b. **Replacement.** If upon testing, the telemetering facilities are inaccurate and cannot be reasonably corrected such that their accuracy is maintained over a period of time, the Company shall modify, replace or repair the telemetering facilities as necessary to provide accurate measurements, at the Customer's expense.

c. **Access.** The Customer shall provide the Company access to the premises at all reasonable hours to install, turn on, disconnect, inspect, test, read, repair or remove the telemetering equipment. The Customer may, at its option, have a representative witness this work.

d. **Remote Terminal Unit.** The Company shall be responsible for the installation of all data acquisition equipment, including a remote terminal unit ("*RTU*") (output port operating in accordance with the Company's specifications and communications protocol) and related surge protection and isolation equipment needed by the Company for the establishment of the Points of Interconnection. The Customer shall be responsible for the cost of such equipment. Upon any failure of the data acquisition system, the Parties shall verbally communicate essential operating data.

8.5 **Scheduling of Generation.** The Customer shall be responsible for coordinating its generation schedule with that of its energy customers. Power and energy from the Facility shall be scheduled per the scheduling business practices of the Company, the Company's Retail Access Service Tariff, the OATT, and any ITC, ECAR or NERC reliability requirements, all as applicable.

8.6 **Generation Imbalance Service.** Customer will be responsible for any generation imbalance charges imposed by ITC, as generally described in Schedule A, as it may be amended from time to time (a current version is attached) in connection with any differences between the energy actually delivered by the Facility and the energy scheduled to be delivered by the Facility.

ARTICLE 9
Billing and Payment

9.1 **Billing Procedures.** Within thirty (30) days after the first day of each month, the Company shall submit an invoice to the Customer for charges arising under Section 3.3 and 8.6 of this Agreement not otherwise previously reimbursed by the Customer, and other charges as may be provided for under this Agreement (e.g., Schedule B – Monthly Charges). The Customer shall pay the invoice within twenty (20) days from the date of the invoice. All payments shall be made in immediately available funds payable to the Company, or by electronic funds to a designated bank account named by the Company. Interest shall be assessed on payments received after their due date at the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" and (b) the

maximum rate permitted by applicable law, said interest to be calculated from the due date of the bill to the date of payment.

9.2 **Billing Disputes.** In the event the Customer disputes a bill or portion thereof, or disputes any other claim or adjustment, the Customer shall pay the bill when due in the amount rendered and provide the Company with written notice of the objection at that time. Upon receipt of the Customer's payment, the Company will submit the matter to an appropriate forum for resolution of the dispute. If it is subsequently determined or agreed that an adjustment to the bill is appropriate, the Company shall issue a revised bill. If the revised bill requires the Customer to make additional payment, then the Customer shall pay the additional amount within ten (10) Business Days of the Customer's receipt of the revised bill. If the revised bill requires the Company to refund all or any portion of a payment, then the Company shall refund to the Customer the appropriate amount within ten (10) Business Days of the issuance of the revised bill. Any over- or under-payment shall bear interest at the rate provided in this Article and shall be assessed from the time of said over/under-payment to the date of issuance of the revised bill or refund.

9.3 **Audit Rights.** Upon reasonable notice to the Company, the Customer may from time-to-time audit the books and records of the Company related to all charges for costs invoiced to the Customer by the Company.

ARTICLE 10
Communications

Following the first Commercial Operation Date, the Customer shall maintain mutually satisfactory operating communications for 24-hour, seven days a week coverage with the Michigan Electric Power Coordination Center (MEPCC) and the ITC System Operations Center (SOC), or other operations center designated by the Company. Twenty-four hour contact is not necessary during periods when the generation is not operating or not operating in parallel with the ITC System. Both Parties will notify the other with any new contact numbers when appropriate.

10.1 The Customer shall provide the following information to the Real Time Operations Desk at the MEPCC (phone number 734-665-3425).

- Generation schedules and changes to generation schedules according to Section 8.5
- Notification of unit startup or shutdown
- Other information according to Section 7.8

10.2 The Customer shall provide the following information to the Real Time Operations Desk at the SOC (phone number 313-235-9528).

- Coordination of unit startup or shutdown

- Coordination of reactive power according to Section 7.6(b)
- Operation of breakers according to Section 7.6

10.3 The Customer's agent is [to be provided by Customer]. The contact number for the Customer's agent is [to be provided by Customer]. The Customer's interim Facility control room number is 313 436-8141.

ARTICLE 11
Continuity of Service

11.1 **Curtailment of Distribution/Interconnection Facilities.** The Company and the Customer shall utilize their reasonable efforts to (a) cause curtailment, interruption or reduction of service of the Distribution/Interconnection Facilities, if any, to be made during non-peak load periods, (b) mitigate the extent and duration of any disconnection, curtailment, interruption or reduction of service of the Distribution/Interconnection Facilities, and (c) provide any information reasonably requested by either Party related to such event occurring on their respective facilities.

11.2 **Notice of Curtailment of Distribution/Interconnection Facilities.** Except in the case of a System Emergency, the Company and the Customer shall give one another prior notice, as may be reasonable under the circumstances, of any curtailment, interruption or reduction of service of their respective Distribution/Interconnection Facilities. Such notice shall give the reason for its occurrence and its probable duration.

ARTICLE 12
Disputes

12.1 **Technical Disputes.**

a. If the Parties cannot agree on matters related to any dispute or controversy of a primarily technical nature and the Parties do not resolve the dispute within ten days of either Party expressing its disagreement with the position of the other Party to such matters, a committee consisting of two officers or delegates of each Party shall meet and attempt in good faith to resolve such dispute. If such committee does not resolve the dispute within ten days following their initial meeting, then either Party may nominate a single third party engineer (the "Third Party Engineer") that it proposes to resolve the dispute. The other Party shall, within ten days thereafter, notify the initiating Party if such person is unacceptable, whereupon the Parties shall meet to discuss and agree upon a person to be the Third Party Engineer. If the Parties cannot agree within ten days thereafter, the responding Party shall nominate a person to be the Third Party Engineer, whereupon the two nominated Third Party Engineers shall

agree on a third person, who shall be the Third Party Engineer to resolve the dispute.

b. Within ten (10) Business Days of the designation of a Third Party Engineer, each of the Customer and the Company shall submit to the Third Party Engineer a notice (a "Position Notice") setting forth in detail such Party's position in respect of the issues in dispute. Such Position Notice shall include supporting documentation, if appropriate.

c. The Third Party Engineer shall complete all proceedings and issue its decision with regard to the issues in dispute as promptly as reasonably possible, but in any event within ten (10) Business Days of the date on which both Position Notices are submitted unless the Third Party Engineer reasonably determines that additional time is required in order to give adequate consideration to the issues raised. In such case the Third Party Engineer shall state in writing his reasons for believing that additional time is needed and shall specify the additional period required, which period shall not exceed ten (10) days without the Parties' agreement.

d. In resolving a dispute, the Third Party Engineer shall consider all facts and circumstances it deems reasonable given the nature of the dispute.

e. The decision of the Third Party Engineer shall be final and non-appealable, except for any regulatory filings necessitated by such decision. The Parties shall each bear one-half of all reasonable costs incurred by the Third Party Engineer in connection with a dispute under this Section 12.1.

ARTICLE 13
Force Majeure

13.1 **Force Majeure.** A Force Majeure event is an event or circumstance that materially and adversely affects a Party's ability to perform its obligations under this Agreement in whole or in material part, to the extent the same (a) is beyond the reasonable control of, and not due to the fault or negligence of the affected Party or its contractors or subcontractors, and (b) could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care. Such events or circumstances may include, to the extent the above conditions are satisfied, drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, strikes or labor disputes, the existence of hazardous materials, the existence of subsurface conditions that could not reasonably have been discovered with the exercise of prudent engineering practices, unavailability of energy, orders or judgments of any Governmental Authority, the absence, suspension, termination, interruption, denial or failure of renewal of any permit. Force Majeure includes the failure of a contractor to furnish labor, services, materials or equipment in accordance with its contractual obligations, provided such failure is itself due to an event of Force Majeure. Notwithstanding the foregoing, an event

of Force Majeure shall not include (i) equipment failures due to normal wear and tear or defects in manufacture, engineering, design or construction, operation or maintenance thereof, or (ii) any strike or labor dispute involving the employees of a contractor or the employees of any construction subcontractor employed by either Party at the Facility unless such strike or labor dispute is, in fact, a violation of the contractor's project labor agreement.

13.2 **Notice.** If either Party's ability to perform its obligations under this Agreement is affected by an event of Force Majeure, such Party claiming such inability shall (i) promptly notify the other Party of such event and its cause and confirm the same in writing within five (5) Business Days of its discovery, (ii) promptly supply such available information about the event and its cause as may be reasonably requested by the other Party and (iii) initiate efforts to remove the cause of the event or to lessen its effect.

13.3 **Effect of Force Majeure.**

a. Upon providing notice pursuant to Section 13.2, a Party affected by a Force Majeure event shall be released from liability for the performance of its obligations under this Agreement, except for the obligation to pay amounts due and owing hereunder, and only for the period that its performance of such obligations is prevented by the Force Majeure event.

b. During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of a Force Majeure event, the other Party may likewise suspend the performance of all or part of its obligations hereunder to the extent such suspension is Commercially Reasonable under the circumstances.

13.4 **Scope.** The suspension of performance under this Article 13 shall be of no greater scope and no longer duration than that which is necessary. The excused Party shall use its reasonable best efforts to remedy with all reasonable dispatch its inability to perform. Notwithstanding the foregoing, no Party shall be required to settle any strike or meet the demands of any union to remedy its inability to perform as a result of a Force Majeure event.

ARTICLE 14
Indemnification and Limitation on Liability

14.1 **Indemnification by Customer.** The Customer will indemnify, defend and hold the Company and its officers, agents, representatives and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from the installation, maintenance, possession or operation of the Facility and any non-Company facilities used by the Customer, except those caused by the sole negligence of the Company. The Customer's indemnification shall not include damages and injuries occurring on the ITC

System unless the damage or injuries would not have occurred but for the operation of the Facility or is caused by the sole negligence of the Customer.

14.2 **Indemnification by the Company.** The Company shall indemnify, defend and hold the Customer and its officers, agents, representatives and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on the Company's Distribution/Interconnection Facilities unless the damage or injuries on such facilities would not have occurred but for the operation of the Facility or is caused by the sole negligence of the Customer.

14.3 **LIMITATION ON LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, MULTIPLE, OR EXEMPLARY DAMAGES OR LOST PROFITS ARISING OUT OF, DUE TO, OR IN CONNECTION WITH EITHER PARTY'S PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT, OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, WARRANTY OR OTHERWISE.

14.4 **Right to Suspend Performance.** After the Commercial Operation Date, either Party shall have the right to request further assurance from the other Party that the other Party's obligations under this Agreement are being met or are being performed. If the Party so requested does not provide further assurance within five (5) Business Days after the request therefor, the requesting Party may without liability, suspend its obligations hereunder until it receives such assurance. The requesting Party may not suspend performance of its obligations while such dispute is pending but, if the requesting Party is the Company, the Company may otherwise disconnect the Facility as permitted under the terms of this Agreement.

ARTICLE 15
Assignment

15.1 This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

15.2 Either Party may assign this Agreement to one or more of its Affiliates, provided that, without the consent of the other Party, (i) any such transfer shall not relieve the assigning Party of its obligations hereunder, and (ii) the assigning Party provides assurance to the other Party of the adequate performance by its assignee of its obligations hereunder.

15.3 Either Party may assign this Agreement to a third party not an Affiliate, provided that (i) such Party transfers all its interest in this Agreement, (ii) the transferee agrees to be bound by the obligations set forth in this Agreement, and (iii) the other Party has consented to such transfer, which consent shall not be unreasonably withheld. Any such transfer shall relieve the assigning Party of its obligations hereunder. Either Party may consider, in determining whether to reasonably withhold consent, factors which include the potential transferee's net

worth, technical expertise, and extent and quality of experience in the business of the independent generation of electricity.

15.4 Either Party may assign this Agreement as collateral security to a lender but any exercise by the lender of its rights with respect to this Agreement shall be subject to compliance with the requirements of Section 15.3.

15.5 Any purported transfer by a Party in violation of the foregoing shall be void, and need not be recognized by the other Party.

ARTICLE 16
Other Provisions

16.1 **Governing Law.** This Agreement shall be governed by the laws of the State of Michigan without regard to principles of conflicts of laws.

16.2 **Headings Not Affecting Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

16.3 **Amendments.** This Agreement may be amended by and only by a written instrument duly executed by each of the Parties hereto.

16.4 **Waiver.** Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

16.5 **Notices.** Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office Box with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party by hand or overnight delivery service, or by facsimile transmission followed by one of the preceding forms of delivery at the address set out below or such other address identified by the Party to the other Party in writing:

To the Company:

The Detroit Edison Company
2000 Second Ave
Detroit, Michigan 48226
Tel. No. (313) 235-8000
Fax No. (313) 235-8500

With a copy to General Counsel at the same address.

To the Customer:

Dearborn Industrial Generation, L.L.C.
Fairlane Plaza South
330 Town Center Drive, Suite 1000
Dearborn, MI 48126
Attention: Project Manager
Phone No. (313) 436-9305
Fax. No. (313) 436-9322

With a copy to General Counsel at the same address.

16.6 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties hereto with reference to the subject matter hereof and supersedes all prior oral and written understandings and agreements between the Parties.

16.7 **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and ITC and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any provision hereof.

16.8 **Regulatory Approval.** This Agreement is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Both Parties, upon any changes or conditions imposed by any Governmental Authority, any of which are reasonably unacceptable to either Party, shall negotiate in good faith an amendment to this Agreement that preserves the rights of the Parties under the Agreement and satisfies the change or condition imposed by such Governmental Authority. Nothing herein shall be construed as affecting in any way the right of the Company to unilaterally make application to an appropriate Governmental Authority for a change in rates, terms and conditions of service, service classification or other modification of this Agreement.

16.9 **Counterparts.** This Agreement may be executed in multiple original counterparts and any counterpart hereof having attached thereto the signatures of both Parties hereto (whether on one page or on separate pages) shall be deemed a fully executed original.

ARTICLE 17
Insurance

17.1 **Customer's Insurance.** Customer, at its expense, shall procure and maintain in effect during the Term of this Agreement, with insurance companies authorized to transact insurance in the State of Michigan and reasonably acceptable to the Company, policies of insurance providing, at a minimum, the coverage and limits specified, and complying with the requirements stated below:

17.1.1 Worker's Compensation in statutory amounts and Employer's Liability with a minimum limit of $1,000,000 per person.

17.1.2 Commercial General Liability Insurance on an occurrence basis, with the following coverage and limits:

General Aggregate	$1,000,000
Products-Completed Operations-Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$5,000

17.1.3 Business Automobile Liability covering autos of Customer, including owned hired and non-owned autos, for Bodily Injury and Property Damage with a combined single limit of $1,000,000 each occurrence.

17.1.4 Excess Liability in Umbrella Form with a limit of $4,000,000 each occurrence, $4,000,000 Aggregate.

17.1.5 By signing this Agreement, Customer thereby waives all rights of subrogation against the Persons Indemnified with respect to any claim or loss payable or paid under each of the policies set forth in Sections 17.1.2, 17.1.3, and 17.1.4 above.

17.1.6 Customer's insurance shall be primary insurance with respect to the operations, maintenance, work, or services on the Facility and insurance of Persons Indemnified shall be excess of the Customer's insurance and shall not contribute with it.

17.1.7 To the extent that Customer utilizes deductibles or self-insurance in connection with the insurance coverage required herein, all such deductible and self-insured amounts shall be for the account and expense of Customer and shall not be considered as costs or fees provided for in this Agreement.

17.2 **Notice and Certification.** Each of the above required policies shall contain a provision whereby the insurance carrier shall endeavor to notify the Company at least thirty (30) days prior to the effective date of cancellation of any of said policies. Customer shall submit to the Company a Certificate, signed by an authorized representative of the insurance carrier, listing the policies, coverage and limits and certifying that the said policies shall be in effect for the time periods stated in the Certificate. The obligations for Customer to procure and maintain insurance shall not be construed to waive or restrict other obligations.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers effective as of the day and year first written above.

DEARBORN INDUSTRIAL GENERATION, L.L.C.

By: _____
Name: _____
Title: _____

THE DETROIT EDISON COMPANY

By: _____
Name: _____
Title: _____