

FORM OF SOLAR POWER PURCHASE AND DEVELOPMENT AGREEMENT

ARTICLE I. DEFINITIONS; RULES OF INTERPRETATION

ARTICLE II. TERM

**ARTICLE III. OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND
REMOVAL**

ARTICLE IV. PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

ARTICLE V. ENVIRONMENTAL ATTRIBUTES

ARTICLE VI. METERING DEVICE(S) AND METERING; BILLING

ARTICLE VII. REPORTING AND RELATED MATTERS

**ARTICLE VIII. LOSS, DAMAGE OR DESTRUCTION OF PV SYSTEM; FORCE
MAJEURE**

**ARTICLE IX. REPRESENTATIONS AND WARRANTIES; CVEC
ACKNOWLEDGEMENT**

ARTICLE X. DEFAULT; TERMINATION;

ARTICLE XI. SECURITY; REMEDIES; LIMITATIONS

ARTICLE XII. INSURANCE AND INDEMNIFICATION

ARTICLE XIII. PV SYSTEM PURCHASE AND SALE OPTIONS

ARTICLE XIV. ASSIGNMENT; BINDING EFFECT; FINANCIER PROVISIONS

ARTICLE XV. DISPUTE RESOLUTION; GOVERNING LAW

ARTICLE XVI. OBLIGATION TO MODIFY AGREEMENT

ARTICLE XVII. MISCELLANEOUS

SOLAR POWER PURCHASE AND DEVELOPMENT AGREEMENT

This SOLAR POWER PURCHASE AND DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the Effective Date by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts governmental entity and cooperative corporation (“CVEC”) and [insert] (“Developer”). CVEC and Developer are in some cases hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, CVEC and [insert] (“Host”) have entered into an Inter-Governmental Power Purchase and Project Development Agreement dated [insert] (“Inter-Governmental PDA”) for CVEC or its assignee to develop a solar photovoltaic system which may or may not include an accompanying Battery Energy Storage System (“PV System”) located on Host's property (the “Premises”), as more particularly described in Exhibit A and/or Exhibit A-1 attached hereto;

WHEREAS, pursuant to G.L. c. 164, §137, CVEC issued a request for proposals for the PV System (the “RFP”);

WHEREAS, Developer is in the business of designing, procuring, installing, testing, commissioning, owning, operating and maintaining solar power electric generation facilities and Battery Energy Storage Systems;

WHEREAS, Developer proposes to design, procure, install, test, commission, own, operate, repair and maintain the PV System on the Premises, as more particularly described in Exhibit B attached hereto;

WHEREAS, CVEC desires to have Developer design, procure, install, test, commission, own, operate, repair and maintain the PV System for the benefit of CVEC and the Host;

WHEREAS, CVEC proposes to assign to Developer the necessary rights to allow Developer to design, procure, install, test, commission, own, operate, and maintain the PV System on the Premises for the purposes and subject to the conditions set forth herein;

WHEREAS, Developer desires to sell to CVEC, and CVEC desires to purchase from Developer, all of the Net Energy (as defined herein) generated by the PV System, and otherwise in accordance with the terms of this Agreement; and

WHEREAS, CVEC desires, to the extent permitted by law, to resell the Net Energy generated by the PV System during the Term to the Host pursuant to the Inter-Governmental PDA.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, CVEC and Developer agree as follows:

ARTICLE I. DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Additional PPA Agreement” has the meaning set forth in Section 2.5.

“Additional Exceptions” has the meaning set forth in Section 3.1 and as set forth in Exhibit A-1 hereto.

“Affiliate” means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“Agreement” means this Solar Development and Power Purchase Agreement, including all Exhibits, attachments, and schedules hereto and any amendments or addenda.

“Alternative On-bill Credit” means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 C.M.R. §20.08(1)(a)(2), as may be amended from time to time.

“Alternative On-bill Generation Unit” has the meaning as set forth in in 225 C.M.R. §20.02.

“Annual System Degradation Factor” means the factor expressed in percent by which the Guaranteed Annual Energy Output of the PV System shall decrease from one Contract Year to the next Contract Year as set forth within Exhibit C. In the case of a PV System that includes a Battery Energy Storage System, Annual System Degradation Factor shall also mean the factor expressed in percent by which the battery system shall decrease in power availability from one Contract Year to the next.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

“Appraised Value” means the fair market value assigned to the PV System, as determined by the Independent Appraiser using customary and accepted appraisal methods in the energy and solar electricity industry, and to any emission trading agreements, renewable energy certificate sales agreements, or revenue producing agreements in connection with the PV System to which

Developer is a party and which are assignable to CVEC, but not including this Agreement or the Inter-Governmental PDA.

“Bankrupt” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vi) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (vii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Battery Energy Storage System” means a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy, which is compliant with the requirements for battery energy storage systems set forth in the SMART Program, SMART Tariff and applicable SMART Guidelines.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Commercial Operation” means that the PV System is ready for regular, daily operation, has undergone testing and met commissioning requirements as set forth in the Common Technical Specifications, has been accepted by Developer and Host (and, to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects, including all final inspections, is capable of producing Energy and delivering it to the Point of Delivery, and all training and documentation requirements, as required in Common Technical Specifications are complete and provided to Host.

“Commercial Operation Date” means the date that Developer certifies in a written notice to CVEC and Host that Commercial Operation has been achieved in accordance with Section 7.4 of this Agreement.

“Commercially Reasonable” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due

diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics, and regulations.

“Common Technical Specifications” means those technical specifications and requirements for the PV System, contained in Exhibit D.

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

“CVEC Event of Default” has the meaning set forth in Section 10.1.

“CVEC Member(s)” means any municipality, county or political subdivision thereof, or body politic, that has duly joined CVEC as a cooperative member

“Contract Year” means the consecutive 12-month period commencing on the Commercial Operation Date.

“Construction Commencement Date” means the date of commencement of actual preparation or construction activities on the Premises in connection with the installation of the PV System, as identified by Developer in the Milestone Schedule.

“Decommissioning Assurance” means adequate financial assurance, in the form funds to be held in the Deposit Control Account and in the amount set forth in Exhibit E hereto intended to fully cover the cost of decommissioning the PV System and restore the Premises as specified in Section 3.14.

“Deposit Control Agreement” means the funds held in a deposit control account in accordance with Article 9 of the UCC intended to cover Development Security and Decommissioning Assurance.

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

“Developer Event of Default” has the meaning set forth in Section 10.2.

“Development Security” means adequate financial assurance, in the form of funds to be held in the deposit control account pursuant to the Deposit Control Agreement and in the amount of ten-thousand dollars (\$10,000.00) that is intended to cover CVEC’s economic losses and lost opportunity cost in the event that CVEC exercises its early termination rights under Section 2.4 or the Outside Commercial Operation Date is not achieved by the date set forth in Exhibit F (Milestones).

“Distribution Company” means NSTAR Electric Company d/b/a Eversource Energy or any successor thereto.

“Distribution Company System” means the electric distribution system operated and maintained by the Distribution Company.

“DOER” means the Massachusetts Department of Energy Resources or any successor thereto.

“Effective Date” means the date that this Agreement has been fully executed by the parties thereto.

“Energy” means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

“Environmental Attributes” means any credit, benefit, reduction, offset, financial incentive, tax credit, or other beneficial allowance that is in effect as of the Effective Date or any expansion, reenactment, extension or replacement thereof that may come into effect in the future (except Shared Environmental Attributes), including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) Class I Renewable Generation Attributes (as such term is defined at 225 C.M.R. §14.02) or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iii) tax credits, incentives, or depreciation allowances established under any federal or state law, (iv) energy investment tax credits under Section 48 of the Internal Revenue Code of 1986, as amended, (v) incentives under the Solar Massachusetts Renewable (SMART) Program as provided in 225 C.M.R. §20.00, (vi) incentives under the Clean Peak Standard, 225 C.M.R. §21.00 *et. seq.*, (vii) incentives under ConnectedSolutions, an energy efficiency program offered in accordance with M.G.L. c. 25A, §21, which uses batteries to reduce peak energy use, and (viii) other allowances however named or referenced, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Net Energy generated by the PV System during the Term and in which Developer has good and valid title.

Notwithstanding anything in this Agreement to the contrary, Environmental Attributes shall not mean: (a) Net Metering Credits; or (b) Shared Environmental Attributes.

“Environmental Claim” means causes of action, claims, fines, penalties, damages, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements arising from activities conducted on or in connection with the Permitted Use which arise, or are alleged to have arisen, out of any (a) violation of any applicable Environmental Law, (b) action by a Governmental Authority for enforcement, cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law, or (c) compensation, or injunctive relief resulting from injuries to persons or property due to (i) an alleged violation of any Environmental Law or (ii) any release of Hazardous Material.

“Environmental Law” means any and all existing and future Applicable Legal Requirements relating to human health, human safety, or the environment.

“Financier” means any individual or entity providing money or extending credit for the PV

System to Developer for: (1) the construction, term or permanent financing of the PV System; (2) a tax equity investment made in part in an expectation of an allocation of tax or other benefits; or (3) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

“Financing Agreement” means any credit agreement, reimbursement agreement, note purchase agreement, trust indenture, lease agreement or other document (and any documents relating to or ancillary to the foregoing documents) identified from time to time in writing by Developer to CVEC as a “Financing Agreement” under which Developer or any Affiliate of Developer obtains financing that is secured by all or substantially all of the assets of Developer (including any credit enhancement for any bonds) for the acquisition, development, construction, modification, repair or operation of the PV System or any refinancing thereof or any equity take-out financing for costs incurred for any of the foregoing purposes.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; extreme winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions; or curtailments ordered by the Distribution Company, the independent electric system operator, or any Governmental Authority. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, *Force Majeure* shall not mean:

- (a) Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Any nonpayment under this Agreement or any third-party agreement.
- (e) Economic hardship of either Party.

“Forward Capacity Market” means the locational capacity market in which ISO New England projects needs of the power system three years in advance and holds an annual auction to purchase power resources to satisfy the New England region future electricity demand needs.

“Good Engineering Practice” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been

expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including Host in its regulatory capacity but excluding Host as Host under the Inter-Governmental PDA.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, including but not limited to Monthly Minimum Reliability Contributions, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority or other similar entity, on or with respect to the Net Energy or this Agreement.

“Guaranteed Annual Energy Output” means the minimum amount of Net Energy that is guaranteed by Developer to be generated by the PV System in a Contract Year, as set forth within Exhibit C.

“Hazardous Material” means (a) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as heretofore or hereafter amended from time to time, and regulations promulgated thereunder; (b) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as heretofore or hereafter amended from time to time, and regulations promulgated thereunder; (c) any “hazardous material” or “hazardous substance” as defined under applicable Massachusetts environmental laws as heretofore or hereafter amended from time to time, and regulations promulgated thereunder; and (d) any other material or substance that is or becomes regulated under any Environmental Law.

“Host” has the meaning set forth in the Recitals.

“Independent Appraiser” means an individual who is a member of an accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the Appraised Value of solar photovoltaic generating facilities of the size and age and with the operational characteristics of the PV System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his/her appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Host, any CVEC Member, CVEC, Developer or any Affiliate of Developer.

“Interconnection Agreement” means the Interconnection Service Agreement and any exhibits thereto, entered into with the Distribution Company which authorizes the interconnection of the

PV System with the Distribution Company System, which confirms the eligibility of the PV System for treatment as a Solar Net Metering Facility and which specifies whether any Net Excess Generation (as defined in the Tariffs) shall be subject to allocation or cash-out.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by CVEC and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

“Inter-Governmental PDA” has the meaning set forth in the Recitals to this Agreement.

“ISO” means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Restated New England Power Pool Agreement, as amended from time to time) and the Interim Independent System Operator Agreement as amended, superseded or restated from time to time.

“kWh” means kilowatt hour.

“Metering Device(s)” means any and all revenue quality meters installed by Developer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale to CVEC.

“Milestone” means the milestones set forth in the Milestone Schedule attached as Exhibit F.

“Milestone Report” means the reports submitted by Developer to CVEC pursuant to Section 7.1.

“Milestone Schedule” means the milestone schedule submitted by Developer with its RFP response, which may be updated by Developer pursuant to Section 3.5(d).

“Monthly Minimum Reliability Contribution” has the meaning set forth in M.G.L. c. 164, §139(j) and 220 C.M.R. §18.10, as approved by the Department of Public Utilities in the Distribution Company’s Tariffs.

“Net Energy” means the actual and verifiable amount of Energy generated by the PV System and delivered to CVEC at the Point of Delivery or allocated to CVEC in excess of any Energy consumed by the PV System (including transformers) as metered in kWh at the Developer’s Metering Device and in conformance with Applicable Legal Requirements.

“Net Energy Price” means the amount paid by CVEC to Developer for each kWh of Net Energy and capacity sold by Developer to CVEC pursuant to this Agreement, as set forth in Exhibit C

attached hereto.

“Net Metered Generation Unit” has the meaning set forth in 225 C.M.R. §20.02.

“Net Metering” means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s Tariffs.

“Net Metering Credits” has the meaning set forth in 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

“Notice of Commercial Operation” has the meaning set forth in Section 7.4 of this Agreement.

“Outside Commercial Operation Date” means the Outside Commercial Operation Date set forth in the Milestone Schedule set forth in Exhibit F. In no event shall this date be later than two years following the Effective Date.

“Outside Construction Commencement Date” means the Outside Construction Commencement Date set forth in the Milestone Schedule set forth in Exhibit F.

“Permits” means all state, federal, county, and local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

“Permitted Use” means the use, occupation, and enjoyment of the Premises by Developer to design, procure, install, test, commission, own, operate, maintain, and remove the PV System (including, if applicable, the Battery Energy Storage System), all of which are designed and intended for the purpose of producing solar-generated electricity (or in the case of a Battery Energy Storage System, absorbing Energy, storing it for a period of time and thereafter dispatching the Energy) in accordance with Applicable Legal Requirements.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

“Point of Delivery” means the agreed location on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

“Premises” means the site for the PV System and staging area for construction owned by Host which is identified in Exhibit A to this Agreement.

“Prime Rate” means the rate published from time to time in the “Money Rates” section of The Wall Street Journal, as the prime-lending rate. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

“Production Shortfall” means the amount, expressed in kWh, by which the actual amount of Net Energy generated by the PV System in any Contract Year is less than the Guaranteed Annual Energy Output for that Contract Year.

“PV System” means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy sold and purchased under this Agreement, as further identified in Exhibit B, attached hereto. The PV System may (or may not) include a Battery Energy Storage System as specified in Exhibit B.

“PV System Assets” means each and all of the assets of which the PV System is comprised, including the solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, Battery Energy Storage System, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, Permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

“PV System Loss” means loss, theft, damage or destruction of the PV System or any portion thereof, or any other occurrence or event that prevents or limits the PV System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or *Force Majeure*).

“Remedial Action Plan” has the meaning set forth in Section 7.2 herein.

“RFP” has the meaning set forth in the Recitals hereto.

“Shared Environmental Attribute” means any credit, benefit, reduction, offset, financial incentive or other beneficial allowance that may come into effect in the future (except any expansion, reenactment, extension or replacement of any credit, benefit, reduction, offset, financial incentive or other beneficial allowance that is in effect as of the Effective Date, or that is otherwise subject to an express revenue sharing agreement set forth in this Agreement as of the Effective Date).

“SMART Guidelines” means a set of clarifications, interpretations, and procedures, including forms, developed by DOER to assist in compliance with the requirements of the SMART Program.

“SMART Program” means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 C.M.R. §20.

“SMART Tariff” has the meaning set forth in 225 C.M.R. §20.02, as may be amended from time to time by a Governmental Authority.

“Solar Net Metering Facility” has the meaning set forth in 220 C.M.R. §18.00, as may be

amended from time to time by a Governmental Authority.

“Substantial Alteration” has the definition set forth in Section 3.9.

“System of Assurance” means the System of Assurance of Net Metering Eligibility, Appendix B to D.P.U. 11-11 (May 7, 2012), together with any subsequent amendments thereto.

“Tariffs” means the Distribution Company’s Standards for Interconnection of Distributed Generation (M.D.P.U. No. 55) and Net Metering Tariff (M.D.P.U. No. 68H) as each may be amended or superseded from time to time.

“Term” has the meaning set forth in Section 2.2 herein.

“Termination Date” means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

ARTICLE II. TERM

2.1 Conditions Precedent. The obligations of CVEC and Developer under this Agreement shall be conditioned upon prior execution by CVEC and Host of the Inter-Governmental PDA.

2.2 Term. The term of this Agreement (the “Term”) commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the “Termination Date”) or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements, for up to five (5) additional years, with such modifications to the provisions hereto as may be appropriate to such extension and which are mutually agreed upon in writing. Notwithstanding the foregoing, in no event shall the Term of this Agreement extend beyond the Term of the Inter-Governmental PDA. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

2.3 Early Termination by Developer. Developer may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(a) In the event there exists site conditions at the Premises or construction requirements that were not known and could not reasonably have been known as of the Effective Date (or discovered during the site visits that occurred as part of the RFP process) and that could reasonably be expected to substantially increase the cost of construction of the PV System or substantially adversely affect the electricity production from the PV System as designed. This right of termination exists for ninety (90) days following the Effective Date and should Developer encounter adverse site conditions after the ninety (90) period, it does not have the option to exercise this early termination right;

(b) In the event Developer is unable, despite Commercially Reasonable efforts, which must be demonstrated to the reasonable satisfaction of CVEC, to obtain financing for the PV System on terms and conditions reasonably satisfactory to Developer, within one hundred and twenty (120) days following the Effective Date;

(c) In the event Developer has not received documentation from the Host reasonably requested by Developer's Financier, which is reasonably necessary to establish the priority of Developer's security interest in the PV System and to ensure that Developer will have access to the Premises throughout the Term;

(d) Developer is unable, through no fault of its own and despite its diligent efforts, to obtain a Preliminary Statement of Qualification under the SMART Program or any related permits and approvals of any Governmental Authority or from the Distribution Company for installation and operation of the PV System and for the sale and delivery of Energy to CVEC, on Commercially Reasonable terms and as contemplated by the terms of this Agreement.

2.4 Early Termination by CVEC. CVEC may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(a) In the event that CVEC determines, in its sole and absolute discretion, that the: (i) PV System will not be eligible for Net Metering if Developer is interconnecting the PV System as a Solar Net Metering Facility; or (ii) the PV System will not be eligible to receive Alternative On-bill Credits if Developer is qualifying the PV System as an Alternative On-bill Credit Generation Unit;

(b) In the event that Developer has not submitted to the Distribution Company a complete Pre-Application Request and Simple MA DG Expedited/Standard Application (or successor interconnection application) seeking authorization to construct and interconnect the PV System to the Distribution Company System in accordance with the Milestone Schedule set forth in Exhibit F;

(c) In the event that Developer has not obtained from DOER a preliminary Statement of Qualification for the PV System, pursuant to and as defined in the SMART Program, by forty-five (45) days after Developer's execution of an Interconnection Agreement with the Distribution Company;

(d) In the event that Developer has not received approval of the Pre-Application Request and Simple MA DG Expedited/Standard Application (or successor interconnection application) with the Distribution Company in accordance with the Milestone Schedule set forth in Exhibit F;

(e) In the event Developer cannot demonstrate to CVEC (through confirmation letters from Developer's Financier(s) or other confirmation satisfactory to CVEC in its reasonable discretion) financing sufficient to purchase, construct, commission, own and operate the PV System; or

(f) In the event that Developer has not commenced construction of the PV System by the Outside Construction Commencement Date.

CVEC may extend any timing benchmark or Developer Milestone set forth in Exhibit F upon a determination by CVEC in its sole discretion that Developer is delayed due to action or inaction of a Governmental Authority or the Distribution Company, despite using Commercially Reasonable efforts to satisfy such Milestone; provided, however, that in no event will CVEC extend any Milestone beyond two years after the Effective Date.

2.5 CVEC's Right to Terminate Other Agreements with Developer. CVEC shall have the right, but not the obligation, to terminate any one or more of each solar power purchase and development agreements or other energy-related agreements it may have with Developer, or any Affiliate of Developer ("Additional PPA Agreement"), prior to the Commercial Operation Date of such Additional PPA Agreement, in the event that prior to the Construction Commencement Date under each such Additional PPA, Developer, as a result of gross negligence or willful misconduct, has failed to fully comply with all Applicable Legal Requirements. This section is not intended to limit any other termination rights of CVEC under such Additional PPAs.

2.6 Notice. In the case of termination pursuant to Sections 2.3 through 2.5 of this Agreement, the terminating Party shall give the other Party thirty (30) days prior written notice of its intent to terminate following the applicable related specified event, but before the Construction Commencement Date. Upon such termination of this Agreement, the Parties shall have no further obligations hereunder except those of Developer in Section 2.7 and those which survive expiration or termination of this Agreement.

2.7 CVEC's Remedy Upon Early Termination. Upon early termination of this Agreement pursuant to Sections 2.3 through 2.5, Developer shall also be obligated to assign Permits for the PV System that run with the Premises to CVEC or Host after consultation with each within thirty (30) days of such termination. Developer shall assign the Interconnection Agreement to CVEC or its designee if CVEC exercises its early termination rights pursuant to Section 2.4 (d) – (f) or Section 2.5.

ARTICLE III. SITE ACCESS RIGHTS, OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL

3.1 Site Access. Developer shall design, procure, install, test, commission, operate, maintain, repair and remove the PV System on the Premises pursuant to and in strict conformance with the access provisions contained herein.

(a) CVEC, for and in consideration of the covenants and agreements on the part of Developer contained herein, does hereby assign to Developer as permitted by, and in accordance with, Article III of the Inter-Governmental PDA all right, title and interest in and to the Real Property Rights granted to CVEC pursuant to the Inter-Governmental PDA for the Term of this Agreement, subject to the conditions of this Section 3.1, for the sole and exclusive purpose of designing, procuring, installing, testing, commissioning, owning, operating, maintaining, repairing and removing the PV System. Developer's use of the Premises is subject to the

following:

(i) the condition and state of repair of the Premises as the same may be on the Effective Date; and

(ii) full compliance by Developer in all respects with all Applicable Legal Requirements and CVEC's obligations under Articles II and IV of the Inter-Governmental PDA;

(iii) full compliance with all Environmental Laws at the Premises. Developer grants CVEC and the Host the right to inspect Premises for purposes of verifying Developer's compliance with Environmental Laws.

(iv) full compliance with any additional exceptions, if any, set forth in Exhibit A-1 hereto, related to land use conditions (the "Additional Exceptions").

(b) If the PV System is to be constructed on school property, Developer will conduct or cause to be conducted background checks on all of Developer's representatives, employees, agents or subcontractors having access to the [Building or Rooftop Space/Premises] to ensure compliance with M.G.L. c. 71, §38R.

(c) The employees and agents of the Developer and the Developer's contractors and subcontractors shall avoid interaction with students, teachers, senior citizens and/or Host's other employees on the real property owned by Host where the Premises is located that are not directly involved in providing Developer access to the Premises, unless interaction with such persons or employees is otherwise authorized in this Agreement. The Host shall have the right to require that the Developer permanently remove from the Premises any of its or its contractor's or subcontractor's employees on account of inappropriate interaction with students, teachers, senior citizens and/or Host's other employees on the Property, including, but not limited to, the use of vulgar language, sexually suggestive statements and any inappropriate physical contact.

3.2 Quiet Enjoyment.

(a) CVEC covenants that so long as no Developer Event of Default has occurred and is continuing pursuant to Section 10.2, Developer shall quietly have and enjoy use of the Premises during the Term. CVEC's exercise of self-help pursuant to this Agreement and rights of entry and inspection pursuant to Section 3.12 of this Agreement shall not be considered a breach of the covenant of quiet enjoyment. Subject to the specific provisions of this Agreement permitting the same, CVEC and/or Host shall have the right to enter upon the Premises at any time for any purpose and no such entry which complies with the provisions of this Agreement permitting the same shall be considered a breach of the covenant of quiet enjoyment.

(b) Developer shall operate, maintain and repair the PV System in a manner that will not obstruct or interfere with CVEC's or Host's use of the Premises or the rights of any other occupants of the Premises and Developer will not injure or materially annoy any occupants of the Premises. In the event interference occurs, Developer agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from

notification by CVEC. Developer will use its best efforts to maintain its PV System in a manner that does not interfere with the Premises or improvements to the Premises. CVEC and/or Host may construct, reconstruct, modify or make alterations to the Premises so long as such activities do not materially interfere (including shading) with the operation of the PV System. Developer acknowledges and agrees that Host may have continued operation or maintenance responsibilities required pursuant to the Additional Exceptions set forth in Exhibit A-1, to be conducted at the sole expense of the Host, and Developer will use its best efforts to cooperate with Host's prosecution and completion of such work.

(c) CVEC shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and shall provide Commercially Reasonable assistance as necessary for Developer to properly record a Notice of Sublease with the applicable land registry that in each case includes all information as may be required pursuant to M.G.L. c. 183, §4 with respect to the Real Property Rights described in the Inter-Governmental PDA and this Agreement, as applicable. Developer shall be responsible for all reasonable documented costs of recording the Notice of Lease and Notice of Sublease.

3.3 Subordination. Developer acknowledges and understands that this Agreement and all rights of Developer are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions, permits, or other matters of record and all existing agreements of the Host with respect to the Premises. Developer acknowledges and understands that the Host reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere with Developer's use of the Premises and the operation of the PV System. CVEC shall provide or shall cause Host to provide Developer with reasonable notice in the event that Host grants such additional rights on the [roof the Building on the] Premises to a third party.

3.4 As-Is Acceptance of the Premises. Developer accepts the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and non-uses. Developer accepts the Premises in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by CVEC and without recourse to CVEC, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Premises or any part thereof may be put. CVEC shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises. Notwithstanding the above, the Parties agree that Developer shall not be liable for any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date.

3.5 Ownership of the PV System.

(a) Title. Subject to the rights provided to CVEC pursuant to Article XIII (PV System Purchase and Sale Option), the PV System and all alterations, additions, improvements or installations made thereto by Developer and all Developer property used in connection with the installation, operation and maintenance of the PV System is, and shall remain, the personal property of Developer.

(b) Security Interests in PV System. Except as otherwise provided herein, CVEC

acknowledges and agrees that Developer may grant or cause to be granted to a Financier a security interest in the PV System and in Developer's rights to payment from CVEC under this Agreement.

(c) No Expenditures. Developer and CVEC acknowledge and agree that, CVEC shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the Developer's ownership, construction, operation, maintenance, repair, or removal of the PV System.

(d) Design and Installation of the PV System. As soon as practicable after the Effective Date, but no later than one hundred and twenty (120) days, Developer shall provide CVEC an updated Milestone Schedule identifying all Permits necessary for commencement of construction and commissioning of the PV System, indicating Milestones for each such Permit and the duration of time necessary to obtain each such Permit.

3.6 Construction of PV System by Developer.

(a) Construction. Developer shall, at its sole cost and expense, (i) design, construct, operate, and maintain the PV System in accordance with Applicable Legal Requirements, including Massachusetts state laws pertaining to prevailing wage in good condition and repair in accordance with applicable contractor warranties or guarantees, manufacturer's warranties, instructions and specifications, as further identified in the Common Technical Specifications applicable requirements of the insurance policies maintained by Host and Developer with respect to the PV System, and the terms of this Agreement.

(b) Payment and Performance Bonds. Prior to the Construction Commencement Date, the Developer shall provide CVEC with a performance bond from an issuer with a Best's rating of not less than "A", and from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570, in a form reasonably acceptable to CVEC, which performance bond shall be in an amount sufficient to secure 100% of Developer's obligations with respect to the construction of the PV System under this Agreement (or Developer's removal and restoration obligations under this Agreement if necessary prior to completion of construction and commissioning of the PV System). The performance bond shall name Host and CVEC as co-obligees. The performance bond shall remain in effect until sixty (60) days after delivery by Developer to Host of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by Host or CVEC, (b) Host has provided notice to Developer of a dispute regarding the completion of the PV System in accordance with the provisions of this Agreement, in which case the performance bond shall remain in effect until the resolution of such dispute, (c) Host provides the issuer of the performance bond written notice authorizing the expiration of the performance bond, or (d) this Agreement is terminated pursuant to the provisions hereof and Developer has fulfilled its removal and restoration obligations under this Agreement. In addition, at least fifteen (15) days prior to the Construction Commencement Date, Developer shall provide CVEC with a payment bond from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to Host. The payment bond shall name Host and CVEC as co-obligees. The payment bond shall be released upon the later of: (a) receipt by Host of satisfactory evidence that all of

Developer's vendors, subcontractors, laborers, etc. have been paid in full; or (b) the Commercial Operation Date.

(c) Mechanics Liens. Developer shall not file any mechanics liens against Host or CVEC for its work performed in accordance with this Agreement, and this requirement shall flow down to all of Developer's contractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the PV System, Developer, within ten (10) days after notice to Developer of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Developer shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, CVEC or Host may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by CVEC or Host and costs and expenses, including court costs and attorney's fees reasonably incurred by CVEC or Host in connection therewith, together with interest thereon at the Interest Rate from the respective dates of CVEC's or Host's making of the payment of the cost and expenses, shall be paid by Developer to CVEC or Host, as applicable, within ten (10) Business Days of Host's invoice therefor.

(d) Utilities. Developer shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all electricity consumed by the Developer on the Premises; provided that the Host shall make available to Developer throughout the Term, and Developer may use in connection with the Permitted Use, all electricity, water, and internet service located on the Premises. For avoidance of doubt, Host shall have no obligation to provide new utility interconnections on the Premises. Host shall have no duty or liability to Developer with respect to the maintenance, repair, upgrade, replacement, or security of any other utilities, nor shall Host have any liability to Developer (including, without limitation, liability for lost revenue) arising from Host's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Developer desires to undertake maintenance, repair, upgrade, replacement, or security activities with respect to electrical transmission or distribution lines owned by Host, Developer may do so at Developer's expense subject to the approval of Host and CVEC, which shall not be unreasonably withheld.

(e) No Voiding of Existing Warranties. Developer shall ensure that the PV System is designed and constructed so that no existing warranties that apply to the [the Premises are voided because of the installation of the PV System. Developer shall consult, as may be necessary, with any company that has provided such warranty.

(f) Use of Hazardous Materials Prohibited. Developer shall not use at nor transport to the Property, including the Premises, any Hazardous Material, unless specifically authorized by Host.

(g) Permits.

(i) Except as otherwise specified herein, Developer shall be responsible at its

sole cost for designing, financing, procuring, installing, testing, commissioning, operating and maintaining the PV System and obtaining all Permits required under the Applicable Legal Requirements for Developer's use of the Premises and for the PV System from any Governmental Authority having jurisdiction in the matter.

(ii) Developer shall be responsible for qualifying the PV System in the SMART Program and for maintaining the PV System's qualification in the capacity block awarded to the Developer for the PV System's participation in the SMART Program.

(iii) Except as otherwise provided herein, Developer will obtain at its sole cost all approvals and agreements required for Developer's interconnection of the PV System to the Distribution Company System. Developer will promptly inform CVEC of all significant developments relating to such interconnection matters. If any material changes in plans and/or specifications to the PV System are required by the Distribution Company, then Developer shall submit such changes, if any to CVEC and Host for their approval, which shall not be unreasonably withheld. Developer will provide CVEC a copy of the Permission to Operate in electronic format. Subject to CVEC's review and approval, CVEC shall promptly execute and deliver to Developer any documents requested by Developer to be executed by CVEC as required for the interconnection of the PV System with the Distribution Company System.

(iv) Developer shall perform all activities necessary and work with CVEC or Host in good faith to support CVEC's or Host's efforts to reserve and maintain an assurance of Net Metering under the System of Assurance. Developer shall pay all application and reservation fees required for the PV System to reserve and maintain an assurance of Net Metering under the System of Assurance.

3.7 Ownership of Drawings, Reports and Other Materials. Developer grants to CVEC and Host an irrevocable license to review (upon reasonable request) and use all site plans, surveys, and operations and maintenance reports that are prepared by or for Developer in the performance of this Agreement, provided that CVEC and Host shall not use such materials for any purposes other than in connection with this Agreement, the Intergovernmental PDA and the PV System. Developer shall at all times own all of the rights in and to such materials, including intellectual property rights. The Parties agree that any documents submitted to the Host or to CVEC are presumptively public records subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10, unless an exemption or other legal protection applies.

3.8 Operation. Developer shall monitor the PV System performance with respect to any PV System malfunction causing a material unanticipated loss of Net Energy such that the same will be discovered and rectified in accordance with Good Engineering Practice. The PV System will, when completed, comply with all Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit D attached hereto, except as waived thereunder. For the duration of the Term, Developer shall notify CVEC as soon as practicable when Developer becomes aware that the PV System may be mechanically inoperable for more than a seven (7) day period. Developer shall provide CVEC with an estimate of the time required to perform necessary repairs.

3.9 Duty to Maintain.

(a) Maintenance; Repairs.

(i) Developer shall properly maintain the PV System, conduct all required maintenance, make all repairs thereto in accordance with Good Engineering Practice, and protect or remove at its own expense any birds or other animals nesting in the PV System. Developer shall take all Commercially Reasonable measures necessary to maximize production of the PV System throughout the Term. Such obligations shall include, but not be limited to, maintaining the PV System in a condition of Commercial Operation, and taking all actions necessary to comply with the Applicable Legal Requirements. Developer shall be responsible for all costs related to the PV System, including, but not limited to, those costs necessary to construct, operate, maintain, repair, and remove the PV System.

(ii) CVEC shall have no duty or liability to Developer with respect to the maintenance, repair or security of the PV System, including the removal of any nesting birds or other animals.

(b) Alterations. Developer shall have the right from time to time both before and after the Commercial Operation of the PV System and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise to the PV System, subject however, in all cases to the following:

(i) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration pursuant to this Section, a "Substantial Alteration");

No Substantial Alteration shall be commenced except after prior written notice to and consent from CVEC and Host, which consent shall not be unreasonably withheld;

(ii) Any alteration or Substantial Alteration shall be made with reasonable dispatch, in accordance with Good Engineering Practice, and in compliance with all Applicable Legal Requirements;

(iii) No later than completion of any alteration or Substantial Alteration, Developer will provide CVEC with complete copies of all final plans and specifications therefor not previously provided; and

(iv) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibit A to the Inter-Governmental PDA.

3.10 Compliance with Laws; Professional Standards. Developer, at Developer's sole expense, shall diligently and fully comply with all Applicable Legal Requirements (including, but not

limited to, any and all applicable local, state, and federal wage laws). If the PV System contains a Battery Energy Storage System, Developer shall obtain approval of a fire prevention plan by the local fire chief.

3.11 Late Completion and Developer Payments.

(a) **Late Completion.** If commencement of construction does not occur on or before the Outside Construction Commencement Date and/or Commercial Operation does not occur on or before the Outside Commercial Operation Date for any reason other than CVEC's failure to perform its obligations hereunder or Host's failure to perform its obligations under the Inter-Governmental PDA, Developer shall pay to CVEC lost revenues plus CVEC's administrative costs as the basis for damage ("Delay Liquidated Damages"). Lost revenues in the event that Developer fails to commence construction by the Outside Construction Commencement Date shall be five hundred dollars (\$500) per day. Lost revenues in the event that Developer fails to commence Commercial Operation by the Outside Commercial Operation Date shall be the product of: (i) the estimated daily Energy output from the PV System (kWh) for each day the PV System fails to achieve timely Commercial Operation; and (ii) the Net Energy Price for such estimated daily Energy output. The Parties recognize the delays, expense, and difficulties involved in proving the actual losses or damages in a judicial or other proceeding and agree that the Delay Liquidated Damages are reasonable compensation to CVEC. In the event that Developer is paying Delay Liquidated Damages for a period of one hundred and eighty (180) days for failure to commence construction by the Outside Construction Commencement Date, CVEC may declare a Developer Event of Default pursuant to Section 10.2. In the event that Developer is paying Delay Liquidated Damages for a period of one hundred and eighty (180) days for failure to achieve Commercial Operation by the Outside Commercial Operation Date, CVEC may declare a Developer Event of Default pursuant to Section 10.2.

(b) Developer shall not be responsible for Delay Liquidated Damages in the event that Developer cannot satisfy the Outside Construction Commencement Date and/or Outside Commercial Operation Date milestone because Developer lacks a Permit necessary to commence construction and/or Commercial Operation of the PV System, and Developer is utilizing Commercially Reasonable efforts to secure such Permit. Notwithstanding the foregoing, CVEC may terminate this agreement in the event that Developer has not satisfied the Outside Construction Commencement Date by [240?] days after the Effective Date or has not satisfied the Outside Commercial Operation Date by two years after the Effective Date.

(c) Payment of Delay Liquidated Damages shall not preclude CVEC from seeking other damages at law or equity to which it may be entitled as a result of Developer's failure to achieve commencement of construction on or before the Outside Construction Commencement Date and/or Commercial Operation on or before the Outside Commercial Operation Date.

3.12 **Inspection and Entry.** During the course of construction and completion of the PV System and any Substantial Alteration thereto, Developer shall maintain all plans, shop drawings, and specifications relating to such construction which CVEC or Host, or either of their agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the agreements contained or referenced

herein. CVEC and/or Host may, upon reasonable prior notice to Developer, enter upon the Premises and inspect the PV System for the purpose of ascertaining the condition or whether Developer is observing and performing the obligations assumed by it under this Agreement, all without hindrance or interference from Developer. CVEC shall promptly notify Developer of any matter it is aware of pertaining to any damage to or loss of the use of the PV System or that could reasonably be expected to adversely affect the PV System.

3.13 Operations Manual; Training. Developer shall deliver to CVEC an operations, maintenance and parts manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit D. In addition, Developer will train CVEC's representative(s), including employees or Developers of Host, on basic principles of operation, maintenance and monitoring of the PV System and on emergency preparedness and response. Notwithstanding the foregoing, CVEC and Host shall have no right to perform any maintenance or repair on the PV System without Developer's prior written consent, except in the case of an emergency where immediate action on the part of CVEC or Host is reasonably necessary for public health or safety reasons.

3.14 Removal and Recycling of the PV System. Except as otherwise provided herein, Developer shall, within one hundred twenty (120) days following the end of the Term and at Developer's sole cost and expense, remove the PV System from the Premises and restore the Premises to its original condition, normal wear and tear excluded (unless CVEC has exercised its purchase option). Developer and CVEC shall use good faith efforts to agree upon whether supports, anchors, penetrations, conduits, or other similar ancillary equipment will be removed, considering whether such removal would cause harm or damage to the Premises. Developer shall use Good Engineering Practice to recycle the decommissioned PV System.

3.15 Abandonment of PV System. If the PV System or any portion thereof remains on the Premises after the passage of one hundred twenty (120) days following the end of the Term (or such other shorter time period for removal as may be provided in this Agreement), the PV System may, at the option of CVEC, be deemed to have been abandoned, and title to the PV System shall automatically vest in CVEC and or its assignee, without the necessity of any deed, conveyance, bill of sale or other written instrument transferring title. In the event CVEC deems the PV System abandoned pursuant to this Section 3.15, Developer shall be obligated to provide CVEC with necessary funds to fully cover the cost of decommissioning the PV System and restoring the Premises to its original condition, normal wear and tear excluded.

3.16 CVEC's Right to Acquire the PV System. The Parties agree if this Agreement is terminated due to the expiration of the Term and CVEC notifies Developer of CVEC's intention to exercise the Purchase Option pursuant to Article XIII (PV System Purchase and Sale Options), then CVEC shall temporarily waive Developer's duty to comply with Section 3.14 for a period of up to one hundred eighty (180) days following the effective date of such termination, and such waiver shall expire if, on or before the expiration of such period, CVEC has not notified Developer of its election to exercise the Purchase Option and further extend the waiver of Developer's duty to comply with Section 3.14.

3.17 Host's Building Maintenance. Developer acknowledges that Host may require temporary removal or relocation of all or a portion of the PV System in order to perform routine or necessary maintenance. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Developer shall be solely responsible):

(a) Host will provide Developer with at least thirty (30) days prior written notice of the need to temporarily relocate (except in the case of an Emergency, in which case notice shall be given as soon as practical and may be after some emergency response work has occurred);

(b) In such notice, Host will certify that Host's requested removal or relocation of the PV System is required to perform routine or necessary maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency response work has occurred), and Developer will have no obligation to temporarily remove or relocate all or a portion of the PV System unless the Host provides such certification;

(c) Host will be responsible for any and all actual, documented, reasonable costs incurred in the relocation of all or a portion of the PV System to and from the temporary location, including any temporary storage costs;

(d) Any such relocation shall be performed by Developer (except that, in the case of an Emergency, Host may perform such activities as are reasonably necessary in light of such Emergency);

(e) Host may not request more than one relocation or temporary removal during the Term, which shall not be of a duration longer than thirty (30) days unless otherwise agreed by the Parties; and

(f) in the event that other than temporary removals or relocations that are an "Emergency", (i) the PV System is temporarily removed or relocated for longer than thirty (30) days or if there has already been at least one relocation during the Term, or (ii) if there is more than one relocation or temporary removal during the Term, Host shall pay Developer for any lost revenue (including lost revenue attributable to the sale of Energy, Environmental Attributes, and any incentives related to or attributes of the operation or ownership of the PV System) for the duration of the temporary removal or relocation in excess of thirty (30) days. Such lost revenue shall be based on Net Energy that would have been produced during the time period of the relocation or temporary removal as estimated by PVWatts Calculator, or similar recognized method using accurate data inputs for the parameters of the PV System and its location. Host will work in good faith to minimize the timing and the operational and economic impacts on Developer of a temporary removal or relocation of the PV System.

For purposes of this Section 3.17, "Emergency" shall mean any Force Majeure event, condition, or circumstance at or affecting the Premises that would, in the reasonable opinion of Host, materially and substantially harm life or property on the Premises without immediate preventative or remedial action. The Host shall not be responsible in any way for Developer's lost revenue that is the result of an Emergency.

3.18 Project Relocation. CVEC, on behalf of Host, may request that Developer move the PV System to another location on the Property or to another site owned by Host, but any such relocation shall be subject to the approval of Developer and Financier, not to be unreasonably withheld provided the alternate location or site is suitable for the PV System without increasing the development, construction, interconnection, and operating cost of the PV System, and the PV System is capable of generating substantially equivalent amounts of Energy when installed at the alternate site. In connection with such relocation, the Parties shall execute an amendment to this Agreement reflecting the new location of the PV System but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. CVEC and Host shall also provide any reasonable consents or releases required by Developer in connection with the new location. Host shall pay all costs associated with the removal and relocation of the PV System, including design, permitting, site investigations, installation, and testing costs and interconnection costs. In addition, during the shutdown of the PV System pursuant to such relocation, and ending with the commercial operation of the PV System when such PV System is reinstalled at a new location (this timeframe referred to in this Section 3.18 as the “Relocation Event”), Host will be responsible for paying Developer an amount equal to the sum of (i) payments that CVEC would have made to Developer hereunder for Net Energy that would have been produced by the PV System during the Relocation Event; (ii) revenues that Developer would have received with respect to the PV System under applicable solar programs and any other assistance program with respect to Net Energy that would have been produced during the Relocation Event; and (iii) revenues from Environmental Attributes that Developer would have received with respect to Net Energy that would have been produced by the PV System during the Relocation Event. Determination of the amount of Net Energy that would have been produced during the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the PV System in the same period in the previous Contract Year, unless Developer and CVEC mutually agree to an alternative methodology.

3.19 Site Access Notifications. After the Commercial Operation Date, should Developer enter upon the Premises for any reason (other than an emergency), a minimum of 5 (five) Business Days advance written notification to CVEC and Host is required. Such notice shall state the reason for entry, and the anticipated duration of the access period.

ARTICLE IV. PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

4.1 Purchase and Sale of Net Energy.

(a) Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Developer shall make available to CVEC, and CVEC shall take delivery of at the Point of Delivery, all of the Net Energy generated by the PV System.

(b) In the event that the System is qualified as a Solar Tariff Generation Unit under the SMART Program, the Distribution Company may elect to retain demand resource payments on account of the System’s participation in the ISO Forward Capacity Market. In the event that the System is not qualified as a Solar Tariff Generation Unit under the SMART Program, or payments from the ISO Forward Capacity Market are not retained by the Distribution Company,

CVEC and shall be entitled to receive demand resource payments from the ISO Forward Capacity Market associated with the Net Energy.

(c) To the extent permitted by law, Host, or CVEC on behalf of Host, shall obtain Net Metering of the Net Energy in accordance with Schedule Z of the interconnection application for the PV System filed by Developer with the Distribution Company on Host or CVEC's behalf, or, if applicable, Host shall obtain Alternative On-bill Credits in accordance with an AOBC Payment/Credit Form for the PV System, or such other form as required by DOER or the SMART Guidelines to be filed by Developer with the Distribution Company on Host's behalf. To the extent permitted by the Distribution Company and in accordance with the Net Metering Tariff, SMART Tariff, or SMART Guidelines, Developer shall assist Host, or CVEC on behalf of Host in the event Host desires to amend the Schedule Z or AOBC Payment/Credit Form for the PV System.

4.2 Price for Net Energy; Price Increases. CVEC shall pay Developer for the Net Energy, as metered at the Metering Device(s), at the applicable Net Energy Price. The payment made by CVEC to Developer shall equal the Net Energy for the relevant period multiplied by the Net Energy Price for such period. In all cases, any adjustments in the Net Energy Price shall be made to the nearest hundredth of a cent.

4.3 Title and Risk of Loss of Net Energy. Title to and risk of loss of the Net Energy will pass from Developer to CVEC at the Point of Delivery. Developer warrants that it will deliver the Net Energy to CVEC at the Point of Delivery free and clear of all liens, security interests, claims, and other encumbrances.

4.4 Net Metering. If the PV System is a Net Metered Generation Unit, each of Developer and CVEC agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering as a Solar Net Metering Facility, pursuant to M.G.L. c. 164, §§138 – 140, 220 C.M.R. §18.00, and the Distribution Company Tariffs, as may be amended from time to time by a Governmental Authority. CVEC and Developer acknowledge and agree that Host (or CVEC, if so designated by Host) shall act as the Host Customer for the PV System, as such term is defined in the Net Metering Tariff. Developer shall assist CVEC and/or Host to undertake any amendments as may be necessary to Schedule Z of the Interconnection Agreement undertaken in accordance with the Distribution Company Tariffs.

4.5 AOBCs. If the PV System is to qualify as an Alternative On-bill Generation Unit, each of Developer and CVEC agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System in the SMART Program. Developer shall assist CVEC and/or Host to enroll for receipt of Alternative On-bill Credits for the PV System and to enter into any amendments to such documentation as may be necessary from time to time undertaken in accordance with the SMART Tariff and/or SMART Guidelines.

4.6 Governmental Charges.

(a) Developer is responsible for local, state, and federal income taxes attributable to Developer for income received under this Agreement.

(b) Developer is responsible for all real and personal property taxes, assessments, use taxes, and all other charges and fees assessed against the PV System.

(c) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Net Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

4.7 Guaranteed Annual Energy Output.

(a) Developer guarantees that the PV System will produce the Guaranteed Annual Energy Output in each Contract Year, as adjusted by the Annual System Degradation Factor. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Guaranteed Annual Energy Output shall be decreased by the Annual System Degradation Factor, as shown on Exhibit C.

(b) In the event that a Production Shortfall exists in any Contract Year, Developer shall owe CVEC a sum equal to the product of: (i) the average applicable all-inclusive rate charged by the Distribution Company in any Contract Year for Energy at the Premises minus the applicable Net Energy Price; and (ii) the Production Shortfall. Developer shall make a preliminary calculation and submit it to CVEC, no later than 30 days after the anniversary of the Commercial Operation Date, for CVEC's review and final approval. The damages for a shortfall shall be payable to CVEC and within 30 days of said approval or CVEC may elect to set-off payments due and owing under Section 4.7 (a) against the shortfall damage amount payable to CVEC under this Section 4.7(b). In the event that any shortfall damages remain payable to CVEC after the second billing cycle that CVEC has used the shortfall damages as a set-off, Developer shall pay CVEC the remaining shortfall damages amount due within thirty (30) days of the end of the second billing cycle.

ARTICLE V. ENVIRONMENTAL ATTRIBUTES

5.1 Title to Environmental Attributes. As between Developer and CVEC, and except as otherwise set forth in this Article V, all Environmental Attributes relating to the PV System or the Net Energy will be and remain property of Developer. The Parties shall use Commercially Reasonable efforts to modify the terms hereof with the mutual intent to allocate the value of any Shared Environmental Attributes between each other on a 50/50 basis.

5.2 Reporting of Environmental Attributes. Developer shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Net Energy. Except as set forth in Section 5.1, CVEC shall not report to any Person that any Environmental Attributes relating to the Net Energy belong to any Person other than Developer.

ARTICLE VI. METERING DEVICE(S) AND METERING; BILLING

6.1 Metering Equipment. The Parties acknowledge and agree that Developer shall provide, install, own, operate, repair and maintain the Metering Device(s) except for the Metering Device owned and installed by the Distribution Company. Developer shall maintain and test the Metering Device(s) in accordance with Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit D.

6.2 Measurements. Developer shall provide, install, own, operate, repair and maintain the Metering Device(s). Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to CVEC. Developer shall maintain and test the Metering Device(s) generally in accordance with the same terms and conditions applicable to Metering Device(s) installed for the purpose of delivering Energy to the Distribution Company and the calculation of Net Metering Credits, but in any event no less than every two (2) years. Developer shall bear the cost of the testing of the Metering Device(s) and the preparation of the Metering Device(s) test reports, as provided for in Section 6.3 (d) below.

6.3 Testing and Correcting.

(a) Twice per calendar year, CVEC may request a test of the Metering Device(s). Following any meter test, if the Metering Device(s) is found to be accurate or inaccurate within $\pm 2\%$, then CVEC shall bear the costs of the meter test and reconciliation. If the Metering Device(s) is found to be inaccurate by more than $\pm 2\%$, or if the Metering Device(s) is for any reason out of service or fails to register, then Developer shall bear the costs of the meter test and reconciliation.

(b) If a Metering Device(s) is found to be inaccurate by $\pm 2\%$ or less, any previous recordings of the Metering Device(s) shall be deemed accurate. If a Metering Device(s) is found to be inaccurate by more than $\pm 2\%$ or if such Metering Device(s) is for any reason out of service or fails to register, then: (i) Developer shall promptly cause the Metering Device(s) found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy; (ii) Developer shall send an invoice to CVEC the following month estimating the correct amounts of Net Energy delivered or allocated during the periods affected by such inaccuracy, service outage or failure to register; and (iii) Developer shall estimate the correct amount of Net Energy in accordance with Good Engineering Practice and as practicable based on the kWh generated during the affected period. If as a result of such adjustment the quantity of Net Energy for any period is decreased, Developer shall reimburse CVEC for the amount paid by CVEC in consideration for that Net Energy. If as a result of such adjustment the quantity of Net Energy for any period is increased, CVEC shall pay for the additional Net Energy. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures shall not be subject to any interest charge in favor of CVEC or Developer.

(c) Each Party and its consultants and representatives shall have the right to witness

each test conducted by or under the supervision of Developer to verify the accuracy of the measurements and recordings of the Metering Device(s). Developer shall provide at least twenty (20) days prior written notice to CVEC of the date upon which any such test is to occur. Developer shall prepare a written report setting forth the results of each such test, and shall provide CVEC with copies of such written report not later than thirty (30) days after completion of such test.

(d) In the event that there is a discrepancy between the Net Energy generated by the PV System as reported by Developer's and Distribution Company's Metering Devices, Developer and CVEC will use good faith efforts to investigate and remedy such discrepancy in consult with Distribution Company. In the event of a discrepancy in which Developer's Metering Device reports greater Net Energy than the Distribution Company's Metering Device, CVEC shall only be required to pay Developer under this Agreement for the amount of Net Energy reported by Distribution Company's Metering Device. Developer shall credit CVEC in the subsequent month's invoice for any amounts paid by CVEC in a prior month or months for Net Energy reported by Developer's Metering Device in excess of the Net Energy reported by Distribution Company's Metering Device.

6.4 Billing. On or before the tenth (10th) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Developer shall calculate the amount due and payable to Developer pursuant to Exhibit C, with respect to the immediately preceding month, and shall forward to CVEC an invoice identifying PV System production data from Developer's Metering Device and including such calculation, with sufficient detail for CVEC to verify the calculation and the total amount due and payable for the previous month. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures, if applicable.

6.5 Payment. Within thirty (30) days of the receipt of Developer's invoice pursuant to Section 6.4 (Billing), CVEC shall pay Developer any amounts due and payable hereunder for Net Energy delivered during the prior month, for which Developer has submitted an invoice to CVEC pursuant to Section 7.4 (Billing). All such invoices shall be paid by mutually agreeable method(s), to the account designated by Developer. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures pursuant to this Section 6.5 shall not be subject to any interest charge in favor of CVEC or Developer.

6.6 Dispute. If a Party, in good faith, disputes an invoice, as described in this Article VII, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within thirty (30) Business Days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article VI, the Parties shall follow the procedure set forth in Article XV (Dispute Resolution; Governing Law).

6.7 Records and Audits. Each Party will keep, for a period not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions during such other Party's normal business hours.

ARTICLE VII. REPORTING AND RELATED MATTERS

7.1 Milestone Reporting by Developer. Commencing thirty (30) days after the Effective Date and through the Commercial Operation Date, at a minimum of every other month, Developer will provide a Milestone Report in the form set forth in Exhibit G, or in such other form as may be reasonably requested by CVEC.

7.2 Remedial Action Plan. If Developer fails to achieve any Milestone by the Milestone Date therefor, Developer shall promptly notify CVEC of such failure and, no more than ten (10) days following the failure to achieve such Milestone, provide CVEC with a written action plan explaining how Developer will cure such failure (such plan, a "Remedial Action Plan"). The Remedial Action Plan shall specify in reasonable detail Developer's analysis of the causes of the missed Milestone Date, the actions that Developer plans to take to correct such situation, the time needed to complete such corrective actions, and the change to future Milestone Dates (other than the Commercial Operation Date) as a result of such Remedial Action Plan. Developer shall use commercially reasonable efforts to complete the corrective actions pursuant to the provisions of the Remedial Action Plan. Developer may (i) supplement the Remedial Action Plan, as may be reasonably required, or (ii) provide CVEC with written notice of deviations from the Remedial Action Plan.

7.3 Milestone Extensions. Each Milestone (and each subsequent Milestone, including the Commercial Operation Date and the Outside Commercial Operation Date, as applicable) shall be extended to the extent reasonably required following an event of Force Majeure or CVEC's breach of this Agreement, in each case, that impacts the achievement of such Milestone.

7.4 Operational Reporting Requirements. Developer shall notify and represent to CVEC and Host when the PV System has achieved Commercial Operation ("Notice of Commercial Operation") and shall in such notice certify the Commercial Operation Date. After the Commercial Operation Date, Developer will provide CVEC with the following:

(a) Record Plans. Within ninety (90) days following the issuance of the Notice of Commercial Operation, Developer shall prepare and deliver to CVEC detailed record plans accurately depicting the PV System and, if applicable, the Battery Energy Storage System including, without limitation, interconnection applications and utility agreements, all wiring, lines, conduits, piping, other structures or equipment and, for any Battery Energy Storage System, the software controls manual.

(b) Data Acquisition System. Developer shall provide CVEC with the URL and permissions to access to the PV System's data acquisition system ("DAS") required by

Section B.14 of the Common Technical Specifications set forth in Exhibit D. If a Battery Energy Storage System is included in the PV System, Developer shall provide CVEC access to the Battery Energy Storage System's data acquisition system required by Section B.14 of the Common Technical Specifications set forth in Exhibit D. The DAS for the PV System must meet the requirements of the Distribution Company (e.g., for participation in the SMART Program) and the ISO-NE Forward Capacity Market participation rules, which may be amended from time to time. Further, the DAS must be capable of reporting production data to CVEC or CVEC's designee on a monthly basis on the first day of each month for the prior month's production in a format designated by CVEC.

(c) **Annual Maintenance Report.** Developer shall deliver a maintenance report annually to the Host and CVEC, within (sixty) 60 days of the annual anniversary of the Commercial Operation Date.

7.5 **Supporting Documentation and CVEC Review.** Developer will provide CVEC with supporting documentation and detail as reasonably requested by CVEC in connection with the Milestone Reports or operational reports. Upon reasonable notice to Developer, Developer shall permit CVEC and its advisors, attorneys or consultants to review and discuss with Developer each such report during business hours.

7.6 **Tracking of Developer Requests.** For such time as a Developer request for CVEC to execute a consent, estoppel, amendment or other instrument related to this Agreement remains pending, Developer's operational reporting to CVEC shall include a chart documenting each such request and identifying the name and contact information of any Financier or other assignee or Person that is the beneficiary of each such request.

ARTICLE VIII. LOSS, DAMAGE OR DESTRUCTION OF PV SYSTEM; FORCE MAJEURE

8.1 **PV System Loss.**

(a) **Damage or Destruction of PV System.** Developer shall bear the risk of loss to the PV System (including casualty, condemnation or Force Majeure), except to the extent that such loss results from the gross negligence of the Host or Host's agents, representatives, customers, vendors, employees, or contractors.

(i) In the event of any PV System Loss, Developer shall, within forty-five (45) Business Days following the occurrence of such PV System Loss, notify Host and CVEC whether Developer has: (i) elected, at its sole cost and expense, to repair or replace the PV System, or (ii) elected to terminate this Agreement in which case Developer shall remove the PV System and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date in accordance with Section xx (Site Restoration).

(ii) In the event of a total or partial PV System Loss because of casualty loss of all or part of the Premises, and the Host elects not to repair or replace the Premises, Developer

shall be limited to recovery of proceeds from its insurance coverage. In the event of a total or partial PV System Loss because of casualty loss of all or part of the Premises, and the Host elects to repair or replace the Premises, Developer may exercise either of its options under Section 8.7(b).

(iii) In the event that Developer notifies Host pursuant to Section 8.1(b) that Developer has opted not to repair or replace the PV System, this Agreement will terminate automatically effective upon the receipt of such notice of termination, and Developer shall be entitled to all proceeds of insurance with respect to the PV System in connection with such PV System Loss, provided however, proceeds paid on account of damage to the Premises shall be paid to Host.

(iv) In the event that Developer elects to repair or replace the PV System pursuant to Section 10.7 of the Inter-Governmental PDA, Developer shall be responsible for any Production Shortfall that occurs during the repair/replacement period except to the extent the damage, destruction or loss is due to Force Majeure, casualty, or condemnation.

(v) If Developer elects not to repair or replace all or part of the portion of the PV System affected by the PV System Loss, the Expected Annual Energy Output shall be recalculated using PV Watts or a similar software program and the Guaranteed Annual Energy Output shall be adjusted accordingly (by way of example, if there is a 200 kW loss from a 2,000 kW system, the Guaranteed Annual Output shall be reduced by a fraction equal to the lost kW capacity divided by the original capacity, i.e. $200 \text{ kW} / 2000 \text{ kW}$). Developer shall, however, pay CVEC an amount equal to the net present value of the Foregone CVEC Benefit, using a discount factor of 4%, such amount not to exceed the replacement value of the part of the PV System affected by the PV System Loss. Foregone CVEC Benefit is defined as (i) in the Contract Year of occurrence, the difference between the G1 rate (or such other rate for the Premises' electric account of the Distribution Company's tariff) in the Contract Year of occurrence of the partial PV System Loss and the Net Energy Price, multiplied by the Expected Annual Output adjusted for the Annual System Degradation Factor, and (ii) for the remainder of the Term the G1 rate (or such other rate for the Premises' electric account of the Distribution Company's tariff) is assumed to increase by 1% per year.

For the avoidance of doubt, payment in respect of the Foregone CVEC Benefit must be paid to CVEC and, so long as (a) Developer elects in its discretion not to repair or replace all or part of the affected portion of the PV System, (b) the condition of the Premises may be made suitable for construction, operation, maintenance, and interconnection of the PV System, as reasonably determined by Developer and (c) the Inter-Governmental PDA remains in full force and effect.

(vi) In the event that Developer notifies CVEC that Developer has opted not to repair or replace the PV System, this Agreement will terminate automatically effective upon the receipt of such notice of termination, and Developer shall be entitled to all proceeds of insurance with respect to the PV System in connection with such PV System Loss, provided however, proceeds paid on account of damage to the Premises shall be paid to Host. In addition, in such event, Developer shall assign the Interconnection Agreement to CVEC or its designee.

8.2 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an event of termination and may immediately terminate this Agreement without liability by sending the other Party a written termination notice setting forth the termination date, provided, however, that the other Party may not terminate this Agreement if the non-performing Party is using Commercially Reasonable efforts to cure the event of termination and the non-performing Party provides reasonable written assurances that it will be able to cure such event of termination within an additional one hundred eighty (180) days. In the event this Agreement is terminated pursuant to this Section 8.2, Developer shall promptly remove the PV System from the Premises in accordance with Section 4.11 of this Agreement.

ARTICLE IX. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties by CVEC. As of the Effective Date, CVEC represents and warrants to Developer as follows:

- (a) CVEC has full legal capacity to enter into this Agreement and to perform all obligations hereunder;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of CVEC has full authority to do so and to fully bind CVEC;
- (c) CVEC knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting CVEC or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or CVEC's ability to carry out its obligations under this Agreement;
- (d) None of the documents or other written or other information furnished by or on behalf of CVEC to Developer or their agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;
- (e) CVEC represents and warrants that this Agreement, as amended, has been presented to the Host and that the final form of this Agreement will be included as an exhibit to

the Inter-Governmental PDA.

9.2 Representations and Warranties by Developer. As of the Effective Date of this Agreement, Developer represents and warrants to CVEC as follows:

(a) Developer has full legal capacity to enter into this Agreement and to perform all its obligations hereunder;

(b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;

(c) Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement;

(d) None of the documents or other written or other information furnished by or on behalf of Developer to CVEC or its agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(e) Developer acknowledges, agrees, and intends for purposes of "safe harbor" under the Bankruptcy Code that, without limitation, as applicable: (i) the transactions pursuant to this Agreement constitute "forward contracts" within the meaning of the Bankruptcy Code or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party under this Agreement with respect to forward contracts constitute "settlement payments" and/or "margin payments" within the meaning of the Bankruptcy Code; and (iii) all transfers of performance assurance by one Party to another Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and

(f) Developer: (i) has received a copy of the Inter-Governmental PDA; (ii) agrees to comply with all of CVEC's obligations set forth in Article III(Leased Premises) and Article IV of the Inter-Governmental PDA; (iii) has read and understood such document; and (iv) has had an adequate opportunity to ask questions regarding such document.

9.3 Host's Representations and Warranties in Inter-Governmental PDA. CVEC shall have no liability or obligation to Developer based upon any representation or warranty made by Host to CVEC under the Inter-Governmental PDA.

9.4 CVEC's Representation and Covenants regarding Inter-Governmental PDA. CVEC represents to Developer that the Inter-Governmental PDA is in full force and effect and that no notices of default have been sent or received by CVEC with respect to the Inter-Governmental

PDA, nor to the present knowledge of CVEC has any event or condition occurred which, with the passing of time or the giving of notice, would result in an event of default by CVEC under the Inter-Governmental PDA. If CVEC receives any notice or demand from Host under the Inter-Governmental PDA with respect to the Premises or the purchase of power from the PV System, CVEC shall promptly but, in any event, in not less than five (5) Business Days, deliver a true and correct copy of the same to Developer. CVEC agrees to use its best efforts to cause Host to comply with or perform the obligations of Host under the Inter-Governmental PDA. To the extent that, at any time, the Host notifies CVEC, or CVEC otherwise becomes aware, of any mortgage, deed of trust, lien, encumbrance or similar real property security interest or financing on the Premises, CVEC shall use Commercially Reasonable efforts to cause Host to cause any such mortgagee, lienholder or lender, as the case may be, to execute a subordination, non-disturbance and attornment agreement, whereby such mortgagee, lienholder or lender, as the case may be, agrees to recognize, and not disturb, the contractual arrangements under the Inter-Governmental PDA.

ARTICLE X. DEFAULT; TERMINATION

10.1 Events of Default by CVEC. The following shall each constitute an event of default by CVEC (“CVEC Event of Default”):

- (a) CVEC breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Developer of the breach;
- (b) CVEC fails to make any payment due under this Agreement within forty-five (45) Business Days after such payment is due unless such payment is contested by CVEC;
- (c) If any material representation or warranty made by CVEC in Article IX (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from the other Party; or
- (d) CVEC becomes Bankrupt.

10.2 Events of Default by Developer. The following shall each constitute an event of default by Developer (“Developer Event of Default”):

- (a) Developer breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by CVEC of the breach;
- (b) Developer fails to make any payment due under this Agreement (i.e. amounts payable to CVEC for any Production Shortfall pursuant to Section 4.7(b) and Indemnification pursuant to Article XII) within forty-five (45) Business Days after such payment is due unless such payment is contested or a right of set-off has been claimed by Developer;

(c) If any material representation or warranty made by Developer in Article IX (Representations and Warranties; CVEC Acknowledgement) of this Agreement proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from the other Party;

(d) Developer becomes Bankrupt;

(e) Subject to Section 7.2, Developer fails to achieve Construction Commencement on or before the Outside Construction Commencement Date or Commercial Operation on or before the Outside Commercial Operation Date, unless such failure is caused by a material breach by Host of its obligations under the Inter-Governmental PDA or by CVEC under this Agreement.

(f) For any reason other than an event of *Force Majeure*, Developer is unable to provide Net Energy to CVEC for ninety (90) consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to the expiration of this Agreement, provided, however, that Developer shall have thirty (30) days to cure such default if Developer is using Commercially Reasonable efforts to cure such Developer Event of Default during the original ninety (90) day period;

(g) The PV System is inoperable for twelve (12) months, except with respect to *Force Majeure* events.

(h) Developer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Developer under this Agreement; or

(i) Any other material breach of this Agreement not specifically enumerated above, and such breach is not cured within thirty (30) Business Days after notification by CVEC of the breach.

10.3 Remedies.

(a) CVEC Event of Default.

(i) In the event of an uncured CVEC Event of Default, not excused by Force Majeure, Developer agrees to give written notice to Host and Host shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Host shall have an additional reasonable period of time thereafter not to exceed thirty (30) days to cure the CVEC Event of Default if Host uses Commercially Reasonable efforts to cure such CVEC Event of Default during the initial sixty (60) days after notice aforesaid, and Host provides reasonable written assurances that it will be able to cure such CVEC Event of Default within such a

reasonable period of time thereafter.

(ii) In the event that Host elects not to step in or fails to cure such CVEC Event of Default, Developer shall be entitled to terminate this Agreement and the Inter-Governmental PDA and shall also be entitled to exercise its legal and equitable remedies.

(b) Developer Event of Default.

(i) Financier Step-In. CVEC agrees to give written notice to any Financier (of which CVEC has written notice) upon a Developer Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional reasonable period of time thereafter not to exceed thirty (30) days to cure Developer Event of Default if Financier uses Commercially Reasonable efforts to cure such Developer Event of Default during the initial sixty (60) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Developer Event of Default within such a reasonable period of time thereafter not to exceed an additional thirty (30) days.

(ii) CVEC Termination. In the event that Financier elects not to step-in or fails to cure pursuant to subsection (i) above, or CVEC has no written notice of a Financier, CVEC shall have the right, but not the obligation, to terminate this Agreement upon thirty (30) days' notice and shall also be entitled to exercise its legal and equitable remedies, including, but not limited to, recovery of monetary damages from Developer and to seek specific performance in the form of removal the PV System from the Premises as provided in the Inter-Governmental PDA, at Developer's sole expense. In addition, in such event, Developer shall assign the Interconnection Agreement to CVEC or its designee.

10.4 Closeout Setoffs. The non-defaulting party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the defaulting party under this Agreement, any amounts due and owing to the defaulting party under this Agreement.

10.5 Unpaid Obligations. The non-defaulting party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the defaulting party shall in all events remain liable to the non-defaulting party for any amount payable by the defaulting party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

10.6 Duty to Mitigate. Each Party has a duty to mitigate its damages under this Agreement.

ARTICLE XI. SECURITY; REMEDIES; LIMITATIONS

11.1 Development Security. As a condition of CVEC's execution of and continuing obligations under this Agreement, Developer shall provide to CVEC, as security for the performance of Developer's obligations hereunder prior to the Outside Commercial Operation Date a cash deposit (the "Development Security"). The Development Security shall be deposited

in the Deposit Control Account within five (5) Business Days after the Effective Date. CVEC shall have the right to draw upon the Development Security, at CVEC's sole discretion: (i) as a non-exclusive remedy available to CVEC under Section 2.4(b) – (f) (Early Termination by CVEC; or (ii) in the event Developer fails to achieve Commercial Operation by the Outside Commercial Operation Date and fails to pay Delay Liquidated Damages as provided in Section 3.11.; (iii) if Developer fails to make any payments owing under this Agreement after expiration of applicable notice and cure periods; or (iv) if Developer fails to reimburse CVEC for costs that CVEC has incurred or may incur as a result of Developer's failure to perform its obligations under this Agreement. Unless this Agreement is terminated, any such drawing on the Development Security by CVEC shall give rise to an obligation of Developer to replenish the Development Security to its required amount within three (3) Business Days of the drawing.

11.2 Decommissioning Assurance. Upon the issuance of the Notice of Commercial Operation, Developer's obligation to provide Development Security shall cease and the funds in the Deposit Control Account shall instead be used to cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Within one hundred eighty (180) days receipt of Notice of Commercial Operation, CVEC will determine (using Good Engineering Practice) that if the amount of Development Security is sufficient to cover the costs of the cost of decommissioning the PV System and restoring the Premises. If there is a shortfall, Developer will provide additional funds within sixty (60) days of receipt of the shortfall notice from CVEC. CVEC may draw upon the Decommissioning Assurance in the event of Developer's failure to comply with its PV System removal and Premises restoration obligations under the Inter-Governmental PDA.

11.3 Grant of Security Interest. To secure its obligations under this Agreement, Developer hereby grants to CVEC, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all funds in the Deposit Control Account.

11.4 Security is Not a Limit on Developer's Liability. The Development Security and Decommissioning Assurance contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, Developer's obligations hereunder; and (b) shall not be CVEC's exclusive remedy for Developer's failure to perform in accordance with this Agreement.

11.5 Remedies. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement.

11.6 Limitations. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER**

PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

ARTICLE XII. INSURANCE AND INDEMNIFICATION

12.1 Insurance.

(a) Developer's insurance obligations. Developer shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Developer shall provide CVEC with evidence, reasonably satisfactory to CVEC and, of its insurance hereunder, upon request.

(i) Comprehensive commercial general liability insurance of at least \$1,000,000 for each occurrence, and \$2,000,000 in the aggregate if solar only, and \$2,000,000 for each occurrence and \$3,000,000 in the aggregate if there is a battery. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

(ii) Excess liability coverage of at least \$5,000,000.

(iii) Worker's compensation coverage as required by the Massachusetts General Laws and at least \$1,000,000 for each occurrence.

(iv) Professional liability coverage for errors and omissions of at least \$1,000,000 and \$1,000,000 aggregate limit.

(v) Cyber risk coverage in an amount adequate to cover potential expenses, fines and associated liabilities caused by any theft or misappropriation of CVEC's or Host's electric account data or other private information of CVEC or Host through cyber breach of Developer's systems or otherwise through its handling of or access to such information.

(vi) Such other forms and types of insurance set forth in Exhibit H (Special Terms and Conditions).

(b) Additional Developer Insurance Requirements. All insurance maintained by Developer shall:

(i) Include as additional insured CVEC and the Host for obligations arising out of this Agreement. The policies shall be endorsed to require that such additional insureds receive at least thirty (30) days' notice of cancellation or non-renewal. Additionally, Developer shall be required to provide notice to CVEC of any cancellation or non-renewal at least thirty (30) days in advance of said cancellation or non-renewal.

(ii) The insurance may be provided on a claims-made basis.

(iii) In the event such insurance is cancelled or non-renewed, Developer agrees to provide a thirty-six (36) month discovery period endorsement for obligations under this Agreement.

(iv) The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability, and personal injury liability.

(v) The insurance shall include blanket contractual liability coverage, including coverage for this Agreement.

(vi) Developer shall waive any rights of subrogation against CVEC and the Host (to the extent permitted by law with respect to workers' compensation).

12.2 CVEC's insurance obligations. CVEC shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. CVEC shall provide Developer with evidence, reasonably satisfactory to Developer, of its insurance hereunder, upon request.

Commercial general liability insurance written on an occurrence basis and endorsed to include its independent Developers, bodily injury liability, property damage liability, personal injury liability, premises/operations hazard coverage, products and completed operations hazard coverage, and broad form general liability, with limits of not less than \$2,000,000 combined single limit and annual aggregate. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

12.3 Host's Insurance Obligations. Pursuant to the Inter-Governmental PDA, Host will secure and maintain, at its own expense, throughout the term of the Inter-Governmental PDA, the following insurance coverage:

(a) Commercial general liability insurance written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations liability, and broad form general liability, with limits of not less than \$1,000,000 combined single limit and \$2,000,000 annual aggregate. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required; and

(b) Property insurance on the Premises with a waiver of subrogation rights against Developer.

CVEC will notify Developer in the event that it receives notice of a change in Host's insurance coverage that materially impacts the installation and/or operation of the PV System.

12.4 Indemnification by Developer. Developer shall indemnify, defend, and hold harmless CVEC and, Host, and other CVEC Members (collectively “CVEC Indemnified Parties” and singularly “CVEC Indemnified Party”) and each CVEC Indemnified Party’s directors, officers, employees, agents, representatives, and independent Developers, from and against any and all (a) costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees) , causes of action, suits, or judgments, incurred by, on behalf of or involving any one of the foregoing parties, in each case, arising out of (i) bodily injury, death or property damage or any other claims by third parties, or (ii) property damage incurred by Host and (b) lien claims by subcontractors or suppliers or sub-subcontractors and sub-suppliers, to the extent, in the case of subclauses (a) and (b), arising, directly or indirectly, from or in connection with (A) any material breach by Developer of its obligations, covenants, representations, or warranties contained in this Agreement, (B) Developer’s actions or omissions taken or made in connection with Developer’s performance of this Agreement, (C) any claims arising from or based on the violation by Developer or its agents of Applicable Legal Requirements and orders, or (D) any claims arising out of or resulting from any and all work performed under this Agreement, except for work required under this Agreement.

12.5 Developer’s Indemnification as to Environmental Matters. Developer agrees to indemnify, defend and hold harmless CVEC Indemnified Parties from all costs, claims, liabilities, damages, expenses (including attorneys’ fees, costs, expenses and interest) incurred in connection with, resulting from or arising out of any and all Environmental Claims from the Effective Date, including, but not limited to, reasonable expenses for legal (including, without limitations, attorneys’ fees), accounting, consulting, engineering, investigation, cleanup, response, removal, and/or disposal and other remedied costs, directly or indirectly imposed upon, incurred by or asserted against a CVEC Indemnified Party arising out of or in connection with any Environmental Claim. Developer shall have no liability arising from prior environmental conditions within, on or under any portion of the Premises, including without limitation, the presence, treatment, transportation, disposal, release, or threat of release, of any Hazardous Material within, on or under the Premises, except to the extent that such conditions are the result of or proximately caused by the act or omission of Developer.

12.6 Notice of Indemnification Claims; Timing of Indemnification Payments. If a CVEC Indemnified Party seeks indemnification pursuant to this Article XII, CVEC shall notify Developer of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Developer further agrees, if requested by the CVEC Indemnified Party, to take prompt action to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article XII. Upon written acknowledgment by Developer that it will assume the defense and indemnification of such claim, Developer may assert any defenses which are or would otherwise be available to the CVEC Indemnified Party. Developer shall not settle any claim, action, suit or proceeding for which it is indemnifying a CVEC Indemnified Party in a manner that would impose any legal liability or financial obligation on the CVEC Indemnified Party without first obtaining the CVEC Indemnified Party’s written consent. Developer understands that, in the event that it has breached its obligations under this Article XII, it is responsible for any and all reasonable costs and expenses incurred by a CVEC

Indemnified Party to enforce this indemnification provision. Developer agrees to pay all CVEC Indemnified Party costs relating to indemnification claims, including reasonable attorneys' fees each may incur in investigating and responding to claims, within thirty (30) days of receipt of a payment request.

ARTICLE XIII. PV SYSTEM PURCHASE AND SALE OPTIONS

13.1 Grant of Purchase Option. Developer grants to CVEC an option to purchase the PV System (the "Purchase Option") as of the fifteenth (15th) anniversary of the Commercial Operation Date and at the expiration of the Term (including, upon an early termination of the Term). Developer acknowledges and agrees that CVEC may freely assign the Purchase Option and CVEC's rights and responsibilities under this Article XIII to any Person. If CVEC elects the Purchase Option, then no later than ninety (90) Business Days following the fifteenth (15th) anniversary of the Commercial Operation Date or expiration of the Term (including, upon an early termination of the Term), as the case may be, CVEC must notify Developer in writing of its intention to exercise the Purchase Option. Within twenty-five (25) Business Days after its receipt of CVEC's notice, Developer shall provide written notice to CVEC of the Appraised Value of the PV System as determined by an Independent Appraiser, which shall be determinative of the purchase price paid by CVEC. The costs of the appraisal shall be borne by the Parties equally, unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser. CVEC shall then have a period of ninety (90) Business Days after Developer's notification to confirm or retract its decision to exercise the Purchase Option. If CVEC confirms its exercise of the Purchase Option, the Parties shall, in a timely manner, execute all documents necessary to cause title to the PV System and the associated Environmental Attributes to pass to CVEC, free and clear of any liens, and Developer shall retain all liabilities arising from or related to the PV System and the associated Environmental Attributes prior to the Transfer Date (as defined herein). CVEC may deduct from the purchase price determined by the Independent Appraiser any termination damages due to CVEC associated with a Developer Event of Default or other set-offs, as applicable. CVEC shall pay the purchase price determined by the Independent Appraiser to Developer by certified check, bank draft, or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date (as defined herein). CVEC and Developer shall also execute such documents reasonably necessary for CVEC to accept, assume, and perform all then-existing agreements relating to such PV System, including, but not limited to, operations and maintenance agreements and agreements for the sale of associated Environmental Attributes. The closing of any sale of the PV System (the "Transfer Date") pursuant to this Article XIII will occur as soon as practicable but no later than one hundred eighty (180) Business Days following the date of the notice furnished by CVEC to Developer of its intent to exercise the Purchase Option. This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

ARTICLE XIV. ASSIGNMENT; BINDING EFFECT; FINANCIER PROVISIONS

14.1 Developer's Assignment Rights. With prior written notice to CVEC, Developer may collaterally assign, pledge, or transfer all or any part of, or any right or obligation under this

Agreement for security purposes in connection with any financing or other financial arrangements regarding the PV System (each, a “Permitted Transfer”). A Permitted Transfer shall not release Developer from any obligation under this Agreement. For any other assignment, pledge, or transfer of all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law (including a Permitted Transfer in which Developer is to be released from all or any part of an obligation under this Agreement), Developer must obtain CVEC’s prior written consent, which shall not be unreasonably, withheld, conditioned, or delayed, provided that: (a) CVEC has been provided with reasonable proof that the proposed assignee will assume Developer’s assigned obligations under this Agreement in writing (unless Developer remains the primary obligor under this Agreement); (b) the proposed assignee is not included on any list of individuals or firms that are debarred by a Governmental Authority; (c) if Developer ceases to be the operator of the PV System upon such assignment, (i) the proposed assignee has comparable experience to Developer in operating and maintaining systems comparable to the PV System and the financial capability to maintain the PV System and perform operation and maintenance consistent with this Agreement and the Inter-Governmental PDA; and (ii) the proposed assignee maintains a Commercially Reasonable operation and maintenance agreement for the PV System; and (d) Development Security and Decommissioning Assurance is maintained. Any such assignment or transfer without CVEC’s written consent will be null and void.

14.2 CVEC’s Assignment Rights. With only prior written notice to Developer, CVEC shall have the right to assign, pledge, or transfer all or any part of, or any right or obligation under, this Agreement, to the Host. CVEC shall not otherwise assign, pledge, or transfer all or any part of, or any right or obligation under, this Agreement unless the proposed assignee has equal financial capability as CVEC to perform under this Agreement, and CVEC has provided prior notice to Developer.

14.3 CVEC Review of Instruments. If Developer assigns, subcontracts, sublets, or delegates its rights, privileges, or obligations under this Agreement, Developer shall immediately reimburse CVEC for all reasonable attorneys’ fees, administrative staff time, and other costs incurred by CVEC related to reviewing, approving, negotiating or executing any instruments related to such change in interest. If Developer requests that CVEC or Host review, approve, or execute any instruments related to project or developer financing, such as consents, estoppels, collateral assignments, memoranda, acknowledgments, or other similar instruments, Developer shall promptly reimburse CVEC and Host for all reasonable attorneys’ fees, administrative staff time, and other costs incurred by CVEC or Host related to reviewing, approving, negotiating, or executing any instruments related to such financing. CVEC shall not be obligated to approve or execute any instrument that is not in its best interest, or in the best interest of Host, as determined by CVEC in its sole discretion. Further, CVEC’s duty to make factual statements or representations in any such instrument are contingent on the truthfulness and accuracy of such statements or representations at the time the instrument is delivered to CVEC.

14.4 Binding Effect. Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

14.5 Financier Provisions.

(a) Any Person or entity that has entered into a loan agreement, credit agreement, reimbursement agreement, note purchase agreement, or other document (and any documents relating to or ancillary to the foregoing documents) identified from time to time in writing by Developer to CVEC as a “Financing Agreement” under which Developer obtains financing whether or not secured by all or substantially all of the assets comprising the PV System shall, for so long as the Financing Agreement is in existence and until any lien thereof has been extinguished, be entitled to the protections set forth herein. No Financing Agreement shall encumber or affect in any way the interest of CVEC or Host in and to the Premises, or CVEC’s or Host’s rights under this Agreement. CVEC will consider in good faith any Financier request to amend this Agreement, provided that such amendment is Commercially Reasonable and in accordance with Applicable Legal Requirements.

(b) Pursuant to the provisions of this Section 14.5 and subject to Section xx (Financier Step-in), Financier shall have the right: (i) to assign the Financing Agreement; (ii) to enforce its lien by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; and (iv) to sell the PV System and rights under this Agreement and any other contracts dealing with the sale of Net Energy or Environmental Attributes from the PV System to a third party. CVEC’s consent shall not be required for the Financier’s acquisition of the PV System pursuant to this Agreement, except as provided in subsection (c) below.

(c) Upon the Financier’s acquisition of the PV System, Financier shall have the right to sell or assign said acquired PV System, provided Financier and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by CVEC, such approval not to be unreasonably conditioned, withheld, or delayed provided that such assignee provides satisfactory evidence of its financial and technical capability to perform Developer’s obligations under this Agreement; (ii) any such assignee shall assume all of Developer’s obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this Agreement but which remains unsatisfied at the time of the proposed assignment that is then reasonably capable of being satisfied; and (iv) Development Security or Decommissioning Assurance is maintained; and (v) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

ARTICLE XV. DISPUTE RESOLUTION; GOVERNING LAW

15.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 15.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement, and all relations and any claims between the Parties. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding the Agreement. Any dispute that arises under or with respect to the Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt

of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be Barnstable County Superior Court, Massachusetts.

Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of the Agreement. In any judicial action, the "Prevailing Party" will be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the party who most substantially prevails in its claims or defenses in the civil action.

15.2 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

15.3 Stay of Termination. During informal negotiations and mediation pursuant to Section 15.1x, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 15.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 15.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

ARTICLE XVI. OBLIGATION TO MODIFY AGREEMENT

Upon: (a) implementation, after the Effective Date, by the Massachusetts Department of Public Utilities, the DOER, the Distribution Company, or any other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement (including the allocation of economic benefits anticipated by either Party) including, but not limited to: (i) Net Metering, (ii) the SMART Program, (iii) the Clean Peak Standard, 225 C.M.R. §21.00 et. seq., (iv) ConnectedSolutions, an energy efficiency program offered in accordance with M.G.L. c. 25A, §21, which uses batteries to reduce peak energy use, (v) benefits, incentives, or tax credits that may be available pursuant to An Act Driving Clean Energy and Offshore Wind, St. 2022, c. 179, (vi) benefits, incentives, or tax credits that may be available pursuant to the

Inflation Reduction Act of 2022, P.L. 117-169; or (b) a requirement or condition of any grant funding assigned to or secured by CVEC or Host intended to assist with the performance of its obligations under this Agreement or the Intergovernmental PDA, the Parties shall be obligated to amend this Agreement to conform to the Applicable Legal Requirement to the extent that such amendment is Commercially Reasonable, and shall use their best efforts to conform such amendment, including allocation of economic benefits, to the original intent of this Agreement, and to do so in a timely fashion.

ARTICLE XVII. MISCELLANEOUS

17.1 Notices. All notices, demands, requests, consents or other documents required or permitted to be given or made under the Agreement shall be in writing and addressed to the following:

If to CVEC:

Cape & Vineyard Electric Cooperative, Inc.
23H2 White's Path, Suite 2
South Yarmouth, MA 02664
Attn: Executive Director
Telephone: (508) 619-7691
Email: office@cvecinc.org

with a copy to:

Erin M. O'Toole, Esq.
KO Law, P.C.
Telephone: (617) 584-8338
Email: eotoole@kolawpc.com

If to Developer:

[insert]

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the Agreement; (b) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the Agreement; or (c) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the Agreement. Either Party may change its address and contact person for the purposes of this Article XV by giving notice thereof in the manner required herein.

17.2 Day to Day Project Management/Points of Contact. Developer shall name a day-to-day point of contact to serve as project manager for all issues arising under this Agreement and the

person responsible for ensuring over the entire term of this Agreement that Developer's obligations are performed in accordance with the terms of this Agreement. Developer's project manager shall also be the point of contact responsible for all necessary coordination between Developer, CVEC and Host during the design, engineering and construction phases of the PV System development. Developer shall notify CVEC of the name and contact information for Developer's project manager no later than 10 days after the Effective Date of this Agreement. CVEC names its Executive Director as the day-to-day point of contact for CVEC for all issues arising under this Agreement and the person responsible for ensuring over the entire term of this Agreement that its obligations are performed in accordance with the terms of this Agreement. Either Party may change its contact person for the purposes of this Section 16.2 by giving notice thereof in the manner required pursuant to Section 16.1 above.

17.3 Entire Agreement; Amendments; Binding Effect. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. Developer acknowledges and agrees that it must comply with CVEC's obligations set forth in Article III and Article IV of the Inter-Governmental PDA(Leased Premises). This Agreement may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

17.4 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into the Agreement, including, without limitation, all attorneys' fees and expenses.

17.5 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

17.6 Joint Work product. This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

17.7 Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of the Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

17.8 Severability. If any section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of the Agreement and the benefits to the Parties are not substantially

impaired.

17.9 Further Assurances. From time to time and at any time at and after the execution of the Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the Agreement.

17.10 Headings and Captions. The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing the Agreement.

17.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a Commercially Reasonable manner.

17.12 Nondiscrimination. Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

17.13 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host or CVEC to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host, CVEC or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

17.14 Special Terms and Conditions. Developer understands and agrees that this Agreement is CVEC's standard form for solar development and power purchase agreement and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit H attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

17.15 Governmental Immunities. The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to CVEC as a governmental entity.

17.16 Survival. Termination of the Agreement for any reason shall not relieve Developer or CVEC of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Section 11.4 (Decommissioning Assurance), Section 3.5 (Abandonment of PV System), Sections 12.4 (Indemnification by Developer) and Article XIV (Dispute Resolution; Governing Law), which shall survive the expiration or termination of the Agreement. Article XII (Insurance) shall expire three (3) years after the Termination Date,

including any extensions thereof, of this Agreement.

17.17 Counterparts; Scanned Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

[Signature page to follow.]

Template

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[signature blocks WITH date lines]

List of Exhibits to Agreement

- Exhibit A: Description of the Premises
- Exhibit A-1: Additional Exceptions to Site Access
- Exhibit B: Description of PV System
- Exhibit C: Net Energy Price Provisions
- Exhibit D: Common Technical Specifications
- Exhibit E: Decommissioning Amount and Development Security
- Exhibit F: Milestone Schedule
- Exhibit G: Form of Milestone Report
- Exhibit H: Special Terms and Conditions

Template

EXHIBIT A

DESCRIPTION OF PREMISES

A scale map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery, the location of the Fuel Delivery Point and the location of important ancillary facilities, the Interconnection Point and the Interconnection Facilities

Template

EXHIBIT A-1

ADDITIONAL EXCEPTIONS TO SITE ACCESS

Template

EXHIBIT B

DESCRIPTION OF PV SYSTEM

ITEM		Specification
PV System	Module Manufacturer	
	Nameplate Capacity	
	Approximate Annual Energy Production	
	Location	
	Mounting System	
	Preliminary Specifications	
	Inverters	
	Related Equipment	
	Other	
Battery System		
	Battery Manufacturer	
	BESS Nameplate Capacity in kilowatts per 2-hour duration	
	Location	
Other Specifications		

EXHIBIT C

NET ENERGY PRICE PROVISIONS

Item	Amount #, \$ or %	Measurement
Expected Annual Energy Output		kWh/year
Guaranteed Annual Energy Output		kWh/year
Annual PV System Degradation Factor		% per
Annual Battery Energy Storage System Degradation Factor		% per year
Battery Energy Storage System State of Minimum Charge		
Net Energy Price, Solar only		per kWh
Net Energy Price with Battery		Per kWh
Added Net Energy Price for Each \$10,000 of Utility Upgrades in Excess of initial \$10,000		
Distribution Company		Eversource Electric Company
Proposed Buyer Purchase Payment for the PV System: Indicate if battery is included		
		Contract Year 10
		Contract Year 12
		Contract Year 15
		Contract Year 20
SMART Block (includes associated adders)		
SMART Block incremental cost in Net Energy Price (for each subsequent Block).		

EXHIBIT D

COMMON TECHNICAL SPECIFICATIONS

The following technical specifications and requirements are common to all the PV Systems solicited under the RFP. Each PV System must meet or exceed these specifications; provided, however, that these specifications are not intended to be all-inclusive, nor are they intended to override Good Engineering Practice or Applicable Legal Requirements. Developer is responsible for conformance to Applicable Legal Requirements, and to the extent there is a conflict between these technical specifications and Applicable Legal Requirements, the Applicable Legal Requirements shall govern. For the avoidance of doubt, these technical specifications are not intended to supersede municipal regulations or Permit conditions that require additional specifications and requirements not included in this exhibit.

A. Design

1. Design Life and Estimated Production Requirements

- a. Each PV System shall have a minimum service life of twenty (20) years at rated load.
- b. The PV System must be designed so that the estimated annual energy output for the PV System, based on actual site-specific shading, azimuth, and inclination is at least 80% of the default optimal output for a fixed PV System of the same capacity in Boston as estimated by PVWATTS Version 6. PVWATTS Version 6 is available at the following website: <https://pvwatts.nrel.gov/>.

2. Additional Design Requirements - Stamped affidavits or drawings are required for the electrical and structural components of the installation.

- a. The electrical design of the PV System must be performed by a Professional Engineer (“PE”) licensed in the Commonwealth of Massachusetts.
- b. The structural design of the PV System requires a stamped affidavit from a Massachusetts-licensed PE confirming that the underlying structure or bearing stratum, is adequate to withstand the static and dynamic loads of the PV System. The analysis must include all mounted portions of the PV System, including modules, racks, ballast, and other related components. The analysis must also include all mount securing portions of the PV System, including any anchors and penetrating devices.

B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. If the Developer determines the use of galvanized structural steel is warranted, the extent of Developer’s use of such material shall be clearly outlined in the Developer’s Proposal. All materials subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. Bare copper conductors exposed to free air shall be tin-plated. Alternative materials must be approved by the Host and CVEC.

2. Inverters

- a. Inverter efficiency shall be equal to or greater than 93%.
- b. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- c. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
- d. Each inverter shall include:
 - i. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
 - ii. Ground fault protection.
 - iii. NEMA 2R rating for interior electrical room location or NEMA 3R for any exterior locations.
- e. The inverter(s) must have secure, weatherproof housing in the exterior installation.
- f. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
- g. The inverter(s) must be located to provide adequate air flow for cooling.

- h. Lightning protection must be provided for the inverter(s) housing.
- 3. **Batteries** - The battery energy storage system will be AC coupled and meet all NEC requirements.
- 4. **Combiner & Junction Boxes** - Combiner boxes and junction boxes which are located outdoors shall have the following characteristics: NEMA 4X enclosure, 600 VDC, and listed by a nationally recognized testing laboratory. All PV System output circuits shall be protected by lightning arrestors of the appropriate voltage rating.
- 5. **DC Disconnect Switches** - The DC disconnect(s) shall be 600 VDC, heavy-duty safety switch and be listed by a nationally recognized testing laboratory. Where located outdoors, disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.
- 6. **AC Disconnects** - All AC disconnects shall be rated to interrupt the necessary voltage and current for the application and be listed by a nationally recognized testing laboratory. Where located outdoors disconnects shall be NEMA 3R. The AC disconnect shall be appropriately located per the utility's requirements and its location shall be noted on the one-line electrical drawing.
- 7. **Interconnection Circuit Breaker** - Developer shall provide the appropriate size, make, and model circuit breaker for the specified AC interconnection switchgear that is suitable for back feed in accordance with NEC 690.64.
- 8. **Wiring and Conduit**
 - a. All system wiring shall be of an MEC approved wiring method. All conductors shall have a temperature rating of 90 degrees C or lower.
 - b. All conductors shall be copper, sized appropriately to minimize line losses.
 - c. All conduits used in interior building applications shall be electro metallic tubing ("EMT").
 - d. All exterior conduits shall be hot dipped galvanized EMT with weather tight compression fittings and expansion joints as required.
 - e. Expansion fittings shall be used in conduit runs in compliance with MEC article 300.7. A value of 144°F (80°C) shall be used for the maximum change in temperature (delta T) in the calculation of conduit expansion.
 - f. All conduits shall be bonded at each end using listed bonding bushings.
 - g. Where conduit is attached to roofs, fully flashed, non ferrous stanchions shall allow for expansion and contraction. For roof-mounted conditions, conduits shall be supported at a height greater than 3.5 inches by fully flashed, non ferrous stanchions. Manufacturer's approved surface applied stanchions shall be used on membrane roofs.
 - h. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
 - i. Exposed cables shall be listed as sunlight resistant and have a temperature rating of 90°C. These conductors shall be properly secured and well supported. Conductors are not permitted to be resting on the abrasive surfaces such as asphalt shingles.
 - j. All wiring and conductors installed in subsurface applications shall be housed in utility grade PVC conduit(s) sufficiently covered and include trench warning identification. Spare conduits shall also be installed with a volumetric capacity of at least 25% of the original service. In the event subsurface conduits are exposed to vehicular traffic, concrete encasement shall be included.
- 9. **PV System Grounding** - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.
- 10. **PV Array**
 - a. PV Modules
 - i. Modules shall be UL 1703 listed.
 - b. Mounting Systems
 - i. In all installations, the mounting system shall promote ambient air circulation beneath and above modules to enhance efficiency. The lower edge of the panels on the mounting should be designed to eliminate power production losses from snow coverage and provide a comfortable working height for maintenance.
 - ii. Modules shall be individually removable for maintenance and repair.
 - iii. The mounting system, regardless of application, shall be designed to meet or exceed requirements of

all applicable state and local building codes, including wind speed, snow and seismic load requirements. The Developer shall describe and document the wind and snow loads that the PV System is designed to withstand.

- iv. For ballasted roof mounted systems, the Developer shall provide a manufacturer's comprehensive designed system. The Professional Engineer responsible for this portion of work shall also be licensed in the state of Massachusetts.
- v. In the event an existing lightning protection system is modified or augmented, Developer is responsible for UL recertification.
- vi. Each module row or column must be separated to minimize shadowing effects on other modules. The spacing between modules shall be noted on the PV layout drawing.
- vii. For all PV Systems with roof penetration points through previously warranted roofs, and provided that Host has delivered a true, complete and correct copy of such roof warranty to Developer prior to the Effective Date, then the Developer is responsible for designing and installing the PV System in compliance with such that roof warranty to ensure that it is not voided.

11. Installation Requirements

- a. If the PV System interconnects to a building owned by Host and located on the Property, the output of the PV inverter(s) shall not interfere with or damage the function of existing building electrical distribution systems. All serviceable components must be "accessible" as defined by the MEC article 100. The installation shall comply with all applicable federal, state, and local building codes including the latest Massachusetts Electrical Code. Developer shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Developer shall coordinate with the Host to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to Host for interconnection of PV System output or if the switchgear is to be turned off.
- b. The PV System electrical work must be performed by individuals licensed in Massachusetts.
- c. The PV System must be installed according to the manufacturer's instructions and in compliance with all applicable codes and standards.
- d. Developer is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any Net Metering or Alternative On-bill Credit arrangement requested by CVEC or Host. An application must be submitted to the local electric utility, with or without Schedule Z as appropriate, to start the formal interconnection process, and sufficient lead time should be allowed to successfully achieve interconnection under the local electric utility interconnection standards. All PV Systems must have an appropriate electric utility interconnection agreement in place at the time of interconnection to the utility grid.
- e. All pertinent permits and inspections must be obtained and copies kept on file as may be required by local codes and/or state law.
- f. All PV Systems shall include appropriate surge arresters or other means to protect the PV System components from lightning and other surge events. It is the responsibility of Developer to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

12. PV System Warranty Requirements

- a. Developer Warranty. All PV Systems must have a minimum five (5) year labor warranty provided by Developer to protect Host against defective workmanship, PV System or component breakdown, or degradation in electrical output of more than fifteen percent from their originally rated electrical output during the warranty period. The warranty must cover the PV System, including PV modules (panels) and inverter(s), racking, conduit run, and components, and provide for no-cost repair or replacement of the PV System, components, including any associated labor during the warranty period.
- b. Manufacturer Warranty. All major equipment must meet the following minimum manufacturer warranties:
 - i. Photovoltaic Module: Minimum of one (1) year product warranty from date of sale to first consumer

purchaser for product workmanship and materials, plus a minimum performance warranty of twenty (20) years within which time the module will produce, under standard test conditions, a minimum of 80% of the product's minimum rated power at time of sale.

- ii. Inverters: Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
- iii. Batteries: Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
- iv. Revenue grade production meters: Minimum of two (2) years following the effective commercial operation date that the meter system will be free from all defects in design, materials and workmanship.
- v. Mounting equipment: The Developer shall obtain from the mounting system manufacturer(s) a warranty that the mounting system(s) will be free from all defects in design, materials and workmanship for a period of ten (10) years following the effective commercial operation date.

13. Electricity Production Meter Requirements - All PV Systems must have a dedicated revenue grade production meter that:

- a. is readily accessible and easily understood by Host;
- b. records the PV System's AC output as measured on the AC side of the PV System's isolation transformer;
- c. shall be separate from the local utility billing meter and shall not interfere with utility billing or net metering;
- d. must be a standard utility "revenue quality" meter that conforms to applicable American National Standards Institute ("ANSI") C-12 standards and shall be installed on the AC output side of the PV System's inverter or isolation transformer; and
- e. shall have a visible display of cumulative energy produced by the PV System and be available for periodic testing and/or re-calibration, if necessary.

14. Automated Reporting - All PV Systems must include an automated reporting system, i.e. Data Acquisition System ("DAS") which will report to the Massachusetts Renewable Energy Trust ("MRET") Production Tracking System ("PTS") and detail view be accessible to CVEC and Host. In addition, the public will have access to a Public View from the DAS. The DAS must meet the requirements of the Distribution Company (e.g., for participation in the SMART Program) and the ISO-NE Forward Capacity Market participation rules, which may be amended from time to time. The DAS must be capable of reporting production data to CVEC or CVEC's designee, such as ISO-NE, on a monthly basis on the first day of each month for the prior month's production in a format designated by CVEC.

C. Commissioning Requirements

1. Commissioning Procedure - At a minimum, Developer's sample testing and commissioning plan shall cover:

- a. measurement and recording of voltage-open-circuit of every source circuit;
 - b. performance of inverter startup tests as specified by the inverter manufacturer in the inverter operation manual;
 - c. measurement of AC power and comparison to predicted power based upon estimated irradiance level;
 - d. performance of loss of grid test and verification of five minute delay upon restoration of the grid; and
 - e. measurement and recording of I_{mp} of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
2. Developer shall verify that the data acquisition/display system and, where applicable, the Battery Energy Storage System controls, are functioning properly, comparing independent measurements to data acquisition display and able to switch Battery Energy Storage System configurations and operations.
 3. Developer shall correct, at no additional cost to the Host, any deficiencies uncovered by the testing prior to commissioning of the PV System.

D. Training Requirements

Developer shall train Host or staff at the Premises on basic principles of operation, maintenance requirements, on-line data monitoring and system controls, and safety issues that are specific to the PV System installed (including points of contact in emergency situations). An operations manual to accompany the training will be delivered to the Host and to CVEC.

E. Documentation Requirements

- 1. Documentation** – Developer shall prepare an Operations and Maintenance manual for the PV System. In addition, Developer shall provide CVEC and Host each with one (1) printed copy and one (1) digital copy on USB drive of the information listed below.
- 2. The documentation shall include:**
 - a. A complete set of all approved shop drawings, a list of equipment and products used, and product literature. The list of equipment shall include the manufacturer, brand name, model (if applicable), equipment components, recommended maintenance procedures for each piece of equipment, approximate amount of product installed and materials contained in the product.
 - b. Record drawings showing, to scale, the location of all arrays, locations of major equipment, including combiner box clusters, all underground and major conduit runs, grounding electrodes and specific locations of building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.
 - c. The Permission to Operate provided by the Local Distribution Company.
 - d. Trouble shooting guidelines.
 - e. PV System maintenance schedule and procedures.
 - f. Contact information for technical assistance and parts ordering.
 - g. Records of all warranties and serial numbers of all warranted equipment.

EXHIBIT E

DECOMMISSIONING AMOUNT AND DEVELOPMENT SECURITY

Template

EXHIBIT F

MILESTONE SCHEDULE

To be determined between Developer and CVEC

Template

EXHIBIT g

FORM OF MILESTONE REPORT

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Solar Power Purchase Agreement and Development Agreement by and between [insert] (“Developer”) and the Cape & Vineyard Cooperative, Inc. dated _____ (the “Agreement”).

Developer shall review the status of each Milestone and Developer shall identify such matters referenced in clauses (i)-(v) below as known to Developer and which in Developer’s reasonable judgment are expected to adversely affect the Milestone Schedule, and with respect to any such matters, shall state the actions which Developer intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Permit, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Legal Requirements, actual or threatened opposition to the granting of a necessary Permit, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Developer is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Developer’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Developer’s business (including a change of 50% or more of any ownership interest in Developer’s business) or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Developer’s ability to attain any Milestone;
- (iii) A change in, or discovery by Developer of, any Applicable Legal Requirement which would reasonably be expected to materially threaten Developer’s ability to attain any Milestone, including any failure or delay in obtaining necessary easements;
- (iv) Any material change in Developer’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Milestone Report and any material change in Developer’s proposed actions to remedy or overcome such matter or issue.

For guidance, each “overview” subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of

major activities planned for the current month.

Developer shall complete, certify, and deliver this form of Milestone Report to CVEC's Executive Director, together with all attachments and exhibits, with copies of this report delivered to the address set forth in the Agreement. Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary:

1. Milestones

In this section, please include information on each Milestone listed in Exhibit F of the Agreement (Milestone Schedule) (as updated and approved by CVEC), plus any additional significant milestones related to the Project.

1.1 Milestone schedule

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

1.2 Remedial Action Plan (applicable if Developer fails to achieve a Milestone by the Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (e.g., Permits, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Developer's Remedial Action Plan which shall include detailed plans to achieve the missed Milestone and subsequent Milestones.

2. Permits

In this section, please include information on each of the Permits required for the construction of the Facility and the status thereof. List the applicable Government Authority, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of Permit. If the Government Authority maintains a website with information on the approval process for the Project, please provide a link.

2.1 Permits

Please describe each of the Permits to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity.

2.2 Recent Permitting activities

Please describe in detail the permitting related activities that occurred during the previous calendar month.

2.3 Expected Permit related activities

Please list all Permits activities that are expected to be performed during the current calendar month.

2.4 Permit Notices received

Please attach to this Milestone Report copies of any notices related to Permits activities received during the previous calendar month.

3. Incentives.

3.1 SMART/SOQ

3.2 SMART/AOBCs

3.3 Net Metering

3.4 Other

4. Development Security.

5. Financing Activities

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

5.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

5.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Project to be completed by Developer.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Project to deliver Net Energy to CVEC. Include information on the Project infrastructure, generating equipment, and major auxiliary equipment.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Project, including a schedule showing expected or actual dates as applicable. If applicable, provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Project to deliver Net Energy to CVEC. Include information on the status of interconnection studies, Interconnection Agreements, any design and construction of any interconnection facilities.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including a status report on any group stud interconnection engineering review undertaken by the Distribution Company with respect to the PV System, and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, any other activities that must be conducted before the Commercial Operation can be achieved

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that any and all information contained in this Developer’s Milestone Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT H

SPECIAL TERMS AND CONDITIONS

Template