

**FORM OF
INTER-GOVERNMENTAL POWER PURCHASE AND PROJECT
DEVELOPMENT AGREEMENT**

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INTER-GOVERNMENTAL POWER PURCHASE AND PROJECT DEVELOPMENT AGREEMENT

This Inter-Governmental Power Purchase and Project Development Agreement (the “Agreement”) is entered into as of the Effective Date, and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts governmental entity and cooperative corporation (“CVEC”), and XXX, Massachusetts (“Host”). CVEC and Host are in some cases hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. Host owns the land described in Exhibit A located at XXX, Massachusetts (the “Premises”), on which the XXX (“Building”)] is located;
- B. Host wishes to lease the Premises to CVEC to allow it to design, procure, install, test, commission, own, operate, repair and maintain the PV System (as defined herein) on the Premises for beneficial public purposes;
- C. CVEC wishes to lease the Premises in order to design, procure, install, test, commission, own, operate, repair and maintain the PV System on the Premises for beneficial public purposes, subject to the terms and restrictions set forth in this Agreement;
- D. CVEC wishes to assign certain rights and obligations under this Agreement to a Developer (as defined herein) to design, procure, install, test, commission, own, operate, repair and maintain the PV System, pursuant to a Solar Power Purchase and Development Agreement (the “Solar PPA”) between CVEC and Developer, a form of which is set forth in Exhibit B, hereto; and
- E. CVEC will sell a certain percentage of the Net Energy generated by the PV System to Host.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows.

ARTICLE I: 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 Exceptions” has the meaning set forth in Section 3.1 of the Solar PPA and as set forth in Exhibit A 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 Inter-Governmental Project Development Agreement.

“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.

“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.

“Building” means the type of structure on the Premises, owned by Host, as referenced in the Recitals and more particularly described on Exhibit A hereto.

“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, Exhibit D to the Solar PPA, 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 the Developer certifies in a written notice to CVEC and Host that Commercial Operation has been achieved in accordance with the Solar PPA.

“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.

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

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

“**Developer**” means the third party entity, including successors and assigns, that will design, procure, install, test, commission, own, operate, and maintain the PV System pursuant to the Solar PPA.

“**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 both Parties.

“**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.

“**Event of Default**” means any event of default as defined in Sections 10.2 and 10.3 of this Agreement.

“**Event of Termination**” means any event of termination as defined in Section 10.4 of this Agreement.

“**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 CVEC or 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.

“Financier” means any individual or entity providing money or extending credit for the PV System to CVEC for: (1) the construction or, term or permanent financing of the PV System; or (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 CVEC. For the avoidance of doubt, Financier as used herein shall not mean Financier as defined in the Solar PPA.

“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.

“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.

“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.

“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 Host and reasonably acceptable to CVEC.) 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.

“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.

“kW” means Kilowatt.

“kWh” means Kilowatt hour.

“Leasehold Mortgage” has the meaning set forth in Section 13.4.

“Metering Device(s)” means any and all revenue quality meters installed by Developer, CVEC 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 and/or Host.

“MW” means Megawatt.

“MWh” means Megawatt hour.

“NEPOOL” means the New England Power Pool and any successor organization.

“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 Metering Device and in conformance with Applicable Legal Requirements.

“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.

“Outside Commercial Operation Date” shall have the meaning set forth in the Solar PPA.

“Outside Construction Commencement Date” shall have the meaning set forth in the Solar PPA.

“Parties” means Host and CVEC collectively, and their respective successors and permitted assignees.

“Party” means Host or CVEC individually, and their respective successors and permitted assignees.

“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.

“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 C attached hereto. The PV System may (or may not) include a Battery Energy Storage System as specified in Exhibit C.

“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.

“Real Property Rights” has the meaning set forth in Section 3.1.

“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.

“Solar PPA” has the meaning set forth in the Recitals hereto, a form of which is attached hereto as Exhibit B.

“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 Article III.

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

ARTICLE II: 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. 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.

ARTICLE III: LEASE OF PREMISES

3.1 Leased Premises.

(a) Host hereby leases to CVEC the possession, use, enjoyment, and control of the Premises (as described in Exhibit A) for the sole and exclusive purpose of conducting the Permitted Use, as set forth below, subject to Host’s reserved uses as set forth in Exhibit A and Article XX (Quiet Enjoyment).

(b) As shown in Exhibit A, Host also grants to CVEC a non-exclusive easement for reasonable pedestrian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance and access to, of electric lines, cables, conduits and related equipment necessary to operate the PV System interconnect the PV System to the Building, which is interconnected with the Distribution Company System, such that the PV System qualifies as a Solar Net Metering Facility and otherwise meets the requirements of the SMART Program or an Alternative On-bill Generation Unit, as the case may be. In the event that the PV System is required to be connected directly to the Distribution Company System, Host hereby grants CVEC a non-exclusive easement on, under and across the real property owned by the Host upon which the Premises is located, to install, construct, operate and maintain electric lines, cables, poles, conduits and related equipment necessary to interconnect the PV System to the Distribution System such that the PV System qualifies as a Solar Net Metering Facility and otherwise meets the requirements of the SMART Program or an Alternative On-bill Generation Unit, as the case may be.

(c) Host also grants CVEC the right to free and unobstructed access to sunlight at the Premises and Host agrees that it shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System.

(d) To the extent reasonably necessary and subject to Applicable Legal Requirements and available space, as determined in Host’s sole discretion, Host may provide necessary space on the real property owned by the Host upon which the Premises is located at locations and for such time as specified by Host (such locations, “Construction Laydown Area(s)”) for temporary: (i) storage and staging of tools, materials and equipment; (ii) construction laydown; (iii) parking of construction crew vehicles; (iv) vehicular and pedestrian access and access for rigging and material handling, and other temporary facilities reasonably necessary to construct, erect, install, and remove the PV System. The foregoing notwithstanding, CVEC shall not obstruct access to the real property owned by Host upon

which the Premises is located, or interfere with or disrupt Host's use thereof or operations therein. Following temporary use thereof, CVEC shall immediately restore the Construction Laydown Area(s) and such other access areas identified herein to their condition prior to CVEC's use.

- (e) The Premises are demised subject to the following:
 - (i) any encumbrances shown on the survey of the Premises;
 - (ii) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A;
 - (iii) present and future zoning laws, ordinances, bylaws, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises for the Permitted Use;
 - (iv) the condition and state of repair of the Premises as the same may be on the Effective Date;
 - (v) all electric and telecommunication cable or wireless services charges, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the construction and operation of the PV System or any appurtenant facilities or improvements associated with the Permitted Use;
 - (vi) full compliance by CVEC of all Applicable Legal Requirements; and
 - (vii) Host's reserved uses, as provided in Article XII (Quiet Enjoyment) and set forth in the Additional Exceptions, attached hereto as Exhibit A.
 - (viii) Host hereby further agrees and acknowledges that CVEC shall have the right, without any notice to or consent of Host:
 - (i) for the PV System to include a total nameplate capacity expected by Developer to be [insert];
 - (ii) to fully assign all of its rights under this Agreement to Developer under the Solar PPA, including to: (i) sublease the Premises to Developer; and (ii) provide non-exclusive easements as set forth in this Section 3.1 to Developer, to construct, own, operate, maintain, and access the PV System (collectively, the "Real Property Rights"); and
 - (iii) to fully assign or otherwise delegate all of CVEC's rights, privileges or obligations under this Agreement to Developer, including, without limitation, the right to

mortgage its interest in the Premises to finance the PV System.

3.2 As-Is Condition of the Premises. CVEC accepts the Premises in the condition or state in which the Premises now is without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, 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.

3.3 Ownership of the PV System. Except as otherwise provided herein, prior to and during the Term, Host shall have no ownership interest in the PV System, except for any ownership interest Host may have by virtue of being a CVEC Member in the event that CVEC exercises its purchase option under the Solar PPA.

3.4 Net Lease. Except as expressly set forth herein, the Parties acknowledge and agree that Host shall not be required prior to or during the Term to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, installation, operation, maintenance, repair or reconstruction of the PV System, subject to the Additional Exceptions set forth in Exhibit A.

3.5 Purposes. the Premises shall be used for the sole and exclusive purpose of conducting the Permitted Use. Except with the prior express written consent of Host, CVEC shall not use the Premises for any use other than the Permitted Use.

3.6 Subordination. CVEC acknowledges and understands that this Agreement and all rights of CVEC 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 Host with respect to the Premises. CVEC acknowledges and understands that 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 Host's use of the Premises and the operation of the PV System. Host shall provide CVEC with reasonable advance notice in the event that Host grants such additional rights on the Premises to a third party.

3.7 Rent. Commencing on Commercial Operation until the end of the Term, CVEC shall pay to Host an annual rental payment in the amount of \$1.00 on or before the fifteenth (15th) day of each January during the Term. CVEC shall have prepayment rights. If CVEC shall fail to pay Host any sum required to be paid by CVEC to Host within ten (10) Business Days after such payment is due, interest on the unpaid amount shall accrue at the Interest Rate from and including the date such payment is due but excluding the date the payment is received.

3.8 Access to and Use of the Premises. During the construction phase and operation of the PV System, including, but not limited to, all pre-construction activities, CVEC and its Developers or agents shall have access to the Premises on a 24-hour basis, seven days per week.

ARTICLE IV: INSTALLATION AND OPERATION OF PV SYSTEM

- 4.1 General Description. Except as otherwise specified herein, the PV System shall consist solely of the equipment and property described in Exhibit C, along with permitted alterations and improvements thereto.
- 4.2 Installation and Operation of PV System. Installation and operation of the PV System shall be governed by the Solar PPA.
- 4.3 Alterations. Alterations to the PV System shall be governed by the Solar PPA.
- 4.4 Emergencies. The Parties agree that Host shall have the right, but not the obligation, to respond to any emergency or equipment failure involving the PV System if necessary to protect the Premises or to protect public health or safety, and to effectuate any necessary repairs or take corrective action.
- 4.5 Host's Building Maintenance. The Host's rights and obligations with respect to temporary removal or relocation of all or a portion of the PV System shall be governed by Sections 3.17 and 3.18 of the Solar PPA.
- 4.6 Damage. Any damage done by Developer to the Premises shall be repaired in accordance with the terms of the Solar PPA.

ARTICLE V: PURCHASE AND SALE OF NET ENERGY

- 5.1 Sale and Purchase. Host shall purchase and CVEC shall sell the Net Energy pursuant to the terms and conditions set forth in Exhibit D.
- 5.2 ISO Forward Capacity Market. As between Host and CVEC, CVEC shall retain the right to all ISO Forward Capacity Market Demand Resource credits or payments associated with the Net Energy.
- 5.3 Take-or-Pay for Net Energy Delivered to Point of Delivery. Subject to Section 10.3 (Events of Default by CVEC) and Section 10.4 (Force Majeure), if Host fails to take Net Energy allocated to Host or made available to Host at the Delivery Point that Host is required to purchase under the terms of this Agreement, then Host shall pay to CVEC on a monthly basis the price of the Net Energy as specified in Exhibit D upon thirty (30) days prior written notice by CVEC. CVEC shall have no duty to mitigate any charges under this Section 5.3. Disputes regarding compensation under this provision shall be subject to Article XIV (Dispute Resolution; Governing Law). Host shall not enter into any other energy agreements that would prevent Host's receipt of Net Metering Credits or Alternative On-bill Credits associated with Host's purchase of Net Energy under this Agreement. Host shall not enter into any other energy agreements (or modify an existing agreement), other than with CVEC, that would result in any reduction in the total number of kWh that are allocated to Host under this Agreement. Pursuant to M.G.L. c. 40, §4A, the obligation of Host to purchase the Net Energy as

required under the terms of this Agreement in any contract year shall not be subject to appropriation and Host shall not be exempt from liability pursuant to M.G.L. c. 44, §31.

5.4 Environmental Credits and Value. The Net Energy to which Host is entitled shall not include any Environmental Attributes. Host may not, under this Agreement, make any claims whatsoever with respect to any Environmental Attributes or the corresponding Energy in regard to a renewable portfolio standard, emission offset or other environmental, disclosure or similar regulatory requirement.

5.5 Net Metering Credits and Alternative On-bill Credits. CVEC and Host acknowledge and agree that for purposes of complying with the regulations at 220 C.M.R. §18.07(2), Host shall: (i) sign the Interconnection Agreement as Host Customer (as such term is defined in 220 C.M.R. §18.02) or sign any applicable Alternative On-bill Credit allocation form from the Distribution Company; and (ii) designate CVEC as its agent for purposes of communications and interactions with the Distribution Company or DOER as necessary to carry out the terms of this Agreement and the Solar PPA.

(a) Allocation of Net Metering and Alternative On-bill Credits.

(i) Host shall designate on Schedule Z to the Interconnection Agreement or any applicable Alternative On-bill Credit allocation form from the Distribution Company, Host's accounts for which Host desires to allocate its share of the Net Metering Credits or Alternative On-bill Credits generated or created during the Term in connection with the operation of the PV System. Any additional service associated with the preparation of Schedule Z or similar DOER forms beyond that set forth in Section 5.5 will be subject to a separate agreement between Host and CVEC.

(ii) CVEC and Host acknowledge and agree that in accordance with the Distribution Company Tariffs, Host Customer may amend Schedule Z of the Interconnection Agreement two (2) times per calendar year, or as otherwise agreed to by the Distribution Company and amend the allocation of Alternative On-bill Credits two (2) times in a twelve (12) month period as set forth in the SMART Tariff. Host and CVEC will use Commercially Reasonable efforts to request that the Distribution Company amend the Schedule Z or Alternative On-bill Credit allocation form to address any changes in the identified electric accounts. Host shall report to CVEC as soon as reasonably possible in advance of any anticipated material change in Host's electric accounts that would require an amendment to the Schedule Z or the allocation of Alternative On-bill Credits.

(b) Purchase of Net Metering Credits by Distribution Company. In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Host's designees, Host shall assign to CVEC the right to receive such payment. CVEC shall allocate to Host the Net Metering Credits associated with the Host's share of Net Energy from the PV System. If applicable under the Tariffs, CVEC and Host acknowledge and agree to request on Schedule Z of the Interconnection Agreement that the Distribution Company purchase Net Metering

Credits from Host Customer in connection with the operation of the PV System. Regardless of whether Host receives an allocation of Net Metering Credits or whether Host receives a payment for the value of the Net Metering Credits purchased by the Distribution Company, Host must pay the price for each kWh of electric power set forth in Exhibit D.

5.6 Maximum Financial Liability of the Parties Pursuant to M.G.L. c. 40, §4A. This Agreement is not intended to impose any financial liabilities on the Parties other than as expressly set forth herein.

5.7 Operational Costs Adder and Services to be Provided. CVEC shall be entitled to recover its operational costs for CVEC's services (in managing the procurement program related to this Agreement, and providing administrative services directly related to performing its obligations under this Agreement, and the Solar PPA as set forth in Exhibit E (as defined therein, the "Operational Costs Adder").

ARTICLE VI: METERING AND BILLING

6.1 Billing. On or about the fifteenth (15th) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), CVEC shall calculate the amount due and payable to CVEC pursuant to Exhibit D, with respect to the immediately preceding month, and shall invoice Host for the Net Energy payment, the Operational Costs Adder, and any other direct costs. Each invoice shall include a calculation with sufficient detail for Host to verify the calculation and the total amount due and payable for the previous month.

6.2 Payment. Host shall pay CVEC, within thirty (30) days of the receipt of CVEC's invoice pursuant to Section 6.1 (Billing).

6.3 Metering Equipment and Testing. Developer and/or the Distribution Company, as applicable pursuant to the Tariffs or SMART Tariff, 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 Host. In accordance with the Solar PPA, Developer shall maintain and test Developer's Metering Device(s). At Host's request, CVEC shall exercise its rights under the Solar PPA to ensure that the Metering Device(s) are tested and are accurately measuring the Net Energy of the PV System.

6.4 Dispute. If a Party, in good faith, disputes a payment or calculation as described in this Article VI, 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 twenty-one (21) 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 be entitled to dispute an invoice only 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 XIV (Dispute Resolution). Host and CVEC hereby acknowledge and agree that during the Term of the Solar PPA (as defined therein), CVEC will rely on the PV System

generation information in the invoices provided to CVEC by Developer pursuant to Section 6.1 (Billing) of the Solar PPA in CVEC's preparation of its invoices sent to Host under this Article VI, and that CVEC shall address any dispute with respect to Developer's invoices pursuant to the applicable dispute resolution provisions of the Solar PPA.

ARTICLE VII: PARTIES' OBLIGATIONS

7.1 CVEC's Obligations.

(a) For the duration of the Term, CVEC shall notify Host as soon as practicable when CVEC becomes aware that the PV System may be mechanically inoperable for more than a seven (7) day period.

(b) CVEC shall promptly inform Host of the occurrence of any event that may reasonably be expected to materially affect the operation of the PV System or the performance of CVEC's obligations under this Agreement (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on CVEC or Host); and

(c) CVEC shall provide Host such other information as Host may reasonably request in order to review CVEC's compliance with the terms of this Agreement.

(d) Prior to deciding whether to waive or forbear on exercise of its discretionary rights, if any, to: (i) early termination of the Solar PPA pursuant to Section 2.4 of the Solar PPA; or (ii) extension of a Milestone date as established therein, CVEC shall in good faith weigh the interests of Host and consult with its duly authorized representative identified in Section 16(a) herein. In addition, CVEC may take into account its role and the authority delegated to it as a Chief Procurement Officer.

In exchange for the Operational Costs Adder, CVEC shall provide the services set forth in Exhibit E.

7.2 Host's Obligations.

(a) Host shall be responsible for any present and future taxes, fees and levies, if any, imposed on or associated with the Energy at and from the Delivery Point. CVEC shall receive the benefit of any allowances or other credits related to the PV System to the extent provided in the Solar PPA, and except as expressly provided to Host under this Agreement. During such time as Developer is owner and operator of the PV System, Host shall reimburse CVEC for any Governmental Charges paid by CVEC to Developer pursuant to the Solar PPA.

(b) Host shall not be required to consent to enter into collateral assignments of this Agreement except as provided by this Section 7.2. Subject to the terms and conditions of this Agreement, Host shall, upon prior written request by CVEC, execute a consent and agreement with respect to a collateral assignment hereof in favor of any CVEC Financier in a form acceptable to Host, provided: (i) CVEC shall reimburse Host for all reasonable expenses and attorneys' fees

incurred by Host in connection therewith, and (ii) that Host's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

(c) Host further acknowledges that CVEC Financier(s) may have other or further requests with respect to the assignment of this Agreement and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Host. Host will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith. Upon Host's written request after execution of any such consent and agreement or assignment, CVEC shall reimburse Host for any reasonable attorney's fees and expenses associated therewith.

(d) Host shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by CVEC Financier in connection with the financing of the PV System so long as said amendments do not change the substance and underlying agreement of the terms originally a part hereof.

(e) Host shall act expeditiously, cooperatively and in good faith in facilitating any Permit, license or similar authorization necessary for the PV System, including, without limitation, assisting CVEC with the Interconnection Agreement required by the Distribution Company or other requirements for Net Metering, in particular Schedule Z (or other alternative documentation required for Distribution Company administration of Alternative On-bill Credits), but Host acting in its regulatory capacity shall not be required under this subsection to provide approvals or permits to Developer other than in the regular course of exercising its regulatory power.

(f) Host agrees that it will accept an assignment from CVEC of the Solar PPA in the event that CVEC ceases its operations, or otherwise if the Parties mutually agree that it is in the best interests of both Parties for Host to assume the obligations of CVEC to purchase Net Energy pursuant to the Solar PPA.

(g) Host agrees to notify CVEC immediately regarding any material issues related to the construction, operation or maintenance of the PV System, or the provision of such services by Developer or Distribution Company, as the case may be, including, but not limited to, damage to the PV System, PV System outages and sustained shortfalls in PV System production.

(h) Host agrees to promptly provide CVEC with updates or information that CVEC may reasonably request from time to time relating to CVEC's or Host's accounting for the purchase and sale of Net Energy under this Agreement.

(i) Host shall act expeditiously, cooperatively and in good faith in responding to CVEC requests for direct/instructions that may affect Host's interests. In the event that Host fails to respond in a timely way, CVEC shall have no liability for actions it takes that it reasonably deems to be in the Host's best interest or not opposed to the best interest of Host.

7.3 Net Metering or Alternative On-bill Credits. Subject to the provisions of this Agreement, each

of Host and CVEC agree 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 or receive Alternative On-bill Credits.

ARTICLE VIII: CVEC'S REPRESENTATIONS AND WARRANTIES

As of the Effective Date of this Agreement, CVEC represents and warrants to Host as follows:

- (a) CVEC has full legal capacity to enter into this Agreement;
- (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; and
- (d) None of the documents or other written or other information furnished by or on behalf of CVEC to Host 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.

ARTICLE IX: HOST'S REPRESENTATIONS AND WARRANTIES,

As of the Effective Date of this Agreement, Host represents and warrants the following to CVEC:

- (a) Host has full legal capacity to enter into this Agreement;
- (b) Host has the power to perform all of its obligations hereunder and the right to grant CVEC the right to assign the Real Property Rights to Developer;
- (c) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Host has full authority to do so and to fully bind Host;
- (d) Host 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 Host or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Host's ability to carry out its obligations under this Agreement;
- (e) With the exception of Developer, on the Effective Date, pursuant to Article XII (Quiet Enjoyment), no third party shall have any tenancy or license to use all or any portion of the

Premises during the Term, except as provided for in Section XX and the Additional Exceptions set forth in Exhibit A;

(f) Host agrees that it has read and fully understands the form of Solar PPA (attached as Exhibit B to this Agreement), including all rights granted to Developer thereunder; and

(g) Host warrants that it owns the Premises in fee simple, and the Premises are free and clear of all liens, encumbrances and restrictions except those listed in the Additional Exceptions set forth in Exhibit A.

ARTICLE X: TERMINATION; DEFAULT; REMEDIES; PURCHASE OPTIONS

10.1 Termination. Subject to Section 10.4 (*Force Majeure*), this Agreement shall not be subject to termination, except for the following Events of Termination:

(a) Either Party may terminate this Agreement in the event a material Event of Default pursuant to Section 10.2 (Events of Default by Host) or Section 10.3 (Events of Default by CVEC) prevents operation of the PV System for twelve (12) months, except with respect to *Force Majeure* events.

(b) CVEC may terminate this Agreement in the event of an Event of Default by Host pursuant to Section 10.2 (Events of Default by Host).

(c) CVEC may terminate this Agreement in the event that the Solar PPA is terminated by either CVEC or Developer, except to the extent the Solar PPA is terminated due to CVEC's exercise of its Purchase Option (as defined therein).

10.2 Events of Default by Host. The following shall each constitute an Event of Default by Host:

(a) Host breaches any material obligation under this Agreement, and fails to cure such breach within thirty (30) Business Days after notification by CVEC of the breach.

(b) Host fails to make any payment due under this Agreement within thirty (30) Business Days after such payment is due unless such payment is contested.

(c) If any material representation or warranty made by Host in Article XX of this Agreement (Host's Representations, Warranties, and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse affect on CVEC, and Host 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 CVEC.

(d) Any breach by Host pursuant to any of the provisions in Section 5.3 (Take-or-Pay for Energy Delivered to Point of Delivery).

(e) Any other material breach of this Agreement, which proves to have a material adverse

affect on CVEC, not specifically enumerated above.

Events of Default in this Section 10.2 are subject to specific performance and monetary damages pursuant to Section 10.5 (Remedies).

10.3 Events of Default by CVEC. It shall constitute an Event of Default by CVEC if CVEC:

(a) breaches any material obligation under this Agreement that proves to have a material adverse affect on Host and fails to cure the breach within thirty (30) days after notification by Host of the breach; or

(b) any material representation or warranty made by CVEC in Article VIII (CVEC's Representations, Warranties and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse affect on Host, and CVEC does not cure the underlying facts so as to make such representation or warranty correct and not misleading within thirty (30) Business Days of written notice from Host.

Events of Default in this Section 10.3 are subject to specific performance and monetary damages pursuant to Section 10.5 (Remedies).

10.4 Force Majeure. Notwithstanding Sections 10.1 (Termination), 10.2 (Events of Default by Host) and 10.3 (Events of Default by CVEC), if by reason of *Force Majeure* either Party is unable to carry 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 by sending the non-performing 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.

10.5 Remedies.

(a) Subject to the limitations set forth in Section 10.5 (c) below, in the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 10.2 (Events of Default by Host) or 10.3 (Events of Default by CVEC), as applicable, the non-defaulting Party may seek specific performance and/or monetary damages pursuant to this Section 10.5.

(b) In the case of a payment default by Host hereunder, CVEC shall have the obligation, during any cure or waiver period provided to Host, to sell Net Energy to any other party on Commercially Reasonable terms to mitigate its losses.

(c) In the case of a payment default by Host hereunder, CVEC's monetary damages shall be the difference between the price under this Agreement and the price at which CVEC sells Host's share of the Net Energy on Commercially Reasonable terms to mitigate its losses plus any costs of arranging for such resale. Provided, however, that if the price at which CVEC sells Host's share of the Net Energy to mitigate its losses is greater than the price under this Agreement, CVEC's monetary damages shall be reasonable costs, including any costs of arranging for such resale, incurred by CVEC.

(d) Both Parties agree that they have a duty to use Commercially Reasonable efforts to mitigate damages that may be incurred as a result of the other Party's performance or non-performance under the Agreement.

(e) After the Termination Date of this Agreement, Host shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the Termination Date. After the Termination Date, this Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the PV System, subject to Section 11.12 (Survival).

(f) Host may not enforce any remedies against Developer under the Solar PPA, except as otherwise provided therein. CVEC agrees to enforce any and all remedies against the Developer under the Solar PPA. Host's sole remedy against Developer under the Solar PPA shall be to seek specific performance of this Agreement by CVEC.

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 obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.

10.6 Step-in Rights of CVEC Financier.

(a) Host is cognizant of the need of CVEC to finance its interest in the PV System should it exercise the Purchase Option under the Solar PPA. Pursuant to Sections 6.2 (Host's Obligations), and 9.1(a) (CVEC Assignment), Host agrees without any further request for prior consent to permit

CVEC to mortgage, assign or transfer this Agreement for the purpose of obtaining financing of the PV System, provided: (i) the term of such mortgage, assignment or transfer shall not exceed the Term hereof; (ii) CVEC shall give Host notice of the name and address of CVEC Financier, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer; and (iii) that the existence of such mortgage, assignment or transfer, or any foreclosure by any CVEC Financier, shall not relieve CVEC from any liability or responsibility for the performance of its obligations under this Agreement.

(b) Host agrees to give written notice to any CVEC Financier of which Host has written notice upon the occurrence of any Event of Default hereunder, and CVEC Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that CVEC Financier shall have an additional reasonable period of time thereafter, not to exceed one hundred eighty (180) days, to cure the Event of Default if CVEC Financier uses Commercially Reasonable efforts to cure such Event of Default during the initial sixty (60) days after notice aforesaid, and CVEC Financier provides reasonable written assurances that it will be able to cure such Event of Default within such reasonable period of time thereafter.

(c) Host agrees that, prior to termination pursuant to Section 10.1 (Termination), Host shall give written notice to any CVEC Financier of which Host has written notice upon the occurrence of any Event of Termination hereunder, and CVEC Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such default, provided however, that CVEC Financier shall have an additional one hundred eighty (180) days to cure the Event of Termination if CVEC Financier uses Commercially Reasonable efforts to cure such Event of Termination during the initial one hundred eighty (180) days after notice aforesaid, and CVEC Financier provides reasonable written assurances that it will be able to cure such Event of Termination within the additional one hundred eighty (180) days.

Host also agrees that, in the event that Host terminates this Agreement pursuant to Section 10.1 (Termination), then Host shall assume the obligations of CVEC in the Solar PPA or a new agreement shall be executed by Host with Developer or CVEC Financier, as the case may be, to assume CVEC's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Developer or CVEC Financier.

10.7 Damage or Destruction of PV System.

(a) CVEC shall bear the risk of loss to the PV System (including casualty, condemnation or *Force Majeure*), except to the extent such loss results from the gross negligence of Host or Host's agents, representative, customers, vendors, visitors, employees, Developers, or invitees.

(b) In the event of any PV System loss, CVEC shall, at its sole cost and expense either (i) repair or replace the PV System, or (ii) elect to terminate this Agreement in which case CVEC 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 8.8 (Site Restoration).

(c) Notwithstanding the foregoing, the provisions of Section 8.1 of the Solar PPA shall govern damage or destruction to the PV System for such time as Developer is the owner of the PV System.

10.8 Site Restoration. On the Termination Date, CVEC shall peaceably and quietly leave, surrender and yield up unto Host the Premises. Following the Termination Date of this Agreement, CVEC shall be granted site access to the Premises and shall have one hundred twenty (120) days to remove the PV System from the Premises, and to restore the Premises to the condition that existed as of the Effective Date.

10.9 Abandonment of PV System. Notwithstanding anything to the contrary contained in this Agreement, any waiver in whole or in part of the requirement to remove the PV System shall require the written approval of Host. Any of the PV System left on the Premises after the passage of one hundred twenty (120) days after the Termination Date shall be deemed abandoned. Host shall provide written notice to CVEC within thirty (30) days of the expiration of such one hundred twenty (120) day period, of its election to retain all or any of the PV System as its property, or dispose of all or any of the PV System in such reasonable manner as Host may see fit and at CVEC's sole cost; provided, however, that Host's election to retain all or any portion of the PV System as its property shall relieve CVEC from any liability for its failure to remove such PV System; and provided further, however, that the foregoing shall not apply to any portion of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure or the negligent acts or omissions of Host (in which event, in either case the time period for removal shall be extended on a day for day basis).

10.10 Acknowledgement of CVEC's Purchase Option. Host agrees and understands that CVEC shall have a Purchase Option to purchase the PV System under the Solar PPA (as defined therein). In the event that CVEC exercises its Purchase Option under the Solar PPA, this Agreement shall continue in full force and effect.

ARTICLE XI: INSURANCE

11.1 Host's Insurance Obligations. Host shall secure and maintain, at its own expense, throughout the Term of this Agreement 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 \$3,000,000 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;

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

- (c) Host shall name CVEC as an additional insured.

11.2 CVEC's Insurance Obligations. CVEC shall secure and maintain, at its own expense, throughout the Term of this Agreement, 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 \$3,000,000 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.

11.3 Evidence of Insurance. The Parties shall provide each other with evidence, reasonably satisfactory to the other Party, of their required insurance hereunder, upon request. Throughout the Term of this Agreement, the Parties will notify each other of any change in their insurance coverage that materially impacts the installation and/or operation of the PV System.

11.4 Additional Insurance Requirements. Additional insurance requirements may be set forth in Exhibit F (Special Terms and Conditions).

ARTICLE XII: QUIET ENJOYMENT

12.1 Quiet Enjoyment. Host covenants that CVEC shall quietly have and enjoy the Premises throughout the Term and any extensions thereof. Host warrants and agrees that, throughout the Term and any extensions thereof:

(a) The Premises shall be dedicated to CVEC's use for conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the PV System, except as provided for in Section 10.2 and subject to the Additional Exceptions set forth in Exhibit A];

(b) Any other uses of the Premises by Host or any third party (other than Developer) pursuant to Section 10.2 and the Additional Exceptions set forth in Exhibit A shall not unreasonably interfere with the Permitted Use and the operational and solar requirements of the PV System;

(c) Host shall not interfere or allow a third party to interfere with the availability of sun affecting the PV System.

(d) Host shall maintain or obtain any agreements, contracts, consents, Permits, approvals, or other instruments or permissions necessary for CVEC to have the quiet enjoyment of its rights under this Agreement; and

(e) Host shall, in good faith, use its best efforts to protect CVEC's quiet enjoyment of its rights hereunder, including, without limitation, defending against a third party claim that would

materially interfere with CVEC's rights under this Article X.

Subject to the specific provisions of this Agreement permitting the same, 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.

12.2 Host's Reserved Uses. Except as specifically set forth in the Additional Exceptions contained in Exhibit A, Host shall not itself conduct any other use, nor shall Host allow any third party to conduct any other use, on the Premises.

ARTICLE XIII: ASSIGNMENT AND MORTGAGE

13.1 Assignment.

(a) CVEC Assignment. Except as otherwise provided by this Agreement, CVEC shall not assign, subcontract, sublet or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Host, provided that prior notice to or consent of Host shall not be required: (i) for an assignment or transfer by CVEC to any of its other individual CVEC Members; (ii) for any assignment or transfer by CVEC to Developer; and (iii) for a collateral assignment by CVEC to any Financier, subject to the terms and conditions of this Article XI. For assignments requiring Host's approval, approval may be denied in the reasonable discretion of Host if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning CVEC. Notwithstanding the foregoing, Host may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with CVEC. CVEC's assignee shall agree in writing to be bound by the terms and conditions of this Agreement.

(b) Host Assignment. Host shall not assign this Agreement without the prior consent of CVEC, such consent not to be unreasonably withheld, provided, however, that any such assignment shall be made subject to the terms and provisions of this Agreement. Host shall promptly provide CVEC a copy of the assignment document following any assignment.

The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto. Notice of any permitted assignment shall be provided to the other Party as soon as practicable.

13.2 Financing by Leasehold Mortgage. Host is cognizant of the need of CVEC to finance its interest in the Premises and the PV System thereon, and therefore specifically agrees, subject to Section 13.3, without any further request for prior consent to permit CVEC to mortgage, assign or transfer its interest in the Premises for the purpose of obtaining financing, which shall include equity and/or debt, provided:

- (a) The term of such mortgage, assignment or transfer shall not exceed the Term; and
- (b) CVEC shall give Host notice of the existence of any mortgage, assignment or transfer,

together with the name and address of the mortgagee, assignee or transferee, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer.

13.3 Financing by Leasehold Mortgage Release of CVEC. CVEC shall be relieved from its obligations under this Agreement in whole or in part, as the case may be:

(a) by any whole or partial disposition of CVEC's interest in this Agreement in compliance with Section 13.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by the terms of this Agreement, unless the Parties agree otherwise, and except as otherwise provided by the terms of any assignment or transfer; and

(b) in the event of any foreclosure by a Financier, in which case the Financier shall substitute for CVEC for purposes of this Agreement.

Absent express written consent of Host, the execution of a mortgage or any assignment from a Financier to another Financier shall not relieve CVEC from its obligations under this Agreement.

13.4 Financier Provisions. Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or in any PV System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Host or Host's fee interest in and to the Premises, or Host's rights under this Agreement. Host shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System.

(a) Financier's Right to Possession, Right to Acquire and Right to Assign. Pursuant to the provisions of this Section 13.4, a Financier shall have the right: (i) to assign its security interest; (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 CVEC 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 renewable energy certificates from the PV System to a third party. Host's consent shall not be required for the Financier's acquisition of the PV System pursuant to this Agreement, except as provided in section (b), below.

(b) 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 Host, 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 CVEC's obligations under this Agreement; (ii) any such assignee shall assume all of CVEC's obligations

under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of CVEC existing under this Agreement but which remains unsatisfied at the time of the proposed assignment that is then reasonably capable of being satisfied; (iv) Financier maintains a Commercially Reasonable operation and maintenance agreement for the PV System; and (v) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

(c) Notice of Default; Opportunity to Cure. The Financier shall be entitled to receive notice of any default by CVEC, provided that such Financier shall have first delivered to Host a notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by state laws, rules, regulations, CVEC's procedures, and the provisions of this Agreement. If any notice shall be given of the default of CVEC and CVEC has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice that CVEC has failed to cure such default and such Financier shall have sixty (60) days after such additional notice to cure any such default or, if such default cannot be cured within sixty (60) days, to diligently commence curing within such time and diligently pursue such cure to completion within such time as CVEC would have been allowed pursuant to Article VIII (Termination; Default; Remedies; Purchase Options) but as measured from the date of such additional notice. The Financier may take possession of the Premises and the PV System, and operate the PV System if necessary, pursuant to Section 8.6.

(d) Cross-Default/Cross-Collateralization. The Leasehold Mortgage shall not contain any cross-collateralization or cross-default provisions relating to other loans of CVEC (or any subsidiary or Affiliate of CVEC) that are not incurred for the ownership, construction, maintenance, operation, repair or financing of the PV System.

(e) Priority in Payment. The Financier shall have priority over Host with respect to payments owed by CVEC except as expressly set forth in this subsection. Notwithstanding the foregoing, CVEC and Host agree that the terms of any financing for CVEC's purchase of the PV System will establish that Host shall have first priority over Financier in Host's share of the Net Metering Credits received by CVEC for the amount of Net Energy generated by the PV System pursuant to this Agreement provided that the corresponding Net Energy payment has been made to, or otherwise received by, CVEC.

ARTICLE XIV: DISPUTE RESOLUTION; GOVERNING LAW

14.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 14.1 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 this Agreement. Any dispute that arises under or with respect to this 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. Each Party will bear its 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 this Agreement.

14.2 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.

14.3 Stay of Termination.

(a) During informal negotiations and mediation pursuant to Section 14.1, 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 defenses based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 14.1 (Dispute Resolution) 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 14.1 (Dispute Resolution), 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.

(b) During the Term of the Solar PPA (as defined therein), if there is any lawsuit pending between CVEC and Developer, Host shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Host 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. This provision may be waived by CVEC at any time by any reason.

ARTICLE XV: CONSTRUCTION; OBLIGATION TO MODIFY AGREEMENT

15.1 Construction. The Parties acknowledge that inconsistencies may exist between this Agreement and the Solar PPA and that the Parties will use their best efforts to construe the two agreements harmoniously. If a conflict arises between CVEC's performance of its obligations under the Solar PPA and the terms of this Agreement, the Parties will use their best efforts to reach a

Commercially Reasonable resolution of the conflict. To the extent the Parties are unable to resolve such conflict, the Parties acknowledge and agree that their sole remedy shall be to utilize the Dispute Resolution procedures set forth in Section 14.1 of this Agreement.

15.2 Obligation to Modify. 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 either Party intended to assist with the performance of its obligations under this Agreement, 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 XVI: MISCELLANEOUS

16.1 Communications.

(a) Day-to-Day Project Management/Points of Contact. Host 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 Host's obligations are performed in accordance with the terms of this Agreement. Host'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. Host shall notify CVEC of the name and contact information for Host'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 16.1 by giving notice thereof in the manner required pursuant to subsection (b) below.

(b) Official Notices. All notices, demands, requests, consents or other documentation required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Host:

with a copy to:

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

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 this 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 this 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 this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

16.2 Entire Agreement; Amendments; Binding Effect. This Agreement and Inter-Governmental PDA constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this 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.

16.3 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

16.4 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.

16.5 Joint Workproduct. This Agreement shall be considered the workproduct of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

16.6 Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this 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 this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

16.7 Severability. If any article, 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 article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

16.8 Further Assurances. From time to time and at any time at and after the execution of this 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 this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

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

16.10 Survival. Termination of this Agreement for any reason shall not relieve Host or CVEC of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article XX (Insurance) and XX (Dispute Resolution; Governing Law), which shall survive the expiration or termination of this Agreement. Article XX (Insurance) shall expire three (3) years after the Termination Date, including any extensions thereof, of this Agreement.

16.11 Reports; Compliance with M.G.L. c. 40, Section 4A. CVEC shall prepare an annual report which shall be provided, without charge, to Host. CVEC shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. CVEC agrees that it will perform regular audits of such records. Periodic financial statements shall be issued to all CVEC Members as required by M.G.L. c. 40, §4A, and they shall be issues to all non-member Participants. CVEC shall comply with all other applicable provisions of M.G.L. c. 40, §4A.

16.12 Special Terms and Conditions. Host understands and agrees that this Agreement is CVEC's standard form inter-governmental agreement for project development 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 F 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.

16.13 No Limitation of Regulatory Authority. Except as provided in Section 2.1(c) (Leased Premises), the Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of Host or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

16.14 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]

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; [Building], Additional Exceptions to Site Access
- Exhibit B: Form of Solar PPA
- Exhibit C: Description of PV System
- Exhibit D: Net Energy Price Provisions
- Exhibit E: CVEC Services and Operational Costs Adder
- Exhibit F: Special Terms and Conditions Applicable to this Agreement

EXHIBIT A

**DESCRIPTION OF THE PREMISES; [BUILDING], ADDITIONAL EXCEPTIONS TO SITE
ACCESS**

Template

EXHIBIT B
FORM OF SOLAR PPA

Template

EXHIBIT C

DESCRIPTION OF PV SYSTEM

Template

EXHIBIT D

NET ENERGY PRICE PROVISIONS

Template

EXHIBIT E

CVEC'S SERVICES AND OPERATIONAL ADDER

CVEC's Services shall consist of the following:

- (i) Tracking Developer's progress towards Commercial Operation;
- (ii) Monitoring of PV System permitting Milestones;
- (iii) Reviewing Developer Milestone Reports;
- (iv) Assistance with determining allocation of electricity accounts associated with the PV System to Schedule Z (for up to three (3) hours annually);
- (v) Monthly collection, review and verification of Developer invoices and preparation of monthly invoices to Host;
- (vi) Annual review of Guaranteed Annual Output and reconciliations for Production Shortfalls, if any, with Developer;
- (vii) Preparation of reports on production generation and net benefits;
- (viii) Routine monitoring of production levels through the Data Acquisition System;
- (ix) Liaison services between Host and Developer, as reasonably required, including operations and maintenance oversight and coordination; and
- (x) Liaison services between Host and Distribution Company, as reasonably required.

If Host requires additional services from CVEC not included in the Operational Costs Adder services described above, Host shall enter into a separate agreement with CVEC for such services. There are no implied services; unless they are expressly listed above, a separate agreement for additional services is required.

In exchange for the above services, CVEC shall be paid the Operational Cost Adder. The Operational Cost Adder shall be calculated as follows:

\$0.0075/kWh of energy production with an annual CPI adjustment after and thereafter on the Commercial Operation Date each year.

EXHIBIT F

SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS AGREEMENT

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