

## FORM SOLAR POWER EASEMENT AGREEMENT

This Solar Power Easement Agreement (“Agreement”) is made and entered into as of this day of \_\_\_\_\_, (“Effective Date”) by and between \_\_\_\_\_, having its offices located at \_\_\_\_\_ (“Customer”), and The Detroit Edison Company, a Michigan corporation, having its offices located at One Energy Plaza, Detroit, Michigan 48226 (“Detroit Edison”). Customer and Detroit Edison may be referred to herein in the singular as a “Party” and collectively as the “Parties”.

WITNESSETH:

The following is a recital of the facts underlying the execution of this Agreement:

- A. Whereas, Customer agrees to allow Detroit Edison to develop a photovoltaic project including, but not limited to, Detroit Edison’s installation, maintenance and operation of the photovoltaic systems described in Schedule A (“System”) at Customer’s facility located at \_\_\_\_\_, (“Premises”); and
- B. Whereas, Detroit Edison shall, at its sole cost and expense, engineer, procure and install any and all equipment in connection with the System; and
- C. Whereas, Detroit Edison intends to supply electric power to or for the benefit of its electrical system through the operation of the System on the Premises.

NOW, THEREFORE, the Parties agree as follows:

1. Term: The term of this Agreement (“Term”) shall commence on the Effective Date and shall continue for a period of Twenty (20) years, except as such Term may be earlier terminated as provided herein, and subject to Detroit Edison’s right to extend the Term for periods of one (1) year each (“Renewal Period”) upon the expiration of the initial Term or a Renewal Period, as the case may be, by written notice to Customer not later than sixty (60) days prior to the expiration of the initial Term or a Renewal Period, as the case may be, up to but not exceeding ten (10) Renewal Periods.
2. System:
  - a. Detroit Edison shall, at its sole cost and expense, install and maintain the System at the Premises.
  - b. Detroit Edison agrees that it will pay any taxes with respect to the System installed on the Premises. Detroit Edison will remit and bear the expenses of any taxes assessed and levied against the System as installed on the Premises.
  - c. The System will be owned, operated and maintained by Detroit Edison and will operate without the involvement of Customer.
  - d. All energy, including capacity, generated by the System shall remain the sole and exclusive property of Detroit Edison.
  - e. Detroit Edison shall, at its sole cost and expense, periodically inspect, clean, maintain, repair and replace the System at intervals determined by Detroit Edison to be necessary or desirable.

- f. Upon termination of this Agreement, Detroit Edison shall be afforded a period of one hundred eighty (180) days in which to remove the System and any other Detroit Edison Property (as defined herein).
3. Right of Utilization: Customer hereby grants Detroit Edison an exclusive easement for the Term to install, inspect, maintain, repair, and replace the System at, upon, under and over the Premises in the location described in Schedule B (“Easement Area”), together with:
- a. the right of Detroit Edison to install, maintain, renew, and inspect, during the Term of this Agreement, the System as Detroit Edison determines to be necessary or desirable;
  - b. the right of Detroit Edison for reasonable access to receive, unload, store, warehouse and protect all materials, tools and equipment on the Premises, as needed, and a lay down area on the Premises during construction of the System;
  - c. the right of Detroit Edison to provide, install, and maintain through or under the Premises during the Term of this Agreement such cables, electric lines, ducts, transformers, and other apparatus as may, in the opinion of Detroit Edison, be necessary or desirable for connecting the System to or for the benefit of Detroit Edison’s electrical system; and
  - d. the right of Detroit Edison and its employees, agents, contractors and subcontractors, at all times during the Term of this Agreement, to enter the Premises, and do thereon such acts and things as may be necessary or desirable for the purpose of installing, inspecting, maintaining, repairing, replacing and removing the System, electric lines or other ancillary equipment or apparatus.

Prior to construction of the System, Customer shall have the right to review and approve Detroit Edison’s plans and specifications for the System, which approval shall not be unreasonably withheld or delayed. Customer shall not grant any licenses, easements, leases or rights of way, whether recorded or unrecorded, which may interfere with Detroit Edison’s use of the Premises to operate the System.

4. Operation, Maintenance and Repair of System: Detroit Edison will operate, maintain and repair the System during the Term of this Agreement at the sole cost and expense of Detroit Edison. Detroit Edison shall provide reasonable prior notice to Customer prior to any maintenance and repair activities that may interfere with Customer’s operations at the Premises, provided that in the event Detroit Edison needs emergency access after regular business hours, Detroit Edison shall contact Customer and Customer shall provide immediate access to the Property. All work performed by Detroit Edison in connection with the installation, operation, maintenance and repair of the System shall be performed in accordance with all applicable federal, state and local laws, rules, regulations and ordinances.
5. Compensation: Detroit Edison shall pay Customer as described in Schedule C.

6. Credits, Rebates and Incentives: All federal and state tax credits, renewable energy credits, including all renewable energy attributes and/or benefits, payments, grants, rebates, incentive payments, or other credits paid as a result of the design, installation, and/or operation of the System (hereinafter “Incentives”) shall inure to the exclusive benefit of and become the exclusive property of Detroit Edison. Customer will cooperate in good faith as necessary to enable Detroit Edison to obtain all available Incentives. Apart from Customer’s cooperation as set forth above, Detroit Edison shall be solely responsible for securing and receiving any Incentives.
7. Ownership. The System and all alterations, additions, improvements or installations made thereto by Detroit Edison and all personal property of Detroit Edison used in connection with the installation, operation and maintenance of the System, electric lines, ducts or other apparatus related to the System are, and shall be and remain, the personal property of Detroit Edison (“Detroit Edison Property”). In no event shall any Detroit Edison Property be deemed a fixture, nor shall Customer, nor anyone claiming by, through or under Customer (including, but not limited to, any present or future mortgagee of Customer) have any rights in or to the Detroit Edison Property at any time.
8. Termination of Agreement Prior to Commencement Date: In the event that Detroit Edison fails to receive any necessary governmental approvals, Detroit Edison shall have the right to terminate this Agreement upon written notice to Customer at any time prior to the commencement of construction of the System. In the event that Detroit Edison terminates this Agreement due to failure to receive governmental approvals, Detroit Edison shall have no further obligations to Customer and Customer shall have no further obligations to Detroit Edison.
9. Full-Service Bundled Customer: Customer agrees that Customer shall be and remain during the Term of this Agreement a full-service bundled customer of Detroit Edison at the Premises by satisfying all of its electric power needs through electric power generated, distributed and transmitted by Detroit Edison (“Full-Service Bundled Customer”). Customer shall not sell, transfer or lease the Premises to any person or entity that is not a Full-Service Bundled Customer of Detroit Edison at the Premises.
10. Customer’s Compliance with Applicable Laws: Customer, at its sole cost and expense, shall comply with all applicable federal, state and local laws, rules, regulations and ordinances relating to the ownership and occupancy of the Premises.
11. Customer’s Obligations: Customer shall at all time during the Term of this Agreement use commercially reasonable efforts to maintain the Premises in good condition and repair. Customer shall not interfere with or cause or permit any interference with the System, electric lines, ducts, or other apparatus related to the System.
12. Sale/Transfer/Lease of Premises: In the event of Customer’s sale, transfer or lease of the Premises, the purchaser, transferee or lessee of the Premises shall be bound by this Agreement, it being the intent of the Parties that this Agreement shall be binding upon and inure to the benefit of the Parties’ successors and assigns, and that the covenants contained herein, including but not limited to Sections 3 and 9, shall run with the land. Customer agrees that Detroit Edison shall have the right, without the further consent,

approval or signature of Customer, to execute and record a short form of memorandum of this Agreement in the office of the Register of Deeds for the county in which the Premises are located in the form set forth at Schedule D. In the event this Agreement is terminated as provided herein, Detroit Edison agrees to record a memorandum discharging the notice in the office of the Register of Deeds for the county in which the property is located.

13. Removal/Relocation of the System:

a. The Parties further agree that in the event that Customer closes or abandons the Premises or Customer elects to relocate the System to another Customer location, as provided below, during the Term of this Agreement, Customer shall reimburse Detroit Edison for the cost of relocating the System ("Removal Costs" as defined below) to (i) another Customer location acceptable to Detroit Edison, in its sole discretion, or (ii) if a Customer location is not available, then any third party location that is acceptable to Detroit Edison in its sole discretion. Removal Costs shall include all costs and expenses incurred by or on behalf of Detroit Edison in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of a new title search, other out of pocket expenses, and loss of revenue or other damages Detroit Edison may suffer as a result of such removal, provided that such costs shall not exceed \$0.\_\_\_\_\_/MW adjusted each year in accordance with the CPI-All Urban Consumers for the year in which such relocation takes place ("Maximum Removal Cost"). In the event that no acceptable location is identified, after closure, abandonment or a request for relocation, Customer shall reimburse Detroit Edison in the amount of the Maximum Removal Cost. Notwithstanding anything stated to the contrary in this Agreement, Customer shall not relocate the System for the first five (5) years of the Term of this Agreement unless the Customer ceases operations at the Premises.

b. If the Premises are closed or abandoned or Customer elects to relocate the System pursuant to Section 13a above, Detroit Edison shall have a period of one hundred twenty (120) days to remove the System from the Premises. A separate written agreement shall govern the reinstallation of the System at the alternate location, which shall include the time frame of the reinstallation.

14. Force Majeure: Neither Party hereto shall be liable to the other for any failure of performance due to causes beyond its reasonable control, the occurrence of which could not have been prevented by the exercise of due diligence ("Force Majeure"), such as acts of God, acts of the other party, acts of civil or military authority, fires, floods, earthquakes, epidemics, windstorms, explosions, natural disasters, sabotage, wars, riots, strikes, work stoppages, labor disputes, or changes in laws or regulations; provided, however, that written notice of such Force Majeure event (including the anticipated duration of the delay caused by a Force Majeure event) shall be given by the affected Party to the other Party as soon as possible after the event or occurrence (but in no event more than 30 days thereafter).

15. Customer's Default: A failure by Customer to perform or comply with any of the terms and conditions of this Agreement may be considered an event of default by

Customer under this Agreement (hereinafter “Event of Default by Customer”) at the option of Detroit Edison. If an Event of Default by Customer occurs, Detroit Edison shall notify Customer in writing of such default. Customer shall have thirty (30) days following written notice by Detroit Edison to cure the default unless by the nature of such default a longer period to cure is required, in which event Customer shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Detroit Edison and diligently proceeds to cure the default thereafter. If an Event of Default by Customer has not been cured within such period, Detroit Edison shall have the right to terminate this Agreement, in which event Customer shall compensate Detroit Edison in accordance with Section 13a above.

16. Detroit Edison’s Default: A failure by Detroit Edison to perform or comply with any of the terms and conditions of this Agreement may be considered an event of default by Detroit Edison under this Agreement (hereinafter “Event of Default by Detroit Edison”) at the option of Customer. If an Event of Default by Detroit Edison occurs, Customer shall notify Detroit Edison in writing of such default. Detroit Edison shall have thirty (30) days following written notice by Customer to cure the default unless by the nature of such default a longer period to cure is required, in which event Detroit Edison shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Customer and diligently proceeds to cure the default thereafter. If an Event of a Default by Detroit Edison has not been cured within such period, Customer shall have the option to terminate this Agreement by written notice to Detroit Edison. Upon termination of this Agreement, Detroit Edison shall have one hundred eighty days (180) from the date of Detroit Edison’s receipt of Customer’s written notice of termination to remove the System from the Premises.
17. Assignment: Customer not may assign its rights and obligations under this Agreement to a purchaser, transferee or lessee of the Premises without Detroit Edison’s prior consent, subject to Section 12 above. Detroit Edison may assign its rights and obligations under this Agreement to a subsidiary or affiliate of Detroit Edison without the prior consent or approval of Customer. Detroit Edison may assign its rights and obligations under this Agreement to a party other than a subsidiary or affiliate of Detroit Edison with Customer’s prior written consent, which shall not be unreasonably withheld or delayed.
18. Insurance:
  - a. Detroit Edison will, at its sole cost and expense, obtain and maintain, and will cause its contractors and subcontractors doing work on the System or the Premises to obtain and maintain Commercial General Liability insurance for personal injury and property damage, including contractual liability insurance, with combined limits of not less than \$2,000,000 Dollars per occurrence.
  - b. Detroit Edison agrees during the Term of this Agreement, that Detroit Edison will add Customer as an additional insured on Detroit Edison’s Commercial General Liability policies. Customer acknowledges and agrees that Detroit Edison may fulfill its obligations under this Section 18 through self-insurance.
  - c. Detroit Edison will maintain Worker’s Compensation insurance in at least the minimum amounts required by applicable Michigan law.

d. Upon Customer's request, Detroit Edison will provide Customer with certificates of insurance evidencing all of the coverages required hereunder and/or written certification, reasonably acceptable to both Customer and Detroit Edison, of Detroit Edison's compliance with the requirements listed above.

19. Indemnity:

- a. Customer shall indemnify, defend and hold harmless Detroit Edison, its agents and employees, from and against any and all liabilities; obligations; damages (other than consequential damages); penalties; claims; costs; damages or injuries to the personnel, equipment or facilities of Detroit Edison including the System or its employees, agents, contractors or subcontractors within the Premises; charges; losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by or asserted against Detroit Edison, its agents or employees, by reason of the negligent actions or omissions or willful misconduct of Customer or its agents, employees, contractors, or subcontractors in connection with Customer's activities at the Premises.
- b. Detroit Edison shall indemnify, defend and hold harmless Customer, its agents and employees, from and against any and all liabilities; obligations; damages (other than consequential damages); penalties; claims; costs; damages or injuries to the personnel, equipment, facilities or Premises of Customer, the Premises, or its employees, agents, contractors or subcontractors within the Premises; charges; losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by or asserted against Customer, its agents or employees, by reason of the negligent actions or omissions or willful misconduct of Detroit Edison or its agents, employees, contractors, or subcontractors in connection with Detroit Edison's activities at the Premises.

20. No Consequential Damages: Except as expressly set forth herein, neither Party hereto shall be responsible to the other for incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue.

21. Confidentiality: Neither Party shall make any public announcement or disclosure of any information related to this Agreement without the specific prior written consent of the other, except for such disclosures to the Parties' lenders, creditors, officers, employees, agents, consultants, attorneys and accountants as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws, rules and regulations. A Party's response to the other Party's request for written consent under this Section 21 shall be within fifteen (15) days, and written consent shall not be unreasonably withheld.

22. Public Statements. Detroit Edison may issue any public announcement, statement or other disclosure with respect to this Agreement and provide Customer with notice of such announcement. Customer shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Detroit Edison unless otherwise agreed to by the Parties.

23. Governing Law: This Agreement shall be governed and shall be interpreted in accordance with the laws of the State of Michigan.
24. Severability: Should any provision of this Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby.
25. Notices: All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, by means of an overnight courier service or by facsimile to the address set forth below, or such other address as a Party shall designate by written notice in the manner set forth herein, and shall be deemed received upon the earlier of (i) if mailed, two (2) business days after the posting by a United States Post Office; (ii) if personally delivered, the date of delivery to the address of the person to receive such notice; (iii) if sent by courier service, two (2) business day after delivery to such courier service; or (iv) if given by facsimile, upon electronic evidence of receipt.

If to Detroit Edison:

The Detroit Edison Company  
One Energy Plaza  
Detroit, Michigan 48226  
Attention:

With a copy to:

Attention:

If to Customer:

Attention:

With a copy to:

Attention:

26. Counterparts: This Agreement may be executed in one (1) or more counterparts, and

all the counterparts shall constitute but one (1) and the same Agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

27. Non-Waiver: Unless otherwise expressly provided in this Agreement, no waiver by Customer or Detroit Edison of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Customer or Detroit Edison, as the case may be. No delay or omission in the exercise of any right or remedy accruing to Customer or Detroit Edison, as the case may be, upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Customer or Detroit Edison of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.
28. Captions: Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Agreement.
29. Exhibits: All Schedules attached hereto shall be incorporated herein by reference as if set out herein in full.
30. Entire Agreement: This Agreement, together with all schedules and exhibits attached hereto or mentioned herein, shall constitute the entire Agreement between the parties and may not be amended, modified or terminated except by a writing signed by the Parties hereto. This Agreement and the Schedules hereto wholly supersede any and all oral statements, representations or agreements made by the Parties to this Agreement. This Agreement shall become binding when executed by Customer and Detroit Edison.
31. Survival: The provisions of Section 19 hereof shall survive the termination of this Agreement for a period of two (2) years.
32. Construction of Agreement: This Agreement is the product of negotiations between the Parties and shall not be construed as being drafted by one Party as opposed to the other.

*[signature page follows]*

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this instrument on the date first written above.

a

\_\_\_\_\_  
Authorized Signature of Customer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

THE DETROIT EDISON COMPANY,  
a Michigan corporation

\_\_\_\_\_  
Authorized Signature of Detroit Edison

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

SAMPLE

Customer Acknowledgment

STATE OF MICHIGAN )  
 )§  
COUNTY OF WAYNE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ on behalf of the \_\_\_\_\_.

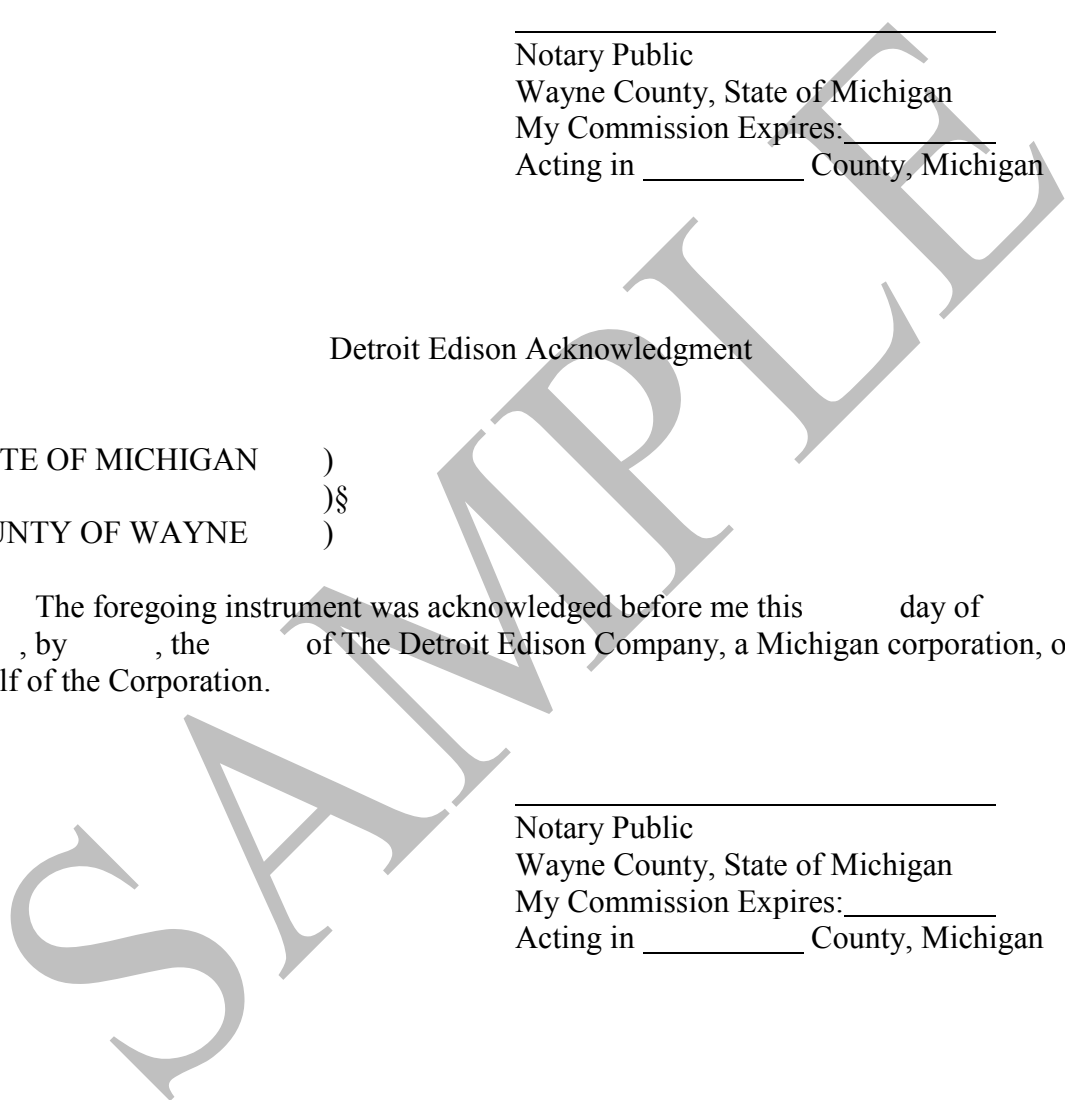
\_\_\_\_\_  
Notary Public  
Wayne County, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, Michigan

Detroit Edison Acknowledgment

STATE OF MICHIGAN )  
 )§  
COUNTY OF WAYNE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of The Detroit Edison Company, a Michigan corporation, on behalf of the Corporation.

\_\_\_\_\_  
Notary Public  
Wayne County, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, Michigan



## Schedule A - Description of Photovoltaic System

Customer Name: \_\_\_\_\_

Customer Address: \_\_\_\_\_

System Size (Nameplate kW DC): \_\_\_\_\_

Mounting Option:  Roof: Ballasted       Roof: Structure-tied       Ground

Proposed PV Technology:     Mono/Poly Crystalline     Thin-Film

Tilt: \_\_\_\_\_° (90° is vertical, 0° is flat)

Orientation: \_\_\_\_\_° (180° is south, 90° is east, 270° is west)

Area required for installation (sq.ft.): \_\_\_\_\_

Array Location Description: \_\_\_\_\_

Inverter Location:     Indoor                       Outdoor

Inverter Location Description: \_\_\_\_\_

Point of Interconnection: \_\_\_\_\_

Description of PV Mounting System: \_\_\_\_\_

Additional Project Requirements: \_\_\_\_\_

**Schedule B - Easement Area**

Insert Drawings

SAMPLE

### Schedule C - Compensation

A. Construction Payment: Detroit Edison agrees to pay Customer the sum of \$\_\_\_\_\_ per Kw DC to be installed at the Premises upon execution of this Agreement.

B. Annual Payment: After commercial operation of the System at the Premises, Detroit Edison agrees to pay Customer annually by December 1<sup>st</sup> for each year of the Term the sum of \$\_\_\_\_\_ per Kw DC multiplied by the total Kw DC installed at the Premises.

SAMPLE

**Schedule D –  
MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT**

**THIS MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT (this “Memorandum”)** is made and entered into as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (“Grantor”), and the Detroit Edison Company, a Michigan corporation (“Grantee”). (Grantor and Grantee are referred to collectively herein as the “Parties”.)

**WITNESSETH:**

A. On the date hereof, the Parties have entered into a Solar Power Easement Agreement (the “Agreement”) pursuant to which Grantor grants to Grantee an exclusive easement for the installation, maintenance, operation, inspection, repair and replacement of certain photovoltaic systems and related cables, electrical lines, ducts, transformers and other equipment, [on, under and over the roof][ ] of Grantor’s building described in Exhibit A attached hereto and incorporated herein by reference, together with the right of ingress and egress to and from the Easement Area described in the Agreement.

B. The term of the Agreement commences on the date the System (as defined in the Agreement) is placed in service and generates electric power, and will continue in full force and effect for a period of twenty (20) years with ten (10) one-year renewal options, unless earlier terminated as provided in Section 10 or 11 of the Agreement. The Agreement further provides that during the term, the Grantee, and its successor owners, shall obtain electricity for the premises as a full-service bundled customer of Company.

C. The Parties desire to execute this Memorandum, which is to be recorded in order that third parties may have notice of the interests of Grantee in the Easement Area and of the existence of the Agreement and of certain easement rights granted to Grantee in the Easement Area as part of the Agreement.

**NOW, THEREFORE**, in consideration of the payments and covenants provided in the Agreement to be paid and performed by Grantee, Grantor hereby grants to Grantee the easements as described in the Agreement, on, over, under and across the Easement Area, all on the terms and conditions set forth in the Agreement. All of the terms, conditions, provisions and covenants of the Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Memorandum and the Agreement, the terms of the Agreement shall prevail. The Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including, without limitation, any options or agreements for easements previously entered into by the Parties with respect to the Easement Area), are superseded by the Agreement and shall be and hereby are released, revoked and terminated.

*[signature page follows]*

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this Memorandum as of the day and year first above written

**GRANTOR**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

**GRANTEE**

The Detroit Edison Company, a Michigan corporation

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

Acknowledged before me in _____ County, Michigan on _____, 20__	
by _____ the _____	
of _____, a _____.	
Notary's Stamp: _____ (Notary's name, county and date commission expires)	Notary's Signature: _____

Acknowledged before me in Wayne County, Michigan, on _____, 20__	
_____ of The Detroit Edison Company,	
a Michigan corporation, for the corporation.	
Notary's Stamp _____ (Notary's name, county, and date commission expires)	Notary's Signature _____

Prepared by: Blair A. Person, Lewis & Munday, 660 Woodward Avenue, Suite 2490, Detroit, Michigan 48226.

When recorded return to: Heather A. Betts, Detroit Edison, 2000 Second Avenue, Detroit, Michigan 48226