempt from this Section.

13.2 Representative for Notices.

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Contract Administration Committee, or a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives.

The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this REPA and to attempt to resolve Disputes or potential Disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this REPA.

13.4 Operating Records.

Seller and Purchaser shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format. Seller and Purchaser shall cause such Operating Records to be kept for a period equal to at least five (5) years following the creation thereof, unless either Seller or Purchaser is required by any Governmental Authority to keep such Operating Records for a longer period of time.

13.5 Operating Log.

Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each Clock Hour; changes in operating status; Scheduled Outages and Forced Outages for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format.

13.6 Billing and Payment Records.

To facilitate payment and verification, Seller and Purchaser shall, for a period of at least five (5) years following the creation thereof, keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or at the notice address listed in Exhibit C. For audit and verification purposes, Seller will grant Purchaser read-only access to the PJM eSuite accounts for the PJM Node.

13.7 Examination of Records.

Seller and Purchaser may examine the financial and Operating Records and data kept by the other Party relating to transactions under and administration of this REPA, at any time

during the period the records are required to be maintained, upon request and during normal business hours.

13.8 Exhibits.

Either Party may change the information for their notice addresses in Exhibit C at any time upon written notice to but without the approval of the other Party. Exhibit C may only be changed in accordance with Section 13.1. Exhibit D may be changed in accordance with Section 16.2. All other Exhibits may only be modified by the mutual agreement of Seller and Purchaser.

13.9 Dispute Resolution.

(A) In the event of any dispute, controversy or claim arising out of or relating to this REPA (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives have not resolved the Dispute within thirty (30) Days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (I) shall independently prepare a written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties have not resolved the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, the following provisions shall apply:

(1) Any Dispute that is not resolved pursuant to this Section 13.9(A), shall, upon mutual written agreement, be submitted for arbitration before a panel of three (3) arbitrators in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), in effect at the time of the arbitration ("Rules"); provided, however, that in the event of any conflict between the procedures herein and the Rules the procedures herein shall control. Within ten (10) Days following the filing of the Arbitration Notice, each Party shall designate one (1) arbitrator, and those two (2) arbitrators shall select a mutually acceptable third arbitrator within twenty (20) Days following the filing of the Arbitration Notice. If either Party fails to appoint an arbitrator, or the two (2) appointed arbitrators cannot agree on the third arbitrator, within the applicable time period, then the arbitrators not yet appointed shall be selected in accordance with the Rules. Notwithstanding any provisions of such Rules, the Parties shall have the right to take depositions (up to three (3) per Party) and obtain limited discovery regarding the subject matter of the arbitration. Any Party desiring arbitration shall serve on the other Party and the regional case

management center of the AAA administering cases for such location in accordance with the aforesaid Rules, its notice of intent to arbitrate (“Arbitration Notice”). The Arbitration Notice shall be made within a reasonable time after the Dispute has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. All arbitration shall be administered by the AAA. All arbitration shall take place in the borough of Manhattan, City of New York, New York, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the arbitration proceeding not less than fifteen (15) days prior to the arbitration. The Parties shall use all commercially reasonable efforts to conclude the arbitration as soon as practicable. A majority of the arbitrators shall be required to agree in writing to the procedures set forth herein and shall determine all questions of fact and law relating to any Dispute hereunder, including whether or not any Dispute is subject to the arbitration provisions contained herein. The arbitrators may not award non-monetary, injunctive or other equitable relief of any sort, however such relief shall be available to the Parties where appropriate from a court of competent jurisdiction. The arbitrators shall have no power to award (i) damages inconsistent with the terms of this REPA, (ii) punitive damages or any other damages not measured by the prevailing Party’s actual damages or (iii) damages in excess of the limitations set forth in this REPA. All aspects of the arbitration shall be treated as confidential. Neither the Parties nor any arbitrator may disclose the content or results of the arbitration, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration. The award of the arbitrators shall be binding and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The rights and obligations of the Parties will remain in effect under the terms of this REPA for the duration of any Dispute. In any arbitration or litigation to enforce the provisions of this REPA, the prevailing Party in such action shall be entitled to recover its reasonable legal fees and expenses, fees of the arbitrators, costs and expenses (such as expert witness fees) as fixed by the arbitrators or court without necessity of noticed motion.

(B) In the event of a Dispute (a) that is not resolved pursuant to Section 13.9(A) and (b) for which the Parties have not mutually agreed (in writing) to submit for arbitration pursuant to Section 13.9(A)(1) above, either Party may seek available legal and equitable remedies in a court of competent jurisdiction. The Parties hereto hereby irrevocably submit to the exclusive jurisdiction of the federal or state courts located in the State of New York over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby; and each Party hereby irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such federal courts unless such federal courts do not have jurisdiction in which event such dispute or proceeding shall be heard and determined in such state courts. Each Party hereby 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 such dispute brought in such court or any defense of inconvenient forum.

(C) Notwithstanding any provision in this REPA to the contrary, if no Dispute Notice has been issued within six (6) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon; provided, however, that the limitation set forth in this subsection (B) shall not apply to any Dispute Notices regarding claims for indemnification under this REPA for third party claims.

(D) Seller and Purchaser each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this REPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Purchaser related hereto and expressly agree to have any Disputes arising under or in connection with this REPA be adjudicated by a judge of the court having jurisdiction without a jury.

(E) During the continuation of any Dispute arising under this REPA, the Parties shall continue to perform their respective obligations under this REPA, including prompt and timely payment of all undisputed amounts due hereunder, until a final non-appealable resolution is reached.

ARTICLE 14 FORCE MAJEURE

14.1 Definition of Force Majeure.

(A) The term "Force Majeure", as used in this REPA, means causes or events beyond the reasonable control of the Party claiming Force Majeure and which (i) is not occurring and cannot reasonably be foreseen on the date hereof, (ii) could not be avoided, prevented or removed by such Party's use of commercially reasonable efforts and (iii) are not caused by or result from the negligence or breach or failure of such Party to perform its obligations hereunder and the affected Party has taken all reasonable precautions, care and alternative measures to avoid or mitigate the effects thereof in accordance with Applicable Law and Good Utility Practices. So long as the requirements of the preceding sentence are met, causes and events of Force Majeure include acts of God, sudden actions of the elements such as floods, hailstorms, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage the Facility or significantly impair its construction or operation for a period of time longer than normally encountered under comparable circumstances; long-term material changes in solar irradiance across the Facility; lightning; fire; ice storms; sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the

demands of a labor group); pandemic; epidemic; and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance. Notwithstanding anything to the contrary, the Parties acknowledge and agree that COVID-19 is an event and circumstance that exists at the Effective Date, and that any specific COVID-19 Effect that arises after the Effective Date may be deemed a "Force Majeure" only if such COVID-19 Effect otherwise satisfies the requirements of this Section 14.1(A); it being understood and agreed that the occurrence of a COVID-19 Effect shall not be deemed to reasonably foreseeable solely as a result of a similar event or circumstance resulting from COVID-19 occurring prior to the Effective Date. In addition, the term "Force Majeure" does not include Facility outages to the extent such are not caused or exacerbated by an event of Force Majeure.

(B) The term Force Majeure does not include (i) any acts or omissions of any third party, in its capacity as vendor, materialman, customer, contractor or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including floods, hurricanes, or tornadoes; sabotage; terrorism; war; riots; emergency orders issued by a Governmental Authority or other Force Majeure event; (iii) loss of Purchaser's markets or Purchaser's inability to use or resell the Renewable Energy Products; (iv) Seller's ability to sell the Renewable Energy Products at a price greater than the applicable Contract Rate; (v) changes in market conditions that affect the cost of Purchaser's or Seller's supplies, or that affect demand or price for any of Purchaser's or Seller's products unless those changes are due to events of Force Majeure; or (vi) lack of funds or inability to make timely payments of money.

14.2 Applicability of Force Majeure.

(A) Other than as set forth in Section 14.3, neither Party shall be responsible or liable for any delay or failure in its performance under this REPA (other than the obligation to make payment of amounts due and payable under this REPA), nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- (1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(4) when the non-performing Party is able to resume performance of its obligations under this REPA, that Party shall give the other Party prompt written notice to that effect.

(B) Except as otherwise expressly provided for in this REPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this REPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

14.3 Limitations on Effect of Force Majeure.

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this REPA beyond its stated term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure prevents the performance of a Party's obligations hereunder in any material respect and continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, which may be before, on or after COD, as noticed pursuant to Section 14.2(A), either Party may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this REPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its assets, and to execute, deliver, and perform its obligations under this REPA.

(B) The execution, delivery, and performance of its obligations under this REPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Purchaser upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Seller.

(D) The execution and performance of this REPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations which Seller anticipates will be obtained by Seller in the ordinary course of business, all permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority (including permits, consents, approvals, licenses, or authorizations), to authorize Seller's execution, delivery and performance of this REPA have been duly obtained and are in full force and effect.

(F) Seller is (1) an "eligible contract participant" as defined in 12 U.S.C. 5301, or (2) a producer, processor, or commercial user of, or a merchant handling, the electricity that is the subject of this REPA, or the products or byproducts thereof, and Seller is entering into this REPA solely for purposes related to its business as such.

(G) Seller shall comply with all applicable local, state, and federal laws, regulations, and ordinances, including applicable equal opportunity and affirmative action requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term.

15.2 Purchaser's Representations, Warranties and Covenants. Purchaser hereby represents and warrants as follows:

(A) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana and is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Purchaser; and Purchaser has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this REPA.

(B) The execution, delivery, and performance of its obligations under this REPA by Purchaser have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Purchaser's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Purchaser or violate any provision in any corporate documents of Purchaser, the violation of which could have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Purchaser's corporate charter or bylaws, or under any agreement relating to the management or affairs of Purchaser, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Purchaser is a party or by which Purchaser or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets or properties of Purchaser now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Purchaser.

(D) The execution and performance of this REPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Purchaser is a party or any judgment, order, statute, or regulation that is applicable to Purchaser.

(E) To the best knowledge of Purchaser, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Purchaser's execution, delivery and performance of this REPA, have been duly obtained and are in full force and effect.

ARTICLE 16 INSURANCE

16.1 Evidence of Insurance.

Seller shall, prior to the commencement of construction and promptly upon renewal of insurance each calendar year or partial calendar year during the Term, provide Purchaser, at the insurance address listed in Exhibit C, with a copy of insurance certificates reasonably acceptable to Purchaser evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in this Article 16 and, to the extent commercially available, Exhibit D to this REPA. If the specifications for coverages are not commercially available, or economically reasonable, Seller and Purchaser will promptly meet to discuss whether alternative specifications or coverages can be secured. Such certificates shall (a) identify Purchaser and its Affiliates as additional insureds (except workers' compensation); (b) provide for a waiver of any rights of subrogation against Purchaser, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) indicate that the Commercial General Liability policy has been endorsed as described in Exhibit D. Seller shall use commercially reasonable efforts to ensure that the insurance policies required by this REPA are procured and stipulate that Purchaser shall receive thirty (30) Days' prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice shall be ten (10) Days for non-payment of premiums); provided, however, that, if Seller is unable to require its insurers to provide such notices to Purchaser, Seller shall provide such notice to Purchaser, at the insurance address listed in Exhibit C. In the event Seller receives notice from one of its insurers, it shall provide notice to Purchaser as soon as practicable but in no event later than five (5) Business Days following Seller's receipt. All policies shall be written with insurers that Purchaser, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld, conditioned or delayed). All policies shall contain an endorsement that Seller's policy shall be primary and non-contributory with respect to any insurance maintained by Purchaser, in all instances regardless of like coverages, if any, carried by Purchaser. Seller's liability under this REPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

All insurance required under this REPA shall be on an occurrence-basis and shall be in effect during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this REPA and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) years after the Term.

ARTICLE 17
[REDACTED]

17.1 [REDACTED]

[REDACTED]

[REDACTED]

17.2 [REDACTED]

[REDACTED]

17.3 [REDACTED]

17.4 [REDACTED]

ARTICLE 18
LEGAL AND REGULATORY COMPLIANCE

18.1 Compliance with Laws.

Each Party shall at all times comply with all laws, ordinances, rules and regulations applicable to it except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all permits, licenses, and inspections required by any Governmental Authority and necessary for performance of this REPA, and shall pay its respective charges and fees in connection therewith.

18.2 Cooperation.

Each Party shall cooperate with the other Party in providing such information as may be reasonably requested, to the extent permitted by Applicable Law and subject to such confidentiality and use limitations as the providing Party may reasonably require, to the extent that the requesting Party requires the same in order to fulfill any regulatory

reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

18.3 Removal of Facility.

Upon permanent cessation of generation of Renewable Energy from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site only if and when required by Applicable Law.

ARTICLE 19 ASSIGNMENT, SUBCONTRACTING, AND FINANCING

19.1 No Assignment Without Consent.

Except as permitted in this Article 19, neither Party shall assign this REPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided (i) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by the other Party and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this REPA; (iii) no assignment shall impair any security given by Seller hereunder; and (iv) before this REPA is assigned by a Party, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies. For the avoidance of doubt, a merger of either Party with another Person shall not qualify as an assignment and shall not be subject to the restrictions set forth in this Section 19.1.

(A) Seller's consent shall not be required for Purchaser to assign this REPA to an Affiliate of Purchaser, provided that (i) Purchaser provides assurances and executes documents reasonably required by Seller and the Facility Financiers regarding Purchaser's continued liability for all of Purchaser's obligations under this REPA in the event of any nonperformance on the part of such assignee and (ii) such assignee is a Creditworthy Entity. In the event that the assignee has or obtains an investment grade senior unsecured debt rating equivalent to or better than the senior unsecured debt rating of Purchaser (but in no event worse than the equivalent of BBB), then Seller agrees to relieve Purchaser from its obligations under this REPA arising after the date of such assignment, if Purchaser requests to be so relieved in a written notice provided to Seller.

(B) Seller shall have the right, without Purchaser's prior written consent, to assign this REPA (i) subject to the provisions of Section 19.2, to a purchaser of all or substantially all of the assets of Seller; (ii) to an Affiliate of Seller; (iii) subject to the provisions of Section 19.2, in connection with a direct or indirect Change of Control of Seller, or (iv) for collateral purposes to the Facility Financing Representative or any Facility Financier provided that the Parties and the Facility Financing Representative have executed the applicable Consent and Agreement; and

in any event provided that such assignee, as applicable, (x) meets the requirements of Section 19.1, (y) complies with the requirements of Section 11.1, and (z) is a Qualified Operator or engages a Qualified Operator to operate and maintain the Facility.

19.2 [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

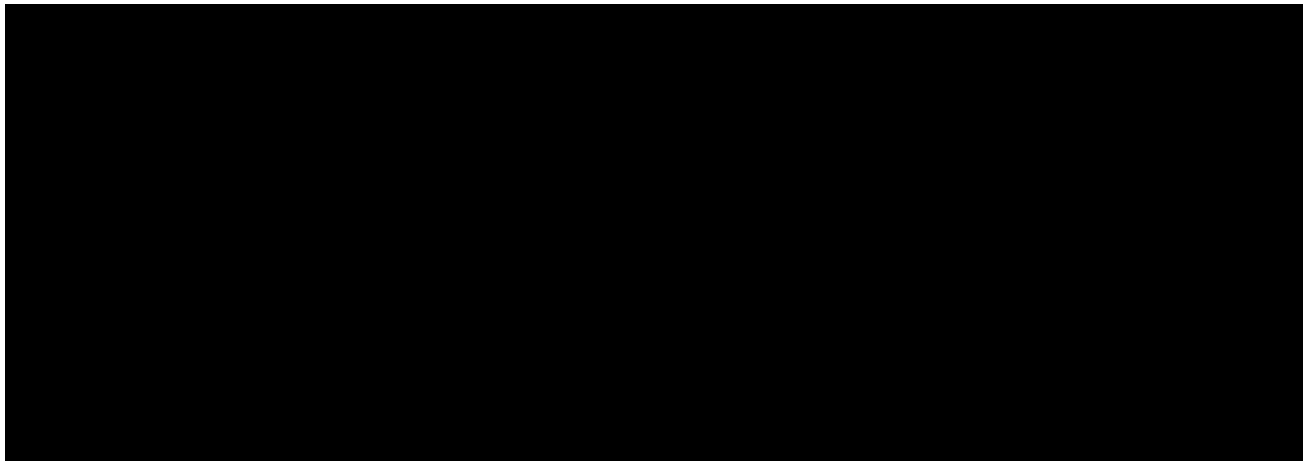
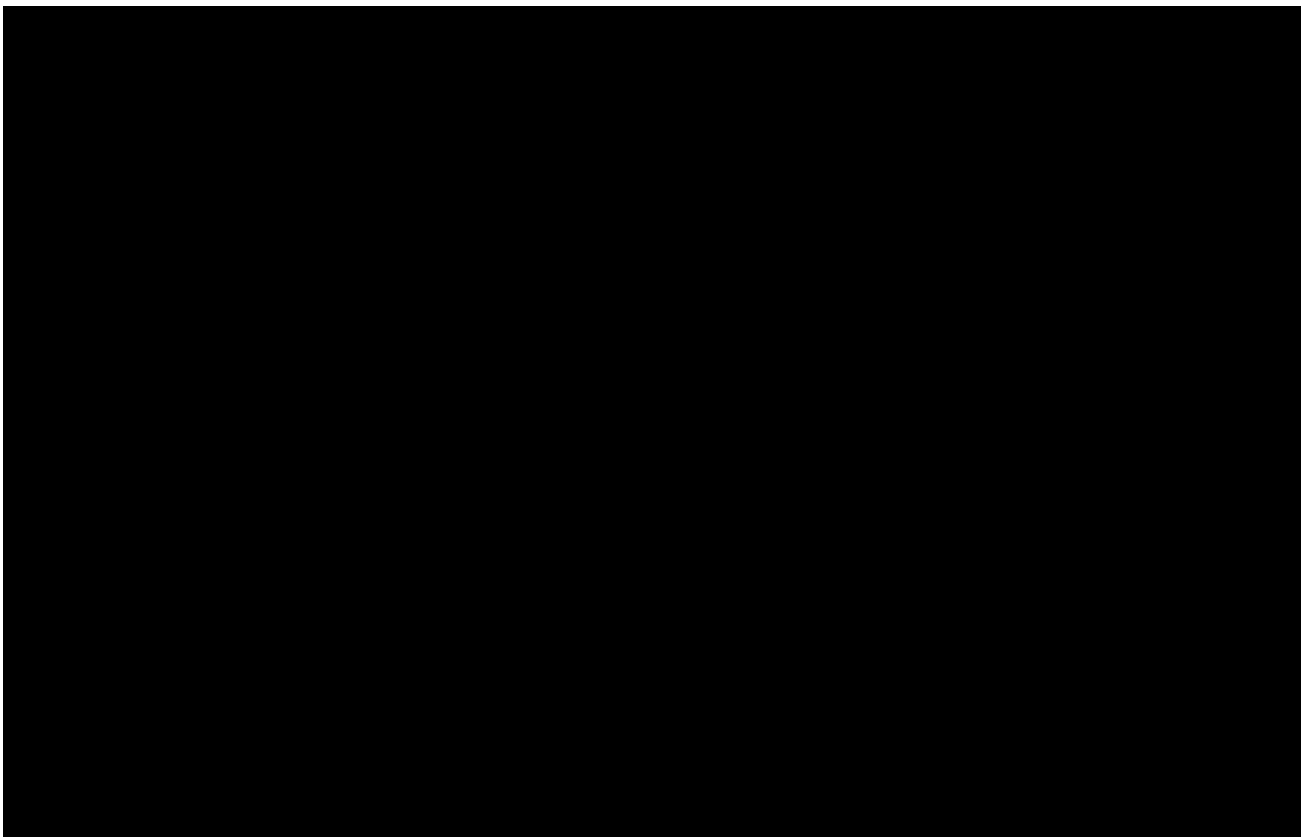
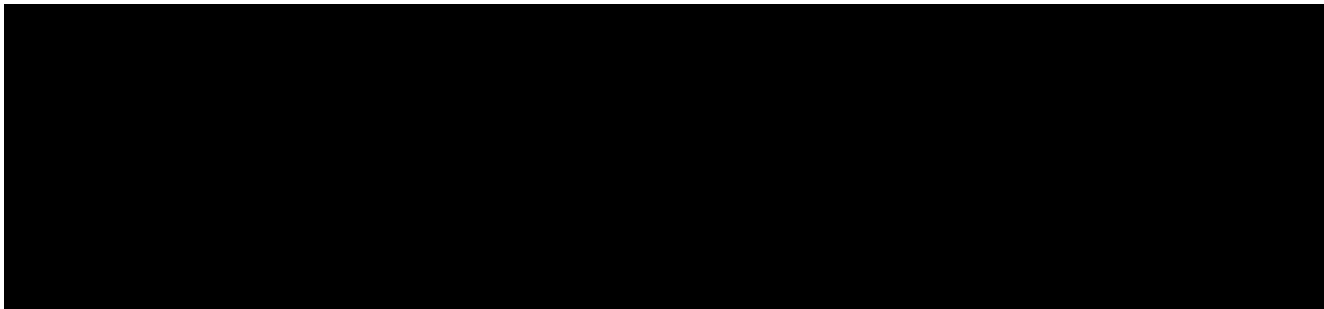
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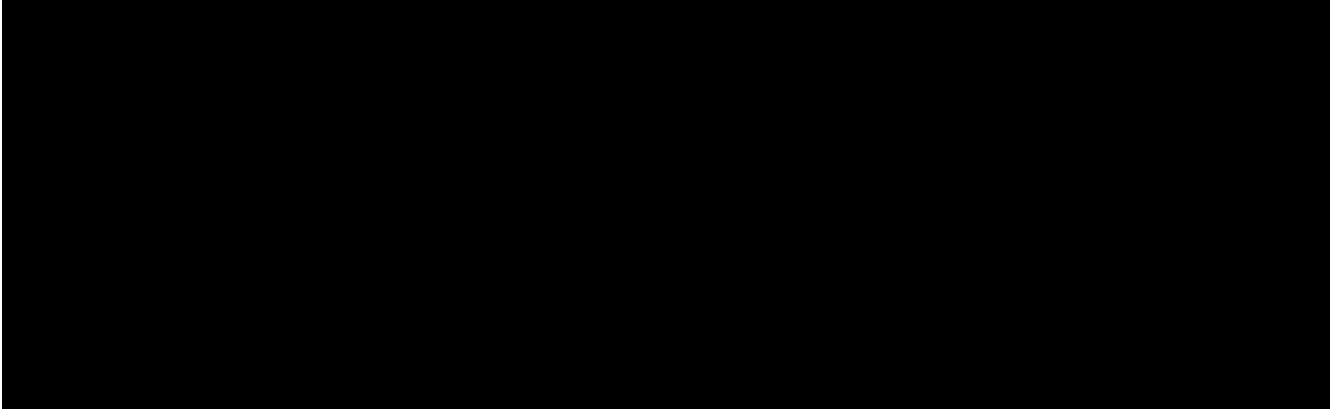
19.3 [Redacted]

[Redacted]

[Redacted]

[Redacted]





19.4 Accommodation of Facility Financiers.

To facilitate Seller's obtaining of financing with respect to the Facility, Purchaser shall make reasonable efforts to enter into the Consent and Agreement (with respect to any debt financing, tax equity financing or cash equity financing) or an estoppel in a form reasonably satisfactory to Purchaser (with respect to any equity financing) and to provide such other certifications, representations or other documents as the Facility Financing Representative may reasonably request and are in form and substance satisfactory to Purchaser; provided, that in responding to any such request, Purchaser shall have no obligation to enter into any agreement that materially adversely affects any of Purchaser's rights, benefits, risks or obligations under this REPA. Seller shall reimburse, or shall cause the Facility Financing Representative to reimburse, Purchaser for expenses (including the reasonable fees and expenses of counsel) incurred by Purchaser in the preparation, negotiation, execution and delivery of the applicable Consent and Agreement, estoppel and other documents pursuant to this Section 19.4 in an amount for each closing of any such financing equal to the [REDACTED] [REDACTED] the actual third-party expenses incurred by Purchaser in connection with such closing.

19.5 Notice of Facility Financier Action.

Within ten (10) Days following Seller's receipt of each written notice from the Facility Financiers of default, or Facility Financiers' intent to exercise any remedies, under the Financing Documents, Seller shall deliver a copy of such notice to Purchaser.

19.6 Transfer Without Consent is Null and Void.

Any sale, transfer, or assignment of any interest in the Facility or in this REPA made without fulfilling the requirements of this REPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

ARTICLE 20 MISCELLANEOUS

20.1 Waiver.

Subject to the provisions of Section 13.9(B), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this REPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Taxes.

(A) Each Party shall use reasonable efforts to implement the provisions of and to administer this REPA in accordance with the intent of the Parties to minimize all Taxes, so long as neither Party is materially adversely affected by such efforts. Notwithstanding the foregoing, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

(B) Seller shall pay or cause to be paid (and shall indemnify and hold Purchaser harmless from and against) all sales, use, excise, ad valorem, transfer and other similar taxes that are imposed by any taxing authority (individually, a "Tax" and collectively, "Taxes") on or with respect to the Facility or the sale of Renewable Energy Products incurred prior to the delivery of Renewable Energy Products to the Point of Delivery. Purchaser shall pay or cause to be paid (and shall indemnify and hold Seller harmless from and against) all Taxes on or with respect to the sale of Renewable Energy Products incurred upon and after the delivery of Renewable Energy Products to the Point of Delivery (other than ad valorem, franchise, income, or commercial activity taxes, and transactional taxes or fees imposed by law on Seller that are related to the sale of Renewable Energy Products and are, therefore, the responsibility of Seller). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the responsible Party shall promptly reimburse the other for such Taxes.

(C) In the event any of the sales of Renewable Energy Products hereunder are exempt or excluded from any particular Tax(es) payable by Purchaser, Purchaser shall provide Seller with all necessary documentation within thirty (30) Days after the execution of this REPA to evidence such exemption or exclusion (or, with regard to any such Tax(es) enacted after the date of this REPA, Purchaser shall provide Seller with such documentation before the date on which the enactment requires the delivery of documentation to Seller in order to effect an exclusion or exemption from such Tax(es)). In the event Purchaser does not provide such

documentation, then Purchaser shall indemnify, defend and hold Seller harmless from any liability with respect to Tax(es) to which Purchaser is exempt or excluded.

20.3 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs to the extent incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this REPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against either Party by any Governmental Authority due to noncompliance by the other Party with this REPA, any requirements of law with which compliance is required by this REPA, any permit or contractual obligation, or, if the work of the other Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to the other Party's noncompliance with any requirements of law with which compliance is required by this REPA, permit, or contractual obligation, penalized Party shall indemnify and hold other Party harmless against any and all reasonable losses, liabilities, damages, and claims suffered or incurred by other Party, including claims for indemnity or contribution made by third parties against other Party, except to the extent other Party recovers any such losses, liabilities or damages through other provisions of this REPA.

20.4 Rate Changes.

The terms and conditions and the rates for service specified in this REPA shall remain in effect for the Term. Absent the Parties' written agreement, this REPA shall not be subject to change by application of either Party pursuant to Section 205, 206 or 306 of the Federal Power Act.

Absent the agreement of all parties to the proposed change, the standard of review for changes to this REPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC et al. v. Maine Public Utilities Commission*, 558 U.S. 165 (2010) (the "Mobile-Sierra doctrine), or such other standard of review permissible to preserve the intent of the Parties pursuant to this Section to uphold this REPA without modification.

20.5 Disclaimer of Third Party Beneficiary Rights.

In executing this REPA, neither Party does, nor should it be construed to, extend its credit or financial support for the benefit of any third parties, including those lending money to or having other transactions with the other Party. Except with respect to the Consent and Agreement and the rights of the Indemnified Parties under Section 17.1, nothing in this REPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this REPA.

20.6 Relationship of the Parties.

(A) This REPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party nor to create any agency relationship between the Parties or impose any fiduciary responsibility on either Party or create any trust or trust obligations on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform its obligations under this REPA, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Purchaser for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Purchaser employee.

20.7 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that as a government contractor Purchaser is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Purchaser. Seller shall comply with all applicable equal opportunity and affirmative action federal laws, executive orders, and regulations, including, if applicable, 41 C.F.R. §60-1.4(a)(1-7).

20.8 Survival of Obligations.

Cancellation, expiration, or earlier termination of this REPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.9 Severability.

In the event any of the terms, covenants, or conditions of this REPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms,

covenants, and conditions of this REPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that Purchaser and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this REPA with a view toward effecting the purposes of this REPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.10 Complete Agreement; Amendments.

The terms and provisions contained in this REPA constitute the entire agreement between Purchaser and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Purchaser and Seller with respect to the sale of Renewable Energy Products from and associated with the Facility. This REPA may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

20.11 Binding Effect.

This REPA, as it may be amended from time to time pursuant to Section 20.10, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.12 Headings.

Captions and headings used in this REPA are for ease of reference only and do not constitute a part of this REPA.

20.13 Counterparts.

This REPA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.14 Governing Law.

The interpretation and performance of this REPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws provisions.

20.15 Confidentiality.

This REPA and any information provided by either Party to the other Party pursuant to this REPA and labeled "CONFIDENTIAL" or with words of similar meaning will be utilized by the receiving Party solely in connection with the purposes of this REPA and will not be disclosed by the receiving Party to any third party, except with the providing Party's consent, and upon request of the providing Party will be returned thereto, except that the receiving Party will not be obligated to return any such information contained in

documents generated by the receiving Party that: (1) reflect or refer to confidential information provided by the disclosing Party; and (2) are stored electronically by the receiving Party. With respect to any such retained electronically stored confidential information, the receiving Party will continue to comply with the obligations of this Section 20.15. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that such confidential information may be disclosed to (i) the Interconnection Provider, the Transmission Operator, Affiliates or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required solely for settlement and billing or otherwise to perform under or administer this REPA, recognizing that such information will not be disclosed, directly or indirectly, to any power marketing or trading personnel, affiliated or otherwise; and (ii) in case of Seller, to Facility Financiers or potential Facility Financiers, potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect ownership interests in the Facility (including direct or indirect interests in the equity interests of Seller). To the extent that such disclosures are necessary, the Parties also agree that they will in disclosing such information seek to preserve the confidentiality of such disclosures, by requiring a party receiving confidential information to be bound by the terms of this REPA applicable to such a confidential information. Without limiting the foregoing, this Section 20.15 will not prevent a Party from providing confidential information to any Governmental Authority formally or otherwise, as required in connection with any regulatory proceeding, as required for obtaining any regulatory approval or making any regulatory filing, provided that each Party agrees to cooperate with the other to maintain the confidentiality of the provisions of this REPA by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law. This provision will not prevent either Party from providing any confidential information received from the other Party to any court or regulatory proceeding or in accordance with a proper discovery request or in response to the reasonable request or need of any Governmental Authority charged with regulating the disclosing Party's affairs or in accordance with the request of any applicable stock exchange, provided that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Notwithstanding anything herein to the contrary, neither Party may issue a press release or public statement regarding entering into this REPA without the other Party's consent.

20.16 Forward Contract.

The Parties acknowledge and agree that this REPA and the transactions contemplated by this REPA constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this REPA as of the date set forth in the preamble hereof.

Seller:

Sculpin Solar LLC

By:  9D34FE611436485...

Name: Kathryn O'Hair

Title: Vice President

Purchaser:

Indiana Michigan Power Company

By: _____

Name: Steven F. Baker

Title: President & Chief Operating Officer

IN WITNESS WHEREOF, the Parties have executed this REPA as of the date set forth in the preamble hereof.

Seller:

Sculpin Solar LLC

By: _____

Name: Kathryn O'Hair

Title: Vice President

Purchaser:

Indiana Michigan Power Company

By:  _____
DocuSigned by:
Steven F. Baker
1541A748CFC94C5...

 DS
JJ

Name: Steven F. Baker

Title: President & Chief Operating Officer

EXHIBIT A

FACILITY DESCRIPTION AND SITE MAP

Facility Description

A 180 MW AC solar photovoltaic facility located in DeKalb County, Indiana.

Expected Major Equipment and Components:

- Main Power Transformer
- Solar Modules
- Inverters
- Racking
- Trackers

Site Map

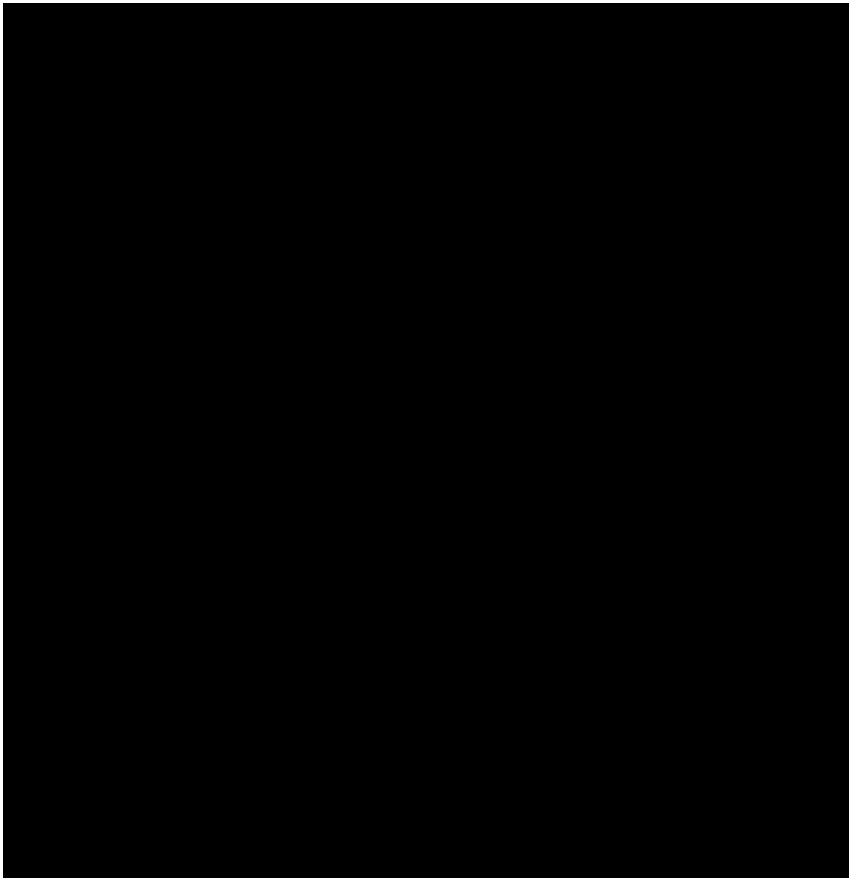


EXHIBIT B

CONTRACT RATE

(\$ Per MWh)

The Contract Rate during the Delivery Period shall be an [REDACTED]

[REDACTED]

EXHIBIT D

INSURANCE COVERAGE

(Refer to Article 16 Insurance for Additional Requirements)

<u>Type of Insurance</u>	<u>Minimum Limits of Coverage</u>
Commercial General Liability (CGL)	<p>\$11,000,000 combined single limit per occurrence, which may be met by any combination of Primary and Excess/Umbrella coverages.. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.</p> <p>CGL insurance shall be written on an ISO occurrence form reasonably acceptable to Purchaser and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground (XCU) property damage.</p> <p>Purchaser shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.</p> <p>The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:</p> <p style="padding-left: 40px;">Such insurance as afforded by this policy for the benefit of Purchaser shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this REPA, and insured hereunder, and any insurance carried by Purchaser shall be excess of and noncontributing with insurance afforded by this policy.</p>
Business Automobile Liability	<p>\$1,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos</p>

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. The policy shall provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation

Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.

Employers Liability

\$1,000,000 each accident for bodily injury and disease.

Builder's Risk

Replacement value of the Facility during the construction of the Facility.

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, materials and design, testing of machinery or equipment, debris removal, and partial occupancy.

Environmental Impairment Liability

\$5,000,000 each occurrence.

"All-Risk" Property insurance covering physical loss or damage to the Facility

"All risk" property insurance [REDACTED]

[REDACTED]

Business Interruption insurance

Amount required to cover Seller's continuing or increased expenses and loss of revenues, resulting from full interruption, for a period of twelve (12) calendar months

Business Interruption insurance shall cover loss of revenues and increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms or such alternative specifications or coverages are worked out between Seller and Purchaser, subject to a reasonable deductible or waiting period, which shall be the responsibility of Seller. Notwithstanding any other provision of this REPA, Seller shall not be required to have Business Interruption insurance until the

Commercial Operation Date.

EXHIBIT E

CALCULATION OF ANNUAL PERFORMANCE RATIO

The following procedure shall be used at the end of each Contract Year to calculate the Performance Ratio (PR) for the next Contract Year, starting at the end of the first Contract Year to calculate the PR for the second Contract Year.

- 1.) On an annual basis Seller shall calibrate and test (a) all Electric Metering Devices in accordance with Section 5.4 of the REPA and (b) all pyranometers using the National Renewable Energy Laboratory's (NREL) Broadband Outdoor Radiometer Calibration (BORCAL) procedures (or equivalent). Purchaser will be provided documentation of all testing and calibration results.
- 2.) At the end of the Contract Year, Seller shall log the total amount of Renewable Energy (kWh/yr) generated by the facility during the Contract Year.

3.) [REDACTED]

4.) [REDACTED]

5.) [REDACTED]

6.) [REDACTED]

$$n \frac{\text{[REDACTED]}}{\text{[REDACTED]}}$$

7.) [REDACTED]

$$\frac{\text{[REDACTED]}}{\text{[REDACTED]}}$$

Where [REDACTED]

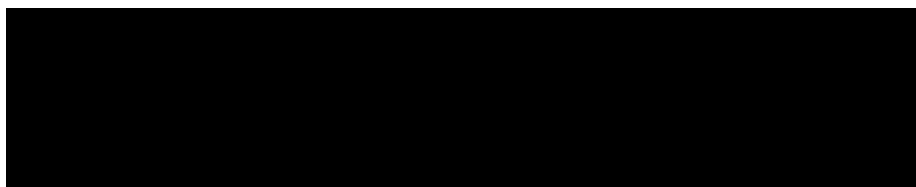


EXHIBIT F

POINT OF DELIVERY

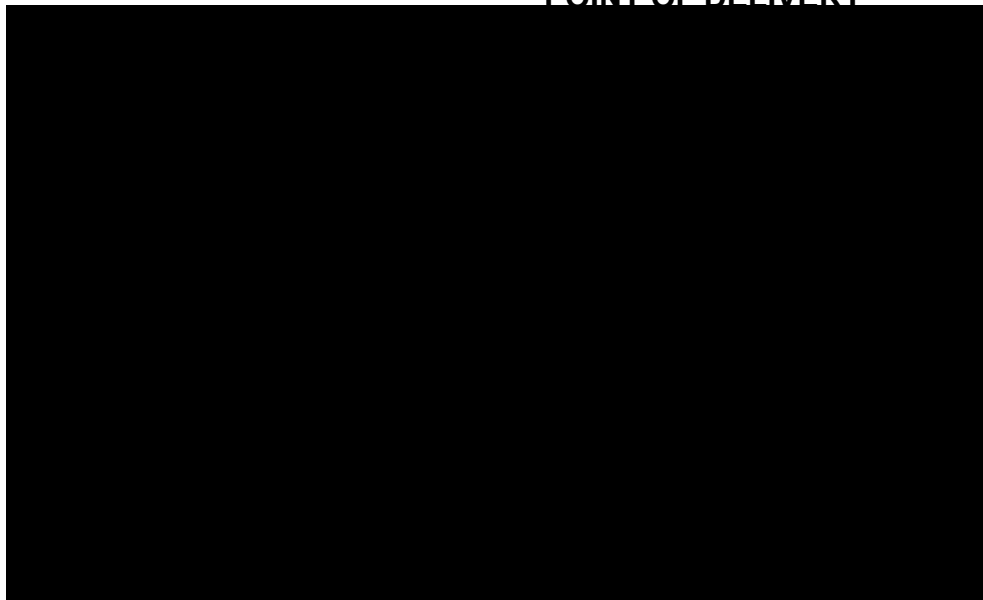


EXHIBIT G



**Solar Farm Data Requirements
PJM PPA non-MP**

Revision History

Date	Version	Description	Author
4-30-2021	1.0	New document created for Solar PPA	CommOps, PSCO, Transmission Settlements

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]	[REDACTED]
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EXHIBIT H

CALCULATION OF [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[Redacted text block]

[Redacted text block]

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EXHIBIT I
FORM OF AVAILABILITY NOTICE

Hour Ending	AVAILABILITY, %	GENERATION, MWh
01:00		
02:00		
03:00		
04:00		
05:00		
06:00		
07:00		
08:00		
09:00		
10:00		
11:00		
12:00		
13:00		
14:00		
15:00		
16:00		
17:00		
18:00		
19:00		
20:00		
21:00		

22:00		
23:00		
24:00		

EXHIBIT J

FORM OF LETTER OF CREDIT

Irrevocable Standby Letter of Credit No. _____

[BANK]

[Address]

Attention: [Standby Letter of Credit Section]

Date: (***Bank Use Only***)

BENEFICIARY

Indiana Michigan Power Company
C/O American Electric Power Service
Corporation
1 Riverside Plaza, 27th Floor
Columbus, OH 43215
Attn: Contract Administration

APPLICANT

[Name]
[Address]

Currency: USD
Amount \$ _____ (_____ and 00/100 U.S. Dollars)
Available by: Payment at our counter
Expiry Date: (One year from issuance) at the close of business at _____, _____

LADIES/GENTLEMEN:

We hereby issue our Irrevocable Standby Letter of Credit No. _____ ("Letter of Credit") in your favor. This Letter of Credit is available by sight payment with ourselves only against presentation to this office at the above address of your Sight Draft and Certificate in the form of Annex A, appropriately completed and purportedly signed by one of your authorized representatives.

Partial and multiple drawings are permitted.

This Letter of Credit shall be deemed automatically extended without an amendment for a one year period beginning on the present expiration date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiration date we have sent you written notice by courier service or overnight mail that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

This Letter of Credit shall finally expire on _____, _____ (the "Final Expiry Date") if it has not previously expired in accordance with the preceding paragraph.

This Letter of Credit sets forth in full terms of our undertaking, and such terms shall not be modified amended or amplified by any document, instrument or agreement referred to in this Letter of Credit, in which this Letter of Credit is referred to or which this Letter of Credit relates.

This Letter of Credit shall not be amended except with the written concurrence of [Insert Issuing Bank] and the Beneficiary.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date twenty (20) calendar days after the place for presentation reopens for business.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification and is our individual obligation which is in no way contingent upon reimbursement or any right of subrogation. We irrevocably waive any and all rights of subrogation, whether as provided by statute or otherwise, now or hereafter that might, but for such waiver, exist, in respect to this Letter of Credit or any payment we make under it, as to the Applicant, you, or the transaction between you and _____. We further give irrevocable notice that we are not now and will not be the secondary obligor or co-obligator of Applicant's or _____'s obligations and liabilities to you for any purpose. Our obligations to you under this Letter of Credit are our primary obligations and are strictly as stated herein.

SPECIAL INSTRUCTIONS:

The original of this Letter of Credit must be presented together with the above documents in order to endorse the amount of each drawing on the reverse side.

All banking charges, commissions and expenses under this Letter of Credit are for the account of the Applicant.

We hereby agree with you that drafts drawn under and in compliance with the terms of this credit will be duly honored within no more than three (3) business days upon presentation and delivery to [Insert Issuing Bank], at the address above. Documents are to be sent in one lot by courier service, overnight mail or hand delivery.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600

Annex A

SIGHT DRAFT AND CERTIFICATE

BANK]
[Address]
Attention: [Standby Letter of Credit Section]

Re: [Bank] Irrevocable Standby Letter of Credit No. _____, dated [DATE]
("Letter of Credit")

All capitalized terms used, but not defined herein, shall have respective meanings assigned to them in the Letter of Credit. The term "REPA" means that certain Renewable Energy Purchase Agreement for Solar Energy Resources, dated [DATE], between _____ ("Seller") and the Beneficiary.

The undersigned hereby certifies to you as follows:

(a) The undersigned is duly authorized by the Beneficiary to execute and deliver this Sight Draft and Certificate.

(b) The draw event authorizing this Sight Draft and Certificate is: [SELECT THE APPLICABLE DRAW EVENT]:

(i) Seller has failed to renew or replace the Letter of Credit with a substitute Seller Security Fund pursuant to the REPA at least thirty (30) calendar days prior to the date on which the Letter of Credit shall terminate; or

(ii) The unsecured debt rating of the issuer of the Letter of Credit has fallen below A-/A3 and the Seller has failed to replace the Letter of Credit with a substitute Seller Security Fund pursuant to the REPA within ten (10) calendar days after receiving written notice from Beneficiary to do so; or

(iii) The amount of U.S.\$_____ (the "Owed Amount") is due and payable under the REPA by Seller to the Beneficiary, which Owed Amount Beneficiary has not been paid within ten (10) calendar days after Beneficiary has given Seller written notice thereof; or

(iv) An Event of Default (as defined in the REPA) other than the Event of Default described in Section 12.1(A)(7) has occurred and is continuing with respect to Seller under the REPA.

The undersigned Beneficiary is making a drawing under the Letter of Credit in the case of the applicable draw event described in (b)(iii) above, [in the amount of the Owed Amount] OR in the case of such other draw event described in (b) above, for the entire undrawn amount of the Letter of Credit.

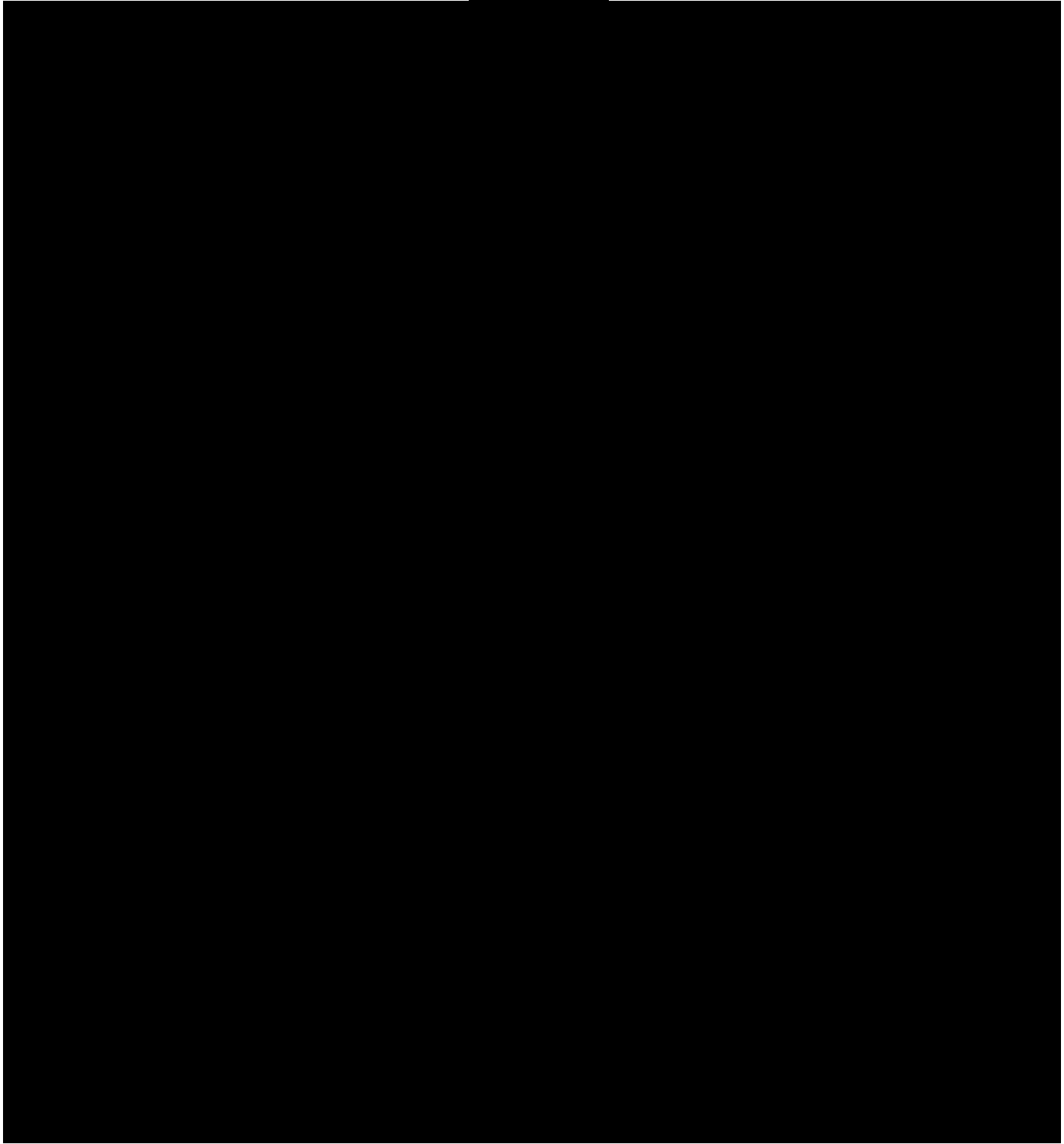
The proceeds from this drawing under the Letter of Credit will be used to satisfy Seller's obligations to the Beneficiary under the REPA.

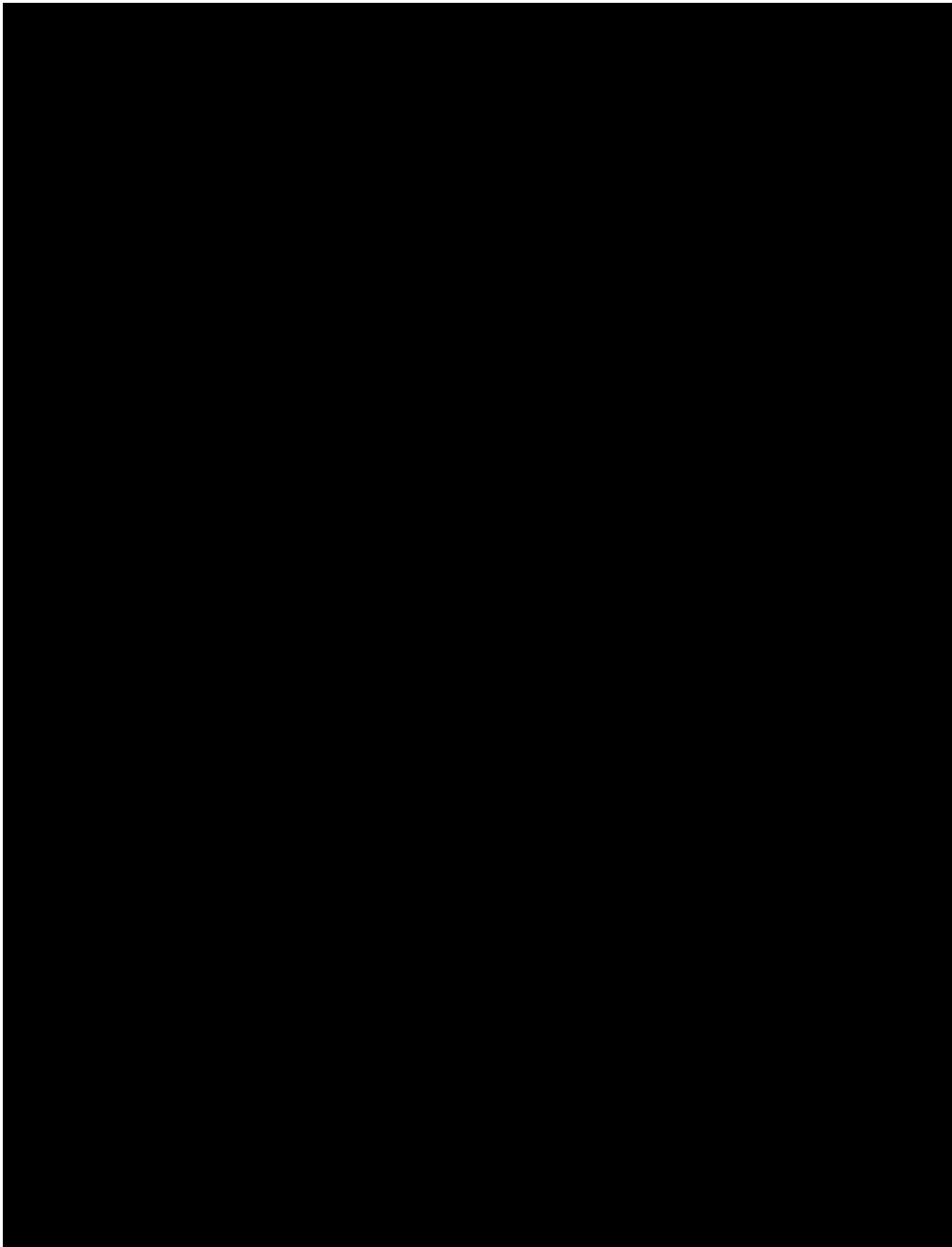
This demand for a drawing under the Letter of Credit and certification are made as of the date hereof.

INDIANA MICHIGAN POWER COMPANY

By: _____
Name:
Title:

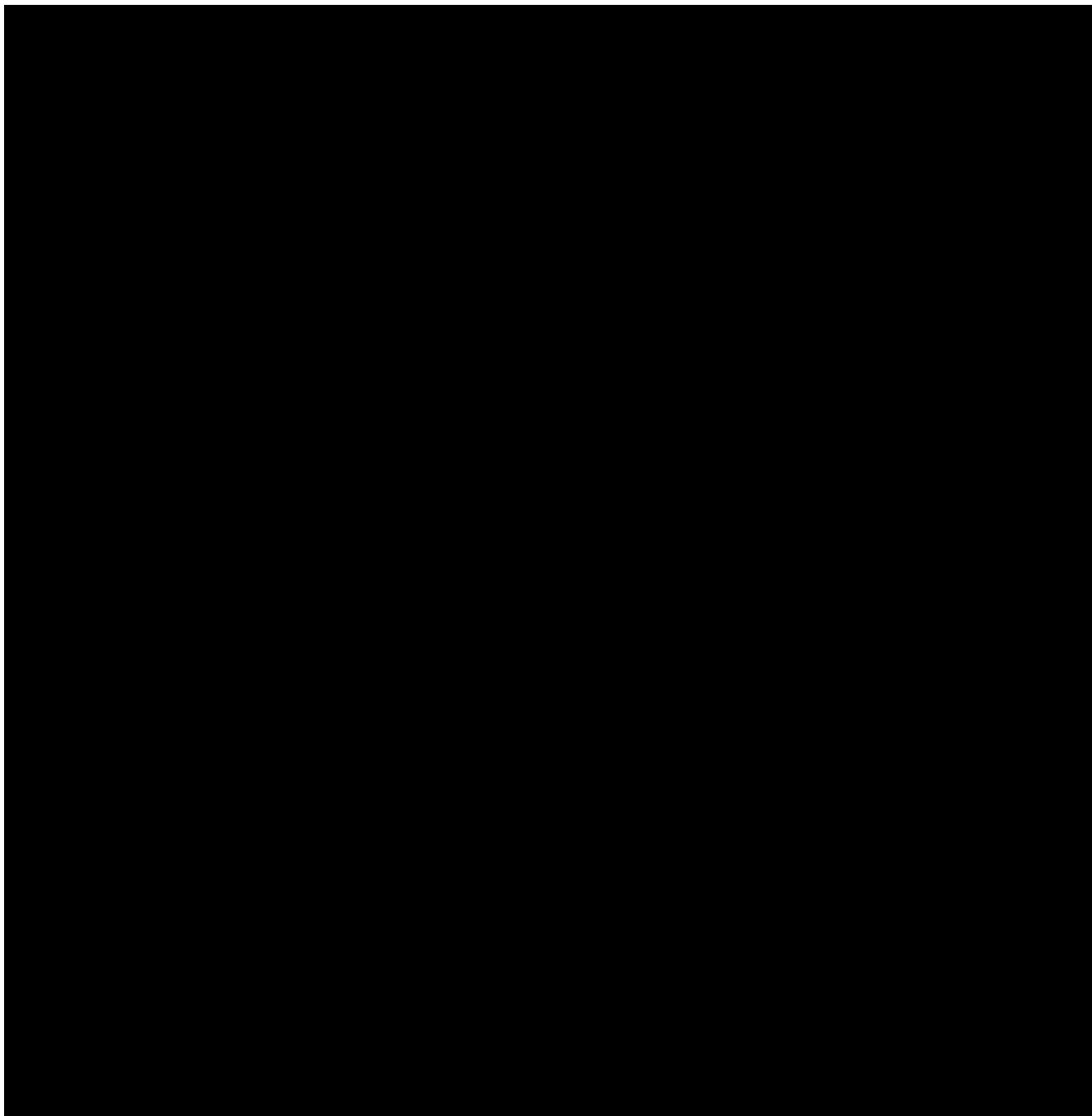
EXHIBIT K
FORM OF GUARANTY
GUARANTY



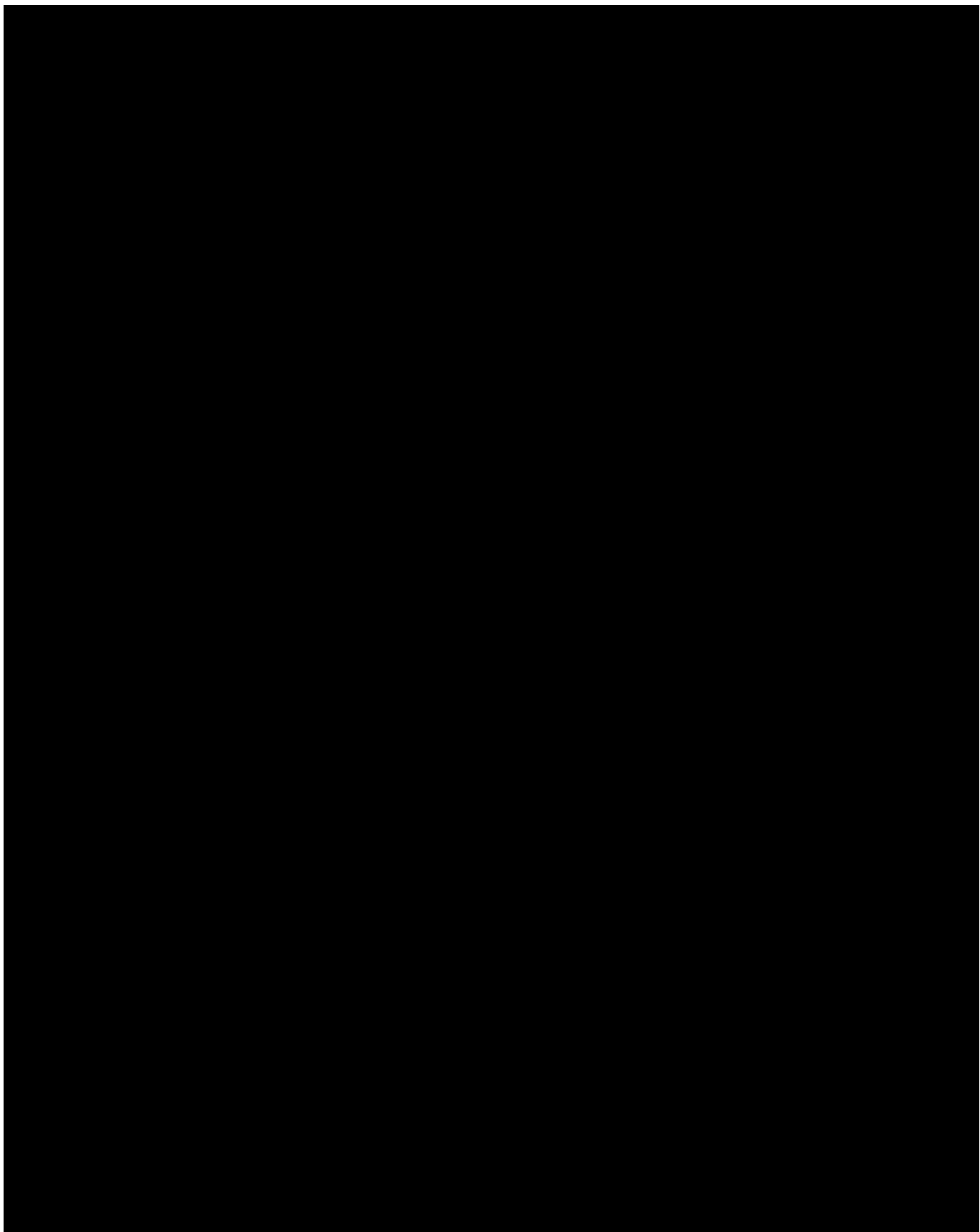


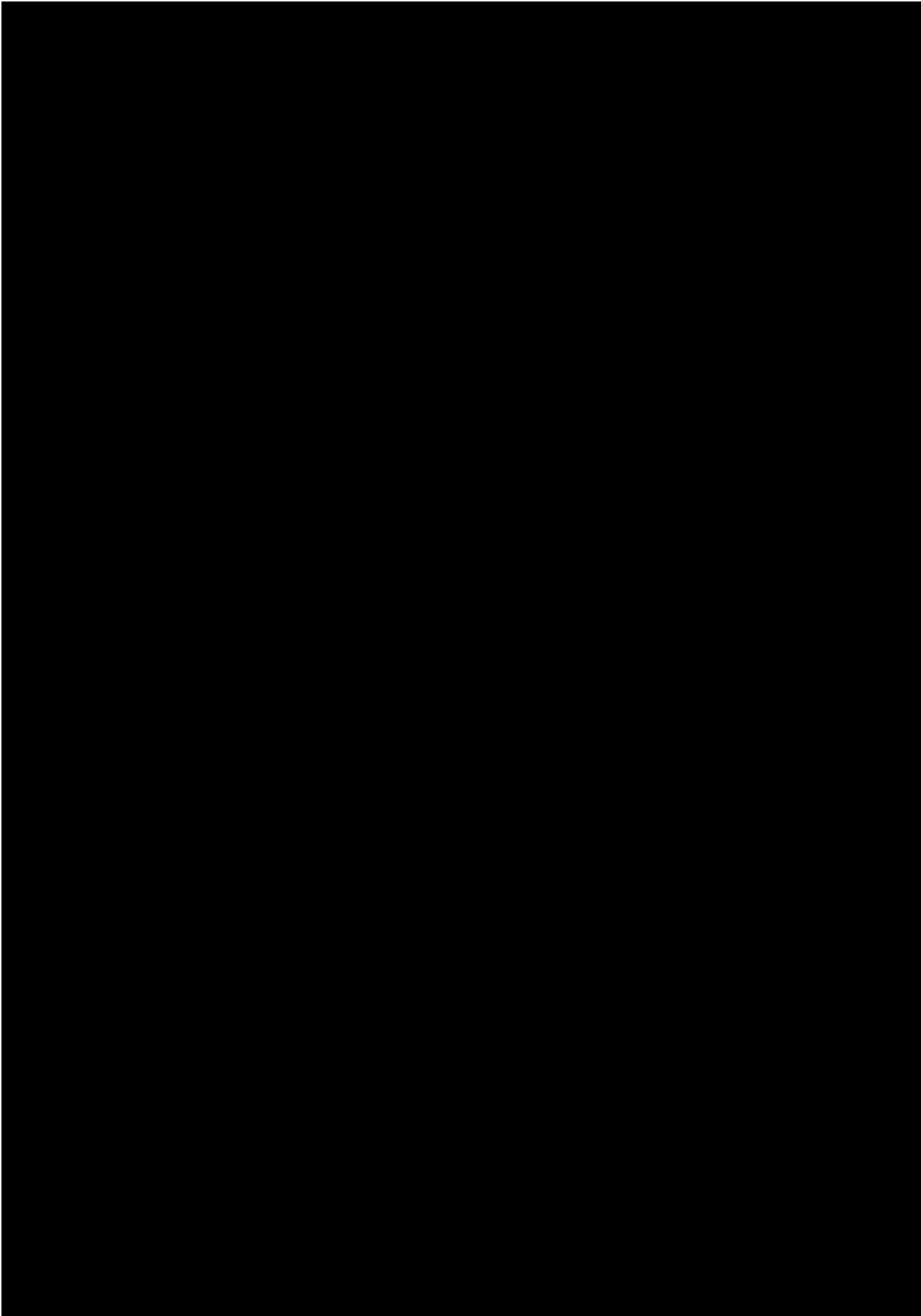


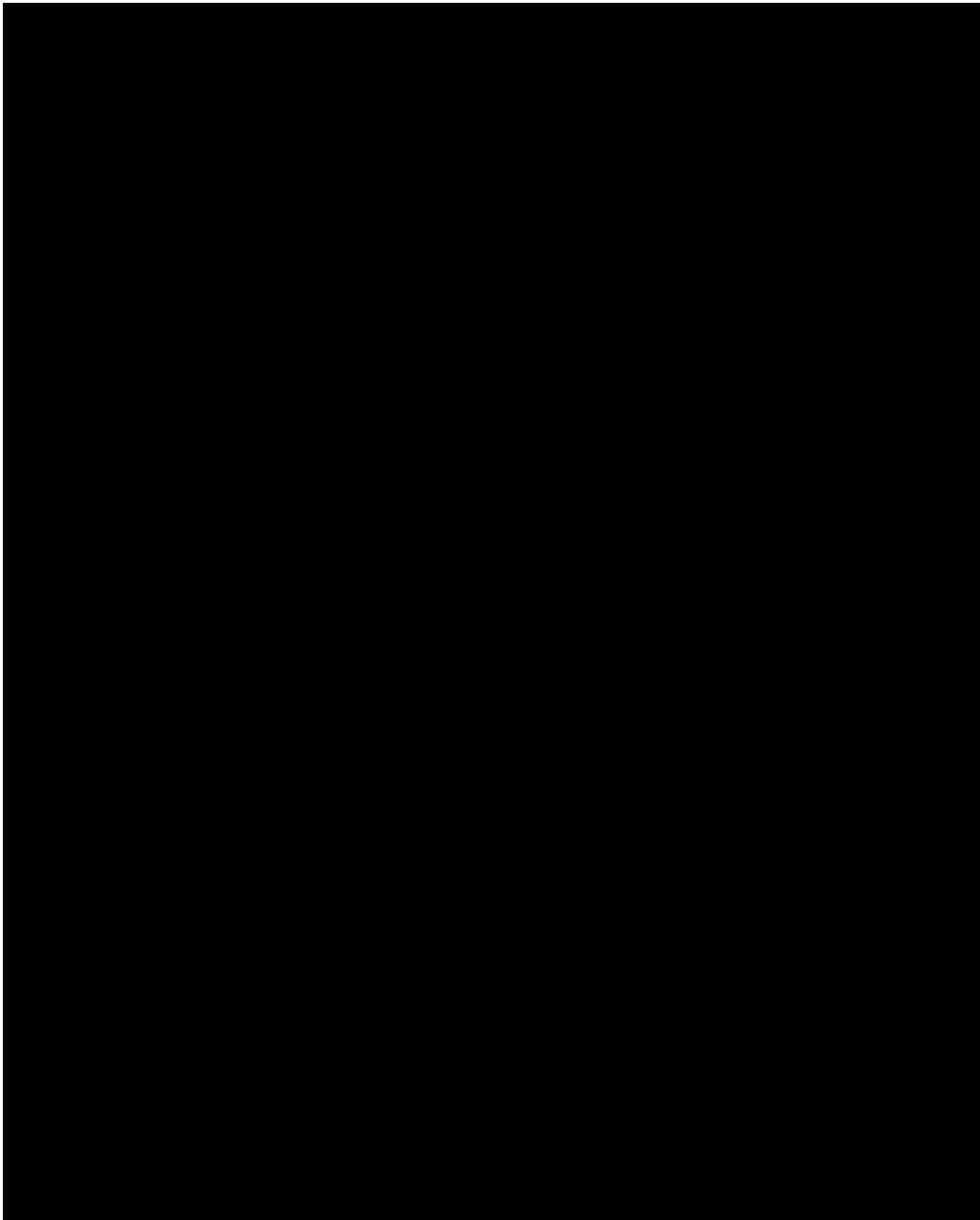
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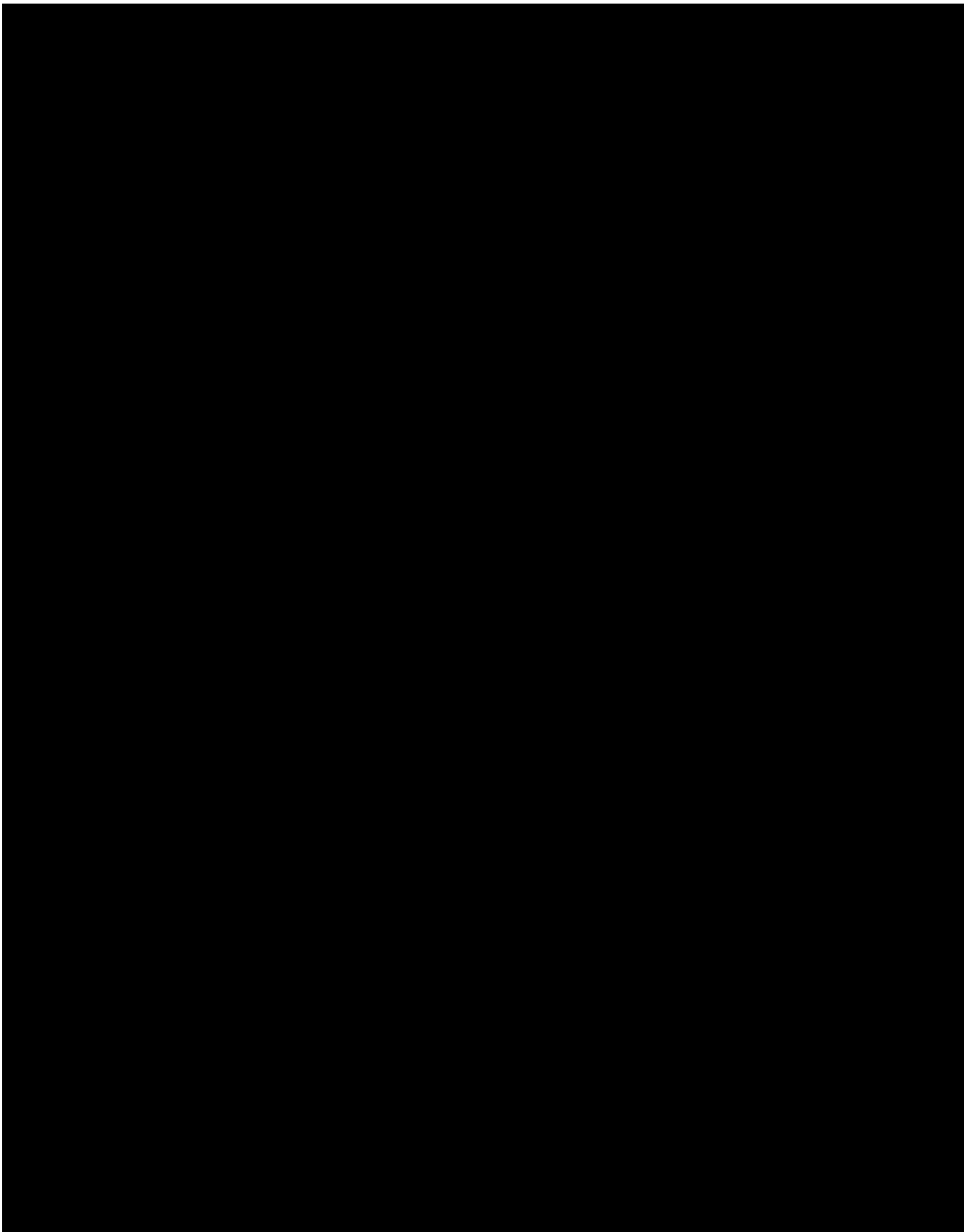


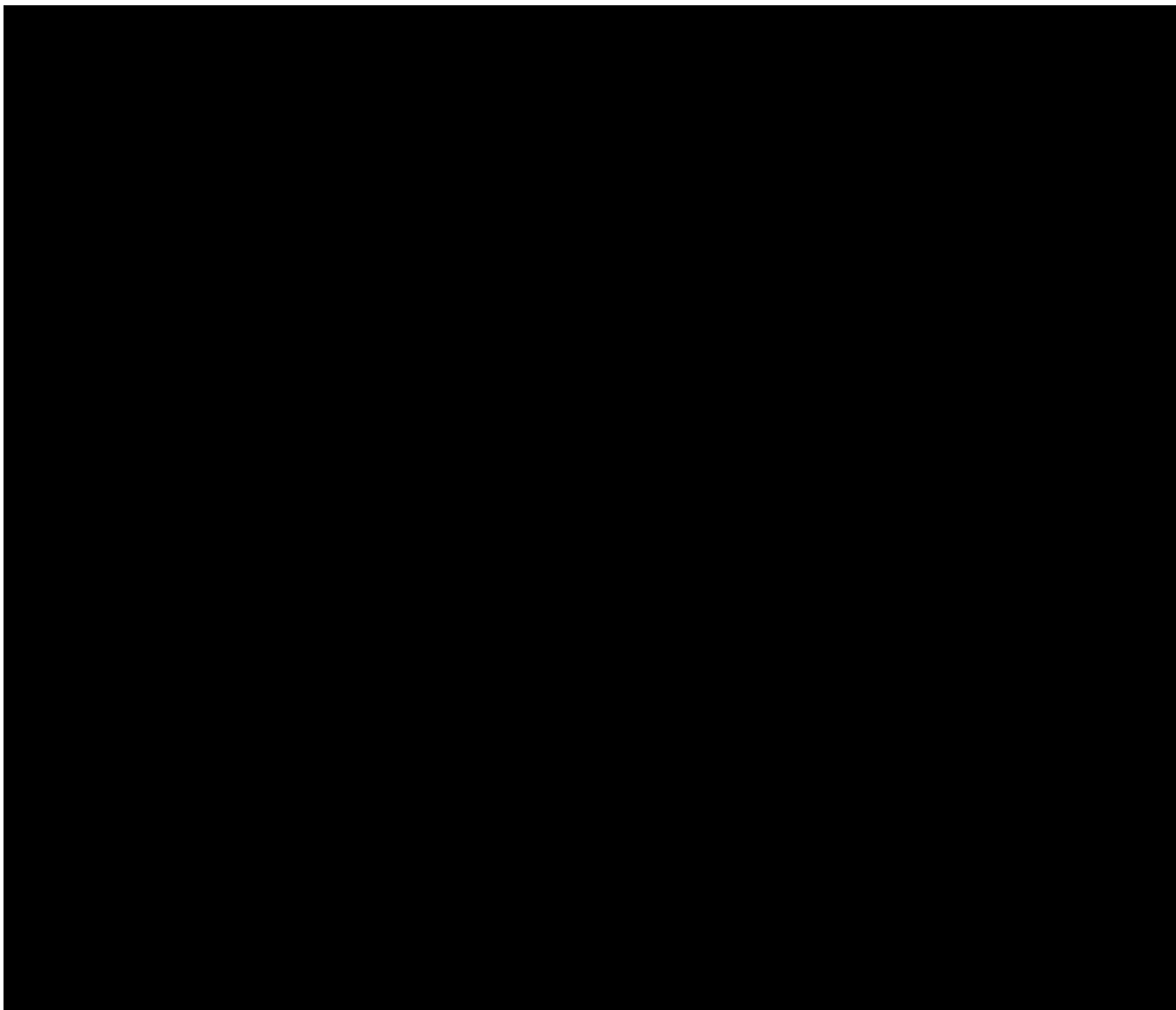
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[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Guarantor and the Beneficiary have caused this Guaranty to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[REDACTED]

By: _____
Name:
Title:

Accepted and agreed to
as of the date first
above written:

[Beneficiary]

By: _____
Name:
Title:

[REDACTED]

Schedule 1

[REDACTED]

[insert date in the format: DD/month in words/YYYY]

To: [REDACTED]

Attn: [●]

Re: [REDACTED]

Dear Ladies and Gentlemen,

[REDACTED]

EXHIBIT L

FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of [____], 202____, among INDIANA MICHIGAN POWER COMPANY, an Indiana corporation (“Purchaser”), [PROJECT COMPANY], a [____] [limited liability company] (“Seller”), [FINANCIAL INSTITUTION], in its capacity as [Collateral Agent] (the “Collateral Agent”) for the Secured Parties, as defined in the hereinafter defined Financing Agreement. Purchaser, Seller and the Collateral Agent shall be referred to hereunder as the “Parties” and, individually, as a “Party”.

RECITALS

Purchaser and Seller have entered into that certain Renewable Energy Purchase Agreement for Solar Energy Resources, dated as of [____] (as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof, the “REPA” or the “Assigned Agreement”).

Seller has entered into that certain [Financing Agreement] (as the same may be amended, modified or supplemented from time to time, the “Financing Agreement”) relating to the construction financing of the approximately ____ megawatt solar photovoltaic generating facility located in _____County, _____ (the “Project”), dated as _____, _____, among Seller, the financial institutions from time to time party thereto (collectively, the “Lenders”), [Provide further description of Financing Agreement].

AGREEMENT

1. Definitions.

Capitalized terms used but not defined in this Consent shall have the meanings given to them in the REPA, or if not defined therein, in the Financing Agreement. In addition, the following terms shall have the meanings set forth below with respect to each term:

“Secured Obligations” shall mean, collectively: all obligations and liabilities of Seller in respect of: (a) the principal of and interest on all loans made under the Financing Agreement; (b) all other amounts due and to become due to the Collateral Agent, the Lenders or any other financing parties under the Financing Agreement or any other document contemplated thereby, including, without limitation, the expenses, indemnities and interest which would accrue on any of the foregoing but for the commencement of a case by or against Seller under any applicable bankruptcy laws; and (c) the performance and observance of all of the covenants and agreements made by Seller under and in connection with the Financing Agreement.

2. Scope of Obligations.

Nothing in this Consent shall make Purchaser liable for any damages or other amounts under the Financing Agreement or for any other damages for which it would not otherwise be liable to Seller under the Assigned Agreement.

3. Consent to Assignment. Purchaser hereby:

- (a) acknowledges and irrevocably consents to the assignment pursuant to the Security Agreement by Seller to the Collateral Agent for the benefit of the Secured Parties of the Assigned Agreement as security for the performance of the Secured Obligations;
- (b) acknowledges and irrevocably agrees that the Collateral Agent (and the other Secured Parties) shall not be or become liable for the performance or observance of any of the obligations or duties of Seller under the Assigned Agreement, nor shall the Collateral Agent (nor the other Secured Parties) be or become liable to perform or observe any obligations or duties owing to Purchaser, in either case solely by reason of the assignment of the Assigned Agreement to the Collateral Agent hereunder, except as otherwise expressly provided in this Consent;
- (c) acknowledges that, upon Purchaser's receipt of a notice from the Collateral Agent of an Event of Default, the Collateral Agent has the right to make all demands, give all notices, take all actions and exercise all rights of, Seller under the Assigned Agreement; and
- (d) acknowledges and agrees, subject in all respects to the conditions and limitations contained in this Consent, that none of the following shall constitute, as between Purchaser and the Secured Parties, an Event of Default by Seller under the Assigned Agreement or shall result in a termination thereof: (i) the assignment by Seller to the Collateral Agent for the benefit of the Secured Parties of a first-priority lien on and security interest in the Project (including, without limitation, the Assigned Agreement); (ii) the operation of the Project by any Transferee that is a Qualified Operator upon the exercise of the Collateral Agent's and the Secured Parties' rights with respect to an Event of Default under, as defined in and in accordance with the Financing Agreement; (iii) the commencement of a foreclosure or similar proceeding to enforce the lien of the Secured Parties against the Project (including, without limitation, the Assigned Agreement); (iv) the acquisition of the rights of Seller in the Project (including, without limitation, the Assigned Agreement) in foreclosure by the Collateral Agent or any Secured Party in connection with such party's exercise of its rights and remedies, at law, in equity or otherwise (or acceptance of an absolute assignment of the Project in lieu of foreclosure); or (v) the subsequent sale, assignment, and/or

conveyance of the Project (including, without limitation, the Assigned Agreement) by the Collateral Agent or any other Secured Party after acquisition of the rights of Seller in the Project following any foreclosure or assignment in lieu of foreclosure.

4. Representations and Warranties.

- (a) Purchaser hereby represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that: (i) Purchaser has the full power and authority to execute, deliver and perform this Consent and to carry out the transactions contemplated hereby; (ii) the execution and delivery of this Consent by Purchaser and the carrying out by Purchaser of the transactions contemplated hereby have been duly authorized by all requisite corporate action, and each of this Consent has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with the terms hereof and thereof, subject, as to enforceability, to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity; (iii) all authorizations, consents, approvals or orders of, notices to, or registrations, qualifications, declarations or filings with, any governmental authority, required for the execution, delivery and performance by Purchaser of this Consent or the carrying out by Purchaser of the transactions contemplated hereby, have been obtained and are in full force and effect; and (iv) none of the execution, delivery, and performance by Purchaser of this Consent, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any law, governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of Purchaser or any applicable order, writ, injunction, judgment or decree of any court or governmental authority against Purchaser or by which it or any of its properties is bound, or any material loan agreement, indenture, mortgage, bond, note, resolution, contract or other agreement or instrument to which Purchaser is a party or by which it or any of its properties is bound.
- (b) Purchaser further represents and warrants to the Collateral Agent, for the benefit of the Secured Parties that: (i) neither an Event of Default by Purchaser nor, to the best of its knowledge, after due inquiry, an Event of Default by Seller exists and is continuing under the Assigned Agreement; (ii) to the best of its knowledge, Purchaser has no existing counterclaims, offsets or defenses against Seller in respect of the Assigned Agreement; (iii) to the best of its knowledge, after giving effect to Purchaser's consent to the assignment

consented to by Purchaser under Section 3(a) herein, and recognizing that Seller has continuing and additional obligations to perform after the date of this Consent, there exists no present event or condition, except those expressly contained in the Assigned Agreement, which enable either Purchaser or Seller to terminate or suspend its obligations under the Assigned Agreement; (iv) except for the assignment to the Collateral Agent for the benefit of the Secured Parties, Purchaser has no notice of any assignment relative to any right, title and interest of Seller in, to and under the Assigned Agreement; (v) the Assigned Agreement and the instruments and documents referred to therein constitute the only agreements between Purchaser and Seller with respect to the matters and interests described therein; and (vi) there are no proceedings pending or, to its knowledge without inquiry, threatened against or affecting Purchaser in any court or by or before any governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under the Assigned Agreement or this Consent.

5. Rights of the Secured Parties. Purchaser agrees that the Secured Parties, so long as any Secured Obligations shall remain outstanding, shall have the following rights with respect to the Assigned Agreement:

(a) Assignment, Amendments, Etc.

(i) No assignment by Purchaser of its obligations under the Assigned Agreement shall be effective unless (A) such assignment complies with the Assigned Agreement, and (B) Purchaser contemporaneously delivers to the Collateral Agent a copy of all notices due to Seller with respect to such assignment; and

(ii) no waiver, amendment, consent or other modification of the Assigned Agreement by Seller shall be effective without the prior written approval of the Collateral Agent (except for any waiver, amendment, and/or consent which is of a routine, ministerial or administrative nature or which is required by law or by any governmental authority).

- (b) Performance of Seller's Obligations. If the Collateral Agent shall provide Purchaser with notice of an Event of Default by Seller under the Financing Agreement, then following Purchaser's receipt of such notice the Collateral Agent or any of the other Secured Parties may, but shall have no obligation to, perform one or more of the obligations of Seller under the Assigned Agreement and Purchaser will accept such performance, if otherwise in accordance with the terms of the Assigned Agreement and this Consent, in lieu of performance by

Seller and in satisfaction of the obligations of Seller under the Assigned Agreement. In the event that the Secured Parties exercise any right under the Financing Agreement to assume possession and control of the Project they shall obtain the appointment of a Qualified Operator to assume possession and control of the Project prior to or pending a foreclosure, and the Secured Parties shall cause the Project to be operated by such Qualified Operator.

(c) Copies of Notices. Purchaser shall acknowledge that is obligated to send the Collateral Agent copies of any notice furnished to Seller of the existence of an Event of Default under the Assigned Agreement or the termination of the Assigned Agreement, and certain other notices as expressly set forth in the Assigned Agreement; provided that any failure of Purchaser to send such notice shall not give rise to any liability to any Person on the part of Purchaser hereunder.

(d) Cure Rights.

(i) Subject to the terms of this Consent, the Collateral Agent and the Secured Parties shall have the right, but not the obligation, to cure any Event of Default under the Assigned Agreement which is capable of being cured.

(ii) As provided in the Assigned Agreement, the Assigned Agreement shall not be terminated automatically or terminated by Purchaser if the Collateral Agent or the Secured Parties cure each Event of Default thereunder which is capable of being cured within the cure period provided to Seller under the Assigned Agreement for such Event of Default.

(iii) Such cure periods shall commence with respect to the Collateral Agent and the Secured Parties as of the date notice is given to the Collateral Agent by Purchaser. Solely with respect to any Events of Default by Seller under the Assigned Agreement that cannot be cured by any Person other than Seller or its designated operator, as the owner or designated operator of the Project, if the Secured Parties declare an Event of Default under and in accordance with the Financing Agreement and promptly commence foreclosure proceedings, then, so long as the Secured Parties are diligently pursuing such foreclosure proceedings, the Secured Parties will be allowed such additional period, not to exceed one hundred eighty (180) days from the date of commencement of such proceedings, as is necessary to complete such proceedings in which to cure the existing Event(s) of Default under the Assigned Agreement. For the avoidance of doubt, the Collateral Agent and the other Secured Parties shall have cured all Events of Default which

are capable of being cured on or prior to the completion of such proceedings.

(iv) Once an Event of Default under the Assigned Agreement is timely cured by the Collateral Agent or the Secured Parties, such event or condition shall no longer be deemed to be an Event of Default under the Assigned Agreement.

(e) Consent to Transfer; Continuation of Agreement. Purchaser consents to the transfer of Seller's interest in the Project to the Collateral Agent or any other Secured Party, or their designee or to any other Person provided that (i) the Collateral Agent, the other Secured Parties or such other Person is or has retained a Qualified Operator to act as operator of the Project in lieu of Seller (collectively, a "Transferee"), (ii) the Collateral Agent or the other Secured Parties shall have caused the Assigned Agreement to be conveyed and transferred to the Transferee at the time of the transfer of the Project and shall have caused the Transferee to assume and to agree to be bound by all the terms and provisions of the Assigned Agreement, which has and continues to remain in full force and effect in accordance with its terms and (iii) the Collateral Agent or the other Secured Parties shall identify the Transferee in a written notice to Purchaser on or before the effective date of the transfer and shall furnish Purchaser with Transferee's written agreement to assume and to agree to be bound by all the terms and provisions of the Assigned Agreement, and Purchaser shall recognize such a Transferee as the "Seller" under the Assigned Agreement, if the Transferee shall or shall have:

(i) cure or cured within the relevant cure period established in the Assigned Agreement, as modified by subsection 6(d) above, all Events of Default of Seller which are then existing under the Assigned Agreement and which are capable of being cured at the time of such transfer; and

(ii) assume or assumed and perform all other obligations of Seller under the Assigned Agreement arising on or after the date of such transfer to the Transferee.

6. Replacement Agreements. If the Assigned Agreement is rejected or terminated as a result of any bankruptcy or insolvency proceeding involving Seller, and Purchaser has been reimbursed by any Person for all amounts which would be due and payable by Seller to Purchaser under the Assigned Agreement but for such bankruptcy or insolvency proceeding, the Collateral Agent may, within thirty (30) days after such rejection or termination, certify in writing to Purchaser that the Transferee intends to perform and is capable of performing the obligations of Seller arising after the date of such

certification as and to the extent required under the Assigned Agreement. In such case, Purchaser shall execute and deliver to the Transferee a new agreement (a "Replacement Agreement") which shall be for the balance of the remaining term under such rejected Assigned Agreement. The Replacement Agreement shall contain the same conditions, agreements, terms, provisions and limitations as the original Assigned Agreement (except for any requirements which have been fulfilled by Seller and Purchaser prior to such rejection or termination or any Person thereafter), and except that the Transferee will be substituted where Seller appears in Assigned Agreement.

7. Purchaser's Reliance on Written Notices by Agent. Seller agrees that Purchaser is entitled to rely on the written instructions of an employee, authorized representative or other agent of the Collateral Agent as permitted herein, including without limitation, any such notice concerning the existence and continuation of an Event of Default under the Financing Agreement, the destination of payments to be made under the Assigned Agreement or whether the Secured Obligations have been fully paid or not, and that Purchaser may make payments that are due to Seller as directed by any such Person upon the written instructions of any such Person to do so. Seller waives any claims that it has or may have against Purchaser based upon the good faith reliance by it on such written instructions.

8. Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the addresses set forth in the table below. All notices to be given under this Consent shall be in writing and shall be (i) delivered personally, (ii) sent by certified or registered first-class mail, postage prepaid, return receipt requested, or (iii) sent by a recognized courier service, with delivery receipt requested to the intended recipient at its address as set forth on the signature pages below, unless the recipient has given notice of another address for receipt of notices. All notices sent hereunder shall be deemed to have been given when personally delivered or in the case of a notice mailed or sent by courier, upon receipt, at the address provided for herein; provided, however, if such notice is given after the close of business on a business day of the receiving party, or on a day on which the receiving party is not open for business, such notice shall be deemed to have been given on the next following business day.

If to
Purchaser:

Indiana Michigan Power Company
C/O American Electric Power Service
Corporation
1 Riverside Plaza, 14th Floor
Columbus, OH 43215
Attn: Contract Administration

with a copy to:

Attn: Chief Counsel, CO&L
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
Attn: Chief Counsel

If to Collateral Agent

If to Seller:

with a copy to:

9. Arrangements Regarding Payments. Commencing on the date of this Consent and so long as the Financing Agreement remains in effect, Purchaser hereby agrees to make all payments required to be made by it under the Assigned Agreements in U.S. dollars and in immediately available funds, directly to Collateral Agent, acting for the benefit of the Lenders for deposit into the account described immediately below, or, if Purchaser has been notified that an Event of Default under the Financing Agreement or any Financing Document has occurred and is continuing, to such other Person and/or at such other address or account as Collateral Agent may from time to time specify in writing to Purchaser. Seller hereby instructs Purchaser, and Purchaser accepts such instructions, to make all payments due and payable to Collateral Assignor under the Assigned Agreement as set forth in the immediately preceding sentence.

Account #

10. Miscellaneous.
- (a) Separate Counterparts; Amendments; Waiver. This Consent may be executed in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts shall constitute one and the same instrument. Until termination as to the respective party, neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each of Purchaser, Seller and the Collateral Agent.
- (b) Severability of Provisions. Any provision of this Consent which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- (c) Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of Purchaser and its successors and

permitted assigns, Seller and its successors and permitted assigns, the Collateral Agent and the other Secured Parties and its or their successors and permitted assigns.

(d) Governing Law; Venue.

(i) This Consent shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in such state.

(ii) Each of Purchaser, Seller and Collateral Agent irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(e) Each of the parties hereto agrees to execute and deliver all such instruments and take all such action as may be reasonably necessary to effectuate the purposes of this Consent.

(f) No failure on the part of any party to exercise and no delay in exercising, any right under this Consent shall operate as a waiver of such right nor shall any single or partial exercise of any right under this Consent preclude any further exercise of such right or the exercise of any other right.

(g) Upon the reasonable request of Seller and the Collateral Agent, including immediately prior to permanent equity financing of the Project, Purchaser agrees to provide Seller with a certificate stating that as of the date of such certificate, the representations and warranties of Purchaser set forth in Sections 4(a) and 4(b) of this Consent are true and correct (and to the extent any such representation or warranty is not true and correct, providing appropriate modifications describing the events or circumstances rendering such representation or warranty untrue or incorrect). Nothing in any such certificate shall make Purchaser liable for any damages or other amounts under the Financing Agreement or for any other damages for which it would not otherwise be liable to Seller under the Assigned Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the Parties hereto have caused this Consent to be duly executed and delivered by its respective authorized officers or authorized persons as of the date first above written.

INDIANA MICHIGAN POWER COMPANY,
an Indiana corporation

By: _____

Name:

Title:

Accepted and agreed:

[FINANCIAL INSTITUTION],
in its capacity as Collateral Agent hereunder

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and agreed:

[PROJECT COMPANY],
a [] [limited liability company]

By: _____
Name:
Title:

EXHIBIT M

DESIGN STANDARDS

All work for the Facility shall be designed, procured, installed, and tested in accordance with this REPA and the applicable section of the latest revisions of the codes and standards, as adopted by the governing authority having jurisdiction, in effect in the Facility location at the time this Facility is designed, built and commissioned. The following is a list of minimum codes and standards for this Facility (the latest version shall apply):

ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
ASCE – American Society of Civil Engineers
FERC – Federal Energy Regulatory Commission
IEC - International Electrotechnical Commission
IEEE - Institute of Electrical and Electronics Engineers
NEC - NFPA-70 National Electrical Code
NEMA - National Electrical Manufacturers Association
NERC – North American Electric Reliability Corporation
NESC - National Electrical Safety Code, ANSI-C2
OSHA - Occupational Safety and Health Act
UL – Underwriter’s Laboratories (for all AC equipment when such standards exist)

EXHIBIT N
FORM OF PROGRESS REPORT

Sculpin Solar **Sculpin Solar LLC** **Progress Report**

Project Name: Sculpin

Reporting Period:

Project Manager:

Offtake: Renewable Energy Purchase Agreement to Indiana Michigan Power Company

REPA Commercial Operation Milestone: 12/15/2025

COD Estimate: []

[Executive summary of major project updates.]

The below is Seller's description of the status of the development and construction of the Facility as of the end of the preceding reporting period. [Include any explanatory notes about project progress, delays, etc.]

Schedule Overview

Accomplishments During This Reporting Period:

- A. [Project Component]
 - [Accomplishment]
- B. [Project Component]
 - [Accomplishment]

Material Project Events or Activities Occurring in Next Reporting Period:

- A. [Event/Activity]
 - a. [Brief Summary]

Progress Summary

Engineering:

- [Project Component] – [if applicable, Name of Contractor]
 - [Status]
- [Project Component] – [if applicable, Name of Contractor]
 - [Status]
- [Project Component] – [if applicable, Name of Contractor]
 - [Status]

Procurement:

- [Project Equipment] – [if applicable, Name of Contractor]
 - [Status]

Construction:

- [Construction Task]
 - [Status]
- Solar Unit commissioning
 - [Status]

Interconnection

- [Status]

Other

- [Status]

**RENEWABLE ENERGY PURCHASE AGREEMENT
FOR
SOLAR ENERGY RESOURCES**

BETWEEN

ELKHART COUNTY SOLAR PROJECT, LLC

AND

INDIANA MICHIGAN POWER COMPANY

March 23, 2023

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION.....	1
1.1 Rules of Construction.....	1
1.2 Interpretation with Interconnection Agreement	3
1.3 Interpretation of Arrangements for Electric Supply to the Facility	3
1.4 Definitions	4
ARTICLE 2 TERM AND TERMINATION.....	20
ARTICLE 3 FACILITY DESCRIPTION	20
3.1 Summary Description.....	20
3.2 Location	21
3.3 General Design of the Facility	21
3.4 [REDACTED]	21
ARTICLE 4 COMMERCIAL OPERATION.....	22
4.1 Commercial Operation	22
4.2 Wildlife Studies and Siting;	22
4.3 Site Report.....	22
4.4 Facility Contracts	22
4.5 Progress Reports	23
4.6 Purchaser’s Rights During Construction	23
4.7 Conditions to Commercial Operation	23
4.8 Pre-Delivery Period Renewable Energy Production	25
4.9 QF Waiver.....	26
4.10 [REDACTED]	26
4.11 [REDACTED]	26
4.12 [REDACTED]	27
ARTICLE 5 DELIVERY AND METERING	27
5.1 Seller’s and Purchaser’s Obligations	27
5.2 Required Operation	27
5.3 Delivery Arrangements	28
5.4 Electric Metering Devices	28
5.5 Adjustment for Inaccurate Meters	30

TABLE OF CONTENTS

5.6	Scheduling Arrangements.....	31
ARTICLE 6 CONDITIONS PRECEDENT.....		32
6.1	Final Non-Appealable Orders	32
6.2	██	33
ARTICLE 7 SALE AND PURCHASE OF RENEWABLE ENERGY		33
7.1	Sale and Purchase	33
7.2	Guaranteed Availability	34
7.3	Title and Risk of Loss.....	35
7.4	Curtailments.....	35
7.5	Renewable Energy Incentives	36
ARTICLE 8 PAYMENT CALCULATIONS		36
8.1	Payments at Contract Rate.....	36
8.2	No Payment Obligation	36
ARTICLE 9 BILLING AND PAYMENT.....		37
9.1	Billing Invoices	37
9.2	Payments.....	37
9.3	Billing Disputes	38
ARTICLE 10 OPERATIONS AND MAINTENANCE		38
10.1	Facility Operation.....	38
10.2	Outage and Performance Reporting	38
10.3	Contract Administration Committee and Contract Administration Procedures.	39
10.4	Access to Facility	39
10.5	Reliability Standards	40
10.6	Beneficial Environmental Interests.....	40
10.7	Forecasts.....	40
10.8	Planned Maintenance Schedule	40
10.9	REC Certification	41
10.10	Public Statements, Press Releases, Other Use.....	42
10.11	Real-Time Information	42

TABLE OF CONTENTS

10.12	Web-Based Operational Reporting	43
ARTICLE 11 SECURITY FOR PERFORMANCE		43
11.1	Seller Security Fund.....	43
ARTICLE 12 DEFAULT AND REMEDIES.....		46
12.1	Events of Default of Seller	46
12.2	Facility Financiers' Right to Cure Default of Seller	48
12.3	Events of Default of Purchaser	48
12.4	Termination for a Purchaser Event of Default.	49
12.5	Termination for a Seller Event of Default.	49
12.6	██████████	49
12.7	████████████████████	50
12.8	██████████	51
12.9	Waiver and Exclusion of Other Damages	51
12.10	Payment of Damages	51
12.11	Duty to Mitigate.....	52
ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES		52
13.1	Notices in Writing	52
13.2	Representative for Notices.....	52
13.3	Authority of Representatives.....	52
13.4	Operating Records.....	53
13.5	Operating Log.....	53
13.6	Billing and Payment Records.....	53
13.7	Examination of Records.....	53
13.8	Exhibits	53
13.9	Dispute Resolution.....	54
ARTICLE 14 FORCE MAJEURE		54
14.1	Definition of Force Majeure.....	54
14.2	Applicability of Force Majeure.....	55
14.3	Limitations on Effect of Force Majeure	56
ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS		56

TABLE OF CONTENTS

15.1	Seller’s Representations, Warranties and Covenants.....	56
15.2	Purchaser’s Representations, Warranties and Covenants.....	58
ARTICLE 16 INSURANCE		59
16.1	Evidence of Insurance	59
16.2	Term and Modification of Insurance.....	60
ARTICLE 17 [REDACTED]		60
17.1	[REDACTED]	60
17.2	[REDACTED]	60
17.3	[REDACTED]	61
17.4	[REDACTED]	61
ARTICLE 18 LEGAL AND REGULATORY COMPLIANCE		61
18.1	Compliance with Laws	61
18.2	Cooperation	61
18.3	[REDACTED]	62
ARTICLE 19 ASSIGNMENT, SUBCONTRACTING, AND FINANCING.....		62
19.1	No Assignment Without Consent	62
19.2	Right of First Offer.	63
19.3	[REDACTED]	64
19.4	Accommodation of Facility Financiers	67
19.5	Notice of Facility Financier Action.....	67
19.6	Transfer Without Consent is Null and Void	67
ARTICLE 20 MISCELLANEOUS.....		67
20.1	Waiver.....	67
20.2	Taxes.....	68
20.3	Fines and Penalties	68
20.4	Rate Changes.....	69
20.5	Disclaimer of Third Party Beneficiary Rights.....	69
20.6	Relationship of the Parties	69
20.7	Equal Employment Opportunity Compliance Certification.....	70
20.8	Survival of Obligations	70

TABLE OF CONTENTS

20.9	Severability	70
20.10	Complete Agreement; Amendments.....	71
20.11	Binding Effect.....	71
20.12	Headings.....	71
20.13	Counterparts	71
20.14	Governing Law.....	71
20.15	Confidentiality	71
20.16	Forward Contract	72

RENEWABLE ENERGY PURCHASE AGREEMENT
BETWEEN
ELKHART COUNTY SOLAR PROJECT, LLC
AND
INDIANA MICHIGAN POWER COMPANY

This Renewable Energy Purchase Agreement (the “REPA”) is made this 23rd day of March 2023, by and between Elkhart County Solar Project, LLC (“Seller”), a Delaware limited liability company, with a principal place of business at 422 Admiral Blvd, Kansas City, Missouri 64106, and Indiana Michigan Power Company (“Purchaser”), an Indiana corporation, with a principal place of business at c/o American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2355. Seller and Purchaser are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

INTRODUCTION

WHEREAS Seller desires to develop, design, construct, own or lease and operate a solar photovoltaic electric generating facility with a total nameplate capacity of 100 MW AC, and which is further defined below as the “Facility”; and

WHEREAS Seller intends to locate the Facility in Elkhart County, Indiana, and to interconnect the Facility with the Transmission Provider’s System; and

WHEREAS Seller desires to sell and deliver to Purchaser at the Point of Delivery all of the Renewable Energy Products generated by the Facility, and Purchaser desires to buy the same from Seller; and

WHEREAS Purchaser has accepted Seller’s offer to sell such Renewable Energy Products in accordance with the terms and conditions set forth in this REPA.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS AND RULES OF INTERPRETATION

1.1 Rules of Construction.

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this REPA, whether in the singular or the plural or in the present or past tense. Other terms used in this REPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and

generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter.
- (B) References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this REPA.
- (C) The Exhibits attached hereto are incorporated in and are intended to be a part of this REPA; provided, that in the event of a conflict between the terms of any Exhibit and the terms of Articles 1 through 20 of this REPA, the terms of Articles 1 through 20 of this REPA shall take precedence.
- (D) This REPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this REPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this REPA or any part hereof.
- (E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this REPA. Unless expressly provided otherwise in this REPA, (i) where this REPA requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever this REPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.
- (F) Each reference in this REPA to any agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time.
- (G) Each reference in this REPA to applicable laws and to terms defined in, and other provisions of, applicable laws (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
- (H) Each reference in this REPA to a Person includes its successors and permitted assigns and, in the case of a Governmental Authority, any Person or Persons succeeding, in whole or in part, to its functions and capacities.
- (I) In this REPA, the words “include,” “includes” and “including” are to be construed as being at all times followed by the words “without limitation.”

1.2 Interpretation with Interconnection Agreement.

(A) The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider and the Transmission Operator.

(B) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this REPA are not binding upon the Interconnection Provider or the Transmission Operator.

(C) Notwithstanding any other provision in this REPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the Interconnection Provider or the Transmission Operator.

(D) Seller expressly recognizes that, for purposes of this REPA, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Purchaser or an Affiliate of Purchaser.

1.3 Interpretation of Arrangements for Electric Supply to the Facility.

(A) The Parties recognize that this REPA does not provide for the supply of any electric service by Purchaser to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility, including the supply of start-up and shutdown house power and Energy.

(B) The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements and that the terms of this REPA are not binding upon the supplier of such electric services.

(C) Notwithstanding any other provision in this REPA, nothing in the arrangements for the supply of retail electric services to the Facility shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the supplier of such retail electric services.

(D) Seller expressly recognizes that, for purposes of this REPA, the supplier of retail electric services to the Facility shall be deemed to be a separate entity and separate contracting party whether or not the arrangements for the supply of retail electric services to the Facility is entered into with Purchaser or an Affiliate of Purchaser.

1.4 Definitions.

The following terms shall have the meanings set forth below when used herein:

“Abandonment” means, on and after the Commercial Operation Date, the relinquishment of all possession and control of the Facility by Seller, other than a foreclosure or subsequent transfer by a Facility Financier or any transfer permitted under this REPA.

“AC” means alternating current.

“Acceptable Credit Rating” means a Credit Rating of (a) BBB- or better from Standard & Poor’s Rating Services and (b) Baa3 or better from Moody’s Investors Service Inc.

“Acceptable Issuing Bank” means a United States commercial bank or a foreign bank with a United States branch, which United States commercial bank or United States branch has at the applicable time a Credit Rating of (a) A- or better from Standard & Poor’s Rating Services and (b) A3 or better from Moody’s Investors Service Inc.

“Actual Availability” shall have the meaning set forth in Exhibit H.

“Adjusted Estimated Seller Costs” shall have the meaning set forth in Section 12.6(A).

“Affiliate” of any Person means any other Person that Controls, is under the Control of, or is under common Control with, the named entity.

“Ancillary Services” means regulation and frequency response services, energy imbalance services, automatic generating control, spinning reserve, non-spinning reserve, replacement reserve, reactive power, voltage support and any other services that support the transmission of capacity and energy or the reliable operation of the Transmission Provider’s transmission system, all to the extent included as ancillary services in the Transmission Operator’s open access transmission tariff, in each case, to the extent commonly sold or saleable and, in each case, only to the extent that the Facility, as constructed in accordance with this REPA, is capable of providing such services.

“Applicable Law” means any treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority.

“Availability” [REDACTED]

[REDACTED]

“Availability Notice” shall have the meaning set forth in Section 10.7.

[REDACTED]

[REDACTED]

[REDACTED]

“Back-Up Metering” shall have the meaning set forth in Section 5.4(C).

“Baseline Estimated Seller Costs” shall have the meaning set forth in Section 12.6(A).

“Beneficial Environmental Interests” means all Non-Power Attributes associated in any way, directly or indirectly, with the Facility and all RECs associated with such Non-Power Attributes, excluding Renewable Energy Incentives.

“Building and Construction Trade Unions” [REDACTED]

[REDACTED]

[REDACTED]

“Business Day” means any calendar day that is not a Saturday, a Sunday, or a NERC Holiday.

“Calculation Period” [REDACTED]

“Capacity” means the output level, expressed in MW AC, that the Facility, or the components of equipment thereof, is capable, as of a given moment, of continuously producing and making available at the Point of Delivery, taking into account the operating condition of the equipment at that time, the auxiliary loads and other relevant factors. Capacity includes all installed capacity and unforced capacity attributed to the Facility by the Transmission Operator, RFC or any Governmental Authority, or that is commonly sold or saleable to third parties.

“Capacity Resource” shall have the meaning set forth in the OATT.

[REDACTED]

“Cash” shall have the meaning set forth in Section 11.1(C)(2).

“Change of Control” [REDACTED]

“Clock Hour” means sixty-minute increments commencing at the top of the hour on the clock (i.e., 12 o’clock)

“Close of the Business Day” means 5:00 PM EPT on a Business Day.

“Commercial Operation Date” or “COD” means the date that Seller provides notification to Purchaser, pursuant to Section 4.7, of Seller’s declaration that all of the Conditions specified in Section 4.7 have occurred or otherwise been satisfied.

“Commercial Operation Milestone” means the anticipated Commercial Operation Date for the Facility. The Commercial Operation Milestone is specified as no

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management of policies of a Person, whether through ownership interest, by contract or otherwise.

“Control Area” means the system of electrical generation, distribution, and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“Credit Rating” means, for any Person, the senior unsecured and non-credit-enhanced long term debt rating of such Person or, if such Person does not have a senior unsecured and non-credit-enhanced long term debt rating, the issuer rating of such Person.

“Creditworthy Entity” means (i) a United States Person having at the applicable time an Acceptable Credit Rating or (ii) a foreign Person acceptable to Purchaser in its sole discretion.

“Day” means a calendar day.

“DC” means direct current.

“Delay Liquidated Damages” shall have the meaning set forth in Section 4.10.

“Delivery Period” means the period that commences as of the Commercial Operation Date and continues through the remainder of the Term.

“Design Requirements” shall have the meaning set forth in Section 3.3.

“Design Standards” has the meaning set forth in Exhibit M.

“Dispute” shall have the meaning set forth in Section 13.9(A).

“Dispute Notice” shall have the meaning set forth in Section 13.9(A).

“Due Diligence Period” shall have the meaning set forth in Section 19.3(B).

[REDACTED]

“Electric Metering Device(s)” means all meters, submeters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Renewable Energy from the Facility.

“Emergency” means an emergency condition as defined under the Interconnection Agreement or the OATT.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWh.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this REPA.

“EPT” means Eastern Prevailing Time.

“Event of Default” shall have the meaning set forth in Article 12.

“Expected Generation” means, with respect to the period in question, the total Renewable Energy that would have been generated by the Facility and delivered to the Point of Delivery, calculated in accordance with Exhibit H.

“Facility” means Seller’s electric generating facility and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this REPA, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller’s equipment, buildings, all of the generation facilities, including panels, inverters, step-up transformers, output breakers, facilities necessary to connect to the Point of Delivery, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy Products subject to this REPA.

“Facility Capacity” means [REDACTED]

“Facility Financiers” means, collectively, any lenders, tax equity investors or any other financiers providing any Facility Financing.

“Facility Financing” means the obligations of Seller or its Affiliates to any Facility Financier pursuant to the Financing Documents, including principal of, premium

and interest on indebtedness, return of equity invested, return on equity invested, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

“Facility Financing Representative” means, during any period when there is only one Facility Financier, the Facility Financier or its agent, and during any period when there is more than one Facility Financier, any trustee or agent on behalf of the Facility Financiers or such other single representative designated in writing by Seller.

“Failure to Extend Condition” shall have the meaning set forth in Section 11.1(C)(1).

“Failure to Replace Condition” shall have the meaning set forth in Section 11.1(D).

[REDACTED]

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (Effective)” as set forth in the weekly statistical release designated as H. 15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission.

“Final Non-Appealable Orders” means with respect to Indiana, a final non-appealable order from the Indiana Utility Regulatory Commission and, with respect to Michigan, a final non-appealable order from the Michigan Public Service Commission, in both cases (i) approving without modification this REPA, (ii) authorizing Purchaser to enter into this REPA, (iii) authorizing Purchaser to recover all of the Indiana or Michigan, as applicable, jurisdictional share of the costs associated with this REPA through an appropriate recovery mechanism(s) and (iv) otherwise acceptable to Purchaser in its sole discretion.

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, equity contribution or subscription agreements, partnership or limited liability agreements and other documents relating to the development, bridge, tax equity, construction or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, letter of credit facilities, and all such documents or agreements related to any refinancing or replacement of any of the foregoing, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion

of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

[REDACTED]

“Force Majeure” shall have the meaning set forth in Section 14.1(A).

“Forced Outage” means any condition at the Facility that requires unplanned removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from, among other things, immediate mechanical, electrical or other control system trips and operator-initiated trips in response to Facility conditions or alarms.

“GATS” means the Generation Attribute Tracking System administered by PJM Environmental Information Services, Inc. (“PJM-EIS”) and providing environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by Governmental Authorities. GATS tracks generation attributes and the ownership of the attributes as they are traded or used to meet standards of Governmental Authorities. GATS includes any successor tracking system or systems with the same or similar purpose administered by PJM-EIS.

“GATS Certificates” means certificates recognized by GATS and associated with the generation of electricity from the Facility.

“Good Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the solar power generation industry, the Transmission Operator or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with this REPA, law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices are not intended to be the optimal practice, method or act to the exclusion of all others, but rather are intended to be any of the practices, methods or acts generally accepted for facilities similar to the Facility in the region in which the Facility is located during the relevant time period. With respect to the Facility, Good Utility Practice(s) includes taking commercially reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available in commercially reasonable quantities to meet the Facility’s needs;

(B) sufficient operating personnel are available to operate the Facility in accordance with reasonable solar industry operating practices for solar power generation equipment and are adequately experienced and trained and licensed as necessary to operate the Facility properly, efficiently, and are capable of responding to Emergency conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that enables, to a commercially reasonable extent, reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or in violation of Applicable Law; and

(E) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations of this type in the region in which the Site is located and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site (which are not Force Majeure events) and under both normal and reasonably anticipated Emergency conditions (which are not Force Majeure events).

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Guaranteed Availability" shall have the meaning set forth in Section 7.2(A).

"Hazardous Materials" means any substance, material or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of nonhuman forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a

pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

[REDACTED]

[REDACTED]

[REDACTED]

“Independent Engineer” means an independent engineering firm mutually acceptable to the Parties.

“Interconnection Agreement” means the separate interconnection construction service agreement and interconnection service agreement among Seller, the Interconnection Provider and the Transmission Operator for interconnection of the Facility to the Transmission Provider’s System, as such agreements may be amended from time to time.

“Interconnection Facilities” means the facilities necessary to connect Transmission Provider’s System to the Point of Delivery, including breakers, bus work, bus relays, and associated equipment installed by the Interconnection Provider for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Interconnection Facilities shall be governed by the Interconnection Agreement.

“Interconnection Provider” means the Transmission Operator or any Transmission Provider responsible for the operation of the Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Point of Delivery.

“Investment Tax Credits” means the investment tax credit under Section 38 of the Code and determined under Sections 46 and 48 of the Code.

“Issuer” means (a) with respect to the Seller Security Fund in the form of a letter of credit or Cash, an Acceptable Issuing Bank, or (b) with respect to the Seller Security Fund in the form of a payment guaranty, a Creditworthy Entity.

“Locational Marginal Price” or “LMP” means the hourly or sub-hourly, as applicable, integrated market clearing marginal price for Energy, including losses and congestion, at or closest to the Point of Delivery.

“Market Participant” shall have the meaning set forth in the OATT.

[REDACTED]

“MW” means megawatt, an amount of power equal to 1,000 kilowatts or 1,000,000 watts.

“MWh” means megawatt-hour, an amount of power equal to 1,000 kilowatt-hours or 1,000,000 watt-hours.

“NERC” means the North American Electric Reliability Corporation.

“NERC Holiday” means every Day other than a Saturday or Sunday which the NERC declares to be a holiday for power scheduling purposes.

“Non-Power Attributes” means any characteristic of the Facility related to its benefits to the environment, including any avoided, reduced, displaced or off-set emissions of pollutants to the air, soil or water such as sulfur dioxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), mercury (Hg), particulates, and any other pollutant that is now or may in the future be regulated under federal, state or local pollution control laws, regulations or ordinances or any voluntary rules, guidelines or programs; and further include any avoided emissions of carbon dioxide (CO₂) and any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Non-Power Attributes do not include Renewable Energy Incentives.

“OATT” means the FERC filed Open Access Transmission Service Tariff of the Transmission Operator, as it may be amended and approved by FERC.

“Operating Records” means operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that the Seller uses or maintains for the operation of the Facility.

[REDACTED]

REPA. “Party” or “Parties” shall have the meaning set forth in the preamble of this

“Penalties” means penalties imposed by Governmental Authorities.

“Performance Ratio” means the Renewable Energy generated by the Facility divided by the total theoretical generation from the Facility that would be expected under Standard Test Conditions, calculated in accordance with Exhibit E.

“Person” means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, Governmental Authority, or other entity.

“PJM” means PJM Interconnection, LLC.

“PJM Amounts” means any scheduling, imbalance or other penalties, fees or charges as are now or at any time in the future assessed or imposed by PJM for failure to satisfy requirements of the PJM Manuals and Agreements.

“PJM Manuals and Agreements” means, collectively, (i) all instructions, rules, procedures and guidelines established by PJM, (ii) all documents and protocols issued by PJM and (iii) all agreements to which Seller, Purchaser or any Affiliates of Purchaser, on the one hand, and PJM, on the other hand, are parties, either bilaterally or in concert with other entities, as may be in effect from time to time, in each case for the operation, planning, and accounting requirements of PJM and the PJM Interchange Energy Market, including the OATT.

“PJM Node” means a pricing node established by PJM that represents the Facility or the closest PJM pricing node to the Facility.

“Point of Delivery” means the 138kV point, as shown on Exhibit F, at which point the quantities of Renewable Energy and Ancillary Services delivered are recorded and measured by the Interconnection Provider’s revenue meters.

“Power Station” means each of those structures within the Facility containing an inverter, a step-up transformer, internal switchgear and monitoring equipment.

“Pre-Delivery Period Renewable Energy Production” means all Renewable Energy Products which are produced by the Facility prior to the commencement of the Delivery Period.

“Project Assets” means the Facility, the Site and all of Seller’s engineering, procurement, construction, operations, maintenance, environmental, regulatory and financial books and records related to the Facility and the Site, together with all other tangible and intangible assets owned, leased or otherwise held by Seller.

“Project Labor Agreement” means [REDACTED]

“Proration Factor” means, [REDACTED]

[REDACTED]

“Purchaser Representative” shall have the meaning set forth in Section 19.3(B).

“Qualified Operator” means a Person that has (i) substantial experience in operating and maintaining solar photovoltaic electric generation facilities in the United States and (ii) met all applicable requirements under Applicable Law for operating and maintaining the Facility, including the requirements of the Transmission Operator. A Person will be deemed to have such substantial experience if it is a Person that has at [REDACTED] of experience in operating and maintaining solar photovoltaic energy generation facilities.

“Reliability Curtailment” means any curtailment of delivery of Renewable Energy that is not an Economic Curtailment and that results from (i) an Emergency, (ii) any other order or directive of the Interconnection Provider, the Transmission Provider, the Transmission Operator or the RFC, which order or directive may be directly communicated to Seller by the Interconnection Provider, the Transmission Provider, the

Transmission Operator or the RFC or indirectly to Seller by Purchaser promptly upon receipt thereof, (iii) Seller's failure to maintain in full force and effect any permit, consent, license, approval, or authorization from any Governmental Authority required by law to construct or operate the Facility, or (iv) Seller's operation of the Facility in a manner inconsistent with Good Utility Practices.

"Renewable Energy" means the net electric Energy generated exclusively by the Facility from the sun and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.4. Renewable Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

"Renewable Energy Certificate" or "REC" means any credit, certificate, allowance or similar right that is related to the Non-Power Attributes of the Facility, whether arising pursuant to law, regulation, certification, markets, trading, off-set, private transaction, renewable portfolio standards, voluntary programs or otherwise.

"Renewable Energy Incentive" means: (a) federal, state, and local tax credits or other tax incentives associated with the construction, ownership, or production of electricity from the Facility (including Investment Tax Credits, credits under Sections 38 and 45 of the Internal Revenue Code as in effect from time to time during the Term and any grants paid in lieu thereof); (b) any federal, state, and local governmental or nongovernmental payments, grants or other negotiable attributes relating in any way to the Facility or the output thereof; and (c) any other form of incentive that is not a Non-Power Attribute or Beneficial Environmental Interest that is available with respect to the Facility.

"Renewable Energy Products" means, collectively, the Renewable Energy and Ancillary Services produced by the Facility and all of the associated Capacity, RECs and other Beneficial Environmental Interests.

"REPA" means this Renewable Energy Purchase Agreement between Seller and Purchaser, including the Exhibits attached hereto.

[REDACTED]

[REDACTED]

[REDACTED]

“RFC” means the Reliability *First* Corporation, one of the eight regional reliability councils approved by the North American Electric Reliability Corporation (NERC), and any successor regional reliability organization having jurisdiction over the Facility.

“ROFO Notice” shall have the meaning set forth in Section 19.2(A).

“ROFO Period” shall have the meaning set forth in Section 19.2(A).

“Scheduled Outage/Derating” means a planned interruption or reduction of the Facility’s generation by Seller that both (i) has been coordinated in advance with Purchaser, with a mutually agreed start date and duration in accordance with Section 10.8, and (ii) is required for inspection, or preventive or corrective maintenance.

[REDACTED]

“Seller Security Fund” means the performance security that Seller is required to establish and maintain, pursuant to Section 11.1, as security for its performance under this REPA.

“Seller’s Interconnection Facilities” means the equipment between the high side disconnect of the step-up transformer and the Point of Delivery, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider’s System at the Point of Delivery, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the high side of the step-up transformer it includes Seller’s load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Site and is conceptually depicted in Exhibit A to this REPA.

[REDACTED]

[REDACTED]

[REDACTED]

“Site” means the parcel or parcels of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Section 3.2 and Exhibit A to this REPA.

“Solar Unit” means each unit of devices for collecting sunlight and generating electricity at the Facility, initially consisting of 194,950 photovoltaic modules (subject to change based on Seller’s final design of the Facility), a Power Station, and associated racking systems, collection lines, circuits and related equipment.

“Standard Test Conditions” means the conditions at which the photovoltaic (PV) modules comprising the Facility are tested to determine the module nominal power output and performance characteristics. The Standard Test Conditions are defined to be 1000 W/m², a relative air mass of 1.5, and 25°C (77°F) cell temperature.

“Tax” or “Taxes” shall have the meaning set forth in Section 20.2(B).

“Term” means the period of time during which this REPA shall remain in full force and effect, and which is further defined in Article 2.

[REDACTED]

[REDACTED]

“Transmission Operator” means PJM or any successor independent system operator, regional transmission operator or other transmission operator from time to time having authority to control the transmission Control Area to which the Facility is interconnected.

any such additional phase. Exhibit A to this REPA provides a detailed description of the Facility, including identification of the equipment and components, which make up the Facility. The aggregate nameplate MW rating of the Facility shall not exceed 100 MW AC

██████████

3.2 Location.

The Facility shall be located on the Site and shall be identified as Seller's Elkhart County Solar Project facility. The Facility is located in Elkhart County, Indiana. A map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery and the location of the important ancillary facilities and Interconnection Facilities, is included in Exhibit A to this REPA.

3.3 General Design of the Facility.

Seller shall construct the Facility in accordance with Good Utility Practice(s), the Design Standards, the Interconnection Agreement and rules of the Transmission Operator, including the PJM Manuals and Agreements (collectively, the "Design Requirements"). Seller shall maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the design of the Facility shall at all times include:

(A) metering accuracy current transformers and voltage transformers located at the Point of Delivery (or some other point mutually agreed to by the Parties) as required to connect to the Electric Metering Devices.

(B) the required panel space and 125V DC battery supplied voltage to accommodate Purchaser's metering, telemetering equipment and Communications Equipment;

(C) the Communications Equipment; and

(D) suitable solar irradiation and meteorological meters of the types necessary to monitor and measure the solar resource and ambient conditions at the Site to support calculations under this REPA, including the estimation of the quantity of Renewable Energy designated as Curtailment Energy under Section 7.4 (each, a "Weather Station"). Such Weather Stations shall be calibrated by Seller at its cost annually in accordance with Good Utility Practice(s) and the standards described in item 1 of Exhibit G to this REPA.

3.4 ██████████

██
██
██

[REDACTED]

ARTICLE 4
COMMERCIAL OPERATION

4.1 Commercial Operation.

Subject to Section 4.10, Seller shall cause the Facility to achieve the Commercial Operation Date, be fully capable of reliably producing the Renewable Energy Products to be provided under this REPA and delivering such Renewable Energy Products to Purchaser at the Point of Delivery, on or before the Commercial Operation Milestone.

4.2 Wildlife Studies and Siting:

Seller shall conduct such wildlife studies with respect to the Site and the Facility as may be required pursuant to Applicable Law (including, if applicable, studies regarding the Indiana bat (*Myotis sodalis*)). Seller shall provide to Purchaser, promptly after issuance, a true and complete copy of any Wildlife Permit Restrictions issued with respect to the Facility.

4.3 Site Report.

Seller shall conduct a phase 1 environmental site assessment of the Site prior to the Fntp Date and provide to Purchaser, promptly after issuance, a copy of the report from such assessment of the Site. If such site assessment identifies any recognized environmental conditions that could reasonably be expected to materially impact the construction, operation or maintenance of the Facility, then Seller shall conduct a phase 2 environmental assessment of the Site and provide to Purchaser, promptly after issuance, a copy of the report from such assessment of the Site.

4.4 Facility Contracts.

Seller shall provide to Purchaser, no later than three hundred and sixty-five (365) Days before the Commercial Operation Milestone, a certificate of an officer of Seller, in a form reasonably acceptable to Purchaser, stating that Seller has sufficient Solar Units under contract to satisfy its obligations hereunder. [REDACTED]

[REDACTED] Information that is commercially sensitive, confidential or proprietary, as reasonably determined by Seller, may be redacted from the documents provided to Purchaser pursuant to this paragraph.

All such information shall be treated as confidential information subject to Section 20.15 hereof.

4.5 Progress Reports.

Commencing upon the execution of this REPA, Seller shall submit to Purchaser, within the first fifteen (15) Days of each calendar quarter until the commencement of construction of the Facility, and within the first fifteen (15) Days of each calendar month thereafter until the Commercial Operation Date is achieved, reports regarding development and construction progress in a form reasonably satisfactory to Purchaser. These progress reports shall describe the status of the development and construction of the Facility as of the end of the preceding month, including (a) a description of the progress of development and construction based on a comprehensive list of all of Seller's deliverables required under this REPA (including the Conditions to COD set forth in Section 4.7), (b) an explanation of any material changes in the development and construction schedule and (c) an estimate of the Commercial Operation Date. Commencing upon the date that is two months prior to the earlier of (x) the Commercial Operation Milestone and (y) the estimated Commercial Operation Date, Seller will additionally advise Purchaser weekly on the status of Solar Unit commissioning until the Commercial Operation Date is achieved.

4.6 Purchaser's Rights During Construction.

Purchaser shall have the right to monitor the construction, start-up and testing of the Facility during normal business operating hours, and Seller shall comply with all reasonable requests of Purchaser with respect to the monitoring of these events, provided, however, that Purchaser provides Seller reasonable advance written notice, shall not unreasonably interfere with or disrupt the activities of the Seller. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Purchaser during and after completion of construction. All persons visiting the Facility on behalf of Purchaser shall comply with all of Seller's applicable safety and health rules and requirements. Purchaser's technical review and inspection of the Facility shall not be construed as endorsing the design thereof nor as any warranty of safety, durability, or reliability of the Facility, nor shall Purchaser's review and inspection of the Facility constitute a waiver by Purchaser or any right or remedy hereunder.

4.7 Conditions to Commercial Operation.

Seller shall notify Purchaser when the Facility has achieved the Commercial Operation Date, which notice shall not be unreasonably withheld or delayed by Seller. This notification is contingent upon Seller providing evidence reasonably acceptable to Purchaser of the satisfaction or occurrence of all of the conditions set forth in this Section 4.7 ("Conditions") and shall include a certification by Seller to that effect. The Parties agree that review and approval of such Conditions may occur on an ongoing and

incremental basis, pending resolution of any Dispute, as such Conditions are satisfied. The Conditions are:

(A) Seller has successfully completed all testing of the Facility that is required by the Financing Documents, the Facility's permits issued by Governmental Authorities, the Interconnection Agreement, Seller's module supply and balance of plant construction contracts for the Facility and manufacturers' warranties for the commencement of commercial operations at the Facility;

(B) the Facility has achieved initial synchronization with the Transmission Provider's System with a Facility Capacity equal to at least 95 MW AC;

(C) an Independent Engineer's certification has been obtained by Seller and delivered to Purchaser stating (i) that the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this REPA, (ii) the Facility has been constructed in accordance with the Design Requirements and (iii) the designed maximum output of the entire Facility, which total shall not exceed 100 MW AC;

(D) the interconnection of the Facility to the Transmission Provider's System has been completed in accordance with the Interconnection Agreement and has operated at a generation level acceptable to the Interconnection Provider in accordance with the operating requirements of the Interconnection Agreement;

(E) Seller has made all arrangements and executed all agreements required to deliver the Renewable Energy from the Facility to the Point of Delivery in accordance with the provisions of this REPA;

(F) Seller can reliably transmit real time data and measurements to Purchaser (i) in accordance with the requirements of the Interconnection Agreement and (ii) in accordance with the requirements of Exhibit G, including the data and measurements from the Weather Stations [REDACTED]

(G) all arrangements for the supply of required electric services to the Facility, including the supply of start-up and shutdown power and Energy, house power and maintenance power have been completed by Seller separate from this REPA, are in effect, and are available for the supply of such electric services to the Facility;

(H) the Seller Security Fund meeting the requirements of Section 11.1 has been established;

(I) certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to Purchaser;

(J) Seller has made all necessary filings and applications with Governmental Authorities for accreditation and participation in GATS and in any other applicable federal and state REC certification program pursuant to Section 10.9;

(K) Seller has submitted to Purchaser a certificate of an officer of Seller certifying that, to such officer's knowledge after a due and reasonable inquiry, Seller and the Facility are in compliance with the terms and conditions of this REPA in all material respects;

(L) Seller shall have provided the following items to Purchaser at least sixty (60) Days prior to the Commercial Operation Date: (1) the Facility layout of the Site with the latitude and longitude and solar module specification sheets; and (2) a non-binding, good faith 12 month x 24 hour forecast of net Energy production from the Facility; and (3) historical solar data for the Site; provided that the data set forth in item (1) above shall be updated and re-submitted to the Purchaser no later than ten (10) Business Days after the Commercial Operation Date (or such other date mutually acceptable to Purchaser);

(M) Seller shall have provided Purchaser with a copy of the final Phase I environmental report referred to in Section 4.3 and either (i) such report shall confirm that no conditions involving Environmental Contamination exist at or under the Site that would materially impact performance of Seller's obligations under this REPA or (ii) Seller shall have provided to Purchaser prior to the Commercial Operation Date a remediation plan for removal of such Environmental Contamination;

(N) Seller shall have provided Purchaser with a copy of the final wildlife studies referred to in Section 4.2 and either (i) such studies shall confirm that no endangered species or other legally protected wildlife (including, if applicable, the Indiana bat (*Myotis sodalis*)) exists at, under or above the Site that would materially impact performance of Seller's obligations under this REPA or (ii) Seller shall have provided to Purchaser prior to the Commercial Operation Date copies of all applicable Wildlife Permit Restrictions; and

(O) Seller shall have completed applications, registrations or filings required by PJM in order to effectuate the delivery of the Capacity of the Facility to Purchaser in accordance with Section 5.6(D).

4.8 Pre-Delivery Period Renewable Energy Production.

Seller shall coordinate the production and delivery of Pre-Delivery Period Renewable Energy Production with the Transmission Operator and be responsible for all scheduling activities and shall be entitled to all credits and charges associated with the delivery of such Pre-Delivery Period Renewable Energy Production into PJM for Seller's account. Purchaser shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to satisfy the Conditions set forth in Section 4.7.

4.9 QF Waiver.

For so long as this REPA is in effect, Seller waives, and agrees not to assert, the rights Seller may have against Purchaser to cause Purchaser to purchase or transmit energy or capacity pursuant to 18 C.F.R. Section 292.303 or Section 292.304 by virtue of the status of the Facility as a qualifying cogeneration facility as defined in the Public Utility Regulatory Policies Act of 1978, as amended.

4.10 [REDACTED].

[REDACTED]

4.11 [REDACTED]

[REDACTED]

Energy Products to Purchaser in all daylight hours of the Delivery Period. Seller agrees that, notwithstanding anything herein to the contrary, Seller will not curtail or otherwise reduce deliveries of Renewable Energy Products in order to sell such Renewable Energy Products to other purchasers.

5.3 Delivery Arrangements.

(A) Prior to the Commercial Operation Date, Seller shall establish and shall maintain throughout the Term with PJM, the PJM Node for purposes of identification of the Facility with PJM.

(B) Prior to the Commercial Operation Date, Seller shall establish an individual PJM account only for the Facility for purposes of (i) identification of the Renewable Energy Products, (ii) Seller's scheduling obligations under Section 5.6, and (iii) the settlement of operating reserves and other charges and credits for which Purchaser is responsible under Section 5.6.

(C) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver the Renewable Energy from the Facility to Purchaser at the Point of Delivery. Purchaser shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to receive the Renewable Energy at the Point of Delivery and deliver such Energy to points beyond the Point of Delivery.

(D) Seller shall be responsible for paying any and all transmission upgrade costs identified by the Transmission Operator as Seller's responsibility in order to designate the Facility as a Capacity Resource.

5.4 Electric Metering Devices.

Seller will comply with the terms and conditions of the Interconnection Agreement. The following provisions on Electric Metering Devices shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(A) All Electric Metering Devices used to measure the Renewable Energy made available to Purchaser by Seller under this REPA and to monitor and coordinate operation of the Facility shall be owned, installed, and maintained by Seller according to Good Utility Practice. Such Electric Metering Devices shall measure only the Renewable Energy delivered to Purchaser from the Solar Units commissioned under this REPA and not from any other solar units installed on the Site, which solar units shall not comprise the Facility even though they may share the same Point of Delivery or revenue meter with the Solar Units commissioned under this REPA. If the Electric Metering Devices are sub-meters, the amount of Renewable Energy delivered to Purchaser and measured by such Electric Metering Devices shall be reduced to account for the losses

of Renewable Energy between the Point of Delivery and such Electric Metering Devices. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Article. Seller shall specify the number, type, and location of such Electric Metering Devices.

(B) Seller, at its own expense, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, inspections and tests of the Electric Metering Devices, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Upon request by Purchaser, Seller shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Purchaser to inspect or witness the testing of any Electric Metering Device, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Purchaser in writing, Seller shall provide copies of any inspection or testing reports to Purchaser.

(C) Purchaser and Seller each may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices. Each Party, at its own expense, shall inspect and test its Back-Up Metering upon installation and at least annually thereafter. Each Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party and shall comply with all of the testing Party's safety standards. Upon request by a Party, the other Party shall perform additional inspections or tests of its Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of such Back-Up Metering, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party and shall comply with all of the testing Party's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the requesting Party, unless, upon such inspection or testing, the Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the testing Party. If requested by the requesting Party in writing, the testing Party shall provide copies of any inspection or testing reports to the requesting Party.

(D) If any Electric Metering Devices, or any Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense. The Party discovering such defect or inaccuracy shall promptly notify the other Party of such discovery.

5.5 Adjustment for Inaccurate Meters.

The following provisions on Adjustment for Inaccurate Meters shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(A) If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than [REDACTED] from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the manner set forth in Section 5.5(B), (C) and (D) below.

(B) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use the Back-Up Metering, if installed, to determine the amount of such inaccuracy, provided that the Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If both Parties have installed Back-Up Metering, and the Back-Up Metering of both Parties is inaccurate by not more than [REDACTED] from the measurements made by the standard meter used in the test, the readings from the Back-Up Metering whose readings most closely conform with the measurements made by the standard meter shall be used. In the event that neither Party has installed Back-Up Metering, or the Back-Up Metering is also found to be inaccurate by more than [REDACTED] from the measurement made by the standard meter used in the test, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Renewable Energy from the Facility during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(C) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(D) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Purchaser, Purchaser shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Purchaser for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Purchaser to Seller; if the difference is a negative number, that difference shall be paid by Seller to Purchaser, or at the discretion of Purchaser, may take the form of an offset to payments due Seller by Purchaser (or by payment to Purchaser, if sufficient payments do not remain to offset). Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Purchaser elects payment via an offset.

5.6 Scheduling Arrangements.

The Parties will effectuate delivery and receipt of Renewable Energy Products at the Point of Delivery as follows:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

(D) Seller shall be responsible for all costs related to delivery of Renewable Energy to the Point of Delivery or to the extent any such costs are incurred as a result of the failure by Seller to curtail deliveries in connection with a Reliability Curtailment [REDACTED]. To the extent either Party (or its agent) incurs costs or expenses which are the responsibility of the other Party under this Section 5.6, such costs or expenses shall be added to or shall be netted against the invoice for Renewable Energy. In the event that after the date of execution of this REPA, the PJM Manuals and Agreements governing costs and expenses to be paid by schedulers of Renewable Energy Products are modified resulting in a material effect on the allocation of the PJM charges or credits incurred by Seller (or Seller's agent) in connection with the Capacity or scheduling the Renewable Energy that Purchaser would have incurred if Purchaser was scheduling and effecting settlements with respect to the Capacity or the Renewable Energy or any credits associated therewith, the Parties hereby agree to amend this REPA to effectuate the intent of this Section 5.6, notwithstanding such modification of the PJM Manuals and Agreements.

(E) The parties will effectuate the delivery and receipt of Capacity from the Facility by timely making and confirming appropriate unit specific, bilateral transactions in PJM's Capacity Exchange system of "Unoffered Capacity" (as defined in PJM Manual 18, PJM Capacity Market, Revision: 45, Effective: May 28, 2020).

ARTICLE 6 CONDITIONS PRECEDENT

6.1 Final Non-Appealable Orders.

(A) Unless waived by Purchaser in writing or deemed waived pursuant to the provisions of this Article 6, it shall be a condition precedent to the Parties' obligations under this REPA that Purchaser has obtained the Final Non-Appealable Orders.

(B) No later than ninety (90) Days after execution of this REPA, Purchaser may, but shall not be obligated to initiate the process to obtain the Final Non-Appealable Orders from the Indiana Utility Regulatory Commission and the Michigan Public Service Commission (i.e., submitting applications). Seller acknowledges and agrees that the form of Purchaser's approval application to the Indiana Utility Regulatory Commission and the Michigan Public Service Commission for the Final Non-Appealable Orders, including cost recovery, and the conduct by Purchaser of any proceedings, including any settlement or appeal, related to or arising from such approval application

shall be determined in the sole discretion of Purchaser. If Purchaser fails to initiate the process to obtain the Final Non-Appealable Orders during such ninety (90) Day period, the condition precedent in Section 6.1(A) shall be deemed waived and this REPA shall remain in full force and effect thereafter.

(C) After Purchaser initiates the process to obtain the Final Non-Appealable Orders set forth above, Purchaser shall use its commercially reasonable efforts to obtain such Final Non-Appealable Order as soon as reasonably practicable, but if despite commercially reasonable efforts, Purchaser is unable to obtain the Final Non-Appealable Orders on or before the date that is 365 days after date of this REPA, Purchaser, by notice to Seller delivered on or prior to fifteen (15) Days thereafter, may terminate this REPA, without any financial or other obligation by either Party arising out of such termination except that Purchaser shall return the Seller Security Fund to Seller. If Purchaser fails to deliver such a notice of termination during such fifteen (15) Day period, the condition precedent in Article 6 shall be deemed waived and this REPA shall remain in full force and effect thereafter.

6.2 [REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 7
SALE AND PURCHASE OF RENEWABLE ENERGY

7.1 Sale and Purchase.

Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Purchaser, and Purchaser shall purchase and pay for, at the Contract Rate, all Renewable Energy Products generated by the Facility. Purchaser shall have no obligation to pay for any Energy that has not actually been generated by the Facility, measured by the Electric Metering Device(s) and delivered to Purchaser at the Point of Delivery, [REDACTED]

[REDACTED]

[REDACTED]

7.2 Guaranteed Availability.

(A) Seller guarantees an Availability of the Facility for each Calculation Period during the Term [REDACTED], multiplied by the Proration Factor, if applicable, with respect to any Calculation Period that contains a Contract Year that is not a full calendar year (the "Guaranteed Availability").

(B) If the [REDACTED]

(C) [REDACTED]

(D) Within forty-five (45) days of the end of each Calculation Period, Seller shall deliver to Purchaser a statement showing Seller's computation of the [REDACTED] if any, for the prior Calculation Period. To the extent required, Seller shall true up any such statement as promptly as practicable following its receipt of actual results for the relevant Calculation Period. Based on such statement, Purchaser shall calculate and issue a statement to Seller for the amount due Purchaser for [REDACTED] pursuant to Section 7.2(C) in respect thereof. Seller shall pay the full amount of [REDACTED] due under such invoice within thirty (30) Days of receipt thereof, unless and except if Purchaser notifies Seller in writing that such amount can be paid via an offset to Seller's next monthly invoice(s), in which case Purchaser shall be entitled to offset any [REDACTED] not paid by Seller within such thirty (30) Day period against the amounts that Purchaser owes to Seller under the next monthly invoices.

(E) Each Party agrees and acknowledges that (i) the damages that Purchaser would incur due to the Facility's failure to achieve the [REDACTED] would be difficult or impossible to predict with certainty, (ii) the [REDACTED] contemplated by this provision are a fair and reasonable calculation of such [REDACTED], and (iii) the required payment by Seller of such [REDACTED] shall be Purchaser's sole remedy for such [REDACTED] and the [REDACTED]

7.3 Title and Risk of Loss.

As between the Parties, Seller shall be deemed to be in control of the Renewable Energy output from the Facility up to the Point of Delivery, and Purchaser shall be deemed to be in control of such Renewable Energy output from and after the Point of Delivery. Title to and risk of loss of the Renewable Energy delivered by Seller to Purchaser hereunder shall transfer from Seller to Purchaser at the Point of Delivery. Title to and risk of loss of the Renewable Energy Certificates shall pass from Seller to Purchaser as provided in the rules governing GATS.

7.4 Curtailments.

(A) Seller shall at all times during the Term comply with the directives of the Transmission Operator, the Transmission Provider and the Interconnection Provider given pursuant to the Interconnection Agreement. In addition, Purchaser shall have the right to notify Seller, by telephonic communication or other method as reasonably determined by Purchaser, of a Reliability Curtailment directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider [REDACTED]. In all cases of Reliability Curtailment, Seller shall reduce the net Energy delivered by the Facility at the Point of Delivery to the level directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider, as applicable. If Purchaser receives any such directive of Reliability Curtailment, Purchaser shall promptly notify Seller of the maximum amount of Renewable Energy, if any, during such Reliability Curtailment that Seller may continue to deliver and the duration thereof, and Seller shall ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed such amount for such duration. If Seller receives any such directive of Reliability Curtailment, Seller shall (i) promptly (and in any event within thirty (30) minutes) notify Purchaser by phone (followed by electronic mail) of the maximum amount of Renewable Energy, if any, during such Reliability Curtailment that Seller may continue to deliver and the duration thereof, if such duration is known to the Seller, (ii) promptly (and in any event within thirty (30) minutes) notify Purchaser of any change to such amount or duration, if any, and (iii) ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed any such amount for any such duration. Except as provided in Section 7.1, no compensation shall be due from Purchaser to Seller as a result of any curtailment of the Facility's generation arising from any Reliability Curtailment directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider.

[REDACTED]

[REDACTED]

(C) Each Party agrees and acknowledges that (i) the damages that [REDACTED] be difficult or impossible to predict with certainty, (ii) the amounts contemplated by Section 7.4(B) are a fair and reasonable calculation of such damages, and (iii) the required payment by Purchaser of such amounts shall be [REDACTED] sole remedy [REDACTED].

7.5 Renewable Energy Incentives.

(A) If, for any reason, Seller does not receive the Renewable Energy Incentives for any period, the cost of Renewable Energy Products delivered to Purchaser under this REPA shall not be affected, and the risk of not obtaining the Renewable Energy Incentives shall be borne solely by Seller.

(B) Seller shall be entitled to all Renewable Energy Incentives, and Purchaser acknowledges that Seller has the right to sell or transfer the Renewable Energy Incentives, at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Purchaser shall have no claim, right or interest in such Renewable Energy Incentives or in any amount that Seller realized from the sale of such incentives.

ARTICLE 8
PAYMENT CALCULATIONS

8.1 Payments at Contract Rate.

Commencing on the first Day of the Delivery Period, Purchaser shall pay Seller for (i) Renewable Energy delivered to Purchaser by Seller to the Point of Delivery and for other Renewable Energy Products associated therewith [REDACTED].

8.2 No Payment Obligation.

For avoidance of doubt, Purchaser shall not be obligated to make any payment to Seller under Section 8.1 for any Energy which, regardless of reason or event of Force Majeure affecting either Party, (i) does not qualify as Renewable Energy, (ii) is not measured by

the Electric Metering Device(s) installed pursuant to Section 5.4, as such measurement may be adjusted pursuant to Section 5.5, or (iii) is delivered to Purchaser at a location other than the Point of Delivery.

ARTICLE 9
BILLING AND PAYMENT

9.1 Billing Invoices.

The monthly billing period shall be the calendar month. No later than ten (10) Business Days after the end of each calendar month, Seller shall provide to Purchaser, by first-class mail or electronically, an invoice for the amount due Seller by Purchaser for the services provided by Seller and purchased by Purchaser, under this REPA, for each monthly billing period. In each case, Seller's invoice will show: (a) with respect to the previous calendar month, all billing parameters, the Contract Rate, any adjustments (including those made pursuant to Sections 5.3(A) and 9.3), and any other data reasonably pertinent to the calculation of monthly payments due to Seller; [REDACTED]

[REDACTED]

9.2 Payments.

Unless otherwise specified herein, payments due under this REPA for undisputed amounts shall be due and payable on or before the later of (i) the twentieth (20th) Day of the month following the month to which such payment relates and (ii) the tenth (10th) Business Day following receipt of the billing invoice. Unless Seller directs Purchaser otherwise, all payments by Purchaser to Seller shall be made by electronic funds transfer. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated using an annual interest rate equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two percent (2%). If the due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 Billing Disputes.

Purchaser may dispute invoiced amounts on or prior to the second (2nd) anniversary of the issuance of the invoice related to such invoiced amounts, but shall pay to Seller the undisputed portion of invoiced amounts on or before the date set forth in Section 9.2. To resolve any billing Dispute, the Parties shall use the procedures set forth in Section 13.9. When the billing Dispute is resolved, the Party owing shall pay the amount owed within ten (10) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.2 from the date such amount was originally due. Purchaser and Seller at any time may offset against any and all amounts that may be due and owed to the other Party under this REPA any amounts that are owed by such other Party to Purchaser or Seller, as applicable, pursuant to this REPA including damages and other payments. Undisputed and non-offset portions of amounts invoiced under this REPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.2.

ARTICLE 10 OPERATIONS AND MAINTENANCE

10.1 Facility Operation.

Seller hereby represents that Seller or one of its Affiliates having operational responsibility for the Facility is and will remain a Qualified Operator during the Delivery Period or that Seller or its Affiliate having operational responsibility for the Facility will engage a Qualified Operator to operate and maintain the Facility during the Delivery Period. Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Contract Administration Procedures developed pursuant to Section 10.3. Personnel capable of starting, operating, and stopping the Facility shall be available, either at the Facility or capable of remotely starting, operating and stopping the Facility within ten (10) minutes' notice. In all cases, personnel capable of starting, operating, and stopping the Facility shall be continuously reachable by phone or pager. Seller shall maintain the Communications Equipment in good operating order at all times during the Term.

10.2 Outage and Performance Reporting.

(A) Seller shall comply with all NERC, RFC and the Transmission Operator generating unit outage and performance reporting requirements, including GATS reporting requirements, as they may be revised from time to time, and as they apply to the Facility.

(B) When Forced Outages of [REDACTED] or greater of the Facility Capacity occur that Seller reasonably expects to continue into the next Day, Seller shall (i) notify Purchaser by phone (followed by electronic mail) of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than

thirty (30) minutes after the Forced Outage occurs, and (ii) update the Availability Notice within sixty (60) minutes after the Forced Outage occurs. Seller shall thereafter inform Purchaser on a daily basis by phone (followed by electronic mail) of changes in the expected extent or duration of the Forced Outage unless relieved of this obligation by Purchaser.

(C) When Forced Outages of [REDACTED] or greater of the Facility Capacity occur that are expected to be of a duration exceeding one hour and be resolved within the same Day of the Forced Outage, Seller shall update the Availability Notice within sixty (60) minutes after the Forced Outage occurs.

(D) Seller shall provide Purchaser with prompt notice by telephone of any malfunction or other failure of the Communications Equipment.

10.3 Contract Administration Committee and Contract Administration Procedures.

(A) Purchaser and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this REPA and to develop operating arrangements for the generation, delivery and receipt of Renewable Energy hereunder. Such representatives shall constitute the Contract Administration Committee, and shall be as specified on Exhibit C. The Contract Administration Committee shall act in accordance with the Contract Administration Procedures. The Parties shall notify each other in writing of such appointments and any changes thereto. The Contract Administration Committee shall have no authority to modify the terms or conditions of this REPA.

(B) Prior to the Commercial Operation Date, the Contract Administration Committee shall develop mutually agreeable written Contract Administration Procedures, which shall include, but not be limited to, method of day-to-day communications; curtailment, outage and performance reporting; metering, telemetering, telecommunications and data acquisition procedures; key personnel list for applicable Purchaser and Seller operating centers; operations and maintenance scheduling and reporting; Renewable Energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties.

10.4 Access to Facility.

Appropriate representatives of Purchaser shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility to read meters, to perform maintenance and service of Purchaser's equipment and to perform all inspections and operational reviews as may be reasonably appropriate to facilitate the performance of this REPA; provided that Purchaser does not interfere in any material respect with the operation of the Facility, and causes all persons visiting the

Facility on its behalf to comply with all of Seller's applicable safety, health and similar rules and requirements.

10.5 Reliability Standards.

Seller shall operate the Facility in a manner that complies in all material respects with all national and regional reliability standards, including standards set by the Transmission Operator, RFC, NERC and FERC, or any successor agencies setting reliability standards for the operation of generation facilities. To the extent that Seller does not operate the Facility in accordance with such standards that result in monetary penalties being assessed to Purchaser by the Transmission Operator, RFC, NERC, or FERC, Seller shall reimburse Purchaser for its share of such monetary penalties.

10.6 Beneficial Environmental Interests.

The Parties acknowledge that future or existing legislation or regulation may create value in the ownership, use or allocation of the Beneficial Environmental Interests of the Facility. Purchaser shall own or be entitled to claim all Beneficial Environmental Interests to the extent they may exist during the Term.

10.7 Forecasts.

Seller shall furnish to Purchaser a notice substantially in the form attached hereto as Exhibit I (an "Availability Notice") at or before 9:00 a.m. EPT on the Business Day immediately prior to the first Day to which such Availability Notice shall relate that shall set forth the Facility Capacity that Seller anticipates will actually be available in each hour through the next Business Day and each subsequent Business Day to which such Availability Notice relates. Seller also shall furnish to Purchaser a revised Availability Notice promptly after the occurrence of any Force Majeure event, Forced Outage, unscheduled outage or other unplanned maintenance, derating, or other event that would reduce or interrupt Renewable Energy or Ancillary Services associated with Facility Capacity or cause the controlling Availability Notice to be inaccurate or incomplete in any material respect, with a description of the circumstances thereof. Each such Availability Notice shall be effective until delivery of a subsequent Availability Notice. Seller does not guarantee the accuracy of said Availability Notices, and said Availability Notices are only intended to be its good faith estimate of the projected availability of the Facility at the time such notice is given.

10.8 Planned Maintenance Schedule.

No later than (a) two (2) months prior to the Commercial Operation Date and (b) two (2) months prior to each calendar year thereafter during the Term, Seller shall submit to Purchaser a schedule of planned maintenance for the following calendar year. Such schedule shall be consistent with the requirements of Good Utility Practice and the Interconnection Agreement, and otherwise in accordance with this REPA. Seller shall

revise such schedule throughout the year to reflect any changes to its actual expected planned maintenance activities, including any cancellation, postponement, or addition of planned maintenance activities. No planned maintenance of the Facility substation or any other portion of the Facility that would affect the availability of [REDACTED] the Facility Capacity at any one time may be scheduled during daylight hours during the [REDACTED] during the Delivery Period or during the non-daylight hours during such periods if the work can't be completed without running over into the next operating day's daylight hours; provided, however, that planned maintenance may be scheduled during such period to the extent (i) required by or necessary to preserve any equipment warranties, (ii) necessary to address any unsafe or emergency conditions involving the Facility or (iii) the failure to perform such planned maintenance is contrary to operation in accordance with Good Utility Practice(s). Such schedule shall indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility. If Purchaser desires to change the scheduled commencement or duration of planned maintenance, the Purchaser shall notify the Seller of the requested change and the Seller shall use reasonable efforts to accommodate the requested change. At least one (1) week prior to any planned maintenance, Seller shall notify Purchaser via e-mail and telephonically of the expected commencement date of such planned maintenance, the affected portion(s) of the Facility during such planned maintenance and the expected completion date of such planned maintenance.

10.9 REC Certification.

(A) Seller shall be responsible for causing the GATS Certificates delivered under this REPA to meet all requirements for entry into GATS. Seller shall be responsible for (i) registering and maintaining compliance during the duration of this REPA with GATS, (ii) timely delivery of RECs as allowed by GATS and (iii) the costs associated with such activities, including entering and transferring RECs to Purchaser's account. [REDACTED]

(B) Seller shall, [REDACTED] take all actions necessary to register for and maintain participation in all applicable systems and programs established by the federal or any state Governmental Authority in Indiana or Michigan to monitor, track, certify or trade RECs. To the extent necessary, Seller shall assign to Purchaser all rights, title and authority for Purchaser to register, own, hold and manage certificates that represent RECs in Purchaser's own name and to Purchaser's account, including any rights associated with any such federal or applicable state renewable energy information or tracking system that may be established with regard to monitoring, tracking, certifying, or trading such RECs. Upon the request of Purchaser from time to time, [REDACTED], (i) Seller shall deliver or cause to be delivered to Purchaser such attestations/certifications of RECs as may be required to comply with any such federal or

applicable state certification system or program, and (ii) Seller shall provide full cooperation in connection with Purchaser's registration and certification of RECs. Purchaser shall assist Seller with the matters described in this subsection (B) to the extent reasonably requested by Seller during the Term.

10.10 Public Statements, Press Releases, Other Use.

(A) Without the written consent of Purchaser, Seller shall not (i) make any public statement or representation that is inconsistent with Purchaser's entitlement to the Renewable Energy Products (or any portion thereof), (ii) use the Facility's Beneficial Environmental Interests to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable energy portfolio standard or other renewable energy mandate, or (iii) advertise, market, sell, retire, convey or otherwise transfer or seek to transfer the Facility's Beneficial Environmental Interests, which rights are expressly reserved to Purchaser during the Term.

(B) Purchaser and Seller hereby agree that prior to the Commercial Operation Date the Parties will coordinate and mutually agree upon the content and timing of any press releases or other public statements concerning the Facility, this REPA or the subject matter of this REPA which may be made by either Party and neither Party will unreasonably withhold, condition, or delay its consent and agreement to the content of such press releases or other public statements.

(C) Notwithstanding the foregoing, the other Party's prior written approval shall not be required nor prevent the Parties from releasing information (a) which is required to be disclosed in order to obtain any permits and any other approvals relating to the Facility or other information required to be or provided to regulators having jurisdiction over a Party's business or that of its Affiliates or to Purchaser's customers, (b) as necessary to fulfill such Party's obligations under this REPA, or (c) as otherwise required by Applicable Law.

10.11 Real-Time Information.

Seller will use commercially reasonable efforts on and after the Commercial Operation Date to continuously and reliably transmit real-time data and measurements to Purchaser in compliance with Exhibit G. Purchaser and Seller shall each bear the cost of and responsibilities for their respective systems, equipment and communications links required for receipt of such real-time information. Seller shall notify Purchaser by phone or electronic mail of the existence, nature, and expected duration of any Weather Station outage (partial or full) as soon as practical, but in no event later than two (2) hours after the Weather Station outage occurs. In the event that Seller fails to continuously transmit real-time data to Purchaser in compliance with Exhibit G, [REDACTED]

[REDACTED]

[REDACTED]

10.12 Web-Based Operational Reporting.

Purchaser may at its option make available to Seller on the Internet a web-based reporting system which will provide the Parties with the capability to generate and submit standardized reports for purposes of satisfying the requirements of the Parties contained in Sections 10.2, 10.7 and 10.8. Purchaser will develop user requirements for such reporting system in consultation with Seller.

ARTICLE 11
SECURITY FOR PERFORMANCE

11.1 Seller Security Fund.

(A) Seller shall establish the Seller Security Fund [REDACTED]

[REDACTED]

(B) If the Seller fails to pay amounts owed to Purchaser under this REPA or there are amounts owed and not paid to Purchaser due to a Seller Event of Default, then in addition to any other remedy available to it, Purchaser may, before or after termination of this REPA and so long as the Seller Security Fund is required to be outstanding after termination of this REPA pursuant to Section 11.1(F), draw from the Seller Security Fund. Purchaser may, in its sole discretion, draw all or any part of such amounts due to it from any form of Seller Security Fund, and from all such forms, and in any sequence Purchaser may select. Any failure to draw upon the Seller Security Fund or other security for any damages or other amounts due to Purchaser shall not prejudice Purchaser's rights to recover such damages or amounts in any other manner.

(C) The Seller Security Fund shall be maintained at Seller's expense, shall be issued by or deposited in an Issuer (as applicable), and shall be in the form of one or more of the following instruments. Seller may replace the form of the Seller Security Fund at any time and from time to time upon reasonable prior notice to Purchaser, but the Seller Security Fund must at all times be comprised of one or any combination of the following:

(1) An irrevocable standby letter of credit in substantially the form of Exhibit J from an Issuer that is an Acceptable Issuing Bank. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the period described in Section 11.1(F)) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein (such condition, the "Failure to Extend Condition"), Purchaser shall have the right to draw immediately upon the letter of credit and be entitled to hold the amounts so drawn as security, provided Purchaser satisfies the conditions of Section 11.1(C)(2)(i). If Purchaser does not meet the conditions of Section 11.1(C)(2)(i), Purchaser will place the amounts so drawn in an interest bearing account or escrow in accordance with Section 11.1(C)(2)(ii), until and unless Seller provides a substitute form of such security meeting the requirements of this Section 11.1. Such amounts shall constitute part of the Seller Security Fund pursuant to Section 11.1(C)(2) for all purposes of this REPA (including for the return of such Cash to Seller according to Section 11.1(F)).

(2) United States currency ("Cash") deposited with (i) Purchaser, provided that Purchaser satisfies the following conditions: (a) it is not a defaulting Party and (b) Purchaser is a Creditworthy Entity. In such event, Purchaser will pay interest to Seller on Cash held at the Federal Funds Effective Rate and may draw on the Cash only in the circumstances, and in the amounts, that a letter of credit in the form of Exhibit J could be drawn (except that the Failure to Extend Condition or Failure to Replace Condition shall not apply as a valid reason for disbursement); or (ii) if, and only if, Purchaser does not meet the aforementioned conditions of Section 11.1(C)(2)(i), then the Cash shall be held with an Issuer that is an Acceptable Issuing Bank, either: (a) in an account under which Purchaser is designated as beneficiary with sole authority to draft from the account or otherwise access the security only in the circumstances, and in the amounts, that a letter of credit in the form of Exhibit J could be drawn (except that the Failure to Extend Condition or Failure to Replace Condition shall not apply as a valid reason for disbursement); or (b) held by Issuer as escrow agent with instructions to pay claims made by Purchaser pursuant to this REPA, such instructions to allow drawing by Purchaser only in the circumstances, and in the amounts, that a letter of credit in the form of Exhibit J could be drawn (except that the Failure to Extend Condition or Failure to Replace Condition shall not apply as a valid reason for disbursement). Security held pursuant to Section 11.1(C)(2)(ii) shall be subject to the following: (x) include a requirement for prompt notice to Purchaser from Seller in the event that the sums held as security in the account or escrow do not at any time meet the required level for the Seller Security Fund as set forth in this Section 11.1 and (y) funds held in the account or escrow may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. Seller grants to Purchaser a present and continuing first priority security interest in all Cash which has been transferred to Purchaser or held by Issuer. At

such times as the balance of Cash held by Purchaser or by Issuer exceeds the amount of Seller's obligation to provide security hereunder, Purchaser shall remit to Seller on demand any excess in the account above Seller's obligations.

(3) A guaranty in substantially the form of Exhibit K (or such other form that is approved by Purchaser in Purchaser's discretion) from an Issuer that is a Creditworthy Entity.

(D) If the Issuer of any Seller Security Fund instrument ceases to be an Acceptable Issuing Bank (in the case of a letter of credit Issuer or holder of Cash) or a Creditworthy Entity (in the case of an Issuer of a payment guaranty) or any Seller Security Fund instrument ceases to be in full force and effect, then Seller shall be required to replace the affected Seller Security Fund instrument with another Seller Security Fund instrument meeting the criteria set forth in Section 11.1(C) no later than ten (10) Days after receiving notice from Purchaser that such replacement of the Seller Security Fund instrument is required pursuant to this Section 11.1(D). If the Seller Security Fund instrument is a letter of credit and is not replaced as required herein (such condition, the "Failure to Replace Condition"), Purchaser shall have the right to draw immediately upon the letter of credit and be entitled to hold the amounts so drawn as security, provided Purchaser satisfies the conditions of Section 11.1(C)(2)(i). If Purchaser does not meet the conditions of Section 11.1(C)(2)(i), Purchaser will place the amounts so drawn, in an interest bearing account or escrow in accordance with Section 11.1(C)(2)(ii), until and unless Seller provides a substitute form of such security meeting the requirements of this Section 11.1. Such amounts shall constitute part of the security pursuant to Section 11.1(C)(2) for all purposes of this REPA (including for the return of such Cash to Seller according to Section 11.1(F)).

(E) If any Seller Security Fund instrument is replaced in accordance with Section 11.1(C) or 11.1(D), (i) if the Seller Security Fund instrument replaced is Cash, Purchaser shall immediately return the Cash (including any interest earned thereon) to Seller, or (ii) if the Seller Security Fund instrument being replaced is not Cash, the Issuer shall be deemed released from all obligations under such replaced Seller Security Fund instrument, and Purchaser shall execute any documents reasonably requested by Seller or the Issuer thereof to confirm such release.

(F) On the later of (i) ninety (90) Days after the termination or expiration of this REPA or (ii) the resolution of any pending Disputes under this REPA, (a) if Cash is part of the Seller Security Fund, Purchaser shall immediately return to Seller such Cash (together with any interest earned thereon), and (b) if a guaranty or letter of credit is part of the Seller Security Fund, the Issuer(s) that provided or issued such Seller Security Fund instrument shall be deemed released from all obligations under such Seller Security Fund instrument, and Purchaser shall execute any documents reasonably requested by Seller or the Issuer thereof to confirm such release.

ARTICLE 12
DEFAULT AND REMEDIES

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an “Event of Default” of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller’s dissolution or liquidation;

(2) Seller’s assignment of this REPA or any of its rights hereunder for the benefit of creditors (except for an assignment to the Facility Financing Representative as security under the Financing Documents as permitted by this REPA);

(3) Seller’s voluntary filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise;

(4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller or the Issuer providing a guaranty pursuant to Section 11.1(C)(3) hereof as debtor, and such case or proceeding has not been dismissed within sixty (60) Days; or

(5) The sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy Products committed to Purchaser by Seller, except to the extent permitted by this REPA.

(B) Seller’s failure to comply with its obligations under Section 11.1 shall constitute an Event of Default of Seller if not cured within [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1;

(C) Seller’s failure to make any payment required under this REPA (net of any other rights of offset that Seller may have pursuant to Section 9.3), shall constitute an Event of Default of Seller if not cured within [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1:

(D) Any of the following shall constitute an Event of Default of Seller if not cured within [REDACTED] in the case of an Event of Default that can be cured solely by the payment of money) after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1:

(1) Abandonment;

(2) Seller's failure to maintain in effect the Interconnection Agreement;

(3) Seller's failure to comply with any material obligation under this REPA, other than as expressly specified in this Article 12, which would result in a material adverse impact on Purchaser;

(4) Seller's assignment of this REPA, or Seller's sale or transfer of its interest, or any part thereof, in the Facility, except as permitted in accordance with Article 19; or

(5) Any representation or warranty made by Seller in this REPA shall prove to have been false in any material respect when made, except to the extent expressly limited to the time when made, if such cessation would reasonably be expected to result in a material adverse impact on Purchaser.

(E) Seller's failure to meet the Commercial Operation Milestone shall constitute an Event of Default of Seller if not cured within [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(F) If the Availability of the Facility is less than [REDACTED] of the [REDACTED] it shall constitute an Event of Default of Seller if Seller does not, prior to [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1 [REDACTED] initiate commercially reasonable efforts to attempt to increase Availability of the Facility such that, for the [REDACTED] beginning on the [REDACTED] the Availability of the Facility exceeds [REDACTED] of the [REDACTED]; provided, however, that, even if Seller does initiate such commercially reasonable efforts prior to [REDACTED] after the [REDACTED], then if, at the end of the [REDACTED] beginning on the [REDACTED] the Availability of the Facility for such period does not exceed [REDACTED] of the [REDACTED] for such period, it shall constitute an Event of Default of Seller. Purchaser may require the retention of an Independent Engineer, at Seller's cost, to confirm that Seller's efforts to increase Availability of the Facility such that, for the [REDACTED] period beginning on the [REDACTED], the Availability of the Facility exceeds [REDACTED] of the [REDACTED], is reasonably achievable.

12.2 Facility Financiers' Right to Cure Default of Seller.

Seller shall provide Purchaser with a notice identifying the Facility Financing Representative and the Parties shall use commercially reasonable efforts to enter into a Consent and Agreement in the form of Exhibit L attached hereto (with such modifications as the Facility Financing Representative may request and Purchaser, in its reasonable discretion, may agree to) with such Facility Financing Representative. Following execution of a Consent and Agreement, Purchaser shall provide notice of any default of Seller under Section 12.1 to the Facility Financing Representative, and Purchaser will accept a cure to such Event of Default of Seller performed by the Facility Financing Representative, in accordance with the terms of the applicable Consent and Agreement.

12.3 Events of Default of Purchaser.

(A) Any of the following shall constitute an "Event of Default" of Purchaser upon its occurrence and no cure period shall be applicable:

- (1) Purchaser's dissolution or liquidation;
- (2) Purchaser's assignment of any of its rights hereunder for the benefit of creditors;
- (3) Purchaser's voluntary filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or Purchaser voluntarily taking advantage of any such law or act by answer or otherwise;
- (4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Purchaser and such case or proceeding is not dismissed within sixty (60) Days; or
- (5) Purchaser's assignment of this REPA, except as permitted in accordance with Article 19.

(B) Purchaser's failure to make any payment due hereunder (net of outstanding damages and any other rights of offset that Purchaser may have pursuant to this REPA) shall constitute an Event of Default of Purchaser if not cured within ten (10) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

(C) Purchaser's failure to comply with any material obligation under this REPA, other than as otherwise expressly specified in this Article 12, which would result in a material adverse impact on Seller, shall constitute an Event of Default of Purchaser if not cured within thirty (30) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

(D) Any representation or warranty made by Purchaser in this REPA shall prove to have been false in any material respect when made, except to the extent expressly limited to the time when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller, and shall constitute an Event of Default of Purchaser if not cured within thirty (30) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

12.4 Termination for a Purchaser Event of Default.

Upon a Purchaser Event of Default, Seller may notify Purchaser in writing of such default. If Purchaser fails to cure the Event of Default within the applicable cure period, Seller may send Purchaser written notice of its intent to terminate this REPA for such default. If Purchaser fails to cure the default within [REDACTED] of receiving Seller's notice of intent to terminate this REPA, Seller may terminate this REPA upon a final written notice to Purchaser.

12.5 Termination for a Seller Event of Default.

Upon a Seller Event of Default, Purchaser may notify Seller in writing of such default. If Seller fails to cure the Event of Default within the applicable cure period, Purchaser may send Seller written notice of its intent to terminate this REPA for such default. If Seller fails to cure the default within [REDACTED] of receiving Purchaser's notice of intent to terminate this REPA, Purchaser may terminate this REPA upon a final written notice to Seller.

12.6 [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

12.7 [REDACTED]

■ [REDACTED]

■ [REDACTED]

12.8 [REDACTED]

[REDACTED]

12.9 Waiver and Exclusion of Other Damages.

The Parties confirm that the express remedies and measures of damages provided in this REPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN); PROVIDED, THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFORE FROM THE OTHER PARTY HERETO, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.10 Payment of Damages.

Without limiting any other provisions of this Article 12 and at any time before or after termination of this REPA, the non-defaulting Party may send the other Party an invoice for such damages (including, if applicable, [REDACTED] or other amounts as are due to the non-defaulting Party at such time from the defaulting Party under this REPA and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. In the case of damages owed by Seller to Purchaser, Purchaser may, subject to the provisions of Section 11.1, withdraw funds from the Seller Security Fund, as needed to provide payment for such invoice if the invoice is

not paid by Seller on or before the tenth (10th) Business Day following the invoice due date.

12.11 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the REPA.

ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES

13.1 Notices in Writing.

Notices required by this REPA shall be addressed to the other Party, including the other Party's representative on the Contract Administration Committee, at the addresses noted in Exhibit C, as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this REPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the Close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations, including communications specified in Section 7.4 and Section 10.2, shall be exempt from this Section.

13.2 Representative for Notices.

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Contract Administration Committee, or a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives.

The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this REPA and to attempt to resolve Disputes or potential Disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this REPA.

13.4 Operating Records.

Seller and Purchaser shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format. Seller and Purchaser shall cause such Operating Records to be kept for a period equal to at least five (5) years following the creation thereof, unless either Seller or Purchaser is required by any Governmental Authority to keep such Operating Records for a longer period of time.

13.5 Operating Log.

Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each Clock Hour; changes in operating status; Scheduled Outages/Deratings and Forced Outages for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format.

13.6 Billing and Payment Records.

To facilitate payment and verification, Seller and Purchaser shall, for a period of at least five (5) years following the creation thereof, keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or at the notice address listed in Exhibit C. For audit and verification purposes, Seller will grant Purchaser read-only access to the PJM eSuite accounts for the PJM Node.

13.7 Examination of Records.

Seller and Purchaser may examine the financial and Operating Records and data kept by the other Party relating to transactions under and administration of this REPA, at any time during the period the records are required to be maintained, upon request and during normal business hours, for a period of at least five (5) years following the creation of such financial and Operating Records and data.

13.8 Exhibits.

Either Party may change the information for their notice addresses in Exhibit C at any time upon written notice to but without the approval of the other Party. Exhibit C may only be changed in accordance with Section 20.4. Exhibit D may be changed in accordance with Section 16.2. All other Exhibits may only be modified by the mutual agreement of Seller and Purchaser.

13.9 Dispute Resolution.

(A) In the event of any dispute, controversy or claim arising out of or relating to this REPA (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives have not resolved the Dispute within thirty (30) Days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (I) shall independently prepare a written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties have not resolved the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal and equitable remedies.

(B) Notwithstanding any provision in this REPA to the contrary, if no Dispute Notice has been issued within six (6) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon; provided, however, that the limitation set forth in this subsection (B) shall not apply to any Dispute Notices regarding claims for indemnification under this REPA for third party claims.

(C) Seller and Purchaser each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this REPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Purchaser related hereto and expressly agree to have any Disputes arising under or in connection with this REPA be adjudicated by a judge of the court having jurisdiction without a jury.

ARTICLE 14 FORCE MAJEURE

14.1 Definition of Force Majeure.

(A) The term "Force Majeure", as used in this REPA, means causes or events beyond the reasonable control of the Party claiming Force Majeure and which (i) is not occurring on the date hereof, (ii) could not be avoided, prevented, overcome or

removed by such Party's use of commercially reasonable efforts and (iii) are not caused by or result from the negligence or breach or failure of such Party to perform its obligations hereunder and the affected Party has taken all reasonable precautions, care and alternative measures to avoid or mitigate the effects thereof in accordance with Applicable Law and Good Utility Practices. So long as the requirements of the preceding sentence are met, causes and events of Force Majeure include acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; pandemics and epidemics (excluding any impacts from COVID-19 and the variants and mutations thereof that are occurring as of the date of this REPA); high winds of sufficient strength or duration to materially damage the Facility or significantly impair its construction or operation for a period of time longer than normally encountered under comparable circumstances; long-term material changes in solar irradiance across the Facility; lightning; fire; ice storms; sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any Applicable Law) but only if such requirements, actions, or failures to act prevent or delay performance.

(B) The term Force Majeure does not include (i) any acts or omissions of any third party, in its capacity as vendor, materialman, customer, contractor or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is itself caused by a Force Majeure; (iii) loss of Purchaser's markets or Purchaser's inability to use or resell the Renewable Energy Products; (iv) Seller's ability to sell the Renewable Energy Products at a price greater than the applicable Contract Rate; (v) changes in market conditions that affect the cost of Purchaser's or Seller's supplies, or that affect demand or price for any of Purchaser's or Seller's products; (vi) lack of funds or inability to make timely payments of money; or (vii) Purchaser's ability to purchase Renewable Energy Products at a price less than the applicable Contract Rate.

14.2 Applicability of Force Majeure.

(A) Other than as set forth in Section 14.3, neither Party shall be responsible or liable for any delay or failure in its performance under this REPA (other than the obligation to make payment of amounts due and payable under this REPA), nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

(1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(4) when the non-performing Party is able to resume performance of its obligations under this REPA, that Party shall give the other Party prompt written notice to that effect.

(B) Except as otherwise expressly provided for in this REPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this REPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

14.3 Limitations on Effect of Force Majeure.

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this REPA beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure prevents the performance of a Party's obligations hereunder in any material respect and continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this REPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Seller's Representations, Warranties and Covenants.

Seller hereby represents and warrants as follows:

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

requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this REPA.

(B) The execution, delivery, and performance of its obligations under this REPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Purchaser upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Seller.

(D) The execution and performance of this REPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(E) To the knowledge of Seller after a due and reasonable inquiry, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this REPA have been duly obtained and are in full force and effect.

(F) Seller is (1) an “eligible contract participant” as defined in 12 U.S.C. 5301, or (2) a producer, processor, or commercial user of, or a merchant handling, the electricity that is the subject of this REPA, or the products or byproducts thereof, and Seller is entering into this REPA solely for purposes related to its business as such.

15.2 Purchaser’s Representations, Warranties and Covenants.

Purchaser hereby represents and warrants as follows:

(A) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana and is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Purchaser; and Purchaser has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this REPA.

(B) The execution, delivery, and performance of its obligations under this REPA by Purchaser have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Purchaser’s Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Purchaser or violate any provision in any corporate documents of Purchaser, the violation of which could have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Purchaser’s corporate charter or bylaws, or under any agreement relating to the management or affairs of Purchaser, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Purchaser is a party or by which Purchaser or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets or properties of Purchaser now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Purchaser.

(D) The execution and performance of this REPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Purchaser is a party or any judgment, order, statute, or regulation that is applicable to Purchaser.

(E) To the best knowledge of Purchaser, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Purchaser's execution, delivery and performance of this REPA have been duly obtained and are in full force and effect.

ARTICLE 16 INSURANCE

16.1 Evidence of Insurance.

Seller shall, prior to the commencement of construction and promptly upon renewal of insurance each calendar year or partial calendar year during the Term, provide Purchaser, at the insurance address listed in Exhibit C, with a copy of insurance certificates acceptable to Purchaser evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in this Article 16 and Exhibit D to this REPA. Such certificates shall (a) name Purchaser and its Affiliates as additional insureds (except workers' compensation/employer's liability); (b) provide for a waiver of any rights of subrogation against Purchaser, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) indicate that the Commercial General Liability policy has been endorsed as described in Exhibit D. Seller shall use commercially reasonable efforts to ensure that the insurance policies required by this REPA are procured and stipulate that Purchaser shall receive thirty (30) Days prior written notice of non-renewal or cancellation of the corresponding policies (except that such notice shall be ten (10) Days for non-payment of premiums); provided, however, that, if Seller is unable to require its insurers to provide such notices to Purchaser, Seller shall provide such notice to Purchaser, at the insurance address listed in Exhibit C. In the event Seller receives notice from one of its insurers, it shall provide notice to Purchaser as soon as practicable but in no event later than five (5) Business Days following Seller's receipt. All policies shall be written with insurers that Purchaser, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld, conditioned or delayed). The commercial general liability policy shall contain an endorsement that Seller's policy shall be primary and non-contributory with respect to any insurance maintained by Purchaser, in all instances regardless of like coverages, if any, carried by Purchaser. The commercial umbrella policy shall be non-contributory. Seller's liability under this REPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance

All insurance required under this REPA shall be on an occurrence-basis and shall be in effect during the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this REPA and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of two (2) years after the Term.

ARTICLE 17
[REDACTED]

17.1 [REDACTED]

[REDACTED]

17.2 [REDACTED]

[REDACTED]

[REDACTED]

17.3 [REDACTED].

[REDACTED]

17.4 [REDACTED].

[REDACTED]

ARTICLE 18
LEGAL AND REGULATORY COMPLIANCE

18.1 Compliance with Laws.

Each Party shall at all times comply with all laws, ordinances, rules and regulations applicable to it except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all permits, licenses, and inspections required by any Governmental Authority and necessary for performance of this REPA, and shall pay its respective charges and fees in connection therewith.

18.2 Cooperation.

Each Party shall cooperate with the other Party in providing such information as may be reasonably requested, to the extent permitted by Applicable Law and subject to such confidentiality and use limitations as the providing Party may reasonably require, to the extent that the requesting Party requires the same in order to fulfill any regulatory

reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

18.3 [REDACTED].

[REDACTED]

ARTICLE 19
ASSIGNMENT, SUBCONTRACTING, AND FINANCING

19.1 No Assignment Without Consent.

Except as permitted in this Article 19, neither Party shall assign this REPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided (i) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by the other Party, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this REPA; (iii) no such assignment shall impair any security given by Seller hereunder; and (iv) before the REPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies. For the avoidance of doubt, a merger of either Party with another Person shall not qualify as an assignment and shall not be subject to the restrictions set forth in this Section 19.1.

(A) Seller's consent shall not be required for Purchaser to assign this REPA to Affiliates of Purchaser that are regulated as a rate-based utility, provided that Purchaser provides assurances and executes documents reasonably required by Seller and the Facility Financiers regarding Purchaser's continued liability for all of Purchaser's obligations under this REPA in the event of any nonperformance on the part of such assignee. In the event that such Affiliate assignee (i) has an investment grade senior unsecured debt rating that makes it a Creditworthy Entity or (ii) agrees to provide a

security fund for the benefit of Seller of equal value as the Seller's Security Fund and to amend this REPA for such purpose, then Seller agrees to relieve Purchaser from its obligations under this REPA if Purchaser requests to be so relieved in a written notice provided to Seller.

(B) Seller shall have the right, without Purchaser's prior written consent, to assign this REPA (i) subject to the provisions of Section 19.2, as applicable, to a purchaser of all or substantially all of the assets of Seller; (ii) to an Affiliate of Seller; (iii) subject to the provisions of Section 19.2, in connection with a merger of Seller with another Person or any other transaction, or (iv) for collateral purposes to the Facility Financing Representative or any Facility Financier provided that the Parties and the Facility Financing Representative have executed the applicable Consent and Agreement; and in any event provided that in the case of the preceding clauses (i), (ii) and (iii) such purchaser, Affiliate or the Person surviving such merger, as applicable, (x) meets the requirements of this Section 19.1, (y) complies with the requirements of Section 11.1, and (z) is itself or one of its Affiliates is a Qualified Operator or engages a Qualified Operator to operate and maintain the Facility.

19.2 Right of First Offer.

(A) Provided that no Event of Default by Purchaser is continuing, Seller shall not sell or transfer all or any portion of the Facility or permit a Change of Control of Seller, at any time after the Commercial Operation Date, unless prior to such sale or transfer or Change of Control, Seller provides written notice thereof to Purchaser. Such notice shall contain a description of the price and other material terms upon which Seller (or any direct or indirect parent of Seller) desires to sell or transfer such interest in the Facility (or direct or indirect equity interests in Seller). If Purchaser desires to enter into negotiations with Seller regarding the sale or transfer of the interest(s) that are the subject of the notice, Purchaser shall notify Seller of such decision within fifteen (15) days of receipt of Seller's notice (a "ROFO Notice"), which ROFO Notice shall set forth the price and other material terms upon which Purchaser desires to purchase the Facility (or direct or indirect equity interests of Seller). Upon Seller's receipt of a ROFO Notice, Purchaser and Seller shall negotiate in good faith, on an exclusive basis for no more than sixty (60) days (unless a longer period is otherwise mutually agreed to) (the "ROFO Period"), the terms of the sale or transfer of the Facility to Purchaser or, at Purchaser's option, an Affiliate of Purchaser. Seller will provide in a timely manner, information regarding such reasonable information as Purchaser may request regarding the Facility in order for Purchaser to perform due diligence and to negotiate in good faith for the purchase of the Facility. During the ROFO Period, Seller shall not, and shall cause its Affiliates, directors, officers, personnel and other representatives not to, engage in any discussions or negotiations with any third party regarding any sale or transfer of the Facility or Change of Control of Seller or provide any information to any third party in furtherance of any such transaction.

(B) In the event that Purchaser does not deliver a ROFO Notice or Purchaser and Seller are unable to agree upon terms pursuant to which they consummate a sale of the Facility to Purchaser, Seller must comply with Section 19.1 in any assignment of Seller's rights, interests or obligations herein to a purchaser of the Facility or in respect of a Change of Control. If Purchaser delivers a ROFO Notice, Seller may not sell the Facility (or direct or indirect equity interests of Seller) to any other Person for a purchase price less than one hundred and one percent (101%) of the purchase price offered by Purchaser in its ROFO Notice or on other terms and conditions materially more favorable, in the aggregate, to such Person than the terms and conditions offered by Purchaser in its ROFO Notice.

(C) If Purchaser does not purchase the Facility (either because Purchaser does not deliver a ROFO Notice or because Purchaser and Seller are unable to agree upon terms pursuant to which they consummate a sale of the Facility to Purchaser), and Seller subsequently does not consummate the sale or transfer of the Facility or the Change of Control within two hundred seventy (270) Days of the date that is the later of (i) Purchaser's declining to enter into negotiations with Seller after Seller's notice pursuant to Section 19.2(A), or (ii) the end of the exclusive negotiation period between Seller and Purchaser pursuant to Section 19.2(A), Seller (or any direct or indirect parent of Seller) shall not sell or transfer all or any portion of the Facility (or all or any portion of its direct or indirect equity interests in Seller), unless prior to such sale or transfer it complies with the provisions of Section 19.2(A).

(D) The provisions of this Section 19.2 shall not apply prior to the Commercial Operation Date and shall terminate upon termination of this REPA by Seller or upon the assignment of this REPA by Purchaser to any Person other than an Affiliate of Purchaser.

19.3 Purchase Option.

(A) [REDACTED]

(B) Due Diligence. Promptly following the delivery of an Option Notice, and for a period of ninety (90) Days thereafter (such period, the “Due Diligence Period”), Seller shall provide to Purchaser reasonable access to the Facility, the Site and all of Seller’s engineering, procurement, construction, operations, maintenance, regulatory, financial and other books and records related to the Facility and the Site for the purposes of Purchaser’s due diligence review thereof, subject to the provisions of this Section 19.3. During the Due Diligence Period, upon reasonable prior notice and during normal business hours, Seller shall provide access to the Site, the Facility (and any offices where any of the Project Assets are kept) to Purchaser and Purchaser’s employees, representatives, consultants and other contractors, for the purpose of conducting such due diligence review of the Facility (each person or entity engaged by Purchaser to perform or assist with such due diligence review, a “Purchaser Representative”). All books and records provided by Seller to Purchaser in connection with such due diligence review shall be subject to the provisions of Section 20.15.

(C) Site Visits. Purchaser shall notify Seller’s designated representative, by telephone, of each request to enter the Site to visit the Facility at least twenty-four (24) hours prior to the intended time of entry. Each such request shall specify the intended date and time of entry and shall provide a reasonable description of the proposed scope of Purchaser’s investigation, including the name of any Purchaser Representative who will be performing or participating in such investigation. A representative of Seller shall have the right, but not the obligation, to be present during any Site visit. None of Purchaser or any Purchaser Representative shall interfere with the use or occupancy of Seller of the Site or the operation or maintenance of the Facility. Purchaser and each Purchaser Representative shall comply with Seller’s reasonable health and safety policies and procedures, and comply with all federal, state, and local laws, rules, regulations, and ordinances which might in any way relate to Purchaser’s investigations, in each case during any Site visit.

(D) [REDACTED]

[REDACTED]

[REDACTED]

(F) Closing. Subject to the provisions of the PSA, Purchaser shall pay to Seller the Purchase Price, as determined in accordance with this Section 19.3, in cash at the closing of the purchase and sale of the Facility, and Seller shall assign and convey to Purchaser the Facility and related Project Assets free and clear of all liens other than those permitted by the terms of the PSA. [REDACTED]

[REDACTED]

(G) [REDACTED]

[REDACTED]

[REDACTED]

(H) Termination. Upon closing of the purchase and sale of the Facility pursuant to the PSA, this REPA shall terminate.

19.4 Accommodation of Facility Financiers.

To facilitate Seller's obtaining of financing with respect to the Facility, Purchaser shall make reasonable efforts to enter into the Consent and Agreement (with respect to any debt financing) or an estoppel in a form reasonably satisfactory to Purchaser (with respect to any equity financing) and to provide such other certifications, representations or other documents as the Facility Financing Representative may reasonably request and are in form and substance satisfactory to Purchaser; provided, that in responding to any such request, Purchaser shall have no obligation to enter into any agreement that materially adversely affects any of Purchaser's rights, benefits, risks or obligations under this REPA. Seller shall reimburse, or shall cause the Facility Financing Representative to reimburse, Purchaser for expenses (including the reasonable fees and expenses of counsel) incurred by Purchaser in the preparation, negotiation, execution and delivery of the applicable Consent and Agreement, estoppel and other documents pursuant to this Section 19.3 in an amount for each closing of any such financing equal to the [REDACTED] or (ii) the actual third-party expenses incurred by Purchaser in connection with such closing.

19.5 Notice of Facility Financier Action.

Within ten (10) Days following Seller's receipt of each written notice from the Facility Financiers of default, or Facility Financiers' intent to exercise any remedies, under the Financing Documents, Seller shall deliver a copy of such notice to Purchaser.

19.6 Transfer Without Consent is Null and Void.

Any sale, transfer, or assignment of any interest in the Facility or in this REPA made without fulfilling the requirements of the REPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

ARTICLE 20
MISCELLANEOUS

20.1 Waiver.

Subject to the provisions of Section 13.9(B), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this REPA, or to take advantage of any of its rights thereunder, shall not

constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Taxes.

(A) Each Party shall use reasonable efforts to implement the provisions of and to administer this REPA in accordance with the intent of the Parties to minimize all Taxes, so long as neither Party is materially adversely affected by such efforts. Notwithstanding the foregoing, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

(B) Seller shall pay or cause to be paid (and shall indemnify and hold Purchaser harmless from and against) all sales, use, excise, ad valorem, transfer and other similar taxes that are imposed by any taxing authority (individually, a "Tax" and collectively, "Taxes") on or with respect to the Facility or the sale of Renewable Energy Products incurred prior to the delivery of Renewable Energy Products to the Point of Delivery. Purchaser shall pay or cause to be paid (and shall indemnify and hold Seller harmless from and against) all Taxes on or with respect to the sale of Renewable Energy Products incurred upon and after the delivery of Renewable Energy Products to the Point of Delivery (other than ad valorem, franchise, income, or commercial activity taxes, and transactional taxes or fees imposed by law on the Seller that are related to the sale of Renewable Energy Products and are, therefore, the responsibility of the Seller). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the responsible Party shall promptly reimburse the other for such Taxes.

(C) In the event any of the sales of Renewable Energy Products hereunder are exempt or excluded from any particular Tax(es) payable by Purchaser, Purchaser shall provide Seller with all necessary documentation within thirty (30) Days after the execution of this REPA to evidence such exemption or exclusion (or, with regard to any such Tax(es) enacted after the date of this REPA, Purchaser shall provide Seller with such documentation before the date on which the enactment requires the delivery of documentation to Seller in order to effect an exclusion or exemption from such Tax(es)). In the event Purchaser does not provide such documentation, then Purchaser shall indemnify, defend and hold Seller harmless from any liability with respect to Tax(es) to which Purchaser is exempt or excluded.

20.3 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs to the extent incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this REPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against either Party by any Governmental Authority due to noncompliance by the other Party with this REPA, any requirements of law with which compliance is required by this REPA, any permit or contractual obligation, or, if the work of the other Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to the other Party's noncompliance with any requirements of law with which compliance is required by this REPA, permit, or contractual obligation, penalized Party shall indemnify and hold other Party harmless against any and all reasonable losses, liabilities, damages, and claims suffered or incurred by other Party, including claims for indemnity or contribution made by third parties against other Party, except to the extent other Party recovers any such losses, liabilities or damages through other provisions of this REPA.

20.4 Rate Changes.

The terms and conditions and the rates for service specified in this REPA shall remain in effect for the Term. Absent the Parties' written agreement, this REPA shall not be subject to change by application of either Party pursuant to Section 205, 206 or 306 of the Federal Power Act.

Absent the agreement of all parties to the proposed change, the standard of review for changes to this REPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC et al. v. Maine Public Utilities Commission*, 558 U.S. 165 (2010) (the "Mobile-Sierra doctrine"), or such other standard of review permissible to preserve the intent of the Parties pursuant to this Section to uphold this REPA without modification.

20.5 Disclaimer of Third Party Beneficiary Rights.

In executing this REPA, neither Party does, nor should it be construed to, extend its credit or financial support for the benefit of any third parties, including those lending money to or having other transactions with the other Party. Except with respect to the Consent and Agreement and the rights of the Indemnified Parties under Section 17.1, nothing in this REPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this REPA.

20.6 Relationship of the Parties.

(A) This REPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party nor to create any agency relationship between the Parties or impose any fiduciary responsibility on either Party or create any trust or trust obligations

on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform its obligations under this REPA, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Purchaser for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Purchaser employee.

20.7 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that as a government contractor Purchaser is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Purchaser. Seller shall comply with all applicable equal opportunity and affirmative action federal laws, executive orders, and regulations, including, if applicable, 41 C.F.R. §60-1.4(a)(1-7).

20.8 Survival of Obligations.

Cancellation, expiration, or earlier termination of this REPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.9 Severability.

In the event any of the terms, covenants, or conditions of this REPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the REPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that Purchaser and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this REPA with a view toward effecting the purposes of this REPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.10 Complete Agreement; Amendments.

The terms and provisions contained in this REPA constitute the entire agreement between Purchaser and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Purchaser and Seller with respect to the sale of Renewable Energy Products from and associated with the Facility. This REPA may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

20.11 Binding Effect.

This REPA, as it may be amended from time to time pursuant to Section 20.10, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.12 Headings.

Captions and headings used in this REPA are for ease of reference only and do not constitute a part of this REPA.

20.13 Counterparts.

This REPA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.14 Governing Law.

The interpretation and performance of this REPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws provisions.

20.15 Confidentiality.

This REPA, the Baseline Estimated Seller Costs and the Adjusted Estimated Seller Costs and any information provided by either Party to the other Party pursuant to this REPA and labeled "CONFIDENTIAL" or with words of similar meaning will be utilized by the receiving Party solely in connection with the purposes of this REPA and will not be disclosed by the receiving Party to any third party, except with the providing Party's consent, and upon request of the providing Party will be returned thereto, except that the receiving Party will not be obligated to return any such information contained in documents generated by the receiving Party that: (1) reflect or refer to confidential information provided by the disclosing Party; and (2) are stored electronically by the receiving Party. With respect to any such retained electronically stored confidential

information, the receiving Party will continue to comply with the obligations of this Section 20.15. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that such confidential information may be disclosed to (i) the Interconnection Provider, the Transmission Operator, Affiliates or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for settlement and billing or otherwise to perform under or administer this REPA; and (ii) in case of Seller, to Facility Financiers or potential Facility Financiers, potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect ownership interests in the Facility (including direct or indirect interests in the equity interests of Seller). To the extent that such disclosures are necessary, the Parties also agree that they will in disclosing such information seek to preserve the confidentiality of such disclosures, by requiring a party receiving confidential information to be bound by the terms of this REPA applicable to such a confidential information. Without limiting the foregoing, this Section 20.15 will not prevent a Party from providing confidential information to any Governmental Authority formally or otherwise, as required in connection with any regulatory proceeding, as required for obtaining any regulatory approval or making any regulatory filing, provided that each Party agrees to cooperate with the other to maintain the confidentiality of the provisions of this REPA by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law. This provision will not prevent either Party from providing any confidential information received from the other Party to any court or regulatory proceeding or in accordance with a proper discovery request or in response to the reasonable request or need of any Governmental Authority charged with regulating the disclosing Party's affairs or in accordance with the request of any applicable stock exchange, provided that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Notwithstanding anything herein to the contrary, neither Party may issue a press release or public statement regarding entering into this REPA without the other Party's consent.

20.16 Forward Contract.

The Parties acknowledge and agree that this REPA and the transactions contemplated by this REPA constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this REPA as of the date set forth in the preamble hereof.

Seller:

Elkhart County Solar Project, LLC

By: _____

Name: _____

Title: _____

Purchaser:

Indiana Michigan Power Company



By: DocuSigned by:
Steve Baker _____
1641A748CF04C6...

Name: Steve Baker _____

Title: President & COO, I&M _____

EXHIBIT A

FACILITY DESCRIPTION AND SITE MAP

Facility Description

A 100MW AC solar photovoltaic facility located in Elkhart County, Indiana.

Site Map

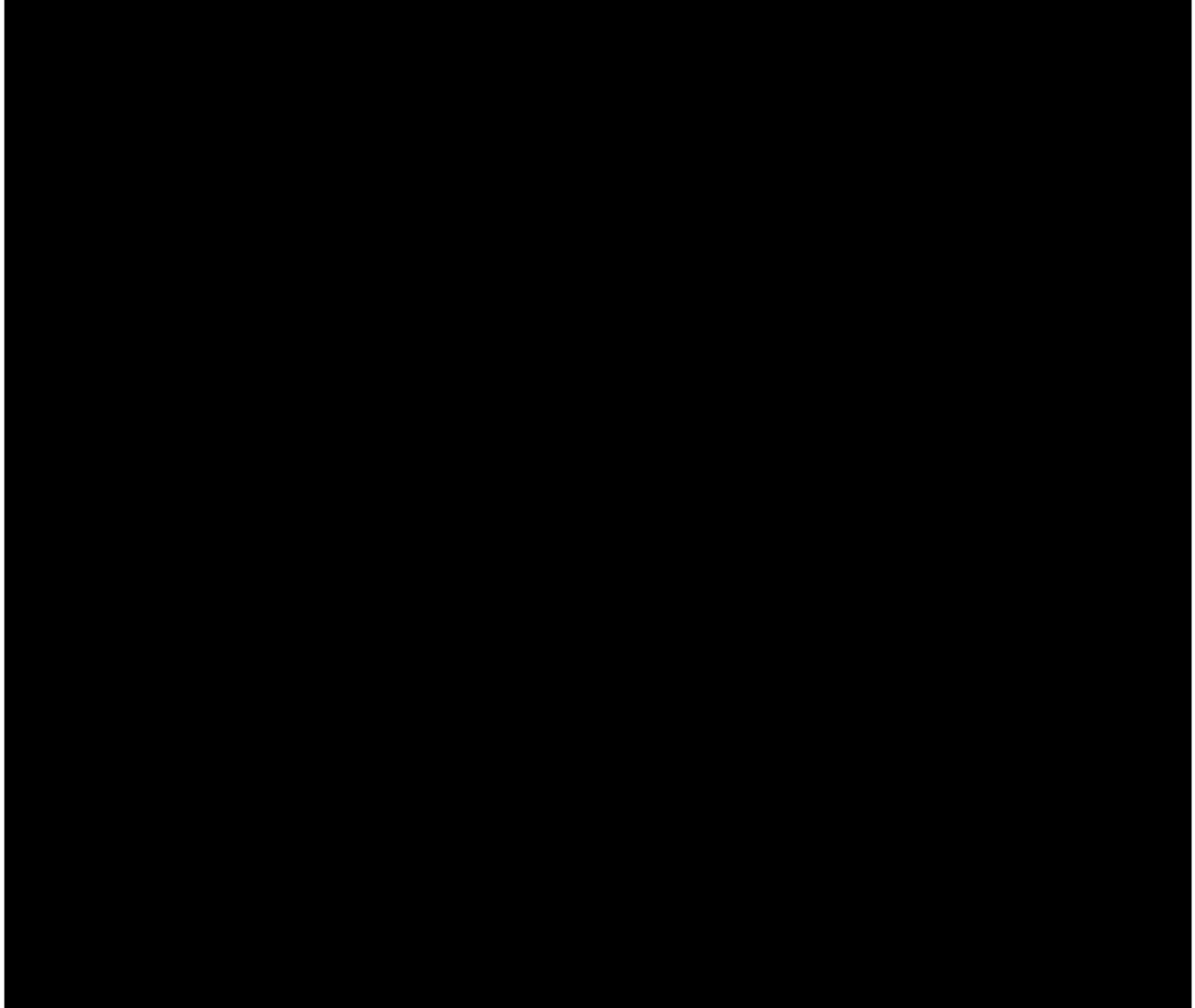


EXHIBIT B

CONTRACT RATE

(\$ Per MWh)

The Contract Rate during the Delivery Period shall be an [REDACTED]
[REDACTED]

<p>Contract Administration Committee Representative: [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p> <p>Alternate: To be designated in writing by Purchaser at or prior to the first meeting of the Contract Administration Committee</p>	<p>Contract Administration Committee Representative: To be designated in writing by Seller prior to the Commercial Operation Date.</p> <p>Alternate: To be designated in writing by Seller at or prior to the first meeting of the Contract Administration Committee</p>
--	--

EXHIBIT D

INSURANCE COVERAGE

(Refer to Article 16 Insurance for Additional Requirements)

Type of Insurance

Minimum Limits of Coverage

Commercial General Liability (CGL)

\$11,000,000 combined single limit per occurrence, which may be met by any combination of Primary and Excess/Umbrella coverages. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on an ISO occurrence form reasonably acceptable to Purchaser and shall cover liability arising from premises, operations, independent contractors, products/completed operations, bodily injury, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground (XCU) property damage.

Purchaser shall be named as an additional insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Purchaser shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this REPA, and insured hereunder, and any insurance carried by Purchaser shall be excess of and noncontributing with insurance afforded by this policy. The commercial excess/umbrella insurance shall be noncontributing.

Business Automobile Liability

\$1,000,000 combined single limit (each accident), including all Owned (if any), Non-Owned, Hired and Leased Autos

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. The policy shall provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation

Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.

Employers Liability

\$1,000,000 bodily injury by accident-each accident; \$1,000,000 bodily injury by disease-policy limit; \$1,000,000 bodily injury by disease-each employee.

Builder's Risk

Replacement value of the Facility during the construction of the Facility.

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability

\$5,000,000 each occurrence.

"All-Risk" Property insurance covering physical loss or damage to the Facility

"All risk" property insurance covering the replacement value of the Facility. A commercially reasonable deductible may be carried which deductible shall be the sole responsibility of Seller.

“All-Risk” Property insurance shall include coverage for all risks of physical loss or damage unless otherwise excluded, including coverage for: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$5,000,000 for flood (based on one in 500 year event with modeling provided) and \$1,000,000 for earthquake; and (ii) Machinery and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their replacement value.

Business Interruption insurance

Amount required to cover Seller’s profit, fixed expenses, debt service, as applicable, and tax equity service, as applicable, resulting from interruption, for a period of twelve (12) calendar months.

Business Interruption insurance shall cover loss of revenues and the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by Purchaser, subject to a reasonable deductible or waiting period, which shall be the responsibility of Seller. Notwithstanding any other provision of this REPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT E

CALCULATION OF ANNUAL PERFORMANCE RATIO

The following procedure shall be used at the end of each Contract Year to calculate the Performance Ratio (PR) for the next Contract Year, starting at the end of the first Contract Year to calculate the PR for the second Contract Year.

1.) On an annual basis Seller shall calibrate and test (a) all Electric Metering Devices in accordance with Section 5.4 of the REPA and (b) all pyranometers using the National Renewable Energy Laboratory's (NREL) Broadband Outdoor Radiometer Calibration (BORCAL) procedures (or equivalent). Purchaser will be provided documentation of all testing and calibration results.

2.) At the end of the Contract Year, Seller shall log the total amount of Renewable Energy (kWh/yr) generated by the facility during the Contract Year.

3.) [REDACTED]

4.) [REDACTED]

5.) [REDACTED]

6.) [REDACTED]

7.) [REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT F

POINT OF DELIVERY

A new substation to be installed on the Transmission Provider's Twin Branch to Guardian 138 kV electric transmission circuit.

EXHIBIT G



**Solar Farm Data Requirements
PJM PPA non-MP**

Revision History

Date	Version	Description	Author
4-30-2021	1.0	New document created for Solar PPA	CommOps, PSCO, Transmission Settlements

[Redacted]

■ [Redacted]

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

■ [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Acronyms, Abbreviations	Description
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

EXHIBIT H

CALCULATION OF [REDACTED]

[REDACTED]

a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

b) [REDACTED]
[REDACTED]

c) [REDACTED]
[REDACTED]
[REDACTED]

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

d) [REDACTED]
[REDACTED]

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

e) [REDACTED]
[REDACTED]

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

o [REDACTED]
[REDACTED]
[REDACTED]

[Redacted text block]

- [Redacted list item]

[Redacted text block]

- [Redacted list item]

[Redacted text block]

- [Redacted list item]

- f) [Redacted list item]

¹ 366 Days will be used in leap years.

EXHIBIT I
FORM OF AVAILABILITY NOTICE

MONTH	AVAILABILITY, %	GENERATION, MWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

EXHIBIT J

FORM OF SELLER LETTER OF CREDIT

BY: DEUTSCHE BANK AG, NEW YORK BRANCH

ISSUE DATE:

L/C NO.: _____

APPLICANT: ELKHART COUNTY SOLAR PROJECT, LLC

BENEFICIARY: INDIANA MICHIGAN POWER COMPANY

ATTENTION:

ADDRESS:

PHONE:

FAX:

AMOUNT:

REF. IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

WE HEREBY ESTABLISH THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ IN YOUR FAVOR IN CONNECTION WITH THE RENEWABLE ENERGY PURCHASE AGREEMENT DATED AS OF _____, BETWEEN APPLICANT AND BENEFICIARY ("AGREEMENT"), FOR AN AGGREGATE AMOUNT NOT TO EXCEED THE AMOUNT INDICATED ABOVE, EXPIRING AT OUR COUNTERS IN NEW YORK CITY ON OUR CLOSE OF BUSINESS ON _____ (THE "EXPIRATION DATE").

THIS LETTER OF CREDIT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR A ONE YEAR PERIOD ON THE EXPIRATION DATE AND UPON EACH ANNIVERSARY OF SUCH DATE UNLESS AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE WE HAVE SENT YOU WRITTEN NOTICE BY COURIER SERVICE OR OVERNIGHT MAIL THAT WE ELECT NOT TO PERMIT THIS LETTER OF CREDIT TO BE SO EXTENDED, IN WHICH CASE IT WILL EXPIRE ON ITS THEN-CURRENT EXPIRATION DATE. THIS LETTER OF CREDIT SHALL FINALLY EXPIRE ON _____ IF IT HAS NOT PREVIOUSLY EXPIRED IN ACCORDANCE WITH THIS PARAGRAPH.

THE TERM "BENEFICIARY" INCLUDES ANY SUCCESSOR BY OPERATION OF LAW OF THE NAMED BENEFICIARY. THIS STANDBY LETTER OF CREDIT MAY NOT BE TRANSFERRED IN WHOLE OR IN PART.

FUNDS UNDER THIS STANDBY LETTER OF CREDIT ARE AVAILABLE AT THE COUNTERS OF DEUTSCHE BANK AG, NEW YORK BRANCH, 1 COLUMBUS CIRCLE, 17TH FLOOR, NEW YORK, NY 10019 ATTN: TRADE FINANCE & LENDING OF YOUR DRAFT AT SIGHT DRAWN ON DEUTSCHE BANK AG NEW YORK BRANCH WHEN ACCOMPANIED BY THE DOCUMENTS INDICATED HEREIN.

A DRAFT MUST BE ACCOMPANIED BY BENEFICIARY'S SIGNED AND DATED STATEMENT AS FOLLOWS:

"THE UNDERSIGNED HEREBY CERTIFIES THAT I AM DULY AUTHORIZED TO EXECUTE THIS DOCUMENT ON BEHALF OF INDIANA MICHIGAN POWER COMPANY AND

- (I) THE AMOUNT OF THE DRAFT ACCOMPANYING THIS CERTIFICATION IS DUE AND OWING TO INDIANA MICHIGAN POWER COMPANY UNDER THE TERMS OF RENEWABLE ENERGY PURCHASE AGREEMENT BETWEEN ELKHART COUNTY SOLAR PROJECT, LLC AND INDIANA MICHIGAN POWER COMPANY." OR
- (II) (A) APPLICANT HAS CONTRACTUAL OBLIGATIONS TO BENEFICIARY WHICH EXTEND BEYOND THE EXPIRATION DATE OF THIS STANDBY LETTER OF CREDIT, AND (B) APPLICANT HAS NOT PROVIDED A SUBSTITUTE STANDBY LETTER OF CREDIT PRIOR TO THIRTY (30) BUSINESS DAYS BEFORE THE EXPIRATION DATE OF THIS STANDBY LETTER OF CREDIT, AND (C) BENEFICIARY IS THEREFORE DRAWING UPON THIS STANDBY LETTER OF CREDIT AND WILL HOLD THE PROCEEDS AS SECURITY UNTIL APPLICATION AGAINST AMOUNTS WHICH BECOME DUE TO BENEFICIARY UNDER THE AGREEMENT OR A SUBSTITUTE STANDBY LETTER OF CREDIT IS PROVIDED."

SUCH DRAFTS MUST BEAR THE CLAUSE "DRAWN UNDER DEUTSCHE BANK AG NEW YORK BRANCH STANDBY LETTER OF CREDIT NUMBER _____ DATED _____."

ALL DEMANDS SHALL BE MADE IN WRITING AND SHALL BE EFFECTIVE UPON ACTUAL RECEIPT BY DEUTSCHE BANK AG NEW YORK BRANCH. THE CUMULATIVE AND AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS STANDBY LETTER OF CREDIT SHALL NOT EXCEED THE AMOUNT SPECIFIED IN PARAGRAPH 1 ABOVE. SUBJECT TO THIS RESTRICTION, MULTIPLE AND PARTIAL DRAWINGS ARE PERMITTED. ALL COSTS RELATED TO DRAWINGS UNDER THIS STANDBY LETTER OF CREDIT SHALL BE CHARGED TO THE ACCOUNT OF THE APPLICANT.

THIS STANDBY LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED EXCEPT FOR INCREASE OR EXTENSION WITHOUT THE EXPRESS WRITTEN CONSENT

OF BENEFICIARY; PROVIDED, HOWEVER, THE AMOUNT AVAILABLE FOR DRAWING UNDER THIS STANDBY LETTER OF CREDIT MAY BE REDUCED FROM TIME TO TIME BY WRITTEN INSTRUCTIONS TO US EXECUTED BY BOTH APPLICANT AND BENEFICIARY.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS STANDBY LETTER OF CREDIT WILL BE DULY HONORED.

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY LETTERS OF CREDIT, INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600, AND AS TO MATTERS NOT GOVERNED BY THE UCP 600, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CHOICE OF LAW PROVISIONS OR CONFLICT OF LAW PRINCIPLES WHICH WOULD REQUIRE REFERENCE TO THE LAWS OF ANY OTHER JURISDICTION, AND APPLICABLE U.S. FEDERAL LAW.

NOTWITHSTANDING ARTICLE 36 OF THE UCP, IF THIS LETTER OF CREDIT EXPIRES DURING AN INTERRUPTION OF OUR BUSINESS AS DESCRIBED IN SAID ARTICLE 36, THE BANK HEREBY SPECIFICALLY AGREES TO EFFECT PAYMENT IF THIS LETTER OF CREDIT IS DRAWN AGAINST WITHIN SEVEN (7) DAYS AFTER THE RESUMPTION OF OUR BUSINESS.

ALL CORRESPONDENCE AND ANY DRAWINGS HEREUNDER ARE TO BE DIRECTED TO DEUTSCHE BANK AG NEW YORK BRANCH, 1 COLUMBUS CIRCLE, 17TH FLOOR, NEW YORK, NY 10019 ATTN: TRADE FINANCE & LENDING, OR SUCH OTHER OFFICE AS WE MAY ADVISE FROM TIME TO TIME, MAKING SPECIFIC REFERENCE TO THE STANDBY LETTER OF CREDIT NUMBER INDICATED ABOVE.

AUTHORIZED SIGNATORY
DEUTSCHE BANK AG,
NEW YORK BRANCH

EXHIBIT K
FORM OF SELLER GUARANTY
GUARANTY

This **GUARANTY** (this “Guaranty”) dated as of [XXX], is made and entered into by [ENTER GUARANTOR COMPANY NAME] (“Guarantor”), in favor of [ENTER BENEFICIARY COMPANY NAME] (“Beneficiary”).

1. GUARANTY. Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of all payment obligations under the _____ Agreement dated as of XXXXX, 20XX (as such may be amended, supplemented or otherwise modified from time to time, the “Agreement”) among [GUARANTEED PARTY] (“Company”) and Beneficiary (such obligations being the “Obligations”). Without limiting the generality of the foregoing, the Guarantor’s liability shall extend to all amounts that constitute part of the Obligations and would be owed by [GUARANTEED PARTY] under or with respect to the Agreement but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the [GUARANTEED PARTY], and Guarantor shall reimburse Beneficiary for all sums paid to Beneficiary by Company with respect to such Obligations which Beneficiary is subsequently required to return to Company or a representative of Company’s creditors as a result of Company’s bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding. To the extent that Company shall fail to timely pay any Obligation when due, Guarantor shall, within ten (10) days after receipt of notice from Beneficiary of such failure, promptly pay to Beneficiary the amount then due. This Guaranty shall constitute a guarantee of payment and not a guaranty of performance or of collection. This Guaranty shall be subject to the following:

(a) Guarantor’s liability hereunder shall be and is primary, absolute, irrevocable and unconditional irrespective of: (i) any defect or deficiency in the Agreement or any other documents executed in connection with the Agreement; (ii) any modification, extension or waiver of any of the terms of the Agreement; (iii) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith; (iv) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Obligations; (v) except as to applicable statute of limitations, the failure, omission, delay, waiver or refusal by the Beneficiary to exercise,

in whole or in part, any right or remedy held by the Beneficiary with respect to the Agreement or (vi) Company's ability or willingness to pay;

(b) IN NO EVENT SHALL GUARANTOR BE SUBJECT HEREUNDER TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, INCIDENTAL, PUNITIVE, OR TORT DAMAGES OR ANY OTHER SIMILAR DAMAGES, COSTS, OR ATTORNEYS' FEES (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THE AGREEMENT); AND

(c) The aggregate amount covered by this Guaranty shall not exceed the Guaranty Limit ("Guaranty Limit"), which Guaranty Limit shall be [DOLLAR AMOUNT].

The obligations of the Guarantor are several and not joint with Company or any other person, and are primary obligations for which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty.

2. TERM. This Guaranty shall remain in full force and effect until the earliest to occur of (a) the satisfaction by Company or the Guarantor of the Obligations, (b) [six] months following the expiration or termination of the Agreement, or (c) [insert date]. No termination shall affect, release or discharge any obligations already incurred by Guarantor under this Guaranty at the time of the notice of the termination.

3. WAIVERS. Guarantor acknowledges that Beneficiary will rely upon this Guaranty in entering into the Agreement with Company. Guarantor hereby waives any claim or defense based upon lack of consideration. Guarantor also irrecoverably waives presentment, diligence, demand, protest or other notice of any kind, including, without limitation, notice of acceptance of this Guaranty and notice of any claim or demand upon Company or Guarantor. Without notice to Guarantor, Beneficiary may extend the time for performance under any Agreement with Company or modify, supplement or amend any Agreement, and otherwise agree in any manner with Company without affecting Guarantor's unconditional obligation under this Guaranty it being understood that Guarantor waives all suretyship defenses generally. Guarantor also waives any requirement that Beneficiary file any claim relating to the Obligations owing to it in the event that Company becomes subject to a bankruptcy, reorganization, or similar proceeding and any failure by Beneficiary to so file.

4. NATURE OF GUARANTY. This Guaranty shall remain in full force and effect without regard to and shall not be impaired by: (i) any change in ownership of Company; (ii) any merger or consolidation of Company or Guarantor or any sale or transfer of all or substantially all of the assets of Company or Guarantor; (iii) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation of or similar occurrence with

respect to Company or any rejection or disallowance of any of the Obligations in connection with the commencement by or against Company of any case or proceeding relating to bankruptcy, insolvency, reorganization, winding up, liquidation, dissolution, or composition on adjustment of debt; or (iv) any modification, supplement or amendment to the Obligations or any waiver of any right with respect thereto. Beneficiary shall not be bound or obligated to exhaust its recourse against Company or other persons or take any other action before being entitled to demand performance by Guarantor hereunder.

5. REPRESENTATIONS. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of [XXX]. The execution, delivery and performance of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor. This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms (except that enforcement may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting the enforcement of creditors' rights generally and general principles of equity, whether considered in a proceeding in equity or at law). Guarantor represents and warrants to Beneficiary that: (a) the incurrence by Guarantor of its obligations under this Guaranty constitute and will constitute private and commercial acts of Guarantor, and the obligations of Guarantor hereunder will rank at least *pari passu* with all other unsecured indebtedness of Guarantor, (b) Guarantor is subject to civil and commercial law with respect to its obligations under this Guaranty and enjoys no immunity, sovereign or otherwise, from any suit or proceeding, the jurisdiction of any court, recoupment, setoff or legal process (and hereby waives any defense of immunity to the extent available to Guarantor) and (c) this Guaranty is in proper legal form for the enforcement of this Guaranty.

6. NOTICE. Any payment demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, to Guarantor at its address set forth below or to Beneficiary at 1 Riverside Plaza, 27th Floor, Columbus, Ohio 43215 Attention: Director of Credit. Notice given by personal delivery or mail shall be effective upon actual receipt. Any party may change any address to which Notice is to be given to such party by giving Notice thereof as provided above.

7. Subrogation. The Guarantor shall be subrogated to all rights of the Company with respect to any amounts paid to Beneficiary by the Guarantor pursuant to the provisions of this Guaranty; provided that the Guarantor shall not be entitled to exercise or enforce, or to receive any payments arising out of or based upon, such right of subrogation until the principal of and interest on such Obligations shall have been paid in full, whether by way of subrogation, reimbursement, restitution, contribution or otherwise.

8. Notwithstanding any other provision in this Guaranty, and for the avoidance of doubt, each of the Guarantor and Beneficiary agree that the Guarantor shall have the benefit of and the right to assert (i) any defense arising pursuant to the terms of the Agreement that the payment sought from the Guarantor has been paid by the Company pursuant to the express terms of the Agreement and (ii) any defense that the payment being sought from the Guarantor is not required to be made by the Company pursuant to the express terms of the Agreement.

9. MISCELLANEOUS. GOVERNING LAW. Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement. This Guaranty embodies the entire agreement of the Parties, and supersedes all prior agreements and understandings of the Parties, with respect to the subject matter hereof. The rights and remedies of Beneficiary under this Guaranty are cumulative and concurrent and shall not be exclusive of any other rights or remedies that Beneficiary may have against Company or Guarantor. No set-off, counterclaim, reduction or diminution of an obligation or any defense of any kind or nature that Guarantor has or may have against Company or Beneficiary shall affect, modify or impair the obligations of Guarantor under this Guaranty. **THIS GUARANTY SHALL BE IN ALL RESPECTS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.** Guarantor irrevocably and unconditionally submits to the exclusive jurisdiction of any NEW YORK STATE or Federal court sitting in NEW YORK, NEW YORK, in the United States of America in any action or proceeding arising out of or relating to this Guaranty. Guarantor waives any objection to venue in NEW YORK, NEW YORK, USA and any objection to any action or proceeding on the base of forum non conveniens. Final judgment against Guarantor in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction.

10. PROCESS AGENT. Guarantor hereby irrevocably and unconditionally appoints [<name of Process Agent>], with offices on the date hereof at [<address of Process Agent>], as its agent for service of process ("Process Agent") of any summons or other legal process in any action or proceeding arising out of or relating to this Guaranty, and such agent is hereby authorized and directed to accept such service on behalf of Guarantor. Guarantor shall at all times maintain [<name of Process Agent>] or another person acceptable to Beneficiary in the State of New York, as a Process Agent to receive service of process. Guarantor shall notify the Beneficiary's Credit Department prior to any change of Process Agent.

11. JUDGMENT CURRENCY. The obligations of Guarantor under this Guaranty shall, notwithstanding judgment in a currency other than U.S. dollars (the "Judgment Currency"), be discharged only to the extent that, on any day following receipt by Beneficiary of any sum adjudged to be due in the Judgment Currency, Beneficiary may

in accordance with normal banking procedures purchase U.S. dollars with the Judgment Currency. If the amount of U.S. dollars so purchased is less than the sum originally due to Beneficiary in U.S. dollars, Guarantor agrees, as a separate obligation and notwithstanding such judgment, to indemnify Beneficiary against such loss.

12. PAYMENTS. All payments by Guarantor under this Guaranty shall be made (a) in U.S. dollars to such account in the United States as Beneficiary may from time to time designate to Guarantor and (b) free and clear of, and without deduction or withholding for or on account of any present or future income, stamp other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by an governmental authority (collectively "Taxes"). If any Taxes are required to be withheld from any amounts payable by Guarantor under this Guaranty, the amounts payable shall be increased to the extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guaranty.

13. RELEASE. Upon termination of this Guaranty, Beneficiary shall execute a release of the Guarantor from its obligations hereunder substantially in the form and substance of Exhibit A hereto.

Address for Notices:

By: _____
Name: _____
Title: _____

**Exhibit A
to the Guaranty**

Form of Release

[Date]

[Address]

Dear Sir/Madam:

Re: **Termination of Guaranty**

[Beneficiary] hereby releases [Guarantor] from any and all obligations as Guarantor arising under the Guaranty dated as of _____, 20XX, on behalf of [Guaranteed Party].

Beneficiary

By: _____
Name: _____
Title: _____

Exhibit L

FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of [____], 202__, among INDIANA MICHIGAN POWER COMPANY, an Indiana corporation ("Purchaser"), [PROJECT COMPANY], a [____] [limited liability company] ("Seller"), [FINANCIAL INSTITUTION], in its capacity as [Collateral Agent] (the "Collateral Agent") for the Secured Parties, as defined in the hereinafter defined Financing Agreement. Purchaser, Seller and the Collateral Agent shall be referred to hereunder as the "Parties" and, individually, as a "Party".

RECITALS

Purchaser and Seller have entered into that certain Renewable Energy Purchase Agreement for Solar Energy Resources, dated as of March 23, 2023 (as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof, the "REPA" or the "Assigned Agreement").

Seller has entered into that certain [Financing Agreement] (as the same may be amended, modified or supplemented from time to time, the "Financing Agreement") relating to the construction financing of the approximately ____ megawatt solar photovoltaic generating facility located in _____ County, _____ (the "Project"), dated as _____, _____, among Seller, the financial institutions from time to time party thereto (collectively, the "Lenders"), [Provide further description of Financing Agreement].

AGREEMENT

1. Definitions.

Capitalized terms used but not defined in this Consent shall have the meanings given to them in the REPA, or if not defined therein, in the Financing Agreement. In addition, the following terms shall have the meanings set forth below with respect to each term:

"Secured Obligations" shall mean, collectively: all obligations and liabilities of Seller in respect of: (a) the principal of and interest on all loans made under the Financing Agreement; (b) all other amounts due and to become due to the Collateral Agent, the Lenders or any other financing parties under the Financing Agreement or any other document contemplated thereby, including, without limitation, the expenses, indemnities and interest which would accrue on any of the foregoing but for the commencement of a case by or against Seller under any applicable bankruptcy laws; and (c) the performance and observance of all of the

covenants and agreements made by Seller under and in connection with the Financing Agreement.

“Secured Parties” shall mean [●].

“Secured Agreement” shall mean [●].

2. Scope of Obligations.

Nothing in this Consent shall make Purchaser liable for any damages or other amounts under the Financing Agreement or for any other damages for which it would not otherwise be liable to Seller under the Assigned Agreement.

3. Consent to Assignment. Purchaser hereby:

(a) acknowledges and irrevocably consents to the assignment pursuant to the Security Agreement by Seller to the Collateral Agent for the benefit of the Secured Parties of the Assigned Agreement as security for the performance of the Secured Obligations;

(b) acknowledges and irrevocably agrees that the Collateral Agent (and the other Secured Parties) shall not be or become liable for the performance or observance of any of the obligations or duties of Seller under the Assigned Agreement, nor shall the Collateral Agent (nor the other Secured Parties) be or become liable to perform or observe any obligations or duties owing to Purchaser, in either case solely by reason of the assignment of the Assigned Agreement to the Collateral Agent hereunder, except as otherwise expressly provided in this Consent;

(c) acknowledges that, upon Purchaser’s receipt of a notice from the Collateral Agent of an event of default by Seller under the Financing Agreement, the Collateral Agent has the right to make all demands, give all notices, take all actions and exercise all rights of, Seller under the Assigned Agreement; and

(d) acknowledges and agrees, subject in all respects to the conditions and limitations contained in this Consent, that none of the following shall constitute, as between Purchaser and the Secured Parties, an Event of Default by Seller under the Assigned Agreement or shall result in a termination thereof: (i) the assignment by Seller to the Collateral Agent for the benefit of the Secured Parties of a lien on and security interest in the Project (including, without limitation, the Assigned Agreement); (ii) the operation of the Project by any Transferee that is a Qualified Operator upon the exercise of the Collateral Agent’s and the Secured Parties’ rights with respect to an Event of Default by Seller under, as defined in and in accordance with the Financing Agreement; (iii) the commencement of a foreclosure or similar proceeding to enforce the lien of the Secured Parties against

the assets of Seller or the equity interests in Seller (including, without limitation, the Project and the Assigned Agreement); (iv) the acquisition of the rights of Seller in the Project (including, without limitation, the Assigned Agreement) in foreclosure by the Collateral Agent or any Secured Party in connection with such party's exercise of its rights and remedies, at law, in equity or otherwise (or acceptance of an absolute assignment of the Project in lieu of foreclosure); or (v) the subsequent sale, assignment, and/or conveyance of the assets of Seller, the equity interests in Seller or the Project (including, without limitation, the Assigned Agreement) by the Collateral Agent or any other Secured Party after acquisition of the rights of Seller in the assets of Seller, the equity interests in Seller or the Project following any foreclosure or assignment in lieu of foreclosure.

4. Representations and Warranties.

(a) Purchaser hereby represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that: (i) Purchaser has the full power and authority to execute, deliver and perform this Consent and to carry out the transactions contemplated hereby; (ii) the execution and delivery of this Consent by Purchaser and the carrying out by Purchaser of the transactions contemplated hereby have been duly authorized by all requisite corporate action, and each of this Consent has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with the terms hereof and thereof, subject, as to enforceability, to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity; (iii) all authorizations, consents, approvals or orders of, notices to, or registrations, qualifications, declarations or filings with, any governmental authority, required for the execution, delivery and performance by Purchaser of this Consent or the carrying out by Purchaser of the transactions contemplated hereby, have been obtained and are in full force and effect; and (iv) none of the execution, delivery, and performance by Purchaser of this Consent, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any law, governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of Purchaser or any applicable order, writ, injunction, judgment or decree of any court or governmental authority against Purchaser or by which it or any of its properties is bound, or any material loan agreement, indenture, mortgage, bond, note, resolution, contract or other agreement or instrument to which Purchaser is a party or by which it or any of its properties is bound.

(b) Purchaser further represents and warrants to the Collateral Agent, for the benefit of the Secured Parties that: (i) neither an Event of Default by Purchaser nor, to the best of its knowledge, after due inquiry, an Event of Default

by Seller, in either case, exists and is continuing under the Assigned Agreement; (ii) to the best of its knowledge, Purchaser has no existing counterclaims, offsets or defenses against Seller in respect of the Assigned Agreement; (iii) to the best of its knowledge, after giving effect to Purchaser's consent to the assignment consented to by Purchaser under Section 3(a) herein, and recognizing that Seller has continuing and additional obligations to perform after the date of this Consent, there exists no present event or condition, except those expressly contained in the Assigned Agreement, which enable either Purchaser or Seller to terminate or suspend its obligations under the Assigned Agreement; (iv) except for the assignment to the Collateral Agent for the benefit of the Secured Parties, Purchaser has no notice of any assignment relative to any right, title and interest of Seller in, to and under the Assigned Agreement; (v) the Assigned Agreement and the instruments and documents referred to therein constitute the only agreements between Purchaser and Seller with respect to the matters and interests described therein; and (vi) there are no proceedings pending or, to the best of its knowledge without inquiry, threatened against or affecting Purchaser in any court or by or before any governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under the Assigned Agreement or this Consent.

5. Rights of the Secured Parties. Purchaser agrees that the Secured Parties, so long as any Secured Obligations shall remain outstanding, shall have the following rights with respect to the Assigned Agreement:

(a) Assignment, Amendments, Etc.

(i) No assignment by Purchaser of its obligations under the Assigned Agreement shall be effective unless (A) such assignment complies with the Assigned Agreement, and (B) Purchaser contemporaneously delivers to the Collateral Agent a copy of all notices due to Seller with respect to such assignment;

(ii) No waiver, amendment, consent or other modification of the Assigned Agreement by Seller shall be effective without the prior written approval of the Collateral Agent (except for any waiver, amendment, and/or consent which is of a routine, ministerial or administrative nature or which is required by law or by any governmental authority); and

(iii) No termination of the Assigned Agreement by Purchaser shall be effective unless (A) such termination complies with the Assigned Agreement, (B) Purchaser has previously delivered to the Collateral Agent a copy of all notices due to Seller with respect to such termination and (C) Purchaser has provided the Facility Financing Representative with the right

to cure any Event of Default under the Assigned Agreement within the time frame identified herein.

(b) Performance of Seller's Obligations. If the Collateral Agent shall provide Purchaser with notice of an Event of Default by Seller under, as defined in and in accordance with the Financing Agreement, then following Purchaser's receipt of such notice the Collateral Agent or any of the other Secured Parties may, but shall have no obligation to, perform one or more of the obligations of Seller under the Assigned Agreement and Purchaser will accept such performance, if otherwise in accordance with the terms of the Assigned Agreement and this Consent, in lieu of performance by Seller and in satisfaction of the obligations of Seller under the Assigned Agreement. In the event that the Secured Parties exercise any right under the Financing Agreement to assume possession and control of the Project they shall obtain the appointment of a Qualified Operator to assume possession and control of the Project prior to or pending a foreclosure, and the Secured Parties shall cause the Project to be operated by such Qualified Operator.

(c) Copies of Notices. Purchaser acknowledges and agrees that is obligated to send the Collateral Agent copies of any notice furnished to Seller of the existence of an Event of Default under the Assigned Agreement or the termination of the Assigned Agreement, and certain other notices as expressly set forth in the Assigned Agreement; provided that any failure of Purchaser to send such notice shall not give rise to any liability to any Person on the part of Purchaser hereunder.

(d) Cure Rights.

(i) Subject to the terms of this Consent, the Collateral Agent and the Secured Parties shall have the right, but not the obligation, to cure any Event of Default by Seller under the Assigned Agreement which is capable of being cured.

(ii) As provided in the Assigned Agreement, the Assigned Agreement shall not be terminated automatically or terminated by Purchaser if the Collateral Agent or the Secured Parties cure each Event of Default by Seller thereunder which is capable of being cured within the following cure periods: [●].

(iii) Such cure periods shall commence with respect to the Collateral Agent and the Secured Parties as of the date notice is given to the Collateral Agent by Purchaser. Solely with respect to any Events of Default by Seller under the Assigned Agreement that cannot be cured by any Person other than Seller or its designated operator, as the owner or designated operator of the Project, if the Secured Parties declare an Event

of Default by Seller under, as defined in and in accordance with the Financing Agreement and promptly commence foreclosure proceedings, then, so long as the Secured Parties are diligently pursuing such foreclosure proceedings, the Secured Parties will be allowed such additional period, not to exceed one hundred eighty (180) days from the date of commencement of such proceedings, as is necessary to complete such proceedings in which to cure the existing Event(s) of Default under the Assigned Agreement. For the avoidance of doubt, the Collateral Agent and the other Secured Parties shall have cured all Events of Default which are capable of being cured on or prior to the completion of such proceedings.

(iv) Once an Event of Default under the Assigned Agreement is timely cured by the Collateral Agent or the Secured Parties, such event or condition shall no longer be deemed to be an Event of Default under the Assigned Agreement.

(e) Consent to Transfer; Continuation of Agreement. Purchaser consents to the transfer of Seller's interest in the Project to the Collateral Agent or any other Secured Party, or their designee or to any other Person provided that (i) the Collateral Agent, the other Secured Parties or such other Person is or has retained a Qualified Operator to act as operator of the Project in lieu of Seller (collectively, a "Transferee"), (ii) the Collateral Agent or the other Secured Parties shall have caused the Assigned Agreement to be conveyed and transferred to the Transferee at the time of the transfer of the Project and shall have caused the Transferee to assume and to agree to be bound by all the terms and provisions of the Assigned Agreement, which has and continues to remain in full force and effect in accordance with its terms and (iii) the Collateral Agent or the other Secured Parties shall identify the Transferee in a written notice to Purchaser on or before the effective date of the transfer and shall furnish Purchaser with Transferee's written agreement to assume and to agree to be bound by all the terms and provisions of the Assigned Agreement, and Purchaser shall recognize such a Transferee as the "Seller" under the Assigned Agreement, if the Transferee shall or shall have:

(i) cure or cured within the relevant cure period established in the Assigned Agreement, as modified by subsection 5(d) above, all Events of Default of Seller which are then existing under the Assigned Agreement and which are capable of being cured at the time of such transfer; and

(ii) assume or assumed and perform all other obligations of Seller under the Assigned Agreement arising on or after the date of such transfer to the Transferee.

6. Replacement Agreements. If the Assigned Agreement is rejected or terminated as a result of any bankruptcy or insolvency proceeding involving Seller,

and Purchaser has been reimbursed by any Person for all amounts which would be due and payable by Seller to Purchaser under the Assigned Agreement but for such bankruptcy or insolvency proceeding, the Collateral Agent may, within thirty (30) days after such rejection or termination, certify in writing to Purchaser that the Transferee intends to perform and is capable of performing the obligations of Seller arising after the date of such certification as and to the extent required under the Assigned Agreement. In such case, Purchaser shall execute and deliver to the Transferee a new agreement (a "Replacement Agreement") which shall be for the balance of the remaining term under such rejected Assigned Agreement. The Replacement Agreement shall contain the same conditions, agreements, terms, provisions and limitations as the original Assigned Agreement (except for any requirements which have been fulfilled by Seller and Purchaser prior to such rejection or termination or any Person thereafter), and except that the Transferee will be substituted where the Seller appears in Assigned Agreement.

7. Purchaser's Reliance on Written Notices by Agent. Seller agrees that Purchaser is entitled to rely on the written instructions of an employee, authorized representative or other agent of the Collateral Agent as permitted herein, including without limitation, any such notice concerning the existence and continuation of an Event of Default by Seller under, as defined in and in accordance with the Financing Agreement, the destination of payments to be made under the Assigned Agreement or whether the Secured Obligations have been fully paid or not, and that Purchaser may make payments that are due to Seller as directed by any such Person upon the written instructions of any such Person to do so. Seller waives any claims that it has or may have against Purchaser based upon the good faith reliance by it on such written instructions.

8. Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the addresses set forth in the table below. All notices to be given under this Consent shall be in writing and shall be (i) delivered personally, (ii) sent by certified or registered first-class mail, postage prepaid, return receipt requested, or (iii) sent by a recognized courier service, with delivery receipt requested to the intended recipient at its address as set forth on the signature pages below, unless the recipient has given notice of another address for receipt of notices. All notices sent hereunder shall be deemed to have been given when personally delivered or in the case of a notice mailed or sent by courier, upon receipt, at the address provided for herein; provided, however, if such notice is given after the close of business on a business day of the receiving party, or on a day on which the receiving party is not open for business, such notice shall be deemed to have been given on the next following business day.

If to Purchaser:

Indiana Michigan Power Company
C/O American Electric Power Service
Corporation
1 Riverside Plaza, 14th Floor
Columbus, OH 43215
Attn: Contract Administration

with a copy to:

Attn: Chief Counsel, CO&L
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
Attn: Chief Counsel

If to Collateral Agreement
Agent:

Attn: _____

If to Seller:

Attention: _____

With a copy to:

Attention: _____

9. Arrangements Regarding Payments. Commencing on the date of this Consent and so long as the Financing Agreement remains in effect, Purchaser hereby agrees to make all payments required to be made by it under the Assigned Agreements in U.S. dollars and in immediately available funds, directly to Collateral Agent, acting for the benefit of the Lenders for deposit into the account described immediately below, or, if Purchaser has been notified that an Event of Default by Seller under, as defined in and in accordance with the Financing

Agreement has occurred and is continuing, to such other Person and/or at such other address or account as Collateral Agent may from time to time specify in writing to Purchaser. Seller hereby instructs Purchaser, and Purchaser accepts such instructions, to make all payments due and payable to Collateral Assignor under the Assigned Agreement as set forth in the immediately preceding sentence.

Account #[_____]

10. Miscellaneous.

(a) Separate Counterparts; Amendments; Waiver. This Consent may be executed in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts shall constitute one and the same instrument. Until termination as to the respective party, neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each of Purchaser, Seller and the Collateral Agent.

(b) Severability of Provisions. Any provision of this Consent which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

(c) Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of Purchaser and its successors and permitted assigns, Seller and its successors and permitted assigns, the Collateral Agent and the other Secured Parties and its or their successors and permitted assigns.

(d) Governing Law; Venue.

(i) This Consent shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in such state.

(ii) Each of Purchaser, Seller and Collateral Agent irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(e) Each of the parties hereto agrees to execute and deliver all such instruments and take all such action as may be reasonably necessary to effectuate the purposes of this Consent.

(f) No failure on the part of any party to exercise and no delay in exercising, any right under this Consent shall operate as a waiver of such right nor

shall any single or partial exercise of any right under this Consent preclude any further exercise of such right or the exercise of any other right.

(g) Upon the reasonable request of Seller and the Collateral Agent, including immediately prior to permanent equity financing of the Project, Purchaser agrees to provide Seller with a certificate stating that as of the date of such certificate, the representations and warranties of Purchaser set forth in Sections 4(a) and 4(b) of this Consent are true and correct (and to the extent any such representation or warranty is not true and correct, providing appropriate modifications describing the events or circumstances rendering such representation or warranty untrue or incorrect). Nothing in any such certificate shall make Purchaser liable for any damages or other amounts under the Financing Agreement or for any other damages for which it would not otherwise be liable to Seller under the Assigned Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the Parties hereto have caused this Consent to be duly executed and delivered by its respective authorized officers or authorized persons as of the date first above written.

INDIANA MICHIGAN POWER COMPANY,
an Indiana corporation

By: _____

Name:

Title:

Accepted and agreed:

[FINANCIAL INSTITUTION],
in its capacity as Collateral Agent hereunder

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and agreed:

[PROJECT COMPANY],
a [_____] [limited liability company]

By: _____
Name:
Title:

II. Safe and Lawful Working Practices

Seller and its subcontractors and vendors shall not use, or participate in the exploitation of workers (i.e., forced or involuntary labor, including child labor). Seller and its subcontractors and vendors shall not employ any person under the minimum legal age for employment as prescribed by the local Governmental Authority and such employment shall be compliant with Applicable Law. For solar facilities, Seller shall be a signatory to the Solar Energy Industries Association's (SEIA) "Solar Industry Forced Labor Prevention Pledge" or similar effort to which Seller has committed to a process "to helping ensure that the solar supply chain is free of forced labor" and to "support the development of an industry-led solar supply chain traceability protocol as a tool for identifying the source of primary raw materials and inputs and tracking their incorporation into finished products, including solar modules." Seller shall not enter into any subcontract for any portion of work on the Facility that does not require the applicable subcontractor or vendor to make a covenant substantially similar to the foregoing.

III. Facility Requirements

Purchaser has established the following utility scale facility requirements of Independent Power Producers (IPP) to ensure the safe, delivery of power to the grid under the terms of this Power Purchase Agreement (PPA). In addition, Purchaser's facility requirements ensure a safe workplace, environmentally compliant, schedule assurance, and energy reliability throughout facility permitting, engineering, procurement, construction, commissioning and commencement of power delivery. Furthermore, compliance with these requirements is a condition of Purchaser's Facility Purchase Option right to purchase asset.

LOCATION

The entire Facility shall be physically located in the State of Indiana.

SAFETY

- A. Safety incidents involving property damage (near miss), personnel injury requiring first aid, and personnel injury requiring OSHA notification shall be reported to Purchaser within 72 hours of occurrence. Injures requiring OSHA notification shall be reviewed with Purchaser including discussion of root cause and prevention of reoccurrence.

- B. Equipment access shall be provided in accordance with all regulations including but not limited to safe working distances and protection from fall hazards over six (6) feet.
- C. Purchaser shall be notified of any OSHA site visit either within 72 hours of occurrence or if known in advance Purchaser shall be permitted to accompany OSHA during the site visit.
- D. Seller shall develop and maintain at the Site a written heat stress/heat illness prevention and mitigation plan, made available to Purchaser upon request.
- E. Seller shall develop and maintain at the Facility a lockout/tagout plan in accordance with guidelines and requirements of OSHA 29 CFR 1910.269 (d), made available to Purchaser upon request.

ENVIRONMENTAL

- F. All work performed shall be in accordance with environmental regulations
- G. All permits and associated compliance records shall be maintained at the Site or in a readily available location and made available to Purchaser upon request.

Programs for which permits compliance documentation, and agency correspondence shall be made available will include but not limited to the following:

- 1) Wetland Impact Permit (USACE, DEQ, VMRC, LWB as applicable)
- 2) County Land Disturbance Permit
- 3) Spill Prevention Control and Countermeasure (SPCC) Plan

- H. Purchaser shall be notified of any environmental regulatory visit within 72 hours of occurrence or if known in advance. Purchaser shall be permitted to accompany the agency site visit.
- I. Purchaser shall be notified of any environmental events that require reporting to a regulatory agency or of any enforcement action taken by a regulatory agency within 72 hours.
- J. Transformer Secondary Containment

- 1) Main power transformer oil and/or coolant shall be contained in concrete secondary containment surrounding the transformer foundation; an earthen berm is not an acceptable means of containment.

SECURITY

K. Array Perimeter

- 1) Array perimeter fence (minimum specs) shall be 6 feet tall, 2" mesh, 9 gauge galvanized metal fabric, topped with 1 foot of 3 strands of barbed wire, 2" IPS line posts, 2 1/2" IPS corner posts, 3 1/2" gate posts, top tension cable, and all posts w/ concrete foundations – 3 feet deep for line posts; 4 feet deep for corner posts unless there are requirements from the Governmental Authority having jurisdiction that supersede this specification. Alternatively, wildlife type fencing can be utilized with approval from the Governmental Authority having jurisdiction.
- 2) Perimeter fence gates shall be 2 x 12 feet swing gates (24 feet opening) for frequent use; infrequent access shall be 2 x 10 feet swing gates (20 feet opening). Personnel gates shall be provided at sediment basins, outfalls, or other storm water management features. All gates shall be lockable with 3/8" diameter, 4" long shackle lock. Frequent, infrequent, and personnel gates shall be located not more than every 2,000 feet along perimeter.
- 3) Fence and gates shall be grounded in accordance with NESC.
- 4) Every 100 feet a metal "Danger Do Not Enter" sign shall be affixed to the fence with metallic fasteners.

L. Substation Perimeter (if applicable)

- 1) Substation perimeter fence (minimum specs) shall be 7 feet tall, 2" mesh, 9 gauge galvanized metal fabric, topped with 1 foot of 3 strands of barbed wire (total height of 8'), 2" IPS line posts, 2 1/2" IPS corner posts, 3 1/2" gate posts, top tension cable, and all posts w/ concrete foundations – 3 feet deep for line posts; 4 feet deep for corner posts unless there are requirements from the Authority Having Jurisdiction that supersede this specification.
- 2) Every 25 feet a metal "Danger Do Not Enter" sign shall be affixed to the fence with metallic fasteners.
- 3) Fence and gates shall be grounded in accordance with NESC. In addition, fence shall be grounded along entire perimeter; gate posts shall be grounded via a driven rod; gate

posts shall be connected together underground via a ground cable following the arc of the gate swing.

FACILITY DESIGN BASIS

M. Codes and Standards

- 1) The Facility shall be designed and built in accordance with all laws, codes, and regulations.
- 2) In addition, the Facility shall be designed and built in accordance with Codes and Standards as specified in Section IV.

N. Facility Name Plate Ratings

- 1) Facility Design
 - a) Design life criteria for all systems shall be a minimum of thirty (30) years.
 - b) Facility shall be designed and constructed with new equipment.

O. Site & Civil Design & Construction Requirements

- 1) Under no circumstances shall Seller or any Seller Persons openly burn wood, wood chips, mulch, or leaves created in the course of construction of the Facility without first obtaining all required environmental or other permits.
- 2) In the event any soils are exported or imported, all materials shall be tested for hazardous materials and records and made available to Purchaser upon request. These records will be retained with the facility.
- 3) Site land disturbance shall be performed in accordance with permits for managing storm water. Storm water basins and / or sediment traps shall be completely installed and placed into service prior to upland disturbance occurring, including stump grubbing, grading, etc.
- 4) Utility Access Roadway providing access to the interconnecting transmission or distribution lines (minimum specs) shall be 20 feet wide within 200 ft of public road and 16 feet wide for the remainder, 50 feet turning radius throughout (minimum), plus 2 feet additional compacted shoulders, roadway base compacted to 95% Proctor, geotechnic fabric plus 9 inches stone. Roads shall have 12 inches of sub-grade preparation.
- 5) Interior access roadways providing access to inverters and shall be 14 feet wide with 6 inches of stone. Roads shall have 12 inches of sub-grade preparation.

- 6) All permanent roadway culverts shall utilize Reinforced Concrete Pipe (RCP) or High Density Polyethylene (HDPE). All culvert headwalls exceeding four (4) feet in fall hazard potential shall have handrails installed as a means of fall protection.
- 7) All USACOE permitted stream crossings shall utilize precast concrete bottomless box culverts to minimize impact to streams.
- 8) All permanent culverts, permanent storm water management ponds, permanent risers and discharge pipes shall utilize Reinforced Concrete Pipe (RCP) or HDPE of the proper grade selected in accordance with the recommendations of the American Concrete Pipe Association. Corrugated Metal Pipe (CMP) is not allowed. Anti-seep collars are required for all discharge pipes.
- 9) All permanent stormwater forebay weirs, dams, shall be concrete.

P. Mechanical Design & Construction Requirements

- 1) Racking and Post design shall conform to the following:
 - a) United States Geological Survey (USGS) Seismic Design Category, in accordance with the 2012 International Building Code (IBC) and Applicable Law as of the date hereof
 - b) Federal Emergency Management Association (FEMA) Wind Zone Classification, including any applicable Special Wind Region and/or Hurricane-Susceptible Region designation

Q. Electrical Design & Construction Requirements

- 1) PV Module DC Arc Flash calculations ensure safety working conditions for maintenance personnel and shall be performed in accordance with Section V hereto.
- 2) All underground or buried ground conductor connections shall be exothermically welded.
- 3) All underground or buried conductors including fiber optic, DC, AC, power conductors or ground conductors shall be recorded and documented by photography before backfill occurs.

R. Purchaser's Site Access

- 1) Purchaser shall be given advance notice of any regulatory agency site visit.

- 2) Purchaser, or Purchaser's representative will be permitted to accompany all regulatory agency site visits.

S. Codes and Standards

This provides a list of minimum industry codes and standards applicable to the Facility.

- A. If requirements from more than one code or standard are applicable to a part of the Facility, the most stringent requirement shall apply.
- B. The version of Industry Codes and Standards in effect as of the date hereof will be the Industry Codes and Standards enforced.

1.0 Industry Codes and Standards

- A. The Industry Codes and Standards applicable to the Facility shall include:

- International Building Code (IBC)
- National Fire Protection Association (NFPA) 70: National Electric Code (NEC)
- International Fire Code, the latest version adopted by the applicable Governmental Authority, including all local amendments
- American Concrete Institute (ACI) 318, "Building Code Requirements for Structural Concrete and Commentary"
- Aluminum Design Manual (ADM)
- American Institute of Steel Construction (AISC), 360, "Specification for Structural Steel Buildings"
- American National Standards Institute (ANSI)/ Institute of Electrical and Electronics Engineers (IEEE) C57.12.91, "Standard Test Code for Dry-Type Distribution and Power Transformers"
- American Society of Civil Engineers (ASCE), 7
- IEC 60068, "Environmental Testing"
- IEC 61646, "Thin-film terrestrial photovoltaic (PV) modules – Design qualification and type approval"
- IEC 61701, "Salt Mist Corrosion Testing of Photovoltaic (PV) Modules"
- IEC 61730, "Photovoltaic Modules"

- IEC 62109-1, “Safety of Power Converters for use in Photovoltaic Power Systems - Part 1: General Requirements”
- IEC 62109-2, “Safety of Power Converters for use in Photovoltaic Power Systems - Part 1: Particular Requirements for Inverters”
- IEEE C62.11, “Standard for Metal-Oxide Surge Arresters for AC Power Circuits (> 1kV)
- IEEE C57.13, “Standard Requirements for Instrument Transformers”
- IEEE C57.12.36, “Standard Requirements for Liquid-Immersed Distribution Substation Transformers”
- IEEE C57.12.00, “Standard for General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers”
- IEEE C37.12, “Guide for Specifications of High-Voltage Circuit Breakers (over 1000 Volts)
- IEEE C37.30.1, “IEEE Standard Requirements for AC High-Voltage Air Switches Rated Above 1000V”
- IEEE C93.1, “American National Standard Requirements for Power-Line Carrier Coupling Capacitors and Coupling Capacitor Voltage Transformers (CCVT)”
- IEEE C57.12.10, “IEEE Standard Requirements for Liquid-Immersed Power Transformers”
- IEEE C37.06, “IEEE Standard for AC High Voltage Circuit Breakers Rated on a Symmetrical Current Basis – Preferred Ratings and Related Required Capabilities for Voltages Above 1000V”
- IEEE C37.66, “IEEE Standard Requirements for Capacitor Switches for AC Systems (1 kV to 38kV)
- IEEE 18, “IEEE Standard for Shunt Power Capacitors”
- IEEE 80, “Guide for Safety in AC Substation Grounding”
- IEEE 81, “Guide for Measuring Earth Resistivity, Ground Impedance, and Earth Surface Potentials of a Grounding System”
- IEEE 404, “Standard for Extruded and Laminated Dielectric Shielded Cable Joints Rated 2.5 kV to 500 kV”
- IEEE 519, “IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems”
- IEEE 1547, “IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces
- IEEE National Electrical Safety Code (NESC)
- National Electrical Testing Association (NETA) Acceptance Testing Specifications (ATS)

- Underwriters Laboratory (UL) 1703, “Standard for Flat-Plate Photovoltaic Modules and Panels”
- Underwriters Laboratory (UL) 1741, “Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources”
- NFPA 10, Standard for Portable Fire Extinguishers.
- NFPA 72, National Fire Alarm and Signaling Code.
- NFPA 75, Fire Protection of Information Technology Equipment
- NFPA 76, Fire Protection of Telecommunications Facilities
- NFPA 77, Static Electricity
- NFPA 101 Life Safety Code (as modified by the VSFPC)
- NFPA 241, Safeguarding Construction, Alteration, and Demolition Operations
- NFPA 850, Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations
- NFPA 2001, Clean Agent Fire Extinguishing Systems
- Factory Manual (FM) Data Sheets:
 - Data Sheet 1-0, Safeguards during Construction, Alteration, and Demolition
 - Data Sheet 4-0, Special Protection Systems
 - Data Sheet 4-9, Clean Agent Fire Extinguishing Systems
 - Data Sheet 5-40, Fire Alarm Systems
 - Data Sheet 5-48, Automatic Fire Detection
- Global Asset Protection Services (GE GAP Services)
 - GAP 13.0.5, Extinguishing System Acceptance Tests
 - GAP 13.0.5.A, Acceptance Test Checklist
 - GAP 13.0.5.2, Door Fan Testing for Enclosure Integrity
- ASTM D422 - Standard Test Method for Particle-Size Analysis of Soils
- ASTM D698 - Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³))
- ASTM D1140 - Standard Test Methods for Amount of Material in Soils Finer Than the No. 200 (75- μ m) Sieve
- ASTM D1556 - Standard Test Method for Density and Unit Weight of Soil in Place by Sand-Cone Method

- ASTM D1557 - Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2700 kN-m/m³))
- ASTM D2167 - Standard Test Method for Density and Unit Weight of Soil in Place by the Rubber Balloon Method
- ASTM D4253 - Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table
- ASTM D4254 - Standard Test Methods for Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density
- ASTM D4318 - Standard Test Method for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D2041 - Standard Test Method for Theoretical Maximum Specific Gravity and Density of Bituminous Paving Mixtures
- ASTM D2487 - Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System)
- ASTM D2726 - Standard Test Method for Bulk Specific Gravity and Density of Non-Absorptive Compacted Bituminous Mixtures
- ASTM D2940 - Standard Specification for Graded Aggregate Material for Bases or Subbases for Highways or Airports
- ASTM D2950 - Standard Test Method for Density of Bituminous Concrete in Place by Nuclear Methods
- ASTM D3381 - Standard Specification for Viscosity-Graded Asphalt Cement for Use in Pavement Construction
- ASTM A121 - Standard Specification for Metallic-Coated Carbon Steel Barbed Wire
- ASTM A392 - Standard Specification for Zinc-Coated Steel Chain-Link Fence Fabric
- ASTM A824 - Standard Specification for Metallic-Coated Steel Marcellled Tension Wire for Use With Chain Link Fence
- ASTM F567 - Standard Practice for Installation of Chain-Link Fence
- ASTM F626 - Standard Specification for Fence Fittings
- ASTM F900 - Standard Specification for Industrial and Commercial Steel Swing Gates

- ASTM F1083 - Standard Specification for Pipe, Steel, Hot-Dipped Zinc-Coated (Galvanized) Welded, for Fence Structures
- U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) – 29 CFR 1926 - Safety and Health Regulations for Construction

2.0 Industry Recommended Practices

A. The Industry Recommended Practices (IRPs) applicable to the Facility shall include:

- IRP701 - Medium-Voltage Cables
- IRP702 - Grounding and Bonding for Electrical Systems
- IRP703 - Underground Ducts and Raceways for Electrical Systems
- IRP704 - Cast-In-Place Concrete
- IRP705 - Concrete Reinforcement
- IRP706 - Earthwork
- IRP707 - Trenching Backfilling Compaction

3.0 Suggested Practices

A. The Suggested Practices applicable to the Facility shall include:

- Avian Protection on Power Lines: The State of the Art
- Reducing Avian Collisions with Power Lines: The State of the Art

Exhibit N

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Title: _____

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