

DTE Electric Company
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September 27, 2022

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

RE: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and or approvals necessary for **DTE ELECTRIC COMPANY** to fully comply with Public Act 295 of 2008.
MPSC Case No: U-20851

Dear Ms. Felice:

Attached for electronic filing in the above referenced matter is DTE Electric Company's *Ex Parte* Application for approval of the DTE Electric Company and New East Solar Energy Inc. Master Supply Agreement ("YYP220207"); DTE Electric Company and Vietnam Sunergy Joint Stock Company ("Module Supply Agreement"); Engineering, Procurement and Construction Agreement between DTE Electric Company and J. Ranck Electric, Inc. ("Gratiot Solar"); Engineering, Procurement and Construction Agreement between DTE Electric Company and Barton Malow Company ("Pine River Solar"); Engineering, Procurement and Construction Agreement between DTE Electric Company and J. Ranck Electric, Inc. ("Polaris Solar"); Engineering, Procurement and Construction Agreement between DTE Electric Company and Barton Malow Company ("Sauk Solar"); the Guidehouse, Inc. Affidavit of Ralph L. Luciani and Affidavit of Terri L. Schroeder. Also attached is the Proof of Service.

Very truly yours,

Paula Johnson-Bacon

PJB/erb
Enclosure
c: Service List

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

Case No. U-20851

**DTE ELECTRIC’S APPLICATION FOR EX PARTE APPROVAL OF
GRATIOT CO-LOCATION SOLAR PARK, POLARIS CO-LOCATION SOLAR PARK,
PINE RIVER CO-LOCATION SOLAR PARK, AND SAUK SOLAR PARK
AND RELATED RELIEF**

DTE Electric Company (“DTE Electric” or the “Company”) files this Application pursuant to the Rules of Practice and Procedure Before the Commission (R460.17101 *et seq.*), the Michigan Court Rules (MCR 2.100 *et seq.*), the Michigan Administrative Procedures Act (MCL 24.201 *et seq.*) and other Michigan law including but not limited to MCL 460.1, *et seq.* and MCL 460.1001, *et seq.* DTE Electric respectfully requests that the Michigan Public Service Commission (“Commission” or “MSPC”) issue, on an *ex parte* basis, an expedited Order by October 27, 2022, approving master supply agreements (MSAs) and engineering, procurement, and construction contracts (EPCs) necessary to develop four renewable projects: Gratiot Co-Location Solar Park (“Gratiot”), Polaris Co-Location Solar Park (“Polaris”), Pine River Co-Location Solar Park (“Pine River”), and Sauk Solar Park (“Sauk”), (collectively referred to as the “Projects”). The MSAs and EPCs are collectively referred throughout this Application as the “Contracts”.

DTE Electric also requests *ex parte* approval of a) the associated transfer prices, which are combined energy and capacity price projections, set forth in Exhibit A-5 filed in Case No. U-21010 for recovery under the Company’s Power Supply Cost Recovery (“PSCR”) process under MCL

460.6j; b) of the capacity charges, which are included in the transfer prices, set forth in Exhibit A-4 filed and approved in Case No. U-21010 for generating facilities for purposes of MCL 460.6j(13)(b); c) the recovery of the costs, which are supplied, engineered, procured and constructed under the Contracts through DTE Electric's Revenue Recovery Mechanism as an Incremental Cost of Compliance with the Renewable Energy Standards under the Company's Amended Renewable Energy Plan, as needed; d) assurance that the full costs of Gratiot, Pine River, Polaris, and Sauk will be recovered through the combined application of the transfer price mechanism for PSCR recovery, application of the Revenue Recovery Mechanism surcharges under Act 295, and other mechanisms as determined by the Commission to recover these costs after the renewable energy plan period in accordance with MCL 460.1047(6) for any unsubscribed portion of the generation from Gratiot, Pine River, Polaris, and Sauk; and e) any additional approvals that the Commission may deem necessary under Act 295, Act 342 or MCL 460.6j.

In support of its request, DTE Electric has attached hereto and incorporated by reference the Affidavit of Terri L. Schroeder, and redacted Contracts attached as Attachment B, and the Affidavit of Ralph Luciani, with accompanying Attachment A, and states as follows:

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

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

3. On October 6, 2008, Public Act 295, the “Clean, Renewable, and Efficient Energy Act,” was enacted into law. Act 295 was subsequently amended in 2016 by Public Act 342 and renamed the “Clean and Renewable Energy and Energy Waste Reduction Act.” This Application is filed in accordance with Act 295 (MCL 460.1001 et seq.) as amended and the Commission’s December 4, 2008 and December 23, 2008 Orders in Case No. U-15800, implementing 2008 PA 295, and the August 23, 2017 Order in Case No. U-18409. The Company filed an Amended Renewable Energy Plan on March 29, 2018 in Case No. U-18232, with an Order given on July 18, 2019 and subsequently filed a 2020 Amended Renewable Energy Plan on March 31, 2020 in this same docket, with an Order given on July 9, 2020. On August 31, 2020, the Company filed an Amended Renewable Energy Plan (Amended REP) in Case No. U-20851 and an Act 342 Section 61 Voluntary Green Pricing (VGP) program biennial plan review (VGP Build Plan), both of which have been consolidated in Case No. U-20713 and were approved on June 9, 2021, with the Commission implementing the Company’s proposed settlement agreement (Settlement Agreement).

4. The Clean and Renewable Energy and Energy Waste Reduction Act requires Commission approval of certain types of contracts entered by electric providers, specifically including EPC Contracts, pursuant to MCL 460.1028(4).

5. With respect to the MSAs necessary to develop the Projects, DTE Electric has entered into an agreement with New East Solar Energy (America) Inc. and a module supply agreement with Vietnam Sunergy Joint Stock Company (“VSUN”). New East Solar Energy will provide solar panel modules for Pine River and Polaris. VSUN will provide solar panel modules for Gratiot and Sauk.

6. The EPC contracts include agreements between DTE Electric and Barton Malow

Company (“Barton Malow”) and DTE Electric and J. Ranck Electric, Inc. (“J. Ranck”). Barton Malow will design, engineer, construct, install, start-up, and test Pine River and Sauk. J. Ranck will design, engineer, construct, install, start-up, and test Gratiot and Polaris. These Projects are self-build, and DTE Electric will own each site.

7. Fully executed and redacted copies of the Contracts are attached to the Affidavit of Terri L. Schroeder as Attachment B and incorporated herein by reference.

8. These Contracts were a result of a Request for Proposal (“RFP”) that DTE Electric developed in consultation with the MPSC Staff pursuant to and consistent with the December 4, 2008 Temporary Order and December 23, 2008 Amendatory Order in Case No. U-15800, and also authorized in Section 11 of the Settlement Agreement. The RFP conformed to the guidelines for requests for proposals approved by the Commission under 2008 PA 295. In Case No. U-15800, Attachment D to the Commission’s December 4, 2008 Temporary Order specifically provided that the *“bid evaluation process may include an assessment of both price and non-price factors.”* With respect to this Application and RFP, price factors included energy, capacity, RECs, and interconnection costs to include reimbursable and non-reimbursable expenses. Non-price factors included consideration of bonus factors like pollinator habitat and commercial operation date (COD).

9. The Company utilized scorecards that were reviewed by the MPSC Staff and were consistent with Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800 and Exhibit No. A-33 (CLC-1) admitted in MPSC Case No. U-15806-RPS. Further details regarding the RFP process and the selection of the developers and projects the selection of the developers and associated projects are set forth in the attached Affidavits of Terri L. Schroeder and Ralph Luciani.

10. The Company held a pre-RFP conference on February 15, 2022, with the MPSC Staff and potential bidders. During this meeting, RFP documents and scorecards were shared with stakeholders to solicit feedback on the Company's proposed RFP. Feedback and suggestions were incorporated into the final RFP, including the suggestion to adjust the COD to March 31, 2024, and modifications to the generation interconnection agreement requirements.

11. The RFP was issued on April 1, 2022, to procure up to 500 MW of renewable energy in order to meet customer demand within the Company's VGP program, MIGreenPower. The proposals were originally due on April 29, 2022; however, delays stemming from an antidumping circumvention investigation on solar panels imported from Southeast Asia and commenced by the Biden Administration provoked DTE Electric to pause the RFP process and allow responses to be submitted until July 29, 2022.

12. DTE Electric, with the help of Guidehouse, an independent evaluator (IE), conducted the RFP under an open, non-discriminatory procurement process that fairly considered different ownership structures, in accordance with Section 11 of the Settlement Agreement. Guidehouse's report entitled, "DTE 2022 Renewable Energy All Source Request for Proposals" (referred to as the "IE Report") has been included as part of this filing as Attachment A to the Affidavit of Ralph Luciani and incorporated herein by reference.

13. The four self-build DTE Electric Projects (Gratiot, Pine River, Polaris, and Sauk) were shortlisted based on the RFP process thoroughly detailed in the IE Report and were the highest scored projects in the renewable energy RFP. These Projects comprise a total of 380 MW and are within the 500 MW sought by DTE Electric under this RFP. Specific details about each individual Project can be found in the Affidavit of Terri L. Schroeder as well as the IE Report. A future RFP will be required to fulfill the remaining need.

14. Based upon the tariff cost-average methodology, there was only one other project (out of a total of 22 unique projects) that met the cost-average to be included in the portfolio; however, this project was a non-conforming proposal across several other evaluation criteria. Bidders were provided an opportunity to cure any deficiencies within their proposal. Specifically, under the oversight of Guidehouse, DTE Electric subject matter experts performed a detailed examination of each qualification criteria contained in the scorecard, which was previously released to potential bidders. During this evaluation, DTE Electric reached out to bidders with follow-up questions that focused on any criteria where qualifications were not met or further clarification was needed. Many proposals were deemed to be “non-conforming” because they did not meet the prespecified minimum requirements and deficiencies were incurable. Additional information about the RFP process, qualifications, scoring, and shortlist development can be found in the IE Report and are incorporated by reference into this Application.

15. To serve DTE Electric’s VGP Build Plan, the Commission approved the development of 420 MW in 2022, 162 MW in 2023, 183 MW in 2024, and 132 MW in 2025 in the Settlement Agreement. Additionally, the Commission approved DTE Electric’s *ex parte* application filed in Case No. U-20851 seeking *ex parte* approval of the development of certain renewable energy projects to fulfill the Commission-approved VGP Build Plan.

16. At this juncture, two of the projects approved by the Commission in Case No. U-20851, Freshwater Solar and White Tail Solar which account for 320 MW, have been delayed indefinitely. These delays in the COD of Freshwater Solar and White Tail Solar have caused DTE Electric to postpone the commencement of MIGreenPower agreements of which customers were expecting to start receiving the benefits of the renewable energy assets in early 2023. These delays have also caused constraints on the potential for non-contracted customer enrollments. In order to

address the delays and honor current and future MIGreenPower customer agreements, DTE Electric is requesting that the 380 MW of Projects in this filing replace the 320 MW of indefinitely delayed projects, along with 60 MW of the 2023 generic solar build, that have already been approved by the Commission in the Settlement Agreement.

17. While the installed costs are higher for the Projects due to unprecedented solar market conditions, the revenue requirement and resulting levelized cost of energy (LCOE) is *lower* due to the passage of the Inflation Reduction Act which provided the Company the ability to utilize Production Tax Credits. Gratiot, Pine River, Polaris, and Sauk are consistent with DTE Electric’s VGP Plan and August 2020 Amended REP as approved by the Commission in the Settlement Agreement and are otherwise reasonable and prudent based upon, among other things, the following pricing information:

Project	Estimated Installed Cost	Expected LCOE	Combined LCOE for the Projects	LCOE Range for White Tail, Freshwater, and 2023 generic Solar
Gratiot	\$1,619 per kW	\$59-\$63/MWh	\$51-\$53/MWh	\$51-\$54/MWh
Polaris	\$1,525 per kW	\$56-\$59/MWh		
Pine River	\$1,455 per kW	\$52-\$54/MWh		
Sauk	\$1,348 per kW	\$45-\$47/MWh		

18. The total costs of the Contracts to develop Gratiot, Polaris, Pine River, and Sauk are **consistent** with the Commission-approved LCOE of Freshwater Solar, White Tail Solar, and the 2023 generic solar build included in DTE Electric’s 2020 August Amended REP.

19. If any of the individual Projects are not approved, the total installed costs and estimated LCOEs will increase due to cancellation of solar panel purchases for the remaining

projects. The Contracts include cost savings due to the bundling of all four projects. The estimated installed cost for the Projects combined is \$1,451/kW and the LCOE is expected to be \$51-\$53/MWh, which is consistent with previously approved 2022 COD LCOEs that have been delayed and the 2023 generic solar build LCOE.¹ With the passing of the Inflation Reduction Act in August 2022, the projects qualify for a 100% Production Tax Credit (PTC) value. The PTC value for the life of the projects is approximately \$209M.

20. Based on the facts and conclusions described in the attached affidavits, the Company believes the development, construction, total power production, and the installed costs of the Projects are reasonable and prudent and consistent with the retail rate impact limits under MCL 460.1045, and approval of the Contracts and DTE Electric's related requests for relief will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in the cost of service to customers beyond what was approved by the Commission in the Company's VGP Plan and Amended Renewable Energy Plan in Case Nos. U-20713, *et al.*

21. DTE Electric believes that it would be appropriate to use the renewable energy transfer prices set forth in Exhibit A-5 filed in Case No. U-21010 (which exhibit reflects the current Commission approved transfer price schedule for Renewable Energy Contracts and Company-owned Renewable Energy Systems) for the energy and capacity associated with the Meridian Wind Farm wind-powered generating facility that will be engineered, procured and constructed under the Contracts, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)).

22. The Company's request for *ex parte* treatment of this Application is supported by MCL 460.1028(4), the Commission's December 4, 2008 Order in U-15800, and the Settlement

¹ The installed cost of \$1,305 per kw is a weighted average installed cost of the 320 MW of previously approved 2022 COD projects and 61.9 MW generic 2023 COD build.

Agreement. This particular Application contains a number of commercially sensitive terms and conditions within the Contracts and are the result of extensive negotiations between stakeholders and DTE Electric. Maintaining the confidentiality of the pricing and specific terms and conditions involved in acquiring renewable energy will help ensure that suppliers submit competitive bids and offer their best prices to DTE Electric, thereby helping the Company achieve the lowest reasonable cost for its customers. This information must be protected, and exposure should be limited to the parties involved in the negotiations.

23. The Contracts are time sensitive and require a 2023 commercial operation date to ensure that pre-negotiated pricing does not lapse. The Contracts include beneficial pricing for DTE Electric that will be realized by and passed on to the Company's MIGreenPower customers. These cost benefits are subject to a material increase if the Commission does not grant approval or in any material way modifies the Contracts or any relief requested by DTE Electric in this application or does not grant approval of DTE Electric's requested relief by December 21, 2022.

24. Conducting a full administrative proceeding, against the intent of MCL 460.1028(4), could delay the Company's build operations and eliminate the Company's ability to honor its contractual obligations to New East Solar Energy (America) Inc., VSUN, Barton Malow, and J. Ranck. These Projects are being built to meet customer demand within MIGreenPower. The indefinite delays in Freshwater Solar and White Tail solar have already placed stress on the contractual agreements between DTE Electric and current MIGreenPower customers, whose customer contracts are subject to not-to-exceed pricing. Additionally, the RFP process was conducted under an open, non-discriminatory procurement that DTE Electric developed in consultation with the MPSC Staff. Prior to the issuance of the RFP, potential bidders were given information about the RFP process, including scoring, and given opportunities to cure deficiencies

within their respective proposal. As a final point, DTE Electric is seeking to substitute 320 MW of indefinitely delayed projects (along with 60 MW of the 2023 generic solar build) that have already been approved by the Commission as part of the Company's VGP Build Plan with lower cost projects (Gratiot, Pine River, Polaris, and Sauk). The previously approved Freshwater Solar and Whitetail Solar were subjected to a fully adjudicated proceeding at the MPSC and approved by the Commission in the Settlement Agreement. The Company is simply seeking to replace these previously approved projects with projects that can be fully executed at this time.

25. In addition to its request for *ex parte* treatment, the Company respectfully requests an expedited review of its Application and Contracts necessary to develop the four Projects. On December 4, 2008, the Commission issued a Temporary Order in Case No. U-15800 pursuant to MCL 460.1191(1), stating that the Commission intends to review and approve submitted contracts on an expedited basis with a target of issuing orders on such contracts within 30 days from the date of filing (December 4, 2008 Temporary Order in Case No. U-15800, p. 16). Accordingly, DTE Electric respectfully requests an expedited review of this Application and the accompanying Contracts and the issuance of an order by October 27, 2022, which falls within 30 days of this filing consistent with the December 4, 2008 Temporary Order in Case No. U-15800.

26. The approvals and assurances requested in this Application will not result in "an alteration or amendment in rates or rate schedules" and "will not result in an increase in the cost of service to customers". The Projects are consistent with the planned activities, expenses and Revenue Recovery Mechanism surcharges described in the approved portions of DTE Electric's VGP Plan and Amended Renewable Energy Plan August 31, 2020 filings approved by the Commission on June 9, 2021. Therefore, per MCL 460.6a(1), the relief requested in this Application "may be authorized and approved without notice or hearing." (MCL 460.6a(1)).

Neither will there be any increase in DTE Electric's rates for electric service resulting from the requested approvals and assurances. Thus, approval of this Application without notice or hearing is lawful and appropriate.

27. MCL 460.1193(2) instructs that "the Commission and a provider shall handle confidential business information under this act in a manner consistent with state law and general rules of the Commission." A number of commercially sensitive terms and conditions in the Contracts have been redacted to maintain confidentiality, consistent with past practice before the Commission. (See e.g., Case Nos. U-14626, U-15806, U-16582, U-17793, 18111, and U-18232). In order to maintain a reasonably competitive environment for the provision of renewable energy, advanced cleaner energy and related equipment, products, and services to DTE Electric and its customers, it is important to maintain the confidentiality of commercially sensitive information. DTE Electric has therefore redacted portions of the Contracts.² The original unredacted Contracts are available for inspection by the Commission and its Staff at the Company's premises or by other agreed means.

28. The approvals and assurances requested in this Application will not modify the revenue recovery mechanism or renewable energy plan surcharge (REPs). As such, the Commission may approve the Amended REP without a contested case hearing pursuant to MCL 460.1022(4). Moreover, the approvals and assurances requested in this Application will not result in "an alteration or amendment in rates or rate schedules" and "will not result in an increase in the cost of service to customers" because the surcharge will remain at zero. Therefore, per MCL 460.6a(1), the relief requested in this Application "may be authorized and approved without notice

² DTE Electric reserves the right to redact different or additional terms and conditions in future contracts as circumstances and conditions warrant.

or hearing.” (MCL 460.6a(1)). There will be no increase in DTE Electric’s rates for electric service resulting from the requested approvals and assurances. Thus, the Commission’s approval of this Application without notice or hearing is lawful and appropriate.

29. DTE Electric further requests that the Commission provide assurance that the full costs of the Projects, including but not limited to the Contracts, will be recovered through the application of the Transfer Price mechanism for PSCR recovery and other mechanisms as determined by the Commission to recover these costs after the 20-year renewable energy plan period in accordance with MCL 460.1047(6).

WHEREFORE, for the reasons stated above, DTE Electric respectfully requests that the Commission expeditiously issue an *ex parte* order in this case by October 27, 2022, that:

A. Consistent with 2008 PA 295, approves the attached Contracts in their entirety, and also approves the associated transfer price schedule set forth at Exhibit A-5 filed and approved in Case No. U-21010 as the schedule of renewable energy transfer prices the Projects that are supplied, engineered, procured and constructed under the Contracts for recovery under the Company’s PSCR process under MCL 460.6j for the duration of the Company’s Amended Renewable Energy Plan;

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

C. Approves the replacement of the 320 MW from the Freshwater Solar and White Tail Solar projects with the 380 MW from the Projects;

D. Provides approval of capacity charges, which are included in the transfer prices, set forth in Exhibit A-5 filed in Case No. U-21010 for Gratiot, Pine River, Polaris, and Sauk that are supplied, engineered, procured, and constructed under the Contracts for purposes of MCL

460.6j(13)(b), and provides for any additional approvals that the Commission may deem necessary under MCL 460.6j;

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

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

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

Respectfully submitted,

DTE ELECTRIC COMPANY

By:

Attorney for Applicant
Paula Johnson-Bacon (P55862)
One Energy Plaza, 1635 WCB
Detroit, Michigan 48226
(313) 235-7052

Dated: September 27, 2022

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions,)
determinations, and or approvals necessary for) Case No. U-20851
DTE ELECTRIC COMPANY to fully comply)
with Public Act 295 of 2008.)

**AFFIDAVIT OF RALPH L. LUCIANI IN SUPPORT OF DTE ELECTRIC
COMPANY'S
2022 RENEWABLE ALL SOURCE REQUEST FOR PROPOSALS PROCESS**

STATE OF VIRGINIA)
COUNTY OF FAIRFAX)

Ralph L. Luciani, being first duly sworn, deposes and says:

1. My name is Ralph L. Luciani, and I am a Director at Guidehouse Inc., (Guidehouse), which acquired Navigant Consulting in 2019. I hold an M.S. in Industrial Administration and a B.S. in Electrical Engineering and Economics from Carnegie Mellon University. Prior to joining Navigant Consulting in 2012, I was a Vice President at Charles River Associates and a Director at Putnam, Hayes & Bartlett, Inc. I have supported and been engaged on competitive renewable power procurements in multiple jurisdictions, including Connecticut, Massachusetts, Minnesota, North Carolina, Ohio, Rhode Island, South Carolina, and Wisconsin. I have more than 30 years of consulting experience analyzing economic and financial issues affecting the electricity industry, including resource planning, power solicitations, ratemaking, transmission cost-benefit studies, fuel and power supply contract negotiations, and environmental

compliance. I have appeared as an expert witness in a number of Federal Energy Regulatory Commission (FERC) and state public utility commission regulatory proceedings.

2. Guidehouse was retained by DTE Electric in October 2021 as the independent evaluator to help assist, provide guidance and oversee DTE Electric in its 2022 Renewable Energy All Source Request for Proposals (“RFP”) process, leveraging prior experience with utilities across the United States with similar procurements for renewables.

3. Attached to this Affidavit as Attachment A is Guidehouse’s Report, which sets out in detail my and my team’s involvement, methods employed, observations and conclusions regarding the 2022 DTE Electric’s Renewable Energy All Source RFP.

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

5. In overseeing the competitive solicitation process, we also conclude that the shortlisted projects including Gratiot Co-Location Solar Park, the Pine River Co-Location Solar Park, the Polaris Co-Location Solar Park, and the Sauk Solar Park DTE Electric self-build projects, are reasonable and prudent.

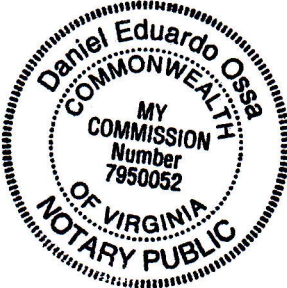
Further, Affiant sayeth not.

Ralph L. Luciani
Ralph L. Luciani

Subscribed and sworn to before
me this 24 day of September 2022.

Daniel Oso

City/County of Fairfax
Commonwealth of Virginia
The foregoing instrument was acknowledged before me
this 24 day of September, 2022
by Ralph Leon Luciani
Daniel Oso Notary Public
Reg # 1950052 Com Exp 07/31/2025



Attachment A



DTE 2022 Renewable Energy All Source Request for Proposals

Report from Guidehouse Inc.

Prepared for:

The logo for DTE, consisting of the letters "DTE" in a large, bold, blue, sans-serif font.

DTE Electric Company

Submitted by:

Guidehouse Inc.
Ralph Luciani, Director
1200 19th Street, NW, Suite 700
Washington, DC 20036
guidehouse.com

September 23, 2022

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Executive Summary

Background

This report summarizes Guidehouse Inc. (Guidehouse) findings as the Independent Evaluator (IE) for the 2022 DTE Electric Renewable Energy All Source RFP (Solar Energy RFP and Wind Energy RFP) issued on April 1, 2022 (RFP). The purpose of the RFP was to solicit proposals for DTE Electric Company (DTE) to help fulfill customer demand for DTE's Voluntary Green Pricing (VGP) program, MIGreenPower, and to meet DTE's carbon reduction goals. DTE retained Guidehouse to assist, guide, and oversee DTE in its RFP process, using prior experience with utilities across the U.S. with similar procurements for wind and solar resources.¹

The RFP was open to solar, wind, and other renewable energy projects located in the state of Michigan and electrically connected to the Midcontinent Independent System Operator (MISO) grid. Dependent on VGP demand, DTE sought to procure up to 500 MW of renewable energy with a Commercial Operation Date (COD) no later than March 31, 2024. While for administrative purposes there were separate RFPs issued for solar and wind, the proposals submitted under these two RFPs were evaluated and scored collectively. The RFP was conducted in accordance with the terms, specifications and requirements contained in Section 11 (RFP Methodology for upcoming VGP Build Plan) of the June 9, 2021, Settlement Agreement in Case Nos. U-20713 and U-20851 (Settlement Agreement).

In this RFP, respondents were requested to bid projects using a build transfer agreement (BTA). Purchase power agreement (PPA) bids and DTE self-build proposals also were permitted. Battery Energy Storage Systems (BESS) could be coupled with a solar or wind energy facility. A pre-RFP conference was held on February 15, 2022, in which the draft RFP documents were presented to potential respondents by DTE and the IE, including the Scorecard used by the IE and DTE to evaluate proposals.

The RFP was issued on April 1, 2022, with an original proposal due date of April 29, 2022. On April 26, 2022, DTE paused the RFP due to the U.S. Department of Commerce (DOC) anti-dumping circumvention investigation on panels imported from Southeast Asia and the uncertainty created by this investigation on solar energy. After an executive order from the Biden administration and the resulting ruling from the DOC, the RFP process resumed on July 8, 2022, with responses due on July 29, 2022. Short-listed proposals were notified on August 22, 2022.

Conformance with Settlement Agreement

DTE retained Guidehouse as the IE to oversee DTE in its RFP process in accordance with the requirements listed in section 11.4 (Oversight and Independence of Bidding Process Requirements) of the Settlement Agreement. Consistent with the Settlement Agreement, the IE: 1) worked with DTE to design the solicitation, 2) oversaw the administration of the bidding through the Power Advocate platform, and 3) evaluated bids for minimum qualifications.

¹ Guidehouse has led or assisted utilities with the procurement of more than 1 gigawatt of renewable resources in the U.S. and has served as the IE or equivalent for utility procurement of renewables in many states, including Arizona, Connecticut, Hawaii, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas.

In addition, consistent with section 11.4 of the Settlement Agreement, the IE and DTE established a firewall and communication protocols between the RFP Evaluation Team, RFP Specialists (subject matter experts), and the DTE Self-Build Team prior to the RFP Formulation. The firewall was in place from the RFP design stage through September 8, 2022, after the selection of finalists, the audit of RFP results by Commission Staff, and the determination that no additional contracts would need to be negotiated. In addition, the IE and DTE hosted both a pre-RFP meeting and post-RFP meeting with Staff, and the RFP proposals, scoring, and other related information were provided to Staff for a Staff audit.

The IE also ensured there was consistency between the RFP and the prespecified minimum RFP requirements contained in Section 11 of the Settlement Agreement. In particular:

- The RFP was conducted under an open, non-discriminatory procurement process that fairly considered different ownership structures.
- Project size and PPA term requirements were consistent with the Settlement Agreement specifications.
- A pre-RFP conference was held on the draft RFP materials for stakeholders to ask questions and provide feedback. This feedback was used to make revisions incorporated into the final RFP.
- At the pre-RFP conference, a Scorecard showing the weighting for price and non-price factors, as well as bonus factors, were supplied and explained to potential bidders by the IE.
- Pro-forma PPA and BTA agreements were supplied to bidders as part of the RFP materials.
- The method used to calculate PPA terminal value was explained to bidders in advance and made use of the forward curves required in the Settlement Agreement.

All other RFP requirements and pre-specifications in the Settlement Agreement were followed.²

Summary and Conclusions

We have completed our assessment of the RFP, and find the following:

- The RFP minimum qualification evaluations were performed on a fair and consistent basis using the process outlined in the RFP and the Scorecard provided to bidders in advance. Respondents were given an opportunity to cure deficiencies within a reasonable period.
- The RFP evaluation stage, including the economic and noneconomic scoring, was performed on a fair and consistent basis using the process outlined in the RFP, and the RFP documents including the Scorecard were provided to bidders in advance.

² Many of the RFP requirements in the September 9, 2021, Competitive Procurement Staff Guidance Document in Case No. U-20852 (Competitive Procurement Guidelines) are similar to those contained in the Settlement Agreement. The IE and DTE worked to ensure that any additional RFP requirements under the Competitive Procurement Guidelines were also met in this RFP. The Competitive Procurement Guidelines state that "it is preferred that an independent administrator (IA) conducts all aspects of the competitive procurement process". An IE, rather than an IA, was used in this RFP consistent with the Settlement Order, with the IE ensuring the fairness and transparency of the RFP through the IE's oversight of the process.

- Use of levelized cost of energy (LCOE) as the underlying basis for scoring on economic grounds was reasonable and typical, as were the adjustments applied to compare the proposals on an equivalent ratepayer impact basis across a 35-year time horizon.
- Use of a scoring sheet/matrix was also reasonable and typical. The range of scoring guidelines applied was reasonable and consistent with similar criteria we have developed or observed.
- The RFP Evaluation Team and DTE subject matter experts performing the RFP review and scoring under the IE's oversight were consistent in their approach. The combined scoring and ranking using a weighting between pricing and noneconomic criteria was reasonable.
- The advancement of conforming bids to the shortlist and selection of finalists was performed on a fair and consistent basis using the process published in the RFP.
- The RFP was developed and performed in accordance with the Settlement Agreement.
- Based on our review and observations, there is no evidence that the evaluation and selection process caused any unfair advantage or disadvantage to any interested party or respondent.

This report was prepared by Guidehouse Inc. pursuant to a client relationship exclusively with DTE. The work presented in this deliverable represents Guidehouse's professional judgment based on the information available at the time this report was prepared. Guidehouse is not responsible for a third party's use of, or reliance upon, the deliverable, nor any decisions based on the report. Readers of the report are advised that they assume all liabilities incurred by them, or third parties, as a result of their reliance on the report, or the data, information, findings and opinions contained in the report.

1. General RFP Background

This report summarizes Guidehouse Inc. (Guidehouse) findings as the Independent Evaluator (IE) for the 2022 DTE Electric Renewable Energy All Source RFP (Solar Energy RFP and Wind Energy RFP) issued on April 1, 2022 (RFP). The purpose of the RFP was to solicit proposals for DTE Electric Company (DTE) to help fulfill customer demand for DTE's Voluntary Green Pricing (VGP) program, MIGreenPower, and to meet DTE's carbon reduction goals. DTE retained Guidehouse to assist, guide, and oversee DTE in its RFP process, using prior experience with utilities across the U.S. with similar procurements for wind and solar resources.

The RFP was open to solar, wind, and other renewable energy projects located in the state of Michigan and electrically connected to the Midcontinent Independent System Operator (MISO) grid. Dependent on VGP demand, DTE sought to procure up to 500 MW of renewable energy with a Commercial Operation Date (COD) no later than March 31, 2024. While for administrative purposes there were separate RFPs issued for solar and wind, the proposals submitted under these two RFPs were evaluated and scored collectively. The RFP was conducted in accordance with the terms, specifications and requirements contained in Section 11 (RFP Methodology for upcoming VGP Build Plan) of the June 9, 2021, Settlement Agreement in Case Nos. U-20713 and U-20851 (Settlement Agreement).

In this RFP, respondents were requested to bid projects using a build transfer agreement (BTA). Purchase power agreement (PPA) bids and DTE self-build proposals also were permitted. Battery Energy Storage Systems (BESS) could be coupled with a solar or wind energy facility. A pre-RFP conference was held on February 15, 2022, in which the draft RFP documents were presented to potential respondents by DTE and the IE, including the Scorecard used by the IE and DTE to evaluate proposals.

The RFP was issued on April 1, 2022, with an original proposal due date of April 29, 2022. On April 26, 2022, DTE paused the RFP due to the U.S. Department of Commerce (DOC) anti-dumping circumvention investigation on panels imported from Southeast Asia and the uncertainty created by this investigation on solar energy. After clarification by the Biden Administration and the DOC, the RFP was resumed on July 8, 2022, with responses due on July 29, 2022. Short-listed proposals were notified on August 22, 2022.

2. Pre-RFP Issuance Stage

2.1 Establishment of Firewall and Communication Protocols

Upon engagement by DTE as the IE for this RFP, Guidehouse reviewed the Settlement Agreement and was informed that DTE was considering submitting self-build bids. Communication protocols were developed by the IE and put in place for this RFP requiring that those at DTE involved in self-build proposals would have no communication related to this RFP with members of the RFP evaluation team other than through PowerAdvocate (the same process as all other potential bidders). Any DTE self-build bids were required to adhere to the same bid requirements and form submittals as all other proposals.

The communication protocols established a firewall between the RFP Evaluation Team, RFP Specialists, and the Self-Build Team. RFP Specialists, because of the scarcity of their expertise within the utility, were designated and authorized to provide information to both the RFP Evaluation Team and the Self-Build Team. The RFP Specialists could not share information about RFP-related support provided to the RFP Evaluation Team to members of the Self-Build Team, and vice versa. The firewall was in place from the RFP design stage through September 8, 2022, after the selection of finalists, the audit of RFP results by Commission Staff, and the determination that no additional contracts would need to be negotiated.

A roster of the members of each team was created and managed by the RFP Evaluation Team Leader. Each team member signed an attestation that they understood and would follow the communication protocols. Updates to the rosters were issued periodically by the RFP Evaluation Team Lead to all team members so that they could be aware of any changes to the team rosters. Any new members of the teams had to sign an attestation.

The IE and the RFP Evaluation Team Lead closely monitored the firewall and communication protocols throughout the RFP process. Responses to any questions that arose with respect to the protocols were discussed and approved by the IE. No breaches of the communication protocols were observed during the RFP process.

2.2 Pre-RFP Conference

The IE worked closely with the RFP Evaluation Team to develop a draft RFP and other draft RFP materials consistent with the Settlement Agreement. The IE and DTE hosted a pre-RFP meeting with Commission Staff on February 2, 2022, to discuss the draft RFP terms, conditions, and schedule.

Subsequently, a pre-RFP conference was held on February 15, 2022, in which draft RFP and related documents were presented by DTE and the IE to potential bidders. A press release was issued to direct interested bidders to register on the PowerAdvocate platform for access to the RFP events. The draft RFP Scorecard containing the RFP minimum requirements and bid scoring methodology was presented by the IE at the conference. Draft RFP documents were posted on PowerAdvocate for respondent review and feedback.

Feedback from stakeholders attending the pre-RFP conferences was solicited, and refinements were made to the draft RFP materials in response to stakeholder feedback received. One important modification was to delay the required COD for proposals from no later

than December 31, 2023, to no later than March 31, 2024. The RFP was released in final form to PowerAdvocate on April 1, 2022.

2.3 RFP Design

This section summarizes the design of the RFP. The IE worked closely with DTE throughout the RFP development process to ensure that the RFP was clear and transparent, that the requested submittal items were aligned with the internal scoring criteria, and that all items necessary for evaluation were requested in the RFP. The IE and DTE also worked together to create a Scorecard that would be used to evaluate each proposal. This Scorecard was included with the RFP materials and allowed each bidder to understand how their proposal would be evaluated and scored, including the weighting of scored criteria.

DTE created and released two RFPs in tandem to solicit solar resources and wind resources respectively. As these two RFPs were similar in structure, terms and schedule, the two RFPs are described collectively below.

2.3.1 Qualifying Renewable Bids

The RFP was open to all renewable energy qualifying resources, including solar and wind energy, and battery energy storage system coupled with a solar or wind energy facility. The resources would be used for MIGreenPower customers enrolled in the DTE voluntary green pricing program. Standalone storage was not permitted. There was no minimum MW size for wind facilities, and solar facilities were required to be category 4 and category 5 as identified by the Department of Energy, Labor, and Economic Growth Public Service Commission Electric Interconnection and Net Metering Standards (i.e., 550kW or higher). Projects were required to be in the state of Michigan and electrically connected to a distribution, sub-transmission or transmission system owner/operator serviced by MISO. A COD no later than March 31, 2024, was required.

2.3.2 Bid Contract Type

The RFP allowed bidders to submit proposals for build transfer agreements (BTAs). Bidders were required to submit BTA bids with no exceptions to the BTA pro forma agreement. If they did so, bidders also could submit an alternate priced BTA bid for the same project with specific red-lines to the BTA pro forma agreement. Portions of the BTA pro forma agreement were marked as “Non-Negotiable” by DTE and were not eligible for modifications.

If a BTA bid with no BTA pro forma agreement exceptions was submitted, bidders could also submit a PPA bid for the same project with no exceptions to the PPA pro forma agreement. If they did so, bidders also could submit an alternative priced PPA bid for the same project with specific modifications to the PPA pro forma agreement. Portions of the PPA pro forma agreement were marked as “Non-Negotiable” by DTE and were not eligible for modifications.

PPA proposals had a minimum term requirement of 20 years, and a maximum of 35 years. A fixed price in \$/MWh for the term of the PPA was required (a fixed annual escalation was permitted). Self-build proposals faced the same bid requirements as all other bids other than the need to submit financial strength information and exceptions to the pro forma BTA. As part of the pre-RFP Conference, draft BTA and PPA pro forma agreements were posted on PowerAdvocate for respondent review and feedback.

2.3.3 Bid Fees

No bid fees were assessed by DTE under this RFP.

2.3.4 Communications with Bidders

RFP communications between DTE and potential bidders and vice versa were required to be conducted solely through the PowerAdvocate website. On April 1, 2022, the RFP overview was posted on PowerAdvocate for any interested party to review. Upon review of the RFP overview, an interested party had to execute a mutual confidentiality agreement with DTE (via a request on PowerAdvocate), after which the bidder was granted full access to the entire set of RFP documentation posted on PowerAdvocate. All bidder questions on the RFP, DTE responses to those questions, proposal submittals, DTE follow-up questions on proposals, and bidder responses to DTE follow-up questions were required to be submitted through PowerAdvocate.

2.3.5 RFP Schedule

The RFP was issued on April 1, 2022. Under the initial schedule, respondent questions could be submitted through April 19, 2022, a Notice of Intent to Bid was due by April 22, 2022, and proposals were due on April 29, 2022. After pausing of the RFP on April 26, 2022, and resuming on July 8, 2022, respondent questions were permitted through July 18, 2022, a Notice of Intent to bid was due by July 18, 2022, and proposals were due on July 29, 2022. Self-built bids, if any, were due on July 28, 2022, one day earlier than all other bids to provide additional assurance that these bids could not incorporate information contained in the proposals submitted by other bidders.

2.3.6 Project Qualification and Scoring

Under the RFP, projects were screened to evaluate whether the proposals met the qualification criteria. Projects were then scored from 1 (low) to 5 (high) using the weighted scoring criteria. A Scorecard showing each of the minimum qualification criteria and the description and weighting of each of the scoring criteria was created and included for bidders in the RFP documents posted on PowerAdvocate. Bidders were encouraged to complete the qualification portion of the Scorecard and provide comments as to whether each qualification criterion was met.

2.3.6.1 Scorecard Qualification Criteria

The Qualification Criteria section of the Scorecard had a series of Yes/No questions designed to assess whether the proposal meets RFP minimum threshold requirements. These questions were grouped into the following categories:

- General Qualifications. Relevant experience with renewable projects, located within the State of Michigan, achieving the required COD, as well as the conforming bid requirements.
- Safety & Quality. Safety and quality of the proposal, in particular project safety history, and whether quality management, quality assurance, risk management, and procurement plans were submitted that meet the minimum requirements.
- Project Feasibility. The feasibility of the project and whether there may be obstacles to the installation of the resource, including those related to permitting and interconnections.

- Proposed Technology. Whether the proposal meets the basic technological requirements.
- Contract Terms and Conditions. Whether the proposal follows requirements regarding exceptions to the pro forma contracts.
- Project Management. Whether there is a project management plan in place that will allow the project to be placed in service by March 31, 2024.
- Financial Strength and Creditworthiness. Whether the bidder has the financial wherewithal to meet the bid's performance requirements.
- Pricing. Whether the RFP pricing sheet is fully filled out for the various possible bid permutations.

2.3.6.2 Scorecard Scoring Criteria

The Evaluation section of the Scorecard shows the criteria and weighting used to score each bid:

- Safety. The safety plan for each proposal was evaluated and scored from 1 (low) to 5 (high). Safety has a 10% weighting for BTAs and 20% for PPAs.
- Project Feasibility. The feasibility of the project was scored between 1 (low) and 5 (high), focusing on the land agreements associated with the proposal, whether there are deviations from standard-type agreements, and how favorable the proposed project is viewed by the local region. This factor has a 20% weighting for BTAs and 30% for PPAs.
- Project Management. The proposal's project management plan was scored between 1 (low) and 5 (high), with a focus on any exceptions to the RFP technical specifications and scope of work. This factor has a 20% weighting for BTAs.
- Pricing. Pricing was scored based on the calculation of the Economic Evaluation Rate (EER). This factor has a 50% weighting for both BTAs and PPAs.
 - The EER was calculated as the Levelized Cost of Energy (LCOE) of the proposal over a 35-year period, net of the proposal's levelized capacity and energy value, plus a contract risk adjustment based on the level of exceptions to the pro forma agreement.
 - The calculation of the LCOE for PPAs incorporated a Financial Compensation Mechanism (FCM), using the methodology described in the Commission's Order in Case Nos. U-20713 and U-20851 on June 9, 2021.
 - In addition, the calculation of the LCOE for PPAs with a term less than 35 years included a terminal value adjustment in accordance with the section 11.3.4.2 of the Settlement Agreement.
 - The resulting EER in \$/MWh terms of each proposal was sorted from low to high across all proposals and scored between 1 (low) and 5 (high).
- Bonus Points. A bonus of 0.1 points each was provided to: 1) those facilities that proposed establishing a pollinator habitat (solar only), and 2) those proposals that had a COD no later than December 31, 2023.

The safety, project feasibility, project management, and pricing scores were weighted, and any bonus points were added to obtain the final score for each proposal. The final scores were then

sorted from high to low, with the conforming proposals with the highest scores being considered for short-listing.

2.3.7 Consistency with the Settlement Agreement

2.3.7.1 Independent Evaluator Role

The IE oversaw the RFP process in accordance with the requirements listed in section 11.4 (Oversight and Independence of Bidding Process Requirements) of the Settlement Agreement. DTE and the IE worked together to ensure that each of the requirements were met, as described further below:

- 11.4.1 Separation. The IE and DTE established a firewall and communication protocols between the RFP Evaluation Team, RFP Specialists (subject matter experts), and the DTE Self-Build Team prior to the RFP Formulation. The firewall was established to be in place from the RFP design stage through the completion of contract negotiations.
- 11.4.2 Pre-RFP Meeting. DTE and the IE hosted a pre-RFP meeting with Commission Staff on February 2, 2022.
- 11.4.3 Staff Audit. The RFP proposals, scoring and other related information were provided to Staff for a Commission Staff Audit on August 30, 2022.
- 11.4.4/11.4.5 Use of an IE. Guidehouse, acting as the IE, oversaw this solicitation.
- 11.4.6.1 IE Role. As required, throughout the RFP process, the IE:
 - Worked with DTE to design the solicitation (as described in detail above),
 - Oversaw the administration of the bidding (specifically, through the Power Advocate platform), and
 - Evaluated bids for minimum qualifications (using the Scorecard described above).
- 11.4.6.2 Post RFP Meeting. A Post-RFP meeting with Commission Staff and the IE was conducted on August 30, 2022.
- 11.4.6.5 IE/Staff. The IE was available to Commission Staff throughout the process to discuss the RFP.
- 11.4.6.6. Deviations. The IE ensured there was consistency between this RFP and the prespecified minimum RFP requirements contained in the Settlement Agreement. There were no deviations.
- 11.4.7 IE Report. This Report summarizes the solicitation process and covers the adherence of DTE to the RFP pre-specifications.

2.3.7.2 Settlement Agreement Pre-specifications

The IE and DTE worked together to ensure that the RFP was conducted in accordance with each of the Settlement Agreement pre-specifications, in particular:

1. The RFP was conducted under an open, non-discriminatory procurement process that fairly considered different ownership structures.

2. Project size and PPA term requirements were consistent with the Settlement Agreement specifications.
3. Scoring sheets showing the weighting for price and non-price factors, as well as bonus factors, were supplied in advance to bidders, and explained to potential bidders by the IE at a pre-RFP conference on February 15, 2022.
4. Pro-forma PPA and BTA agreements were supplied to bidders as part of the RFP documentation.
5. The method used to calculate PPA terminal value was explained to bidders in advance and made use of the forward curves required in the Settlement Agreement.

Based on our review, we conclude that all RFP requirements and pre-specifications in the Settlement Agreement were met.

Many of the RFP requirements in the September 9, 2021, Competitive Procurement Staff Guidance Document in Case No. U-20852 (Competitive Procurement Guidelines) are similar to those contained in the Settlement Agreement. The IE and DTE worked to ensure that any additional RFP requirements under the Competitive Procurement Guidelines were also met in this RFP. The Competitive Procurement Guidelines state that “it is preferred that an independent administrator (IA) conducts all aspects of the competitive procurement process”. An IE, rather than an IA, was used in this RFP consistent with the Settlement Order, with the IE ensuring the fairness and transparency of the RFP through the IE’s oversight of the process.

2.4 RFP Process

This section describes the procedural steps that took place during the RFP process. Key procedural steps included:

- The RFP was issued on April 1, 2022.
- Subsequently, 60 entities (“potential bidders”) entered into confidentiality agreements with DTE as part of this RFP and gained access to the complete set of RFP documentation posted on PowerAdvocate.
- Questions on the RFP were submitted by potential bidders through the RFP question deadline date of July 18, 2022. Responses to these questions were posted on PowerAdvocate periodically by DTE on PowerAdvocate as questions were received, with the final full set of responses posted on July 19, 2022. Responses to bidder questions were available for all potential bidders to see. All DTE responses were reviewed by the IE prior to posting.
- Through PowerAdvocate, potential bidders were notified of the pause of the RFP on April 26, 2022, and the resumption of the RFP on July 8, 2022.
- Four DTE self-build proposals were submitted by July 28, 2022, in accordance with the updated RFP schedule.
- Nine other bidders submitted proposals by July 29, 2022, in accordance with the updated schedule.
- In total, on a project basis, there were 22 unique projects submitted from 10 bidders representing about 3,000 MW of capacity.

- Of the 22 unique projects, there was one wind only project, 14 solar only projects, three solar projects with BESS, and four BESS only projects. Qualification, Scoring, and Shortlist Development

Under the oversight of the IE, eligible submitted proposals were advanced to the qualification criteria evaluation stage. Excluded from the eligible proposals were any proposals for renewable energy types not allowed under the RFP (i.e., standalone battery storage systems), as well as any proposal that did not submit bid response forms or pricing information.

Under the oversight of the IE, subject matter experts from DTE performed a detailed examination of each of the qualification criteria contained in the Scorecard and previously released to potential bidders (as discussed above). An evaluation session was conducted at a central location under the oversight of the IE. During the evaluation session the IE, the RFP Evaluation Team, and RFP subject matter experts completed an initial Scorecard for each proposal that provided pricing information regardless of if the proposal was conforming. Where needed, a series of follow-up questions were developed.

In general, these questions focused on any criteria where qualifications were not met or further clarification was required. This provided an opportunity for bidders to cure any deficiencies. The bidder responses to the follow-up questions were examined by the IE, RFP Evaluation Team, and RFP subject matter experts and the Scorecard for each proposal was updated. A follow-up discussion occurred with a respondent to further evaluate the project pricing.

Based on the updated Scorecard, many proposals were deemed to be non-conforming as they did not meet the prespecified minimum requirements and specific deficiencies were not curable. Scores were ranked from high to low to create the final shortlist. DTE proceeded down the list until a sufficient and reasonable number of conforming proposals that would satisfy project objectives were selected to advance to the final selection stage.

2.5 Final Selected Projects

Four self-build DTE projects (Gratiot, Pine River, Polaris, and Sauk) were selected as finalists based on the process described above. These four projects comprise a total of 380 MW, within the 500 MW sought by DTE under this RFP.

To help further assess whether the DTE self-build projects would be of value to VGP customers, the pricing of the self-build projects was compared to other eligible RFP proposals, regardless of whether the other proposals conformed to RFP requirements. Based on this comparison, the DTE self-build projects were priced favorably having received the maximum price score.

3. Recommendations

Guidehouse worked closely with DTE throughout the development of the solicitation, the administration of the bidding, and the evaluation of the bids. DTE adopted Guidehouse recommendations throughout this process and Guidehouse has no specific additional recommendations at this time. We expect that additional refinements to the RFP documents and process will be made in future DTE VGP-related RFPs to reflect: 1) the questions from the bidders during the RFP, 2) the responses of bidders in their submitted proposals to the various forms and other RFP requests for information, and 3) any additional best practices developed through other renewable RFPs in the U.S. and shared with DTE by Guidehouse.

4. Findings

The following is our independent assessment of whether the goals of the RFP were achieved and whether the overall RFP process was fair and consistent.

- Our overall assessment is that the goals of the RFP were achieved as 380 MW of renewable energy projects were selected through this RFP. The RFP request was for approximately 500 MW of renewable energy projects therefore a future RFP will be required to fulfill the remaining need.
- The qualification evaluation was performed on a fair and consistent basis using the process described in the RFP. Respondents were given an opportunity to cure deficiencies within a reasonable amount of time.
- The evaluation stage, including the pricing and noneconomic evaluation, was performed on a fair and consistent basis using the process noted in the RFP. Use of LCOE as the underlying basis for scoring on price was reasonable and typical, as was the methodology to equate, from a revenue requirements standpoint, proposal options (BTA) that result in DTE ownership of the facilities against PPA options.
- Using a score sheet and scoring guide for the criteria scoring was also reasonable and typical. The RFP Evaluation Team and the DTE subject matter experts that performed the evaluation and scoring, as overseen by the IE, were consistent in their approach. The combined scoring and ranking using a weighting between pricing/noneconomic criteria was reasonable.
- The advancement of conforming bids to the shortlist and selection of finalists was performed on a fair and consistent basis using the process published in the RFP.
- The RFP was developed and performed in accordance with the Settlement Agreement.
- Based on our review and observations, there is no evidence that the evaluation and selection process caused any unfair advantage or disadvantage to any interested party or respondent.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

Case No. U-20851

**AFFIDAVIT OF TERRI L. SCHROEDER IN SUPPORT OF DTE ELECTRIC
COMPANY'S APPLICATION FOR APPROVAL OF GRATIOT CO-LOCATION SOLAR
PARK, POLARIS CO-LOCATION SOLAR PARK, PINE RIVER CO-LOCATION SOLAR
PARK, AND SAUK SOLAR PARK**

STATE OF MICHIGAN)

COUNTY OF WAYNE)

Terri L. Schroeder, being first duly sworn, deposes and says:

1. My title is Director, Renewable Energy. I graduated from DePaul University in 2002 with a Bachelor of Science Degree in Business. In 2008, I received a Master of Business Administration from the University of Michigan Ross School of Business and a Master of Science from the University of Michigan School of Natural Resources and Environment (now known as the School for Environment and Sustainability). I began my career in the marketing department at Jenner & Block, an Am Law 100 law firm based in Chicago. Prior to graduate school, I served one year with AmeriCorps at City Year Detroit. After graduate school, I worked at two different consulting firms: first at Shepherd Advisors from 2008-2012 and later at Public Sector Consultants from 2012-2014, where I focused on energy policy, energy marketing, and program management.

My employment with DTE Electric began in 2014 when I joined the Renewable Energy team as a Senior Strategist in Business Development. In this role, I executed on our approved plans to meet the requirements of 2008 PA 295, running RFPs for our renewable energy parks, filing applications with the MPSC, and maintaining our Renewable Energy Credit (REC) compliance. In January of 2017, I became Manager of Business Development in Renewable Energy and was responsible for planning and executing renewable energy activities for the Company under 2008 PA 295, as amended by 2016 PA 342. I also served as the Manager of Product Development in Renewable Solutions from June 2019 to June 2020, and Chief of Staff for Distribution Operations from June 2020 to March 2022. In March of 2022, I assumed my current role of Director of Renewable Energy. I am responsible for planning, development, and executing renewable energy activities and associated regulatory filings.

I have previously sponsored testimony before the Michigan Public Service Commission in the following cases:

U-18232 REP Plan Proceeding

U-18242 Reconciliation of the DTE Electric 2016 REP Program

U-18352 Section 61 of 2016 PA 342

U-18419 DTE Electric 2017 Certificate of Necessity Case

U-20172 Reconciliation of the DTE Electric 2017 REP Program

U-20343 Large Customer Voluntary Green Pricing program

U-20471 DTE Electric Company Integrated Resource Plan

The facts contained in this affidavit are true and correct and are all within my personal knowledge.

2. With this filing (U-20851), DTE Electric Company (“DTE Electric” or the “Company”) requests the Commission’s *ex parte* approval of master supply agreements and engineering, procurement, and construction contracts necessary to develop four renewable projects, and related relief. Specifically, the Company seeks to develop the Gratiot Co-Location Solar Park (“Gratiot”), Polaris Co-Location Solar Park (“Polaris”), Pine River Co-Location Solar Park (“Pine River”), and Sauk Solar Park (“Sauk”), (collectively referred to as the “Projects”). With respect to the master supply agreements necessary to develop the Projects, DTE has entered into module supply agreements with New East Solar Energy (America) Inc. and Vietnam Sunergy Joint Stock Company (“VSUN”), (collectively, the “MSAs”). DTE Electric and Barton Malow Company (“Barton Malow”) and DTE Electric and J. Ranck Electric, Inc. (“J. Ranck”) have entered into engineering, procurement, and construction contracts (collectively, the “EPCs”). The MSAs and EPCs are collectively referred to in this Affidavit as the Contracts and are attached to my Affidavit as Attachment B and incorporated by reference.

3. The Contracts require: New East Solar Energy (America) Inc. and VSUN to provide solar panel modules; Barton Malow and J. Ranck to design, engineer, construct, install, start-up, and test the Projects. Additional contracts for other facility components were negotiated and are included in the total installed cost of Gratiot, Polaris, Pine River, and Sauk. The contracts are assigned to the Projects as follows:

Project	Gratiot	Pine River	Polaris	Sauk
Module Supply Agreement	New East Solar Energy (America) Inc.	VSUN	VSUN	New East Solar Energy (America) Inc.
EPC Contract	J. Ranck	Barton Malow	J. Ranck	Barton Malow

4. Gratiot will be sited in Bethany Township in Gratiot County. The project will interconnect into the existing Gratiot Wind Park substation located in Bethany Township in Gratiot

County and is anticipated to provide 50 megawatts (MW) of renewable energy nameplate capacity. Commercial operation of Gratiot is expected to occur in December 2023.

5. Pine River will be sited in Pine River Township in Gratiot County. The project will interconnect into the existing Pine River Wind Park substation located in Pine River Township in Gratiot County and is anticipated to provide 80 MW of renewable energy nameplate capacity. Commercial operation of Pine River is expected to occur in December 2023.

6. Polaris will be sited in North Star and Washington Townships in Gratiot County. The project will interconnect into the existing Polaris Wind Park substation located in North Star Township in Gratiot County and is anticipated to provide 100 MW of renewable energy nameplate capacity. Commercial operation of Polaris is expected to occur in December 2023.

7. Sauk will be sited in Union Township in Branch County. The project will interconnect in Union Township in Branch County and is anticipated to provide 150 MW of renewable energy nameplate capacity. Commercial operation of Sauk is expected to occur in December 2023.

8. To satisfy the December 2023 commercial operation dates of the Projects, the Company respectfully requests an expedited review of this Application and accompanying Contracts with the issuance of a Commission order. The Contracts submitted within this Application are fully executed. The solar market supply chain, including solar module panels and construction, is an extremely dynamic market where supply and demand are causing material shortages, delays in production and tightening labor market. If the Commission does not approve this Application or in any material way modifies the Contracts and/or any relief requested by DTE Electric in the Company's filing or does not grant approval of DTE Electric's requested relief by December 21, 2022, then under the terms of the Contracts, DTE Electric and Barton Malow may terminate the Barton Malow Contract and DTE Electric and J. Ranck may terminate the J. Ranck

Contract by January 6, 2023. Additionally, DTE Electric has secured solar panel modules with locked in beneficial pricing and manufacturing capacity that will be lost if these Contracts are not approved.

9. DTE Electric also seeks *ex parte* approval of this filing in accordance with the Commission-approved Settlement Agreement in Case Nos. U-20713 and U-20851 and consistent with MCL 460.1028 and the Commission's December 4, 2008, Order in U-15800.

10. DTE Electric developed the request for proposals (RFP) in consultation with the MPSC Staff pursuant to and consistent with the December 4, 2008, Temporary Order and December 23, 2008, Amendatory Order in Case No. U-15800 as well as the June 9, 2021, Settlement Agreement in Case Nos. U-20713 and U-20851 (Settlement Agreement).

11. The RFP process was conducted pursuant to the Settlement Agreement and the September 9, 2021, Competitive Procurement Guidelines in Case No. U-20852. The Company used an independent evaluator ("IE") as opposed to an independent administrator ("IA") as specified in the Commission approved Settlement Agreement. A pre-RFP conference was held with MPSC Staff and interested stakeholders on February 15, 2022. The RFP conformed to the guidelines for requests for proposals approved by the Commission under 2008 PA 295. In Case No. U-15800, Attachment D to the Commission's December 4, 2008, Temporary Order specifically provided that the "*bid evaluation process may include an assessment of both price and non-price factors.*" Accordingly, the Company utilized scorecards that were reviewed by the MPSC Staff and were consistent with Attachment D to the December 4, 2008, Temporary Order in MPSC Case No. U-15800 and Exhibit No. A-33 (CLC-1) admitted in MPSC Case No. U-15806-RPS and consistent with the Settlement Agreement.

12. A pre-RFP conference was held on February 15, 2022, during which RFP documents and scorecards were shared with stakeholders, including bidders and MPSC Staff, for

review and feedback. As a result of the pre-RFP conference, the Company received feedback and incorporated suggestions into the final RFP. DTE Electric updated the RFP based upon stakeholder feedback, and these updates included adjusting the commercial operation date to March 31, 2024, and modifications to the generation interconnection agreement requirement. The March 31, 2024, date would allow developers more time to complete projects, but also allows MIGreenPower customers to begin receiving the benefits of the renewable assets during the peak generation summer months.¹ DTE Electric appreciates and values feedback from all stakeholders and will continue to leverage learnings to inform and improve future RFP processes.

13. DTE Electric retained Guidehouse, Inc. (“Guidehouse”) to serve as an independent evaluator (IE) of DTE Electric’s RFP process and leverage its experience with utilities across the United States in similar procurements. Guidehouse provided support and oversight of the Company’s RFP development, administration of the bidding, and proposal evaluation processes and leveraged their experience with utilities across the United States in similar procurements. Guidehouse’s report entitled, “DTE 2022 Renewable Energy All Source Request for Proposals” has been included as part of this filing as Attachment A to the affidavit of Ralph Luciani.

14. The RFP was issued on April 1, 2022, to procure up to 500 MW of renewable energy in order to meet customer demand within the Company’s Voluntary Green Pricing (VGP) program, MIGreenPower, where customer contracts are based on not-to-exceed pricing. The proposals were originally due on April 29, 2022; however, on April 26, 2022, DTE Electric paused the RFP due to the U.S. Department of Commerce (DOC) antidumping circumvention investigation on solar panels imported from Southeast Asia and the uncertainty created by the investigation on solar energy. After an executive order from the Biden administration and the

¹ The MIGreenPower customers that these projects are intended to serve expected to have projects online in Q4 2022. Due to delays in other projects, it was important to start generating renewable energy for these customers early in 2024.

resulting ruling from the DOC, the RFP process resumed on July 8, 2022, with responses due on July 29, 2022.

15. The RFP was conducted under an open, non-discriminatory procurement process that fairly considered different ownership structures. Guidehouse served as the IE in the Company's RFP process in accordance with Section 11.4 of the Settlement Agreement. To ensure that evaluations of proposals were performed on a fair and consistent basis and to maintain integrity within the competitive bidding process, Guidehouse and DTE established a firewall and communication protocols between the RFP evaluation team, RFP subject matter experts, and the DTE self-build team. Guidehouse ensured that there was consistency between the RFP and the prespecified minimum RFP requirements contained in Section 11 of the Settlement Agreement.

16. Four self-build DTE projects (Gratiot, Pine River, Polaris, and Sauk) were shortlisted based on the process described above. These Projects comprise a total of 380 MW, within the 500 MW sought by DTE under this RFP. A future RFP will be required to fulfill the remaining need. *See* Attachment A to the affidavit of Ralph Luciani.

17. To serve DTE's VGP build plan, the Commission approved the development of 420 MW in 2022, 162 MW in 2023, 183 MW in 2024, and 132 MW in 2025 in the Settlement Agreement. Additionally, the Commission approved DTE Electric's *ex parte* application filed in Case No. U-20851 seeking *ex parte* approval of the development of certain renewable energy projects to fulfill the Commission-approved VGP build plan. At this juncture, two of the projects approved by the Commission in Case No. U-20851, Freshwater Solar and White Tail Solar which account for 320 MW, have been delayed indefinitely.

18. The delays with these third-party projects, Freshwater Solar and White Tail Solar, have caused DTE Electric to postpone the commencement of MIGreenPower customer agreements where customers expected to start receiving the benefits of the renewable energy assets in early

2023. Additionally, the delays have caused constraints on the potential for non-contracted customer enrollments, thus requiring a reservation system to be developed in anticipation of high demand and limited availability. DTE Electric is requesting that the 380 MW of Projects in this filing replace the 320 MW of indefinitely delayed projects that have already been approved by the Commission, along with 60 MW of the 2023 generic solar build. Collectively, the Projects will be incorporated into the Voluntary Green Pricing program and generation from the Projects applied for all customers in the program and not applied on an individual customer basis. By incorporating the Projects collectively, new and current MIGreenPower customers will benefit from the lower five year forecasted net premium per the Rider 17 Tariff.

19. Based on my knowledge related to the development of DTE Electric's August 2020 Amended REP, as well as the negotiations to establish the Contracts, I believe that Gratiot, Polaris, Pine River, and Sauk as well as their accompanying Contracts are reasonable and prudent based upon, among other things, the following pricing information: The total costs of the Projects for the customer are consistent with the Commission-approved levelized cost of energy (LCOE) of Freshwater Solar, White Tail Solar and the 2023 generic solar build included in DTE Electric's 2020 Amended REP. Generally, while the installed costs are higher for these projects due to the unprecedented solar market conditions, the revenue requirement and resulting LCOE is lower due to the passage of the Inflation Reduction Act which provided the ability to utilize Production Tax Credits. The estimated installed cost for Gratiot, Pine River, Polaris, and Sauk in aggregate is \$1,453/kW and the LCOE is expected to be \$51-\$53/MWh, which is consistent with previously approved 2022 COD LCOEs of third-party projects that have been delayed and the 2023 generic solar build LCOE². The previously approved 2022 COD LCOEs and the 2023 generic solar build

² The installed cost of \$1,305 per kw is a weighted average installed cost of the 320 MW of previously approved 2022 COD projects and 61.9 MW generic 2023 COD build.

LCOE range was \$51-\$54/MWh. With the passing of the Inflation Reduction Act in August 2022, the projects qualify for a 100% Production Tax Credit (PTC) value. The PTC value for the life of the projects is approximately \$209M. The table below reflects the estimated installed cost and expected LCOE for each of the Projects.

Project	Estimated Installed Cost	Expected LCOE
Gratiot	\$1,619 per kW	\$59-\$63/MWh
Polaris	\$1,525 per kW	\$56-\$59/MWh
Pine River	\$1,455 per kW	\$52-\$54/MWh
Sauk	\$1,348 per kW	\$45-\$47/MWh

20. The Projects include cost savings due to bundling all four projects together for greatest synergies. The Gratiot, Polaris, Pine River, and Sauk were also the highest scored projects in the renewable energy RFP. The subscription charge for MIGreenPower customers is based on the levelized cost of the current projects within the rider plus any additional costs the Commission may approve for inclusion in the future. Additional projects are cost-averaged based on generation into the rider using a five-year forecast for net premium (subscription charge less forecasted Locational Marginal Price and capacity credits) as the evaluation factor at the time of the additional project(s)' contract approval. Based upon the tariff cost-average methodology, there was only one other project that met the cost-average to be included in the portfolio³. Therefore, I believe that combining the project development and construction costs of the Gratiot, Polaris, Pine River, and Sauk solar parks together are reasonable and prudent and consistent with the retail rate impact limits under MCL 460.1045, and approval of the Contracts and DTE Electric's related requests for relief will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in the cost of service to customers beyond what is proposed in the Company's Amended REP filed in August 2020 in Case No. U-20851.

³ The one project that met the cost-average was a non-conforming proposal across several evaluation criteria.

21. DTE Electric believes that it would be appropriate to use the renewable energy transfer prices set forth in Exhibit A-5 filed in Case No. U-21010 which reflects the current Commission approved transfer price schedule for Renewable Energy Contracts and Company-owned Renewable Energy Systems) for the energy and capacity associated with Gratiot, Polaris, Pine River, and Sauk solar-powered generating facilities that will be engineered, procured, and constructed under the Contracts, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. *See also* MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c).

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

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

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

25. Based on my experience and the above determinations, it is in DTE Electric's, as well as its customers', best interest for the Commission to approve the Gratiot Co-Location Solar Park, Polaris Co-Location Solar Park, Pine River Co-Location Solar Park, and Sauk Solar Park and grant the Company's related requests.

Further, Affiant sayeth not.

Terri L. Schroeder

Subscribed and sworn to before
me this 27th day of September 2022.

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

Attachment B

MASTER SUPPLY AGREEMENT

This Master Supply Agreement (“Agreement”) is made and entered into as of 8 April, 2022 (the “Effective Date”) by and between DTE Electric Company, a Michigan Corporation with offices at One Energy Plaza Drive, Detroit, MI 48226 (“Buyer”) and New East Solar Energy (America) Inc., a California limited liability with offices at 4411 Schaefer Ave., Chino, CA 91710 (“Seller”). This Master Supply Agreement number is referred to as “YYP220207”. Buyer and Seller may each be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Seller is in the business of the selling photovoltaic solar modules;

WHEREAS, Seller wishes to supply to Buyer, and Buyer wishes to procure from Seller, certain photovoltaic solar modules on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the respective covenants and undertakings herein, Seller and Buyer agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions and Rules of Interpretation.** Capitalized terms used in this Agreement without other definition shall have the meanings set forth in Exhibit A. The rules of interpretation set forth in Exhibit A shall apply to this Agreement unless the context requires otherwise.

2. SALE AND PURCHASE

2.1 **Purchase and Sale.** Buyer agrees to purchase, and Seller agrees to sell, Modules on the terms and conditions set forth in this Agreement.

2.2 **Purchase Orders.** Buyer shall submit a purchase order for each order of Modules under this Agreement (“Purchase Order”) indicating the following for the Modules that Buyer desires to purchase: the volume, product name and nameplate power rating, price per Module, Delivery Date, and the Delivery Point. Seller shall either confirm or reject the Purchase Order. On the date the Purchase Order is confirmed by Seller, the Purchase Order is binding on both Parties and cannot be cancelled, terminated or changed except pursuant to Section 5 and Section 9. Any preprinted terms and conditions of any Purchase Order, or any document issued by Buyer that conflicts with, modifies, or restricts this Agreement, shall be null and void and such terms are hereby rejected with the exemption of any payment terms, delivery terms, warranty terms, liquidated damages, or where expressly excepted herein.

2.3 **Affiliate Purchase Orders.** Buyer Affiliate(s) may issue Purchase Order(s) under this Agreement if Seller approves, in its sole and absolute discretion, such Buyer Affiliate(s) for purchases under this Agreement (“Approved Buyer Affiliate(s)”). If an Approved Buyer Affiliate issues a Purchase Order under this Agreement and Seller accepts such Purchase Order in its sole and absolute discretion, then such Approved Buyer Affiliate shall be deemed to be the Buyer with respect to such Purchase Order and shall have all the obligations and rights of Buyer hereunder with respect to such Purchase Order. Notwithstanding the foregoing or any other provision of this Agreement or the Purchase Order, Buyer agrees that, except to the extent otherwise set forth in a Purchase Order, it shall be jointly and severally liable for all payment obligations with respect to any Purchase Orders issued by an

Approved Buyer Affiliate unless Buyer provides a guaranty of all payment obligations under any such Purchase Order in a form approved by Seller or provides such other credit support as is approved by Seller in its sole discretion.

2.4 [REDACTED]

3. PRICE, TERMS OF PAYMENT, AND TAXES

3.1 **Price.** Buyer shall pay the amounts due under each Purchase Order for the Modules (“Purchase Price”) and any other applicable charges or fees provided for in this Agreement and set forth in such Purchase Order (the total amount, the “Purchase Order Amount”), as and to the extent set forth in this Agreement in the applicable Purchase Order.

3.2 Invoices; Payment.

(a) **Invoices.** Seller shall invoice Buyer in accordance with the terms of the applicable Purchase Orders. Each such Seller invoice shall be in substantially the form attached hereto as Exhibit A. Seller shall provide conditional lien waivers in form and substance reasonably satisfactory to Buyer with respect to the every [REDACTED] Delivered Modules.

(b) **Payment.** Buyer shall pay the undisputed portion of each invoice submitted by Seller in accordance with Section 3.2(a) within the timeline as specified on each Purchase Order. [REDACTED]

[REDACTED] Buyer and Seller shall hold video call/conference call weekly to discuss the status of any unpaid invoices. [REDACTED]

[REDACTED] If the buyer fails to pay the payments according to the contract, the delivery time shall be postponed accordingly. Payments made to Seller by Buyer hereunder shall be made by wire transfer of immediately available funds to the account of Seller as follows, or such other depository as Seller designates by notice to Buyer.

3.3 Deposit. [REDACTED]

3.4 Taxes and Duties.

(a) [REDACTED]

[REDACTED] If Buyer is exempt from any such tax, Buyer shall submit to Seller its certification of exemption in proper form issued by the applicable taxing authority prior to the time when such taxes would be otherwise

collected and paid. Notwithstanding such exemption certificates, Buyer shall remain liable for any such taxes that actually become due (except to the extent resulting from the actions or omissions of Seller), and shall indemnify, reimburse and hold Seller harmless from all costs (including payment of such taxes and any interest or penalties thereon) incurred by Seller in connection with Buyer's failure to pay any such taxes when due or to pay Seller for such amounts as invoiced.

(b) [REDACTED]

(c) [REDACTED]

4. SHIPPING; DELIVERY; DELAY

4.1 Shipping.

[REDACTED]

4.2 Delivery. Seller shall Deliver the Modules in accordance with the Delivery Dates, subject to changes in accordance with the provisions of Section 5. Seller must provide Buyer with immediate written notification when each shipment leaves from factory. Additionally, Seller shall provide [REDACTED] updates on the progress for goods in transit for the duration of the delivery schedule. Seller shall provide notice to Buyer promptly after it becomes aware that any Delivery of Modules may not occur by the Delivery Date, including an explanation for the delay, measures that Seller is taking to limit the delay and the estimated date of Delivery.

4.2.1 Delivery Delay Liquidated Damages. [REDACTED]

[REDACTED]

4.3 Inspection Period; Acceptance. [REDACTED]

[REDACTED]

4.4 Storage. [REDACTED]

[REDACTED]

5. CHANGES

5.1 **Changes.** Changes to the terms and conditions of this Agreement or a Purchase Order (a “Change”) shall be made only in accordance with a duly issued order in writing executed by both Parties (a “Change Order”). The Change Order shall include: (i) a description of the Change, (ii) a price adjustment (increase or decrease) in the

Purchase Price, if any, resulting from the proposed Change, (iii) the effect of the Change, if any, on the Delivery Dates, or any other schedule or dates for performance hereunder, (iv) the effect of the Change, if any, on the Purchase Order, the Commercial Terms, the Technical Specifications or any other terms or conditions of this Agreement and/or Seller's ability to comply with any of its obligations under this Agreement and (v) any other required modification to this Agreement, specifying the provisions of this Agreement to be affected and modified. Changes shall be subject to mutual agreement of the Parties and no Change Order will be effective until executed by both Parties.

6. WARRANTIES

6.1 Limited Warranty; Serial Defect Warranty.

(a) **Limited Warranty.** Seller shall provide to Buyer the limited warranty set forth in [REDACTED] which is incorporated by reference into this Agreement ("Limited Warranty").

(b) **Serial Defect Warranty.** If, at any time during the applicability of the Limited Warranty, [REDACTED] supplied under a Purchase Order manifest the same or a substantially identical defect, then Seller shall, promptly after notification thereof by Buyer and at Seller's sole cost and expense: (i) conduct a comprehensive investigation and evaluation of the defective Modules (and any other Modules from the same lot that are sold to Buyer under such Purchase Order or any other Purchase Order) to determine the cause of such defects and whether such defects stem from the same root cause; and (ii) provide a detailed written report of the results of such root cause investigation and evaluation to Buyer as promptly as practicable, but in no event more than [REDACTED] after such notice from Buyer. If such defects stem, or are more likely than not to stem, from the same root cause (a "Serial Defect"), then Seller: (x) shall propose, within [REDACTED] after such determination, an action plan that is reasonably acceptable to Buyer to repair or replace all Modules affected or potentially affected by such Serial Defect, whether such Serial Defect has manifested itself in such Module or not; and (y) upon Buyer's acceptance thereof (which acceptance shall not be unreasonably withheld), Seller shall, at Seller's sole cost and expense, implement and complete such action plan as promptly as practicable thereafter. If Buyer disagrees with the results of any root cause investigation and evaluation performed by Seller pursuant to this Section 6.1(b), then Buyer may institute dispute resolution proceedings to determine whether a Serial Defect in fact exists.

6.2 **Exclusivity of Warranty and Remedies.** THE LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY FOR THE MODULES AND NO OTHER WARRANTIES FOR THE MODULES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), SHALL APPLY. THE REMEDIES SET FORTH IN THE LIMITED WARRANTY ARE THE EXCLUSIVE REMEDIES OF BUYER FOR ANY FAILURE BY SELLER TO COMPLY WITH ITS WARRANTY OBLIGATIONS REGARDLESS OF WHETHER A CLAIM IS BASED ON WARRANTY, CONTRACT, INDEMNITY, TORT, STRICT LIABILITY OR OTHERWISE.

6.3 **Disclaimer of Other Representations or Descriptions.** ANY SUGGESTIONS BY SELLER OR ITS EMPLOYEES OR AGENTS REGARDING APPLICATION, USE OR SUITABILITY OF THE MODULES SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS EXPRESSLY CONFIRMED TO BE SUCH IN WRITING BY SELLER. ORAL STATEMENTS BY SELLER'S AGENTS OR EMPLOYEES CONCERNING PROPERTIES AND PERFORMANCE CHARACTERISTICS OF SELLER'S MODULES SERVE AS ILLUSTRATION AND ARE NOT BINDING, UNLESS SPECIFIED IN WRITING. PUBLIC STATEMENTS, ENDORSEMENTS OR ADVERTISEMENTS DO NOT CONSTITUTE CONTRACTUAL STATEMENTS OF QUALITIES REGARDING THE MODULES. STATEMENTS REGARDING

MEASUREMENTS, WEIGHTS, PROPERTIES AND QUALITIES REMAIN SUBJECT TO MINOR DEVIATIONS.

6.5 **Forced Labor.** Notwithstanding anything to the contrary herein, Seller represents and warrants that: (a) it does not, and will not, directly or indirectly through the sourcing of materials or equipment, use or employ, or permit the use of employment of, Forced Labor in connection with any mining, processing, procurement, or manufacturing process related to the Modules or the components thereof, or otherwise; (b) as of their respective manufacturing, the Modules (including each of the materials and components thereof) shall be in compliance with all Applicable Laws of the United States of America and international law regarding the use of Forced Labor; and (c) no Modules will be impounded or subject to a withhold release or similar order by any governmental authority in the United States of America upon importation into the United States of America on account of any violation or alleged violation of any Applicable Law, regulation, order, or directive issued by any governmental authority in the United States of America relating to Forced Labor. Seller's violation of this Section 6.5 shall be a material breach of this Agreement entitling Buyer to terminate the applicable Purchase Order(s) upon [REDACTED] prior written notice to Seller.

7. **TITLE; RISK OF LOSS**

7.1 **Title.** [REDACTED]

7.2 **Risk of Loss.** [REDACTED]

8. **FORCE MAJEURE**

8.1 **Excused Performance.** Seller shall be excused from performance and shall not be or be deemed to be in breach of this Agreement to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any [REDACTED]. In the event Seller claims [REDACTED], and the delays form such [REDACTED] in the aggregate, then [REDACTED]

8.2 **Effect of Force Majeure Event.** To claim relief hereunder with respect to a [REDACTED], Seller must, within [REDACTED] after Seller knows, or should have known, of the impact of such Force Majeure Event of its ability to timely perform hereunder, notify Buyer of such potential [REDACTED] and provide all information relating to such [REDACTED] in Seller's possession or control at such time. Seller shall use diligent, commercially reasonable efforts to overcome the impact of such [REDACTED] on its ability to perform hereunder and to avoid and/or minimize any delay resulting therefrom, and shall provide Buyer with periodic updates on such efforts as and to the extent reasonably requested by Buyer. Within [REDACTED] after such initial notice, Seller shall notify Buyer in writing of any further information regarding such [REDACTED] and, if possible, provide supporting evidence showing the anticipated impact of such [REDACTED] on Seller's performance hereunder. [REDACTED]

[REDACTED]

9. TERM AND TERMINATION

9.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year (the "Initial Term"). Unless a Party provides written notice to the other Party of its intent to terminate this Agreement at least [REDACTED] prior to the expiration of the Initial Term or the then-current Renewal Term, the term shall be automatically extended on an annual basis for an additional year (each such annual extension, a "Renewal Term" and together with the Initial Term, the "Term"). The Term shall be extended as necessary to allow the performance of any Purchase Order confirmed by Seller during the Term.

9.2 **Termination for Convenience.** [REDACTED]

9.3 **Termination for Default.**

[REDACTED]

[Redacted text]

(b) Termination of Purchase Orders by Buyer. [Redacted text]

[Redacted text]

[Redacted text]

[Redacted text]

(c) Agreement. [Redacted text]

[Redacted text]

■ [Redacted text]

[Redacted text]

■ [Redacted text]

[Redacted text]

■ [Redacted text]

[Redacted text]

■ [Redacted text]

[Redacted text]

■ [Redacted text]

[Redacted text]

9.4 Remedies. [REDACTED]

[REDACTED] If this Agreement is terminated in part or in whole by either Party or both Parties in accordance with this Section, neither Party shall be discharged from any other obligation or liability to the other Party incurred prior to the date of termination unless otherwise agreed in writing, and any payment obligation hereunder shall immediately become due and shall be completed within [REDACTED]

9.5 **Suspension.** If Buyer fails to cure a breach of any payment obligation relating to a Purchase Order within [REDACTED] after such payment is due, in addition to its other rights set forth herein, Seller may suspend any performance in part or in whole under such Purchase Order until such payment is made. For avoidance of doubt, Seller may, at its discretion, choose to suspend its performance first and still elect to terminate the Agreement pursuant to Section 9.3.

10. INTELLECTUAL PROPERTY

10.1 Indemnity.

(a) Subject to Section 10.1(b), Seller shall defend, hold harmless, and indemnify the Buyer Indemnitees from and against any Losses arising out of any suit, claim, or proceeding (a “Claim”) brought by a third party: (x) arising out of or result from any breach by Seller of the representations set forth in Section 10.1(f) below; or (y) alleging that the Modules infringe the intellectual property rights of an unaffiliated third party on the condition that (i) Buyer, after becoming aware of such Claim, promptly delivers notice of such Claim to Seller, (ii) Buyer makes no admission of liability and gives Seller sole authority, at Seller’s expense, to direct and control the defense and any settlement and compromise negotiations; provided that any settlement must, at no expense to Buyer: (A) pay or settle all damages and costs awarded in it against such Buyer Indemnitee; and (B) either: (I) procure for Buyer, or reimburse Buyer for procuring, the right to continue using the infringing Modules; or (II) modify or replace the infringing Modules to make them non-infringing, but without adversely affecting the performance, function, generating capacity, efficiency, operation, or expected design life of such Modules, and (iii) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

(b) Seller shall have no obligation or liability with respect to any Claim based upon or resulting from (i) any Modules that have been altered (except for alterations by or at the express written direction or recommendation of Seller, including work or services performed pursuant to the Limited Warranty), (ii) the combination or use of the Modules with other products not provided by Seller or at its express written direction or recommendation when the combination is part of any allegedly infringing process, (iii) any Modules that were designed according to Buyer’s specifications.

(c) If Buyer’s use of the Modules is enjoined as the result of a Claim described in Section 10.1(a), then Seller, at its expense, shall use commercially reasonable efforts to have any injunction removed promptly at no cost or expense to Buyer or Owner, and shall promptly either (i) procure for Buyer, or reimburse Buyer for procuring, the right to continue using the affected Modules, or (ii) modify or replace the Modules to make them non-infringing with equivalent performance, function, generating capacity, efficiency, operation, and design life, such choice of remedy to be at Seller’s discretion.

(d) The indemnities and remedies set forth in this Section 10.1 comprise Seller's sole and entire liability for infringement in respect of the Modules. Seller's obligations under this Article 10 shall survive any expiration or termination of this Agreement or any Purchase Order.

(e) Defense of any Claim for which Buyer is indemnified pursuant to this Section 10.1 shall be governed by the procedures set forth in this Section 10.1(e). An indemnitee may, at its own expense, assist in such defense or provide its own separate defense, provided that indemnitor, subject to the terms hereof, shall control its defense and all negotiations relative to its settlement of any such claim. An indemnitee shall promptly notify indemnitor in writing of any claim which such indemnitee believes falls within the scope of this Section 10.1, but failure to give such prompt notice shall not relieve the obligations of indemnitor described in this Section 10.1 except to the extent the indemnitor is prejudiced by the failure to give prompt notice. Seller shall not be entitled to any cost or schedule relief due to claims, defenses, or other actions required under this Section 10.1.

(f) Seller represents that: (i) Seller owns or has the right to use all intellectual property rights necessary to manufacture, modify, and sell the Modules, and to otherwise perform all of its obligations under this Agreement and each Purchase Order, in each case without infringing any patent, copyright, trade secret, or other intellectual property or proprietary right held by any other Person; (ii) Seller has not previously granted, and shall not grant, any rights in the Modules to any Person other than Buyer; and (iii) Buyer's use of the Modules will not infringe any patent, copyright, trade secret, or other intellectual property or proprietary right held by any third party.

10.2 Other Intellectual Property Provisions.

(a) Buyer expressly acknowledges that, as between Seller and Buyer, Seller (together with Seller's suppliers as applicable) owns all worldwide right, title and interest in and to all intellectual property rights embodied in the Modules and the components thereof, and agrees that, subject to Applicable Law, nothing in this Agreement will be construed as granting any rights to Buyer, by license or otherwise, in or to any Confidential Information or any patent, copyright, trademark, trade secret, or other intellectual property or proprietary rights of Seller or its suppliers, except as expressly specified in this Agreement. Seller acknowledges and agrees that between Seller and Buyer, Seller is responsible for obtaining all rights, licenses and permission for use of all intellectual property incorporated in the modules, and paying all required royalties and license fees unless otherwise agreed to in writing by Buyer. Notwithstanding the foregoing, Seller hereby grants, and shall cause any of its subcontractors and vendors to grant to Buyer and/or Owner (in each case at no additional cost) a perpetual, irrevocable, non-exclusive, sub-licensable, transferable and assignable, royalty free, fully paid up license to access, use, reproduce, display, modify, make derivative works of and otherwise exploit all or any intellectual property included in or arising from the Modules delivered under this Agreement for use in connection with the design, engineering, procurement, construction, start-up, testing, commissioning, operation, modification, maintenance, and decommissioning of the Work and/or the Plant. The foregoing license shall survive any expiration or termination of this Agreement.

(b) Buyer acknowledges that Confidential Information relating to the Modules and the components thereof is subject to the provisions of Section 11. In order to protect such Confidential Information and other interests that Seller and its suppliers may have therein, Buyer agrees that (except as provided in Section 10.2(c)) it shall not, and it shall not permit or authorize any third party to, reverse engineer, disassemble or examine or analyze for the purposes of reverse engineering the Modules or any components thereof, or attempt to determine any methods, technology or techniques used or embodied in the Modules or any components thereof.

(c) [REDACTED]

[REDACTED]

11. CONFIDENTIAL INFORMATION

11.1 Restrictions on Disclosure.

(a) In connection with this Agreement, Seller and Buyer (as to information disclosed, the “Disclosing Party”) may each have provided or will provide the other Party (as to information received, the “Receiving Party”) with Confidential Information.

(b) The term “Confidential Information” as used herein shall mean information relating to the subject matter of this Agreement that is exchanged between the Parties pursuant to this Agreement and that reasonably should be considered confidential or proprietary, including business or technical information, Documentation, pricing information for the Modules, information concerning customers or vendors, information concerning the terms of this Agreement, trade secret information, or any technology, invention, idea, process, formulation, method of manufacture, software, documentation, analytical method or data, whether disclosed orally or in written, graphic, electronic or other form.

(c) Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of acts or omissions by the Receiving Party, (ii) was in the possession of the Receiving Party on a non-confidential basis (other than in connection with the negotiation of this Agreement) prior to its disclosure by the Disclosing Party to the Receiving Party, (iii) becomes available to the Receiving Party from a source other than the Disclosing Party, provided, that such source is not bound by a confidentiality obligation, directly or indirectly, to the Disclosing Party, or (iv) is independently developed by Receiving Party without use or reliance upon the Disclosing Party’s Confidential Information.

(d) Each Party agrees to take reasonable measures to preserve the other Party’s Confidential Information in confidence and prevent disclosure thereof to third parties. The Parties shall exercise the same degree of care to preserve and safeguard the other Party’s Confidential Information as they use to preserve and safeguard their own Confidential Information of like character, but in no event less than a reasonable degree of care. Each Party may disclose the Confidential Information of the other Party only to those of its directors, officers, employees, Affiliates, agents, legal counsel, advisors, lenders, potential lenders, and suppliers (collectively, its “Representatives”), on a strict need to know basis, who (i) are advised by such Party of this Agreement and (ii) are bound by an obligation of confidentiality to such Party on terms sufficient to ensure compliance with this Agreement. Additionally, Buyer may disclose the contents of any [REDACTED] notice delivered by Seller in whole or in part in its absolute discretion to any contractual counterparty relevant to the Plant, including the Owner. Each Party shall be responsible for any breach of this Agreement by its Representatives, and each Party agrees, at its sole expense, to take all reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure of the Confidential Information of the other Party and will notify the other Party if it becomes aware of any unauthorized disclosure of Confidential Information. In no event is a Receiving Party permitted to disclose any Confidential Information to a competitor of the Disclosing Party.

(e) The Receiving Party agrees to use the Confidential Information only to carry out its obligations under this Agreement, or as otherwise permitted by this Agreement. Buyer is permitted to use the Confidential Information only to install, maintain and operate the Modules.

(f) Upon termination, Buyer shall return all Confidential Information to Seller, except for Documentation solely as to Modules for which Buyer retains title and with regard to which Buyer's obligations under this Section 11.1 shall survive for as long as Buyer (or any transferee) retains title to the Modules.

11.2 Disclosure Pursuant to Legal Process. If the Receiving Party or any of its Representatives is requested or required by Applicable Law (including, without limitation, by deposition, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice (unless prohibited by Applicable Law) of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If such a protective order or other remedy is not obtained or compliance with the terms of this Agreement is waived, the Receiving Party agrees that it will furnish only that portion of the Confidential Information and other information that is legally required; provided that the Receiving Party exercises reasonable efforts to preserve the confidentiality of the Confidential Information and other information, including by cooperating with the Disclosing Party to obtain reliable assurances that confidential treatment will be accorded the Confidential Information and other information being disclosed.

11.3 Irreparable Harm. Each Party agrees that the other Party may be irreparably damaged by a breach of this Section 11 and that monetary remedies may be inadequate to protect the other Party against any actual or threatened breach of this Section 11. Accordingly, each Party agrees that in addition to all other relief available to the Parties and notwithstanding anything to the contrary herein, each Party shall be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach of the provisions of this Section 11.

11.4 Publicity. Neither Party shall publicly disclose any information relating to this Agreement to the press or any media without the prior written consent of the other Party, which consent shall not be unreasonably withheld. The Parties shall cooperate to agree on public disclosures and publicity and marketing materials in respect of the sale, purchase and use of the Modules and the construction of the Plant.

11.5 Priority; Survival. The provisions of this Section 11 supersede any separate confidentiality or nondisclosure agreement signed by the Parties. The provisions of this Section 11 shall survive for three (3) years following the termination of this Agreement.

12. LIMITATION OF LIABILITY; INDEMNITIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.4 Indemnification.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. **DISPUTE RESOLUTION**

Dispute Resolution Procedure. [REDACTED]

13.1 **Continued Performance.** [REDACTED]

14. **MISCELLANEOUS**

14.1 **Waivers.** The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of such provisions, shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement, or any parts thereof, or the right of either Party thereafter to enforce each and every provision.

14.2 **Applicable Law.** This Agreement, and the rights and obligations of the Parties and any dispute arising under or relating thereto (whether in contract, tort or otherwise) shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules or any other statute or doctrine that might call for the application of the laws of any other jurisdiction. The Convention on the International Sale of Goods shall not apply to this Agreement.

14.3 **Severability.** If any provision of this Agreement is determined to be void, unlawful, or otherwise unenforceable, that provision shall be severed from the remainder of the Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and the Agreement, as so modified, shall continue in full force and effect.

14.4 **Assignment.**

(a) **Buyer Assignment.** [REDACTED]

[REDACTED]

(c) **Seller Assignment.** Seller may assign its rights and delegate its obligations under this Agreement to any Affiliate or subsidiary of Seller, provided that Seller shall either (i) guarantee the obligations of the assignee by executing a guaranty in a form acceptable to Buyer or (ii) retain its obligations under any payment and indemnity provisions of this Agreement.

(d) **No Other Assignment without Consent.** A Party may not assign this Agreement other than as provided in this Section 14.4 without the prior written consent of the other Party.

14.5 **Headings.** The headings used in this Agreement are not to be construed as modifying, limiting or expanding in any way the scope or extent of the Sections or Exhibits of this Agreement.

14.6 **Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

14.7 **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by email, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service, in each case to the appropriate addresses or emails set forth below (or to such other addresses or emails as a party may designate by notice to the other Party):

[REDACTED]

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

[REDACTED]

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

14.8 **Survival.** All provisions of this Agreement that reasonably should survive the termination of this Agreement in order to give full force and effect to the intent of the Parties shall remain in effect and be enforceable following such termination to such extent, subject to all applicable statutes of limitations.

14.9 **Independent Contractor.** The Parties acknowledge that, except as expressly set out in this Agreement to the contrary, each Party is entering into this Agreement as an independent contractor and nothing in this Agreement shall be interpreted or applied so as to make the relationship of any of the Parties that of partners, joint venturers or anything other than independent contractors.

14.11 **Further Assurances.** The Parties agree, to the extent not inconsistent with the provisions of this Agreement and not involving the assumption of any obligation other than those in this Agreement, to provide such

information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party in order to give full effect to this Agreement and to carry out the intent of the Parties under this Agreement.

14.12 **No Recourse.** The obligations of Buyer and Seller under this Agreement shall be without recourse to any of the officers, board members, directors, shareholders, employees, agents, partners or Affiliates of Buyer or Seller, or to the Affiliates of any of the foregoing.

14.13 **No Third Party Beneficiaries.** Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement, provided that Owner shall be an intended third-party beneficiary of this Agreement and Seller assumes toward Buyer all of the obligations and responsibilities that Buyer has to Owner under a construction contract to the extent of the work to be performed by such Seller. Except as stated above in regards to Owner, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and assigns and shall not be enforceable by any third party.

14.14 **Compliance with Laws and Legal Requirements.** Seller declares that it has received any certifications as provided in the Technical Specifications attached as [REDACTED]

14.15 **Export Controls.** Buyer represents and warrants that it shall not sell, dispose of, license, rent, transfer, disclose or otherwise provide the Modules and/or technical information relating thereto directly or indirectly to any country or to any citizen or resident of any country prohibited by the laws and/or regulations of by the authorities claiming jurisdiction over it, in particular that of the United States of America.

14.16 **Anti-Corruption.** The Parties shall each comply with the U.S. Foreign Corrupt Practices Act and any similar Applicable Laws or requirements.

14.17 **Cooperation in Seller's Insurance Arrangement.** Buyer acknowledges and understands that Seller may have made insurance arrangement with respect to its obligations arising from or in connection with this Agreement. Buyer agrees to provide, at Seller's expense, any support and assistance that Seller may reasonably require to facilitate such insurance arrangement, including but not limited to Seller's claiming or obtaining reimbursement under such insurance arrangement.

14.18 **Entire Agreement.** This Agreement supersedes all prior agreements and understandings, whether written or oral, between the Parties with respect to its subject matter, and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be changed, modified or amended in any way, except by a written change order or contract amendment executed by authorized representatives of both Parties.

14.19 **Counterparts.** This Agreement may be executed in counterparts, including by electronic transmission, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

15. Additional Flow-Down Terms

15.1 **Safety.** Seller acknowledges and agrees that Buyer will implement, and Seller (and other subcontractors and vendors) shall comply with while present on the Site, any safety and environmental programs established for work at the Site and laydown areas. Buyer agrees to furnish any such safety program to Seller and reasonably inform Seller of any applicable requirements. Furthermore, Seller agrees to comply with all Site security procedures and policies of Owner.

15.2 **Diversity.** Seller acknowledges receipt of [REDACTED] [REDACTED] is incorporated herein. Seller agrees to input requested data into [REDACTED] and deliver a completed form to with [REDACTED] of Buyer's request.

15.3 **Licenses.** Seller shall obtain and maintain, and shall require any subcontractor to obtain and maintain, applicable licenses as required by Applicable Laws and those required by the Commonwealth of Virginia.

15.4 **Insurance.** Before Seller commences any work under the Purchase Order and during the term of the Purchase Order, Seller shall maintain insurance as and to the extent set forth in [REDACTED]

16. Representations and Warranties. Each Party represents and warrants to the other Party, on the date hereof and on effective date of each Purchase Order, as follows:

(a) **Due Organization and Good Standing.** Such Party is validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to do business in each jurisdiction where the failure to so qualify would have a material adverse effect on its ability to perform its obligations under this Agreement or the applicable Purchase Order.

(b) **Due Authorization, Execution, and Delivery.** Each Party has all necessary corporate power, authority, and capacity to enter into this Agreement and the applicable Purchase Order, and to carry out its obligations under this Agreement and such Purchase Order. The execution and delivery of this Agreement and the applicable Purchase Order, and the consummation of the transactions contemplated by this Agreement and the applicable Purchase Order, have been duly authorized by all necessary corporate, limited liability company, or other action of such Party, and do not and will not require the consent of any Person except for any consents that have already been obtained. This Agreement and the applicable Purchase Order have been duly executed and delivered by such Party. This Agreement and the applicable Purchase Order constitute a valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.

(c) **Governmental Approvals.** No governmental authorization, approval, order, license, permit, franchise, or consent, and no registration, declaration, or filing with any governmental authority, is required on the part of such Party in connection with the execution, delivery, and performance of this Agreement and the applicable Purchase Order (including the Delivery of the Modules to the Delivery Point under such Purchase Order), except those which have already been obtained or which such Party anticipates will be timely obtained in the ordinary course of performance of this Agreement and the applicable Purchase Order before being required by Applicable Law.

(d) **No Conflict.** The execution, delivery, and performance by such Party of this Agreement and the applicable Purchase Order will not conflict with or cause any default under: (i) its organizational documents; (ii) any indebtedness or other obligation for borrowed money of such Party; or (iii) any Applicable Law governing such Party or such Party's performance under this Agreement or the applicable Purchase Order; and will not subject the other Party (or in the case of Buyer, the Owner or the Plant) or any component thereof (including the Modules) to any lien or encumbrance other than as contemplated or permitted by this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Master Supply Agreement as of the Effective Date.

SELLER:

New East Solar Energy (America) Inc

By: 

Name: Yunfei Huang

Title: CEO

BUYER:

DTE Electric Company

By: 

Name: Charles Conlen

Title: Vice President – Renewable Energy

EXHIBIT A

DEFINITIONS; RULES OF USAGE

A. Definitions.

For purposes of this Agreement, the following capitalized terms have the meanings and uses established in this Exhibit A.

1. “Affiliate” of any Person means a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Person specified.
2. “Agreement” means this Master Supply Agreement together with all Exhibits, Schedules and Appendices hereto.
3. “Applicable Law” means any laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court, or governmental agency or authority, and rules, regulations, orders, interpretations and permits of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the applicable matter and professional codes and standards with which a Party is required to comply.
4. “Approved Buyer Affiliate” has the meaning established in Section 2.3.
5. “Business Day” means any day other than a Saturday, Sunday or any day that banks in New York City, New York are authorized or required to be closed.
6. “Buyer” has the meaning established in the preamble to this Agreement.
7. [Reserved].
8. “Change” has the meaning established in Section 5.1.
9. “Change in Law” means any change to an Applicable Law or a binding change in interpretation of an Applicable Law, after the Effective Date.
10. “Change Order” has the meaning established in Section 5.1.
11. “Claim” has the meaning established in Section 10.1(a).
12. [Reserved]
13. [Reserved]
14. “Commission” or “Commissioning” means the start-up, testing and commissioning of the Modules in accordance with the Technical Specifications, the applicable Documentation, and Applicable Law.
15. “Contract Amount” has the meaning established in Section 3.1.
16. “Confidential Information” has the meaning established in Section 11.1.
17. “Delivery” has the meaning established in Section 4.1(a).
18. “Delivery Date” means the date the Modules are scheduled to be delivered by Seller, as specified in the applicable Purchase Order.

19. "Delivery Point" means the Delivery point or location specified in the Commercial Terms and/or Purchase Order.
20. "Deposit" has the meaning established in Section 3.3.
21. "Disclosing Party" has the meaning established in Section 11.1.
22. "Dispute" has the meaning established in Section 13.1.
23. "Documentation" means user guides and other documentation relating to the storage, transportation, handling, storage, protection, installation, and commissioning of the Modules, including, without limitation, the Installation Manual and the Transportation and Packaging Information Sheet.
24. "Effective Date" has the meaning established in the preamble to this Agreement.
25. [REDACTED]
26. "Forced Labor" means all work or service which is exacted from any Person under the menace of penalty for nonperformance and for which the Person has not offered himself or herself voluntarily through the free and informed consent of a worker to take a job or his or her freedom to leave at any time.
27. "Forced Labor Impact" means any adverse impact on Seller's performance of its obligations under this Agreement that is attributable to the enactment, modification, interpretation, application or administration of Applicable Law relating to items being manufactured in whole or in part using Forced Labor.
28. "Government Authority" means, as the context requires, any public body that exercises jurisdiction over a Party, the Site, or the design, engineering, construction, erection, transportation of Modules and operation of the Plant, including government agencies that issue licenses, permits, and authorizations, and courts of competent jurisdiction.
29. "Initial Term" has the meaning established in Section 9.1.

30. "Inspection Period" has the meaning established in Section 4.3.
31. "Installation Manual" means the Installation Manual attached as [REDACTED] of this Agreement.
32. "Letter of Credit" has the meaning established in Section 3.6.
33. "Limited Warranty" has the meaning established in Section 6.1.
34. "Modules" means the photovoltaic solar modules and/or related products to be supplied hereunder.
35. "Person" means any individual, entity or association.
36. "Plant" means the power generating facility identified in the Commercial Terms, or if none is identified, the location where the Modules are installed.
37. "Purchase Order" has the meaning established in Section 2.2.
38. "Purchase Order Amount" has the meaning established in Section 3.1
39. "Purchase Price" has the meaning established in Section 3.1.
40. "Quarantine Modules" has the meaning established in Section 4.3.
41. "Receiving Party" has the meaning established in Section 11.1.
42. "Rejected Modules" has the meaning established in Section 4.3.
43. "Renewal Term" has the meaning established in Section 9.1.
44. "Seller" has the meaning established in the preamble to this Agreement.
45. "Site" means the real property on which the Plant will be located.
46. "Technical Specifications" means the standard manufacturer's technical specifications for the Modules in effect on the Delivery Date. The Technical Specifications in effect on the Execution Date are as set forth in [REDACTED]
47. "Term" has the meaning established in Section 9.1.
48. "Transportation and Packaging Information Sheet" means the Transportation and Packaging Information Sheet attached as [REDACTED] of this Agreement.

B. Rules of Interpretation.

The Parties hereby agree that the following rules of interpretation shall apply to this Agreement unless otherwise required by the context or unless otherwise specified:

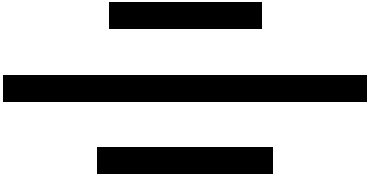
1. Singular and Plural. Definitions set forth herein shall be equally applicable to the singular and plural forms of the terms defined.
2. Section References. References to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in this Agreement.
3. References to Persons. References to any Person shall include such Person, its successors and permitted assigns, and transferees, from time to time.
4. Agreements as Amended. Reference to any agreement (including this Agreement) means such agreement as amended, supplemented or otherwise modified from time to time in accordance with the applicable provisions thereof.

5. **Laws as Amended.** References to any Applicable Law includes any Applicable Law as that Applicable Law may be changed as provided in the definition of Change in Law herein.
6. **Grammatical Forms.** Where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words “herein,” “hereunder,” and “hereof” refer to the provisions of this Agreement as a whole and not to any particular portion or provision of this Agreement; “including” means “including, but not limited to,” and other forms of the verb “to include” are to be interpreted similarly; references to “or” shall be deemed to be disjunctive but not necessarily exclusive.
7. **Days.** References to “day” shall mean a calendar day, unless the term “Business Day” is used. If the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.
8. **Time Periods.** Where a period of time is specified to run from or after, or before or prior to, a given hour or day or the hour or day of an act or event, such period is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given hour or day or the hour or day of an act or event, it is to be calculated inclusive of such day.

[REDACTED]









**Module Supply Agreement
General Terms and Conditions**

These General Terms and Conditions (these “General Terms and Conditions”) are entered into by and between DTE ELECTRIC COMPANY, a Michigan corporation, with its registered address at One Energy Plaza Drive, Detroit, MI 48226 (hereinafter called the “Buyer”), and VIETNAM SUNERGY JOINT STOCK COMPANY, a Vietnam corporation, with its registered address at Lot III – Dong Vang, Dinh Tram, Industrial Park, Nenh Town, Viet Yen District, Bac Giang Province, Vietnam (hereinafter called the “Seller”). Each of the Buyer and the Seller are sometimes referred to herein individually as a “Party” and together as the “Parties.” When the Buyer and the Seller agree to a purchase order for the purchase and sale of solar photovoltaic modules (the “Products”) offered by the Seller (a “Purchase Order”), the terms of such Purchase Order and these General Terms and Conditions shall form the “Contract” governing such purchase and sale of such Products. Capitalized terms not defined herein shall have the meaning given such terms in the applicable Purchase Order. The Effective Date is July 5, 2022.]].

1. Definitions

“Calendar Days” any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, including weekends and United States federal holidays, unless otherwise expressly provided. To the extent a deadline falls on a weekend or United States federal holiday, the next business day shall be the applicable deadline.

“Forced Labor” means all work or service which is exacted from any person under the menace of penalty for nonperformance and for which the person has not offered himself or herself voluntarily through the free and informed consent of a worker to take a job or his or her freedom to leave at any time.

“Forced Labor Impact” means any adverse impact on Seller’s performance of its obligations under this Agreement that is attributable to the enactment, modification, interpretation, application or administration of applicable law relating to items being manufactured in whole or in part using Forced Labor.

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Contract Purpose

The Contract consists of: (i) these General Terms and Conditions; and (ii) the applicable Purchase Order. These General Terms and Conditions do not in and of themselves obligate the Buyer to buy, or the Seller to sell, any Products; the Buyer shall have an obligation to buy, and the Seller will have an obligation to sell, Products only if: (x) a written Purchase Order is issued by Buyer; and (y) Buyer's Purchase Order is duly accepted by Seller in accordance with these General Terms and Conditions, and both Buyer's and Seller's rights and obligations with respect to the purchase and sale of such Products shall be as set forth in such Purchase Order and these General Terms and Conditions. Any conflict or inconsistency between such documents shall be resolved by giving priority first to such Purchase Order and then to these General Terms and Conditions. The Buyer expressly rejects any different, additional, or conflicting terms in Seller's acceptance of any Purchase Order (unless agreed to by Buyer in writing) and expressly limits Seller's acceptance to the terms set forth in the Purchase Order and these General Terms and Conditions (unless otherwise agreed by the Parties in writing).

4. [Reserved]

5. [Reserved]

6. Price of Products: The price for the Products shall be as set forth in the applicable Purchase Order (the "Contract Price").

7. Specifications: The specifications of the Products shall be in the applicable Purchase Order.

8. Product(s) Origin:

The Seller represents and warrants that the Products are products of, and will be manufactured and assembled in, Vietnam.

9. Payment Terms:

9.1 The total Contract Price shall be paid in US Dollars in accordance with the applicable Purchase Order.

9.2 The payment terms for the Products shall be as set forth in the applicable Purchase Order. The Seller shall invoice the Buyer in accordance with the terms of the applicable Purchase Order. Each such Seller invoice shall be in substantially the form attached hereto as [REDACTED] and accompanied by a conditional lien waiver in form and substance reasonably satisfactory to the Buyer with respect to the Product related to such invoice.

9.3 Within [REDACTED] of the Products arriving at the port of unloading in the United States of America and after the Products have been cleared through United States Customs, the Seller must provide a copy of the Shipping Arrival Notice and CBP Form #7501 to the Buyer.

9.4 The Buyer shall remit to the Seller all undisputed amounts due for sales, use, or similar taxes imposed by any governmental authority of the United States of America on the sale or purchase of the Products under the applicable Purchase Order (collectively, "Sales Taxes") together with balance payment after receiving an invoice from the Seller (together with a copy of all documentation issued by such governmental authority to the Seller, if any), and Seller shall remit all such amounts collected from the Buyer to the applicable taxing authorities promptly after receipt. If the Buyer is exempt from any such tax, and submits to the Seller its certification of exemption in proper form issued by the applicable taxing authority prior to the time when such taxes would otherwise be collected and paid, then the Seller shall not invoice the Buyer or collect from the Buyer any Sales Taxes covered by such exemption certificate. Notwithstanding such exemption certificate, the Buyer shall remain liable for any such Sales Taxes that actually become due (except to the extent resulting from the actions or omissions of the Seller), and shall indemnify, reimburse, and hold the Seller harmless from all costs (including payment of such taxes and any interest or penalties thereon) incurred by the Seller as a result of the Buyer's failure to remit any such Sales Taxes to the applicable governmental authority when due on account of the Seller's reliance on such exemption certificate (except to the extent such Sales Taxes become due and owing as a result of the actions or omissions of the Seller). For the avoidance of doubt, Sales Taxes do not include any taxes or duties imposed or levied in connection with the manufacture or delivery of the Products, including, without limitation, any income, gross receipts, or similar taxes, or any taxes, fees, duties, or other governmental charges relating to the export of the Products from the country of manufacture or assembly or other taxes, fees, duties, or other governmental charges imposed on the importation of the Products into the United States of America (collectively, "Seller Taxes"). Subject to Section 12.3, Seller shall be responsible for, and shall pay as and when due, all Seller Taxes.

9.5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

9.6 [REDACTED]

9.7 All bank charges imposed by the Seller's bank shall be borne by the Seller, and all bank charges imposed by the Buyer's bank shall be borne by the Buyer. The Buyer shall use the following account for purposes of making any payment due to the Seller under the Contract:

[REDACTED]

9.8 Cancellation:
The Buyer may cancel all or a portion of a Purchase Order by providing the Seller written notice of such cancellation and by paying to the Seller, as liquidated damages, the applicable amount set forth in the Cancellation Schedule in such Purchase Order based on the number of days that such cancellation notice is provided before the Shipping Date for such cancelled Products

[REDACTED]

9.9 Adjustment to Production Schedule
After issuance of a Purchase Order, Buyer may request a change in production schedule. If such change is granted by the Seller, the [REDACTED] shall be calculated using the new shipping date based on the revised production dates and in accordance with [REDACTED]

10. Packing condition:

The Seller shall package the Products included in any shipment under a Purchase Order in accordance with the requirements set forth in [REDACTED].

11. Shipment terms:

11.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11.2 Seller shall perform [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11.3 If the Buyer notifies the Seller that the Delivery Destination is not reasonably capable of accepting deliveries of the Products on the scheduled delivery dates and in accordance with these terms and conditions [REDACTED]
[REDACTED] then the Seller shall deliver the Products to a storage location selected by the Buyer in a manner reasonably intended to minimize storage fees and additional transportation costs. If Product is delivered to storage, then the following shall apply: (i) payment obligations and original payment terms and schedule by Buyer shall not be changed; (ii) delivery of such Product shall not be deemed to have occurred, other than for purposes of triggering the payment obligations of the Buyer upon delivery of the Products to such storage facility; (iii) upon the Buyer's request, the Seller shall cause such Product to be removed from storage and transported to the applicable Delivery Destination; and (iii) the Buyer shall reimburse Seller for all unloading, storage, maintenance, insurance, re-loading, additional transportation and other costs and fees incurred by the Seller that are additional to those that would have been incurred delivering the Products to the original Delivery Destination in connection with the storage of the Products and re-delivery of the Products to the Delivery Destination, and such costs and fees shall be paid by Buyer to Seller prior to starting to transport for re-delivery of the products to the Delivery Destination.

11.4 [REDACTED]

11.5 For avoidance of doubt, before delivery of the Products to a storage location, the Seller shall have received any balance payment of corresponding batch shipment set forth in the Purchase Order.

12. Delivery Schedule:

12.1 The Seller shall ship the Products to the applicable Delivery Destination in accordance with the Delivery Dates as set forth in the Purchase Order. The Seller may not deliver Product to a Delivery Destination more than [REDACTED] prior to its applicable Delivery Date without the Buyer's prior written consent.

12.2 In the event the Seller fails to deliver Product to its applicable Delivery Destination by its applicable Delivery Date [REDACTED]

12.3 Seller shall be responsible for and pay all taxes and duties imposed or levied in connection with the manufacture or delivery of the Product, including, without limitation, any income, gross receipts, or similar taxes, as well as any tariffs, taxes, fees, duties, or other governmental charges relating to the export of the Products from the country of manufacture or assembly or other tariffs, taxes, fees, duties, or other governmental charges imposed on the importation of the Products into the United States of America. The Contract Price includes all current import tariffs and duties imposed by the United States of America government or its instrumentalities. If there is any extension, removal or amendment of any relevant current import tariff or duty, Seller and Buyer shall either increase or decrease the Contract Price by

the actual difference between the current tariffs and duties and any applicable tariffs and duties in place at the time of customs clearance. If the tariff and duty rate in place at the time of customs clearance changes in the liquidation period, Seller and Buyer shall either compensate or refund the actual difference between the tariffs and duties in place at the time of customs clearance and the tariff and duty applied in the liquidation period or any time after customs clearance.

12.4 Seller shall pay any [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] percent (10%) per annum or (ii) the maximum rate permitted under applicable law.

13. Acceptance and Title/Risk of Loss:

13.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] after the Buyer has satisfied its payment obligations hereunder with respect to

a Product, provide a final lien waiver to the Buyer in form and substance reasonably satisfactory to the Buyer with respect to such Product. Risk of loss to the Products shall pass to the Buyer when the Seller has made the Products available for offloading by the Buyer at the Delivery Destination.

14. Insurance:

The Seller shall, at its sole cost and expenses, obtain and maintain insurance, including marine cargo insurance, for all shipments of Product under any Purchase Order in accordance with [REDACTED]

15. Partial shipment:

Allowed

16. Transshipment:

Allowed

17. Advice of Shipment:

Seller shall provide Buyer a "Shipping Departure Notice" within [REDACTED] after each shipment has been dispatched from the port of origin. The Shipping Departure Notice shall at minimum include the following:

- (a) Transportation documents (including Bill of Lading copies)
- (b) Commercial invoice
- (c) Packing list (including quantities and wattages)
- (d) Container Numbers
- (e) Port departure date
- (f) Port arrival date (ETA)
- (g) Flash Test Data (in Excel format)

18. Warranty:

18.1 Limited Warranty. The Seller shall warrant the Products delivered under a Purchase Order in accordance with the warranty terms attached to such Purchase Order ("Limited Warranty for Products").

18.2 Serial Defect Warranty. If, at any time during the applicability of the Limited Warranty for Products, [REDACTED] supplied under a Purchase Order manifest the same or a substantially identical defect, then the Seller shall, promptly after notification thereof by the Buyer and at Seller's sole cost and expense: (i) conduct a comprehensive investigation and evaluation of the defective Products (and any other Products from the same lot that are sold to the Buyer under such Purchase Order or any other Purchase Order) to

[REDACTED]

19.3 Termination for Cause by Buyer. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19.4 Remedies. In the event of a default by any Party hereunder: (a) the non-defaulting Party may pursue any legal remedy available to it, whether or not specified herein, (b) all rights and remedies of a Party hereunder are cumulative, and (c) the exercise of any remedy does not preclude the exercise of any other remedy. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19.5 Upon any suspension of Seller’s performance for reasons not due to Seller, Buyer shall pay all reasonable and documented out-of-pockets expenses actually incurred by Seller in connection with the suspension, including repossession, fee collection, and costs of storage.

19.6 Either Party may terminate this Agreement if the other Party applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets or such a receiver, trustee or liquidator is appointed; or the other party has filed against it an involuntary petition for bankruptcy that has not been dismissed within [REDACTED], or files a voluntary petition for bankruptcy, or a petition or answer seeking reorganization, becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature,

makes an assignment for the benefit of creditors or seeks to take advantage of any law relating to relief of debtors.

20. Limitation of Liability

20.1 [REDACTED]

21. Seller's Indemnity

21.1 [REDACTED]

21.2

[REDACTED]

22. Excused Events:

22.1

[REDACTED]

22.2

[REDACTED]

[REDACTED]

22.3

[REDACTED]

22.4

[REDACTED]

[REDACTED]

22.5 As of the Effective Date, Seller acknowledges and confirms that it is not aware of any negative impact related to COVID-19 on its ability to fulfil its contractual obligations under the Contract or any Purchase Order. Notwithstanding the previous sentence, if a [REDACTED] related to COVID-19 occurs after the Effective Date, then Seller will be entitled to relief as and to the extent set forth in this Section 22, but only to the extent that the circumstances, laws or the response of government authorities in Vietnam *and* the United States of America regarding the COVID-19 pandemic have changed since the Effective Date in a way that further restricts the movement of goods or people (in comparison to those laws in effect as of the Effective Date).

23. Disputes and Governing Law:

The Contract and each Purchase Order shall be governed by, and construed in accordance with, the laws of the State of New York. The Parties shall attempt to resolve any disputes arising from the execution of or in connection with the Contract or any Purchase Order through friendly negotiation. In the event that a settlement cannot be reached through negotiation, either Party may commence a legal action, suit, or proceeding in a court of competent jurisdiction located within the United States of America. The attorney fees, administrative fees and other charges arising from any such legal action, suit, or proceeding shall be borne by the losing party.

24. Amendments

Any amendment to these terms and conditions must be mutually agreed by both parties.

25. Confidentiality

The Parties shall keep the confidentiality of all records or information received from the other with the same degree of care used to protect its own information. The Parties agree that they shall not disclose any records or information to any other third party without the prior written permission of the disclosing Party.

26. Additional clauses:

- 26.1 Annexed documents are an integral part of the Contract. Buyer expressly rejects any different, additional or conflicting terms in Seller's acceptance of any Purchase Order and expressly limits Seller's acceptance to the terms set forth in the Purchase Order and in these terms and conditions.
- 26.2 Each Party shall comply with the U.S. Foreign Corrupt Practices Act and any similar applicable laws or requirements.
- 26.3 Seller Performance Security. Contemporaneously with the execution of this Contract, Seller shall provide Buyer a guaranty in the form attached as [REDACTED]

27. Assignability:

Neither Party may transfer or assign any of its rights, liabilities or obligations under this Contract or any Purchase Order to any third party without prior written consent of the other Party. Notwithstanding the foregoing, the Buyer shall have the right to assign any Purchase Order (and its rights and obligations hereunder relating to such Purchase Order), in whole or in part, without the consent of Seller to: (i) its financing parties providing financing to a project, a sub-project comprising part of a project, or another project in which the Products are intended to be used, on the understanding that, if such assignment is a collateral assignment, on enforcement of such collateral assignment by such financing parties (or their affiliates), the collateral assignee may assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of Buyer hereunder; or (ii) to any project company intending to use the Products or any affiliate for the purpose of developing, financing or owning a project, a sub-project comprising part of a project or another project in which the Products are intended to be used, on condition that any assignment under shall be subject to satisfying at least one of the following conditions: (1) the assignee is as creditworthy as the Buyer as determined by the Seller in its reasonable discretion (such determination to be made promptly after request by the Buyer); or (2) the Buyer remains jointly and severally liable for all of the assignee's obligations under the Purchase Order. In connection with any collateral assignments, Seller will execute commercially reasonable consents to assignment, confirmations, and estoppels if requested by any financing parties. Without relieving its payment obligations hereunder, Buyer may direct that any Products purchased hereunder be titled in the name of and/or shipped to the attention of an affiliate or any financing parties. The Buyer shall be permitted to assign Seller's warranties to any entity to which the Products are transferred, conveyed and/or assigned by Buyer with prior notice to, but without the prior consent of, Seller; provided that such Products are not de-installed and re-installed in connection with any such transfer, conveyance and/or assignment.

- 28. Representations and Warranties:** Each Party represents and warrants to the other Party, on the date hereof and on the effective date of each Purchase Order, as follows:

- 28.1 Due Organization and Good Standing. Such Party is validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to do business in each jurisdiction where the failure to so qualify would have a material adverse effect on its ability to perform its obligations under this Agreement or the applicable Purchase Order.
- 28.2 Due Authorization, Execution, Delivery, and Enforceability. Each Party has all necessary corporate power, authority, and capacity to enter into this Agreement and the applicable Purchase Order, and to carry out its obligations under this Agreement and such Purchase Order. The execution and delivery of this Agreement and the applicable Purchase Order, and the consummation of the transactions contemplated by this Agreement and the applicable Purchase Order, have been duly authorized by all necessary corporate, limited liability company, or other action of such Party, and do not and will not require the consent of any person except for any consents that have already been obtained. This Agreement and the applicable Purchase Order have been duly executed and delivered by such Party. This Agreement and the applicable Purchase Order constitute a valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- 28.3 Governmental Approvals. No governmental authorization, approval, order, license, permit, franchise, or consent, and no registration, declaration, or filing with any governmental authority, is required on the part of such Party in connection with the execution, delivery, and performance of this Agreement and the applicable Purchase Order (including the Delivery of the Modules to the Delivery Point under such Purchase Order), except those which have already been obtained or which such Party anticipates will be timely obtained in the ordinary course of performance of this Agreement and the applicable Purchase Order before being required by Applicable Law.
- 28.4 No Conflict. The execution, delivery, and performance by such Party of this Agreement and the applicable Purchase Order will not conflict with or cause any default under: (a) its organizational documents; (b) any indebtedness or other obligation for borrowed money of such Party; or (c) any Applicable Law governing such Party or such Party's performance under this Agreement or the applicable Purchase Order; and will not subject the other Party (or in the case of Buyer, the Owner or the Plant) or any component thereof (including the Modules) to any lien or encumbrance other than as contemplated or permitted by this Agreement.

29. Forced Labor

Notwithstanding anything to the contrary herein, the Seller represents and warrants that: (a) it does not, and will not, directly or indirectly through the sourcing of materials or equipment, use or employ, or permit the use of employment of, Forced Labor in connection with any mining, processing, procurement, or manufacturing process related to the Products or the components thereof, or otherwise; (b) as of their respective manufacturing, the Products (including each of the materials and components thereof) shall be in compliance with all applicable laws of the United States of America and international law regarding the use of Forced Labor; and (c) no Product will be impounded or subject to a withhold release or similar order by any governmental authority in the United States of America upon importation into the United States of America on account of any violation or alleged violation of any applicable law, regulation, order, or directive issued by any governmental authority in the United States of America relating to Forced Labor. The Seller's violation of this Section 29 shall be a material breach of the Contract entitling the Buyer to terminate the applicable Purchase Order(s) [REDACTED] prior written notice to the Seller.

30. Intellectual Property

30.1 The Seller represents that: (i) the Seller owns or has the right to use all intellectual property rights necessary to manufacture, modify, and sell the Products, and to otherwise perform all of its obligations under the Contract and each Purchase Order, in each case without infringing any patent, copyright, trade secret, or other intellectual property or proprietary right held by any other person; (ii) the Seller has not previously granted, and shall not grant, any rights in the Products to any person other than the Buyer; and (iii) the Buyer's use of the Products will not infringe any patent, copyright, trade secret, or other intellectual property or proprietary right held by any third party.

30.2 The Seller shall defend, hold harmless, and indemnify the Buyer Indemnitees from and against any Losses arising out of any Claim brought by a third party: (i) arising out of or result from any breach by the Seller of the representations set forth in Section 30.1; or (ii) alleging that the Products infringe the intellectual property rights of an unaffiliated third party on the condition that: (a) the Buyer, after becoming aware of such Claim, promptly delivers notice of such Claim to the Seller; (b) the Buyer makes no admission of liability and gives the Seller sole authority, at the Seller's expense, to direct and control the defense and any settlement and compromise negotiations; provided that any settlement must, at no expense to Buyer: (I) pay or settle all damages and costs awarded in it against such Buyer Indemnitee; and (II) either: (A) procure for the Buyer, or reimburse the Buyer for procuring, the right to continue using the infringing Products; or (B) modify or replace the infringing Products to make them non-infringing, but without adversely affecting the performance, function, generating capacity, efficiency, operation, or expected design life of such Products; and (c) the Buyer provides the Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

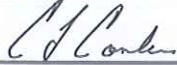
- 30.3 The Seller shall have no obligation or liability with respect to any Claim based upon or resulting from: (i) any Products that have been altered (except for alterations by or at the express written direction or recommendation of the Product, including work or services performed pursuant to the Limited Warranty); or (ii) the combination or use of the Products with other products not provided by the Seller or at its express written direction or recommendation when the combination is part of any allegedly infringing process.
- 30.4 If the Buyer's use of the Products is enjoined as the result of a Claim described in this Section 30, then the Seller, at its expense, shall use commercially reasonable efforts to have any injunction removed promptly at no cost or expense to the Buyer, and shall promptly either: (i) procure for the Buyer, or reimburse the Buyer for procuring, the right to continue using the affected Products; or (ii) modify or replace the Products to make them non-infringing with equivalent performance, function, generating capacity, efficiency, operation, and design life.

[Signature pages follow]

Buyer: DTE Electric Company
Name: Charles Conlen
Title: Vice President-Renewable Energy

Seller: Vietnam Sunergy Joint Stock
Company
Name: Zhengxun Liu
Title: Vice Executive President

Signature:



Date: July 5, 2022

Signature:



Date: July 5, 2022

PHÓ TỔNG GIÁM ĐỐC
LIU ZHENGXUN



[REDACTED]

[REDACTED]

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

[REDACTED]

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

BETWEEN

DTE ELECTRIC COMPANY

AND

J. RANCK ELECTRIC, INC.

as Contractor

Dated as of September 21, 2022

Gratiot Solar

ARTICLE 1
RECITALS

WHEREAS, DTE desires to own and operate a solar photovoltaic system (as further defined below, the Gratiot “Solar Energy Facility” or “SEF”) located in Gratiot County, Michigan as further provided in this Agreement;

WHEREAS, Contractor is a full-service, engineering, procurement, construction company with the financial and technical capabilities to provide services to DTE including, but not limited to, engineering, procurement of material not provided by Owner, project and construction management, construction and installation, commissioning, testing and training as to its operation and maintenance; and

WHEREAS, Contractor has received, reviewed, and understands DTE’s requirements for the SEF design and drawings [REDACTED] and Specifications [REDACTED] DTE’s SEF commissioning requirements [REDACTED]

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter contained, and other good and valuable consideration receipt of which is hereby acknowledged, DTE and Contractor hereby agree as follows:

ARTICLE 2
DEFINITIONS

For purposes of the Agreement, and its [REDACTED] the defined terms herein shall have the meaning set forth as follows:

“Agreement” or “Contract” shall mean this Engineering, Procurement and Construction Agreement and all [REDACTED] attached hereto which are incorporated herein, as the same may be amended or modified from time to time in accordance with the provisions hereof, including any [REDACTED] executed in accordance with this Agreement.

“AHJ” shall mean the authority having jurisdiction

“Applicable Laws” shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or the performance of the Work.

“Applicable Permits” shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or performance of the Work. A list of all Applicable Permits is contained in [REDACTED] and includes a matrix of the responsibility of the Parties for such permits.

“Business Day” means any day except a Saturday, Sunday, or day on which banks in the State of Michigan are closed.

“Capacity Guarantee” shall have the meaning set forth in [REDACTED]

[REDACTED]

“Change” shall mean any material addition to, deletion from, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, or other modification that constitutes a material change to the Scope of Work.

[REDACTED]

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall mean the date that Commissioning is complete and the SEF is capable of delivering energy to the grid at the Interconnection Point.

“Change in Law” means the enactment, adoption, promulgation, modification, or repeal of any applicable Law or Permit after the Effective Date.

“Commissioning” shall mean the set of tests and procedures performed on the Solar Energy Facility to verify its operational readiness.

“Commissioning Plan” shall mean the plan presented to DTE prior to performing any tests or procedures to verify as-built Project parameters as part of Commissioning.

“Construction Lien Act” shall have the meaning as provided in Section 5.4.

“Contract Date” shall have the meaning set forth in the Preamble. “Contract Documents” shall mean this Agreement, the Submittals, and any amendments thereto.

[REDACTED]

“Contractor” has the meaning set forth in the Preamble.

“Contractor Event of Default” shall have the meaning set forth in Section 16.1.1.

“Contractor Warranty” shall have the meaning set forth in Section 6.1.1.

“Contractor Warranty Period” shall have the meaning set forth in Section 6.1.1.

“COVID Pandemic” shall have the meaning set forth in Article 15.

“Daily Progress Report” shall have the meaning set forth in Section 3.3.3.2.

completed to the reasonable satisfaction of DTE and (b) of the Final Completion Certificate, certifying that the criteria for Final Completion, has been delivered by DTE to the Contractor, signed by the Contractor and returned to DTE.

“Final Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Final Completion to be achieved by Contractor as contemplated by Section 10.4 and this Agreement.

“Final Completion Date” shall have the meaning set forth in Section 10.4

[REDACTED]

“Gold Shovel Certified” is a certification confirming developer understands Gold Shovel standards in an effort to reduce the damages to underground utility infrastructure as provided in Exhibit W.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and, with respect to the Contractor, shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the construction, use, and operation of the SEF.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

[REDACTED]

[REDACTED]

“Interconnection Requirements” means the Michigan Electric Utility Generator Interconnection Requirements, Category 5 Projects filed with the MPSC, DTE Electric Company SIMS Manual for Metering Guidelines, as modified from time to time, ITC Operating Guides, ITC Metering Guidelines, MISO Generation Interconnection Procedures, any other documents adopted by the Company, ITC or MISO relating to the interconnection and operation of generators and transmission systems as amended from time to time, and any successors thereto and any and all applicable law or regulation regarding interconnection.

“Landowner” shall mean the individual or entity owner of such property to which the Company intends to install any portion of the SEF.

“Lien” means any lien (statutory or other), pledge, mortgage, charge, security interest, deed of trust, assignment, hypothecation, deposit arrangement, easement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever in respect of an asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Laws.

[REDACTED]

“Manufacturer’s Warranty” shall mean the specific warranty furnished by Contractor and provided by the manufacturer of a specific product covering the material workmanship and/ or performance of that specific product, a list of which is set forth in [REDACTED]

“Materials” shall mean any articles, apparatus, goods, materials, products, items, data, documents, supplies, equipment, component parts and assemblies, or any other substances, parts, or any combination thereof used, consumed, furnished or installed by Contractor or any subcontractor as part of the Work.

“Mechanical Completion” shall mean (a) the conditions as set forth in [REDACTED] have been achieved and (b) the Mechanical Completion Certificate has been signed by Contractor and DTE. “Mechanical Completion Certificate” shall mean the certification as provided in accordance with

the form in [REDACTED] providing the criteria for Mechanical Completion to be achieved by Contractor as contemplated by Section 10.2 and this Agreement.

“Milestone Payment Schedule” means the milestone payment schedule attached hereto as [REDACTED]

“MPSC” shall mean Michigan Public Service Commission.

“MPSC Approval” shall have the meaning set forth in Section 4.4.

“MPSC Submittal Date” shall have the meaning set forth in Section 4.4.1(c).

“NERC” shall mean North American Electric Reliability Corporation

“Network Access Point” shall mean the RJ45 jack into which the Data Acquisition System may be plugged and which provides direct access to the internet, either via DTE’s network, or via a third-party service such as DSL, cable or cellular data modem.

“Notice to Proceed” or “NTP” shall mean the written notice provided by DTE to Contractor authorizing Contractor to proceed with the Work, and which is further described in Section 4.4.

“Operations and Maintenance Manual” shall mean the manual provided by the Contractor that describes in detail the processes and procedures required to safely operate and maintain the SEF, and shall include documentation provided by the original equipment manufacturers of all equipment covered by a Manufacturer's Warranty which describe how to operate and maintain such equipment to maintain, as applicable, warranty coverage and effective operation.

[REDACTED]

“Party” or “Parties” shall mean Contractor, DTE, each or both of them, as the context may require pursuant to the terms and conditions of this Agreement.

[REDACTED]

“Project” shall mean the SEF and the substation to be constructed consistent with the Contract Documents.

“Project Schedule” shall mean the overall engineering, permitting, and construction schedule for the Work, as further detailed in Section 3.3.1, [REDACTED]

“Prudent Industry Practice” shall mean those practices, methods, standards and procedures as are commonly used by professional construction and engineering firms performing turnkey engineering, procurement and construction services on facilities of a type and size similar to the Solar Energy Facility, which in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the design, manufacture and construction and use of electrical and other equipment, facilities, equipment and improvements, with commensurate standards of safety, performance, dependability, efficiency and economy.

“PTC” means PV USA Test Conditions; 1000W/square meter solar irradiance; 1.5 air mass @20°C; wind speed 1 meter/second

“Punchlist” shall have the meaning as provided in Section 10.1.

“Redline” shall mean the set of prints on the construction site that reflect “as built” conditions using the Green-in, Red-out standard.

[REDACTED]

“SCADA” shall mean Supervisory Control and Data Acquisition systems used to monitor and control a plant or equipment

“Scope of Work” shall mean the Work to be performed hereunder by Contractor pursuant to the Scope of Work (as amended by approved Change Orders), attached hereto as [REDACTED] this Agreement.

“Site” shall mean that area or areas where the materials and equipment for the Solar Energy Facility (as depicted in the Site Plan, [REDACTED] shall be installed and/or used to perform the Work.

“Solar Power Easement Agreements” shall mean the easement agreements which are entered into between Landowner and DTE for the SEF.

“Solar Energy Facility” or “SEF” shall mean the entirety of the solar generating system, its electrical and mechanical components, Support Structure, mounting or tracking components, inverter(s), modules, meter(s), monitoring components, conduit, substation and other elements installed in the nature of the Work.

“Solid Waste” means that term as defined under Part 115 of Michigan Act 451 of 1994, MCL 324.11506.

“Specifications” shall mean such references, materials, methods, design and engineering requirements, safety requirements and other such standards of workmanship and materials as described in [REDACTED]

“STC” means Factory Standard Test Conditions – 1000W/square meter solar irradiance; 1.5 air mass @25°C; wind speed 1 meter/second.

“Subcontractor” shall mean any subcontractor, supplier, vendor or other service provider of Contractor as well as any subcontractor, supplier, vendor or other service provider of such subcontractor, supplier, vendor or other service provider retained by such subcontractor.

“Submittals” shall mean all documents required to be provided to DTE by Contractor as described in [REDACTED]

“Substantial Completion” or “Substantially Complete” shall mean the (a) conditions as set forth in [REDACTED] have been achieved; and (b) the Substantial Completion Certificate, has been signed and delivered by the Contractor and DTE.

“Substantial Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Substantial Completion to be achieved by Contractor as contemplated by Section 10.3 and this Agreement.

“Substantial Completion Date” shall mean the date indicated as the Substantial Completion Date in the Substantial Completion Certificate.

“Support Structure” shall mean the rooftop, ground-based or floating mounting system, elevated structure or tracking system that will hold the solar modules of the Solar Energy Facility on the Site, and all supports thereto.

[REDACTED]

“Term” shall have the meaning set forth in Section 19.1.

“Work” shall mean the design, engineering, permit attainment, procurement, construction and installation of the Solar Energy Facility and all other services to be provided by Contractor hereunder, in accordance with the terms hereof, including the Scope of Work and Specifications and Submittals.

ARTICLE 3 **RESPONSIBILITIES OF CONTRACTOR**

3.1 Performance of the Work

Contractor shall fully perform the Work in accordance with the provisions of this Agreement. Such Work shall be performed in a manner consistent and in accordance with Prudent Industry Practice, provided, however, that in the event of any conflict between the requirements of this Agreement and Prudent Industry Practice, the requirements of this Agreement shall govern Contractor's Work. Contractor shall perform all Work in accordance with applicable equipment manufacturers' requirements, including all requirements necessary to preserve and maintain in effect any and all warranties and, if applicable, any performance guarantees with respect to such equipment. Contractor shall perform the Work in accordance with all workmanship, safety requirements and [REDACTED] and in accordance with all specifications as defined in [REDACTED] and all Applicable Permits and all Applicable Laws.

3.2 Site Access, Maintenance and Damages

3.2.1 Maintenance of the Site. Contractor shall keep the Site reasonably free from accumulations of waste materials, rubbish, and other debris resulting from performance of the Work; and reasonably promptly after the Substantial Completion Date, remove from those portions of the Site involved in the commercial operation of the SEF, in conformity with Applicable Laws, all such waste materials, rubbish, and other debris, as well as all tools, construction equipment, machinery and surplus material that would interfere in any material way with the commercial operation of the SEF (specifically excluding materials, tools, and construction equipment necessary to complete any Punchlist items); and before final departure from the Site, in conformity with Applicable Laws, all remaining waste and rubbish generated during performance of the Punchlist work, and all remaining materials, tools, and construction equipment of Contractor or its Subcontractors, and leave the Site in clean and usable condition.

3.2.2 Site Access. As soon as practicable, DTE shall provide written notification to Contractor to allow access to the Site sufficient to enable Contractor's performance of the Work. DTE shall have the right to freely access the Site subject to reasonable conditions necessary to avoid interference with performance of the Work as the Parties may agree upon in writing; so long as, when accessing the Site, DTE and its agents comply with Prudent Industry and Contractor's safety plan to the extent applicable to such access.

3.2.3 Damage to Real Property

Contractor will conduct all of Contractor's activities within the boundaries of the Site or other Owner designated work area and any other limitations and requirements set forth herein and will be responsible for any trespass or damage to property resulting from its activities. Contractor acknowledges and agrees to observe reasonable construction practices in performing the Work, including reasonable care and respect for the real property at the Site. Without limiting Contractor's obligations as set forth elsewhere herein, Contractor agrees that it will be responsible for any and all damages to real property inside the boundaries of the Site or other Owner designated work area or inside the areas defined by any other limitations and requirements set forth herein caused by Contractor or its Subcontractors in the performance of the Work. Contractor shall immediately report to Owner in writing all damage to any real or personal property wherever located.

3.3 Hazardous Substances.

3.3.1 As required by Applicable Laws, Contractor shall provide safety data sheets, warning labels, or other documentation covering all Hazardous Substances furnished under or otherwise associated with the Work. Contractor shall provide to DTE either copies of the applicable safety data sheets or copies of a document certifying that no safety data sheets are required under any Applicable Laws prior to the commencement of such Work or at such time as any such substances enter the Site.

3.3.2 [REDACTED]

3.4 Project Pricing and Schedule

3.4.1 [REDACTED]

3.4.2 Progress Reports and Meetings.

3.4.2.1 During the design, engineering and permitting phases of the Work, Contractor will schedule regular meetings with DTE to review any design or engineering changes, and such meetings shall coincide with milestones agreed to by the Parties. During such meetings, Contractor and DTE shall review any materials selection and logistics, and other plans that relate to the design, engineering and permitting of the Solar Energy Facility.

3.4.2.2 During the construction phase of the Work, Contractor will schedule regular meetings with DTE at least [REDACTED] to review the Project Schedule and any other items related to the construction of the Solar Energy Facility.

3.5 Project Implementation

3.5.1 Engineering. Contractor shall execute all necessary designs and drawings in accordance with this Agreement, including but not limited to the Specifications. Contractor shall deliver drawings and specifications to DTE as such documents are prepared for DTE's approval as provided in [REDACTED]. DTE shall review and respond to each submission by Contractor [REDACTED]. Contractor shall make all designs, drawings, and related documents available to DTE. The Parties expressly agree that DTE's approval of any plans, designs, drawings, specifications or any other items hereunder in no way relieves Contractor of its obligations under this Agreement.

3.5.2 Permit Submittal. Following DTE's approvals as required under Section 3.4.1 and in accordance with the [REDACTED] Contractor shall proceed with the preparation and submittal of the applications for all Applicable Permits, except DTE Permits, to the appropriate Governmental Authorities and agencies. Contractor shall deliver drafts of such Applicable Permits, except DTE Permits, to DTE for its review and approval. DTE shall review and respond to each submission by Contractor in an effort to finalize the applications as quickly as reasonably possible. In no event shall such response take more than [REDACTED] [REDACTED]. The Parties expressly agree that DTE's approval of any applications for Applicable Permits in no way relieves Contractor of its obligations under this Agreement.

3.5.3 Procurement and Construction.

3.5.3.1 Contractor shall commence procurement of the materials and the construction of the Solar Energy Facility in accordance with the Contract Documents. The construction will be performed by Contractor and/or one or more licensed Subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, and all manufacturer requirements for the maintenance of all applicable warranties. [REDACTED]
[REDACTED]
[REDACTED] as well as an evaluation and appropriate documentation of the safety record of any licensed Subcontractor that will be performing work on the Solar Energy Facility.

3.5.3.2 Contractor will be responsible for providing or causing to be provided by Contractor's Subcontractor(s), all labor, Materials, equipment (excluding Owner Supplied Equipment), tools, transportation, security, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any [REDACTED]. Contractor will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the Contract Documents. Contractor shall provide for the handling of equipment and Materials and construction equipment, including, as necessary, inspection, expediting, shipping, unloading, receiving, and

customs clearance and be responsible for all customs duties and similar charges payable in connection with the importation of equipment and Materials into the United States.

3.5.3.2.1 Contractor shall notify Owner's Project Manager of the receipt of each Owner Supplied [REDACTED]

[REDACTED] stating what Owner Supplied Equipment has been received and whether or not such delivered Owner Supplied Equipment received by Contractor: (i) was, to the extent ascertainable by diligent visual inspection, in a good and new condition, without visible defects or damage to the exterior packaging; *provided* that if any packaging appears damaged the contents will be immediately examined for damage and reported, (ii) matches the specifications for such Owner Supplied Equipment set forth in the Owner Supplied Equipment Specifications, (iii) was in a condition sufficient to achieve Mechanical Completion and (iv) was in the proper amounts (collectively, "Working Condition"). All damages must be documented by photographs and the delivery driver signature.

3.5.3.2.2 Contractor shall ensure that all equipment and Materials supplied shall be new (unless otherwise agreed by Contractor and DTE) and shall meet the requirements of the Specifications and Scope of Work and all Applicable Permits. References in the Specifications or Scope of Work to equipment and Materials or patented processes by trade name, make or catalog number shall be regarded as establishing a standard of quality expected by DTE. Contractor may use equipment, Materials, or process that is equal to that named in the Scope of Work or Specifications, subject to the prior written approval of DTE.

3.5.3.3 No longer than [REDACTED], Contractor shall develop a Quality Control plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED]

3.5.3.4 No longer than [REDACTED] Contractor shall develop a Risk Management Plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED]

3.5.3.5 Contractor will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Solar Energy Facility. Contractor will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (i) employees of Contractor and Subcontractors performing Work under this Agreement; (ii) Contractor's property and other materials to be incorporated for the Solar Energy Facility, under the care, custody, and control of Contractor or its Subcontractors; and (iii) the Site or other property at or adjacent to the Site not designated for removal, relocation, or replacement during the course of construction. For any personnel working on Site, whether Contractor employee or contractor or

Subcontractor employee or contractor, Contractor shall conduct background checks as provided in [REDACTED]

3.5.3.5 Contractor will maintain in good order at the Site copies of this Agreement, the Scope of Work, [REDACTED], one record copy of all drawings, specifications, product data, samples, manufacturer's installation, operation & maintenance manuals, and other pertinent construction-related documents. Redlines shall be added to all applicable construction drawings weekly.

3.5.3.6 If materials are to be stored on-site, or in the designated material lay down area, then prior to the arrival of equipment and materials, the Contractor shall provide and be responsible for the security and storage of such equipment and materials, including the installation of a security fence that aligns with the AHJ fencing requirements, [REDACTED] and placement of locked containers for the storage of tools, modules, etc. The size and location of the secured area shall be subject to the approval of DTE, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.5.3.7 During the construction phase of the Work, Contractor shall conduct all Commissioning tests that are scheduled to occur prior to Substantial Completion in accordance with the SEF commissioning requirements as described in [REDACTED]. Contractor shall provide notice to DTE of any scheduled test(s) of installed equipment, and DTE and/or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, and/or manufacturers of the equipment. Contractor shall be responsible for correcting and/or adjusting all deficiencies in the Solar Energy Facility and equipment operations that may be observed during equipment commissioning procedures.

3.6 Independent Review by DTE

Neither independent review of the construction by DTE nor any approval provided by DTE under this Agreement shall relieve Contractor of any of its obligations or responsibilities hereunder.

3.7 Assistance to DTE in Dealings with Governmental Authorities

Each Party shall provide or cause to be provided to the other Party information reasonably requested by such Party to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by such Party in dealing with any Governmental Authority in matters relating to the Work and the SEF.

3.8 [REDACTED]

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

ARTICLE 4
DTE OBLIGATIONS

4.1 Data Acquisition System Interconnectivity Requirements

DTE shall be responsible for obtaining for the benefit of the Solar Energy Facility, at DTE's sole cost and expense, the internet communication service necessary for the operation of the Data Acquisition System, up to a defined Network Access Point to which the Data Acquisition System will be connected. Contractor shall design the SEF to integrate with the DTE provided integration cabinet and the Project substation. This integration shall comply with DTE Cyber Security and Networking standards included in [REDACTED] as governed by DTE's "OP3 Information Security" policy. The Contractor shall provide a SCADA (Supervisory Control and Data Acquisition System) that supports industry standard data interface protocols (OPC, Modbus, DNP etc).

4.2 Contractor Assistance

DTE shall also do the following:

4.2.1 Attend the regularly scheduled progress meetings and participate as needed regarding scheduling of the Work.

4.2.2 Participate in the job inspection walk-throughs with Contractor and the Subcontractor(s), if any, while determining whether Substantial Completion has been achieved.

4.2.3 Upon its approval of the physical aspects of the Work, and its verification of the receipt of all required Submittals, and its verification of the performance of the SEF in accordance with the Scope of Work and the Specifications, issue and execute the Substantial Completion Certificate.

4.2.4 Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for coordination.

4.2.5 At DTE's sole discretion, perform a final walk-through of the SEF and check status of the physical aspects of the Work to reasonably determine whether Final Completion has been achieved.

4.2.6 Upon receipt of the Submittals, verification of Punchlist completion, and upon its sole approval of the completion of the entire Scope of Work as listed in [REDACTED] and according to the Specifications as listed in [REDACTED] a, issue a Final Completion Form.

4.3 DTE Representative; Response Periods

DTE shall designate the DTE Project Manager with whom Contractor shall consult on a reasonable, regular basis and who is authorized to act on DTE's behalf for all purposes in connection with this Agreement and the Work. DTE may from time-to-time change the DTE Project Manager by providing written notice thereof to Contractor. Except as otherwise provided herein, the DTE Project Manager shall render decisions in a timely manner [REDACTED] [REDACTED] with regard to any documents submitted by Contractor and to other requests made by Contractor in order to avoid unreasonable delay in the orderly and sequential progress of the Work.

4.4 Notices to Proceed; Conditions Precedent to Contract

4.4.1 Each Party's obligations under this Agreement are subject to DTE's fulfillment of the following conditions precedent:

(a) DTE must have received written approval of this Agreement in an order(s) from the MPSC that is in form and content reasonably satisfactory to DTE (such approval, the "MPSC Approval"); and

(b) Excluding Final Site Plan Approval, DTE must have received the applicable special land use or any other zoning approvals or variances from applicable Governmental Authorities to construct the SEF, in a form and content reasonably satisfactory to DTE.

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.4.2 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

ARTICLE 5

[REDACTED]

5.1 [REDACTED]

[REDACTED]

5.2 [REDACTED]

[REDACTED]

5.3 [REDACTED]

[REDACTED]

5.4 [REDACTED]

[REDACTED]

[REDACTED]

5.5 [REDACTED]

[REDACTED]

5.6 [REDACTED]

[REDACTED]

5.7 **Payment or Use Not Acceptance.** No payment by DTE pursuant to an invoice from Contractor or any use of the Work by DTE shall constitute an acceptance of any of the Work or of any of the parts, materials, equipment or other supplies furnished by Contractor or its Subcontractors or suppliers and shall not relieve Contractor of any of its obligations or liabilities under this Agreement.

5.8 Tax Payments

[REDACTED]

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

[REDACTED]

[REDACTED]

5.9 Federal Contracting Certifications

Contractor shall comply with the requirements [REDACTED] Federal Contract Requirements.

**ARTICLE 6
WARRANTY/LIMITATION OF LIABILITY**

6.1 [REDACTED]

6.1.1 Commencing on the [REDACTED]

[REDACTED] Contractor warrants that (a) the Work will be free from defects in workmanship under normal operating conditions, and shall conform to the Scope of Work and all other requirements of this Agreement (the “Contractor Warranty”), and (b) all material (excluding DTE furnished material), equipment, and/or supplies furnished or procured by Contractor and/or incorporated into the Project will be new and in conformance with the requirements of this Agreement, including the Scope of Work. Contractor shall at all times perform its construction, installation, commissioning, operation or maintenance activities in accordance with this Agreement and Prudent Industry Practice and in a manner consistent with all such warranties and shall not perform any actions that may violate such warranties. [REDACTED]

[REDACTED]

6.1.2 [REDACTED]

[REDACTED]

6.1.3 During the Contractor Warranty Period, Contractor shall be responsible for any labor, time and travel for such repair regardless of whether or not the manufacturer reimburses Contractor, and Contractor shall be entitled to make claims against the Manufacturers’ Warranties, and to recover any monetary amounts from such Manufacturers’ Warranties, as the holder of those warranties is otherwise entitled.

6.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 7
PERMITS AND APPROVALS; COORDINATION

7.1 Permits and Approvals

Contractor will obtain all Applicable Permits and all Governmental Approvals from all necessary Government Authorities, except DTE Permits, required for the construction, installation, start-up, and operation of the Solar Energy Facility and the performance of the Work hereunder, including but not limited to, land use approvals, recorded restrictive covenant, fire marshal, architectural or design review, or other covenant, conditions and restrictions (CC&Rs) approvals, nighttime operations, encroachment (hauling, street cleaning, etc.), soil erosion and sedimentation control, storm water pollution prevention plan and water quality management plan permits, those listed on [REDACTED] or any other specialty permits, in each case, when and as required for the performance of the Work in accordance with the Project Schedule.

7.2 Coordination During Installation

DTE and Contractor shall cooperate with each other in an effort to coordinate the activities of Contractor and Subcontractors with those of DTE, its employees, agents and contractors.

7.3 Coordination for Special Inspections

Contractor shall coordinate the inspections of the Site by any Governmental Authorities as well as any other inspections, including but not limited to those required by DTE, insurance company representative, or manufacturers' representative and the requirements specified in the chart below:

Item No.	Description	Notification Req'd
1	Major Material Delivery	[REDACTED]
2	Concrete Pour	[REDACTED]
3	Cable/Piping Trench Closure	[REDACTED]
4	Excavation for site drainage/new catch basin	[REDACTED]
5	Megger Testing	[REDACTED] [REDACTED]
6	DTE Meter Installation	[REDACTED]
7	DC Test	[REDACTED]
8	AC Test	[REDACTED]

ARTICLE 8
OWNERSHIP OF CERTAIN PROPERTY

8.1 Ownership of Certain Proprietary Property Rights

DTE shall own and have any and all rights, including all perpetual, irrevocable non-exclusive royalty-free license for any and all software or other intellectual property rights necessary for DTE to operate, maintain, improve or repair the Solar Energy Facility, including drawings in native program.

ARTICLE 9

[REDACTED]

9.1 [REDACTED]

[REDACTED]

9.2 [REDACTED]

[REDACTED]

9.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

9.4 [Redacted]

[Redacted]

ARTICLE 10
PUNCHLIST, MECHANICAL COMPLETION; SUBSTANTIAL COMPLETION, AND
FINAL COMPLETION

10.1 [REDACTED]

[REDACTED]

10.2 Mechanical Completion.

Contractor shall cause Mechanical Completion to occur as a condition to Substantial Completion. When Contractor believes it has achieved Mechanical Completion, it shall deliver to DTE, a completed Mechanical Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Mechanical Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If within such [REDACTED]

[REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such

milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved.

10.3 Substantial Completion.

Contractor shall cause Substantial Completion to occur as a condition to Final Completion. When Contractor believes it has achieved Substantial Completion, it shall deliver to DTE, a completed Substantial Completion Certificate. DTE shall, within [REDACTED] following receipt of such notice, either (i) deliver to Contractor a countersigned Substantial Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Substantial Completion (the “Substantial Completion Date”) shall be the date on which the last of the conditions for achievement of Substantial Completion was satisfied, as set forth in the Substantial Completion Certificate countersigned by DTE.

10.4 Final Completion.

When Contractor believes that it has achieved Final Completion, it shall deliver to DTE, a completed Final Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Final Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Final Completion (the “Final Completion Date”) shall be the date on which the last of the conditions for achievement of Final Completion was satisfied, as set forth in the Final Completion Certificate countersigned by DTE.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1 Each Party warrants and represents to the other that:

11.1.1 It has all requisite power, authority and approvals to legally and validly execute and deliver this Agreement.

11.1.2 The execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, each Party's respective governing entity, and this Agreement has been duly executed for it and delivered by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

11.1.3 Its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any contract or instrument to which it is a Party or by which it or its properties may be bound or affected; and

11.1.4 It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect either Party's ability to perform hereunder.

11.2 Contractor warrants and represents to DTE that:

11.2.1 Contractor has examined and carefully reviewed this Agreement;

11.2.2 Contractor has inspected the Site and become generally familiar with the general, local and site conditions that may affect the construction, installation and operation of the Solar Energy Facility and the performance of the Work;

11.2.3 Contractor has performed, or has caused to be performed, all necessary due diligence to determine suitability of the Site for the Solar Energy Facility including without limitation any structural, soils, or civil analyses or reports. If any of these reports are completed after execution of this Agreement, and the information gained in these reports necessitates a [REDACTED]

11.2.4 Contractor has all the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement and Prudent Industry Practice; and

11.2.5 Contractor is familiar with Applicable Laws, regulations, and interconnection standards relevant to the performance of its obligations under this Agreement.

ARTICLE 12
SUBCONTRACTORS

12.1 Authority to Subcontract

Contractor may delegate its duties and performance under this Agreement and shall have the right to enter into agreements with Subcontractors to perform the Work hereunder; provided, however that such delegations do not relieve Contractor from liability or its obligations to DTE under this Agreement. Subcontractors shall have the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement, Applicable Laws and Prudent Industry Practice. Prior to the start of construction on the Site, and unless the parties shall have previously agreed upon Contractor's selection of Subcontractors, Contractor shall submit to DTE a comprehensive list of all Subcontractors. Such list shall be kept current and revised and updated as necessary. DTE shall have the ability, in its sole discretion, to reject any Subcontractor proposed by Contractor. Contractor shall bind every Subcontractor to the terms and provisions of this Agreement to the extent applicable to such party's work under this Agreement, including the requirements of [REDACTED]. At DTE's request, Contractor shall remove any Contractor or Subcontractor personnel that DTE in its sole discretion deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, without cause, at any time

12.2 Prompt Payment of Subcontractors

Contractor shall promptly pay when due all amounts payable to its Subcontractors for labor and materials furnished in the performance of this Agreement and shall ensure that the Solar Energy Facility and the Site remain free of any Liens arising through Contractor and/or any of its Subcontractors.

12.3 [REDACTED]

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

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

[REDACTED]

12.4 Responsibility

Contractor shall, at all times, be responsible for the acts, errors and/or omissions of its Subcontractors and agents. Nothing in this Agreement shall constitute any contractual relationship between DTE and any Subcontractor or in any way obligate DTE to pay, or to be responsible for the payment of, any sums to any Subcontractors.

ARTICLE 13

[REDACTED]

13.1 [REDACTED]

[REDACTED]

13.2 [REDACTED]

[REDACTED]

[Redacted text block]

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ARTICLE 14

[REDACTED]

[REDACTED]

ARTICLE 15

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 16

[REDACTED]

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16.2 [REDACTED]

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

■ [Redacted text]

[Redacted text]

■ [Redacted text]

[Redacted text]

16.3 [Redacted text]

[Redacted text]

[Redacted text]

■ [Redacted text]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16.4 [REDACTED]

[REDACTED]

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[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

16.4.4.2 [REDACTED]

[REDACTED]

16.4.5 [REDACTED]

ARTICLE 17

[REDACTED]

17.1 [REDACTED]

[REDACTED]

17.2 [REDACTED]

[REDACTED]

17.3 [REDACTED]

[REDACTED]

ARTICLE 18

[REDACTED]

18.1 [REDACTED]

[REDACTED]

18.2 [REDACTED]

[REDACTED]

18.3 [REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 19
TERM AND TERMINATION

19.1 Effective Date; Term.

The term shall commence on the Effective Date and end on the last day of the Contractor Warranty Period (the “Term”), unless terminated earlier in accordance with the terms hereof.

19.2 Termination

DTE shall have the rights to terminate this Agreement set forth Article 4.5 and Article 16. Contractor shall have the right to terminate this Agreement as set forth in Article 16.

19.3 [REDACTED]

[REDACTED]

19.4 [REDACTED]

[REDACTED]

ARTICLE 20
MISCELLANEOUS

20.1 Assignment.

Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, DTE may, without the need for consent from Contractor: (i) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of DTE, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or (ii) assign its rights under this Agreement to an affiliate or to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Any assignment made in contravention of this clause shall be void and unenforceable.

20.2 Agreement Construction

This Agreement is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Agreement was executed.

20.3 Binding Effect

Except as otherwise provided herein, the terms and provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

20.4 Independent Contractor

The Parties hereto agree that Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with DTE other than that of owner or independent contractor, nor shall it be construed as creating any relationship whatsoever between DTE and any Subcontractors nor between DTE and Contractor employees or agents. Neither Contractor nor any Subcontractors nor any of their respective employees shall be deemed to be employees of DTE.

20.5 No Waiver

The failure of Contractor or DTE to insist upon the strict performance of the terms and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement.

20.6 Severability

In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

20.7 Entire Agreement

This Agreement, when executed, together with all [REDACTED] shall constitute the entire agreement between the Parties; and this Agreement cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto.

20.8 Governing law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

The Parties hereby irrevocably submit to the exclusive jurisdiction of any court of the State of Michigan or Federal court of the United States of America, sitting within the County of Gratiot, Michigan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement and irrevocably and unconditionally agree that all claims in respect of such action or proceeding in any Michigan State or Federal court sitting in Gratiot County, Michigan may be heard and determined in any such Michigan State court or, to the extent permitted by law, in such Federal court. The Parties agree that a final judgment in any action or proceeding under this paragraph shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

20.9 Notice

Any notice required or permitted hereunder shall be deemed received (i) on the day on which such notice is delivered personally, (ii) on the [REDACTED] after deposit in the U.S. Mail; provided such notice is sent by certified mail with a return receipt request and postage prepaid or (iii) the following Business Day if deposited with a recognized overnight carrier, to the address shown below or to such other persons or addresses as are specified by similar notice.

If to DTE:

with a copy to:

DTE Electric Company
One Energy Plaza, 1635 WCB
Detroit, MI 48226
Attention: General Counsel
Fax: 313-235-8500

If to Contractor:

J. Ranck Electric, Inc.
1993 Gover Parkway
Mt. Pleasant, MI 48858
[REDACTED]

20.10 Headings

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

20.12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20.13 Public Announcements

Neither Party shall issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby, without the prior consent of the other Party, unless required by Applicable Laws or order of a court of competent jurisdiction.

20.14 Cooperation

Upon the receipt of a request from the other Party, each Party shall execute such reasonable additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.14. Without limiting the generality of the foregoing, Contractor will provide DTE promptly upon DTE's written request all documents reasonably necessary for DTE to qualify of the SEF as "Qualified Facility" under pertinent rules and regulations of the FERC or any other Governmental Authority.

20.15 No Rights in Third Parties.

Unless and except as may be otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

20.16 [REDACTED]

[REDACTED]

20.17 Amendments

This Agreement may be modified or amended only by a written instrument signed by the Parties.

20.18 Drafting Ambiguities

Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of

construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, or any amendments or [REDACTED] hereto.

IN WITNESS WHEREOF, Contractor and DTE have caused this Agreement to be executed by their duly authorized representatives as of the date first above written,

Signature Page follows

CONTRACTOR:

J. Ranck Electric Company

By:  _____

Name: Jordan Wilcox

Title: Contracts Manager

DTE:

DTE ELECTRIC COMPANY

By:  _____

Name: Trevor Lauer

Title: President & COO - DTE Electric

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

BETWEEN

DTE ELECTRIC COMPANY

AND

BARTON MALOW COMPANY

as Contractor

Dated as of September 21, 2022

ARTICLE 1
RECITALS

WHEREAS, DTE desires to own and operate a solar photovoltaic system (as further defined below, the Pine River “Solar Energy Facility” or “SEF”) located in Gratiot County, Michigan as further provided in this Agreement;

WHEREAS, Contractor is a full-service, engineering, procurement, construction company with the financial and technical capabilities to provide services to DTE including, but not limited to, engineering, procurement of material not provided by Owner, project and construction management, construction and installation, commissioning, testing and training as to its operation and maintenance; and

WHEREAS, Contractor has received, reviewed, and understands DTE’s requirements for the SEF design and drawings [REDACTED] and Specifications [REDACTED] and DTE’s SEF commissioning requirements [REDACTED]

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter contained, and other good and valuable consideration receipt of which is hereby acknowledged, DTE and Contractor hereby agree as follows:

ARTICLE 2
DEFINITIONS

For purposes of the Agreement, and its [REDACTED] the defined terms herein shall have the meaning set forth as follows:

“Agreement” or “Contract” shall mean this Engineering, Procurement and Construction Agreement and all [REDACTED] attached hereto which are incorporated herein, as the same may be amended or modified from time to time in accordance with the provisions hereof, including any [REDACTED] executed in accordance with this Agreement.

“AHJ” shall mean authority having jurisdiction

“Applicable Laws” shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or the performance of the Work, including without limitation the IRA.

“Applicable Permits” shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or performance of the Work. A list of all Applicable Permits is contained in [REDACTED] and includes a matrix of the responsibility of the Parties for such permits.

“Business Day” means any day except a Saturday, Sunday, or day on which banks in the State of Michigan are closed.

“Capacity Guarantee” shall have the meaning set forth in [REDACTED]

[REDACTED]

“Change” shall mean any material addition to, deletion from, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, or other modification that constitutes a material change to the Scope of Work.

[REDACTED]

“Change in Law” means the enactment, adoption, promulgation, modification, or repeal of any applicable Law or Permit after the Effective Date.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commissioning” shall mean the set of tests and procedures performed on the Solar Energy Facility to verify its operational readiness.

“Commissioning Plan” shall mean the plan presented to DTE prior to performing any tests or procedures to verify as-built Project parameters as part of Commissioning.

“Construction Lien Act” shall have the meaning as provided in Section 5.4.

“Contract Date” shall have the meaning set forth in the Preamble.

“Contract Documents” shall mean this Agreement, the Submittals, and any amendments thereto.

[REDACTED]

“Contractor” has the meaning set forth in the Preamble.

“Contractor Event of Default” shall have the meaning set forth in Section 16.1.1.

“Contractor Warranty” shall have the meaning set forth in Section 6.1.1.

“Contractor Warranty Period” shall have the meaning set forth in Section 6.1.1.

“COVID Pandemic” shall have the meaning set forth in Article 15.

“Daily Progress Report” shall have the meaning set forth in Section 3.3.3.2.

“Data Acquisition System” or “DAS” shall mean the Solar Energy Facility operational monitoring and revenue metering system.

[REDACTED]

“DTE” shall have the meaning set forth in the Preamble.

“DTE Event of Default” shall have the meaning set forth in Section 16.2.1.

“DTE Indemnified Party” shall have the meaning set forth in Section 13.1.

“DTE Permits” shall mean those permits that are identified as the responsibility of DTE pursuant to [REDACTED]

“DTE Project Manager” shall mean DTE’s designated single-point representative with whom Contractor shall consult on a reasonable, regular basis and who is authorized to act on DTE’s behalf for all purposes in connection with this Agreement and the Work.

“Effective Date” shall have the meaning set forth in Section 19.1.

“Engineer of Record” shall mean any and all structural, electrical, civil, mechanical, environmental or other professional engineer either employed by Contractor or its Subcontractors, whose seal is incorporated within any Construction Document.

“Environmental Documents” shall mean those documents included in [REDACTED] and any additional documents identified and provided to Contractor prior to the Effective Date by DTE that were prepared pursuant to any Environmental Laws and that are applicable to the Work.

[REDACTED]

“Excused Site Condition” means (i) the discovery of archeological artifacts, endangered or threatened species, or religious, historical, or archeological resources above or below the surface of the Site the handling, disturbance, or removal of which is constrained by Applicable Law, unless the same were otherwise disclosed in the Environmental Documents; (ii) the discovery of Hazardous Substances in or on the Site, unless the same were otherwise disclosed in the Environmental Documents or the same could have reasonably been inferred from a visual inspection of the site; or (iii) the discovery of man-made objects in the subsurface of the Site that have a material adverse impact on the execution of the Work, unless the same could reasonably have been inferred from a visual inspection of the Site or were otherwise disclosed in the Environmental Documents.

[REDACTED]

“FERC” shall mean the Federal Energy Regulatory Commission.

“Final Completion” shall be deemed to have occurred when (a) conditions as set forth in [REDACTED] [REDACTED] have been achieved and (b) the Final Completion Certificate, certifying that the criteria for Final

Completion, has been delivered by DTE to the Contractor, signed by the Contractor and returned to DTE.

“Final Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Final Completion to be achieved by Contractor as contemplated by Section 10.4 and this Agreement.

“Final Completion Date” shall have the meaning set forth in Section 10.4

[REDACTED]

“Gold Shovel Certified” is a certification confirming developer understands Gold Shovel standards in an effort to reduce the damages to underground utility infrastructure as provided in [REDACTED]


“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and, with respect to the Contractor, shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the construction, use, and operation of the SEF.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

[REDACTED]

[REDACTED]


[REDACTED]




“Interconnection Requirements” means the Michigan Electric Utility Generator Interconnection Requirements, Category 5 Projects filed with the MPSC, DTE Electric Company SIMS Manual for Metering Guidelines, as modified from time to time, ITC Operating Guides, ITC Metering Guidelines, MISO Generation Interconnection Procedures, any other documents adopted by the Company, ITC or MISO relating to the interconnection and operation of generators and transmission systems as amended from time to time, and any successors thereto and any and all applicable law or regulation regarding interconnection.

“Landowner” shall mean the individual or entity owner of such property to which the Company intends to install any portion of the SEF.

“Lien” means any lien (statutory or other), pledge, mortgage, charge, security interest, deed of trust, assignment, hypothecation, deposit arrangement, easement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever in respect of an asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Laws.



“Manufacturer’s Warranty” shall mean the specific warranty furnished by Contractor and provided by the manufacturer of a specific product covering the material workmanship and/ or performance of that specific product, a list of which is set forth in 

“Materials” shall mean any articles, apparatus, goods, materials, products, items, data, documents, supplies, equipment, component parts and assemblies, or any other substances, parts, or any combination thereof used, consumed, furnished or installed by Contractor or any subcontractor as part of the Work.

“Mechanical Completion” shall mean (a) the conditions as set forth in  have been achieved and (b) the Mechanical Completion Certificate has been signed by Contractor and DTE.

“Mechanical Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] the criteria for Mechanical Completion to be achieved by Contractor as contemplated by Section 10.2 and this Agreement.

“Milestone Payment Schedule” means the milestone payment schedule attached hereto as [REDACTED]

“MPSC” shall mean Michigan Public Service Commission.

“MPSC Approval” shall have the meaning set forth in Section 4.4.

“MPSC Submittal Date” shall have the meaning set forth in Section 4.4.1(c).

“NERC” shall mean North American Electric Reliability Corporation

“Network Access Point” shall mean the RJ45 jack into which the Data Acquisition System may be plugged and which provides direct access to the internet, either via DTE’s network, or via a third-party service such as DSL, cable or cellular data modem.

“Notice to Proceed” or “NTP” shall mean the written notice provided by DTE to Contractor authorizing Contractor to proceed with the Work, and which is further described in Section 4.4.

“Operations and Maintenance Manual” shall mean the manual provided by the Contractor that describes in detail the processes and procedures required to safely operate and maintain the SEF and shall include documentation provided by the original equipment manufacturers of all equipment covered by a Manufacturer's Warranty which describe how to operate and maintain such equipment to maintain, as applicable, warranty coverage and effective operation.

[REDACTED]

“Owner Contractors” means those persons or entities, other than Contractor, with whom Owner contracts to perform any work or services or provide any materials, supplies, parts, and equipment in connection with the Project (including Owner’s equipment suppliers), or their subcontractors or suppliers of any tier.

“Party” or “Parties” shall mean Contractor, DTE, each or both of them, as the context may require pursuant to the terms and conditions of this Agreement.

[REDACTED]

[REDACTED]

“Project” shall mean the SEF and the substation to be constructed consistent with the Contract Documents.

“Project Schedule” shall mean the overall engineering, permitting, and construction schedule for the Work, as further detailed in Section 3.3.1, [REDACTED]

“Prudent Industry Practice” shall mean those practices, methods, standards and procedures as are commonly used by professional construction and engineering firms performing turnkey engineering, procurement and construction services on facilities of a type and size similar to the Solar Energy Facility, which in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the design, manufacture and construction and use of electrical and other equipment, facilities, equipment and improvements, with commensurate standards of safety, performance, dependability, efficiency and economy.

“PTC” means PV USA Test Conditions; 1000W/square meter solar irradiance; 1.5 air mass @20°C; wind speed 1 meter/second

“Punchlist” shall have the meaning as provided in Section 10.1.

“Redline” shall mean the set of prints on the construction site that reflect “as built” conditions using the Green-in, Red-out standard.

[REDACTED]

“SCADA” shall mean Supervisory Control and Data Acquisition systems used to monitor and control a plant or equipment

“Scope of Work” shall mean the Work to be performed hereunder by Contractor pursuant to the Scope of Work [REDACTED] attached hereto as [REDACTED] of this Agreement.

“Site” shall mean that area or areas where the materials and equipment for the Solar Energy Facility (as depicted in the Site Plan, [REDACTED] shall be installed and/or used to perform the Work.

“Solar Power Easement Agreements” shall mean the easement agreements which are entered into between Landowner and DTE for the SEF.

“Solar Energy Facility” or “SEF” or “Facility” shall mean the entirety of the solar generating system, its electrical and mechanical components, Support Structure, mounting or tracking components, inverter(s), modules, meter(s), monitoring components, conduit, substation and other elements installed in the nature of the Work.

“Solid Waste” means that term as defined under Part 115 of Michigan Act 451 of 1994, MCL 324.11506.

“Specifications” shall mean such references, materials, methods, design and engineering requirements, safety requirements and other such standards of workmanship and materials as described in [REDACTED]

“STC” means Factory Standard Test Conditions – 1000W/square meter solar irradiance; 1.5 air mass @25°C; wind speed 1 meter/second.

“Subcontractor” shall mean any subcontractor, supplier, vendor or other service provider of Contractor as well as any subcontractor, supplier, vendor or other service provider of such subcontractor, supplier, vendor or other service provider retained by such subcontractor.

“Submittals” shall mean all documents required to be provided to DTE by Contractor as described in [REDACTED]

“Substantial Completion” or “Substantially Complete” shall mean the (a) conditions as set forth in [REDACTED] have been achieved; and (b) the Substantial Completion Certificate, has been signed and delivered by the Contractor and DTE.

“Substantial Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Substantial Completion to be achieved by Contractor as contemplated by Section 10.3 and this Agreement.

“Substantial Completion Date” shall mean the date indicated as the Substantial Completion Date in the Substantial Completion Certificate.

“Support Structure” shall mean the rooftop, ground-based or floating mounting system, elevated structure or tracking system that will hold the solar modules of the Solar Energy Facility on the Site, and all supports thereto.

[REDACTED]

“Term” shall have the meaning set forth in Section 19.1.

“Work” shall mean the design, engineering, permit attainment, procurement, construction and installation of the Solar Energy Facility and all other services to be provided by Contractor hereunder, in accordance with the terms hereof, including the Scope of Work and Specifications and Submittals.

ARTICLE 3
RESPONSIBILITIES OF CONTRACTOR

3.1 Performance of the Work

Contractor shall fully perform the Work in accordance with the provisions of this Agreement. Such Work shall be performed in an expeditious manner consistent and in accordance with Prudent Industry Practice, provided, however, that in the event of any conflict between the requirements of this Agreement and Prudent Industry Practice, the requirements of this Agreement shall govern Contractor's Work. Contractor shall perform all Work in accordance with applicable equipment manufacturers' requirements, including all requirements necessary to preserve and maintain in effect any and all warranties and, if applicable, any performance guarantees with respect to such equipment. Contractor shall perform the Work in accordance with all site access and personnel requirements set forth on [REDACTED] with all workmanship, safety requirements, with the scope of work set forth on [REDACTED] in accordance with all specifications as defined in [REDACTED] and all Applicable Permits and all Applicable Laws.

3.2 Site Access, Maintenance and Damages

3.2.1 Maintenance of the Site. Contractor shall keep the Site reasonably free from accumulations of waste materials, rubbish, and other debris resulting from performance of the Work; and reasonably promptly after the Substantial Completion Date, remove from those portions of the Site involved in the commercial operation of the SEF, in conformity with Applicable Laws, all such waste materials, rubbish, and other debris, as well as all tools, construction equipment, machinery and surplus material that would interfere in any material way with the commercial operation of the SEF (specifically excluding materials, tools, and construction equipment necessary to complete any Punchlist items); and before final departure from the Site, in conformity with Applicable Laws, all remaining waste and rubbish generated during performance of the Punchlist work, and all remaining materials, tools, and construction equipment of Contractor or its Subcontractors, and leave the Site in clean and usable condition.

3.2.2 Site Access. As soon as practicable, DTE shall provide written notification to Contractor to allow access to the Site sufficient to enable Contractor's performance of the Work. DTE shall have the right to freely access the Site subject to reasonable conditions necessary to avoid interference with performance of the Work as the Parties may agree upon in writing; so long as, when accessing the Site, DTE and its agents comply with Prudent Industry and Contractor's safety plan to the extent applicable to such access.

3.2.3 Damage to Real Property

Contractor will conduct all of Contractor's activities within the boundaries of the Site or other Owner designated work area and any other limitations and requirements set forth herein and will be responsible for any trespass or damage to property resulting from its activities. Contractor acknowledges and agrees to observe reasonable construction practices in performing the Work, including reasonable care and respect for the real property at the Site. Without limiting Contractor's obligations as set forth elsewhere herein, Contractor agrees that it will be responsible for any and all damages to real property inside the boundaries of the Site

or other Owner designated work area or inside the areas defined by any other limitations and requirements set forth herein caused by Contractor or its Subcontractors in the performance of the Work. Contractor shall immediately report to Owner in writing all damage to any real or personal property wherever located.

3.3 Hazardous Substances.

3.3.1 As required by Applicable Laws, Contractor shall provide safety data sheets, warning labels, or other documentation covering all Hazardous Substances furnished under or otherwise associated with the Work. Contractor shall provide to DTE either copies of the applicable safety data sheets or copies of a document certifying that no safety data sheets are required under any Applicable Laws prior to the commencement of such Work or at such time as any such substances enter the Site.

3.3.2 [Redacted]

3.4 Project Pricing and Schedule

3.4.1 [Redacted]

3.4.2 Progress Reports and Meetings.

3.4.2.1 During the design, engineering and permitting phases of the Work, Contractor will schedule regular meetings with DTE to review any design or engineering changes, and such meetings shall coincide with milestones agreed to by the Parties. During

such meetings, Contractor and DTE shall review any materials selection and logistics, and other plans that relate to the design, engineering and permitting of the Solar Energy Facility.

3.4.2.2 During the construction phase of the Work, Contractor will schedule regular meetings with DTE at least [REDACTED] to review the Project Schedule and any other items related to the construction of the Solar Energy Facility.

3.5 Project Implementation

3.5.1 Engineering. Contractor shall execute all necessary designs and drawings in accordance with this Agreement, including but not limited to the Specifications. Contractor shall deliver drawings and specifications to DTE as such documents are prepared for DTE's approval as provided in [REDACTED]. DTE shall review and respond to each submission by Contractor [REDACTED]. Contractor shall make all designs, drawings, and related documents available to DTE. The Parties expressly agree that DTE's approval of any plans, designs, drawings, specifications or any other items hereunder in no way relieves Contractor of its obligations under this Agreement.

3.5.2 Permit Submittal. Following DTE's approvals as required under Section 3.4.1 and in accordance with the [REDACTED] Contractor shall proceed with the preparation and submittal of the applications for all Applicable Permits, except DTE Permits, to the appropriate Governmental Authorities and agencies. Contractor shall deliver drafts of such Applicable Permits, except DTE Permits, to DTE for its review and approval. DTE shall review and respond to each submission by Contractor in an effort to finalize the applications as quickly as reasonably possible. In no event shall such response take more than [REDACTED]. The Parties expressly agree that DTE's approval of any applications for Applicable Permits in no way relieves Contractor of its obligations under this Agreement.

3.5.3 Procurement and Construction.

3.5.3.1 Contractor shall commence procurement of the materials and the construction of the Solar Energy Facility in accordance with the Contract Documents. The construction will be performed by Contractor and/or one or more licensed Subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, and all manufacturer requirements for the maintenance of all applicable warranties. [REDACTED]
[REDACTED]
[REDACTED] well as an evaluation and appropriate documentation of the safety record of any licensed Subcontractor that will be performing work on the Solar Energy Facility.

- 3.5.3.2 Contractor will be responsible for providing or causing to be provided by Contractor's Subcontractor(s), all labor, Materials, equipment (except Owner Supplied Equipment), tools, transportation, security, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any [REDACTED]. Contractor will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the Contract Documents. Contractor shall provide for the handling of equipment and Materials and construction equipment, including, as necessary, visual inspection, as requested unloading, and receiving.
- 3.5.3.3 Contractor shall notify Owner and Owner's Project Manager of the receipt of each Owner Supplied [REDACTED] [REDACTED] stating what Owner Supplied Equipment has been received and whether or not such delivered Owner Supplied Equipment received by Contractor: (i) was, to the extent ascertainable by diligent visual inspection, in a good and new condition, without visible defects or damage to the exterior packaging; *provided* that if any packaging appears damaged the contents will be immediately examined for damage and reported, (ii) visibly matches the specifications for such Owner Supplied Equipment set forth in the Owner Supplied Equipment Specifications, (iii) was in the proper amounts. All damages must be documented by photographs and the delivery driver signature.
- 3.5.3.4 Contractor shall ensure that all equipment and Materials supplied shall be new (unless otherwise agreed by Contractor and DTE) and shall meet the requirements of the Specifications and Scope of Work and all Applicable Permits. References in the Specifications or Scope of Work to equipment and Materials or patented processes by trade name, make or catalog number shall be regarded as establishing a standard of quality expected by DTE. Contractor may use equipment, Materials, or process that is equal to that named in the Scope of Work or Specifications, subject to the prior written approval of DTE.
- 3.5.3.5 No longer than [REDACTED] Contractor shall develop a Quality Control Plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED].
- 3.5.3.6 No longer than [REDACTED] Contractor shall develop a Risk Management Plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED].
- 3.5.3.7 Contractor will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Solar Energy Facility. Contractor will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (i) employees of Contractor and Subcontractors performing Work under this Agreement; (ii) Contractor's property and other materials to be incorporated for the Solar Energy Facility, under the care, custody, and control of Contractor or its Subcontractors; and (iii) the Site or other property at or adjacent to the Site not designated for removal, relocation, or replacement during the course of construction. For any

personnel working on Site, whether Contractor employee or contractor or Subcontractor employee or contractor, Contractor shall conduct background as provided in [REDACTED]

3.5.3.8 Contractor will maintain in good order at the Site copies of this Agreement, the Scope of Work, all [REDACTED] one record copy of all drawings, specifications, product data, samples, manufacturer's installation, operation & maintenance manuals, and other pertinent construction-related documents. Redlines shall be added to all applicable construction drawings as required at milestone completions.

3.5.3.9 If materials are to be stored on-site, or in the designated material lay down area, then prior to the arrival of equipment and materials, the Contractor shall provide and be responsible for the security and storage of such equipment and materials, including the installation of a security fence that aligns with the AHJ fencing requirements, [REDACTED] and placement of locked containers for the storage of tools, modules, etc. The size and location of the secured area shall be subject to the approval of DTE, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.5.3.10 During the construction phase of the Work, Contractor shall conduct all Commissioning tests that are scheduled to occur prior to Substantial Completion in accordance with the SEF commissioning requirements as described in [REDACTED]. Contractor shall provide notice to DTE of any scheduled test(s) of installed equipment, and DTE and/or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, and/or manufacturers of the equipment. Contractor shall be responsible for correcting and/or adjusting all deficiencies in workmanship in the Solar Energy Facility and equipment operations that may be observed during equipment commissioning procedures. If deficiencies are found in any Owner Supplied Material, the parties shall work collaboratively to develop the plan and compensation for remediation.

3.6 Independent Review by DTE

Neither independent review of the construction by DTE nor any approval provided by DTE under this Agreement shall relieve Contractor of any of its obligations or responsibilities hereunder.

3.7 Assistance to DTE in Dealings with Governmental Authorities

Each Party shall provide or cause to be provided to the other Party information reasonably requested by such Party to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by such Party in dealing with any Governmental Authority in matters relating to the Work and the SEF.

3.8 [REDACTED]



ARTICLE 4
DTE OBLIGATIONS

4.1 Data Acquisition System Interconnectivity Requirements

DTE shall be responsible for obtaining for the benefit of the Solar Energy Facility, at DTE’s sole cost and expense, the internet communication service necessary for the operation of the Data Acquisition System, up to a defined Network Access Point to which the Data Acquisition System will be connected. Contractor shall design the SEF to integrate with the DTE provided integration cabinet and the Project substation. This integration shall comply with DTE Cyber Security and Networking standards included in [REDACTED] as governed by DTE’s “OP3 Information Security” policy. The Contractor shall provide a SCADA (Supervisory Control and Data Acquisition System) that supports industry standard data interface protocols (OPC, Modbus, DNP etc.)

4.2 Contractor Assistance

DTE shall also do the following:

- 4.2.1 Attend the regularly scheduled progress meetings and participate as needed regarding scheduling of the Work.
- 4.2.2 Participate in the job inspection walk-throughs with Contractor and the Subcontractor(s), if any, while determining whether Substantial Completion has been achieved.
- 4.2.3 Upon its approval of the physical aspects of the Work, and its verification of the receipt of all required Submittals, and its verification of the performance of the SEF in accordance with the Scope of Work and the Specifications, issue and execute the Substantial Completion Certificate.
- 4.2.4 Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for coordination.
- 4.2.5 At DTE’s sole discretion, perform a final walk-through of the SEF and check status of the physical aspects of the Work to reasonably determine whether Final Completion has been achieved.

[REDACTED]

[REDACTED]

ARTICLE 5

[REDACTED]

5.1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.4 [REDACTED]

[REDACTED]

5.5 [REDACTED]

[REDACTED]

5.6 **Payment or Use Not Acceptance.** No payment by DTE pursuant to an invoice from Contractor or any use of the Work by DTE shall constitute an acceptance of any of the Work or of any of the parts, materials, equipment or other supplies furnished by Contractor or its

Subcontractors or suppliers and shall not relieve Contractor of any of its obligations or liabilities under this Agreement.

5.8 Tax Payments

[REDACTED]

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

5.8 Federal Contracting Certifications

Contractor shall comply with the requirements [REDACTED] Federal Contract Requirements.

**ARTICLE 6
WARRANTY/LIMITATION OF LIABILITY**

[REDACTED]

ARTICLE 7
PERMITS AND APPROVALS; COORDINATION

7.1 Permits and Approvals

Contractor will obtain all Applicable Permits and all Governmental Approvals from all necessary Government Authorities, except DTE Permits, required for the construction, installation, start-up, and operation of the Solar Energy Facility and the performance of the Work hereunder, including but not limited to, land use approvals, recorded restrictive covenant, fire marshal, architectural or design review, or other covenant, conditions and restrictions (CC&Rs) approvals, nighttime operations, encroachment (hauling, street cleaning, etc.), soil erosion and sedimentation control, storm water pollution prevention plan and water quality management plan permits, those listed on [REDACTED] or any other specialty permits, in each case, when and as required for the performance of the Work in accordance with the Project Schedule.

7.2 Coordination During Installation

DTE and Contractor shall cooperate with each other in an effort to coordinate the activities of Contractor and Subcontractors with those of DTE, its employees, agents and contractors.

7.3 Coordination for Special Inspections

Contractor shall coordinate the inspections of the Site by any Governmental Authorities as well as any other inspections, including but not limited to those required by DTE, insurance company representative, or manufacturers' representative and the requirements specified in the chart below:

Item No.	Description	Notification Req'd
----------	-------------	--------------------

9.2 [REDACTED]

[REDACTED]

9.3 [REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

9.4 [REDACTED]

[REDACTED]

ARTICLE 10
PUNCLIST, MECHANICAL COMPLETION; SUBSTANTIAL COMPLETION, AND
FINAL COMPLETION

10.1 [REDACTED]

[REDACTED]

[REDACTED]

10.2 Mechanical Completion.

Contractor shall cause Mechanical Completion to occur as a condition to Substantial Completion. When Contractor believes it has achieved Mechanical Completion, it shall deliver to DTE, a completed Mechanical Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Mechanical Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If within such [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved.

10.3 Substantial Completion.

Contractor shall cause Substantial Completion to occur as a condition to Final Completion. When Contractor believes it has achieved Substantial Completion, it shall deliver to DTE, a completed Substantial Completion Certificate. DTE shall, within [REDACTED] following receipt of such notice, either (i) deliver to Contractor a countersigned Substantial Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of

Substantial Completion (the “Substantial Completion Date”) shall be the date on which the last of the conditions for achievement of Substantial Completion was satisfied, as set forth in the Substantial Completion Certificate countersigned by DTE.

10.4 Final Completion.

When Contractor believes that it has achieved Final Completion, it shall deliver to DTE, a completed Final Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Final Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Final Completion (the “Final Completion Date”) shall be the date on which the last of the conditions for achievement of Final Completion was satisfied, as set forth in the Final Completion Certificate countersigned by DTE.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1 Each Party warrants and represents to the other that:

11.1.1 It has all requisite power, authority and approvals to legally and validly execute and deliver this Agreement.

11.1.2 The execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, each Party's respective governing entity, and this Agreement has been duly executed for it and delivered by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

11.1.3 Its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any contract or instrument to which it is a Party or by which it or its properties may be bound or affected; and

11.1.4 It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules,

decrees, awards, permits or orders which would materially and adversely affect either Party's ability to perform hereunder.

11.2 Contractor warrants and represents to DTE that:

11.2.1 Contractor has examined and carefully reviewed this Agreement;

11.2.2 Contractor has inspected the Site and become generally familiar with the general, local and site conditions that may affect the construction, installation and operation of the Solar Energy Facility and the performance of the Work;

11.2.3 Contractor has performed, or has caused to be performed, all necessary due diligence to determine suitability of the Site for the Solar Energy Facility including without limitation any structural, soils, or civil analyses or reports. If any of these reports are completed after execution of this Agreement, and the information gained in these reports necessitates a [REDACTED]

11.2.4 Contractor has all the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement and Prudent Industry Practice; and

11.2.5 Contractor is familiar with Applicable Laws, regulations, and interconnection standards relevant to the performance of its obligations under this Agreement.

ARTICLE 12 **SUBCONTRACTORS**

12.1 Authority to Subcontract

Contractor may delegate its duties and performance under this Agreement and shall have the right to enter into agreements with Subcontractors to perform the Work hereunder; provided, however that such delegations do not relieve Contractor from liability or its obligations to DTE under this Agreement. Subcontractors shall have the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement, Applicable Laws and Prudent Industry Practice. Prior to the start of construction on the Site, and unless the parties shall have previously agreed upon Contractor's selection of Subcontractors, Contractor shall submit to DTE a comprehensive list of all Subcontractors. Such list shall be kept current and revised and updated as necessary. DTE shall have the ability, in its sole discretion, to reject any Subcontractor proposed by Contractor. Contractor shall bind every Subcontractor to the terms and provisions of this Agreement to the extent applicable to such party's work under this Agreement, including the requirements of [REDACTED]. At DTE's request, Contractor shall remove any Contractor or Subcontractor personnel that DTE in its sole discretion deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, without cause, at any time

12.2 Prompt Payment of Subcontractors

Contractor shall promptly pay when due all amounts payable to its Subcontractors for labor and materials furnished in the performance of this Agreement and shall ensure that the Solar Energy Facility and the Site remain free of any Liens arising through Contractor and/or any of its Subcontractors.

12.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.4 Responsibility

Contractor shall, at all times, be responsible for the acts, errors and/or omissions of its Subcontractors and agents. Nothing in this Agreement shall constitute any contractual relationship between DTE and any Subcontractor or in any way obligate DTE to pay, or to be responsible for the payment of, any sums to any Subcontractors.

ARTICLE 13

[REDACTED]

13.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

ARTICLE 14

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 15

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 16

[REDACTED]

16.1

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16.4 [REDACTED]

[REDACTED]

[REDACTED]

16.4.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16.4.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 17

[REDACTED]

17.1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 18

[REDACTED]

18.1 [REDACTED]

[REDACTED]

18.2 [REDACTED]

[REDACTED]

18.3 [REDACTED]

[REDACTED]

ARTICLE 19
TERM AND TERMINATION

19.1 Effective Date; Term.

The term shall commence on the Effective Date and end on the last day of the Contractor Warranty Period (the "Term"), unless terminated earlier in accordance with the terms hereof.

19.2 Termination

DTE shall have the rights to terminate this Agreement set forth Article 4.4 and Article 16. Contractor shall have the right to terminate this Agreement as set forth in Article 16.

19.3 [REDACTED]

[REDACTED]

19.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 20
MISCELLANEOUS

20.1 Assignment.

Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, DTE may, without the need for consent from Contractor: (i) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of DTE, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or (ii) assign its rights under this Agreement to an affiliate or to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Any assignment made in contravention of this clause shall be void and unenforceable.

20.2 Agreement Construction

This Agreement is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Agreement was executed.

20.3 Binding Effect

Except as otherwise provided herein, the terms and provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

20.4 Independent Contractor

The Parties hereto agree that Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with DTE other than that of owner or independent contractor, nor shall it be construed as creating any relationship whatsoever between DTE and any Subcontractors nor between DTE and Contractor employees or agents. Neither

Contractor nor any Subcontractors nor any of their respective employees shall be deemed to be employees of DTE.

20.5 No Waiver

The failure of Contractor or DTE to insist upon the strict performance of the terms and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement.

20.6 Severability

In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

20.7 Entire Agreement

This Agreement, when executed, together with all [REDACTED] shall constitute the entire agreement between the Parties; and this Agreement cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto.

20.8 Governing law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

The Parties hereby irrevocably submit to the exclusive jurisdiction of any court of the State of Michigan or Federal court of the United States of America, sitting in the County of Gratiot, Michigan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement and irrevocably and unconditionally agree that all claims in respect of such action or proceeding in any Michigan State or Federal court sitting in Gratiot County, Michigan may be heard and determined in any such Michigan State court or, to the extent permitted by law, in such Federal court. The Parties agree that a final judgment in any action or proceeding under this paragraph shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

20.9 Notice

Any notice required or permitted hereunder shall be deemed received (i) on the day on which such notice is delivered personally, (ii) on the [REDACTED] after deposit in the U.S. Mail; provided such notice is sent by certified mail with a return receipt request and postage prepaid or (iii) the following Business Day if deposited with a recognized overnight carrier, to the address shown below or to such other persons or addresses as are specified by similar notice. Email notifications are acceptable for day-to-day project correspondence.

If to DTE:

with a copy to:

DTE Electric Company
One Energy Plaza, 1635 WCB
Detroit, MI 48226
Attention: General Counsel
Fax: 313-235-8500

If to Contractor:

Barton Malow Company
26500 American Drive
Southfield, MI 48034
Attn: General Counsel

20.10 Headings

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

20.12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20.13 Public Announcements

Neither Party shall issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby, without the prior consent of the other Party, unless required by Applicable Laws or order of a court of competent jurisdiction.

20.14 Cooperation

Upon the receipt of a request from the other Party, each Party shall execute such reasonable additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.14. Without limiting the generality of the foregoing, Contractor will provide DTE promptly upon DTE's written request all documents reasonably necessary for DTE to qualify of the SEF as "Qualified Facility" under pertinent rules and regulations of the FERC or any other Governmental Authority.

20.15 No Rights in Third Parties.

Unless and except as may be otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

20.16 [REDACTED]


[REDACTED]



20.17 Amendments

This Agreement may be modified or amended only by a written instrument signed by the Parties.

20.18 Drafting Ambiguities

Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, or any amendments or  hereto.

IN WITNESS WHEREOF, Contractor and DTE have caused this Agreement to be executed by their duly authorized representatives as of the date first above written,

CONTRACTOR:

Barton Malow Company

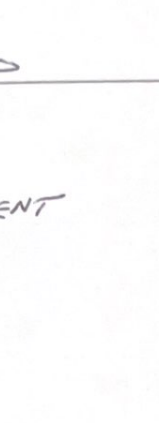
By:  _____

Name: *MMT LENTINI*

Title: *SR. VICE PRESIDENT*

DTE:

DTE ELECTRIC COMPANY

By:  _____

Name: Trevor Lauer

Title: President & COO - DTE Electric

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

BETWEEN

DTE ELECTRIC COMPANY

AND

J. RANCK ELECTRIC, INC.

as Contractor

Dated as of September 21, 2022

Polaris Solar

ARTICLE 1
RECITALS

WHEREAS, DTE desires to own and operate a solar photovoltaic system (as further defined below, the Polaris “Solar Energy Facility” or “SEF”) located in Gratiot County, Michigan as further provided in this Agreement;

WHEREAS, Contractor is a full-service, engineering, procurement, construction company with the financial and technical capabilities to provide services to DTE including, but not limited to, engineering, procurement of material not provided by Owner, project and construction management, construction and installation, commissioning, testing and training as to its operation and maintenance; and

WHEREAS, Contractor has received, reviewed, and understands DTE’s requirements for the SEF design and drawings [REDACTED] and Specifications [REDACTED] and DTE’s SEF commissioning requirements [REDACTED]

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter contained, and other good and valuable consideration receipt of which is hereby acknowledged, DTE and Contractor hereby agree as follows:

ARTICLE 2
DEFINITIONS

For purposes of the Agreement, and its [REDACTED], the defined terms herein shall have the meaning set forth as follows:

“Agreement” or “Contract” shall mean this Engineering, Procurement and Construction Agreement and all [REDACTED] attached hereto which are incorporated herein, as the same may be amended or modified from time to time in accordance with the provisions hereof, including any [REDACTED] executed in accordance with this Agreement.

“AHJ” shall mean the authority having jurisdiction

“Applicable Laws” shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or the performance of the Work.

“Applicable Permits” shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or performance of the Work. A list of all Applicable Permits is contained in [REDACTED] and includes a matrix of the responsibility of the Parties for such permits.

“Business Day” means any day except a Saturday, Sunday, or day on which banks in the State of Michigan are closed.

“Capacity Guarantee” shall have the meaning set forth in [REDACTED]

[REDACTED]

“Change” shall mean any material addition to, deletion from, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, or other modification that constitutes a material change to the Scope of Work.

[REDACTED]

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall mean the date that Commissioning is complete and the SEF is capable of delivering energy to the grid at the Interconnection Point.

“Change in Law” means the enactment, adoption, promulgation, modification, or repeal of any applicable Law or Permit after the Effective Date.

“Commissioning” shall mean the set of tests and procedures performed on the Solar Energy Facility to verify its operational readiness.

“Commissioning Plan” shall mean the plan presented to DTE prior to performing any tests or procedures to verify as-built Project parameters as part of Commissioning.

“Construction Lien Act” shall have the meaning as provided in Section 5.4.

“Contract Date” shall have the meaning set forth in the Preamble. “Contract Documents” shall mean this Agreement, the Submittals, and any amendments thereto.

[REDACTED]

“Contractor” has the meaning set forth in the Preamble.

“Contractor Event of Default” shall have the meaning set forth in Section 16.1.1.

“Contractor Warranty” shall have the meaning set forth in Section 6.1.1.

“Contractor Warranty Period” shall have the meaning set forth in Section 6.1.1.

“COVID Pandemic” shall have the meaning set forth in Article 15.

“Daily Progress Report” shall have the meaning set forth in Section 3.3.3.2.

completed to the reasonable satisfaction of DTE and (b) of the Final Completion Certificate, certifying that the criteria for Final Completion, has been delivered by DTE to the Contractor, signed by the Contractor and returned to DTE.

“Final Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Final Completion to be achieved by Contractor as contemplated by Section 10.4 and this Agreement.

“Final Completion Date” shall have the meaning set forth in Section 10.4

[REDACTED]

“Gold Shovel Certified” is a certification confirming developer understands Gold Shovel standards in an effort to reduce the damages to underground utility infrastructure as provided in [REDACTED]

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and, with respect to the Contractor, shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the construction, use, and operation of the SEF.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

[REDACTED]

[REDACTED]

“Interconnection Requirements” means the Michigan Electric Utility Generator Interconnection Requirements, Category 5 Projects filed with the MPSC, DTE Electric Company SIMS Manual for Metering Guidelines, as modified from time to time, ITC Operating Guides, ITC Metering Guidelines, MISO Generation Interconnection Procedures, any other documents adopted by the Company, ITC or MISO relating to the interconnection and operation of generators and transmission systems as amended from time to time, and any successors thereto and any and all applicable law or regulation regarding interconnection.

“Landowner” shall mean the individual or entity owner of such property to which the Company intends to install any portion of the SEF.

“Lien” means any lien (statutory or other), pledge, mortgage, charge, security interest, deed of trust, assignment, hypothecation, deposit arrangement, easement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever in respect of an asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Laws.

[REDACTED]

“Manufacturer’s Warranty” shall mean the specific warranty furnished by Contractor and provided by the manufacturer of a specific product covering the material workmanship and/ or performance of that specific product, a list of which is set forth in [REDACTED]

“Materials” shall mean any articles, apparatus, goods, materials, products, items, data, documents, supplies, equipment, component parts and assemblies, or any other substances, parts, or any combination thereof used, consumed, furnished or installed by Contractor or any subcontractor as part of the Work.

“Mechanical Completion” shall mean (a) the conditions as set forth in [REDACTED] have been achieved and (b) the Mechanical Completion Certificate has been signed by Contractor and DTE. “Mechanical Completion Certificate” shall mean the certification as provided in accordance with

the form in [REDACTED] providing the criteria for Mechanical Completion to be achieved by Contractor as contemplated by Section 10.2 and this Agreement.

“Milestone Payment Schedule” means the milestone payment schedule attached hereto as [REDACTED]

“MPSC” shall mean Michigan Public Service Commission.

“MPSC Approval” shall have the meaning set forth in Section 4.4.

“MPSC Submittal Date” shall have the meaning set forth in Section 4.4.1(c).

“NERC” shall mean North American Electric Reliability Corporation

“Network Access Point” shall mean the RJ45 jack into which the Data Acquisition System may be plugged and which provides direct access to the internet, either via DTE’s network, or via a third-party service such as DSL, cable or cellular data modem.

“Notice to Proceed” or “NTP” shall mean the written notice provided by DTE to Contractor authorizing Contractor to proceed with the Work, and which is further described in Section 4.4.

“Operations and Maintenance Manual” shall mean the manual provided by the Contractor that describes in detail the processes and procedures required to safely operate and maintain the SEF, and shall include documentation provided by the original equipment manufacturers of all equipment covered by a Manufacturer's Warranty which describe how to operate and maintain such equipment to maintain, as applicable, warranty coverage and effective operation.

[REDACTED]

“Party” or “Parties” shall mean Contractor, DTE, each or both of them, as the context may require pursuant to the terms and conditions of this Agreement.

[REDACTED]

“Project” shall mean the SEF and the substation to be constructed consistent with the Contract Documents.

“Project Schedule” shall mean the overall engineering, permitting, and construction schedule for the Work, as further detailed in Section 3.3.1, [REDACTED]

“Prudent Industry Practice” shall mean those practices, methods, standards and procedures as are commonly used by professional construction and engineering firms performing turnkey engineering, procurement and construction services on facilities of a type and size similar to the Solar Energy Facility, which in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the design, manufacture and construction and use of electrical and other equipment, facilities, equipment and improvements, with commensurate standards of safety, performance, dependability, efficiency and economy.

“PTC” means PV USA Test Conditions; 1000W/square meter solar irradiance; 1.5 air mass @20°C; wind speed 1 meter/second

“Punchlist” shall have the meaning as provided in Section 10.1.

“Redline” shall mean the set of prints on the construction site that reflect “as built” conditions using the Green-in, Red-out standard.

[REDACTED]

“SCADA” shall mean Supervisory Control and Data Acquisition systems used to monitor and control a plant or equipment

“Scope of Work” shall mean the Work to be performed hereunder by Contractor pursuant to the Scope of Work (as amended by approved Change Orders), attached hereto as [REDACTED] of this Agreement.

“Site” shall mean that area or areas where the materials and equipment for the Solar Energy Facility (as depicted in the Site Plan, [REDACTED]) shall be installed and/or used to perform the Work.

“Solar Power Easement Agreements” shall mean the easement agreements which are entered into between Landowner and DTE for the SEF.

“Solar Energy Facility” or “SEF” shall mean the entirety of the solar generating system, its electrical and mechanical components, Support Structure, mounting or tracking components, inverter(s), modules, meter(s), monitoring components, conduit, substation and other elements installed in the nature of the Work.

“Solid Waste” means that term as defined under Part 115 of Michigan Act 451 of 1994, MCL 324.11506.

“Specifications” shall mean such references, materials, methods, design and engineering requirements, safety requirements and other such standards of workmanship and materials as described in [REDACTED]

“STC” means Factory Standard Test Conditions – 1000W/square meter solar irradiance; 1.5 air mass @25°C; wind speed 1 meter/second.

“Subcontractor” shall mean any subcontractor, supplier, vendor or other service provider of Contractor as well as any subcontractor, supplier, vendor or other service provider of such subcontractor, supplier, vendor or other service provider retained by such subcontractor.

“Submittals” shall mean all documents required to be provided to DTE by Contractor as described in [REDACTED]

“Substantial Completion” or “Substantially Complete” shall mean the (a) conditions as set forth in [REDACTED] have been achieved; and (b) the Substantial Completion Certificate, has been signed and delivered by the Contractor and DTE.

“Substantial Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Substantial Completion to be achieved by Contractor as contemplated by Section 10.3 and this Agreement.

“Substantial Completion Date” shall mean the date indicated as the Substantial Completion Date in the Substantial Completion Certificate.

“Support Structure” shall mean the rooftop, ground-based or floating mounting system, elevated structure or tracking system that will hold the solar modules of the Solar Energy Facility on the Site, and all supports thereto.

[REDACTED]

“Term” shall have the meaning set forth in Section 19.1.

“Work” shall mean the design, engineering, permit attainment, procurement, construction and installation of the Solar Energy Facility and all other services to be provided by Contractor hereunder, in accordance with the terms hereof, including the Scope of Work and Specifications and Submittals.

ARTICLE 3 **RESPONSIBILITIES OF CONTRACTOR**

3.1 Performance of the Work

Contractor shall fully perform the Work in accordance with the provisions of this Agreement. Such Work shall be performed in a manner consistent and in accordance with Prudent Industry Practice, provided, however, that in the event of any conflict between the requirements of this Agreement and Prudent Industry Practice, the requirements of this Agreement shall govern Contractor's Work. Contractor shall perform all Work in accordance with applicable equipment manufacturers' requirements, including all requirements necessary to preserve and maintain in effect any and all warranties and, if applicable, any performance guarantees with respect to such equipment. Contractor shall perform the Work in accordance with all workmanship, safety requirements and [REDACTED] and in accordance with all specifications as defined in [REDACTED] and all Applicable Permits and all Applicable Laws.

3.2 Site Access, Maintenance and Damages

3.2.1 Maintenance of the Site. Contractor shall keep the Site reasonably free from accumulations of waste materials, rubbish, and other debris resulting from performance of the Work; and reasonably promptly after the Substantial Completion Date, remove from those portions of the Site involved in the commercial operation of the SEF, in conformity with Applicable Laws, all such waste materials, rubbish, and other debris, as well as all tools, construction equipment, machinery and surplus material that would interfere in any material way with the commercial operation of the SEF (specifically excluding materials, tools, and construction equipment necessary to complete any Punchlist items); and before final departure from the Site, in conformity with Applicable Laws, all remaining waste and rubbish generated during performance of the Punchlist work, and all remaining materials, tools, and construction equipment of Contractor or its Subcontractors, and leave the Site in clean and usable condition.

3.2.2 Site Access. As soon as practicable, DTE shall provide written notification to Contractor to allow access to the Site sufficient to enable Contractor's performance of the Work. DTE shall have the right to freely access the Site subject to reasonable conditions necessary to avoid interference with performance of the Work as the Parties may agree upon in writing; so long as, when accessing the Site, DTE and its agents comply with Prudent Industry and Contractor's safety plan to the extent applicable to such access.

3.2.3 Damage to Real Property

Contractor will conduct all of Contractor's activities within the boundaries of the Site or other Owner designated work area and any other limitations and requirements set forth herein and will be responsible for any trespass or damage to property resulting from its activities. Contractor acknowledges and agrees to observe reasonable construction practices in performing the Work, including reasonable care and respect for the real property at the Site. Without limiting Contractor's obligations as set forth elsewhere herein, Contractor agrees that it will be responsible for any and all damages to real property inside the boundaries of the Site or other Owner designated work area or inside the areas defined by any other limitations and requirements set forth herein caused by Contractor or its Subcontractors in the performance of the Work. Contractor shall immediately report to Owner in writing all damage to any real or personal property wherever located.

3.3 Hazardous Substances.

3.3.1 As required by Applicable Laws, Contractor shall provide safety data sheets, warning labels, or other documentation covering all Hazardous Substances furnished under or otherwise associated with the Work. Contractor shall provide to DTE either copies of the applicable safety data sheets or copies of a document certifying that no safety data sheets are required under any Applicable Laws prior to the commencement of such Work or at such time as any such substances enter the Site.

3.3.2 [REDACTED]

3.4 Project Pricing and Schedule

3.4.1 [REDACTED]

3.4.2 Progress Reports and Meetings.

3.4.2.1 During the design, engineering and permitting phases of the Work, Contractor will schedule regular meetings with DTE to review any design or engineering changes, and such meetings shall coincide with milestones agreed to by the Parties. During such meetings, Contractor and DTE shall review any materials selection and logistics, and other plans that relate to the design, engineering and permitting of the Solar Energy Facility.

3.4.2.2 During the construction phase of the Work, Contractor will schedule regular meetings with DTE at least [REDACTED] to review the Project Schedule and any other items related to the construction of the Solar Energy Facility.

3.5 Project Implementation

3.5.1 Engineering. Contractor shall execute all necessary designs and drawings in accordance with this Agreement, including but not limited to the Specifications. Contractor shall deliver drawings and specifications to DTE as such documents are prepared for DTE's approval as provided in [REDACTED]. DTE shall review and respond to each submission by Contractor [REDACTED]. Contractor shall make all designs, drawings, and related documents available to DTE. The Parties expressly agree that DTE's approval of any plans, designs, drawings, specifications or any other items hereunder in no way relieves Contractor of its obligations under this Agreement.

3.5.2 Permit Submittal. Following DTE's approvals as required under Section 3.4.1 and in accordance with the [REDACTED] Contractor shall proceed with the preparation and submittal of the applications for all Applicable Permits, except DTE Permits, to the appropriate Governmental Authorities and agencies. Contractor shall deliver drafts of such Applicable Permits, except DTE Permits, to DTE for its review and approval. DTE shall review and respond to each submission by Contractor in an effort to finalize the applications as quickly as reasonably possible. In no event shall such response take more than [REDACTED] [REDACTED]. The Parties expressly agree that DTE's approval of any applications for Applicable Permits in no way relieves Contractor of its obligations under this Agreement.

3.5.3 Procurement and Construction.

3.5.3.1 Contractor shall commence procurement of the materials and the construction of the Solar Energy Facility in accordance with the Contract Documents. The construction will be performed by Contractor and/or one or more licensed Subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, and all manufacturer requirements for the maintenance of all applicable warranties. [REDACTED]
[REDACTED]
[REDACTED] as well as an evaluation and appropriate documentation of the safety record of any licensed Subcontractor that will be performing work on the Solar Energy Facility.

3.5.3.2 Contractor will be responsible for providing or causing to be provided by Contractor's Subcontractor(s), all labor, Materials, equipment (excluding Owner Supplied Equipment), tools, transportation, security, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any [REDACTED]. Contractor will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the Contract Documents. Contractor shall provide for the handling of equipment and Materials and construction equipment, including, as necessary, inspection, expediting, shipping, unloading, receiving, and

customs clearance and be responsible for all customs duties and similar charges payable in connection with the importation of equipment and Materials into the United States.

3.5.3.2.1 Contractor shall notify Owner's Project Manager of the receipt of each Owner Supplied [REDACTED]

[REDACTED] stating what Owner Supplied Equipment has been received and whether or not such delivered Owner Supplied Equipment received by Contractor: (i) was, to the extent ascertainable by diligent visual inspection, in a good and new condition, without visible defects or damage to the exterior packaging; *provided* that if any packaging appears damaged the contents will be immediately examined for damage and reported, (ii) matches the specifications for such Owner Supplied Equipment set forth in the Owner Supplied Equipment Specifications, (iii) was in a condition sufficient to achieve Mechanical Completion and (iv) was in the proper amounts (collectively, "Working Condition"). All damages must be documented by photographs and the delivery driver signature.

3.5.3.2.2 Contractor shall ensure that all equipment and Materials supplied shall be new (unless otherwise agreed by Contractor and DTE) and shall meet the requirements of the Specifications and Scope of Work and all Applicable Permits. References in the Specifications or Scope of Work to equipment and Materials or patented processes by trade name, make or catalog number shall be regarded as establishing a standard of quality expected by DTE. Contractor may use equipment, Materials, or process that is equal to that named in the Scope of Work or Specifications, subject to the prior written approval of DTE.

3.5.3.3 No longer than [REDACTED], Contractor shall develop a Quality Control plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED]

3.5.3.4 No longer than [REDACTED] Contractor shall develop a Risk Management Plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED]

3.5.3.5 Contractor will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Solar Energy Facility. Contractor will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (i) employees of Contractor and Subcontractors performing Work under this Agreement; (ii) Contractor's property and other materials to be incorporated for the Solar Energy Facility, under the care, custody, and control of Contractor or its Subcontractors; and (iii) the Site or other property at or adjacent to the Site not designated for removal, relocation, or replacement during the course of construction. For any personnel working on Site, whether Contractor employee or contractor or

Subcontractor employee or contractor, Contractor shall conduct background checks as provided in [REDACTED]

3.5.3.5 Contractor will maintain in good order at the Site copies of this Agreement, the Scope of Work, [REDACTED], one record copy of all drawings, specifications, product data, samples, manufacturer's installation, operation & maintenance manuals, and other pertinent construction-related documents. Redlines shall be added to all applicable construction drawings weekly.

3.5.3.6 If materials are to be stored on-site, or in the designated material lay down area, then prior to the arrival of equipment and materials, the Contractor shall provide and be responsible for the security and storage of such equipment and materials, including the installation of a security fence that aligns with the AHJ fencing requirements, [REDACTED] and placement of locked containers for the storage of tools, modules, etc. The size and location of the secured area shall be subject to the approval of DTE, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.5.3.7 During the construction phase of the Work, Contractor shall conduct all Commissioning tests that are scheduled to occur prior to Substantial Completion in accordance with the SEF commissioning requirements as described in [REDACTED]. Contractor shall provide notice to DTE of any scheduled test(s) of installed equipment, and DTE and/or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, and/or manufacturers of the equipment. Contractor shall be responsible for correcting and/or adjusting all deficiencies in the Solar Energy Facility and equipment operations that may be observed during equipment commissioning procedures.

3.6 Independent Review by DTE

Neither independent review of the construction by DTE nor any approval provided by DTE under this Agreement shall relieve Contractor of any of its obligations or responsibilities hereunder.

3.7 Assistance to DTE in Dealings with Governmental Authorities

Each Party shall provide or cause to be provided to the other Party information reasonably requested by such Party to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by such Party in dealing with any Governmental Authority in matters relating to the Work and the SEF.

3.8 [REDACTED]

[REDACTED]

ARTICLE 4
DTE OBLIGATIONS

4.1 Data Acquisition System Interconnectivity Requirements

DTE shall be responsible for obtaining for the benefit of the Solar Energy Facility, at DTE's sole cost and expense, the internet communication service necessary for the operation of the Data Acquisition System, up to a defined Network Access Point to which the Data Acquisition System will be connected. Contractor shall design the SEF to integrate with the DTE provided integration cabinet and the Project substation. This integration shall comply with DTE Cyber Security and Networking standards included in [REDACTED] as governed by DTE's "OP3 Information Security" policy. The Contractor shall provide a SCADA (Supervisory Control and Data Acquisition System) that supports industry standard data interface protocols (OPC, Modbus, DNP etc).

4.2 Contractor Assistance

DTE shall also do the following:

4.2.1 Attend the regularly scheduled progress meetings and participate as needed regarding scheduling of the Work.

4.2.2 Participate in the job inspection walk-throughs with Contractor and the Subcontractor(s), if any, while determining whether Substantial Completion has been achieved.

4.2.3 Upon its approval of the physical aspects of the Work, and its verification of the receipt of all required Submittals, and its verification of the performance of the SEF in accordance with the Scope of Work and the Specifications, issue and execute the Substantial Completion Certificate.

4.2.4 Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for coordination.

4.2.5 At DTE's sole discretion, perform a final walk-through of the SEF and check status of the physical aspects of the Work to reasonably determine whether Final Completion has been achieved.

4.2.6 Upon receipt of the Submittals, verification of Punchlist completion, and upon its sole approval of the completion of the entire Scope of Work as listed in [REDACTED] and according to the Specifications as listed in [REDACTED], issue a Final Completion Form.

4.3 DTE Representative; Response Periods

DTE shall designate the DTE Project Manager with whom Contractor shall consult on a reasonable, regular basis and who is authorized to act on DTE's behalf for all purposes in connection with this Agreement and the Work. DTE may from time-to-time change the DTE Project Manager by providing written notice thereof to Contractor. Except as otherwise provided herein, the DTE Project Manager shall render decisions in a timely manner [REDACTED] [REDACTED] with regard to any documents submitted by Contractor and to other requests made by Contractor in order to avoid unreasonable delay in the orderly and sequential progress of the Work.

4.4 Notices to Proceed; Conditions Precedent to Contract

4.4.1 Each Party's obligations under this Agreement are subject to DTE's fulfillment of the following conditions precedent:

(a) DTE must have received written approval of this Agreement in an order(s) from the MPSC that is in form and content reasonably satisfactory to DTE (such approval, the "MPSC Approval"); and

(b) Excluding Final Site Plan Approval, DTE must have received the applicable special land use or any other zoning approvals or variances from applicable Governmental Authorities to construct the SEF, in a form and content reasonably satisfactory to DTE.

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.4.2 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

ARTICLE 5

[REDACTED]

[REDACTED]

[REDACTED]

5.2 [REDACTED]

[REDACTED]

5.3 [REDACTED]

[REDACTED]

5.4 [REDACTED]

[REDACTED]

[REDACTED]

5.5 [REDACTED]

[REDACTED]

5.6 Retainage

[REDACTED]

5.7 Payment or Use Not Acceptance. No payment by DTE pursuant to an invoice from Contractor or any use of the Work by DTE shall constitute an acceptance of any of the Work or of any of the parts, materials, equipment or other supplies furnished by Contractor or its Subcontractors or suppliers and shall not relieve Contractor of any of its obligations or liabilities under this Agreement.

5.8 Tax Payments

[REDACTED]

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

[REDACTED]

[REDACTED]

5.9 Federal Contracting Certifications

Contractor shall comply with the requirements [REDACTED] Federal Contract Requirements.

**ARTICLE 6
WARRANTY/LIMITATION OF LIABILITY**

6.1 [REDACTED]

6.1.1 Commencing on the [REDACTED] Contractor warrants that (a) the Work will be free from defects in workmanship under normal operating conditions, and shall conform to the Scope of Work and all other requirements of this Agreement (the “Contractor Warranty”), and (b) all material (excluding DTE furnished material), equipment, and/or supplies furnished or procured by Contractor and/or incorporated into the Project will be new and in conformance with the requirements of this Agreement, including the Scope of Work. Contractor shall at all times perform its construction, installation, commissioning, operation or maintenance activities in accordance with this Agreement and Prudent Industry Practice and in a manner consistent with all such warranties and shall not perform any actions that may violate such warranties. [REDACTED]

[REDACTED]

6.1.2 [REDACTED]

6.1.3 During the Contractor Warranty Period, Contractor shall be responsible for any labor, time and travel for such repair regardless of whether or not the manufacturer reimburses Contractor, and Contractor shall be entitled to make claims against the Manufacturers’ Warranties, and to recover any monetary amounts from such Manufacturers’ Warranties, as the holder of those warranties is otherwise entitled.

6.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 7
PERMITS AND APPROVALS; COORDINATION

7.1 Permits and Approvals

Contractor will obtain all Applicable Permits and all Governmental Approvals from all necessary Government Authorities, except DTE Permits, required for the construction, installation, start-up, and operation of the Solar Energy Facility and the performance of the Work hereunder, including but not limited to, land use approvals, recorded restrictive covenant, fire marshal, architectural or design review, or other covenant, conditions and restrictions (CC&Rs) approvals, nighttime operations, encroachment (hauling, street cleaning, etc.), soil erosion and sedimentation control, storm water pollution prevention plan and water quality management plan permits, those listed on [REDACTED] or any other specialty permits, in each case, when and as required for the performance of the Work in accordance with the Project Schedule.

7.2 Coordination During Installation

DTE and Contractor shall cooperate with each other in an effort to coordinate the activities of Contractor and Subcontractors with those of DTE, its employees, agents and contractors.

7.3 Coordination for Special Inspections

Contractor shall coordinate the inspections of the Site by any Governmental Authorities as well as any other inspections, including but not limited to those required by DTE, insurance company representative, or manufacturers' representative and the requirements specified in the chart below:

Item No.	Description	Notification Req'd
1	Major Material Delivery	[REDACTED]
2	Concrete Pour	[REDACTED]
3	Cable/Piping Trench Closure	[REDACTED]
4	Excavation for site drainage/new catch basin	[REDACTED]
5	Meggar Testing	[REDACTED] [REDACTED]
6	DTE Meter Installation	[REDACTED]
7	DC Test	[REDACTED]
8	AC Test	[REDACTED]

ARTICLE 8
OWNERSHIP OF CERTAIN PROPERTY

8.1 Ownership of Certain Proprietary Property Rights

DTE shall own and have any and all rights, including all perpetual, irrevocable non-exclusive royalty-free license for any and all software or other intellectual property rights necessary for DTE to operate, maintain, improve or repair the Solar Energy Facility, including drawings in native program.

ARTICLE 9

[REDACTED]

9.1 [REDACTED]

[REDACTED]

9.2 [REDACTED]

[REDACTED]

9.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

9.4 [REDACTED]

[REDACTED]

ARTICLE 10
PUNCHLIST, MECHANICAL COMPLETION; SUBSTANTIAL COMPLETION, AND
FINAL COMPLETION

10.1 [REDACTED]

[REDACTED]

10.2 Mechanical Completion.

Contractor shall cause Mechanical Completion to occur as a condition to Substantial Completion. When Contractor believes it has achieved Mechanical Completion, it shall deliver to DTE, a completed Mechanical Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Mechanical Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If within such [REDACTED]

[REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such

milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved.

10.3 Substantial Completion.

Contractor shall cause Substantial Completion to occur as a condition to Final Completion. When Contractor believes it has achieved Substantial Completion, it shall deliver to DTE, a completed Substantial Completion Certificate. DTE shall, within [REDACTED] following receipt of such notice, either (i) deliver to Contractor a countersigned Substantial Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Substantial Completion (the “Substantial Completion Date”) shall be the date on which the last of the conditions for achievement of Substantial Completion was satisfied, as set forth in the Substantial Completion Certificate countersigned by DTE.

10.4 Final Completion.

When Contractor believes that it has achieved Final Completion, it shall deliver to DTE, a completed Final Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Final Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Final Completion (the “Final Completion Date”) shall be the date on which the last of the conditions for achievement of Final Completion was satisfied, as set forth in the Final Completion Certificate countersigned by DTE.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1 Each Party warrants and represents to the other that:

11.1.1 It has all requisite power, authority and approvals to legally and validly execute and deliver this Agreement.

11.1.2 The execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, each Party's respective governing entity, and this Agreement has been duly executed for it and delivered by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

11.1.3 Its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any contract or instrument to which it is a Party or by which it or its properties may be bound or affected; and

11.1.4 It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect either Party's ability to perform hereunder.

11.2 Contractor warrants and represents to DTE that:

11.2.1 Contractor has examined and carefully reviewed this Agreement;

11.2.2 Contractor has inspected the Site and become generally familiar with the general, local and site conditions that may affect the construction, installation and operation of the Solar Energy Facility and the performance of the Work;

11.2.3 Contractor has performed, or has caused to be performed, all necessary due diligence to determine suitability of the Site for the Solar Energy Facility including without limitation any structural, soils, or civil analyses or reports. If any of these reports are completed after execution of this Agreement, and the information gained in these reports necessitates a [REDACTED]

11.2.4 Contractor has all the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement and Prudent Industry Practice; and

11.2.5 Contractor is familiar with Applicable Laws, regulations, and interconnection standards relevant to the performance of its obligations under this Agreement.

ARTICLE 12
SUBCONTRACTORS

12.1 Authority to Subcontract

Contractor may delegate its duties and performance under this Agreement and shall have the right to enter into agreements with Subcontractors to perform the Work hereunder; provided, however that such delegations do not relieve Contractor from liability or its obligations to DTE under this Agreement. Subcontractors shall have the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement, Applicable Laws and Prudent Industry Practice. Prior to the start of construction on the Site, and unless the parties shall have previously agreed upon Contractor's selection of Subcontractors, Contractor shall submit to DTE a comprehensive list of all Subcontractors. Such list shall be kept current and revised and updated as necessary. DTE shall have the ability, in its sole discretion, to reject any Subcontractor proposed by Contractor. Contractor shall bind every Subcontractor to the terms and provisions of this Agreement to the extent applicable to such party's work under this Agreement, including the requirements of [REDACTED]. At DTE's request, Contractor shall remove any Contractor or Subcontractor personnel that DTE in its sole discretion deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, without cause, at any time

12.2 Prompt Payment of Subcontractors

Contractor shall promptly pay when due all amounts payable to its Subcontractors for labor and materials furnished in the performance of this Agreement and shall ensure that the Solar Energy Facility and the Site remain free of any Liens arising through Contractor and/or any of its Subcontractors.

12.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.4 Responsibility

Contractor shall, at all times, be responsible for the acts, errors and/or omissions of its Subcontractors and agents. Nothing in this Agreement shall constitute any contractual relationship between DTE and any Subcontractor or in any way obligate DTE to pay, or to be responsible for the payment of, any sums to any Subcontractors.

ARTICLE 13

[REDACTED]

13.1 [REDACTED]

[REDACTED]

13.2 [REDACTED]

[REDACTED]

[Redacted text block]

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ARTICLE 14

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ARTICLE 15

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[REDACTED]

[REDACTED]

16.4.4.2 [REDACTED]

[REDACTED]

16.4.5 [REDACTED]

ARTICLE 17

[REDACTED]

17.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 18

[REDACTED]

18.1 [REDACTED]

[REDACTED]

18.2 [REDACTED]

[REDACTED]

18.3 [REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 19
TERM AND TERMINATION

19.1 Effective Date; Term.

The term shall commence on the Effective Date and end on the last day of the Contractor Warranty Period (the "Term"), unless terminated earlier in accordance with the terms hereof.

19.2 Termination

DTE shall have the rights to terminate this Agreement set forth Article 4.5 and Article 16. Contractor shall have the right to terminate this Agreement as set forth in Article 16.

19.3 [REDACTED]

[REDACTED]

19.4 [REDACTED]

[REDACTED]

ARTICLE 20
MISCELLANEOUS

20.1 Assignment.

Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, DTE may, without the need for consent from Contractor: (i) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of DTE, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or (ii) assign its rights under this Agreement to an affiliate or to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Any assignment made in contravention of this clause shall be void and unenforceable.

20.2 Agreement Construction

This Agreement is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Agreement was executed.

20.3 Binding Effect

Except as otherwise provided herein, the terms and provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

20.4 Independent Contractor

The Parties hereto agree that Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with DTE other than that of owner or independent contractor, nor shall it be construed as creating any relationship whatsoever between DTE and any Subcontractors nor between DTE and Contractor employees or agents. Neither Contractor nor any Subcontractors nor any of their respective employees shall be deemed to be employees of DTE.

20.5 No Waiver

The failure of Contractor or DTE to insist upon the strict performance of the terms and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement.

20.6 Severability

In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

20.7 Entire Agreement

This Agreement, when executed, together with all [REDACTED] shall constitute the entire agreement between the Parties; and this Agreement cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto.

20.8 Governing law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

The Parties hereby irrevocably submit to the exclusive jurisdiction of any court of the State of Michigan or Federal court of the United States of America, sitting within the County of Gratiot, Michigan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement and irrevocably and unconditionally agree that all claims in respect of such action or proceeding in any Michigan State or Federal court sitting in Gratiot County, Michigan may be heard and determined in any such Michigan State court or, to the extent permitted by law, in such Federal court. The Parties agree that a final judgment in any action or proceeding under this paragraph shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

20.9 Notice

Any notice required or permitted hereunder shall be deemed received (i) on the day on which such notice is delivered personally, (ii) on the [REDACTED] after deposit in the U.S. Mail; provided such notice is sent by certified mail with a return receipt request and postage prepaid or (iii) the following Business Day if deposited with a recognized overnight carrier, to the address shown below or to such other persons or addresses as are specified by similar notice.

If to DTE:

with a copy to:

DTE Electric Company
One Energy Plaza, 1635 WCB
Detroit, MI 48226
Attention: General Counsel
Fax: 313-235-8500

If to Contractor:

J. Ranck Electric, Inc.
1993 Gover Parkway
Mt. Pleasant, MI 48858
[REDACTED]

20.10 Headings

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

20.12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20.13 Public Announcements

Neither Party shall issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby, without the prior consent of the other Party, unless required by Applicable Laws or order of a court of competent jurisdiction.

20.14 Cooperation

Upon the receipt of a request from the other Party, each Party shall execute such reasonable additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.14. Without limiting the generality of the foregoing, Contractor will provide DTE promptly upon DTE's written request all documents reasonably necessary for DTE to qualify of the SEF as "Qualified Facility" under pertinent rules and regulations of the FERC or any other Governmental Authority.

20.15 No Rights in Third Parties.

Unless and except as may be otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

20.16 [REDACTED]

[REDACTED]

20.17 Amendments

This Agreement may be modified or amended only by a written instrument signed by the Parties.

20.18 Drafting Ambiguities

Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of

construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, or any amendments or [REDACTED] hereto.

IN WITNESS WHEREOF, Contractor and DTE have caused this Agreement to be executed by their duly authorized representatives as of the date first above written,

Signature Page follows

CONTRACTOR:

J. Ranck Electric Company

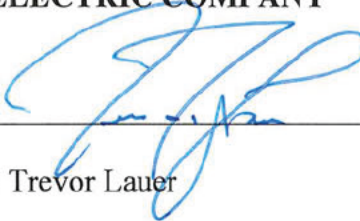
By:  _____

Name: Jordan Wilcox

Title: Contracts Manager

DTE:

DTE ELECTRIC COMPANY

By:  _____

Name: Trevor Lauer

Title: President & COO - DTE Electric

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

BETWEEN

DTE ELECTRIC COMPANY

AND

BARTON MALOW COMPANY

as Contractor

Dated as of September 21, 2022

ARTICLE 1
RECITALS

WHEREAS, DTE desires to own and operate a solar photovoltaic system (as further defined below, the Sauk “Solar Energy Facility” or “SEF”) located in Branch County, Michigan as further provided in this Agreement;

WHEREAS, Contractor is a full-service, engineering, procurement, construction company with the financial and technical capabilities to provide services to DTE including, but not limited to, engineering, procurement of material not provided by Owner, project and construction management, construction and installation, commissioning, testing and training as to its operation and maintenance; and

WHEREAS, Contractor has received, reviewed, and understands DTE’s requirements for the SEF design and drawings [REDACTED] and Specifications [REDACTED] and DTE’s SEF commissioning requirements [REDACTED]

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter contained, and other good and valuable consideration receipt of which is hereby acknowledged, DTE and Contractor hereby agree as follows:

ARTICLE 2
DEFINITIONS

For purposes of the Agreement, and its [REDACTED], the defined terms herein shall have the meaning set forth as follows:

“Agreement” or “Contract” shall mean this Engineering, Procurement and Construction Agreement and all [REDACTED] attached hereto which are incorporated herein, as the same may be amended or modified from time to time in accordance with the provisions hereof, including any [REDACTED] executed in accordance with this Agreement.

“AHJ” shall mean authority having jurisdiction

“Applicable Laws” shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or the performance of the Work, including without limitation the IRA.

“Applicable Permits” shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or authority having jurisdiction over the Solar Energy Facility and/or performance of the Work. A list of all Applicable Permits is contained in [REDACTED] and includes a matrix of the responsibility of the Parties for such permits.

“Business Day” means any day except a Saturday, Sunday, or day on which banks in the State of Michigan are closed.

“Capacity Guarantee” shall have the meaning set forth in [REDACTED]

[REDACTED]

“Change” shall mean any material addition to, deletion from, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, or other modification that constitutes a material change to the Scope of Work.

[REDACTED]

“Change in Law” means the enactment, adoption, promulgation, modification, or repeal of any applicable Law or Permit after the Effective Date.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commissioning” shall mean the set of tests and procedures performed on the Solar Energy Facility to verify its operational readiness.

“Commissioning Plan” shall mean the plan presented to DTE prior to performing any tests or procedures to verify as-built Project parameters as part of Commissioning.

“Construction Lien Act” shall have the meaning as provided in Section 5.4.

“Contract Date” shall have the meaning set forth in the Preamble.

“Contract Documents” shall mean this Agreement, the Submittals, and any amendments thereto.

[REDACTED]

“Contractor” has the meaning set forth in the Preamble.

“Contractor Event of Default” shall have the meaning set forth in Section 16.1.1.

“Contractor Warranty” shall have the meaning set forth in Section 6.1.1.

“Contractor Warranty Period” shall have the meaning set forth in Section 6.1.1.

“COVID Pandemic” shall have the meaning set forth in Article 15.

“Daily Progress Report” shall have the meaning set forth in Section 3.3.3.2.

“Data Acquisition System” or “DAS” shall mean the Solar Energy Facility operational monitoring and revenue metering system.

[REDACTED]

“DTE” shall have the meaning set forth in the Preamble.

“DTE Event of Default” shall have the meaning set forth in Section 16.2.1.

“DTE Indemnified Party” shall have the meaning set forth in Section 13.1.

“DTE Permits” shall mean those permits that are identified as the responsibility of DTE pursuant to [REDACTED]

“DTE Project Manager” shall mean DTE’s designated single-point representative with whom Contractor shall consult on a reasonable, regular basis and who is authorized to act on DTE’s behalf for all purposes in connection with this Agreement and the Work.

“Effective Date” shall have the meaning set forth in Section 19.1.

“Engineer of Record” shall mean any and all structural, electrical, civil, mechanical, environmental or other professional engineer either employed by Contractor or its Subcontractors, whose seal is incorporated within any Construction Document.

“Environmental Documents” shall mean those documents included in [REDACTED] and any additional documents identified and provided to Contractor prior to the Effective Date by DTE that were prepared pursuant to any Environmental Laws and that are applicable to the Work.

[REDACTED]

“Excused Site Condition” means (i) the discovery of archeological artifacts, endangered or threatened species, or religious, historical, or archeological resources above or below the surface of the Site the handling, disturbance, or removal of which is constrained by Applicable Law, unless the same were otherwise disclosed in the Environmental Documents; (ii) the discovery of Hazardous Substances in or on the Site, unless the same were otherwise disclosed in the Environmental Documents or the same could have reasonably been inferred from a visual inspection of the site; or (iii) the discovery of man-made objects in the subsurface of the Site that have a material adverse impact on the execution of the Work, unless the same could reasonably have been inferred from a visual inspection of the Site or were otherwise disclosed in the Environmental Documents.

[REDACTED]

“FERC” shall mean the Federal Energy Regulatory Commission.

“Final Completion” shall be deemed to have occurred when (a) conditions as set forth in [REDACTED] [REDACTED] have been achieved and (b) the Final Completion Certificate, certifying that the criteria for Final

Completion, has been delivered by DTE to the Contractor, signed by the Contractor and returned to DTE.

“Final Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Final Completion to be achieved by Contractor as contemplated by Section 10.4 and this Agreement.

“Final Completion Date” shall have the meaning set forth in Section 10.4

[REDACTED]

“Gold Shovel Certified” is a certification confirming developer understands Gold Shovel standards in an effort to reduce the damages to underground utility infrastructure as provided in [REDACTED]

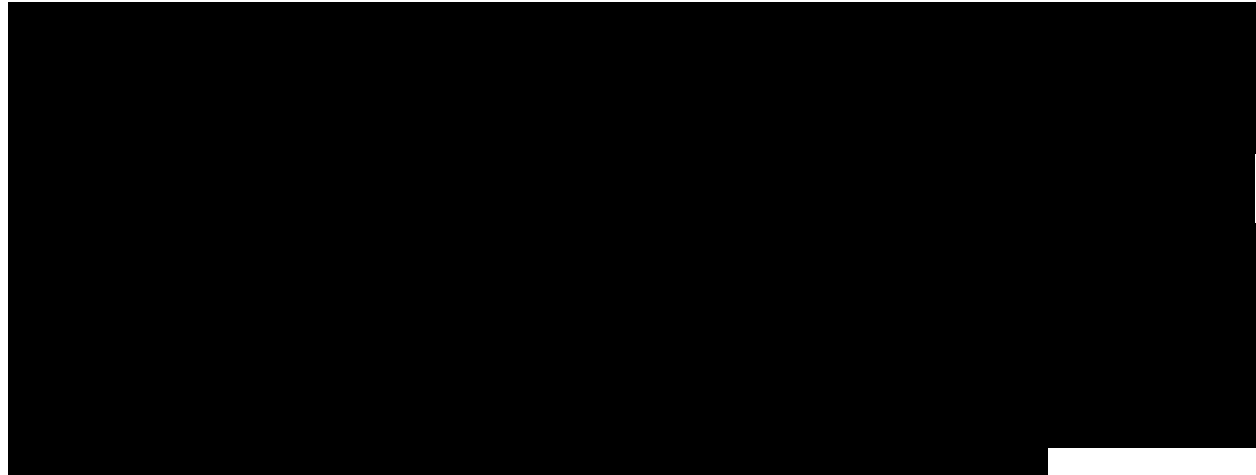
“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and, with respect to the Contractor, shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the construction, use, and operation of the SEF.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

[REDACTED]

[REDACTED]


[REDACTED]




“Interconnection Requirements” means the Michigan Electric Utility Generator Interconnection Requirements, Category 5 Projects filed with the MPSC, DTE Electric Company SIMS Manual for Metering Guidelines, as modified from time to time, ITC Operating Guides, ITC Metering Guidelines, MISO Generation Interconnection Procedures, any other documents adopted by the Company, ITC or MISO relating to the interconnection and operation of generators and transmission systems as amended from time to time, and any successors thereto and any and all applicable law or regulation regarding interconnection.

“Landowner” shall mean the individual or entity owner of such property to which the Company intends to install any portion of the SEF.

“Lien” means any lien (statutory or other), pledge, mortgage, charge, security interest, deed of trust, assignment, hypothecation, deposit arrangement, easement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever in respect of an asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Laws.



“Manufacturer’s Warranty” shall mean the specific warranty furnished by Contractor and provided by the manufacturer of a specific product covering the material workmanship and/ or performance of that specific product, a list of which is set forth in 

“Materials” shall mean any articles, apparatus, goods, materials, products, items, data, documents, supplies, equipment, component parts and assemblies, or any other substances, parts, or any combination thereof used, consumed, furnished or installed by Contractor or any subcontractor as part of the Work.

“Mechanical Completion” shall mean (a) the conditions as set forth in  been achieved and (b) the Mechanical Completion Certificate has been signed by Contractor and DTE.

“Mechanical Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Mechanical Completion to be achieved by Contractor as contemplated by Section 10.2 and this Agreement.

“Milestone Payment Schedule” means the milestone payment schedule attached hereto as [REDACTED]

“MPSC” shall mean Michigan Public Service Commission.

“MPSC Approval” shall have the meaning set forth in Section 4.4.

“MPSC Submittal Date” shall have the meaning set forth in Section 4.4.1(c).

“NERC” shall mean North American Electric Reliability Corporation

“Network Access Point” shall mean the RJ45 jack into which the Data Acquisition System may be plugged and which provides direct access to the internet, either via DTE’s network, or via a third-party service such as DSL, cable or cellular data modem.

“Notice to Proceed” or “NTP” shall mean the written notice provided by DTE to Contractor authorizing Contractor to proceed with the Work, and which is further described in Section 4.4.

“Operations and Maintenance Manual” shall mean the manual provided by the Contractor that describes in detail the processes and procedures required to safely operate and maintain the SEF and shall include documentation provided by the original equipment manufacturers of all equipment covered by a Manufacturer's Warranty which describe how to operate and maintain such equipment to maintain, as applicable, warranty coverage and effective operation.

[REDACTED]

“Owner Contractors” means those persons or entities, other than Contractor, with whom Owner contracts to perform any work or services or provide any materials, supplies, parts, and equipment in connection with the Project (including Owner’s equipment suppliers), or their subcontractors or suppliers of any tier.

“Party” or “Parties” shall mean Contractor, DTE, each or both of them, as the context may require pursuant to the terms and conditions of this Agreement.

[REDACTED]

[REDACTED]

“Project” shall mean the SEF and the substation to be constructed consistent with the Contract Documents.

“Project Schedule” shall mean the overall engineering, permitting, and construction schedule for the Work, as further detailed in Section 3.3.1, [REDACTED]

“Prudent Industry Practice” shall mean those practices, methods, standards and procedures as are commonly used by professional construction and engineering firms performing turnkey engineering, procurement and construction services on facilities of a type and size similar to the Solar Energy Facility, which in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the design, manufacture and construction and use of electrical and other equipment, facilities, equipment and improvements, with commensurate standards of safety, performance, dependability, efficiency and economy.

“PTC” means PV USA Test Conditions; 1000W/square meter solar irradiance; 1.5 air mass @20°C; wind speed 1 meter/second

“Punchlist” shall have the meaning as provided in Section 10.1.

“Redline” shall mean the set of prints on the construction site that reflect “as built” conditions using the Green-in, Red-out standard.

[REDACTED]

“SCADA” shall mean Supervisory Control and Data Acquisition systems used to monitor and control a plant or equipment

“Scope of Work” shall mean the Work to be performed hereunder by Contractor pursuant to the Scope of Work [REDACTED] attached hereto as [REDACTED] of this Agreement.

“Site” shall mean that area or areas where the materials and equipment for the Solar Energy Facility (as depicted in the Site Plan, [REDACTED] shall be installed and/or used to perform the Work.

“Solar Power Easement Agreements” shall mean the easement agreements which are entered into between Landowner and DTE for the SEF.

“Solar Energy Facility” or “SEF” or “Facility” shall mean the entirety of the solar generating system, its electrical and mechanical components, Support Structure, mounting or tracking components, inverter(s), modules, meter(s), monitoring components, conduit, substation and other elements installed in the nature of the Work.

“Solid Waste” means that term as defined under Part 115 of Michigan Act 451 of 1994, MCL 324.11506.

“Specifications” shall mean such references, materials, methods, design and engineering requirements, safety requirements and other such standards of workmanship and materials as described in [REDACTED]

“STC” means Factory Standard Test Conditions – 1000W/square meter solar irradiance; 1.5 air mass @25°C; wind speed 1 meter/second.

“Subcontractor” shall mean any subcontractor, supplier, vendor or other service provider of Contractor as well as any subcontractor, supplier, vendor or other service provider of such subcontractor, supplier, vendor or other service provider retained by such subcontractor.

“Submittals” shall mean all documents required to be provided to DTE by Contractor as described in [REDACTED]

“Substantial Completion” or “Substantially Complete” shall mean the (a) conditions as set forth in [REDACTED] have been achieved; and (b) the Substantial Completion Certificate, has been signed and delivered by the Contractor and DTE.

“Substantial Completion Certificate” shall mean the certification as provided in accordance with the form in [REDACTED] providing the criteria for Substantial Completion to be achieved by Contractor as contemplated by Section 10.3 and this Agreement.

“Substantial Completion Date” shall mean the date indicated as the Substantial Completion Date in the Substantial Completion Certificate.

“Support Structure” shall mean the rooftop, ground-based or floating mounting system, elevated structure or tracking system that will hold the solar modules of the Solar Energy Facility on the Site, and all supports thereto.

[REDACTED]

“Term” shall have the meaning set forth in Section 19.1.

“Work” shall mean the design, engineering, permit attainment, procurement, construction and installation of the Solar Energy Facility and all other services to be provided by Contractor hereunder, in accordance with the terms hereof, including the Scope of Work and Specifications and Submittals.

ARTICLE 3
RESPONSIBILITIES OF CONTRACTOR

3.1 Performance of the Work

Contractor shall fully perform the Work in accordance with the provisions of this Agreement. Such Work shall be performed in an expeditious manner consistent and in accordance with Prudent Industry Practice, provided, however, that in the event of any conflict between the requirements of this Agreement and Prudent Industry Practice, the requirements of this Agreement shall govern Contractor's Work. Contractor shall perform all Work in accordance with applicable equipment manufacturers' requirements, including all requirements necessary to preserve and maintain in effect any and all warranties and, if applicable, any performance guarantees with respect to such equipment. Contractor shall perform the Work in accordance with all site access and personnel requirements set forth on [REDACTED] with all workmanship, safety requirements, with the scope of work set forth on [REDACTED] in accordance with all specifications as defined in [REDACTED] and all Applicable Permits and all Applicable Laws.

3.2 Site Access, Maintenance and Damages

3.2.1 Maintenance of the Site. Contractor shall keep the Site reasonably free from accumulations of waste materials, rubbish, and other debris resulting from performance of the Work; and reasonably promptly after the Substantial Completion Date, remove from those portions of the Site involved in the commercial operation of the SEF, in conformity with Applicable Laws, all such waste materials, rubbish, and other debris, as well as all tools, construction equipment, machinery and surplus material that would interfere in any material way with the commercial operation of the SEF (specifically excluding materials, tools, and construction equipment necessary to complete any Punchlist items); and before final departure from the Site, in conformity with Applicable Laws, all remaining waste and rubbish generated during performance of the Punchlist work, and all remaining materials, tools, and construction equipment of Contractor or its Subcontractors, and leave the Site in clean and usable condition.

3.2.2 Site Access. As soon as practicable, DTE shall provide written notification to Contractor to allow access to the Site sufficient to enable Contractor's performance of the Work. DTE shall have the right to freely access the Site subject to reasonable conditions necessary to avoid interference with performance of the Work as the Parties may agree upon in writing; so long as, when accessing the Site, DTE and its agents comply with Prudent Industry and Contractor's safety plan to the extent applicable to such access.

3.2.3 Damage to Real Property

Contractor will conduct all of Contractor's activities within the boundaries of the Site or other Owner designated work area and any other limitations and requirements set forth herein and will be responsible for any trespass or damage to property resulting from its activities. Contractor acknowledges and agrees to observe reasonable construction practices in performing the Work, including reasonable care and respect for the real property at the Site. Without limiting Contractor's obligations as set forth elsewhere herein, Contractor agrees that it will be responsible for any and all damages to real property inside the boundaries of the Site

or other Owner designated work area or inside the areas defined by any other limitations and requirements set forth herein caused by Contractor or its Subcontractors in the performance of the Work. Contractor shall immediately report to Owner in writing all damage to any real or personal property wherever located.

3.3 Hazardous Substances.

3.3.1 As required by Applicable Laws, Contractor shall provide safety data sheets, warning labels, or other documentation covering all Hazardous Substances furnished under or otherwise associated with the Work. Contractor shall provide to DTE either copies of the applicable safety data sheets or copies of a document certifying that no safety data sheets are required under any Applicable Laws prior to the commencement of such Work or at such time as any such substances enter the Site.

3.3.2 [Redacted]

3.4 Project Pricing and Schedule

3.4.1 [Redacted]

3.4.2 Progress Reports and Meetings.

3.4.2.1 During the design, engineering and permitting phases of the Work, Contractor will schedule regular meetings with DTE to review any design or engineering changes, and such meetings shall coincide with milestones agreed to by the Parties. During

such meetings, Contractor and DTE shall review any materials selection and logistics, and other plans that relate to the design, engineering and permitting of the Solar Energy Facility.

3.4.2.2 During the construction phase of the Work, Contractor will schedule regular meetings with DTE at least [REDACTED] to review the Project Schedule and any other items related to the construction of the Solar Energy Facility.

3.5 Project Implementation

3.5.1 Engineering. Contractor shall execute all necessary designs and drawings in accordance with this Agreement, including but not limited to the Specifications. Contractor shall deliver drawings and specifications to DTE as such documents are prepared for DTE's approval as provided in [REDACTED]. DTE shall review and respond to each submission by Contractor [REDACTED]. Contractor shall make all designs, drawings, and related documents available to DTE. The Parties expressly agree that DTE's approval of any plans, designs, drawings, specifications or any other items hereunder in no way relieves Contractor of its obligations under this Agreement.

3.5.2 Permit Submittal. Following DTE's approvals as required under Section 3.4.1 and in accordance with the [REDACTED] Contractor shall proceed with the preparation and submittal of the applications for all Applicable Permits, except DTE Permits, to the appropriate Governmental Authorities and agencies. Contractor shall deliver drafts of such Applicable Permits, except DTE Permits, to DTE for its review and approval. DTE shall review and respond to each submission by Contractor in an effort to finalize the applications as quickly as reasonably possible. In no event shall such response take more than [REDACTED]. The Parties expressly agree that DTE's approval of any applications for Applicable Permits in no way relieves Contractor of its obligations under this Agreement.

3.5.3 Procurement and Construction.

3.5.3.1 Contractor shall commence procurement of the materials and the construction of the Solar Energy Facility in accordance with the Contract Documents. The construction will be performed by Contractor and/or one or more licensed Subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, and all manufacturer requirements for the maintenance of all applicable warranties [REDACTED]
[REDACTED]
[REDACTED] as well as an evaluation and appropriate documentation of the safety record of any licensed Subcontractor that will be performing work on the Solar Energy Facility.

- 3.5.3.2 Contractor will be responsible for providing or causing to be provided by Contractor's Subcontractor(s), all labor, Materials, equipment (except Owner Supplied Equipment), tools, transportation, security, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any [REDACTED]. Contractor will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the Contract Documents. Contractor shall provide for the handling of equipment and Materials and construction equipment, including, as necessary, visual inspection, as requested unloading, and receiving.
- 3.5.3.3 Contractor shall notify Owner and Owner's Project Manager of the receipt of each Owner Supplied [REDACTED] [REDACTED] stating what Owner Supplied Equipment has been received and whether or not such delivered Owner Supplied Equipment received by Contractor: (i) was, to the extent ascertainable by diligent visual inspection, in a good and new condition, without visible defects or damage to the exterior packaging; *provided* that if any packaging appears damaged the contents will be immediately examined for damage and reported, (ii) visibly matches the specifications for such Owner Supplied Equipment set forth in the Owner Supplied Equipment Specifications, (iii) was in the proper amounts . All damages must be documented by photographs and the delivery driver signature.
- 3.5.3.4 Contractor shall ensure that all equipment and Materials supplied shall be new (unless otherwise agreed by Contractor and DTE) and shall meet the requirements of the Specifications and Scope of Work and all Applicable Permits. References in the Specifications or Scope of Work to equipment and Materials or patented processes by trade name, make or catalog number shall be regarded as establishing a standard of quality expected by DTE. Contractor may use equipment, Materials, or process that is equal to that named in the Scope of Work or Specifications, subject to the prior written approval of DTE.
- 3.5.3.5 No longer than [REDACTED] Contractor shall develop a Quality Control Plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED]
- 3.5.3.6 No longer than [REDACTED] Contractor shall develop a Risk Management Plan that shall be reviewed by DTE and submitted by Contractor as [REDACTED]
- 3.5.3.7 Contractor will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Solar Energy Facility. Contractor will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (i) employees of Contractor and Subcontractors performing Work under this Agreement; (ii) Contractor's property and other materials to be incorporated for the Solar Energy Facility, under the care, custody, and control of Contractor or its Subcontractors; and (iii) the Site or other property at or adjacent to the Site not designated for removal, relocation, or replacement during the course of construction. For any

personnel working on Site, whether Contractor employee or contractor or Subcontractor employee or contractor, Contractor shall conduct background as provided in [REDACTED]

3.5.3.8 Contractor will maintain in good order at the Site copies of this Agreement, the Scope of Work, all [REDACTED], one record copy of all drawings, specifications, product data, samples, manufacturer's installation, operation & maintenance manuals, and other pertinent construction-related documents. Redlines shall be added to all applicable construction drawings as required at milestone completions.

3.5.3.9 If materials are to be stored on-site, or in the designated material lay down area, then prior to the arrival of equipment and materials, the Contractor shall provide and be responsible for the security and storage of such equipment and materials, including the installation of a security fence that aligns with the AHJ fencing requirements, [REDACTED] and placement of locked containers for the storage of tools, modules, etc. The size and location of the secured area shall be subject to the approval of DTE, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.5.3.10 During the construction phase of the Work, Contractor shall conduct all Commissioning tests that are scheduled to occur prior to Substantial Completion in accordance with the SEF commissioning requirements as described in [REDACTED]. Contractor shall provide notice to DTE of any scheduled test(s) of installed equipment, and DTE and/or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, and/or manufacturers of the equipment. Contractor shall be responsible for correcting and/or adjusting all deficiencies in workmanship in the Solar Energy Facility and equipment operations that may be observed during equipment commissioning procedures. If deficiencies are found in any Owner Supplied Material, the parties shall work collaboratively to develop the plan and compensation for remediation.

3.6 Independent Review by DTE

Neither independent review of the construction by DTE nor any approval provided by DTE under this Agreement shall relieve Contractor of any of its obligations or responsibilities hereunder.

3.7 Assistance to DTE in Dealings with Governmental Authorities

Each Party shall provide or cause to be provided to the other Party information reasonably requested by such Party to enable it to fulfill its obligations under this Agreement. This obligation shall include providing such assistance as is reasonably requested by such Party in dealing with any Governmental Authority in matters relating to the Work and the SEF.

3.8 [REDACTED]



ARTICLE 4
DTE OBLIGATIONS

4.1 Data Acquisition System Interconnectivity Requirements

DTE shall be responsible for obtaining for the benefit of the Solar Energy Facility, at DTE’s sole cost and expense, the internet communication service necessary for the operation of the Data Acquisition System, up to a defined Network Access Point to which the Data Acquisition System will be connected. Contractor shall design the SEF to integrate with the DTE provided integration cabinet and the Project substation. This integration shall comply with DTE Cyber Security and Networking standards included in [REDACTED] as governed by DTE’s “OP3 Information Security” policy. The Contractor shall provide a SCADA (Supervisory Control and Data Acquisition System) that supports industry standard data interface protocols (OPC, Modbus, DNP etc.)

4.2 Contractor Assistance

DTE shall also do the following:

- 4.2.1 Attend the regularly scheduled progress meetings and participate as needed regarding scheduling of the Work.
- 4.2.2 Participate in the job inspection walk-throughs with Contractor and the Subcontractor(s), if any, while determining whether Substantial Completion has been achieved.
- 4.2.3 Upon its approval of the physical aspects of the Work, and its verification of the receipt of all required Submittals, and its verification of the performance of the SEF in accordance with the Scope of Work and the Specifications, issue and execute the Substantial Completion Certificate.
- 4.2.4 Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for coordination.
- 4.2.5 At DTE’s sole discretion, perform a final walk-through of the SEF and check status of the physical aspects of the Work to reasonably determine whether Final Completion has been achieved.

[REDACTED]

4.4.2 [REDACTED]

ARTICLE 5

[REDACTED]

5.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.4 [REDACTED]

[REDACTED]

5.5 [REDACTED]

[REDACTED]

5.6 **Payment or Use Not Acceptance.** No payment by DTE pursuant to an invoice from Contractor or any use of the Work by DTE shall constitute an acceptance of any of the Work or of any of the parts, materials, equipment or other supplies furnished by Contractor or its

Subcontractors or suppliers and shall not relieve Contractor of any of its obligations or liabilities under this Agreement.

5.8 Tax Payments

[REDACTED]

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

5.8 Federal Contracting Certifications

Contractor shall comply with the requirements [REDACTED] Federal Contract Requirements.

**ARTICLE 6
WARRANTY/LIMITATION OF LIABILITY**

[REDACTED]

ARTICLE 7
PERMITS AND APPROVALS; COORDINATION

7.1 Permits and Approvals

Contractor will obtain all Applicable Permits and all Governmental Approvals from all necessary Government Authorities, except DTE Permits, required for the construction, installation, start-up, and operation of the Solar Energy Facility and the performance of the Work hereunder, including but not limited to, land use approvals, recorded restrictive covenant, fire marshal, architectural or design review, or other covenant, conditions and restrictions (CC&Rs) approvals, nighttime operations, encroachment (hauling, street cleaning, etc.), soil erosion and sedimentation control, storm water pollution prevention plan and water quality management plan permits, those listed on [REDACTED] or any other specialty permits, in each case, when and as required for the performance of the Work in accordance with the Project Schedule.

7.2 Coordination During Installation

DTE and Contractor shall cooperate with each other in an effort to coordinate the activities of Contractor and Subcontractors with those of DTE, its employees, agents and contractors.

7.3 Coordination for Special Inspections

Contractor shall coordinate the inspections of the Site by any Governmental Authorities as well as any other inspections, including but not limited to those required by DTE, insurance company representative, or manufacturers' representative and the requirements specified in the chart below:

Item No.	Description	Notification Req'd
----------	-------------	--------------------

9.2

[REDACTED]

[REDACTED]

9.3

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

9.4 [REDACTED]

[REDACTED]

ARTICLE 10
PUNCLIST, MECHANICAL COMPLETION; SUBSTANTIAL COMPLETION, AND
FINAL COMPLETION

10.1 [REDACTED]

[REDACTED]

[REDACTED]

10.2 Mechanical Completion.

Contractor shall cause Mechanical Completion to occur as a condition to Substantial Completion. When Contractor believes it has achieved Mechanical Completion, it shall deliver to DTE, a completed Mechanical Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Mechanical Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If within such [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved.

10.3 Substantial Completion.

Contractor shall cause Substantial Completion to occur as a condition to Final Completion. When Contractor believes it has achieved Substantial Completion, it shall deliver to DTE, a completed Substantial Completion Certificate. DTE shall, within [REDACTED] following receipt of such notice, either (i) deliver to Contractor a countersigned Substantial Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of

Substantial Completion (the “Substantial Completion Date”) shall be the date on which the last of the conditions for achievement of Substantial Completion was satisfied, as set forth in the Substantial Completion Certificate countersigned by DTE.

10.4 Final Completion.

When Contractor believes that it has achieved Final Completion, it shall deliver to DTE, a completed Final Completion Certificate. DTE shall, within [REDACTED] following receipt of such certificate, either (i) deliver to Contractor a countersigned Final Completion Certificate indicating its acceptance of the achievement of such milestone, or (ii) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. [REDACTED]

[REDACTED] If DTE delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions, Contractor shall issue to DTE, another notice with respect to such milestone pursuant to this subsection. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Final Completion (the “Final Completion Date”) shall be the date on which the last of the conditions for achievement of Final Completion was satisfied, as set forth in the Final Completion Certificate countersigned by DTE.

ARTICLE 11 **REPRESENTATIONS AND WARRANTIES**

11.1 Each Party warrants and represents to the other that:

11.1.1 It has all requisite power, authority and approvals to legally and validly execute and deliver this Agreement.

11.1.2 The execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, each Party's respective governing entity, and this Agreement has been duly executed for it and delivered by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

11.1.3 Its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any contract or instrument to which it is a Party or by which it or its properties may be bound or affected; and

11.1.4 It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules,

decrees, awards, permits or orders which would materially and adversely affect either Party's ability to perform hereunder.

11.2 Contractor warrants and represents to DTE that:

11.2.1 Contractor has examined and carefully reviewed this Agreement;

11.2.2 Contractor has inspected the Site and become generally familiar with the general, local and site conditions that may affect the construction, installation and operation of the Solar Energy Facility and the performance of the Work;

11.2.3 Contractor has performed, or has caused to be performed, all necessary due diligence to determine suitability of the Site for the Solar Energy Facility including without limitation any structural, soils, or civil analyses or reports. If any of these reports are completed after execution of this Agreement, and the information gained in these reports necessitates a [REDACTED];

11.2.4 Contractor has all the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement and Prudent Industry Practice; and

11.2.5 Contractor is familiar with Applicable Laws, regulations, and interconnection standards relevant to the performance of its obligations under this Agreement.

ARTICLE 12
SUBCONTRACTORS

12.1 Authority to Subcontract

Contractor may delegate its duties and performance under this Agreement and shall have the right to enter into agreements with Subcontractors to perform the Work hereunder; provided, however that such delegations do not relieve Contractor from liability or its obligations to DTE under this Agreement. Subcontractors shall have the required skills and capacity necessary to perform or cause to be performed the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement, Applicable Laws and Prudent Industry Practice. Prior to the start of construction on the Site, and unless the parties shall have previously agreed upon Contractor's selection of Subcontractors, Contractor shall submit to DTE a comprehensive list of all Subcontractors. Such list shall be kept current and revised and updated as necessary. DTE shall have the ability, in its sole discretion, to reject any Subcontractor proposed by Contractor. Contractor shall bind every Subcontractor to the terms and provisions of this Agreement to the extent applicable to such party's work under this Agreement, including the requirements of [REDACTED]. At DTE's request, Contractor shall remove any Contractor or Subcontractor personnel that DTE in its sole discretion deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, without cause, at any time

12.2 Prompt Payment of Subcontractors

Contractor shall promptly pay when due all amounts payable to its Subcontractors for labor and materials furnished in the performance of this Agreement and shall ensure that the Solar Energy Facility and the Site remain free of any Liens arising through Contractor and/or any of its Subcontractors.

12.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.4 Responsibility

Contractor shall, at all times, be responsible for the acts, errors and/or omissions of its Subcontractors and agents. Nothing in this Agreement shall constitute any contractual relationship between DTE and any Subcontractor or in any way obligate DTE to pay, or to be responsible for the payment of, any sums to any Subcontractors.

ARTICLE 13

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

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ARTICLE 14

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ARTICLE 15

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ARTICLE 16

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[REDACTED]

[REDACTED]

16.4 [REDACTED]

[REDACTED]

[REDACTED]

16.4.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16.4.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 17

[REDACTED]

17.1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 18

[REDACTED]

18.1 [REDACTED]

[REDACTED]

18.2 [REDACTED]

[REDACTED]

18.3 [REDACTED]

[REDACTED]

ARTICLE 19
TERM AND TERMINATION

19.1 Effective Date; Term.

The term shall commence on the Effective Date and end on the last day of the Contractor Warranty Period (the "Term"), unless terminated earlier in accordance with the terms hereof.

19.2 Termination

DTE shall have the rights to terminate this Agreement set forth Article 4.4 and Article 16. Contractor shall have the right to terminate this Agreement as set forth in Article 16.

19.3 [REDACTED]

[REDACTED]
[REDACTED]
19.4 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ARTICLE 20
MISCELLANEOUS

20.1 Assignment.

Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, DTE may, without the need for consent from Contractor: (i) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of DTE, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or (ii) assign its rights under this Agreement to an affiliate or to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Any assignment made in contravention of this clause shall be void and unenforceable.

20.2 Agreement Construction

This Agreement is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Agreement was executed.

20.3 Binding Effect

Except as otherwise provided herein, the terms and provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

20.4 Independent Contractor

The Parties hereto agree that Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with DTE other than that of owner or independent contractor, nor shall it be construed as creating any relationship whatsoever between DTE and any Subcontractors nor between DTE and Contractor employees or agents. Neither

Contractor nor any Subcontractors nor any of their respective employees shall be deemed to be employees of DTE.

20.5 No Waiver

The failure of Contractor or DTE to insist upon the strict performance of the terms and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement.

20.6 Severability

In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

20.7 Entire Agreement

This Agreement, when executed, together with all [REDACTED] shall constitute the entire agreement between the Parties; and this Agreement cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto.

20.8 Governing law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

The Parties hereby irrevocably submit to the exclusive jurisdiction of any court of the State of Michigan or Federal court of the United States of America, sitting County of Branch, Michigan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement and irrevocably and unconditionally agree that all claims in respect of such action or proceeding in any Michigan State or Federal court sitting in Branch County, Michigan may be heard and determined in any such Michigan State court or, to the extent permitted by law, in such Federal court. The Parties agree that a final judgment in any action or proceeding under this paragraph shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

20.9 Notice

Any notice required or permitted hereunder shall be deemed received (i) on the day on which such notice is delivered personally, (ii) on the [REDACTED] after deposit in the U.S. Mail; provided such notice is sent by certified mail with a return receipt request and postage prepaid or (iii) the following Business Day if deposited with a recognized overnight carrier, to the address shown below or to such other persons or addresses as are specified by similar notice. Email notifications are acceptable for day-to-day project correspondence.

If to DTE:

with a copy to:

DTE Electric Company
One Energy Plaza, 1635 WCB
Detroit, MI 48226
Attention: General Counsel
Fax: 313-235-8500

If to Contractor:

Barton Malow Company
26500 American Drive
Southfield, MI 48034
Attn: General Counsel

20.10 Headings

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

20.12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20.13 Public Announcements

Neither Party shall issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby, without the prior consent of the other Party, unless required by Applicable Laws or order of a court of competent jurisdiction.

20.14 Cooperation

Upon the receipt of a request from the other Party, each Party shall execute such reasonable additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.14. Without limiting the generality of the foregoing, Contractor will provide DTE promptly upon DTE's written request all documents reasonably necessary for DTE to qualify of the SEF as "Qualified Facility" under pertinent rules and regulations of the FERC or any other Governmental Authority.

20.15 No Rights in Third Parties.

Unless and except as may be otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

20.16 [REDACTED]


[REDACTED]



20.17 Amendments

This Agreement may be modified or amended only by a written instrument signed by the Parties.

20.18 Drafting Ambiguities

Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, or any amendments or  hereto.

IN WITNESS WHEREOF, Contractor and DTE have caused this Agreement to be executed by their duly authorized representatives as of the date first above written,

CONTRACTOR:

Barton Malow Company

By: _____

Name: *MMT LENTINI*

Title: *SR. VICE PRESIDENT*

DTE:

DTE ELECTRIC COMPANY

By: _____

Name: Trevor Lauer

Title: President & COO - DTE Electric

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

Case No. U-20851

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ESTELLA R. BRANSON, being duly sworn, deposes and says that on the 27th day of September, 2022, she served a copy of the DTE Electric Company's *Ex Parte* Application for approval of the DTE Electric Company and New East Solar Energy Inc. Master Supply Agreement ("YYP220207"); DTE Electric Company and Vietnam Sunergy Joint Stock Company ("Module Supply Agreement"); Engineering, Procurement and Construction Agreement between DTE Electric Company and J. Ranck Electric, Inc. ("Gratiot Solar"); Engineering, Procurement and Construction Agreement between DTE Electric Company and Barton Malow Company ("Pine River Solar"); Engineering, Procurement and Construction Agreement between DTE Electric Company and J. Ranck Electric, Inc. ("Polaris Solar"); Engineering, Procurement and Construction Agreement between DTE Electric Company and Barton Malow Company ("Sauk Solar"); the Guidehouse, Inc. Affidavit of Ralph L. Luciani and Affidavit of Terri L. Schroeder, via electronic mail upon the persons referred to in the attached service list.

ESTELLA R. BRANSON

MPSC Case No. U-20851
SERVICE LIST

MPSC STAFF

Steven D. Hughey
Assistant Attorney General
Public Service Division
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hugheys@michigan.gov