

SOLAR ENERGY PURCHASE AGREEMENT

This Solar Energy Purchase Agreement ("Agreement") is entered into this ____ day of _____, 201_ (the "Effective Date") by and between Northern States Power Company, a Wisconsin corporation ("NSP"), and XXX("Seller") a XXX LLC .

RECITALS

1. Seller has agreed to construct, own and operate a solar powered electric generating facility on a site located inXXX, County, with a nameplate capacity of XXXX (AC) to be interconnected to the Distribution Authority's system.
2. Seller has agreed to interconnect into the Distribution Authority's system and be responsible for all costs associated with delivering Net Energy from the Facility to the Point of Delivery including but not limited to any losses, ancillary service costs, wheeling, and any applicable tariff charges.
3. NSP desires to purchase and Seller desires to sell, all of the Capacity and Net Energy of the Facility, subject to the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and NSP agree as follows:

AGREEMENT

ARTICLE I - DEFINITIONS

- 1.1 **AC.** Alternating electric current.
- 1.2 **Acceptance Criteria.** The criteria that will be used to determine whether and when the Facility is capable of producing Energy associated with the Committed Nameplate Capacity and delivering such Energy to the Point of Delivery, as set forth in Appendix A.
- 1.3 **Agreement.** This contract, including all appendices, for the purchase of Capacity and Net Energy entered into between Seller and NSP, as amended by the Parties from time to time in accordance with this Agreement.
- 1.4 **Available Capacity:** This term is defined in Section 5.3(c).
- 1.5 **Capacity:** The output potential a machine or system can produce or carry under specified conditions. The capacity of generating equipment is generally expressed in MW. Capacity is also referred to as "capability" in the industry and for the purposes of this Agreement the terms are synonymous.

- 1.6 Capacity Resource.** The amount of net generating Capacity associated with the Facility for which Capacity credit may be obtained under applicable planning reserve procedures and requirements. Initially, such requirements are set forth in Module E of MISO's OATT and MISO Business Practices Manual for Resource Adequacy.
- 1.7 Change of Control.** This term is defined in Section 9.2(a).
- 1.8 Commercial Operation.** When (a) one hundred percent (100%) of the Committed Nameplate Capacity of the Facility is installed, (b) the Facility has operated at a generation level acceptable to the Distribution Authority without experiencing any abnormal or unsafe operating conditions on any interconnected system, (c) Seller has obtained all Permits necessary to authorize that production and delivery, and (d) Seller or the Facility have completed all other Acceptance Criteria as set forth in Appendix B.
- 1.9 Commercial Operation Date.** The first Day following a successful demonstration that the Facility has reached Commercial Operation and Seller has met the other criteria of Appendix B; provided that such date must not be earlier than July 1, 2015 or later than December 31, 2016,
- 1.10 Committed Nameplate Capacity.** The total maximum designed power output, expressed in MW (AC), of all installed solar panels at the Facility as specified by the equipment manufacturer. Such capacity is capacity that Seller agrees to construct and maintain at the Facility in order to sell and deliver Capacity and Energy to NSP pursuant to this Agreement.
- 1.11 Damages.** This term is defined in Section 7.5(a).
- 1.12 Day** means a calendar day.
- 1.13 DC.** Direct electric current.
- 1.14 Delay Damages.** This term is defined in Section 7.4(d).
- 1.15 Distribution Authority.** The business unit within NSP responsible for operating the interconnection facilities, and the Distribution System applicable to Seller.
- 1.16 Distribution System.** The contiguously interconnected electric distribution facilities over which the Distribution Authority has rights (by ownership or contract).
- 1.17 Eligible Renewable Energy Resource.** Any resource that qualifies as a Renewable Energy resource eligible to be certified to receive, claim, own or use Renewable Energy Credits pursuant to the protocols and procedures developed and approved by the M-RETS Program.
- 1.18 Electric Metering Devices.** Revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the Energy from the Facility, including the metering current transformers and the metering voltage transformers.

- 1.19 Emergency.** Any condition or situation that in the judgment of NSP, the Distribution Authority, MISO or MRO (as communicated to NSP) (i) endangers or might endanger life or property or public safety (ii) affects or might affect NSP's ability, or the ability of any participant of MRO, or MISO, to maintain safe, adequate and continuous electric service to NSP's or the Distribution Authority's customers or the customers of any participant of MRO, or MISO.
- 1.20 Energy.** The amount of electricity either used or generated over a period of time; expressed in terms of MWh.
- 1.21 Environmental Contamination.** 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 Applicable Law, and present a material risk under Applicable Laws that the Site will not be available or usable for the purposes contemplated by this Agreement.
- 1.22 Environmental Law.** Any federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants, process waste water or otherwise relating to the environment or hazardous substances as amended from time to time.
- 1.23 Facility.** The generation and distribution facilities located on the Site and between the Site and the Point of Interconnection for the generation of solar powered electricity and delivery of such electricity to NSP. A description of the Facility is set forth in Appendix C and incorporated by reference.
- 1.24 FERC.** Federal Energy Regulatory Commission or its successor organization, if any.
- 1.25 Financier.** Any individual or entity providing money or extending credit (including any capital lease, sale, sale-leaseback or power purchase agreement) for (i) the construction, term, ownership or permanent financing of the Facility or (ii) working capital or other ordinary business requirements for the Facility. "Financier" shall not include common trade creditors of Seller.
- 1.26 Force Majeure.** This term is defined in Section 6.1.
- 1.27 Governmental Authority.** Any nation, government, state or other political subdivision thereof, whether foreign or domestic, including, without limitation, any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.
- 1.28 Guaranteed Price.** The prices expressed in dollars per MWh set forth in Section 2.3(a) and used as the basis for determining payments by NSP to Seller for the Net Energy of the Facility.

- 1.29 Hazardous Materials** means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human 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).
- 1.30 Interconnection Agreement.** The separate distributed generation interconnection agreement between Seller and Distribution Authority for the interconnection of the Facility to the Distribution System, as such agreement may be amended from time to time, that is described in Section 4.5.
- 1.31 Interconnection Facilities.** All the facilities installed for the purpose of interconnecting the Distribution System and 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, whether owned by Seller, the Distribution Authority or another entity..
- 1.32 kW.** Kilowatt.
- 1.33 kWh.** Kilowatt hour.
- 1.34 Material Adverse Effect.** Any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.
- 1.35 MISO.** Midcontinent Independent System Operator, Inc., a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware, or its successor organization, if any.
- 1.36 M-RETS Program.** The Midwest Renewable Energy Trading System program.
- 1.37 MRO.** The Midwest Reliability Organization, a NERC regional electric reliability council, or its successor organization, if any.
- 1.38 MW.** Megawatt.

- 1.39 MWh.** Megawatt hour.
- 1.40 NERC.** North American Electric Reliability Corporation or its successor agency, if any.
- 1.41 Net Energy.** The actual number of MWh generated by the Facility during the period being considered less any generating output in MWh used for the Facility's Station Auxiliary as measured by the meter installed pursuant to Section 3.2.
- 1.42 NSP.** This term is defined in the introductory paragraph and includes NSP's successors and assignees.
- 1.43 OATT.** Any Open Access Transmission Tariff on file with FERC, including MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, as amended from time to time.
- 1.44 Outage.** A physical state in which all or a portion of the Plant is Unavailable to provide Energy.
- 1.45 Parties.** NSP, Seller and their respective permitted successors and assignees.
- 1.46 Party.** NSP or Seller and their respective permitted successors and assignees.
- 1.47 Pending Facility Transaction.** This term is defined in Section 9.2(b).
- 1.48 Permits.** All state, federal and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the Facility.
- 1.49 Person.** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority or other entity.
- 1.50 PFT Notice.** This term is defined in Section 9.2(b)ii.
- 1.51 PI.** This term is defined in Section 9.17.
- 1.52 Point of Delivery.** The point at which NSP accepts title to and risk of loss for the Net Energy and Capacity sold and delivered by Seller to NSP and the amount of Net Energy delivered and purchased is established for purposes of billing. The Point of Delivery shall be at a location within Distribution Authority's system and is shown in Appendix A. For purpose of this Agreement, the Point of Delivery is the Point of Interconnection.
- 1.53 Point of Interconnection.** The point on the electrical system where the Facility is physically interconnected with the Distribution Authority's system. The Point of Interconnection is shown in Appendix A.
- 1.54 Proprietary Data.** This term is defined in Section 9.18(c).

- 1.55 Prudent Electric Industry Practice.** Those methods, practices and use of certain equipment, as changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electric equipment lawfully, safely, dependably and efficiently, including, but not limited to, the requirements of the National Electric Safety Code, the National Electrical Code, NERC, MRO procedures, NERC standards and procedures and any governmental code or regulations.
- 1.56 PSCW.** Public Service Commission of Wisconsin and any successor agency.
- 1.57 Qualifying Production Loss Event.** This term is defined in Section 5.3(b).
- 1.58 Renewable Energy Credits.** Any contractual right to the full set of non-Energy attributes, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, directly attributable to a specific amount of Capacity or electric Energy generated from an Eligible Renewable Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state or local) by virtue of or due to the Facility's actual Energy production or the Facility's Energy production capability because of the Facility's environmental or renewable characteristics or attributes, including any Renewable Energy Credits or similar rights arising out of or eligible for consideration in the M-RETS Program. For the avoidance of doubt, "Renewable Energy Credits" excludes (i) any local, state or federal tax credits, depreciation deductions or other tax credits, deductions or exclusions, guarantees, or preferred or special financing rates or terms, in each case providing a benefit to Seller (or any Financier) (or any benefit or payment in lieu of any of the foregoing) based on ownership of, or Energy production from, or operation of, any portion of the Facility, (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 and (iii) any federal, state, local or other grants related to the Facility.
- 1.59 Replacement Energy Costs.** If Seller commits an Event of Default pursuant to Section 7.2(a), the costs actually and reasonably incurred by NSP to purchase renewable Energy (including Capacity) or non-renewable Energy and Capacity from a third Person, in each case including any actual costs for delivery of such replacement Energy to NSP, and any associated transaction costs, less the amount that NSP would have paid Seller for an equivalent amount of Net Energy pursuant to this Agreement during the applicable period of time given the available solar resource, plus all incremental costs suffered by NSP to replace the Renewable Energy Credits that Seller fails to deliver to NSP under this Agreement with alternative solar Energy that meets the requirements of M-RETS and the PSCW, if applicable. In the event that Replacement Energy Costs for any hour are less than the Guaranteed Price for such hour, Replacement Energy Costs shall be deemed to be equal to the Guaranteed Price for such hour for purposes of this Agreement Liability limits of section 7.4 (c) apply.
- 1.60 Requirements of Law.** Collectively, the certificate of incorporation and bylaws or other organizational or governing documents of Seller or NSP and any United States or Canadian federal, state or provincial law, treaty, franchise, rule, regulation, order, writ, judgment,

injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or NSP or any of Seller's property or to which Seller or any of its respective properties are subject.

- 1.61 Seller.** This term is defined in the introductory paragraph and includes any of Seller's permitted successors or assignees.
- 1.62 Seller's Contractual Obligations.** As to Seller, any provision of any security issued by it or any material agreement, instrument or undertaking to which Seller is a party or by which it or any of its property is bound.
- 1.63 Site.** The real property on which the Facility will be constructed and located, including all related solar easements and on which Seller receives electric service. The legal description of the Site is set forth in Appendix C and incorporated by reference.
- 1.64 Station Auxiliary.** Energy used by Seller to operate the Facility.
- 1.65 Term.** The Term is as defined in Section 2.1..
- 1.66 Test Energy.** Any Net Energy generated by the Facility and delivered to the Point of Delivery prior to the Commercial Operation Date for the Facility.
- 1.67 Unavailable.** A physical state in which the Facility is not capable of providing Net Energy or Capacity to the Point of Delivery, or in which any other equipment or facility is not capable of performing its intended purpose.

ARTICLE II - SALE AND PURCHASE

2.1 Term.

This Agreement shall be effective upon execution by authorized representatives of both Parties, and shall continue until the end of the XX th year after the Commercial Operation Date unless otherwise terminated in accordance with its terms. Except as set forth in Section 2.3(b) with respect to Test Energy, NSP's obligation to purchase the Capacity and Net Energy of the Facility, as set forth herein, shall be effective on the Commercial Operation Date.

2.2 Conditions Precedent

Should NSP determine, in its sole discretion, that it has not received a sufficient number of subscription commitments to the Program, NSP shall have the right to terminate this Agreement without any further financial or other obligation to Seller as a result of such termination. If NSP fails to terminate this Agreement by XXXXXX, 2018, NSP shall be deemed to have waived its right to terminate this Agreement under this Section 2.2., and this Agreement shall remain in full force and effect thereafter.

2.3 Sale and Purchase. NSP agrees to purchase the entire Capacity and Net Energy of the Facility during the Term and to accept delivery of the Capacity and Net Energy at the Point

of Delivery during the Term, subject to the terms of this Agreement. Seller agrees to deliver and sell the entire Capacity and Net Energy from the Facility to NSP at the Point of Delivery for the Term. Seller shall not contract to sell any Energy or Capacity from the Facility to any Person other than NSP for the Term and Seller acknowledges that NSP is entitled to receive all Capacity and Energy from the Facility during the Term.

2.4 Energy Rate.

- (a) **Guaranteed Price.** From and after the Commercial Operation Date, NSP shall pay Seller the Guaranteed Price set forth in Exhibit E for the Net Energy that Seller delivers to NSP at the Point of Delivery. NSP and Seller agree that the applicable Guaranteed Price is intended to compensate Seller for both the Net Energy and Capacity delivered to NSP, and that Seller is not entitled to a separate price or payment for the Capacity of the Facility to which NSP is entitled.
- (b) **Test Energy.** NSP shall purchase all Test Energy produced by the Facility during startup and testing and delivered to NSP at the Point of Delivery at the NSP system average embedded production cost as reflected in NSP's retail electric rates for Year 1. For calendar year 2016, this value is XXX per kWh.
- (c) **Qualified Production Loss Event.** If delivery of Net Energy is curtailed by NSP pursuant to a Qualifying Production Loss Event (as defined in Section 5.3), NSP shall make payments to the extent provided in, and in accordance with, Section 5.3.

2.5 Tax Credits. Seller is responsible to apply and qualify for the federal investment tax credit pursuant to 26 U.S.C. Section 48 and any other tax credits or payments or other assistance, grants or credits that might be available to Seller or the Facility from any Governmental Authority or other source, and NSP agrees that Seller is entitled to receive any such credits, assistance or grants. Seller and NSP agree that the Guaranteed Price and other pricing set forth in this Agreement are not subject to adjustment or amendment due to Seller's receipt, or failure to receive, any such credits, assistance or grants, in whole or in part, after the date of this Agreement, including without limitation failure of the Facility to qualify to receive any tax credit for any reason.

2.6 Committed Nameplate Capacity. Seller agrees that the Committed Nameplate Capacity shall be XXX (AC), and that the Committed Nameplate Capacity shall include only Capacity from the Facility.

2.7 Capacity Accreditation. MISO places upon the Company certain planning, operating and reporting requirements. If required by MISO specifically for the Facility, Seller shall complete at its own expense all applicable testing and reporting requirements for the Facility, including any required capacity testing.

2.8 Renewable Energy Credits. The Parties agree that the Guaranteed Price includes compensation for the Renewable Energy Credits associated with the Net Energy and Capacity purchased by NSP pursuant to this Agreement and that NSP is entitled to utilize

any and all such Renewable Energy Credits for purposes determined by NSP, including without limitation to (i) meet any voluntary, statutory or regulatory mandate to own, construct or contract for the purchase of solar Energy, including but not limited to the terms of any PSCW order and any other similar existing or future requirement; (ii) meet the requirements of any green pricing or community solar garden program by which NSP resells the Net Energy to retail customers as solar or renewable Energy; and (iii) offset, avoid, reduce or obtain credit for reduction of pollutants or air emissions created by NSP's electric generating facilities. To the full extent allowed by such Applicable Law, NSP shall own or be entitled to claim all Renewable Energy Credits to the extent such credits may exist during the Term and, to the extent necessary, Seller shall assign to NSP all rights, title and authority for NSP to register, own, hold and manage such credits in NSP's own name and to NSP's account, including any rights associated with any renewable Energy information or tracking system that may be established with regard to monitoring, tracking, certifying or trading such credits. For the avoidance of doubt, Renewable Energy Credits do not include State and Federal Cash Incentive Payments or Credits.

ARTICLE III - DELIVERY, METERING AND BILLING

3.1 Delivery Arrangements.

- (a) Seller shall be solely responsible to deliver the Net Energy and Capacity from the Facility to the Point of Delivery. Net Energy shall be measured by electric metering devices located at the Point of Interconnection (the "Electric Metering Devices").
- (b) Seller shall be responsible for all distribution interconnection, electric losses, distribution, transmission, and ancillary service arrangements and costs required to deliver the Net Energy from the Facility to NSP at the Point of Delivery.
- (c) NSP shall be responsible for all electric losses, distribution, transmission and ancillary service arrangements and costs from the Point of Delivery to points beyond the Point of Delivery. NSP may elect at NSP's sole option the services and facilities to be utilized for the delivery of Energy from the Point of Delivery.

3.2 Metering Requirements. The transfer of electric Capacity and Energy between Seller and NSP shall be measured by metering equipment installed in accordance with the Interconnection Agreement at no cost to NSP under this Agreement. Seller shall provide NSP access to all metering equipment for all purposes necessary to perform under this Agreement and shall provide NSP the reasonable opportunity to be present at any time the metering equipment is to be inspected and tested or adjusted in accordance with the Interconnection Agreement. Seller shall provide NSP with all authorizations necessary to have access to the metering equipment, including obtaining any consent or other agreement from the Distribution Authority necessary to allow NSP such access. If the metering equipment fails to register, or is found upon testing to be inaccurate by more than one percent (1%) (for a mechanical meter) or three tenths of a percent (.3%) (for an electronic meter), an adjustment shall be made correcting all measurements by the inaccurate or defective device using the best available information; provided that such correction shall be limited to no more than the preceding one hundred eighty (180) Days prior to the

discovery of the error. Either Party may install back-up metering at its own cost; provided that such back-up metering meets the same technical standards applicable to the metering equipment.

- 3.3 Billing.** NSP shall read the meter approximately once a month. Within fifteen (15) Days of the date on which NSP reads the meter, NSP shall send Seller a settlement statement for the previous month that contains data for the computation of payments owed to Seller. Based on such settlement statement, Seller shall send NSP an invoice for Net Energy and Capacity, in accordance with the price terms of this Agreement, within fifteen (15) Days of the date on which NSP delivered such settlement statement to Seller. Seller shall use the invoice format provided by NSP. In the event that NSP is unable or fails to read the meter, if available and upon request, Seller shall provide to NSP data related to back-up metering.
- 3.4 Billing and Payment Records.** To facilitate payment and verification, Seller shall maintain all books and records necessary for billing and payments, including without limitation copies of all invoices and curtailment data with respect to the Facility for a period of at least two (2) years, and Seller shall grant NSP reasonable access to those books, records and data on the premises of the Facility or at the principal place of business of Seller. NSP may examine such books and records relating to transactions under and administration of this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours.
- 3.5 Payment.** NSP's payment to Seller for Net Energy and Capacity delivered shall be posted, if by mail, twenty (20) Days following the date of the bill. If such due date falls on a weekend or legal holiday, such due date shall be the next business day. Payments posted after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to three percent (3%) plus the average daily prime rate as determined from the "Money Rates" section of the Midwest Edition of the Wall Street Journal for the Days of the late payment period multiplied by the number of Days elapsed from and including the Day after the due date, to and including the payment date. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.
- 3.6 Wire Transfer.** NSP shall make payment of bills via wire transfer of funds if requested in writing by Seller, at Seller's sole expense, and if the request contains adequate payment information. NSP shall be entitled to presume conclusively, without any liability whatsoever, that the payment information furnished by Seller (for example, name, financial institution, account numbers and payee) is accurate. In no event will NSP be required to pay any bill more than once when the invoice was first paid in accordance with Seller's instructions.

ARTICLE IV - SELLER'S OBLIGATIONS

During the Term of this Agreement, Seller hereby agrees to be bound by and to perform the following affirmative obligations:

- 4.1 Design, Construction and Operation of the Facility.**

Seller shall:

- (a) At its sole expense, design and construct the Facility and any related facilities in accordance with Prudent Electric Industry Practice. The Facility shall at all times operate exclusively using the process described in the Working Statement.
- (b) In a timely manner, seek, obtain, maintain, comply with and, as necessary, renew and modify, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations that are required by any Requirement of Law or Governmental Authority as prerequisites to engaging in the activities envisioned by this Agreement and to meeting Seller's obligation to operate the Facility consistently with the terms of this Agreement.
- (c) At its sole expense, operate, maintain and repair the Facility in accordance with this Agreement, all Requirements of Law, Seller's Contractual Obligations, Permits, the practices and requirements of NSP, MISO and MRO, and in accordance with Prudent Electric Industry Practice.
- (d) At its sole expense, obtain and maintain the policies of insurance in the initial amount specified in Appendix D during the Term of this Agreement. The insurance policies shall list NSP as an additional insured and shall not be cancelable without sixty (60) Days prior written notice by the insurer to NSP.
- (e) Comply with MISO, MRO and NERC procedures and the requirements of any new similar authority, and cooperate with all reasonable requests by NSP relating to NSP's compliance with such entities.
- (f) Comply with all current NSP outage reporting requirements, as they may be revised from time to time, and as they apply to the Facility. Seller shall have suitable solar radiation and other meteorological meters of the types necessary to characterize fully the solar resource and ambient conditions to support calculations under this Agreement, including the estimation of the quantity of Energy subject to Qualifying Production Loss Event payments under Section 5.3.
- (g) No later than 60 days following the Effective Date of this Agreement, Seller shall conduct a Phase I environmental investigation of the Site and shall provide Company with a copy of the report summarizing the Phase I environmental investigation of the Site, together with any data or information generated pursuant to such investigation. The report shall include disclosure of any Environmental Contamination identified in the investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA,

along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Seller shall promptly disclose to Company the presence of any such Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

4.2 General Obligations.

- (a) Seller, during the Term of this Agreement, shall pay all present or future federal, state, municipal or other lawful taxes or fees applicable to Seller, the Site and the Facility or by reason of Seller's ownership or operation of the Site and the Facility and the sale of Energy or Capacity under this Agreement (excluding any federal, state, municipal, sales, use, excise or other similar taxes on the sale of electricity). Seller shall receive the benefit of any new tax credits, allowances or other credits related to the Site and the Facility.
- (b) Seller shall obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Environmental Laws.
- (c) To the best of Seller's knowledge, the Site does not contain any hazardous material or wastes (as defined by any applicable Environmental Law), whether or not the substance is prohibited, limited or regulated by any Governmental Authority. Seller agrees to defend, indemnify and hold NSP and its officers, directors, employees, agents and representatives, and their respective successors and assigns, harmless from and against all claims, actions, demands, losses, liabilities, damages, judgments, penalties, injuries and expenses arising from or related to any Environmental Contamination concerning Seller, the Facility or the Site, including but not limited to (a) any claim for personal injury or property damage by any Person arising out of, resulting from or caused by any violation of any applicable Environmental Law by Seller or concerning the Facility or the Site; (b) any assessment, fine, penalty, lien or other imposition by any Governmental Authority; and (c) any liability, losses or remedial costs suffered because a Governmental Authority finds NSP to be a responsible party, owner or operator of the Facility or Site.
- (d) The Parties acknowledge that this Agreement does not provide for the supply of any retail electric service by NSP to the Facility. Seller shall provide its own Station Auxiliary power and Energy pursuant to separate arrangements, which may include obtaining Station Auxiliary power and Energy from the gross output of the Facility when it is operating. Seller shall arrange with the Distribution Authority or applicable retail service provider to measure separately such Station Auxiliary to ensure proper computing of Net Energy. This may be accomplished with a single net meter as long as Station Auxiliary

power can be read separately from gross output. If the facility is ever a net user of electric energy, Seller expressly recognizes that, for purposes of this Agreement, 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 arrangement for the supply of retail electric services to the Facility is entered into with NSP or an affiliate of NSP.

- (e) Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority, NSP, the Parties and as otherwise required by Prudent Electric Industry Practice. NSP shall provide reasonable notice of NSP's specific requirements of Seller.
- (f) Seller shall continue to (i) to the extent applicable, preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all permits, rights, privileges, licenses and franchises necessary or desirable in the ordinary course of its business; and (ii) comply with all Seller's Contractual Obligations and Requirements of Law.
- (g) Seller shall provide to NSP such other information regarding the permitting, engineering, construction, condition and operations of Seller or the Facility, financial or otherwise, or other data concerning Seller or the Facility as NSP may, from time to time, reasonably request.

4.3 Merger. Seller shall not merge, consolidate or join with or into any other Person (or permit or suffer any subsidiary, if any, to do the same) without the prior written consent of NSP, which shall not be unreasonably withheld, receipt of which will be contingent upon Seller's demonstration to NSP's satisfaction that the proposed changes will not adversely affect the ability of Seller or any successor entity to perform its obligations under this Agreement.

4.4 Sale of Assets.

- (a) Seller shall not lease, sell, agree to sell, convey or otherwise transfer or dispose of (in one or a series of related transactions) any of its interest or title in any material portion of its Facility assets, now owned or hereafter acquired, except as part of a financing arrangement with a Financier (such as a sale-leaseback or a lease) or a collateral assignment or other security instrument in favor of a Financier, or in the ordinary course of business as parts need repair or replacement, without NSP's consent, which shall not be unreasonably withheld.
- (b) Notwithstanding any provision in this Agreement to the contrary, the members of Seller may not sell or transfer any of their membership interests in Seller to any Person without NSP's consent, which shall not be unreasonably withheld.

4.5 Interconnection Agreement.

- (a) The Parties acknowledge that Seller will be interconnecting into the Distribution Authority's system pursuant to the Interconnection Agreement. Seller shall be responsible for negotiating, entering into and performing the Interconnection Agreement with the Distribution Authority and any other necessary Persons for design, installation and operation of the Interconnection Facilities necessary to permit delivery and transformation of the Net Energy and Capacity on Seller's side of the Point of Delivery. Seller shall provide the Distribution Authority and any applicable transmission owner's written permission to release transmission study results to NSP.
- (b) The Parties acknowledge that NSP's responsibilities and obligations under this Agreement are those of NSP's merchant function, , and that this Agreement imposes no responsibilities or obligations on the Distribution Authority. The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Distribution Authority, which will be a separate and free-standing contract. Seller expressly recognizes that, for purposes of this Agreement, the Distribution Authority shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with NSP or an affiliate of NSP. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or NSP's rights, duties and obligations under this Agreement. Furthermore, this Agreement shall not be construed to create any rights between Seller and the Distribution Authority.
- (c) The Parties recognize that Seller will be obligated to comply with the terms of the Interconnection Agreement and the rules of the PSCW.

4.6 Renewable Energy Credits. To the full extent allowed by law, NSP shall own or be entitled to claim all Renewable Energy Credits as such credits may exist or be created during the Term. To the extent necessary, Seller shall provide NSP with any assistance or documentation necessary for NSP to claim such Renewable Energy Credits. Without limiting the foregoing, Seller will upon NSP request, assign to NSP all rights and authority for NSP to hold such credits in NSP own name and to NSP's account, including any rights associated with any renewable Energy tracking system that may be established with regard to monitoring or tracking such credits

4.7 Provision of Real-Time Data. Seller shall install equipment at the Point of Interconnect that is capable of providing real-time access to Facility production data directly to NSP or through the Distribution Authority. To the extent such data is not readily available electronically or in real time, Seller agrees to provide such data on a historical basis in a CSV format or Excel spreadsheet upon request by NSP.

ARTICLE V - NSP OBLIGATIONS; DISTRIBUTION SERVICE; CURTAILMENT

5.1 Cooperation. NSP agrees to cooperate with Seller in any applications that Seller is making for tax credits, grants or assistance as described in Section 2.4, at NSP's expense. NSP's obligation shall consist only of providing nonproprietary information in its possession, custody or control necessary to complete any such applications, responding to requests from the relevant Governmental Authorities and similar activities.

5.2 Collateral Assignments.

- (a) Subject to Section 9.1(b), NSP shall not be required to enter into a consent to collateral assignments of this Agreement except as provided by this Section 5.2. Subject to the terms and conditions of this Agreement, NSP shall, upon prior written request by Seller, execute a commercially reasonable consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form acceptable to NSP, provided that (i) Seller shall reimburse NSP for all reasonable expenses incurred by NSP in connection therewith, including without limitation reasonable attorneys' fees, (ii) NSP shall have no obligation to alter or modify the terms of this Agreement or provide any consent or enter into any agreement, that has a Material Adverse Effect on any of NSP's rights, benefits, risks, or obligations under this Agreement, and (iii) NSP's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.
- (b) NSP further acknowledges that the Financiers may have other or further requests with respect to the assignment of this Agreement (such as requests for legal opinions or certificates from NSP) and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by NSP. NSP will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith. Seller shall reimburse NSP for all reasonable expenses incurred by NSP in connection therewith, including without limitation reasonable attorneys' fees.

5.3 Curtailement; Production Losses.

- (a) The Parties acknowledge that there may be circumstances in which NSP, the Distribution Authority or another Person with authority will direct Seller to curtail deliveries of Energy and Capacity from the Facility in accordance with applicable laws, tariffs or agreements. If and to the extent a curtailment is due to (i) an Emergency, (ii) Force Majeure, (iii) failure of Seller to maintain all permits or authorizations necessary to deliver Net Energy to the Point of Delivery, or (iv) the operation of Seller's system protection equipment or any malfunction of Seller's equipment that causes the Facility to be disconnected from the Distribution System, Seller shall not be entitled to any compensation for any lost production; provided that nothing in this Section 5.3(a) or

elsewhere in this Agreement shall limit or affect any rights Seller may have against any Person under the Interconnection Agreement or under any other agreement or at law as a result of such events.

- (b) In the event that a curtailment is directed by NSP or other Person with authority or NSP refuses or fails to accept delivery of Net Energy and Capacity at the Point of Delivery for reasons other than as set forth in Section 5.3(a), (hereinafter a "Qualifying Production Loss Event") and the Facility was otherwise capable of providing and delivering Energy and Capacity to the Point of Delivery, then Seller shall be able to claim compensation pursuant to Section 5.3(c).
- (c) Upon the occurrence of a Qualifying Production Loss Event, Seller shall calculate the amount of Net Energy and Capacity that it would have produced and delivered to NSP at the Point of Delivery but for the Qualifying Production Loss Event, using the manufacturer's power curve for the solar panels (adjusted for actual operating experience at the Facility, as necessary) and the recorded solar irradiation at the Facility for each hour during the duration of the Qualifying Production Loss Event. For each hour during a Qualifying Production Loss Event, the lost production shall be based on the actual availability of all solar panels during the hour, excluding any solar panels unavailable for outages and reflecting any other operating restrictions applicable to any solar panels during the hour (the "Available Capacity"). The Available Capacity shall be multiplied by the product of hourly average solar resource as measured at the Site and the power curve specified by the manufacturer for each applicable solar panel and summed to equal the lost production of the Facility for that hour. Any actual Net Energy produced by the Facility and delivered to the Point of Delivery during the applicable hour shall be subtracted from the estimated lost production for that hour to obtain the amount in MWh of lost production experienced by Seller for that hour. The Parties may revise the calculation of Available Capacity and lost production based on changes in the actual operational characteristics of the Facility and other circumstances.
- (d) Upon the occurrence of a Qualifying Production Loss Event, NSP shall be obligated to pay Seller an amount equal to the Guaranteed Price then in effect that Seller would have received under this Agreement for the Net Energy, measured in MWh, that Seller would have otherwise produced and delivered to the Point of Delivery but for the Qualifying Production Loss Event.
- (e) Seller shall invoice NSP for amounts due as a result of Qualifying Production Loss Events together with its regular monthly invoices for the applicable month as set forth in Section 3.2. Seller shall include information with the invoice documenting (i) the nature and duration of the Qualifying Production Loss Event, (ii) meteorological data gathered at the Site for the period during such Qualifying Production Loss Event used to calculate the lost production amounts, and (iii) the computation of amounts due under this Section 5.3 for

the invoiced lost production, all in a format provided by NSP. NSP shall notify Seller within thirty (30) Days of receipt if NSP believes that the circumstances described do not constitute a Qualifying Production Loss Event and the reason for that conclusion. If the Parties cannot resolve the difference of opinion by negotiation, either Party may utilize the dispute resolution procedures in this Agreement.

- (f) Seller shall install, or arrange for the Distribution Authority to install pursuant to the Interconnection Agreement, equipment necessary to disconnect the Facility. Seller and NSP shall each use commercially reasonable efforts to develop a mutually acceptable procedure for NSP to notify Seller, of curtailments.

ARTICLE VI - FORCE MAJEURE

- 6.1 Force Majeure.** The performance of each Party under this Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure that, by exercise of due diligence and foresight, could not reasonably have been avoided, including but not limited to an Emergency; a Force Majeure event on the Distribution System as defined in the Interconnection Agreement to the extent it causes the Facility to be physically incapable of delivering Energy or NSP from receiving Energy at the Point of Delivery; a Force Majeure event (or comparable uncontrollable circumstances as may be defined in applicable tariffs or rules) on the Distribution System or the regional transmission system to the extent it causes NSP to be unable to accept delivery of Energy at the Point of Delivery or to transmit such energy from and after the Point of Delivery; flood; earthquake; storm; fire; lightning; epidemic; war; riot; civil disturbance; sabotage; terrorism; labor strike, slowdowns or stoppages or other labor disruptions against Seller or Seller's contractors or subcontractors; act of God or any other cause beyond the control of the Party claiming Force Majeure. However, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. In no event will the existence of Force Majeure extend this PPA beyond its stated Term.
- 6.2 Remedial Action.** A Party shall not be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed.
- 6.3 Exclusions from Definition of Force Majeure.** Notwithstanding anything in this Agreement to the contrary, "Force Majeure" shall not mean:

- (a) General inclement weather normally experienced within the vicinity of the Site and affecting construction, start-up, operation or decommissioning of the Facility or related facilities.
- (b) Changes in market conditions, governmental action or weather conditions that affect the cost of Seller's supply of Energy from the Facility.
- (c) Unavailability of solar irradiation.
- (d) Unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to a qualifying event of Force Majeure.
- (e) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining or renewing any Permit.
- (f) Litigation or administrative or judicial action pertaining to this Agreement, the Site, the Facility, the acquisition, maintenance or renewal of financing or any Permits, or the design, construction, maintenance or operation of the Facility.
- (g) Any acts or omissions of any third party, including, without limitation, any vendor or supplier of Seller, except to the extent due to a qualifying event of Force Majeure.
- (h) Any mechanical or equipment breakdown or other mishap at the Facility or events or conditions attributable to normal wear and tear or flaws or failure to operate or maintain such component in accordance with Prudent Electric Industry Practice, unless such mishap is caused by a qualifying event of Force Majeure.

6.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall provide notice to the other Party. The notice shall be in writing and be given twenty-four (24) hours after the occurrence or the Party's knowledge of the occurrence of the Force Majeure event or, if such notice is not possible, as soon as practicable thereafter and include the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

ARTICLE VII - TERMINATION/DEFAULT/REMEDIES

7.1 Events of Default by NSP. The following shall each constitute an Event of Default by NSP:

- (a) NSP breaches any curable non-monetary material obligation under this Agreement and fails to cure such breach within thirty (30) Days after written notification by Seller of the breach.
- (b) After the Commercial Operation Date, for any reason other than an event of Force Majeure or an Event of Default by Seller, and except when Seller is

being compensated for Qualifying Production Loss Event as allowed pursuant to Section 5.3, NSP refuses to purchase Energy after the Commercial Operation Date for either ninety (90) consecutive Days or one hundred twenty (120) nonconsecutive Days in any three hundred sixty-five (365) Day period.

- (c) NSP fails to make any material payment due under this Agreement within thirty (30) Days after written notice from Seller that such payment is past due, unless such payment is contested or a right of set-off has been claimed by NSP.
- (d) Any other material breach of this Agreement not specifically enumerated that is not cured within thirty (30) Days after NSP receives written notification of default from Seller.

7.2 Events of Default by Seller. The following shall each constitute an Event of Default by Seller:

- (a) For any reason other than an event of Force Majeure or an Event of Default by NSP, the Facility being Unavailable to provide Energy for ninety (90) consecutive Days or one hundred twenty (120) non-consecutive Days in any three hundred sixty-five (365) Day period commencing on the Commercial Operation Date and prior to expiration of the Term of this Agreement.
- (b) Seller breaches any curable material obligation under this Agreement and fails to cure the breach within thirty (30) Days after written notification by NSP of the breach.
- (c) Any other material breach of this Agreement not specifically enumerated that is not cured within thirty (30) Days after Seller receives written notification of default from NSP.
- (d) The Facility shall fail to achieve Commercial Operation on or before sixty (60) Days following the latest authorized Commercial Operation Date for reasons other than as a result of a Force Majeure or an Event of Default by NSP.

7.3 Termination.

- (a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 7.1 or 7.2, as applicable, or upon the occurrence of an incurable Event of Default, the non-defaulting Party may terminate this Agreement by notifying the defaulting Party in writing of the decision to terminate and the effective date of the termination.
- (b) In the event (i) the Facility is Unavailable to provide Energy for ninety (90) consecutive Days or one hundred twenty (120) non-consecutive Days in any three hundred sixty-five (365) Day period commencing on the Commercial Operation Date and prior to expiration of the Term of this Agreement or (ii) the Facility fails to achieve Commercial Operation on or before the last authorized Commercial Operation Date for any reason other than Force

Majeure, if mutually agreeable to Seller and NSP, NSP agrees to forego its right to terminate this Agreement so long as for the duration of such circumstance, Seller compensates NSP for actual Damages incurred, including but not limited to the difference, if any, between the Guaranteed Price and Replacement Energy Costs.

- (c) Upon termination of this Agreement by NSP due to an Event of Default by Seller pursuant to Section 7.3(a), NSP shall have no future or further obligation to purchase the Capacity or Net Energy of the Facility or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination. Upon termination of this Agreement by Seller due to an Event of Default by NSP pursuant to Section 7.3(a) Seller shall have no future or further obligation to deliver the Capacity or Net Energy of the Facility to NSP or to satisfy any other obligation of this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination. After the effective date of termination, this Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of or benefits from the Facility or the Distribution System.
- (d) Notwithstanding any provisions in this Agreement to the contrary, upon the occurrence of an Event of Default by Seller, NSP shall provide notice of the Event of Default to each Financier for which an address or other contact information has been provided to NSP by Seller. Each Financier shall have the right to cure the Event of Default on behalf of Seller within the cure periods set forth in Section 7.2, and NSP agrees to accept any such cure to the same extent as if made by Seller. If a Financier needs to foreclose on the Facility or otherwise take legal action to gain possession of the Facility in order to cure the applicable Event of Default, the applicable cure period shall be extended by the amount of time necessary for the Financier, using all reasonable due diligence, to obtain possession of the Facility. If a Financier, or its permitted designee, obtains possession of the Facility and assumes all of the obligations of Seller under this Agreement, and cures any Event of Default, NSP agrees to recognize the Financier, or its permitted designee, as Seller under this Agreement and to perform its obligations to such Financier or its permitted designee.
- (e) If an Event of Default by Seller will require more than the prescribed cure period to cure, and Seller is diligently pursuing a cure, as reasonably demonstrated to NSP, then the applicable cure period shall be extended up to an additional ninety (90) Days so long as Seller is diligently pursuing the cure. This provision shall not apply to monetary defaults.
- (f) If the Parties are engaged in a dispute as to whether an Event of Default has occurred or whether a Party has the right to terminate this Agreement, and the Parties are handling the dispute through the procedures established in Article VIII, the Party claiming the Event of Default or the right to terminate shall not

be entitled to terminate this Agreement until a ruling of the arbitrators is received pursuant to Section 8.2

7.4 Other Damages

- (a) For all claims, causes of action and damages, the Parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by this Agreement. Neither the enumeration of Events of Default in Sections 7.1 and 7.2, nor the termination of this Agreement by a non-defaulting Party pursuant to Section 7.3(a), shall limit the right of a non-defaulting Party to rights and remedies available at law, including but not limited to claims for breach of contract or failure to perform by the other Party and for direct damages incurred by the non-defaulting Party as a result of the termination of this Agreement.
- (b) Except as otherwise specifically and expressly provided in this Agreement, no Party shall be liable to the other Party under this Agreement for any indirect, special, punitive, exemplary, incidental or consequential damages, including without limitation loss of use, loss of revenues, loss of profit, interest charges, cost of capital, or claims of customers to which service is made, from any cause whether arising under statute or in tort or contract. Notwithstanding the foregoing, in the event that NSP breaches this Agreement by failing to purchase or accept delivery of Energy and Capacity (except as contemplated for curtailments allowed pursuant to Section 5.3 or as otherwise excused pursuant to the terms of this Agreement), Seller shall be entitled to seek damages equal to (i) the amounts Seller would otherwise have been paid under this Agreement for such Energy and Capacity if it had been purchased or accepted for delivery by NSP or (ii) in the event Seller sells such Energy and Capacity to a third party for less than the amount Seller would have been paid by NSP under this Agreement, the difference between the amounts Seller would otherwise have been paid under this Agreement and the price Seller received for such Energy and Capacity sold to a third party. In no event shall one Party's liability to the other exceed any limit of liability established for either Party under any Requirements of Law.
- (c) Except as otherwise provided in this Section 7.4, Seller's aggregate financial liability to NSP for Replacement Energy Costs, Renewable Energy Credits, and other damages shall not exceed \$XXX. The limitations on damages set forth in this Section 7.4 shall not apply to damages arising out of any of the following events:
 - (i) Actual fraud or other material intentional misrepresentation or material misconduct sanctioned by, or at the direction of, Seller in connection with this Agreement or the operation of the Facility;

- (ii) The sale by Seller to a third party, or unauthorized diversion by Seller, of Energy committed to NSP under this Agreement, except during an Event of Default by NSP;
 - (iii) Seller's failure to apply any property insurance proceeds to reconstruction of the Facility following a casualty to the extent required by this Agreement;
 - (iv) Damages incurred by NSP pursuant to Section 7.5;
 - (v) Any Environmental Contamination caused by Seller in connection with this Agreement; or
 - (vi) The filing of an involuntary bankruptcy petition against Seller (other than by NSP), which petition is not dismissed within sixty (60) Days of its filing, or the filing of a voluntary petition in bankruptcy by Seller.
- (d) If Seller fails to meet the Commercial Operation Date within sixty (60) Days following the latest authorized Commercial Operation Date for reasons other than Force Majeure, Seller shall pay damages to NSP on account of such delay ("Delay Damages") in the amount of \$XXX multiplied by the MW of the Committed Nameplate Capacity for each Day of such delay. All Delay Damages shall begin to accrue on the Day after the missed Commercial Operation Date and shall continue to accrue until the Commercial Operation Date is achieved or this Agreement is terminated. For so long as Seller pays Delay Damages to NSP in full as they accrue, NSP agrees to forego its right to terminate this Agreement due to Seller's failure to meet the Commercial Operation Date for up to one hundred eighty (180) Days, provided that Seller is not otherwise in default under this Agreement. All Delay Damages shall be cumulative. Limitations described under 7.4 (c) shall apply.

7.5 Indemnification.

- (a) Seller and NSP agree to defend, indemnify and hold each other, and their respective officers, directors, employees and agents, harmless from and against all claims, demands, losses, liabilities and expenses (including reasonable attorneys' fees) (collectively "Damages") for personal injury or death to Persons and damage to each other's physical property or facilities or the property of any other Person to the extent arising out of, resulting from or caused by the negligent or intentional acts, errors or omissions of the indemnifying Party. Furthermore, each Party shall defend, indemnify and hold the other harmless from and against all damages that are or were incurred or suffered by the indemnified Party and that relate to the indemnifying Party's breach or failure to perform any of the covenants, agreements, obligations, representations or warranties contained in this Agreement. Nothing in this Section 7.5(a) shall relieve Seller or NSP of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply

notwithstanding any negligent or intentional acts, errors or omissions of the indemnitees but the indemnifying Party's liability to pay Damages to the indemnified Party shall be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for its Damages resulting from its sole negligence or intentional misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

- (b) The following representation shall be made only as of the Commercial Operation Date and not as of the date hereof: Seller represents and warrants that, to the best of its knowledge based solely on the Phase I environmental assessment performed on the Site, no portion of the Site or the improvements thereon has been used by previous or current owners or operators or Seller to generate, manufacture, refine, transport, treat, store, handle or dispose of toxic material, hazardous substances, solid waste or hazardous wastes, as such terms are defined in any applicable Environmental Law, and Seller does not intend to use any of the Site for such purposes, and Seller is not aware of any spills, leaks or discharges of any such hazardous or toxic materials on the Site. To the best of Seller's knowledge, based solely on the Phase I environmental assessment performed on the Site, the Site does not contain, through the action or inaction of previous owners or operators or Seller, asbestos, urea formaldehyde foam insulation, PCBs, other toxic materials, hazardous substances or any other chemical, material or substance, exposure to which may or could pose a health hazard, whether or not the substance is prohibited, limited or regulated by any Governmental Authority, whether used in the Facility or stored on the Site.
- (c) The following representation shall be made only as of the Commercial Operation Date and not as of the date hereof: Seller represents and warrants that Seller has not received a written summons, citation, directive, letter or other written communication from any Governmental Authority concerning the existence of any condition on or affecting the Site that currently violates or that, with the passage of time, will violate any applicable Environmental Law or that otherwise indicates that Seller may be subject to any potential Environmental Contamination with respect to the Site or the Facility. To the best of Seller's knowledge, Seller, the Facility and the Site are not subject to any existing or pending investigation or inquiry by any Governmental Authority or to any remedial obligations under any applicable Environmental Law. These representations and warranties would continue to be true and correct following disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances pertaining to Seller, the Facility and the Site.
- (d) From and after the Commercial Operation Date, Seller agrees to defend, indemnify and hold NSP and its officers, directors, employees, agents and representatives, and their respective permitted successors and assigns,

harmless from and against all claims, actions, demands, losses, liabilities, damages, judgments, penalties, injuries and expenses arising under any Environmental Law concerning Seller, the Facility or the Site, including but not limited to (a) any claim for personal injury or property damage by any Person arising out of, resulting from or caused by any violation of any applicable Environmental Law by Seller or concerning the Facility or the Site; (b) any assessment, fine, penalty, lien or other imposition by any Governmental Authority; and (c) any liability, losses or remedial costs suffered because a Governmental Authority finds NSP to be a responsible party, owner or operator of the Facility or Site, except in each case to the extent that the claim, assessment, fine penalty, lien, imposition, liability, loss or remedial costs are due to NSP's negligence, fraud or intentional misconduct.

ARTICLE VIII - DISPUTE RESOLUTION.

- 8.1** In the event of any dispute arising under this Agreement (a "Dispute"), within ten (10) business days following notice issued by either Party pursuant (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) business days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute thereafter, either Party may seek available legal remedies.
- 8.2** If no Dispute notice has been issued within twenty-four (24) months following the occurrence of events or 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.
- 8.3** SELLER AND NSP 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 AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.

ARTICLE IX - MISCELLANEOUS

9.1 No Assignment.

- (a) Except as provided in Sections 4.4 and 5.2, the rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Seller's consent shall not be required for NSP to assign this Agreement to an affiliate of NSP, provided that NSP provides assurances and executes documents reasonably required by Seller and the Financier regarding NSP's continued liability for all of NSP's obligations under this Agreement in the event of any nonperformance on the part of such assignee. Such assignments may be subject to approval by the PSCW. In the event that the permitted assignee has or obtains an investment grade unsecured bond rating equivalent to or better than the unsecured bond rating of NSP (but in no event worse than the equivalent of BBB-), then Seller agrees to relieve NSP from its obligations under this Agreement if NSP requests to be so relieved in a written notice provided to Seller. Any purported assignment of this Agreement in the absence of the required consent as required by this Section 9.1 shall be void.

9.2 Change of Control of Seller

- (a) Any direct or indirect change of control of Seller, whether voluntary or by operation of law (a "Change of Control"), shall require the prior written consent of NSP, which shall not be unreasonably withheld, delayed or conditioned; provided that, notwithstanding any other remedy, in no circumstance does NSP have the obligation to consent to any Change of Control prior to the issuance and expiration of the PFT Notice.
- (b) Pending Facility Transaction:
 - (i) For purposes of this Agreement, a "Pending Facility Transaction" means (1) any Change of Control of Seller, (2) the issuance by Seller or any of its affiliates of a request for proposals or the response by Seller or any of its affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale of the Facility or any group of assets or equity interests that includes the Facility, (3) the commencement by Seller or any of its affiliates of substantive negotiations with any third party with respect to the sale of the Facility or any group of assets or equity interests that includes the Facility, or (4) the execution by Seller or any of its affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, that contemplates the sale of the Facility or any group of assets or equity interests that includes the Facility.
 - (ii) Seller shall give to NSP at least ninety (90) Days prior notice of any Pending Facility Transaction (a "PFT Notice"). Any PFT Notice shall

include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. Seller shall have no obligation to sell, nor shall NSP have any obligation to purchase, the Facility following any PFT Notice. Upon expiration of the PFT Notice, Seller and its affiliates shall be free for a period of nine (9) months thereafter to proceed with the transaction that was subject to the PFT Notice. If Seller and its affiliates have not closed the proposed Pending Facility Transaction within such nine (9) month period, this Section 9.2(b)ii shall again apply to any proposed Pending Facility Transaction.

- (iii) NSP shall not be obligated to provide Seller with any consent or other document in connection with this Agreement until Seller has provided the PFT Notice required by this Section 9.2(b).

9.3 Notices. Any notice, demand, request or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

With copies to:

on behalf of NSP, and to:

on behalf of Seller.

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request or communication shall be deemed delivered on receipt if delivered by hand or facsimile, on the next business day if delivered by overnight courier and on the fifth (5th) business day after deposit by the sending party if delivered by U.S. mail.

9.4 Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive or definitive or to affect the meaning of the contents or scope of this Agreement.

9.5 No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

- 9.6 No Dedication.** No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of NSP as an independent public utility corporation or Seller as an independent individual or entity and not a public utility.
- 9.7 Integration; Amendment.** This Agreement, together with all Appendices attached hereto, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
- 9.8 Governing Law.** This Agreement is made in the State of Wisconsin and shall be interpreted and governed by the laws of the State of Wisconsin and/or the laws of the United States, as applicable.
- 9.9 Relationship of Parties.**
- (a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and NSP or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and NSP shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
 - (b) The relationship between NSP and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of this Agreement, NSP shall have no general right to prescribe the means by which Seller shall meet its obligations under this Agreement.
 - (c) Seller shall be solely liable for the payment of all wages, taxes and other costs related to the employment of persons to perform Seller's obligations under this Agreement, 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 NSP for any purpose, nor shall Seller represent to any Person that it is or shall become an NSP employee or agent.
- 9.10 Good Faith and Fair Dealing; Reasonableness.** The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a Party a right to determine, require, specify or take similar action

with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

- 9.11 Severability.** Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provision with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- 9.12 Cooperation.** The Parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.
- 9.13 Counterparts.** This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.
- 9.14 Standard of Review.** This Agreement is contingent upon appropriate authorization from FERC under Section 205 of the Federal Power Act. The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the term of the transaction described in this Agreement. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of Seller and NSP to a proposed change, the standard of review for changes to the Guaranteed Price under this Agreement proposed by NSP, Seller, a non-party or FERC 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) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).
- 9.15 Use of NSP's Name.** Seller shall not use NSP's (or any of its affiliates') name, logos or other marks in connection with this Agreement or otherwise without the prior written consent of NSP, which consent shall be within NSP's sole discretion.
- 9.16 Press Releases and Media Contact.** Upon the request of either Party, the Parties shall develop a mutually agreed upon joint press release to be issued as of the Effective Date describing the location, size, type and timing of the Facility, the long-term nature of this Agreement and other relevant factual information about the relationship of the Parties; provided, however, that at Seller's request, the Parties will delay the issuance of the press release until a date mutually agreeable to the Parties. In the event during the Term either Party is contacted by the media concerning this Agreement or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked and the substance of any information provided to the media
- 9.17 Solar Panel Performance and Meteorological Data.** Seller shall provide NSP at Seller's expense, with real time generation performance and meteorological data for the solar Facility for the Term of this Agreement. Seller shall undertake at Seller's expense, to install, operate and maintain a Plant Information System ("PI") at the Facility. Seller shall

provide NSP real time access to all data gathered from PI and shall ensure that real time communications capabilities are available and maintained for the transmission of all PI data.

9.18 Confidentiality.

- (a) Except as otherwise agreed to by the Parties, and except for Appendix E, this Agreement and all appendices, Exhibits and amendments are not confidential, proprietary or trade secret.
- (b) The Parties acknowledge and agree that during the course of the performance of their respective obligations under this Agreement, either Party may need to provide information to the other Party that the disclosing Party deems confidential, proprietary or trade secret.
- (c) All documentation and data, including but not limited to special techniques, methods, computer programs and software, that the disclosing Party considers proprietary and trade secret and furnishes to the receiving Party and wants the receiving Party to maintain as confidential shall be designated as proprietary, confidential or trade secret (collectively, "Proprietary Data") and shall be treated by the receiving Party to be proprietary, confidential or trade secret. The disclosing Party hereby grants to the receiving Party authority to use Proprietary Data only for the purposes of this Agreement. The receiving Party agrees to keep such Proprietary Data confidential, to use it only for work necessary to the performance of this Agreement, and not to sell, transfer, sublicense, disclose or otherwise make available any such Proprietary Data to others.
- (d) Notwithstanding the preceding, this Section 9.18 and the restrictions on the receiving Party shall not apply to any data or documentation:
 - (i) That is in the public domain at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;
 - (ii) That is independently developed by the receiving Party; or
 - (iii) That becomes known to the receiving Party from an ultimate source other than the disclosing Party without breach of this Agreement by the receiving Party.
- (e) NSP shall be entitled to disclose or use Proprietary Data in any proceedings before the PSCW or a similar regulatory commission or agency if it is required or advantageous to do so, in NSP's sole discretion and upon written notice to Seller. In such an event, NSP will take all reasonable actions to limit the scope of any disclosure, shall only disclose Proprietary Data subject to applicable rules and regulations protecting its proprietary nature, and shall use commercially reasonable efforts to resist all efforts by any Person under the Minnesota Data Practices Act to obtain any such Proprietary Data. Seller shall

cooperate with NSP to limit the scope of any information for which Seller is requiring designation as proprietary to information that Seller still deems, at the time, to be trade secret.

- (f) Notwithstanding anything to the contrary in this Section 9.18, NSP may disclose Proprietary Data of Seller to any third Person who is subject to a confidentiality agreement that contains provisions at least as restrictive as those set forth herein; provided, however, that NSP agrees to make commercially reasonable efforts to avoid disclosure in response to third Person requests made solely for apparent competitive purposes. NSP agrees to make reasonable efforts to notify Seller of disclosure of Proprietary Data in a timely manner.
- (g) Notwithstanding anything to the contrary in this Section 9.18, NSP may disclose Proprietary Data to Xcel Energy Services Inc. and its employees without the consent of Seller.

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

Dated: _____, XXX, LLC, a Wisconsin limited liability company

By: _____
Name: _____
Its: _____

Dated: _____,

**NORTHERN STATES POWER
COMPANY, a Wisconsin corporation**

By: _____
Name: _____
Title: _____,
Xcel Energy Services Inc., as agent for Northern
States Power Company

APPENDIX A

Points of Interconnection and Delivery

Below is a diagram showing the location of the Point of Delivery.

Model

APPENDIX B

Acceptance Criteria

Seller and the Facility shall be deemed to have reached Commercial Operation when each of the following has occurred:

1. The Facility and Interconnection Facilities are physically complete as required by this Agreement and the Interconnection Agreement and are capable of transmitting, transforming and delivering the Net Energy and Capacity to the Point of Delivery in accordance with the Interconnection Agreement, and Seller is both obligated under, and in compliance with, the Interconnection Agreement and the rules of the PSCW.
2. The metering devices pursuant to Section 3.1 of this Agreement have been installed and identified by NSP, as confirmed by NSP in the confirmation notice and procedure described in Item 4 below.
3. The Facility is capable of producing electricity substantially in accordance with the manufacturer's power curve to the full extent of the Committed Nameplate Capacity, and has produced and delivered such Energy for no less than seventy-two (72) hours during which solar irradiation is available at sufficient intensity to operate the panels.
4. Seller has provided NSP with written notice that the preceding three criteria have been met and a certificate of insurance reflecting compliance with Section 4.1(e) and Appendix D of this Agreement, and NSP has confirmed in writing to Seller that the Facility has reached Commercial Operation. NSP shall confirm or dispute that the Facility has reached Commercial Operation within ten (10) business days of receipt of Seller's notice. NSP's failure to provide confirmation or other response to Seller's notice within ten (10) business days after receipt of Seller's notice shall constitute confirmation of Commercial Operation.

APPENDIX C

Legal Description of the Site

DESCRIPTION OF PREMISES

Parcel ID Sec/Twp/Rng
Description

Description of the Facility

Model

APPENDIX D

Insurance Requirements

- 1.0 Seller shall procure and maintain throughout the Term, at its own expense, the following policies of insurance:
 - A. If the Seller has employees, a Workers' Compensation and Employer's Liability insurance that complies with the laws of Wisconsin to the extent of statutory limits;
 - B. Comprehensive or Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence.
 - C. The Seller shall provide proof of Completed Operations Coverage from the General Contractor providing installation or repairs of or to the facility. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Agreement, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage and products/completed operations liability coverage;
 - D. In the event that Seller owns or hires vehicles, Comprehensive Automobile Liability Insurance to the extent applicable with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired or non-owned; and
 - E. All other insurance required by regulation or law as deemed appropriate by Seller.
- 2.0 The amounts of insurance required above may be satisfied by Seller buying primary coverage in the amounts specified or by buying a separate excess umbrella liability policy together with the lower limit primary underlying coverage. The structure of the coverage is Seller's option, as long as the total amount of insurance meets the requirements of this Agreement.
- 3.0 The policies required of Seller shall be "occurrence" form policies. Seller may not use "claims-made" form coverage to meet its obligations without the prior written consent of each such policy from NSP.
- 4.0 Seller's Comprehensive or Commercial General Liability policies and Umbrella or Excess Liability policies shall include each of the following endorsements, and its Workers' Compensation and automobile liability policies, if required, shall include the last endorsement listed below:
 - a. NSP and its directors, officers, employees and agents shall be additional insureds under all policies;
 - b. The policies are to be primary with respect to the interest of NSP and its directors, officers, employees and agents, and any other insurance maintained by any of them shall be excess and not contributory with Seller's insurance;

- c. Each insurer shall waive all rights of subrogation against NSP and its directors, officers, employees and agents;
 - d. Notwithstanding any other provision of a policy, no policy shall be cancelled, expire or changed in a material way by the insurer without thirty (30) Days prior written notice to NSP.
- 5.0 Seller or its insurers or agents shall provide NSP with certificates of insurance evidencing the policies and endorsements described herein within thirty (30) Days of the Commercial Operation Date. Failure to obtain the insurance coverage required shall in no way relieve or limit Seller's obligations and liabilities under other provisions of this Agreement.

APPENDIX E

Guaranteed Price

Guaranteed Price: The Guaranteed Price for Net Energy and Capacity purchased by NSP during the term and delivered to the Point of Delivery during the term shall be as follows and shall reset on the 1st of each calendar year: The first year and the last year of operation (COD) may not be a full twelve months.

Year	Rate (\$/kWh)
1	
2	
3	
4	
5	
6	
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10	
11	
12	
13	
14	
15	
16	
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24	
25	
26	

APPENDIX F

Model