

ENERGY MANAGEMENT SERVICES AGREEMENT
FOR SOLAR PHOTOVOLTAIC SYSTEM
BETWEEN THE
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BROADWAY ELECTRICAL COMPANY, INC.

Standard Form/(v. 3.28.13) (Roof Mount)

Bourne Community Center

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BETWEEN THE
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BROADWAY ELECTRICAL COMPANY, INC.**

THIS ENERGY MANAGEMENT SERVICES AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM ("Agreement") is made and entered into as of this 25 day of September (the "Effective Date"), by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation ("User") and Broadway Electrical Company, Inc., a Massachusetts corporation ("Contractor"). User and Contractor are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, User and the Town of Bourne ("Host Town"), a member of User have entered into an Inter-Governmental Project Development Agreement dated September 19, 2013 ("Inter-Governmental PDA") for User to develop a roof mounted solar photovoltaic system ("PV System") located on Host Town's property (the "Premises") on which the Bourne Community Center ("Building") is located, as more particularly described in Exhibit A attached hereto;

WHEREAS, on behalf of the Host Town, User issued an energy management services request for proposals for a PV System (the "RFP");

WHEREAS, Contractor is in the business of designing, procuring, installing, testing, commissioning, owning, operating and maintaining solar power electric generation facilities;

WHEREAS, Contractor proposes to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises;

WHEREAS, User desires to have Contractor design, procure, install, test, commission, own, operate and maintain the PV System;

WHEREAS, User proposes to assign to Contractor the necessary rights to allow Contractor 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, Contractor desires to sell to User, and User desires to purchase from Contractor, 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, User desires, to the extent permitted by law, to net meter the Net Energy generated by the PV System during the Term for the benefit of Host Town and the Cooperative Members (as defined herein).

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

**ARTICLE I.
DEFINED TERMS; RULES OF INTERPRETATION**

1.1 Defined Terms. 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 4.2(a)(iv) 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 Energy Management Services Agreement, including all Exhibits, attachments, and schedules hereto and any amendments or addenda.

“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 in Exhibit C.

“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, factoring: (i) the life expectancy of the PV System (adjusted for reasonable depreciation); (ii) the Environmental Attributes; (iii) the current gross revenues and reasonably estimated future revenues; (iv) any other power sales agreements (or the value of the energy and capacity if used by the owner or operator), emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements which may reasonably arise from the ownership and operation of the PV System; and (v) the present and reasonably expected estimated future operating costs (including, but not limited to, routine operation and maintenance, taxes and insurance), all as determined by the Independent Appraiser.

“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; (vi) seeks or 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; (vii) 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; (viii) 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 (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Building" means the Bourne Community Center on the Premises, owned by Host Town, 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 as provided in the Common Technical Specifications attached as Exhibit D, hereto, is in compliance with Applicable Legal Requirements in all respects (including, but not limited to, a grant of permission to operate from the Distribution Company), and is capable of producing Energy and delivering it to the Point of Delivery.

"Commercial Operation Date" means the first day on which the PV System is ready for Commercial Operation, as certified in writing by Contractor to User in the Notice of Commercial Operation.

"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 Attachment C to the RFP and set forth in Exhibit D, hereto.

"Contractor" has the meaning set forth in the Preamble.

"Contractor Event of Default" has the meaning set forth in Section 9.2.

"Contractor Property" has the meaning ascribed to it in Section 4.1(a).

“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 the Contractor in the Project Development Schedule in Attachment J-1.

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

“Decommissioning Assurance” means adequate financial assurance, in a form reasonably satisfactory to User and in the amount set forth in Exhibit C hereto that is established and thereafter maintained by Contractor upon and after the Commercial Operation Date, to fully cover the cost of decommissioning the PV System and restoring the Rooftop Space on the Premises as specified in Section 4.7(h).

“Distribution Company” means NStar Electric Company 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.

“Effective Date” is the date first set forth in the introductory paragraph of this Agreement.

“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 and 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) financial based incentives under the Commonwealth Solar Initiative, (ii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iii) Renewable Energy Credits or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iv) tax credits, incentives or depreciation allowances established under any federal or state law, (v) payments under section 1603 of The American Recovery and Reinvestment Tax Act of 2009, as amended, (vi) energy investment tax credits under section 48 of the Internal Revenue Code of 1986, as amended, (vii) any Solar Carve-Out Renewable Generation Attribute (as such term is defined at 225 C.M.R. § 14.02) related to the PV System and in effect as of the Effective Date 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 Contractor has good and valid title. Environmental Attributes shall not include any capacity credits for the PV System or 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 Work 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 federal, state, local and other governmental and quasi-governmental laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of governmental and quasi-governmental authorities relating to human health, human safety or the environment or to any Hazardous Material) including, without limitation, any such law referenced in 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, the Federal Clean Air Act, 42 U.S.C. § 7411 et seq., as heretofore or hereafter amended from time to time, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as heretofore or hereafter amended from time to time, the Federal Clean Water Act, 33 U.S.C. § 1251 et seq., as heretofore or hereafter amended from time to time, the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as heretofore or hereafter amended from time to time, the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., as heretofore or hereafter amended from time to time, and all applicable Massachusetts environmental laws, as heretofore or hereafter amended from time to time.

“Financier” means any individual or entity providing money or extending credit for the PV System to Contractor for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Contractor.

“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 Contractor to User as a “Financing Agreement” under which Contractor or any Affiliate of Contractor obtains financing that is secured by all or substantially all of the assets of Contractor (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 the Agreement, including, but not limited to, Acts of God; 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. 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 the 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, 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, Distribution Company, 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 the Contractor to be generated by the PV System in a Contract Year, as set forth in 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.

“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 appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Host Town, any Cooperative Member, User, Contractor or any Affiliate of Contractor.

“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 User and reasonably acceptable to Contractor.) 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.

“Inter-Governmental PSA” means the Inter-Governmental Net Metered Power Sales Agreement for the PV System entered into between User and Host Town.

“ISO” means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) 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 Contractor, User 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 User.

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

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

“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 4.6(i) of this Agreement.

“Notice of Permits and Interconnection Costs” means the written notice from Contractor to User that Contractor has obtained all final permits or required approvals (excepting an interconnection agreement) required to construct the PV System and identifying all Distribution Company estimated infrastructure upgrade costs associated with interconnection of the PV System, as evidenced in writing by the Distribution Company.

“Outside Construction Commencement Date” means one hundred eighty (180) days after the Effective Date for a roof mounted PV System and three hundred (300) days after the Effective Date for a ground mounted PV System.

“Outside Commercial Operation Date” means fourteen (14) months from the Effective Date for a roof mounted PV System and eighteen (18) months from the Effective Date for a ground mounted PV System.

“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 or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

“Premises” has the meaning set forth in the Recitals to this Agreement, and is the area in which User has assigned to Contractor the necessary rights to design, procure, install, test, commission, own, operate, maintain and remove the PV System, as further identified in Exhibit A.

“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.

“Purchase Price” has the meaning ascribed to it in Section 13.3 of this Agreement.

“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.

“PV System Assets” means each and all of the assets of which the PV System is comprised, including Contractor’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators 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*).

“Real Property Rights” has the meaning set forth in Section 4.2(a) herein.

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

“Rooftop Space” means the area on the roof of the Building in which User has assigned to Contractor the necessary rights to design, procure, install, test, commission, own, operate, maintain and remove the PV System, as further identified in Exhibit A.

“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).

“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.

“Tariffs” means the Distribution Company’s Interconnection Agreement, M.D.T.E. No. 162-B (Standards for Interconnecting Distributed Generation), and Net Metering Tariff, M.D.P.U. No. 163, as approved in D.P.U. Docket 09-73 and subsequent amendments thereto.

“Term” has the meaning set forth in Section 3.2 herein.

“Total Project Cost” means the total cost for Contractor’s engineering, design, materials, labor and any other related costs to construct and install the PV System.

“User” has the meaning set forth in the introductory paragraph of this Agreement.

“User Event of Default” has the meaning set forth in Section 9.1.

ARTICLE II. OBLIGATION TO MODIFY AGREEMENT

Upon implementation by the Massachusetts Department of Public Utilities, the DOER, or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular (i) any rule or regulation regarding Net Metering, or (ii) any order, rule or regulation issued by the DOER pursuant to M.G.L. c. 25A, §11C or 225 C.M.R. § 10.08(8) requesting a modification to this Agreement, the Parties shall be obligated to amend this Agreement to conform to such rule(s), order(s) and/or regulation(s) to the extent that such amendments are Commercially Reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion. In the event that Contractor provides User with written notification certifying to User that any such amendment (excluding any future cost-sharing agreement by the Parties pursuant to Sections 3.3(a)(vii) or 3.3(a)(xii)) will increase the Total Project Cost by more than 10%, the Parties agree to use good faith efforts to request a waiver from DOER pursuant to 225 C.M.R. § 10.10. In the event that DOER denies any such waiver request, Contractor may, upon thirty (30) days’ written notice to the User, terminate this EMS Agreement without penalty and promptly remove the PV System from the Premises in accordance with Section 4.11 of this Agreement.

ARTICLE III. TERMS

3.1 **Conditions Precedent:** The obligations of the User and Contractor under this Agreement shall be conditioned upon the following requirements:

(a) execution by User and Host Town of the Inter-Governmental PDA as of or of even date with the Effective Date of this Agreement.

(b) execution by User and Host Town of the Inter-Governmental Power Purchase Agreement as of or of even date with the Effective Date of this Agreement.

3.2 Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Effective Date or such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

3.3 Early Termination.

(a) Early Termination by User. User may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(i) in the event that Contractor has not prepared for submission to the Distribution Company a complete interconnection application seeking authorization to construct and interconnect the PV System to the Distribution Company System within forty-five (45) days of the Effective Date;

(ii) if the PV System is to be constructed on a capped landfill, in the event that Contractor has not submitted an application to the Massachusetts Department of Environmental Protection within forty-five (45) days of the Effective Date for any necessary post-closure use permit;

(iii) in the event that Contractor has not provided User with initial notice (through confirmation letters from Contractor’s Financier(s) or other confirmation satisfactory to User in its reasonable discretion) of financing sufficient to purchase, construct, commission, own and operate the PV System, provided, however, that such confirmation letters or other confirmation may be conditional on due diligence, documentation and subject to credit approval (“Initial Notice of Financial Commitment”) within forty-five (45) days after the Effective Date;

(iv) in the event the User determines, in its sole and absolute discretion, that the PV System will not be eligible for Net Metering under the Distribution Company’s aggregate capacity cap. This right of termination exists for thirty (30) days upon User’s receipt of the Notice of Permits and Interconnection Costs;

(v) in the event that Contractor has not provided User with final notice (through confirmation letters from Contractor’s Financier(s) or other confirmation satisfactory to User in its reasonable discretion) of financing sufficient to purchase, construct, commission, own and operate the PV System, provided, however, that such final notice may contain customary conditions for closing and all borrowings (“Final Notice of Financial Commitment”) within forty five (45) days of the receipt of the last final and non-appealable permit or required approval (including interconnection agreements) required to construct the PV System;

(vi) in the event that Contractor has not entered into a binding purchase order for the major components of the PV System, including the PV panels, racking system, inverters and transformers within thirty (30) days after receipt of a fully executed Interconnection Agreement;

(vii) in the case of a ground mounted PV System, in the event that during the interconnection process the Distribution Company imposes a cost for utility upgrades greater than \$10,000 necessary to interconnect the PV System, and the Parties are not able to reach agreement within sixty (60) days of Contractor’s receipt of such notice from the Distribution

Company on how such cost will be allocated among the Parties. The Parties acknowledge and agree that in the event that such cost imposed by the Distribution Company is in excess of \$10,000, the Parties shall first consider Contractor's proposal for a Net Energy Price increase of \$0.0008 for every \$30,000 per megawatt required and billed by the Distribution Company, but in no way shall User be obligated to accept such proposal;

(viii) in the case of a roof mounted PV System, in the event that during the interconnection process the Distribution Company imposes a cost for utility upgrades necessary to interconnect the PV System, and the Parties are not able to reach agreement within sixty (60) days of Contractor's receipt of such notice from the Distribution Company on how such cost will be allocated among the Parties;

(ix) in the event that the Interconnection Agreement, in form and substance satisfactory to Contractor and User, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Contractor's submission of the interconnection application, provided, however, that User will extend the deadline for compliance with this subsection in thirty (30) day increments, upon User's determination, in its reasonable discretion, that Contractor is using Commercially Reasonable efforts to secure such Interconnection Agreement;

(x) in the event that Contractor has not obtained a Statement of Qualification from the Massachusetts Department of Energy Resources for the PV System to be eligible as a RPS Class I Solar Carve-Out Renewable Generation Unit as defined in and in accordance with 225 C.M.R. 14.00 et seq. within twelve (12) months of the Effective Date, provided, however, that User will extend the deadline for compliance with this subsection in thirty (30) day increments, upon User's determination, in its reasonable discretion, that Contractor is using Commercially Reasonable efforts to secure such Statement of Qualification;

(xi) if the PV System is to be constructed on a closed landfill, in the event that Contractor has not obtained a post-closure use permit from the Massachusetts Department of Environmental Protection for the construction of the PV System, within six (6) months of the Effective Date, provided however, that User will extend the deadline for compliance with this subsection in thirty (30) day increments, upon User's determination, in its reasonable discretion, that Contractor is using Commercially Reasonable efforts to secure such permit; or

(xii) in the event that during the permitting phase for the PV System, environmental mitigation measures are required to be undertaken on the Premises by the Department of Environmental Protection ("DEP") pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, §§61-62H), the Massachusetts Endangered Species Act (M.G.L. c.131A), the Wetlands Protection Act (M.G.L. c.131 s.40) or other Applicable Legal Requirements and the parties are not able to reach agreement within sixty (60) days of Contractor's receipt of such notice from the DEP or other Governmental Authority on how the costs for such environmental mitigation will be allocated among the Parties. The Parties acknowledge and agree that the Parties will first consider Contractor's proposal for a Net Energy Price increase of \$0.001/kWh for each \$20,000 per MW of environmental mitigation costs required by the DEP, but in no way shall User be obligated to accept this proposal.

(b) Early Termination by Contractor. Contractor may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(i) In the case of a ground-mounted PV System, there exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known and could not reasonably have been known as of the Effective Date and that could reasonably be expected to substantially increase the cost of the 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 may only be exercised if Contractor first notifies User of such conditions, requesting a reasonable adjustment to the Net Energy Price and User does not agree to such adjustment;

(ii) In the case of a roof-mounted PV System, if an independent engineer (chosen by the User and acceptable to the Contractor in its reasonable discretion) determines that the roof of the Building is structurally unsound, including, but not limited to, consideration of age of the roof, damage or destruction of all or part of the roof on the Rooftop Space from any source, or other factors relating to condition of the Rooftop Space;

(iii) Contractor is unable, despite Commercially Reasonable efforts which must be demonstrated to the reasonable satisfaction of User, to obtain financing for the PV System on terms and conditions reasonably satisfactory to Contractor within forty-five (45) days of the Effective Date; or

(iv) Contractor has not received documentation from User reasonably requested by Contractor's Financier, which is reasonably necessary to establish the priority of its security interest in the PV System and to ensure that Contractor will have access to the Premises throughout the Term.

(c) User's Right to Terminate Other Agreements with Contractor. User shall have the right, but not the obligation, to terminate any one or more of each energy management services agreement it may have with Contractor, or any Affiliate of Contractor ("Additional EMS Agreement"), prior to the Commercial Operation Date of such Additional EMS Agreement, in the event that there is a Special Event of Default by Contractor prior to the Commercial Operation Date hereunder. "Special Event of Default" means as a result of gross negligence or willful misconduct on the part of the Contractor, a breach has occurred under any of the following provisions in this Agreement or any Additional EMS Agreement:

(i) 4.2(a)(ii) (full compliance by the Contractor in all respects with all Applicable Legal Requirements);

(ii) 4.2(a)(iii) (full compliance with all Environmental Laws at the Premises and Building); or

(iii) 4.2(a)(iv) (full compliance with Section 2 of the Additional Exceptions).

(d) Notice/Waiver. In the case of termination pursuant to subsections (a) and (b) above, the terminating Party shall give the other Party thirty (30) days prior written notice of its intent to terminate within thirty (30) days after the occurrence of the applicable deadline. In the

event that a Party fails to provide such notice, the Party shall be deemed to have waived its right to terminate under the applicable subsection in question.

(e) User's Remedy Upon Early Termination. In the event this Agreement is terminated pursuant to Section 3.3(a), (b) or (c),

(i) Contractor shall pay to User within thirty (30) days of the termination date a sum of \$10,000 to cover User's cost to procure another contractor to design, procure, install, test, commission, own, operate and maintain a ground-mounted solar PV System; provided, however, that in no event shall the total amount paid by Contractor to User exceed \$100,000 in the aggregate for User's early termination pursuant to an energy management services agreement entered into between User and Contractor as a result of the RFP; and

(ii) User shall be entitled to all drawings, designs, permits, samples, applications, reports and approvals prepared and/or obtained by Contractor as of the termination date for development of the PV System.

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

4.1 Ownership of the PV System.

(a) Title. Subject to the rights provided to User pursuant to other terms hereof, the PV System and all alterations, additions, improvements or installations made thereto by Contractor and all Contractor property used in connection with the installation, operation and maintenance of the PV System is, and shall remain, the personal property of Contractor ("Contractor Property"). In no event shall any Contractor Property be deemed a fixture, nor shall User, nor anyone claiming by, through or under User (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Contractor Property at any time except as otherwise provided herein. Except as otherwise set forth in Section 4.12 (Abandonment of PV System), Section 4.13 (User's Right to Acquire the PV System) and Article 13 (PV System Purchase and Sale Options), User shall have no ownership of or other interest in the PV System or any PV System Assets or other equipment or personal property of Contractor installed on the Premises, and Contractor may remove all or any portion of the PV System or any PV System Assets at any time and from time to time as further provided in the Agreement. Without limiting the generality of the foregoing, User hereby waives any statutory or common law lien that it might otherwise have in or to the PV System and other PV System Assets or any portion thereof.

(b) Security Interests in PV System. Except as otherwise provided herein, User acknowledges and agrees that Contractor may grant or cause to be granted to a lender a security interest in the PV System and in Contractor's rights to payment under the Agreement.

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

4.2 Site Access. Contractor shall design, procure, install, test, commission, operate, maintain, repair and remove the PV System on the Rooftop Space of the Building on the Premises pursuant to and in strict conformance with the access provisions contained herein.

(a) User, for and in consideration of the covenants and agreements on the part of the Contractor contained herein, does hereby assign to Contractor as permitted by, and in accordance with, Sections 11.1(a) and 11.3(a) of the Inter-Governmental PDA all right, title and interest in and to the Real Property Rights granted to User pursuant to Section 2.1 of the Inter-Governmental PDA for the Term of this Agreement, subject to the conditions of this Section 4.2, for the sole and exclusive purpose of designing, procuring, installing, testing, commissioning, owning, operating, maintaining, repairing and removing the PV System. Contractor's use of the Premises is subject to the following:

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

(ii) full compliance by the Contractor in all respects with all Applicable Legal Requirements and User's obligations under the Inter-Governmental PDA;

(iii) full compliance with all Environmental Laws at the Premises. Contractor grants User and the Host Town the right to inspect the Building and Rooftop Space on the Premises for purposes of verifying Contractor's compliance with Environmental Laws.

(iv) full compliance with any additional exceptions, if any, set forth in Exhibit A-1 hereto, which may or may not include the conditions of a landfill closure order and landfill post-closure use permit, etc. (the "Additional Exceptions").

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

4.3 Quiet Enjoyment.

(a) User covenants that so long as no Contractor Event of Default has occurred and is continuing pursuant to Section 9.2, Contractor shall quietly have and enjoy use of the Rooftop Space on the Premises during the Term. User's exercise of self-help pursuant to Section 9.3 of this Agreement and rights of entry and inspection pursuant to Section 4.9 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, User and/or Host Town shall have the right to enter upon the Rooftop Space on 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) Contractor shall operate, maintain and repair the PV System in a manner that will not obstruct or interfere with User's or Host Town's use of the Premises or the rights of any other occupants of the Premises (including the Building and the roof of the Building), and Contractor will not injure or materially annoy any occupants of the Premises. In the event

interference occurs, Contractor agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the User. Contractor 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. User and/or Host Town may construct, reconstruct, modify or make alterations to the Rooftop on the Premises so long as such activities do not materially interfere (including shading) with the operation of the PV System. The Contractor acknowledges and agrees that Host Town 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 Town, and Contractor will use its best efforts to cooperate with Host Town's prosecution and completion of such work.

4.4 Subordination. Contractor acknowledges and understands that this Agreement and all rights of Contractor 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 Town with respect to the Premises. Contractor acknowledges and understands that the Host Town 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 Contractor's use of the Rooftop Space on the Premises and the operation of the PV System. User shall provide or shall cause Host Town to provide Contractor with reasonable notice in the event that Host Town grants such additional rights on the roof of the Building of the Premises to a third party.

4.5 As-Is Acceptance of the Premises. Contractor 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. Contractor accepts the Rooftop Space on 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 User and without recourse to User, 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. User 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 Contractor shall not be liable for any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date.

4.6 Construction of PV System by Contractor.

(a) Construction. Contractor shall, at its sole cost and expense, (i) construct, operate, and maintain the PV System in accordance with Applicable Legal Requirements, in good condition and repair in accordance with applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, as further identified in the Common Technical Specifications set forth in Exhibit D, applicable requirements of the insurance policies maintained by User and/or Host Town or Contractor with respect to the PV System, and the terms of this Agreement, and (ii) monitor the PV System performance to ensure that any PV System malfunction causing a loss of Net Energy will be discovered and rectified in accordance with industry standards. The PV System will, when completed, comply with all Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit D, except as waived thereunder.

(b) Use of Installation and/or Maintenance Subcontractors. Contractor may use qualified subcontractors to install the PV System, provided that Contractor shall obtain the prior written approval of User for Major Subcontractors and shall at all times remain fully responsible for the acts and omissions of all subcontractors. Installation and maintenance subcontractors shall be required to meet the insurance requirements set forth in Section 11.1, provided, however, that satisfaction of such requirements shall not relieve Contractor of its responsibilities for such subcontractors as set forth in this Section 4.6(b). Contractor shall in good faith advertise locally on Cape Cod and Martha's Vineyard, as applicable, for installation and/or maintenance subcontractors to install the PV System. For purposes of this Section 4.6(b), "Major Subcontractors" means any subcontractor(s) that Contractor intends to engage for services related to installation and maintenance of the PV System under a contract having an aggregate value in excess of twenty-five thousand dollars (\$25,000). Contractor shall notify User of the proposed Major Subcontractor(s) at the earliest practical point in its selection process and furnish to User all information reasonably requested by User with respect to Contractor's selection criteria (including copies of bid packages furnished to prospective Major Subcontractors and the qualifications of proposed Major Subcontractors). User shall have the right to reject for good cause any proposed Major Subcontractor. If at the end of ten (10) Business Days after receipt of such information by User, Contractor has not received notice of User's rejection of the proposed Major Subcontractor, Contractor shall have the right to execute a contract with the proposed Major Subcontractor.

(c) Use of the Premises. Contractor and its subcontractors, agents, consultants, and representatives shall have reasonable access at all reasonable times (including under emergency conditions) to the necessary portion of the Building and Rooftop Space on the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the PV System, and to any documents, materials and records of User relating to the Premises that Contractor reasonably requests in conjunction with these activities. Contractor shall provide User reasonable notice of all activities conducted by or on behalf of Contractor on the Building and Rooftop Space on the Premises relating to the PV System. During any such activities, Contractor, and its subcontractors, agents, consultants and representatives shall comply with Host Town's reasonable safety and security procedures (as may be promulgated from time to time) and Contractor and its subcontractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with User's and Host Town's activities.

(d) Construction Commences Promptly. Contractor shall commence the design, engineering and permitting of the PV System promptly following the Effective Date and will proceed diligently and continuously thereafter with construction until completion, subject to a *Force Majeure* event. A schedule of milestones related to completion of the PV System is attached as Exhibit J.

(e) Governmental Approvals. Except as otherwise specified herein, the Contractor shall be responsible at its sole cost for designing, financing, procuring, installing, testing, commissioning, operating and maintaining the PV System and obtaining all approvals and permits required under the Applicable Legal Requirements for Contractor's use of the Premises and for the PV System from any Governmental Authority having jurisdiction in the matter. Contractor will promptly inform User of all significant developments relating to the issuance of

such approvals or permits. User will, and will cause Host Town to reasonably cooperate with Contractor in procuring such approvals. If any changes in such plans and/or specifications are required by any Governmental Authority, then Contractor shall submit such changes, if any, to User for its approval, which shall not be unreasonably conditioned, withheld or delayed. The Contractor shall be responsible for obtaining a Statement of Qualifications from the Department of Energy Resources to qualify the PV System as a RPS Class I Solar Carve-Out Renewable Generation Unit in accordance with, and as such term is defined in, 225 C.M.R. 14.00 et seq. for participation in the Massachusetts Solar Carve-Out Program. If the PV System is to be built on a capped landfill, Contractor shall be responsible for obtaining any and all necessary permits and approvals from the Massachusetts Department of Environmental Protection.

(f) Ownership of Drawings, Reports and Other Materials. All drawings, reports and materials prepared by the Contractor specifically in the performance of this Agreement shall, upon reasonable request, be made available to User.

(g) Reporting.

(i) Ten (10) days prior to the first anniversary of the Effective Date, and every year thereafter on the same date, and upon the reasonable request of User, Contractor shall provide User with an electronic report of the energy generation from the PV System, consistent with the letter and intent of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines, for use in User's annual report to DOER pursuant to 225 C.M.R. § 10.07.

(ii) Contractor shall provide User access to the PV System's data acquisition system required pursuant to Section 13 of the Common Technical Specifications set forth in Exhibit D to this Agreement.

(h) Interconnection with Distribution Company System. Except as otherwise provided herein, Contractor will obtain at its sole cost all approvals and agreements required for Contractor's interconnection of the PV System to the Distribution Company System. Contractor will promptly inform User 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 Contractor shall submit such changes, if any to User for its approval, which shall not be unreasonably withheld.

(i) Notice of Commercial Operation. Subject to the provisions of this Agreement, Contractor shall notify and represent to User when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to User the Commercial Operation Date.

(j) Record Plans. Within ninety (90) days following the issuance of the Notice of Commercial Operation, Contractor shall prepare and deliver to User detailed record plans accurately depicting the PV System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

4.7 Duty to Maintain.

(a) Maintenance; Repairs.

(i) Contractor shall take good care of the Rooftop Space on the Premises and the PV System, conduct all required maintenance and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Rooftop Space on the Premises and the PV System in first class order, repair and condition (“Contractor’s Maintenance Obligations”).

(ii) User shall have no duty or liability to Contractor with respect to the maintenance, repair or security of the Premises or the PV System.

(iii) Any damage caused by Contractor or its subcontractors to the Premises or other property not belonging to Contractor or its subcontractors shall be repaired at Contractor’s expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

(iv) Nothing in this Agreement shall limit Host Town’s ability to maintain the Building or the Premises in a reasonable manner consistent with Host Town’s current and past practices, the Additional Exceptions set forth in Exhibit A-1, and any other conditions imposed by a Governmental Authority that are applicable to the Building or the Premises.

(b) Alterations. Contractor shall have the right from time to time both before and after the Commercial Operation of the PV System and at Contractor’s sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the Rooftop Space Premises as is reasonably required to conduct its obligations hereunder, in compliance with the provisions of the Agreement, 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 4.7(b)(i), a “Substantial Alteration”);

(ii) No Substantial Alteration shall be commenced except after prior written notice to and consent from User, which consent shall not be unreasonably withheld;

(iii) 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 and the Additional Exceptions; and

(iv) No later than completion of any alteration or Substantial Alteration, Contractor will provide User with complete copies of all final plans and specifications therefor not previously provided.

(c) Utilities. Contractor shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or

used by it, including, without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. User and Host Town shall have no duty or liability to Contractor with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by User, Host Town, or any third party, nor shall User or Host Town have any liability to Contractor (including, without limitation, liability for lost revenue) arising from User's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Contractor desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Host Town, Contractor may do so at Contractor's expense subject to the approval of User and Host Town, which shall not be unreasonably withheld.

(d) Compliance with Laws; Professional Standards. Contractor, at Contractor'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). In addition, Contractor shall ensure that the PV System is operated and maintained in a professional manner by appropriately trained and qualified individuals.

(e) Major Equipment Assurance. Upon issuance of the Final Notice of Financial Commitment, Contractor shall notify User whether it intends to provide a major equipment assurance bonding alternative pursuant to this Section 4.7(e) or the Payment and Performance Bond pursuant to Section 4.7(f)(ii). If Contractor elects to use the major equipment bonding alternative, within fifteen (15) days after the Notice of Financial Commitment, Contractor shall provide User with a copy of an escrow agreement, in substantially the same form as attached in Exhibit G hereto, to satisfy Contractor's payment and performance obligations for the purchase of major components of the PV System (including PV modules, racking system, combiner boxes, cable and inverters). Such escrow agreement shall remain in effect until all suppliers of the major components are paid in full. The final escrow agreement shall be in a form and amount subject to the reasonable approval of User.

(f) Payment and Performance Bond.

(i) In the event that Contractor elects to use the major equipment assurance alternative pursuant to Section 4.7(e), at least fifteen (15) days prior to the Construction Commencement Date, Contractor shall provide User with a performance bond ("Performance Bond") limited to all construction costs excluding the costs of the major components (including P.V. modules, racking systems, combiner boxes, cable and invertors) from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570 and a payment bond ("Payment Bond") limited to all construction costs excluding the costs of the major components (including P. V. Modules, racking systems, combiner boxes, cable and invertors) from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to User to secure Contractor's remaining obligations for the installation, construction and commissioning of the PV System, or, prior to completion of installation, construction and commissioning of the PV System, Contractor's removal and restoration obligations under this Agreement. The Performance Bond and Payment Bond shall name User and Host Town as obligees as their interests may appear. The Performance Bond shall remain in effect until sixty (60) days after delivery by Contractor to User of the Notice of

Commercial Operation, unless (a) fully drawn upon earlier by User, (b) User has provided some notice to Contractor 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) User 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 Contractor has fulfilled its removal and restoration obligations under this Agreement. The Payment Bond shall be released upon the later of: (a) receipt by User of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full; or (b) the Commercial Operation Date. User understands and agrees that prior to delivery to the Premises of the major PV System components (including PV modules, racking systems, combiner boxes, cables and invertors), Contractor's obligations to subcontractors and suppliers of all such major components will be secured through the escrow agreement in accordance with Section 4.7(e) hereunder. Contractor agrees that pursuant to such escrow agreement, among other things, upon delivery to the Premises and acceptance of such major components, all suppliers of such major components will be paid in full and at such time Contractor shall have title to such major components free and clear of all liens (except as otherwise permitted herein).

(ii) If Contractor does not elect to use the major equipment assurance alternative pursuant to Section 4.7(e), then at least thirty (30) days prior to the Construction Commencement Date, Contractor shall provide User 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 User (the "Performance Bond"), which Performance Bond shall be in an amount sufficient to secure 100% of Contractor's obligations with respect to the construction of the PV System under this Agreement or, prior to completion of construction and commissioning of the System, Contractor's removal and restoration obligations under this Agreement. The Performance Bond shall name User and Host Town as obligees as their interests may appear. The Performance Bond shall remain in effect until sixty (60) days after delivery by Contractor to User of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by User, (b) User has provided notice to Contractor 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) User 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 Contractor has fulfilled its removal and restoration obligations under this Agreement. In addition, at least thirty (30) days prior to the Construction Commencement Date, Contractor shall provide User 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 User (the "Payment Bond"). The Payment Bond shall name User and Host Town as obligees as their interests may appear. The Payment Bond shall be released upon the later of: (a) receipt by User of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full; or (b) the Commercial Operation Date.

(g) Mechanics Liens. Contractor shall not file any mechanics liens against User or Host Town for its work performed in accordance with this Agreement and this requirement shall flow down to all of Contractor's subcontractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or the PV System, Contractor, within ten (10) days after notice to Contractor 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 Contractor shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, User 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 User and costs and expenses reasonably incurred by User in connection therewith, together with interest thereon at the Interest Rate from the respective dates of User's making of the payment of the cost and expenses, shall be paid by Contractor to User within ten (10) Business Days of User's invoice therefor.

(h) Decommissioning Assurance. Upon the issuance of the Notice of Commercial Operation, Contractor shall establish and maintain thereafter adequate financial assurance, in substantially the form set forth in Exhibit G hereto, or another form reasonably acceptable to the User, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Depending on the circumstances, and subject to User's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide User with adequate rights to access the Decommissioning Assurance in the event of Contractor's failure to comply with its PV System removal and Premises restoration obligations under the Agreement. The guaranteed Decommissioning Assurance amount for the PV System is set forth in Exhibit C.

(i) Additional Security. Upon the Effective Date, Contractor shall provide a Letter of Credit in substantially the form set forth in Exhibit H hereto in the amount of \$100,000 to cover Contractor's initial performance obligations under this Agreement and the Additional EMS Agreements during the design, engineering and permitting phase for the PV System. Upon the Construction Commencement Date, Contractor shall provide a replacement Letter of Credit in the amount of \$2,000,000.00 to cover all of Contractor's obligations under this Agreement and the Additional EMS Agreements, except for decommissioning assurance required pursuant to Section 4.7(h). In addition, at such time as this Agreement is assigned by Contractor to a special purpose vehicle as authorized in Section 16.1(a), Contractor shall provide a guaranty, in substantially the form set forth in Exhibit I hereto to cover all of Contractor's performance and payment obligations under this Agreement. Upon reasonable request during the term of this Agreement and on a continuing basis, Contractor will provide User with Commercially Reasonable proof of its ability to meet its performance and payment obligations to User pursuant to this Agreement. Contractor will provide User with a copy of audited financial statements of the guarantor under the guaranty as reasonably requested by User throughout the Term.

4.8 Late Completion and Contractor 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 User's failure to perform its obligations hereunder, Contractor shall pay to User lost revenues plus User's administrative costs as the basis for damage ("Delay Liquidated Damages"), as set forth in the Special Terms and Conditions attached as Exhibit F. Notwithstanding the foregoing, Contractor shall not be responsible for Delay Liquidated Damages in the event that Contractor cannot satisfy the Outside Construction Commencement Date and/or Outside Commercial Operation Date

milestone because Contractor lacks a permit, approval or Interconnection Agreement necessary to commence construction and/or Commercial Operation of the PV System, and Contractor is utilizing Commercially Reasonable efforts to secure such permit, approval or Interconnection Agreement. 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 User. Payment of Delay Liquidated Damages shall not preclude User from seeking other damages at law or equity to which it may be entitled as a result of Contractor'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.

(b) Design and Permit Review. Contractor shall pay to User a sum certain for oversight of the design and permitting of the PV System, at the time and in the amount set forth in Exhibit F, hereto.

4.9 Inspection and Entry. During the course of construction and completion of the PV System and any substantial alteration thereto, Contractor shall maintain all plans, shop drawings, and specifications relating to such construction which User, its 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. User and/or Host Town may, upon reasonable prior notice to Contractor, enter upon the Rooftop Space Premises and inspect the PV System for the purpose of ascertaining the condition or whether Contractor is observing and performing the obligations assumed by it under this Agreement, all without hindrance or interference from Contractor. User shall promptly notify Contractor 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.

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

4.11 Removal of the PV System. Except as otherwise provided herein, Contractor shall, within one hundred twenty (120) days following the end of the Term and at Contractor's sole cost and expense, remove the PV System from the Rooftop Space and restore the Rooftop Space Premises to its original condition, normal wear and tear excluded.

4.12 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 User, be deemed to have been abandoned, and title to the PV System shall automatically vest in the User or its assignee, without the necessity of any deed,

conveyance, bill of sale or other written instrument transferring title. In the event User deems the PV System abandoned pursuant to this Section 4.12, Contractor shall be obligated to provide User 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.

4.13 User's Right to Acquire the PV System. The Parties agree if this Agreement is terminated due to the expiration of the Term and User notifies Contractor of User's intention to exercise the Purchase Option pursuant to Article XIII (PV System Purchase and Sale Options), then User shall temporarily waive Contractor's duty to comply with Section 4.11 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, User has not notified Contractor of its election to exercise the Purchase Option and further extend the waiver of Contractor's duty to comply with Section 4.11.

4.14 Host Town's Building Maintenance. Contractor acknowledges that Host Town may need to temporarily remove or relocate the PV System in order to perform routine or necessary Building maintenance, including, but not limited to, repair or replacement of the roof of the Building. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Contractor shall be solely responsible): (i) Host Town will provide Contractor with at least thirty (30) days prior written notice of its intent 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); (ii) In such notice, Host Town will identify an independent engineer to inspect the Building and certify that Host Town's requested removal or relocation of the PV System is required to perform routine or necessary Building maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency response work has occurred) and Contractor will have no obligation to temporarily remove or relocate the PV System unless the independent engineer provides such certification; (iii) Host Town will be responsible for any and all costs incurred in the relocation of the PV System to and from the temporary location (except for the costs of the independent engineer, which are the sole responsibility of the Contractor); (iv) any such relocation shall be performed by Contractor (except that, in the case of an Emergency, Host Town may perform such activities as are reasonably necessary in light of such Emergency); (v) the first temporary relocation shall not be for more than sixty (60) days; (vi) Host Town may not request more than one relocation per Contract Year; and (vii) in the event that a temporary relocation is for longer than sixty (60) days or if there has already been at least one relocation during the Term, Host Town, through User, shall promptly pay Contractor for any lost revenue (that would have been paid to Contractor by User) during the relocation. Such lost revenue shall be based on Net Energy averaged over the prior twelve (12) months multiplied by the Net Energy Price as specified in Exhibit C. If less than twelve (12) months of historic data is available, Contractor shall be entitled to estimate the expected Net Energy using Good Engineering Practice. In no case shall Host Town or User be responsible to Contractor under this Section 4.14 for any lost S-REC revenue. User and Host Town agree to work in good faith in accordance with the recommendations of the independent engineer to minimize the timing of a temporary removal or relocation of the PV System. Contractor and User agree that the Guaranteed Annual Output for a Contract Year will be reduced, as appropriate, to account for any time in which the PV System is temporarily displaced. For purposes of this Section 4.14, "Emergency" shall mean any event, condition or circumstance at or affecting the Premises that would, in the reasonable opinion of

Host Town, materially and substantially harm life or property on the Premises without immediate preventative or remedial action.

4.15 Notice of Lease and Sublease. User shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and shall provide Commercially Reasonable assistance as necessary for Contractor 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. Contractor shall be responsible for all reasonable documented costs of recording the Notice of Lease and Notice of Sublease.

ARTICLE V. PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

5.1 Purchase and Sale of Net Energy.

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

(b) To the extent permitted by law, User shall obtain Net Metering Credits for the Net Energy in accordance with Schedule Z of the interconnection application filed by Contractor with the Distribution Company on User's behalf.

5.2 Price for Net Energy.

(a) User shall pay Contractor for the Net Energy, as metered at the Metering Device(s), at the applicable Net Energy Price. The payment made by User to Contractor shall equal the Net Energy for the relevant period multiplied by the Net Energy Price for such period.

(b) Adjustments to Net Energy Price. In all cases, any adjustments in the Net Energy Price shall be made to the nearest thousandth of a cent.

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

5.4 Net Metering. Subject to the provisions of this Agreement, each of Contractor and User 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 as a Solar Net Metering Facility, pursuant to M.G.L. c. 164, §§138 – 140, 220 C.M.R. §18.00, and the Tariffs, as may be amended from time to time by a Governmental Authority. User and Contractor acknowledge and agree that User or Host Town (if so designated by User) shall act as the Host Customer, as defined in 220 C.M.R. §18.02 of the Distribution Company's Net Metering Tariff, M.D.P.U. No. 163, for the PV System. To the

extent that the Distribution Company elects not to purchase Net Metering Credits from User, User shall assign the Net Metering Credits to Host Town and the Cooperative Members.

5.5 Governmental Charges.

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

(b) Contractor is responsible for all real property taxes, assessments, and all personal property taxes, use taxes and all other charges and fees assessed against the PV System. The Parties acknowledge and agree that within thirty (30) days of Contractor's payment of such charges and fees, Contractor will invoice User for the same, and User will have ninety (90) days to reimburse Contractor for such charges and fees.

(c) Contractor is responsible for any Governmental Charges attributable to the sale of Net Energy from Contractor to User or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of Net Energy to User at the Point of Delivery or to the Distribution Company System.

(d) 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.

5.6 Guaranteed Annual Energy Output.

(a) Contractor 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, the Contractor shall owe User 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. User may elect to set-off payments due and owing under Section 5.2(a) against the Production Shortfall damages payable to User under this Section 5.6(b) for the first two (2) billing cycles of the subsequent Contract Year. In the event that any damages remain payable to User after the second billing cycle, Contractor shall pay User the remaining amounts due within thirty (30) days of the end of the second billing cycle.

5.7 Interference with PV System. If Contractor provides written notification to User reasonably certifying to User that Host Town is in breach of a non-monetary material obligation under the Inter-Governmental PDA which could reasonably be expected to have a material adverse impact on the PV System's production of Net Energy (including material delays in

construction of the PV System that are not the result of Host Town acting in its regulatory capacity or exercise of police powers) or Contractor's ability to comply with: (i) Contractor's Maintenance Obligations; or (ii) the Common Technical Specifications, User shall notify Host Town of such breach within five (5) Business Days of receipt of notice from Contractor. If Host Town does not dispute the breach and the breach results in a Host Town event of default pursuant to Section 8.2(d) or 8.2(e) of the Inter-Governmental PDA, User shall seek damages from Host Town for the benefit of Contractor pursuant to Section 8.5 (d) or Section 8.5 (e) of the Inter-Governmental PDA, as applicable. User shall, on a monthly basis, collect such damages and remit payment to Contractor on a monthly basis. Notwithstanding anything to the contrary in Section 14.1 (Dispute Resolution) of this Agreement, and in accordance with Section 8.5(c) of the Inter-Governmental PDA, if Host Town provides written notice disputing notice of a Host Town breach pursuant to Section 8.2(d) or Section 8.2(e) of the Inter-Governmental PDA prior to the expiration of Host Town's cure period, the Parties, together with Host Town, shall attempt to resolve the dispute through mediation. The Parties and Host Town shall agree to a neutral and otherwise qualified mediator. If the Parties and Host Town fail to agree upon a mediator, the Parties and Host Town shall request that the American Arbitration Association, Boston, Massachusetts appoint a mediator. The Parties agree that the mediation shall occur on an expedited basis and shall last no longer than five business days. The Parties will bear their own costs of mediation. If at the expiration of the mediation, Host Town maintains its dispute of a Host Town breach under Section 8.2(d) or Section 8.2(e) of the Inter-Governmental PDA, User acknowledges that Contractor may seek judicial enforcement of this Agreement in the sole venue of Barnstable County Superior Court, Massachusetts. 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. Contractor and User acknowledge that the Host Town is a necessary party to any civil action advancing allegations of a Host Town default under Section 8.2(d) or Section 8.2(e) of the Inter-Governmental PDA (the "Action"). Cooperative or Contractor will not oppose any motion, request or assertion by the Host Town, pursuant to Rule 24 of the Massachusetts Rules of Civil Procedure, seeking to intervene as a necessary party to the Action.

ARTICLE VI. ENVIRONMENTAL ATTRIBUTES

6.1 Title to Environmental Attributes. All Environmental Attributes relating to the PV System or the Net Energy will be and remain property of Contractor. Contractor shall have all right, title, and interest in and to any and all Environmental Attributes, and User shall have no right, title or interest in or to any such Environmental Attributes. The Parties shall use Commercially Reasonable efforts to allocate the value of any Shared Environmental Attributes between each other on a 50/50 basis.

6.2 Reporting of Environmental Attributes. In accordance with Section 4.6(e) of this Agreement, Contractor 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 6.1, User shall not report to any Person that any Environmental Attributes relating to the Net Energy belong to any Person other than Contractor.

**ARTICLE VII.
METERING DEVICE(S) AND METERING; BILLING**

7.1 Metering Equipment. The Parties acknowledge and agree that Contractor shall provide, install, own, operate and maintain the Metering Device(s). Contractor shall maintain and test the Metering Device(s) in accordance with Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit D.

7.2 Measurements. Contractor shall provide, install, own, operate 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 User. Contractor 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. Contractor 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 7.3(d) below.

7.3 Testing and Correcting.

(a) Twice per calendar year, User 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 User 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 Contractor 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) Contractor shall promptly cause the Metering Device(s) found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy; (ii) Contractor shall send an invoice to User 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) Contractor 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, Contractor shall reimburse User for the amount paid by User in consideration for that Net Energy. If as a result of such adjustment the quantity of Net Energy for any period is increased, User 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 User or Contractor.

(c) In the event that the Metering Device(s) is for any reason out of service or fails to register, and as a result, the Distribution Company refuses to allocate to User's designees or otherwise to purchase the Net Metering Credits associated with the Net Energy generated during

that affected period, Contractor shall have no obligation to User with respect to those Net Metering Credits.

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

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

7.4 **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), Contractor shall calculate the amount due and payable to Contractor pursuant to Exhibit A, with respect to the immediately preceding month, and shall forward to User an invoice, identifying PV System production data from the Contractor's Metering Device, and including such calculation, with sufficient detail for User 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.

7.5 **Payment.** Within twenty-one (21) days of the receipt of Contractor's invoice pursuant to Section 7.4 (Billing), User shall pay Contractor any amounts due and payable hereunder for Net Energy delivered during the prior month, for which Contractor has submitted an invoice to User pursuant to Section 7.4 (Billing). All such invoices shall be paid by mutually agreeable method(s), to the account designated by Contractor. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures pursuant to this Section 7.5 shall not be subject to any interest charge in favor of User or Contractor. Notwithstanding the foregoing, User shall not be required to pay Contractor for Net Energy delivered to User during any period in which User is exercising its step-in rights in accordance with Section 9.3(b)(ii) of this Agreement.

7.6 **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 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 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 VII, the Parties shall follow the procedure set forth in Article XIV (Dispute Resolution; Governing Law).

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

8.1 PV System Loss.

(a) Contractor shall bear the risk of any PV System Loss, except to the extent such PV System Loss results from the negligence of User or Host Town or User's or Host Town's agents, representatives, customers, vendors, visitors, employees, contractors, or invitees ("User Misconduct").

(b) In the event of any PV System Loss that, in the reasonable judgment of Contractor, results in less than total damage, destruction or loss of the PV System, this Agreement shall remain in full force and effect and Contractor has the option, at Contractor's absolute and sole discretion and sole cost and expense, to repair or replace the PV System as quickly as practicable. Contractor shall be entitled to all proceeds of insurance with respect to the PV System in connection with any PV System Loss. If Contractor elects not to repair or replace 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. $200 \text{ kW} / 2000 \text{ kW}$). Contractor shall however pay User an amount equal to the net present value of the Foregone User Benefit, using a discount factor of 3%, such amount not to exceed the replacement value of the part of the PV System affected by the PV System Loss. Foregone User Benefit is defined as (i) in the year of occurrence, the difference between the G1 rate in the 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 is assumed to increase by 3% per year. In the event that Contractor elects to repair or replace the PV System pursuant to this Section 8.1(b), Contractor shall be responsible for any Production Shortfall that occurs during the repair/replacement period.

(c) In the event of any PV System Loss that, in the reasonable judgment of Contractor, results in total damage, destruction or loss of the PV System, Contractor shall, within

twenty (20) Business Days following the occurrence of such PV System Loss, notify User whether Contractor is willing to repair or replace the PV System. In the event that Contractor notifies User that Contractor 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 Contractor 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 User. In the event that a total PV System Loss resulted from or arose out of any cause other than a Force Majeure, and Contractor has opted not to repair or replace the PV System, Contractor shall pay User an amount equal to the net present value of the Foregone User Benefit, using a discount factor of three percent (3%), such amount not to exceed the replacement value of the PV System. In the event that (i) a total PV System Loss resulted from or arose out of a Force Majeure and (ii) Contractor has opted not to repair or replace the PV System, Contractor shall pay to User the lesser of (A) the Foregone User Benefit as described in the preceding sentence or (B) the positive difference, if any, between the actual amount of property insurance proceeds received by Contractor with respect to the PV System in connection with such PV System Loss and the Appraised Value of the PV System as of the date immediately prior to the Force Majeure that caused the total PV System Loss, to be determined by an Independent Appraiser in accordance with Section 13.4, with reference, if applicable, to the Purchase Price amounts set forth in Exhibit C; provided, however, that it shall be a condition precedent to Contractor's ability to elect to pay the amount set forth in Section 8.1(c)(ii)(B) that Contractor shall have in place, at the time of making such election, an operational property damage insurance policy in respect of the PV System, for an amount of not less than the full replacement value of the PV System, which shall include sublimits, aggregates, deductibles and other terms, conditions and exclusions that are reasonably consistent with prudent industry practices as determined by Contractor. Foregone User Benefit is defined as (i) in the year of occurrence, the difference between the G1 rate in the year of occurrence of the PV System Loss and the Net Energy Price multiplied by the Expected Annual Output adjusted for the Annual System Degradation Factor and (ii) for subsequent years the G1 rate is assumed to increase by 3% per year.

8.2 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Party affected by Force Majeure will use Commercially Reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

8.3 Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure for a consecutive period of six (6) calendar months or longer, the non-Claiming Party may terminate this Agreement, in whole or in part, without any liability to the Claiming Party as a result of such

termination and Contractor shall promptly remove the PV System from the Premises in accordance with Section 4.11 of this Agreement.

**ARTICLE IX.
DEFAULT; TERMINATION; REMEDIES**

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

(a) User breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Contractor of the breach;

(b) User 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 User;

(c) If any material representation or warranty made by User in Article X (Representations and Warranties; User 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) User becomes Bankrupt;

(e) User fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within three (3) Business Days after receipt of written notice from the Contractor;

(f) User fails to carry out its obligations and duties pursuant to Section 4.3 (Quiet Enjoyment);

(g) User 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 User under this Agreement; or

(h) 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 Contractor of the breach.

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

(a) Contractor breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by User of the breach;

(b) Contractor fails to make any payment due under this Agreement (i.e. amounts payable to User for any Production Shortfall pursuant to Section 5.6(b) and Indemnification pursuant to Section 11.2 or 11.3) 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 Contractor;

(c) If any material representation or warranty made by Contractor in Article X (Representations and Warranties; User 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) Contractor becomes Bankrupt;

(e) Contractor fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within three (3) Business Days after receipt of written notice from the User;

(f) failure by the Contractor to commence construction of the PV System on or before the Outside Construction Commencement Date, or achieve Commercial Operation of the PV System on or before the Outside Commercial Operation Date;

(g) For any reason other than an event of *Force Majeure*, Contractor is unable to provide Net Energy to User for sixty (60) 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 Contractor shall have thirty (30) days to cure such default if Contractor is using Commercially Reasonable efforts to cure such Contractor Event of Default during the original sixty (60) day period;

(h) Contractor 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 Contractor 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 User of the breach.

9.3 Remedies.

(a) Financier Step-In. User agrees to give written notice to any Financier (of which User has written notice) upon a Contractor 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 to cure the Triggering Event if Financier uses Commercially Reasonable efforts to cure such Contractor 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 Contractor Event of Default within such a reasonable period of time thereafter.

(b) User Cure and Step-In. In the event that Financier elects not to step-in or fails to cure pursuant to Section 9.3(a), above, or User has no written notice of a Financier:

(i) User, without being under any obligation to do so and without waiving such Contractor Event of Default, may remedy such default for the account of Contractor, immediately upon notice to avoid forfeiture of a material right, after User notifies Contractor in writing of User's intention to remedy such other default. All costs reasonably incurred by User to remedy such default (including, without limitation, all reasonable attorney's fees), shall be at the expense of Contractor.

(ii) Regardless of whether User exercises its rights pursuant to Section 9.3(b)(i) above, User shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements, to take possession of the PV System and to operate the PV System upon the occurrence of a Contractor Event of Default until Contractor demonstrates to the reasonable satisfaction of User that the events giving rise to the Contractor Event of Default have been cured, and that Contractor has taken all reasonably necessary steps to ensure that such events shall not re-occur. User shall not be liable to Contractor for any damages, losses or claims sustained by or made against Contractor as a result of User's exercise of possession and operational control of the PV System except to the extent such damages, losses or claims result from the negligence or willful misconduct of User.

(c) User Termination; PV System Purchase Rights. In the event that Financier elects not to step-in or fails to cure pursuant to Section 9.3(a), above, or User has no written notice of a Financier and elects not to cure such default pursuant to Section 9.3(b), above, User shall have the right, but not the obligation, to:

(i) terminate this Agreement upon thirty (30) days notice and seek monetary damages from Contractor in an amount equal to the product of: (x) the Net Energy Price; and (y) the Guaranteed Annual Energy Output for the remaining Contract Years of the expected twenty (20) year term of this Agreement, provided however, that if User has claimed Net Metering Credits for the PV System, this subsection (c)(i)(x) shall be adjusted to reflect the difference between the applicable Net Metering Credit value and the Net Energy Price. If User has claimed Net Metering Credits for the PV System, and the Parties are unable to reach agreement on the value of Net Metering Credits to apply to the calculation of monetary damages, User shall have the right to provide a notice to the Contractor requiring an appraisal to determine the value of such Net Metering Credits, in accordance with the following:

1) Within twenty (20) Business Days of Contractor's receipt of a notice provided under Section 9.3(c)(i), Contractor and User shall each propose an Independent Appraiser. If Contractor and User do not agree upon the appointment of an Independent Appraiser within such twenty (20) Business Day period, then at the end of such twenty (20) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Contractor and User. Such selection shall be final and binding on Contractor and User.

2) The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the value of the Net Metering Credits in accordance with Section 9.3(c)(iv) (the “Preliminary Determination”).

3) Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Contractor and User, together with all supporting documentation that details the calculation of the Preliminary Determination. Contractor and User shall each have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the selected Independent Appraiser shall issue its final determination (the “Final Determination”) to Contractor and User, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the selected Independent Appraiser shall be final and binding on the Parties.

4) If User requests an appraisal pursuant to Section 9.3(c)(i) above, the value of the Net Metering Credits applicable to the calculation of monetary damages payable by Contractor pursuant to Section 9.3(c)(i) shall be equal to the value set forth in the Final Determination.

5) Contractor and User shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s); or

(ii) purchase the PV System pursuant to Article 13 (PV System Purchase and Sale Options) and seek monetary damages from Contractor in the amount set forth in Section 9.2 (c)(i), above, provided that User shall be able to offset the Alternative Purchase Price of the PV System determined in accordance with Article XIII against the amount of monetary damages due and owing User pursuant to this Section 9.3(c)(ii).

9.4 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.

9.5 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.

ARTICLE X. REPRESENTATIONS AND WARRANTIES; USER ACKNOWLEDGEMENT

10.1 Representations and Warranties by User. As of the Effective Date, User represents and warrants to Contractor as follows:

(a) User 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 User has full authority to do so and to fully bind User;

(c) Except as set forth in Exhibit O, User 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 User or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or User'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 User to Contractor 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) User 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) User represents and warrants that this Agreement, as amended, has been presented to the Host Town and that the final form of this Agreement will be included as an exhibit to the Inter-Governmental PDA and the Inter-Governmental PSA.

10.2 Representations and Warranties by Contractor. As of the Effective Date of this Agreement, Contractor represents and warrants to User as follows:

(a) Contractor 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 Contractor has full authority to do so and to fully bind Contractor;

(c) Contractor 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 Contractor or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Contractor'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 Contractor to User 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; and

(e) Contractor 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.

(f) Contractor: (i) has received a copy of the Inter-Governmental PDA; (ii) agrees to comply with all of User’s obligations set forth in Sections 2.1 and 2.2 (Leased Premises) and Article 5 (Installation and Operation of PV System) 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.

10.3 Host Town’s Representations and Warranties in Inter-Governmental PDA. User shall have no liability or obligation to Contractor based upon any representation or warranty made by Host Town to User under the Inter-Governmental PDA.

10.4 User’s Representation and Covenants regarding Inter-Governmental PDA and Inter-Governmental PSA. User represents to Contractor that the Inter-Governmental PDA and Inter-Governmental PSA are in full force and effect and that no notices of default have been sent or received by User with respect to the Inter-Governmental PDA or Inter-Governmental PSA, nor to the present knowledge of User 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 User under the Inter-Governmental PDA or Inter-Governmental PSA. If User receives any notice or demand from Host Town under the Inter-Governmental PDA or Inter-Governmental PSA with respect to the Premises or the purchase of power from the PV System, User shall promptly but, in any event, in not less than five (5) Business Days, deliver a true and correct copy of the same to Contractor. User agrees to use its best efforts to cause Host Town to comply with or perform the obligations of Host Town under the Inter-Governmental PDA and Inter-Governmental PSA. To the extent that, at any time, the Host Town notifies User, or User otherwise becomes aware, of any mortgage, deed of trust, lien, encumbrance or similar real property security interest or financing on the Rooftop Space of the Building, User shall use Commercially Reasonable efforts to cause Host Town 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, Inter-Governmental PSA.

10.5 User Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366. User acknowledges and agrees that, for purposes of this Agreement, Contractor is not a “utility”

as such term is used in Section 366 of the United States Bankruptcy Code and User agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein User is a debtor.

ARTICLE XI. INDEMNIFICATION AND INSURANCE

11.1 Insurance. The Parties agree to comply with the insurance obligations allocated to them in Exhibit E hereto.

11.2 Indemnification by Contractor. Without duplication of any amounts paid to User pursuant to Section 9.3(c)(i) and subject to Article XII, Contractor shall indemnify, defend and hold harmless the User, Host Town and other Cooperative Members (collectively “User Indemnified Parties” and singularly “User Indemnified Party”) and each User Indemnified Party’s directors, officers, employees, agents, representatives and independent contractors, 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 and (ii) property damage incurred by Host Town 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 Contractor of its obligations, covenants, representations or warranties contained in this Agreement, (B) Contractor’s actions or omissions taken or made in connection with Contractor’s performance of this Agreement, except for actions or omissions required by this Agreement and in accordance with the Common Technical Specifications set forth in Exhibit D as approved by User, and which is in accordance with Good Engineering Practices; (C) any claims arising from or based on the violation by Contractor 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 and performed in accordance with the Common Technical Specifications set forth in Exhibit D as approved by User, and which is in accordance with Good Engineering Practice.

11.3 Contractor’s Indemnification as to Environmental Matters. Contractor agrees to indemnify, and defend User Indemnified Parties from and save and hold them harmless 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 User Indemnified Party arising out of or in connection with any Environmental Claim. Contractor 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 Contractor.

11.4 Notice of Indemnification Claims. If a User Indemnified Party seeks indemnification pursuant to this Article XI, the User shall notify Contractor 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. Contractor further agrees, if requested by the User Indemnified Party, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article XI. Upon written acknowledgment by Contractor that it will assume the defense and indemnification of such claim, Contractor may assert any defenses which are or would otherwise be available to the User Indemnified Party.

ARTICLE XII. REMEDIES; LIMITATIONS

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.

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 XIII. PV SYSTEM PURCHASE AND SALE OPTIONS

13.1 Grant of Purchase Option. For and in consideration of the payments made by User under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Contractor hereby grants User the right and option to purchase all of Contractor's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Agreement (the "Purchase Option"). User, in its sole discretion, shall have the right to exercise the Purchase Option: (a) upon the seventh (7th), tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Effective Date of this Agreement, (b) upon a Contractor Event of Default pursuant to Section 9.3(c)(ii), or (c) upon the expiration of the Term of this Agreement in accordance with Section 4.13 (User's Right to Acquire PV System), subject to the timing and conditions set forth in this Article XIII.

13.2 Timing of Purchase Option.

(a) If purchasing the PV System at the Purchase Price (as defined in Section 13.3 below), User shall have sixty (60) Business Days from (i) the seventh (7th), tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Effective Date of this Agreement (“Purchase Price Exercise Period”), to exercise the Purchase Option at the Purchase Price. User must exercise its Purchase Option during the Purchase Price Exercise Period by providing written notice to Contractor. Once User delivers such notice to Contractor, such exercise shall be irrevocable.

(b) If purchasing the PV System at the Alternate Purchase Price (as defined in Section 13.4 below), User shall have thirty (30) Business days from the date of the Final Determination (as defined in Section 13.4(c) below) (the “Alternate Purchase Price Exercise Period”), to exercise the Purchase Option at the Alternate Purchase Price. User must exercise its Purchase Option during the Alternate Purchase Price Exercise Period by providing written notice to Contractor. Once User delivers such notice to Contractor, such exercise shall be irrevocable.

(c) Promptly following receipt of User’s notice pursuant to this Section 13.2, Contractor shall make the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, available to User for its inspection during normal business hours.

13.3 Determination of Purchase Price. If the Parties are in agreement prior to the Effective Date of this Agreement on a purchase price for the PV System upon the seventh (7th), tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Effective Date of this Agreement, such price listed in Exhibit C hereto shall be the price payable by User for the PV System (the “Purchase Price”). Upon exercise of the Purchase Option at the Purchase Price, User shall have the right to conduct an independent engineering analysis at its sole cost to determine whether the condition of the PV System is in the proper condition for a PV System of its vintage (i.e. that the PV System has been properly maintained and is in good working condition). User shall have forty-five (45) days from the date of its written notice to the Contractor under Section 13.2(a) to conduct the independent engineering analysis. In the event the independent analysis concludes that the PV System is not in good working condition for a PV System of its vintage, User shall be entitled to a downward adjustment to the Purchase Price. The downward adjustment shall be equal to: (i) the costs incurred by User to conduct the independent analysis and (ii) the amount that would be required as determined by the independent analysis to make the repairs or replacements necessary such that the PV System is in the good working condition expected for its vintage. User will not seek damages from Contractor for breach of Contractor’s Maintenance Obligations with respect to the PV System pursuant to Section 4.7(a)(i), Section 4.6(a) and Section 4.7(d) in the event there is a downward adjustment to the Purchase Price.

13.4 Determination of Alternate Purchase Price. User shall have sixty (60) Business Days from: (i) a Contractor Event of Default in accordance with Section 9.3(c)(ii); or (ii) the expiration of the Term of this Agreement, to provide a notice to Contractor requiring a determination of an alternate purchase price in accordance with this Section 13.4 (the “Alternate Purchase Price”).

(a) Within fifteen (15) Business Days of Contractor's receipt of a notice provided under this Section 13.4, Contractor and User shall each propose an Independent Appraiser. If Contractor and User do not agree and appoint an Independent Appraiser within such fifteen (15) Business Day period, then at the end of such fifteen (15) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Contractor and User. Such selection shall be final and binding on Contractor and User.

(b) The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value in accordance with Section 13.4(c) (the "Preliminary Determination").

(c) Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Contractor and User, together with all supporting documentation that details the calculation of the Preliminary Determination. Contractor and User shall each have the right to object to the Preliminary Determination within thirty (30) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such thirty (30) Business Day period, the selected Independent Appraiser shall issue its final determination (the "Final Determination") to Contractor and User, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the selected Independent Appraiser shall be final and binding on the Parties.

(d) The Alternate Purchase Price payable by User for the PV System shall be equal to the Appraised Value as determined by the Independent Appraiser in its Final Determination.

(e) Contractor and User shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s).

13.5 Transfer Date. 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 ninety (90) Business Days following the date of the notice provided to Contractor pursuant to Section 13.2(a) or (b). This Agreement shall terminate effective upon the Transfer Date.

13.6 Terms of PV System Purchase. On the Transfer Date (a) Contractor shall surrender and transfer to User all of Contractor's right, title and interest in and to the PV System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) User shall pay the Purchase Price or Alternate Purchase Price, as applicable, 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, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are

reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in User, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to User.

**ARTICLE XIV.
DISPUTE RESOLUTION; GOVERNING LAW**

14.1 Dispute Resolution. Unless otherwise expressly provided for in the Agreement, the dispute resolution procedures of this Article XIV shall be the exclusive mechanism to resolve disputes arising under the Agreement. 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.

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. 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 defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 14.1 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 14.1, 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 XV.
NOTICES**

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

If to User:

Cape & Vineyard Electric Cooperative, Inc.
P.O. Box 427/SCH
Barnstable, MA 02630
Attn: E. Mark Zielinski
Tel: (508) 375-6643
Fax: (508) 362-4136
Email: mzielinski@barnstablecounty.org

with a copy to:

Jeffrey M. Bernstein, Esq.
BCK Law, P.C.
One Gateway Center, Suite 809
Newton, MA 02458
Tel: (617) 244-9500
Fax: (617) 244-9550
Email: jbernstein@bck.com

If to Contractor:

Broadway Electrical Company, Inc.
295 Freeport Street
Boston, MA 02122
Attn: Jonathan B. Wienslaw, President
Tel: (617) 822 -8831
Fax: (617) 288 – 4169
Email: jwienslaw@broadelec.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 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.

ARTICLE XVI.
ASSIGNMENT; BINDING EFFECT; FINANCIER PROVISIONS

16.1 Assignment; Binding Effect.

(a) Contractor shall not, without the prior written consent of User, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void; provided, however, that Contractor may, only with prior notice to User, 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”); *provided further, however*, that assignee shall assume all of Contractor’s obligations under this Agreement in writing. Contractor shall deliver notice of any Permitted Transfer to User in writing as soon as reasonably practicable. User hereby consents to the Contractor’s assignment, pledge or transfer of all or any part of, or any right or obligation under, this Agreement, to a special purpose vehicle formed by Broadway Renewable Strategies LLC (which special purpose vehicle will be acquired by Mass Solar, LLC or a subsidiary of Mass Solar, LLC) for the purpose of financing the PV System and any PV System under any Additional EMS Agreement, provided, however, that (i) at the time of such assignment, in accordance with Section 4.7(i) (Additional Security) above, Contractor shall provide User with a guaranty in substantially the form set forth in Exhibit I hereto; (ii) such special purpose vehicle shall assume all of Contractor’s obligations under this Agreement in writing; and (iii) Contractor shall deliver notice of such Permitted Transfer to User in writing as soon as reasonably practicable.

(b) User 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 Town without the consent of the Contractor. User 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 User to perform under this Agreement, equal rights to the Real Property Rights granted to User pursuant to Section 2.1 of the Inter-Governmental PDA and provided that no such assignment will impair Contractor’s right and title to Environmental Attributes pursuant to Section 6.1.

(c) 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.

16.2 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 Contractor to User as a “Financing Agreement” under which Contractor obtains financing that is 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 the lien thereof has been extinguished, be entitled to the protections set forth herein. Except as otherwise provided herein or in the consent to assignment in the form attached hereto as Exhibit K, no Financing Agreement shall encumber or affect in any way the interest of User or Host Town in and to the Premises, or User's or Host Town's rights under this Agreement. User 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 and shall, upon request, execute and deliver to Contractor and such Financiers a consent to assignment in the form attached hereto as Exhibit K and a legal opinion in substantially the form attached hereto as Exhibit L.

(b) Pursuant to the provisions of this Section 16.2 and subject to Section 9.3(a) (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 Contractor 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. User's consent shall not be required for the Financier's acquisition of the PV System pursuant to this Agreement.

(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 User, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of Contractor's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Contractor existing under this Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

ARTICLE XVII. MISCELLANEOUS

17.1 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. The Contractor acknowledges and agrees that it must comply with User's obligations set forth in Section 2.1 and 2.2 (Leased Premises) and Article V (Installation and Operation of PV System) of the Inter-Governmental PDA. This Agreement may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto. Subject to Article II and in accordance with 225 C.M.R. 10.06, no amendment to this Agreement shall increase the Total Project Cost by ten percent (10%) and all amendments shall be filed by User with DOER. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

17.2 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.

17.3 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.

17.4 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.

17.5 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.

17.6 Severability. If any section, phrase or portion of the 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.

17.7 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.

17.8 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.

17.9 Survival. Termination of the Agreement for any reason shall not relieve Contractor or User of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Section 4.7(h) (Decommissioning Assurance), Section 4.12 (Abandonment of PV System), Sections 11.2, 11.3 and 11.4 (Indemnification by Contractor) and Article XIV (Dispute Resolution; Governing Law), which shall survive the expiration or termination of the Agreement.

17.10 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.

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. Contractor 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 Contractor, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Contractor 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 Town or User to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host Town, User 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. Contractor understands and agrees that this Agreement is User's standard form for energy management services 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.

17.15 System of Assurance. Contractor shall perform all activities necessary and support User's efforts to reserve and maintain an assurance of Net Metering under the System of Assurance. Contractor shall work in good faith with User to prepare the Application for a Cap Allocation (as such terms are defined in the System of Assurance) to be signed by the "Host Customer," and any amendments thereto. At such time as the final costs associated with the System of Assurance are approved by the Department of Public Utilities, Contractor and User shall negotiate in good faith a side agreement to set out an equitable division of any "Host Customer" fees under the System of Assurance, including, but not limited to, the application fee and any reservation fee set forth in Section 5(d) of the System of Assurance. The side agreement may include, but is not limited to, any cost sharing formula that would result in an increase to the Net Energy Price. For purposes of this section, "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.

ARTICLE XVIII. POWER OF ATTORNEY; LOCKBOX AGREEMENT

18.1 Master Lockbox and Security Agreement. User agrees to execute prior to the Commercial Operation Date, and at all times for the remainder of the Term hereof maintain, a

Master Lockbox and Security Agreement in form and substance substantially similar to Exhibit M, and User agrees to comply with its obligations thereunder.

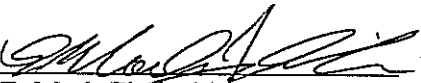
18.2 Irrevocable Limited Power of Attorney. User agrees to execute, and at all times during the Term hereof maintain, an Irrevocable Limited Power of Attorney in form and substance substantially similar to Exhibit N, and User agrees to comply with its obligations thereunder.

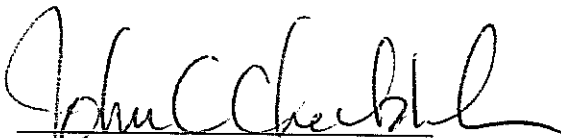
[Signature page to follow.]

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

USER:

Cape & Vineyard Electric Cooperative, Inc.

By: 
Name: E. Mark Zielinski
Title: Treasurer

By: 
Name: John C. Checklick
Title: President

P.O. Box 427
Superior Court House
Barnstable, MA 02630
(508) 375-6648 (voice)
(508) 362-4136 (fax)

CONTRACTOR

Broadway Electrical Company, Inc.

By: _____
Name:
Title:

295 Freeport Street
Boston, MA 02122
Attn: Jonathan B. Wienslaw, President
(617) 822 -8831(voice)
(617) 288 - 4169 (fax)

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

USER:

Cape & Vineyard Electric Cooperative, Inc.

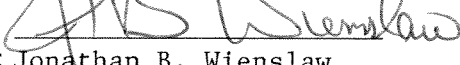
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List of Exhibits to Agreement

- 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: Insurance
- Exhibit F: Special Terms and Conditions Applicable to this Energy Management Services Agreement
- Exhibit G: Form of Escrow Agreement
- Exhibit H: Form of Letter of Credit
- Exhibit I: Form of Guaranty
- Exhibit J: PV System Milestones
- Exhibit K: Form of Consent to Assignment
- Exhibit L: Form of Opinion of Counsel
- Exhibit M: Form of Master Lockbox and Security Agreement
- Exhibit N: Form of Irrevocable Limited Power of Attorney
- Exhibit O: Schedule of Exceptions to Section 10.1(c)

EXHIBIT A

DESCRIPTION OF PREMISES

Address:

239 Main Street, Buzzards Bay MA

Legal Description:

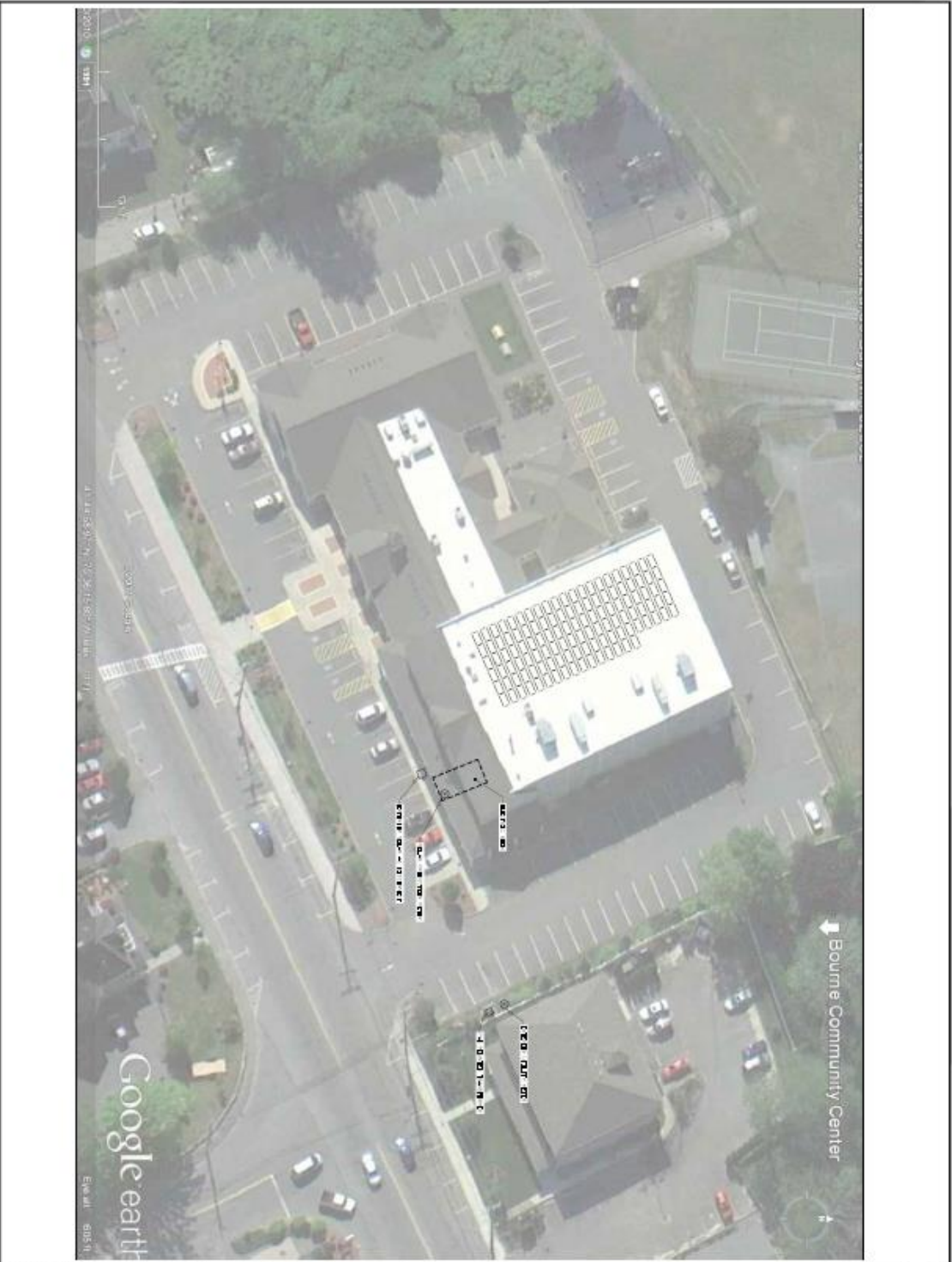
The rooftop site is shown on a plan entitled “239 Main Street Buzzards Bay, MA PV Solar Array” situated in the Town of Bourne, Massachusetts, by Broadway Renewable Strategies, LLC, December 7, 2011 as revised by General Revision 11/27/12. The Rooftop Space on the attached plan is identified by the area where the solar panels are located, as such plan may be amended or revised from time to time. The subject rooftop site’s building is situated on a parcel of land identified as Parcel 98 on the Town of Bourne Assessor’s Map 20.3.

The rooftop sites are situated on land described in a Deed from the United States of America to the Town of Bourne recorded February 6, 1947 in Barnstable County Registry of Deeds in Book 665, Page 139.

Description of the Premises:

The Premises was constructed in 2003 and is of excellent quality. The wood frame building is 2 stories and has a net area of 27,958 square feet. The Premises include adequate space on the roof of the Building for the installation, operation and maintenance of utility lines, cables, conduits, inverters, transformers, wires, meters, monitoring equipment and other necessary and convenient equipment and appurtenances (collectively, the “Cabling Space”), and all necessary electrical and other utility sources located within the Building to enable Contractor to transmit Net Energy generated by the PV System to the Point of Delivery, together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day. In the event there are not sufficient electric and other necessary utility sources located in the Building, the roof of the Building, or the Rooftop Space, to enable Contractor to transmit Net Energy generated by the PV System to the Point of Delivery, the Host Town agrees to grant Contractor or the Distribution Company the right to install such utilities on, over and/or under the Building, as necessary for Contractor to operate the PV System, provided, however, that the location of such utilities shall be as reasonably designated by the Host Town.

The target area roof system is newly installed (April, 2013) and is under warranty with the Manufacturer (Sika Sarnafil) for 15 years. The roof is in new condition.



<p>PROJECT BROADWAY RENEWABLE STRATEGIES, LLC</p>		<p>CLIENT CYRC TOWN OF BOURNE COMMUNITY CENTER</p>		<p>LOCATION 299 MAIN STREET BOURNE, MA PV SOLAR ARRAY</p>	
<p>DATE 10/2023</p>		<p>SCALE 1" = 100'</p>		<p>PROJECT NO. PV-1</p>	
<p>DESIGNER BROADWAY RENEWABLE STRATEGIES, LLC 299 MAIN STREET BOURNE, MA 01901 TEL: 508-865-1111 WWW.BROADWAYRENEWABLESTRATEGIES.COM</p>		<p>APPROVED </p>		<p>DATE 10/2023</p>	

EXHIBIT A-1

ADDITIONAL EXCEPTIONS

Contractor's use of the Premises shall be subject to the following:

1. Full compliance by the Contractor in all respects with the Permitted Use of the Premises as such term is defined in the Inter-Governmental PDA.
2. Full compliance by the Contractor with respect to the terms and conditions of the Sika Sarnafil roof warranty document, Serial No.: 0000010691-164013.2, and the manufacturer requirements outlined in the Sika Sarnafil Photovoltaic Installation/Warranty Continuation Policy. The above-referenced Sika Sarnafil roof warranty document and Sika Sarnafil Photovoltaic Installation/Warranty Continuation Policy are available for inspection in the office of the Host Town's Director of Facilities.
3. The Contractor shall have access to the Building and/or Rooftop Space housing PV related equipment only during normal business hours, Monday through Friday (7am till 5pm). No access will be provided on Weekends or Town of Bourne Holidays. Twenty-four hour notice for access should be given to the Building manager or Host Town Director of Facilities.
4. In the event of an emergency, access will be coordinated with the Building manager or onsite emergency coordinator.
5. The Contractor shall keep the Rooftop Space in clean condition, and shall not leave loose debris or store items on the roof of the Building. Host Town's access to the Building's mechanical systems shall be maintained at all times.

Host Town's Reserved Use of the Roof-Top Space of the Premises:

1. None.

EXHIBIT B

DESCRIPTION OF PV SYSTEM

The Bourne Community Center PV Project is a .035 MW (DC) and .029 MW (AC) solar electric generation facility to be located at 239 Main Street – Buzzards Bay, MA 02532. The facility will consist of approximately 121 photovoltaic modules [mounted on a non-penetrating ballasted roof mount system]. The .035 MW (DC) solar array will utilize approximately one (1) inverter to convert the energy output from direct current (DC) to alternating current (AC). A transformer will then step up the voltage of the AC output to the level of the interconnecting utility's distribution line. The system will be designed to meet all local, state and federal codes and regulations. At such time that Contractor can fully describe the PV System, this Exhibit B shall be replaced in its entirety with the completed chart below.

PV SYSTEM: System Manufacturer: Suntech Modules or Equal

Nameplate Capacity: 35.09 kW

Approximate Annual Energy Production:

42,414 kWh

Location: 239 Main Street – Buzzards Bay, MA
02532

Preliminary Specifications:

PV SYSTEM ASSETS: Mounting Systems: Panel Claw Mounting System
or Equal

Tracking Devices: Not Applicable

Inverters: Advanced Energy Inverters or Equal

Integrators: Broadway Electrical Company, Inc.

Related Equipment: Not Applicable

Electric Lines: 480V, 120V, 13.8kV

Permits: Electrical & Building Permits

Contracts: EMS Agreement

**** Final system size will be determined once final field layout and structural analysis has been completed.**

EXHIBIT C

NET ENERGY PRICE PROVISIONS¹

EXPECTED ANNUAL ENERGY OUTPUT	42,414kWh/year
GUARANTEED ANNUAL ENERGY OUTPUT	33,931kWh/year ²
PV SYSTEM PROBABILITY	P 50
PV SYSTEM CAPACITY FACTOR	13.80%
ANNUAL SYSTEM DEGRADATION FACTOR	0.50% per year
NET ENERGY PRICE	\$0.0713 per kWh
DISTRIBUTION COMPANY	NSTAR Electric Company
DECOMMISSIONING ASSURANCE AMOUNT	\$3,509.00
PROPOSED BUY-OUT AMOUNT FOR THE PV SYSTEM	\$68,917.00 Year 7 \$30,704.00 Year 10 \$27,195.00 Year 12 \$22,809.00 Year 15

¹ In the event that the final field layout and/or structural analysis performed by Contractor results in a substantial and material change to the PV System Size identified in Exhibit B, hereto, User and Contractor agree to negotiate in good faith an amendment to this Exhibit C.

² The only allowable adjustment to the Guaranteed Annual Output is the Annual System Degradation Factor.

EXHIBIT D

COMMON TECHNICAL SPECIFICATIONS

This Exhibit describes the technical specifications and requirements that are common to all the PV Systems. These common technical specifications are those that each PV System must meet or exceed. These specifications and requirements are not intended to be all-encompassing, nor are they intended to override good engineering practice or applicable laws and code requirements. The Contractor is responsible for conformance to all relevant, prevailing codes, and the codes take precedence over these Technical Specifications. Site-specific conditions and/or local regulations may 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 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 1. PVWATTS Version 1 is available at the following website:
<http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Massachusetts/>.

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 staturm, 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 Contractor determines the use of galvanized structural steel is warranted, the extent of Contractor’s use of such material shall be clearly outlined in the Contractor’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 User.

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. Inverters shall be approved and listed with the California Energy Commission's list of eligible PV modules:
http://www.gosolarcalifornia.ca.gov/equipment/pv_modules.php.
 - d. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
 - e. 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.
 - f. The inverter(s) must have secure, weatherproof housing in the exterior installation.
 - g. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
 - h. Lightning protection must be provided for the inverter(s) housing.
3. **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.
4. **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.
5. **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.
6. **Interconnection Circuit Breaker** - The Contractor 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.
7. **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.
- 8. PV System Grounding** - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.
- 9. PV Array**
- a. PV Modules
 - i. Modules shall be UL 1703 listed.
 - ii. Modules shall be approved and listed on the California Energy Commission’s list of eligible PV modules:
<http://www.gosolarcalifornia.ca.gov/equipment/pvmodule.html>.
 - 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 Contractor shall describe and document the wind and snow loads that the PV System is designed to withstand.

- iv. For ballasted roof mounted systems the Contractor 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, the Contractor 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.

10. Installation Requirements

- a. 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. The Contractor shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Contractor shall coordinate with the User to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to the User 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. The Contractor is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any net metering arrangement requested by the User. 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 the Contractor to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

11. PV System Warranty Requirements

- a. Contractor Warranty. All PV Systems must have a minimum five (5) year labor warranty provided by the Contractor to protect the User 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. **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. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the User.
 - iv. **Mounting equipment:** The Contractor 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. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the User.

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

- a. is readily accessible and easily understood by the User;
- 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.

13. 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").

C. Commissioning Requirements

1. **Commissioning Procedure** - At a minimum, the Contractor'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. The Contractor shall verify that the data acquisition/display system is functioning properly, comparing independent measurements to data acquisition display.
3. The Contractor shall correct, at no additional cost to the User, any deficiencies uncovered by the testing prior to commissioning of the PV System.

D. Training Requirements

The Contractor shall train the User or staff at the Facility awarded to the Contractor, on basic principles of operation, maintenance requirements, on-line data monitoring, 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 Facility.

E. Documentation Requirements

1. **Documentation** – The Contractor shall prepare an Operations and Maintenance manual for the PV System at each Facility. In addition, the Contractor shall provide the User with one (1) printed copy and two (2) digital copies on CD 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 to building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.

- c. Trouble shooting guidelines.
- d. PV System maintenance schedule and procedures.
- e. Contact information for technical assistance and parts ordering.
- f. Records of all warranties and serial numbers of all warranted equipment.

EXHIBIT E
INSURANCE

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

1. **Commercial general liability insurance** of at least three million dollars.
2. **Professional liability insurance** covering negligent errors, omissions, and acts of the Contractor or of any person or business entity for whose performance the Contractor is legally liable arising out of the performance of the Agreement of at least three (3) million dollars. Said policy or policies shall provide that no cancellation, lapse or material change thereof shall be effective until at least thirty (30) days written notice is mailed to the first named insured, except ten (10) days for nonpayment of premium and further provide that within three (3) days of receipt of said notice first insured must provide User notice of same. If the policy providing professional liability coverage is a "claims-made" form, the Contractor is required to either (a) maintain such coverage for a minimum of three (3) years (and six (6) years for design defect claims) following the Commercial Operation Date or (b) obtain and maintain an extended reporting period in respect of such coverage for the same periods of time as described above.
3. **Worker's compensation insurance**, in compliance with applicable law.
4. **Comprehensive automobile liability** coverage of at least three (3) million dollars.
5. **Umbrella liability** coverage with single limits in the amount of at least three (3) million dollars.
6. **Builder's All Risk** property coverage.
7. **Additional Insurance Requirements.** All liability insurance (other than workers' compensation and professional liability insurance) maintained by Contractor shall:
 - (i) include as additional insureds User and Host Town, through an endorsement or rider;
 - (ii) provide that no cancellation, lapse or material change thereof shall be effective until at least thirty (30) days written notice of cancellation is mailed to the first named insured, except ten (10) days for nonpayment of premium and further provide that within three (3) days of receipt of said notice of cancellation or nonpayment of premium, first insured must provide User notice of same; and

(iii) waive subrogation rights against User and Host Town (to the extent permitted by law with respect to workers' compensation).

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

1. ***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 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.

C. Host Town's insurance obligations. Host Town's insurance obligations are as set forth in the Inter-Governmental PDA. Throughout the Term of this Agreement, Contractor will be notified of any change in Host Town's insurance coverage that materially impacts the installation and/or operation of the PV System.

EXHIBIT F

SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS ENERGY MANAGEMENT SERVICES AGREEMENT

The following Special Terms and Conditions shall apply to this Energy Management Services Agreement:

1. Design and Permit Review. Within thirty (30) days of the Effective Date, Contractor shall pay to User the amount of \$5,000.00 for oversight of the design and permitting of the PV System.
2. Delay Liquidated Damages. Delay Liquidated Damages pursuant to Section 4.8 shall be calculated as follows:
 - a. Lost revenues in the event that Contractor fails to commence construction by the Outside Construction Commencement Date shall be \$500/day.
 - b. Lost revenues in the event that Contractor 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.
3. Notwithstanding anything to the contrary set forth in this EMS Agreement, a “Contract Year” shall be interpreted to mean each consecutive 12-month period commencing on the Commercial Operation Date.
4. The Collateral Agent (as such term is defined in the form of Consent to Assignment set forth in Exhibit K to this EMS Agreement) shall be permitted to, and is hereby authorized to, but is not required to, file one or more precautionary UCC financing statements with respect to the PV System in such jurisdictions as it deems appropriate in order to protect the Collateral Agent’s rights in and to the PV System.
5. Notwithstanding anything to the contrary set forth in this EMS Agreement, Sections 4.2(a)(ii), (iii) and (iv) of this EMS Agreement shall be interpreted to be covenants with which Contractor must comply, rather than conditions to the assignment by User to Contractor of the Real Property Rights granted to User pursuant to Section 2.1 of the Inter-Governmental PDA.
6. With respect to Section 4.14 of the EMS Agreement, the Parties hereby acknowledge and agree that while the Host Town is the party who will ultimately be responsible for any costs payable under Section 4.14 of the EMS Agreement, as between Contractor and User, User will be responsible to Contractor for paying these costs or ensuring that the Host Town pays such costs.
7. Notwithstanding anything to the contrary set forth in Section 10.1 of the EMS Agreement, the Parties hereby acknowledge and agree that User shall make the

representations and warranties set forth in Section 10.1 of the EMS Agreement in respect of the EMS Agreement and the Power of Attorney.

8. Notwithstanding anything to the contrary set forth in Exhibit E to this EMS Agreement, Contractor shall be deemed to have satisfied its requirement to secure and maintain professional liability insurance as required under Section A(2) thereof, to the extent that such insurance is maintained by, or on behalf of, Contractor; provided, however, that if such insurance is maintained by a third party on behalf of Contractor, upon request by User, Contractor will be responsible to provide User with evidence of its insurance in accordance with Section A of Exhibit E.

EXHIBIT G

FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of _____, 2012 (“Escrow Agreement”), is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“User”); Broadway Electrical Company, Inc., a Massachusetts corporation (“Contractor”); and [_____], a [national banking association], as Escrow Agent hereunder (“Escrow Agent”).

BACKGROUND

A. User and Contractor have entered into that certain Energy Management Services Agreement for Solar Photovoltaic System listed on Schedule A (each as amended, the “Underlying Agreement”), pursuant to which Contractor will engineer, procure and construct a solar photovoltaic generation facility described therein.

B. This Escrow Agreement is being executed by the parties hereto, and will be funded by Contractor as set forth in Schedule A, in satisfaction of Contractor’s obligation under Section 4.7(h) of the Underlying Agreement to provide Decommissioning Assurance.

C. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it and the interest thereon in accordance with the terms of this Escrow Agreement.

D. Pursuant to the Underlying Agreement, User and Contractor have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Escrow Agent and this Escrow Agreement.

E. In order to establish the escrow of funds and to effect the provisions of the Underlying Agreement, the parties hereto have entered into this Escrow Agreement.

STATEMENT OF AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

“Contractor Representative” shall mean the person so designated on Schedule A hereto or any other person designated in a writing signed by Contractor and delivered to Escrow Agent and the User Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

“Escrow Funds” shall mean the funds deposited with Escrow Agent pursuant to Section 3 of this Agreement, together with any interest and other income thereon.

“Escrow Period” shall mean the period commencing on the date hereof and ending two hundred and forty (240) days after the termination date of the Underlying Agreement.

“Representatives” shall mean the User Representative and the Contractor Representative.

“User Representative” shall mean the person so designated on Schedule A hereto or any other person designated in a writing signed by User and delivered to Escrow Agent and the Contractor Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

“Written Direction” shall mean a written direction executed by User and/or Contractor, as applicable, directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking an action pursuant to this Escrow Agreement.

2. Appointment of and Acceptance by Escrow Agent. User and Contractor hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Deposit of Escrow Funds. From time to time subsequent to the execution and delivery of this Escrow Agreement, Contractor will fund the Escrow Account with the amounts set forth in Schedule A, by wire transfer of immediately available funds, to the account of the Escrow Agent referenced on Schedule A hereto.

4. Disbursements of Escrow Funds. Escrow Agent shall disburse Escrow Funds at any time upon receipt of and in accordance with (a) a Written Direction signed by User and Contractor or (b) a Written Direction signed by User certifying that (i) an Event of Default has occurred and is continuing under the EMS Agreement resulting from the Contractor’s breach of its obligations under the EMS Agreement to remove the PV System (as defined in such EMS Agreement) and restore the Premises (as defined in such EMS Agreement) and (ii) the Escrow Funds being requested are in an amount reasonably necessary to satisfy, and will be applied by User in satisfaction of, such Contractor obligations. Such Written Direction shall contain wiring instructions or an address to which a check shall be sent. If at any time the Escrow Amount exceeds the amount set forth on Schedule A, Escrow Agent shall distribute, as promptly as practicable, such excess Escrow Funds to Contractor in the manner described on Schedule A, without any further instruction or direction from either Representative.

5. Suspension of Performance: Disbursement Into Court. If, at any time, (i) there shall exist any dispute between User, Contractor or the Representatives with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent’s sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent’s proper actions with respect to its obligations hereunder, or (iii) the Representatives have not within 30 days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 6 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed (as the case may be).

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Agent shall have no liability to User, Contractor, their respective shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

6. Resignation of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving ten (10) days prior written notice to the User and Contractor specifying a date when such resignation shall take effect. Upon any such notice of resignation, the Representatives jointly shall appoint a successor Escrow Agent hereunder prior to the effective date of such resignation. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Escrow Agent's resignation, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

7. Liability of Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith, except to the extent that a court of competent jurisdiction determines that any loss to the User or Contractor arises the Escrow Agent's gross negligence or willful misconduct. Escrow Agent's sole responsibility shall be for the safekeeping and disbursement of the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall

have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Underlying Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent shall not be responsible or liable in any manner for the performance by any party of their respective obligations under the Underlying Agreement nor shall Escrow Agent be responsible or liable in any manner for the failure of any party to honor any of the provisions of this Escrow Agreement. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel. User and Contractor, jointly and severally, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel.

The Escrow Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

8. Indemnification of Escrow Agent. From and at all times after the date of this Escrow Agreement, User and Contractor, jointly and severally, shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, arising from any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation User or Contractor, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the

negotiation, preparation, execution, performance or failure of performance of this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; *provided, however*, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to the extent arising from the gross negligence or willful misconduct of such Indemnified Party. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the User and Contractor jointly and severally. The obligations of User and Contractor under this Section 8 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

The parties agree that neither the payment by User or Contractor of any claim by Escrow Agent for indemnification hereunder nor the disbursement of any amounts to Escrow Agent from the Escrow Funds in respect of a claim by Escrow Agent for indemnification shall impair, limit, modify, or affect, as between User and Contractor, the respective rights and obligations of User, on the one hand, and Contractor, on the other hand, under the Underlying Agreement.

9. Fees and Expenses of Escrow Agent. Contractor shall compensate Escrow Agent for its services hereunder in accordance with Schedule A attached hereto and, in addition, shall reimburse Escrow Agent for all of its reasonable out-of-pocket expenses, including attorneys' fees, travel expenses, telephone and facsimile transmission costs, postage (including express mail and overnight delivery charges), copying charges and the like. The additional provisions and information set forth on Schedule A are hereby incorporated by this reference, and form a part of this Escrow Agreement. All of the compensation and reimbursement obligations set forth in this Section 9 shall be payable by Contractor in accordance with Schedule A. The obligations of Contractor under this Section 9 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

10. Representations and Warranties: Legal Opinions. Each of User and Contractor respectively makes the following representations and warranties to Escrow Agent:

- (i) It is duly organized, validly existing, and in good standing under the laws of the state of its incorporation or organization, and has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder.
- (ii) This Escrow Agreement has been duly approved by all necessary action, including any necessary shareholder or membership approval, has been executed by its duly authorized officers, and constitutes its valid and binding agreement enforceable in accordance with its terms.
- (iii) The execution, delivery, and performance of this Escrow Agreement is in accordance with the Underlying Agreement and will not violate, conflict with, or cause a default under its articles of incorporation, bylaws, management agreement or other organizational document, as applicable, any applicable law or regulation, any court order or administrative ruling or decree to which it is a party or any of its property is subject, or any agreement, contract, indenture, or other binding

arrangement, including without limitation the Underlying Agreement, to which it is a party or any of its property is subject.

(iv) The applicable persons designated on Schedule A hereto have been duly appointed to act as its Representatives hereunder and have full power and authority to execute and deliver any Written Direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as the Representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party.

(v) No party other than the parties hereto has, or shall have, any lien, claim or security interest in the Escrow Funds or any part thereof.

(vi) All of its representations and warranties contained herein are true and complete as of the date hereof and will be true and complete at the time of any disbursement of the Escrow Funds.

11. IMPORTANT INFORMATION FOR OPENING AN ACCOUNT.

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual persons such as a business entity, a charity, a trust, or other legal entity, we ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

User and Contractor acknowledge that a portion of the identifying information set forth on Schedule A is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and User and Contractor agree to provide any additional information requested by the Escrow Agent in connection with the Act or any similar legislation or regulation to which Escrow Agent is subject, in a timely manner. The User and the Contractor each represent that all identifying information set forth on Schedule A, including without limitation, its Taxpayer Identification Number assigned by the Internal Revenue Service or any other taxing authority, is true and complete on the date hereof and will be true and complete at the time of any disbursement of the Escrow Funds.

12. Consent to Jurisdiction and Venue. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the parties hereto agree that the Superior Court, Barnstable, Massachusetts shall have jurisdiction over any such proceeding. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein and agree to accept service of process to vest personal jurisdiction over them in any of these courts.

13. Notice. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or facsimile transmitter (with confirmed receipt) to the address or facsimile number set forth on Schedule A hereto, or to such other address as each party may designate for itself by like notice, and shall be

deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth on Schedule A hereto, or to such other address as each party may designate for itself by like notice.

14. Amendment or Waiver. This Escrow Agreement may be changed, waived, discharged or terminated only by a writing signed by the Representatives and Escrow Agent. No delay or omission by any party in exercising any right with respect hereto shall operate as a waiver. A waiver on any one occasion shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion.

15. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

16. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to the conflict of laws principles thereof.

17. Entire Agreement. This Escrow Agreement constitutes the entire agreement between the parties relating to the holding and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of the Escrow Agent with respect to the Escrow Funds. The Escrow Agent has no knowledge of the terms of, or any responsibility under, the Underlying Agreement.

18. Binding Effect. All of the terms of this Escrow Agreement, as amended from time to time, shall be binding upon, inure to the benefit of and be enforceable by the respective successors and assigns of User, Contractor and Escrow Agent.

19. Execution in Counterparts. This Escrow Agreement may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

20. Termination. Upon the first to occur of the termination of the Escrow Period, the final disbursement of all of the Escrow Funds pursuant to Written Directions, or the disbursement of all amounts in the Escrow Funds into court pursuant to Section 5 or Section 7 hereof, this Escrow Agreement shall terminate and Escrow Agent shall have no further obligation or liability whatsoever with respect to this Escrow Agreement or the Escrow Funds.

21. Dealings. The Escrow Agent and any stockholder, director, officer or employee of the Escrow Agent may buy, sell, and deal in any of the securities of the User or Contractor and become financially interested in any transaction in which the User or Contractor may be interested, and contract and lend money to the User or Contractor and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for the User or Contractor or for any other entity.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the date first above written.

as User

By: _____

Title: _____

as Contractor

By: _____

Title: _____

as Escrow Agent

By: _____

Title: _____

SCHEDULE A

EXHIBIT H
FORM OF
IRREVOCABLE STANDBY LETTER OF CREDIT

[*Issuing Bank*]

Irrevocable Standby Letter of Credit No. [_____]

[Address]

Date of Issue:

Expiration Date:

Beneficiary:

[*Name*]

[*Address*]

Applicant:

[*Name*]

[*Address*]

Maximum Stated Amount:

\$_[_____]

Ladies and Gentlemen:

We hereby establish this Irrevocable Standby Letter of Credit No. [_____] (this "Letter of Credit") for an aggregate amount not to exceed the Maximum Stated Amount of \$_____, for the account of [*Applicant*], established in favor of [*Beneficiary*], in its capacity as User (the "Beneficiary") under each Energy Management Services Agreement for Solar Photovoltaic System (as may be updated from time to time the "EMS Agreement").

We irrevocably authorize you to draw on us, in accordance with the terms and conditions hereinafter set forth, in any amount up to the Maximum Stated Amount available against presentation of a dated drawing request drawn on [*Issuing Bank*], manually signed by a purported authorized officer of the Beneficiary completed in the form of Annex 1 hereto (a "Drawing Request"). Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed to us at: [*Issuing Bank*], [*address*], Attn:[*name*], referencing this Letter of Credit No. [_____]. In addition, presentation of a Drawing Request may also be made by fax transmission to [*fax*], or such other fax number identified by us in a written notice to you. To the extent a Drawing Request is made by fax transmission, you must provide telephone notification to us at [*fax*] prior to or simultaneously with the sending of such fax transmission. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents. If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number on or by [11:00 a.m., Eastern Time] on any Business Day, payment will be

made not later than [2:00 p.m., Eastern Time] on the next Business Day and if such Drawing Request is so presented to us after [11:00 a.m., Eastern Time] on any Business Day, payment will be made not later than [2:00 p.m., Eastern Time] on the second Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as may be designated by the Beneficiary in the applicable Drawing Request.

As used in this Letter of Credit, “Business Day” mean any day other than a Saturday, a Sunday, or any other day on which banking institutions in the [county and state] are authorized by law to remain closed. This Letter of Credit shall expire at [4:00 p.m., Eastern Time] on the earlier to occur of: (i) 12 months from the issue date (as extended from time to time in accordance with the terms set forth herein, the “Expiration Date”); (ii) the date we have paid drawings hereunder in the aggregate of the Maximum Stated Amount; (iii) the date upon which we receive a written notice from Beneficiary addressed to [Issuing Bank] and authorizing the cancellation of this Letter of Credit along with the original Letter of Credit and any amendments.

Notwithstanding the above (but subject to the immediately succeeding paragraph), this Letter of Credit shall be deemed automatically extended without an amendment for a one year period beginning on the present expiration date hereof and upon each anniversary of such date, unless at least sixty (60) days prior to any such expiration date we have sent you written notice by courier service or overnight mail that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on, its then current expiration date. No presentation made under this Letter of Credit after such expiration date will be honored. This Letter of Credit will not be extended beyond [ultimate expiration date], which represents the third anniversary of the termination date of the last EMS Agreement.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of same stating the reasons therefor and shall upon receipt of the Beneficiary’s instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any nonconforming Drawing Request and other documents to the Beneficiary at the address set forth above. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, the Beneficiary may attempt to correct such non-complying Drawing Request if, and to the extent that, you are entitled and able to do so on or before the current Expiration Date.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates.

This Letter of Credit is transferable, in its entirety, only up to the then available amount in favor of any nominated transferee (“Transferee”) who you certify is the successor User under the Credit Agreement, assuming such transfer to such Transferee would be in compliance with then applicable law and regulation, including but not limited to the regulations of the U.S. Department of Treasury and U.S. Department of Commerce. At the time of transfer, the original Letter of Credit and original amendments, if any, must be surrendered to us together with our Letter of Transfer documentation in the form of Annex 2 attached hereto.

Partial drawings under this Letter of Credit are allowed; provided, however, that the aggregate amount of such drawings shall not exceed the Maximum Stated Amount. In addition, the Maximum Stated Amount may be reduced from time to time, without amendment, upon our receipt of a Reduction Certificate in the form of Annex 3 attached hereto signed by the Beneficiary. The Maximum Stated Amount of this Letter of Credit shall immediately be reduced by the amount of any payment made by us in respect of any Drawing Request under this Letter of Credit. Any payment under this Letter of Credit shall be made without any deduction, set off or counterclaim of any kind. All bank charges are for the

account of the Applicant with the exception of the transfer charges. This Letter of Credit shall not be amended except with the written concurrence of the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms and conditions of this Letter of Credit and any amendments thereto shall be honored.

This Letter of Credit is subject to the rules of the “International Standby Practices 1998”, International Chamber of Commerce, Publication No. 590 (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of New York.

[Issuing Bank]

Authorized signature

[Letterhead of Beneficiary]

“Drawn under [Issuing Bank],
Letter of Credit Number [_____] dated [_____]

DRAWING REQUEST

[Date]

[Issuing Bank]

[Address]

Attn: [Name]

Ladies and Gentlemen:

The undersigned, a duly authorized officer of [Beneficiary], hereby draws on [Issuing Bank], Irrevocable Standby Letter of Credit No. [_____] (the “Letter of Credit”) dated [_____] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) “This drawing in the amount of US\$[_____] is being made pursuant to the Letter of Credit and Section [_____] of the Energy Management Services Agreement for Solar Photovoltaic System, dated as of [_____] (as amended, restated, supplemented or otherwise modified from time to time, the “EMS Agreement”), between [_____] and [_____].”;

and

B-1) “An Event of Default has occurred and is continuing under the EMS Agreement.”;

or

B-2) “The Letter of Credit will expire on [*expiration date*], which date is 30 days or less from the date of this Drawing Request, and we have not received from the Beneficiary a replacement of this Letter of Credit.”;

C) “You are directed to make payment of the requested drawing to account no. _____ at _____ [*insert bank name, address and account number*].”

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on the date first written above.

[Beneficiary]

By: _____
Name:
Title:

CC:

[Applicant]

TRANSFER OF LETTER OF CREDIT³

[Date]

[Issuing Bank]

[Address]

Attn: [Name]

Ladies and Gentlemen:

Reference is made to [Issuing Bank], Irrevocable Standby Letter of Credit No. [_____] dated [_____] issued by you in favor of us (the "Letter of Credit"). Any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit.

For value received, the undersigned, as the current beneficiary under the Letter of Credit, hereby irrevocably transfers to [_____] (the "Transferee") all rights of the undersigned to draw under the Letter of Credit in its entirety. We certify that the Transferee is the successor User under each EMS Agreement.

By this transfer, all rights of the undersigned, as beneficiary under the Letter of Credit, are transferred to the Transferee, and the Transferee shall have the sole rights with respect to the Letter of Credit (to the exclusion of the undersigned) including without limitation all rights relating to any amendments thereof and any notices thereunder. All amendments to the Letter of Credit are to be consented to by the Transferee without necessity of any consent of or notice to the undersigned.

Simultaneously with the delivery of this notice to you, copies of this notice are being transmitted to the Transferee and the Applicant.

The original Letter of Credit and all amendment(s) thereto, if any, is/are returned herewith, and we ask you to either issue a substitute letter of credit for the benefit of the Transferee or endorse the transfer on the reverse thereof, and forward it directly to the Transferee with your customary notice of transfer.

Very truly yours,

[Beneficiary]

By: _____

Name:

Title:

cc:

³ This form must be accompanied by evidence satisfactory to the Issuing Bank of the legal authority of the above signatory, with title as stated.

[Transferee]

[Applicant]

FORM OF LETTER OF CREDIT REDUCTION CERTIFICATE

To: [Issuing Bank]
[Address]
Attn: [Name]

Reference is made to the Irrevocable Letter of Credit No. [] dated [] (the “Letter of Credit”) issued by you in favor of us. Capitalized terms used herein and not otherwise defined herein shall have the meanings herein ascribed thereto in the Letter of Credit.

The undersigned is an authorized representative of the Applicant and hereby requests a reduction of the Maximum Stated Amount referenced in the Letter of Credit in an amount equal to \$ [] (the “Reduction Amount”), so that the new Maximum Stated Amount shall be \$[].

IN WITNESS WHEREOF, the undersigned has executed and delivered this Letter of Credit Reduction Certificate as of the [] day of [].

[Applicant]

By: _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned has executed and delivered this Letter of Credit Reduction Certificate as of the [] day of [].

[Beneficiary]

By: _____
Name:
Title:

EXHIBIT I

FORM OF GUARANTY

This Guaranty (the "Guaranty") is made by Broadway Electrical Company, Inc. ("Guarantor"), in favor of Cape & Vineyard Electric Cooperative, Inc. ("CVEC"), a Massachusetts cooperative corporation, and entered into as of _____, 20__.

Guarantor and CVEC may be referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, _____, a _____ corporation ("Contractor") and CVEC are parties to that certain Energy Management Services Agreement listed on Exhibit A attached hereto (the "EMS Agreement");

WHEREAS, Guarantor is the [direct or indirect parent/affiliate] of Contractor, will receive substantial and direct benefits from the extensions of credit contemplated by the EMS Agreement and has agreed to enter into this Guaranty to provide assurance for the payment and performance of Contractor's obligations in connection with the EMS Agreement and to induce CVEC to enter into the EMS Agreement; and

WHEREAS, the execution and delivery of this Guaranty is a condition precedent to CVEC's further performance of its obligations under the terms of the EMS Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty. Guarantor hereby unconditionally and absolutely guarantees any and all of Contractor's payment or performance obligations, liabilities, indebtedness, duties and undertakings to CVEC, whether now or hereafter existing or arising, created by contract or by operation of law, direct or indirect, absolute or contingent, due or to become due, sole, joint or several, liquidated or unliquidated, primary or secondary, secured or unsecured, voluntary or involuntary, presently contemplated or un contemplated, and however arising under the EMS Agreements, as such Agreement may be amended or modified from time to time, (collectively, the "Guaranteed Obligations"). The Guaranteed Obligations include, but are not limited to, Contractor's indemnification and payment of damages upon a Production Shortfall (as defined in the EMS Agreement) under the EMS Agreement.

2. Guaranty Absolute. The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (a) the creation of or increases or additions to the Obligations;
- (b) any lack of validity or enforceability of or defect or deficiency applicable to Contractor in the EMS Agreement or any other documents executed in connection with the EMS Agreement;
- (c) any modification, extension or waiver of any of the terms of the EMS Agreement;

(d) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the EMS Agreement or any other agreement or instrument executed in connection therewith;

(e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by CVEC to exercise, in whole or in part, any right or remedy held by CVEC with respect to the EMS Agreement or any transaction under the EMS Agreement; or

(f) any change in the existence, structure or ownership of Guarantor or Contractor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Contractor or its assets.

The obligations of Guarantor hereunder are several from Contractor or any other person, and are primary obligations concerning which Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for CVEC, in order to enforce payment by Guarantor under this Guaranty, to show any proof of Contractor's default, to exhaust its remedies against Contractor, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by CVEC upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Contractor or any other guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for Contractor or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

3. Waivers and Subordination by Guarantor. This is a Guaranty of payment and not of collection. To the extent permitted by law, Guarantor hereby waives:

(a) all notices and rights to notice to which Guarantor might be entitled, including notices of acceptance hereof, and any action taken or omitted in reliance hereon;

(b) presentment, demand and protest of any instrument;

(c) all suretyship and equitable defenses;

(d) all other defenses, counterclaims and set-offs against CVEC;

(e) all exemptions and rights of homestead, valuation, postponement or similar nature;

(f) all claims against Contractor, whether in the nature of subrogation or otherwise as a creditor resulting from this Guaranty or any payments hereunder unless and until the Obligations have been satisfied in full or CVEC has expressly consented thereto in writing;

(g) any statute of limitations in any action hereunder or for the collection of the EMS Agreement or the performance of any of the Obligations;

(h) the incapacity or lack of authority of Contractor, Guarantor or any other person or entity, or the failure of CVEC to file or enforce a claim against the estate (either in bankruptcy, or any other proceeding) of Contractor or Guarantor or any other person or entity;

(i) any election of remedies by CVEC which destroys or otherwise impairs any subrogation rights of Guarantor or the right of Guarantor to proceed against Contractor for reimbursement, or both;

(j) any lack of diligence by Contractor in collection, protection, or realization upon any collateral securing the EMS Agreement;

(k) the invalidity or unenforceability of any of the documents evidencing the EMS Agreement or the Security; or

(l) any other cause or facts similar or dissimilar to the foregoing, it being the intention that the obligations of Guarantor are absolute, unconditional, and irrevocable. Guarantor shall not take any action to assert, collect, claim or realize upon any indebtedness, liabilities or collateral therefor, or any right of subrogation, reimbursement, contribution, indemnification or similar right, all against any other guarantor unless and until the Obligations have been satisfied in full or CVEC has expressly consented thereto in writing. Guarantor hereby subordinates any and all such claims and rights, in all respects, to the Obligations.

4. Expenses. Guarantor agrees to pay on demand any and all out-of-pocket costs, including reasonable legal fees and expenses, and other expenses incurred by CVEC in enforcing Guarantor's payment obligations under this Guaranty; provided that Guarantor shall not be liable for any expenses of CVEC if it is not successful in such enforcement action.

5. Subrogation. Guarantor shall be subrogated to all rights of CVEC against Contractor in respect of any amounts paid by Guarantor pursuant to the Guaranty, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under the United States Bankruptcy Code), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of CVEC against any collateral which CVEC now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to CVEC in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations in default shall not have been paid in full, such amount shall be held in trust for the benefit of CVEC and shall forthwith be paid to CVEC to be applied to the Guaranteed Obligations. If (a) Guarantor shall perform and shall make payment to CVEC of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, CVEC shall, at Guarantor's request, execute and deliver to Guarantor appropriate documents necessary to evidence the transfer by subrogation to Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.

6. Reservation of Defenses. Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guaranty notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations under a guaranty. Guarantor does reserve the right to assert defenses which Contractor may have to payment of any Guaranteed Obligation other than defenses arising from the bankruptcy or insolvency of Contractor and other defenses expressly waived hereby. Guarantor's exercise of such defenses shall not delay or excuse its payment obligations under this Guaranty. Such defenses may be asserted in any dispute resolution proceeding pursuant to Section 16 hereof.

7. Notices. All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon receipt, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, facsimile or personally delivered. Notices shall be sent to the following addresses:

If to CVEC:

[_____]
[_____]
[_____]
[_____]

If to Guarantor:

[_____]
[_____]
[_____]
[_____]

8. Demand and Payment. Any demand by CVEC for payment hereunder shall be in writing, signed by a duly authorized representative of CVEC and delivered to Guarantor pursuant to Section 7 hereof, and shall (a) reference this Guaranty, (b) specifically identify Contractor, the nature of the default, the Guaranteed Obligations to be paid and the amount of such Guaranteed Obligations and (c) set forth payment instructions, including bank name, routing number and bank account number. There are no other requirements of notice, presentment or demand. Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within two (2) business days of receipt of such demand.

9. No Waiver; Remedies. Except as to applicable statutes of limitation, no failure on the part of CVEC to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Term; Termination. This Guaranty shall become effective as of the date first above written and shall continue in full force and effect until the third anniversary of the termination date of the EMS Agreement.

11. Assignment; Successors and Assigns. CVEC may, upon notice to Guarantor, assign its rights hereunder without the consent of Guarantor. Guarantor may assign its rights hereunder with the prior written consent of CVEC, which consent shall not be unreasonably withheld. Subject to the foregoing, this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives. Guarantor expressly acknowledges and agrees that the “Host Town” or “Host” (as such term is defined in the EMS Agreement) is an intended beneficiary of this Guaranty.

12. Entire Agreement; Amendments. This Guaranty 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. This Guaranty may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto.

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

14. Representation and Warranties. Guarantor represents and warrants as follows:

(a) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guarantee;

(b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene Guarantor’s constitutional documents or any contractual restriction binding on Guarantor or its assets;

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency) reorganization and other laws of general applicability relating to or affecting CVEC’s rights and to general equity principles;

(d) There is no material litigation now pending or threatened in writing against Guarantor which, if adversely decided, could materially impair the ability of Guarantor to pay and perform the Obligations;

(e) Guarantor is solvent and is not rendered insolvent by the obligations undertaken in this Guaranty;

(f) Guarantor is not contemplating the filing of a petition or proceeding under any state or federal bankruptcy or insolvency or reorganization laws or the liquidating of all or a major portion of Guarantor’s property, and Guarantor has no knowledge of any such petition or proceeding being filed against Guarantor; and

(g) The EMS Agreement will constitute a material economic benefit to Guarantor.

15. Limitation by Law. All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

16. Severability. If any section, phrase or portion of the Guaranty 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 Guaranty 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 Guaranty and the benefits to the Parties are not substantially impaired.

17. 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.

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

19. Governing Law; Dispute Resolution. This Guaranty shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts. In the event a dispute arises concerning this Guaranty, the parties agree to follow the dispute resolution procedures set forth in the EMS Agreement.

20. 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.

21. Guarantor's Role as Contractor under EMS Agreement. This Guaranty is subject to the following: should Guarantor assume the role of Contractor through a permitted assignment of the EMS Agreement, nothing in this Guarantee shall be construed as a (i) waiver of any defenses that Guarantor, in its role as Contractor, may have against CVEC as User pursuant to such EMS Agreement, or (ii) as a waiver of any rights or remedies that that Guarantor, in its role as Contractor, may have against CVEC as User pursuant to such EMS Agreement.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of the date first above written.

Guarantor:

BROADWAY ELECTRICAL COMPANY, INC.

By: _____

Name:

Title:

Accepted and Agreed:

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

EXHIBIT J
PV SYSTEM MILESTONES

- i) Interconnection application seeking authorization to construct and interconnect the PV System to the Distribution Company System within forty-five (45) days of the Effective Date.
- ii) If the PV System is to be constructed on a capped landfill, submission of an application to the Massachusetts Department of Environmental Protection within forty-five (45) days of the Effective Date for any necessary post-closure use permit.
- iii) The Initial Notice of Financial Commitment within forty-five (45) days after the Effective Date.
- iv) Binding purchase order for the PV panels, racking system, inverters and transformers within thirty (30) days after receipt of a fully executed Interconnection Agreement.
- v) Interconnection Agreement, in form and substance satisfactory to Contractor and User, in each of its reasonable discretion, finalized and executed within one hundred eighty (180) days of Contractor's submission of the interconnection application.
- vi) The Final Notice of Financial Commitment within forty-five days of the receipt of the last final permit or required approval (including interconnection agreements) required to construct the PV System.
- vii) Statement of Qualification from the Massachusetts Department of Energy Resources for the PV System to be eligible as a RPS Class I Solar Carve-Out Renewable Generation Unit as defined in and in accordance with 225 C.M.R. 14.00 et seq. within twelve (12) months of the Effective Date.
- viii) If the PV System is to be constructed on a closed landfill, a post-closure use permit from the Massachusetts Department of Environmental Protection for the construction of the PV System, within six (6) months of the Effective Date.
- ix) The Project Development Schedule, including Construction Commencement Date is set forth in Attachment J-1.

**EXHIBIT K
FORM OF CONSENT TO ASSIGNMENT**

FORM CONSENT TO ASSIGNMENT AND AGREEMENT ([INSERT PROJECT NAME])

This Consent to Assignment and Agreement (this “Consent”) is entered into as of [____], by CAPE & VINEYARD ELECTRIC COOPERATIVE, INC., a [Massachusetts cooperative corporation] (“Consenting Party”), [INSERT FULL NAME OF ASSIGNING ENTITY], a [INSERT STATE] [INSERT FORM OF ORGANIZATION] (“Assignor”), and [INSERT NAME OF COLLATERAL AGENT], as collateral agent (together with its successors and assigns in such capacity, the “Collateral Agent”), for the Secured Parties under the Credit Agreement (as such terms are defined below). Capitalized terms used but not otherwise defined herein shall have the respective meanings as set forth in the Assigned Agreements (as defined below). *[NB: Relevant definitions from Credit Agreement to be included as an annex to consent to assignment.]*

RECITALS

WHEREAS, the Consenting Party and the Assignor are party to that certain Energy Management Services Agreement for Solar Photovoltaic System, dated [____] (as amended, modified and supplemented and in effect from time to time, the “EMSA”) and that certain Irrevocable Limited Power of Attorney, dated [____], 2013 (as amended, modified and supplemented and in effect from time to time, the “PoA” and, together with the EMSA, the “Assigned Agreements”);

WHEREAS, Assignor is a wholly owned subsidiary of Mass Solar Holdings I, LLC, a [Delaware] limited liability company (the “Borrower”);

WHEREAS, the Borrower has requested that the Lenders (as defined below) provide the credit facilities described in the Credit and Guaranty Agreement dated as of [____] (as amended, modified and supplemented and in effect from time to time, the “Credit Agreement”), among the Borrower, [____], as administrative agent (together with its successors and assigns in such capacity, the “Administrative Agent”) and Collateral Agent, and the financial institutions party thereto (the “Lenders”);

WHEREAS, the Assignor is providing a guarantee of the Borrower’s obligations under the Loan Documents (as defined in the Credit Agreement, the “Loan Documents”), and shall enter, or has entered, into a Security Agreement with the Collateral Agent, dated as of [____] (as amended, modified and supplemented and in effect from time to time, the “Security Agreement”) pursuant to which the Assignor shall collaterally assign in favor of the Collateral Agent and for the benefit of the Secured Parties (as defined in the Credit Agreement, the “Secured Parties”) all of its respective right, title and interest in the Assigned Agreements, as permitted, in the case of the EMSA, pursuant to Section 4.1(b) of the EMSA;

WHEREAS, Assignor may, pursuant to Section 16.1(a) of the EMSA, assign, pledge or transfer all or any part of, or any right or obligation under the EMSA for security purposes in connection with any financing or other financial arrangements regarding the PV System; and

WHEREAS, it is a condition precedent to the obligations of the Lenders and the other Secured Parties under the Loan Documents that the Assignor shall have entered into this Consent with the Consenting Party and the Collateral Agent.

NOW, THEREFORE, in consideration of the premises and of other valuable consideration, the parties hereto agree as follows:

1. ASSIGNMENT AND SECURITY INTEREST

As security for the performance and payment of the obligations secured by the Collateral Documents (as defined in the Credit Agreement, the “Collateral Documents”), Assignor has assigned or will assign to Collateral Agent for the benefit of the Secured Parties as collateral security, all of Assignor’s respective rights in, to and under, and granted a first priority security interest in, the Assigned Agreements, upon the terms set forth in the Collateral Documents.

2. CONSENT

Consenting Party hereby (a) irrevocably consents to the assignment specified in paragraph 1 of this Consent and, notwithstanding Section 16.2(c) of the EMSA, to any subsequent assignments by Collateral Agent upon and after Collateral Agent’s notification to Consenting Party that Collateral Agent is exercising its rights and remedies under the Collateral Documents, and (b) agrees that, following the assumption of the Assigned Agreements by Collateral Agent or its nominee, designee or assignee, all representations, warranties, indemnities and agreements (other than those representations and warranties expressly made only as of an earlier date) made by Consenting Party under or pursuant to the Assigned Agreements shall inure to the benefit of such party and shall be enforceable by such party to the same extent as if such party were originally named in the Assigned Agreements.

3. DEFAULT AND CURE

(a) In accordance with Section 9.3(a) of the EMSA, if Assignor defaults under the EMSA, Consenting Party shall give written notice to Collateral Agent (and shall update any such notice upon the request of Collateral Agent) (i) upon the occurrence of any such default, and (ii) after the expiration of any cure period of Assignor under the EMSA (including any extension thereof), if any. In both cases (i) and (ii), the notice given by Consenting Party shall specify the default and the steps necessary to cure the same, and, for any notice given pursuant to the foregoing clause (ii), state that the cure period of Assignor has expired. Consenting Party shall not terminate or suspend the EMSA as to Assignor or exercise any other remedy thereunder until after Collateral Agent has been given sixty (60) days after the receipt of the notice described in the foregoing clause (i) (for Assignor defaults for which the EMSA provides no cure period) or clause (ii) (for Assignor defaults for which the EMSA provides a cure period) or, in either case, such additional reasonable period of time as may be reasonably necessary under the circumstances (provided that Collateral Agent uses commercially reasonable efforts to cure such Assignor default during the initial sixty (60) days after the original notice) to cure such default or to cause it to be cured. Notwithstanding the foregoing sentence, if it is necessary for Collateral Agent to gain possession of, or to foreclose upon, any of the Collateral (as defined in the Credit Agreement, the “Collateral”) granted to it to secure the obligations secured by the Collateral Documents in order to cure such default, the initial cure period for defaults shall extend for a period of sixty (60) days after the date on which Collateral Agent shall have so gained possession of, or foreclosed upon, such Collateral. If Collateral Agent fails to cure, or cause to be cured, any such default within the appropriate period set forth above, Consenting Party shall have, as to Assignor, all of its rights and remedies with respect to such default as set forth in the EMSA, including, subject to Section 4 of this Consent, the rights and remedies granted to it under Sections 9.3(b) and (c) of the EMSA; provided, however, that notwithstanding anything to the contrary herein, if the default is particular to Assignor and not curable by Collateral Agent, such as the insolvency, bankruptcy, general assignment for the benefit of the creditors, or appointment of a receiver, trustee, custodian or liquidator

of Assignor or its properties, then, notwithstanding any right that Consenting Party may have to terminate the EMSA, Collateral Agent shall be entitled to assume the ongoing rights and obligations of Assignor under the EMSA within the applicable cure periods specified in this Section 3, and provided such assumption has occurred within such periods, Consenting Party shall not be entitled to terminate the EMSA as a result of such default; provided further, however, that for the avoidance of doubt, in the event that Collateral Agent elects not to assume the ongoing rights and obligations of Assignor under the EMSA as provided in the foregoing proviso, Consenting Party shall be entitled to terminate the EMSA in accordance with its terms as a result of the applicable default.

(b) In the event that an Assigned Agreement is terminated by rejection, or otherwise, during a case in which an Assignor is the debtor under Title 11 of the United States Code, or other similar federal or state statute, then Consenting Party shall, at the option of Collateral Agent and so long as all existing payment defaults by the Assignor under the applicable Assigned Agreement are cured by Collateral Agent or its nominee, designee or assignee, enter into a new agreement with Collateral Agent or (at the direction of Collateral Agent) its nominee, designee or assignee, having terms substantially identical to the applicable Assigned Agreement, pursuant to which Collateral Agent or its nominee, designee or assignee shall have all of the rights and obligations of Assignor under the applicable Assigned Agreement (each, subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree, a “Replacement Agreement”), provided that the term under the applicable Replacement Agreement shall be no longer than the remaining balance of the term specified in the applicable Assigned Agreement.

(c) In the event Collateral Agent or its nominee, designee or assignee is substituted for Assignor under an Assigned Agreement, Collateral Agent or its nominee, designee or assignee, as the case may be, shall cure any defaults for failure to pay amounts owed under such Assigned Agreement and assume all other ongoing rights and obligations of the Assignor under such Assigned Agreement; provided, however, that Collateral Agent or its nominee, designee or assignee, as the case may be, shall not be obligated to cure any defaults (other than payment defaults) which are not capable of being cured, to the extent that Collateral Agent or its nominee, designee or assignee, as the case may be, provides written notice to Consenting Party identifying any such incurable defaults and determines, in its reasonable discretion, that its failure to cure any such defaults will not have a material adverse effect on its ability to operate or maintain the PV System in accordance with the ongoing obligations under such Assigned Agreement.

4. **STEP-IN RIGHTS**

(a) For purposes of this Section 4, the following terms shall have the following respective meanings:

- i. “Collateral Agent Step-In Rights” shall mean the rights of the Collateral Agent (acting for the benefit of the Secured Parties) pursuant to the Collateral Documents to possess, assume control of, and operate the PV System as agent for, or on behalf of, Assignor (either directly or through a designee) in accordance with the Collateral Documents prior to (and not in conjunction with) the exercise by the Collateral Agent of its rights under the Collateral Documents to foreclose upon or otherwise dispose of the PV System and related collateral under, and in accordance with, the Collateral Documents; and
- ii. “CVEC Step-In Rights” shall mean the Consenting Party’s rights, pursuant to Section 9.3(b)(ii) of the EMSA, to possess, assume control of and operate the PV System

as agent for Assignor (in accordance with Assignor's rights, obligations and interests under the EMSA), under the terms and conditions of the EMSA.

(b) The Collateral Agent Step-In Rights and the CVEC Step-In Rights are in all respects subject to the terms and conditions of this Consent. .

(c) In the event of an Assignor Event of Default under the EMSA (each, a "Step-In Rights Event"), the Collateral Agent shall have the right to exercise the Collateral Agent Step-In Rights, including the cure rights described in Section 3 of this Consent, prior to any exercise by Consenting Party of (i) the CVEC Step-In Rights, (ii) Consenting Party's right to terminate the EMSA and collect monetary damages pursuant to Section 9.3(c)(i) of the EMSA or (iii) Consenting Party's right to purchase the PV System pursuant to Section 9.3(c)(ii) of the EMSA.

(d) In the event that the Collateral Agent elects not to exercise the Collateral Agent Step-In Rights with respect to a given Step-In Rights Event within the time period prescribed therefor in Section 3 of this Consent:

i. Consenting Party shall give the Collateral Agent written notice of Consenting Party's intent to exercise the CVEC Step-In Rights with respect to such Step-In Rights Event and shall not exercise the CVEC Step-In Rights with respect to such Step-In Rights Event until the date that is five (5) business days after the delivery of such notice (the period from and including the date of delivery of such notice through and including the date referred to above, a "Consenting Party Notice Period"). In the event that, prior to the date that Consenting Party exercises the CVEC Step-In Rights, the Step-In Rights Event is no longer continuing (by virtue of Assignor or the Collateral Agent effecting a cure or otherwise), then, in such case, the CVEC Step-In Rights shall terminate;

ii. In the event that the Step-In Rights Event is continuing at the conclusion of the relevant Consenting Party Notice Period, Consenting Party may exercise the CVEC Step-In Rights, subject to the following conditions:

A. Within thirty (30) days after commencing its exercise of the CVEC Step-In Rights, Consenting Party shall elect to either (x) terminate the EMSA, terminate the CVEC Step-In Rights and collect monetary damages (if applicable) pursuant to Section 9.3(c)(i) of the EMSA, or (y) issue to Assignor and Collateral Agent a notice of intent to purchase the PV System in accordance with this Section 4(d)(ii). The notice specified in subclause (y) above shall include a binding offer by CVEC (a "CVEC Initial Purchase Offer") to purchase the PV System pursuant to Section 9.3(c)(ii) the EMSA, at a fair market price reasonably determined by Consenting Party and collect monetary damages (if applicable) pursuant to Section 9.3(c)(ii) of the EMSA. In the event that CVEC does not elect to terminate the EMSA pursuant to this Section 4(d)(ii)(A), then CVEC shall continue its CVEC Step-In Rights until the consummation of any sale of the PV System contemplated in this Section 4(d)(ii), unless such CVEC Step-In Rights are earlier terminated in accordance with Section 4(d)(ii)(F) below;

B. Collateral Agent shall be entitled to accept or reject in writing the CVEC Initial Purchase Offer made pursuant to Section 4(d)(ii)(A) above,

within thirty (30) days after Collateral Agent's receipt of such CVEC Purchase Offer. In the event that Collateral Agent accepts the CVEC Purchase Order, then, within one hundred and eighty (180) days after Consenting Party's receipt of Collateral Agent's acceptance, Consenting Party and Collateral Agent or its nominee, designee or assignee, as the case may be, shall close on the sale of the PV System and execute and deliver all conveyance and transaction documents as are usual and customary for a sale of assets similar to the PV System; provided, however, Consenting Party shall have an additional reasonable period of time thereafter (not to exceed a further one hundred and eighty (180) days) to consummate such sale if Consenting Party provides notice and demonstrates to the reasonable satisfaction of Collateral Agent during such initial one hundred and eighty (180) day period that Consenting Party is using commercially reasonable efforts to obtain financing for the purchase of the PV System and such financing is reasonably likely to be obtained within such additional period of time; provided, further, that, in the event that Consenting Party concurrently (1) is exercising the CVEC Step-In Rights and (2) issues a notice of intent to purchase, in each case, in respect of two (2) or more PV Systems, which PV Systems collectively have an aggregate capacity of more than five (5) MW, then the second one hundred and eighty (180) day period set forth in this Section 4(d)(ii)(B) shall be extended for up to an additional ninety (90) day period;

C. In the event that Collateral Agent rejects the CVEC Initial Purchase Offer submitted by Consenting Party pursuant to Section 4(d)(ii)(A) above, Consenting Party may, within fifteen (15) days after Consenting Party's receipt of such rejection notice, provide a notice to Collateral Agent requiring a determination of the Appraised Value (as defined in the EMSA) of the PV System pursuant to and in accordance with Section 13.4 of the EMSA, which determination shall be based on the condition of the PV System as of the date the Consenting Party commenced its exercise of the CVEC Step-In Rights but shall take into account any normal wear and tear to the PV System during the period of Consenting Party's exercise of the CVEC Step-In Rights. The Parties shall use Commercially Reasonable efforts to procure the Final Determination (as defined in the EMSA) of the Appraised Value of the PV System as soon as practicable. In addition, Collateral Agent shall be entitled to conduct an independent engineering analysis at its sole cost to determine whether, from the commencement of Consenting Party's exercise of the CVEC Step-In Rights until the date of the Final Determination of the Appraised Value of the PV System (the "Initial CVEC Step-In Period"), Consenting Party maintained the PV System pursuant to and in accordance with its obligations in Section 4(d)(ii)(F) below. There shall be an upward adjustment to the purchase price as set forth in the Final Determination of the Appraised Value of the PV System in an amount equal to the amount of any lost revenue from the production of Net Energy including lost revenue from Environmental Attributes determined by the independent engineer to be the result of Consenting Party's operation of the PV System in a manner that materially adversely effected the

production of Net Energy from the PV System during the Initial CVEC Step-In Period (such adjusted purchase price, the “Final CVEC Purchase Price”);

D. On or before the later of (1) one hundred twenty (120) days after commencing its exercise of the CVEC Step-In Rights or (2) thirty (30) days following the Final Determination of the Appraised Value of the PV System in accordance with Section 4(d)(ii)(C) above, Consenting Party shall elect to (x) terminate the EMSA, terminate the CVEC Step-In Rights and collect monetary damages (if applicable) pursuant to Section 9.3(c)(i) of the EMSA, or (y) issue to Assignor and Collateral Agent a notice of intent to purchase the PV System in accordance with Section 4(d)(ii)(E) below and collect monetary damages (if applicable) pursuant to Section 9.3(c)(ii) of the EMSA. The notice specified in subclause (y) above shall include a binding offer by CVEC (a “CVEC Final Purchase Offer”) to purchase the PV System at the Final CVEC Purchase Price. If Consenting Party elects to terminate the EMSA in accordance with subclause (x) above, Collateral Agent shall be entitled to an amount equal to the amount of any degradation in the fair market value of the PV System during the Initial CVEC Step-In Period determined by the independent engineer to be the result of Consenting Party’s operation of the PV System during the Initial CVEC Step-In Period;

E. Within one hundred and eighty (180) days after Consenting Party’s issuance of the CVEC Final Purchase Offer, Consenting Party and Collateral Agent or its nominee, designee or assignee, as the case may be, shall close on the sale of the PV System and execute and deliver all conveyance and transaction documents as are usual and customary for a sale of assets similar to the PV System; provided, however, that Consenting Party shall have an additional reasonable period of time thereafter (not to exceed a further one hundred and eighty (180) days) to consummate such sale if Consenting Party provides notice and demonstrates to the reasonable satisfaction of Collateral Agent during such initial one hundred and eighty (180) day period that Consenting Party is using commercially reasonable efforts to obtain financing for the purchase of the PV System and such financing is reasonably likely to be obtained within such additional period of time; provided, further, that, in the event that Consenting Party concurrently (i) is exercising the CVEC Step-In Rights and (ii) issues a notice of intent to purchase, in each case, in respect of two (2) or more PV Systems, which PV Systems collectively have an aggregate capacity of more than five (5) MW, then the second one hundred and eighty (180) day period set forth in this Section 4(d)(ii)(E) shall be extended for up to an additional ninety (90) day period.

F.

(1) During any period in which Consenting Party exercises the CVEC Step-In Rights, Consenting Party shall operate and maintain the PV System in first class order, repair and condition and in accordance

in all material respects with Good Engineering Practice and the Common Technical Specifications. In the event that Consenting Party fails to operate and maintain the PV System in accordance with this Section 4(d)(ii)(F) and such failure could reasonably be expected to have a material adverse effect on the value of the PV System or its ability to produce Net Energy as determined by an independent engineer (chosen by Collateral Agent and acceptable to the Consenting Party in its reasonable discretion), the CVEC Step-In Rights shall terminate and Consenting Party shall give over possession and control of the PV System to Collateral Agent;

(2) During the initial sixty (60) day period of Consenting Party's exercise of the CVEC Step-in Rights, Consenting Party shall not be responsible for the payment of Net Energy (as such term is defined in the EMSA). Notwithstanding anything to the contrary set forth herein or in the EMSA, Consenting Party shall pay Assignor for Net Energy delivered to Consenting Party during any period after such initial sixty (60) day period, *less* Consenting Party's reasonable, documented costs incurred in the operation and maintenance of the PV System (including, but not limited to, the costs of capital improvements to the PV System or to cure any existing maintenance deficiencies of the PV System, incurred by Consenting Party upon the exercise of the CVEC Step-In Rights that are reasonably necessary for Consenting Party to operate the PV System in accordance with the maintenance obligations set forth in this Section 4(d)(ii)(F)(1)), pursuant to and in accordance with Section 7.5 of the EMSA; and

(3) At all times during Consenting Party's exercise of the CVEC Step-In Rights, (x) title to the Environmental Attributes (as such term is defined in the EMSA) shall remain as set forth in Section 6.1 of the EMSA, (y) notwithstanding anything to the contrary set forth herein or in Section 5.6(b) of the EMSA, Assignor shall have no liability to pay damages to Consenting Party in respect of the portion of any Production Shortfall for a given Contract Year that occurs during Consenting Party's exercise of the CVEC Step-In Rights and (z) notwithstanding anything to the contrary set forth herein or in Section 11.2 or 11.3 of the EMSA, Assignor shall have no liability to indemnify, defend or hold harmless any User Indemnified Party with respect to any costs, claims, liability, damages, expenses (including reasonable attorneys' fees, costs, expenses and interest) or lien claims arising out of or in connection with Consenting Party's exercise of the CVEC Step-In Rights.

5. PAYMENTS

Consenting Party agrees to execute a Master Lockbox and Security Agreement in form and substance substantially similar to Exhibit L of the EMSA, and Consenting Party agrees to comply with its obligations thereunder.

6. DELIVERY OF NOTICES

Consenting Party agrees that it will promptly notify Collateral Agent of any material default, event of default or assessment of liquidated damages against Assignor under an Assigned Agreement and will deliver to Collateral Agent simultaneously with the delivery thereof to Assignor.

7. LIABILITY OF COLLATERAL AGENT

Notwithstanding anything to the contrary set forth in either Assigned Agreement (including Section 16.1(a) of the EMSA), Consenting Party acknowledges and agrees that Collateral Agent (and any successor(s), nominee(s), assignee(s), designee(s) or other representative of Collateral Agent) has not assumed and does not have any obligation or liability under or pursuant to the Assigned Agreements, and that the exercise by Collateral Agent (or any successor(s), nominee(s), assignee(s), designee(s) or other representative of Collateral Agent) of its rights and remedies under the Collateral Documents shall not constitute an assumption of any Assignor's obligations under either Assigned Agreement (except to the extent any such obligations shall be expressly assumed by an instrument in writing executed by Collateral Agent or by the applicable successor(s), nominee(s), assignee(s), designee(s) or other representative of Collateral Agent).

8. AMENDMENT OR TERMINATION OF ASSIGNED AGREEMENTS

Consenting Party covenants and agrees with Collateral Agent that, without the prior written consent of Collateral Agent, Consenting Party will not (a) amend or modify either Assigned Agreement in any manner that will materially adversely affect the operation of the PV System or Assignor's rights and obligations under such Assigned Agreement, or (b) terminate (prior to the expiration of the applicable cure periods in Section 3 hereof), assign, transfer or encumber any of its interests in either Assigned Agreement (except, in the case of the EMSA, as permitted in Section 16.2(b) of the EMSA); provided, however, that (i) Consenting Party shall provide reasonable advance notice of any such permitted assignment by Consenting Party and (ii) any such permitted assignee shall assume in writing all of Consenting Party's obligations under the applicable Assigned Agreement and this Consent, in each case, as a condition to the effectiveness of any such permitted assignment.

9. REPRESENTATIONS AND WARRANTIES

As of the date hereof, Consenting Party hereby represents and warrants to Collateral Agent as follows:

(a) Consenting Party is a cooperative corporation duly formed, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreements and this Consent. Consenting Party has the requisite power, authority and legal right necessary to execute, deliver and incur the obligations provided for in this Consent and the Assigned Agreements;

(b) the execution, delivery and performance by Consenting Party of this Consent and the Assigned Agreements have been duly authorized by all necessary cooperative corporation action on its part. No material consent, approval, order or authorization of or registration, declaration of a filing with, or giving of notice to, obtaining of any license or permit from, or taking any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution, delivery and performance of this Consent or the Assigned Agreements by Consenting Party which has not been obtained;

(c) each of this Consent and the Assigned Agreements has been duly executed and delivered by Consenting Party and constitutes the legal, valid and binding obligations of Consenting Party, enforceable against Consenting Party in accordance with its terms, except as enforceability may be limited by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law) and by applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally;

(d) each of the Assigned Agreements is in full force and effect and has not been amended except as specifically described herein, and neither Consenting Party, nor to the knowledge of Consenting Party, Assignor, is in default in any respect under either Assigned Agreement or has failed to fulfill any of its obligations under either Assigned Agreement, and no event or condition exists and is continuing that with the lapse of time, the giving of notice, or both, would reasonably be expected to constitute such a default under either Assigned Agreement;

(e) all representations and warranties made by Consenting Party in each Assigned Agreement were true and correct in all material respects on and as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects on and as of the date of this Consent;

(f) except as set forth in Schedule A, there is no litigation, action, suit, investigation or proceeding pending or, to the best of Consenting Party's knowledge, threatened against Consenting Party, before or by any court, administrative agency, arbitrator or governmental authority, body or agency, which if adversely determined, individually or in the aggregate, (i) could materially and adversely affect the performance by Consenting Party of its obligations hereunder or under either of the Assigned Agreements, (ii) could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (iii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Consenting Party or (iv) questions the validity, binding effect or enforceability hereof or of either of the Assigned Agreements, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

(g) Consenting Party is not in violation of its constitutive documents. The execution, delivery and performance by Consenting Party of this Consent and the Assigned Agreements, and the consummation of the transactions contemplated hereby and thereby, do not result in (i) any violation of any term of its constitutive documents or of any material contract or agreement applicable to it, (ii) any violation of any license, permit, franchise, judgment, decree, writ, injunction, order, charter, law, ordinance, rule or regulation applicable to it or any of its properties, any obligations incurred by it or by which it or any of its properties may be bound or affected, or any determination or award of any arbitrator applicable to it, or (iii) the creation of any lien upon any of its properties or assets that, in each of the circumstances and scenarios described in subclauses (i), (ii) and (iii), could have a material adverse effect on Consenting Party's ability to perform under this Consent or under either of the Assigned Agreements;

(h) Consenting Party has not received notice of, or consented to, the assignment of Assignor's respective right, title, or interest in either of the Assigned Agreements, to any person or entity other than Collateral Agent;

(i) Consenting Party is not aware of any event, act, circumstance or condition constituting an event of force majeure (as defined in the EMSA) under the EMSA;

(j) to Consenting Party's knowledge, (i) neither Consenting Party nor Assignor owes any indemnity, warranty or liquidated damages payment under the EMSA, (ii) there are no facts entitling Consenting Party to any material claim, counterclaim or offset against Assignor in respect of the EMSA and (iii) all payments, costs and expenses required to be made or paid under the EMSA as of the date hereof have been made or paid by or on behalf of Assignor;

(k) Consenting Party's leasehold interest in the [Premises] [Rooftop Space] is not encumbered by any mortgage, lien, deed of trust or similar real property security interest or financing other than as set forth in the Exhibit A-1 of the EMSA; and

(l) there are no disputes or legal proceedings currently pending (or, to Consenting Party's knowledge, threatened) between Consenting Party and Assignor.

TO HAVE AND TO HOLD unto Collateral Agent, its heirs, successors and assigns forever, upon the terms and conditions set forth in this Consent.

10. NOTICES

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Collateral Agent:

[INSERT COLLATERAL AGENT NAME]
[]
[]
Attn: []
Tel: []
Fax: []

If to Assignor:

[INSERT ASSIGNING ENTITY NAME]
[]
[]
Attn: []
Tel.: []
Fax: []

If to Consenting Party:

Cape & Vineyard Electric Cooperative, Inc.
P.O. Box 427/SCH
Barnstable, MA 02630
Attn: Margaret T. Downey
Tel: (508) 375-6636
Fax: (508) 362-4136
Email: mdowney@barnstablecounty.org

with a copy to:

Jeffrey M. Bernstein, Esq.
BCK Law, P.C.
One Gateway Center, Suite 809
Newton, MA 02458
Tel: (617) 244-9500
Fax: (617) 244-9550
Email: jbernstein@bck.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or two (2) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified above (or such other address as a party hereto may designate to the other parties hereto by providing notice in accordance with this Section 10).

11. GOVERNING LAW; VENUE

This Consent 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. Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in any court of competent jurisdiction within the Commonwealth of Massachusetts, and by execution and delivery of this Consent, Consenting Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. EACH OF ASSIGNOR AND CONSENTING PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT.

12. SUCCESSORS AND ASSIGNS

This Consent shall be binding upon and inure to the benefit of the parties and their respective successors and assigns (which assigns, in the case of Collateral Agent, shall include, without limitation, any nominee, designee or assignee of Collateral Agent, any entity that refinances all or any portion of Assignor's obligations under the Credit Agreement and any purchaser of all or any portion of Collateral Agent's rights under either of the Assigned Agreements in connection with the enforcement of remedies upon the occurrence and during the continuance of an event of default). Collateral Agent shall have the right, without the prior consent of the Consenting Party, to assign its right, title and interest in this Consent to any successor collateral agent for the Secured Parties, provided that (i) any successor collateral agent shall be a bank having a combined capital and surplus that is not less than \$500,000,000 or an affiliate of such bank, (ii) any successor collateral agent shall be a bank having a credit rating of at least Baa2 from Moody's Investors Service or an affiliate of such bank and (iii) Collateral Agent shall provide notice to Consenting Party of any such assignment.

13. WAIVER

No amendment or waiver of any provisions of this Consent shall be effective unless the same shall be in writing and signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure or delay on the part of

Consenting Party, Assignor, Collateral Agent or any agent or designee of any of the foregoing to exercise, and no course of dealing with respect to, any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. SEVERABILITY

Any provision of this Consent which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15. INTERPRETATION

All references in this Consent to any document, instrument or agreement (a) shall include all contract variations, change orders, exhibits, schedules and other attachments thereto, and (b) shall include all documents, instruments or agreements issued or executed in replacement or as predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.

16. COUNTERPARTS

This Consent may be executed in one or more counterparts and by facsimile and when signed by all of the parties listed below shall constitute a single binding agreement.

17. FURTHER ASSURANCES

Consenting Party will, upon the reasonable written request of Collateral Agent, execute and deliver such further documents and do such other acts and things necessary to effectuate the purposes of this Consent.

18. CONFLICTS

In the event of a conflict between any provision of this Consent and the provisions of either of the Assigned Agreements, the provisions of this Consent shall prevail.

19. TERMINATION

Consenting Party's and Assignor's obligations hereunder are absolute and unconditional, and neither Consenting Party nor Assignor has, or shall have, a right to terminate this Consent or to be released, relieved or discharged from any obligation hereunder until the earlier to occur of (i) the termination of each of the Assigned Agreements (provided Consenting Party has fully performed its obligations thereunder and under this Consent) or (ii) the date on which all of the Obligations secured by the Collateral Documents have been repaid in cash in full or performed (or otherwise cancelled, forgiven, released, discharged or satisfied (in law or at equity)), as applicable.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Consent as of the date first above written.

Assignor

[INSERT FULL NAME OF ASSIGNING ENTITY]

By: _____

Name:

Title:

Consenting Party

**CAPE & VINEYARD ELECTRIC COOPERATIVE,
INC.**

By: _____

Name:

Title:

By: _____

Name:

Title:

Accepted by Collateral Agent:

DEUTSCHE BANK SECURITIES INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

Schedule A
[CVEC to provide.]

EXHIBIT L
FORM OF OPINION OF COUNSEL

BCK WORKING DRAFT DATED 3-9-13
SUBJECT TO ADDITIONAL REVIEW AND CHANGES
PENDING FINALIZATION OF TRANSACTION DOCUMENTS

[date]

Deutsche Bank Trust Company Americas

[_____]

[_____]

Attn: _____

Deutsche Bank Securities Inc.

60 Wall Street

New York, NY 10005

Attn: _____

KeyBank National Association

601 108th Avenue NE

Bellevue, WA 98004

Attn: _____

Re: **[Project Description]** (the “EMS Transaction”)

Gentlemen and Mesdames:

We have acted as counsel to the Cape & Vineyard Electric Cooperative, Inc. (“CVEC”) and are delivering this opinion to you at CVEC’s request pursuant to Section **xx** of that certain Credit and Guaranty Agreement (the “Credit Agreement”) dated as of [____], among Mass Solar Holdings I, LLC, a [Delaware] limited liability company (the “Borrower”), each subsidiary of the Borrower that, from time to time, becomes a guarantor thereunder, the financial institutions party thereto (the “Lenders”), Deutsche Bank Trust Company Americas, as administrative agent (together with its successors and assigns in such capacity, the “Administrative Agent”), Deutsche Bank Trust Company Americas, as collateral agent (together with its successors and assigns in such capacity, the “Collateral Agent”), and Deutsche Bank Securities, Inc. and KeyBank National Association, as joint lead arrangers and as issuing banks.

[addressee]

[date]

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We advise you that we have examined originals or copies, certified or otherwise identified to our satisfaction, documents numbered **xx to xx** on the Opinion Document List set forth in Exhibit A to this opinion (dated as of **[insert]** and as delivered to us on **[insert]**) (the “Opinion Documents”).

We have also examined such other documents and have made such other examinations, including, without limitation, examinations of all applicable laws, statutes, ordinances and regulations, as we have deemed appropriate or necessary as the basis for the opinions hereinafter set forth. In rendering the opinions expressed below, we have assumed, without independent investigation: (a) that the signatures of persons signing all documents in connection with which this opinion is rendered are genuine; (b) all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents; (c) the accuracy of all certificates and other statements, representations, documents, records, financial statements and papers with respect to the factual matters set forth therein; and (d) that all parties to the documents reviewed by us (other than CVEC) are duly organized, validly existing and in good standing under the laws of all jurisdictions where they are conducting their businesses or otherwise required to be so qualified, and have full power and authority to execute, deliver and perform under such documents and all such documents have been duly authorized, executed and delivered by such parties.

We have, without independent investigation or inquiries of any kind, relied upon and assumed the truth and accuracy of all factual matters contained in the “authority documents” of CVEC as set forth in the Opinion Document List (numbered **xx and xx**) attached to this opinion as Exhibit A (the “Certificates”). We have also relied upon and assumed the truth and accuracy of each of the representations and warranties as to factual matters contained in the Opinion Documents. We have not undertaken any independent investigation to determine the accuracy of any factual statement in any Closing Document, and no inference that we have any knowledge of any matters pertaining to any such statement should be drawn from our representation of CVEC.

We have not reviewed the Credit Agreement, and none of the opinions expressed herein have any application to the Credit Agreement (or to any other agreement that CVEC is not a party to).

Based upon the foregoing and subject to the qualifications stated herein, we are of the opinion that:

1. CVEC has been duly incorporated and organized under G.L. c. 156B and c. 164, Section 136 and is existing as a corporation and a cooperative corporation in good standing under the laws of the Commonwealth of Massachusetts;
2. CVEC has all requisite corporate power and authority to conduct its business as now conducted and to execute and deliver and perform its obligations under each Energy Management Services Agreement (“EMSA”) and consent to assignment

[addressee]

[date]

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and the Master Lockbox and Security Agreement;

3. The execution, delivery and performance of each EMSA and consent to assignment and the Master Lockbox and Security Agreement would not conflict with CVEC's organizational documents as set forth in **xx – xx** of the Opinion Document List or conflict with or result in a breach of any contracts to which CVEC is a party;
4. Other than as set forth in the documents listed in the Opinion Document List and noted below, no further governmental approvals are required for the due execution, delivery and performance by CVEC of its obligations under each EMSA and consent to assignment and the Master Lockbox and Security Agreement or the validity and enforceability against CVEC of the EMSA or consent to assignment; and
5. Each EMSA and consent to assignment and the Master Lockbox and Security Agreement has been duly executed and delivered and constitute legal, valid and binding obligations of CVEC, enforceable against CVEC in accordance with its terms.

We note that the following governmental approvals are required: **[insert]**.

We also note that CVEC's bylaws require two officers sign CVEC contracts. The specific bylaw provision is as follows:

12.3 Execution of Papers

All deeds, leases, transfers, contracts, bonds, notes, releases, checks, drafts and other obligations authorized to be executed on behalf of the Cooperative shall be signed by at least two persons. Such persons shall either be an Officer of the Cooperative or persons as the Board of Directors may generally or in particular cases otherwise determine.

The opinions as expressed herein are subject to the following additional qualifications:

With your permission, our opinion in paragraph 1 above is based solely on a review of a copy of CVEC's Articles of Organization as amended and certified by the Secretary of the Commonwealth of Massachusetts on **[insert]** and a certificate of the Secretary of the Commonwealth of Massachusetts, dated **[insert]**, as to the good standing of CVEC.

With your permission, our opinion in paragraph 2 above is based solely on our review of the Certificates.

[addressee]

[date]

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Our opinions in paragraphs 4 and 5 are limited to the EMSAs and consents to assignment and the Master Lockbox and Security Agreement, and do not apply to the transactions contemplated by other documents in the Opinion Document List.

[Placeholder for language to address status of EMSAs, the consents to assignment and the Master Lockbox and Security Agreement at time of delivery of the opinion. The current proposal is to issue the opinion in respect of all CVEC EMSAs and consents to assignment and the Master Lockbox and Security Agreement executed in respect of CVEC projects that are funded on the Borrower's initial funding date under the Credit Agreement.]

The enforceability of the Opinion Documents and the obligations of the parties hereunder, and the availability of certain rights and remedial provisions provided for on the Opinion Documents are subject to the effects of: (a) bankruptcy, fraudulent conveyance or fraudulent transfer, insolvency, reorganization, moratorium liquidation, conservatorship, and similar laws and limitations imposed under judicial decisions, related to or affecting creditor's rights and remedies generally; (b) general equitable principles, regardless of whether the issue of enforceability is considered in a proceeding in equity or at law and principles limiting the availability of the remedy or specific performance; (c) concepts of good faith, fair dealing, materiality and reasonableness; and (d) the possible unenforceability under certain circumstances of provisions providing for indemnification or contribution that are contrary to public policy.

We express no opinion herein as to the enforceability of cumulative remedies to the extent such cumulative remedies would have the effect of compensating the party entitled to the benefits thereof in amounts in excess of the actual loss suffered by such party.

Notwithstanding certain language in the Opinion Documents, the Collateral Agent may be limited to recovery of fees, costs and expenses in recovering only reasonable attorneys' fees and legal expenses and only reasonable costs.

Requirements in the Opinion Documents specifying that provisions thereof may only be waived in writing may not be valid, binding, or enforceable to the extent that an oral agreement or an implied agreement by trade practice or course of conduct has been created modifying any provision of such documents.

We express no opinion herein in respect to any federal or state anti-trust, banking, tax, securities, or "blue sky" laws or ERISA laws, rules or regulations.

We express no opinion herein with respect to the validity, binding effect, or enforceability or any provision of the Opinion Documents: (a) authorizing self-help or permitting the unilateral or *ex parte* appointment of a receiver; (b) prohibiting oral modifications or waivers of the Opinion Documents; (c) regarding choice of law, forum selection or waiver of jury trial; (d) indemnifying a party for, or releasing, exculpating or exempting a party from, liability for its own action or inaction to the extent such action or inaction is wrongful, willful, reckless, negligent or unlawful or where such indemnification, release, exculpation or exemption is contrary to public policy; (e) concerning the payment of penalties, consequential damages or

[addressee]

[date]

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liquidated damages; (f) waiving obligations of good faith, fair dealing, diligence or reasonableness; (g) providing that an election of remedies does not affect the Collateral Agent's right to other remedies; (h) providing that any unenforceable terms shall not affect the enforceability of any other terms where the unenforceable terms are an essential part of the agreement; (i) to the effect that the Financier's failure to exercise or delay in exercising a right or remedy will not operate as a waiver of such right or remedy; (j) granting powers of attorney or proxies; (k) purporting to establish evidentiary standards; (l) purporting to establish in advance standards of commercial reasonableness; (m) purporting to charge interest on interest; (n) attempting to limit the status of Collateral Agent as "mortgagee-in-possession" to periods of actual possession of the [Real Property]; (o) waiving or limiting the statutory right of redemption; (p) providing that Collateral Agent, by the exercise or non-exercise of any of its remedies under the Opinion Documents with respect to the investigation, prevention or cleanup of any release or threat of release of hazardous materials, the removal of hazardous materials, any remedial work or any other action or inaction regarding such materials, shall have no responsibility as a potentially responsible party, nor shall be deemed to be an "operator" of the [Real Property], under applicable law, to the extent that any such exercise or non-exercise falls outside of the scope of any so-called "secured creditor exemptions" provided thereby; (q) purporting to permit the exercise, under certain circumstances, of rights or remedies without nature or without providing opportunity to cure failures to perform; (r) purporting to require a waiver of defenses, set-offs, counterclaims or rights to jury trial; or (s) that provides that determination by a party or a party's designee are conclusive or deemed conclusive.

We are attorneys admitted to practice in the Commonwealth of Massachusetts. We express no opinion as to the laws of any jurisdiction other than the laws of the Commonwealth of Massachusetts existing as of the date hereof, to the extent necessary to render the opinions set forth above. To the extent the opinions expressed herein address matters arising under the laws of other jurisdictions, we have, with your permission, assumed that the laws of such jurisdictions are the same, in all material respects, as the laws of the Commonwealth of Massachusetts.

This opinion is furnished by us at CVEC's request as counsel for CVEC solely in connection with the EMS Transaction and, except as set forth in the paragraph below, may be relied upon only by the three named addressees to this opinion and solely in connection with the EMS Transaction. Our opinion may not be used, quoted from, referred to or relied upon by you or by any other person for any other purpose, without our prior written consent in each instance; except that you may deliver copies of this opinion to governmental regulatory agencies having jurisdiction over you to the extent disclosure of the opinion is required by applicable law or regulation. This opinion is based on factual matters in existence as of the date hereof and laws and regulations in effect on the date hereof. We shall have no obligation to revise or supplement or reissue this opinion with respect to any change in law or any event, fact, circumstance or transaction which occurs after the date hereof. In addition, we express no opinion with respect to any issue arising out of or related to: (a) the identity or status of any assignee of any of the Opinion Documents in the EMS Transaction; (b) a securitization of the EMS Transaction; or (c) any future transaction.

[addressee]

[date]

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We hereby agree to provide a letter to any future assignee of your interest in the loans under the Credit Agreement authorizing reliance on this opinion by such assignee, upon such assignee's reasonable request, as determined by us in our reasonable discretion on the condition and understanding that: (a) this opinion speaks only as of the date hereof, (b) we have no responsibility or obligation to update this opinion, to consider its applicability or correctness to other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware; and (c) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time.

Very truly yours,

BCK Law, P.C.

By: _____
Jeffrey M. Bernstein, Esquire

OPINION DOCUMENT LIST

**EXHIBIT M
FORM OF
MASTER LOCKBOX AND SECURITY AGREEMENT**

THIS MASTER LOCKBOX AND SECURITY AGREEMENT (“AGREEMENT”) is dated _____, 2013 and is by and among _____, a _____ corporation (“Secured Party”), the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Debtor”), and TD Banknorth NA (“Bank”).

RECITALS

WHEREAS, Debtor is purchasing energy generated by ground-mounted or roof-mounted photovoltaic systems (“PV System” or “PV Systems”) owned and operated by project companies formed by Secured Party as [direct or indirect parent] (each, a “Project Company”) and sited on Site Hosts’ land or rooftop space pursuant to an Energy Management Services Agreement entered into between Debtor and the applicable Project Company for each PV System (each individually, an “EMS Agreement” and collectively, the “EMS Agreements”);

WHEREAS, Debtor is reselling the energy from the PV Systems to a Site Host pursuant to an Inter-Governmental Net Metered Power Sales Agreement;

WHEREAS, Secured Party desires to secure certain payment obligations from Debtor and Site Hosts in connection with the EMS Agreements;

WHEREAS, in connection with securing such payment obligations, Secured Party desires to make certain arrangements with respect to a bank account owned by Debtor, and to obtain a security interest in certain property owned by Debtor; and

WHEREAS, Debtor desires to enter into such arrangements to grant Secured Party a security interest subject to the terms and conditions set forth herein.

NOW THEREFORE, IT IS AGREED THAT, the Parties hereby enter into this Agreement subject to the terms and conditions below.

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 Section 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text.

“**Agreement**” shall have the meaning set forth in the first paragraph.

“**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.

“Bank” shall have the meaning set forth in the first paragraph.

“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; (vi) seeks or 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; (vii) 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; (viii) 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 (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“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.

“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 applicable law and regulations.

“Confidential Information” means all trade secrets or confidential, competitively sensitive or other proprietary information provided by either party in connection with this Agreement, whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words “Confidential” or “Proprietary” or marking of similar import, or if disclosed orally, is identified as confidential at the time of disclosure and in a written notice delivered to the nondisclosing party promptly following disclosure. Confidential Information does not include: (i) information already in the possession of the nondisclosing party at the time of disclosure by the disclosing party, as long as such information was not provided by the disclosing party; (ii) information that is now or later becomes publicly available, unless

such information becomes publicly available as a result of any action or inaction on the part of the nondisclosing party; (iii) information received by the nondisclosing party from a third party, unless such third party was under a duty of confidentiality with respect to such information; (iv) information for which disclosure is required under the Massachusetts Public Records Act, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10; or (v) information that is not designated or identified by the disclosing party as “Confidential” or “Proprietary” at the time of its initial submission. Such information shall be presumptively subject to disclosure under the Public Records Act.

“**Debtor**” shall have the meaning set forth in the first paragraph.

“**Effective Date**” means the effective date of this Agreement, pursuant to Section 2 (Term and Termination) below.

“**EMS Agreement**” shall have the meaning set forth in the Recitals. A list of each EMS Agreement entered into between a Project Company and Debtor is set forth in Exhibit A, as such list may be updated from time to time upon notice from the Secured Party to the Bank.

“**Financier**” means any individual or entity providing money or extending credit for the PV System to Secured Party for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Secured Party.

“**Funds**” means (i) the monthly energy payments pursuant to an Inter-Governmental Net Metered Power Sales Agreement which are or may become due and payable by the Site Hosts to Debtor, (ii) the monthly energy payments pursuant to an EMS Agreement which are or may become due and payable by Debtor to the applicable Project Company (or to the Secured Party on behalf of such Project Company), (iii) the monthly damages payments pursuant to an Inter-Governmental Project Development Agreement which are or may become due and payable by the Site Hosts to Debtor on behalf of the applicable Project Company (or to the Secured Party on behalf of such Project Company) pursuant to Section 8.5(d) or 8.5(e) thereof and/or (iv) the monthly damages payments pursuant to an EMS Agreement which are or may become due and payable by Debtor to the applicable Project Company (or to the Secured Party on behalf of such Project Company) pursuant to Section 5.7 thereof.

“**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.

“**Inter-Governmental Net Metered Power Sales Agreement**” shall have the meaning set forth in the Recitals. A list of each Inter-Governmental Net Metered Power Sales Agreement entered into between Debtor and a Site Host is set forth in Exhibit B, as such list may be updated from time to time upon notice from the Secured Party to the Bank.

“Inter-Governmental Project Development Agreement” means each of the Inter-Governmental Project Development Agreements entered into between Debtor and a Site Host that are set forth in Exhibit C, as such list may be updated from time to time upon notice from the Secured Party to the Bank.

“Lockbox Account” shall have the meaning set forth in Section 3 (Lockbox Account).

“Net Energy Price” means the amount paid by Debtor to the applicable Project Company (or to the Secured Party on behalf of such Project Company) as set forth in Exhibit C to each EMS Agreement.

“Parties” means Secured Party, Debtor, and Bank, as the context requires. In the singular, “Party” shall refer to any of the preceding.

“Payment Instruction” means a written notice from Secured Party or Debtor, as applicable, instructing the Bank to disburse Funds. Such notice shall be in substantially the same form as Exhibit D attached hereto and may be transmitted by facsimile or by means of electronic communications.

“Project Company” shall have the meaning set forth in the Recitals.

“Secured Party” shall have the meaning set forth in the first paragraph.

“Site Host” means any municipality, county or political subdivision thereof, or other body politic, that has duly joined Debtor as a cooperative member, or any other governmental entity that has entered into an Inter-Governmental Net Metered Power Sales Agreement with Debtor.

“Termination Date” shall have the meaning set forth in Section 2.

2. ***Term and Termination.*** This Agreement shall be effective as of the date the last of the three Parties hereto executes this Agreement (the “Effective Date”) and shall continue so long as any EMS Agreement is in effect or any sums due and owing to any Project Company (or to the Secured Party on behalf of such Project Company) under any EMS Agreement remain unpaid (the “Termination Date”). Debtor shall not have a right to terminate this Agreement or to be released, relieved or discharged from any obligation hereunder until the Termination Date. Upon the Termination Date, all collected and available Funds shall be disbursed to the applicable Project Company (or to the Secured Party on behalf of such Project Company) in accordance with the respective rights of each under the Inter-Governmental Net Metered Power Sales Agreements, the Inter-Governmental Project Development Agreements and the EMS Agreements, respectively.

3. ***Establishment of Lockbox Account.*** Debtor has opened a Lockbox Account with Bank, Account No. _____ (the “Lockbox Account”), which will exclusively be used to collect and hold the Funds. The Lockbox Account will contain subaccounts for each EMS Agreement (i.e., each subaccount will contain commingled

Funds from the three agreements related to each PV System -- the Inter-Governmental Net Metered Power Sales Agreement, the Inter-Governmental Project Development Agreement and the EMS Agreement).

4. ***Appointment of and Grant of Authority to Bank; Liability of Bank.*** Debtor and Secured Party hereby appoint Bank as their agent and bailee hereunder. Bank accepts such appointment and agrees to receive, hold and disburse the Funds in accordance with the terms of this Agreement. Secured Party hereby consents to the appointment of Bank as the bank of Debtor for the purpose of performing the duties and obligations provided for by this Agreement. In connection therewith, Debtor and Secured Party hereby grant to Bank the following authority and rights:

(a) to make withdrawals and disbursements from the Lockbox Account in accordance with Section 6 (Disbursements from Lockbox Account) and the other applicable terms and conditions of this Agreement;

(b) to endorse in the name of Debtor or Secured Party, without recourse to Bank, Secured Party or Debtor, any checks constituting Funds and to deposit such checks into the Lockbox Account; and

(c) to take such other action in respect of the Lockbox Account as may be necessary or appropriate within the discretion of Bank for the purpose of collecting and depositing the Funds (but without any obligation to enforce any Debtor payment obligation under the EMS Agreements), disbursing the same to Debtor and/or Secured Party as set forth in Section 6 hereof, and to otherwise carry out the duties and obligations imposed upon Bank pursuant to the terms of this Agreement.

Bank shall not be responsible or liable in any manner whatsoever for the correctness, genuineness or validity of any document or instrument, or any signature thereon, deposited with or delivered to Bank pursuant to this Agreement, except for acts or omissions resulting from Bank's gross negligence, intentional misconduct or bad faith; provided nothing contained herein shall relieve Bank from its obligation and responsibility to account for all Funds received and held by Bank from time to time.

Subject to the appointment and acceptance of a successor Bank as provided below, Bank may resign at any time by notifying Debtor and Secured Party. Secured Party and, so long as no Event of Default of Debtor has occurred and is continuing, Debtor shall have the right, acting jointly, to remove Bank for cause. Upon any such resignation or removal, Secured Party and, so long as no Event of Default of Debtor has occurred and is continuing, Debtor acting jointly, shall have the right to appoint a successor. If no successor shall have been so appointed by Debtor and/or Secured Party, as applicable, and shall have accepted such appointment within [30] days after Bank gives notice of its resignation or Debtor and/or Secured Party, as applicable, agree to remove Bank, then the retiring or removed Bank may, on behalf of Secured Party and Debtor, appoint a successor Bank which shall be a bank with an office in [_____] having a combined capital and surplus that is not less than \$[_____]. Upon the acceptance of any

appointment as Bank hereunder by a successor bank, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Bank and the retiring or removed Bank shall be discharged from its duties and obligations hereunder. After Bank's resignation or removal hereunder, the provisions of this Section 4 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Bank.

5. ***Use of Lockbox Funds; Limitations on Issuance of Payment Instructions.***

(a) The Parties acknowledge and agree that, except upon the occurrence and during the continuation of an Event of Default of Debtor, and subject to the limitations provided in Section 7 below, Debtor may direct Bank to disburse the Funds to pay each Project Company the Net Energy Price and/or damages payments that each Project Company is authorized to collect from Debtor under each EMS Agreement; provided, however, that Debtor shall deliver such Payment Instruction to both Secured Party and Bank; and

(b) The Parties acknowledge and agree that, upon the occurrence and during the continuation of an Event of Default of Debtor, Secured Party may direct Bank to disburse the Funds to pay to each Project Company (or to itself on behalf of such Project Company) the amounts each Project Company would otherwise be entitled to collect pursuant to Section 5(a) hereof; provided, however, that Secured Party shall deliver such Payment Instruction to both Debtor and Bank.

6. ***Disbursements from Lockbox Account.***

(a) Bank shall disburse the Funds as follows:

(i) Except upon the occurrence and during the continuation of an Event of Default of Debtor, Bank shall disburse Funds as directed by Debtor on the third (3rd) Business Days after receiving a Payment Instruction from Debtor to pay each Project Company, as applicable, the amount of Funds as set forth in the Payment Instruction, provided that Bank has not received a written notice from Secured Party objecting to such Payment Instruction on or before the third (3rd) Business Day after such notification; and

(ii) Upon the occurrence and during the continuation of an Event of Default of Debtor and in accordance with Section 11, Bank shall disburse funds as directed by Secured Party within two (2) Business Days after receiving a Payment Instruction from Secured Party to pay to each Project Company (or to the Secured Party on behalf of each Project Company) the amount of Funds as set forth in the Payment Instruction, provided, that the amounts of Funds set forth in the Payment Instruction corresponds to the amount set forth in the invoice(s) issued to Debtor by the Project Company (or by Secured Party on behalf of such Project Company) under the applicable EMS Agreement, which shall be attached as an exhibit to each such Payment Instruction.

(b) All amounts disbursed to a Project Company (or to the Secured Party on behalf of each Project Company) pursuant to this Agreement shall be paid, in immediately available funds, by wire transfer as follows:⁴

Bank:
ABA No.:
Account No.
Account Name:

(c) All amounts disbursed to Debtor pursuant to this Agreement shall be paid, in immediately available funds, by wire transfer as follows:

Bank:
ABA No.:
Account No.
Account Name:

(d) The Bank shall deliver to Debtor and Secured Party a monthly bank statement showing (i) the amount of the Funds then held in the Lockbox Account and each subaccount thereof, (ii) the amounts deposited into the Lockbox Account and each subaccount thereof and (iii) the amount of all Funds distributed from the Lockbox Account and each subaccount thereof.

(e) Disbursement of Funds with respect to a particular EMS Agreement shall be suspended in the event that the Debtor (other than upon the occurrence and during the continuation of an Event of Default of Debtor) or Secured Party sends the Bank a notice of suspension, with a copy to the other Party. In such event, Debtor and Secured Party agree to resolve such dispute according to the dispute resolution procedures under Section 14.1 of the applicable EMS Agreement.

7. *Grant of Security Interest; Control of Account.*

(a) This Agreement evidences Secured Party's control over the Lockbox Account. Notwithstanding anything to the contrary in the agreement between Bank and Debtor governing the Lockbox Account, Bank will comply with instructions originated by the Secured Party as set forth and permitted herein directing the disposition of Funds without further consent of the Debtor. For the avoidance of doubt, nothing in this Section 7(a) is intended to abrogate the Debtor's right to issue a Payment Instruction pursuant to Section 6(a)(i) of this Agreement.

(b) Other than as set forth in a Payment Instruction pursuant to Section 6, Bank agrees that it shall not offset, charge, deduct or otherwise withdraw funds from the Lockbox Account until it has been advised in writing by Secured Party that all of Debtor's obligations that are secured by the Funds and the Lockbox Account are paid in

⁴ [Note: Payments shall be made on an EMSA-by-EMSA basis to the applicable Project Company subaccount]

full, except that Bank is permitted to charge the Lockbox Account for (i) its fees and charges relating to the Lockbox Account or associated with the services provided by Bank under this Agreement; (ii) in the event any check deposited into the Lockbox Account is returned unpaid for any reason or for any breach of warranty claim; and (iii) for any electronic automated clearing house (“ACH”) credit entries with respect to the Lockbox Account that may have been originated by Debtor but that have not settled at the time of the commencement of the occurrence of an Event of Default of Debtor, or for any entries with respect to the Lockbox Account, whether debit or credit, that are subsequently returned thereafter.

8. ***Representations, Warranties and Covenants of Debtor.*** Debtor hereby represents, warrants and covenants to Secured Party as follows:

(a) Debtor has, and at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder;

(b) The execution, delivery and performance of this Agreement by Debtor have been duly authorized by all necessary action and do not violate any of the terms or conditions of Debtor’s governing documents, or any contract to which it is a party, or Applicable Legal Requirements;

(c) Except as set forth in Exhibit E, there is no pending or (to Debtor’s knowledge) threatened litigation or administrative proceeding that materially adversely affects Debtor’s ability to perform this Agreement;

(d) Except for the security interest herein granted, Debtor shall be the owner of or have other rights in the Funds and the Lockbox Account free from any right or claim of any other person or any lien, security interest or other encumbrance, and Debtor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Secured Party;

(e) Debtor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Funds and the Lockbox Account, or any security interest, lien or other encumbrance in the Funds and the Lockbox Account in favor of any person, other than Secured Party;

(f) Debtor shall instruct each Site Host to make any payments due to Debtor under the Inter-Governmental Net Metered Power Sales Agreement or the Inter-Governmental Project Development Agreement, as applicable, in U.S. dollars and in immediately available funds, directly into the Lockbox Account. To the extent that a Site Host does not make such payments as instructed by Debtor pursuant to the foregoing sentence, Debtor shall hold such amounts in trust for Secured Party and shall, as soon as reasonably practicable but in no event later than five (5) Business Days after receiving such amounts from a Site Host, deposit such amounts into the Lockbox Account; and

(g) As soon as reasonably practicable, but in no event later than five (5) Business Days after Funds are deposited into the Lockbox Account each month by Site Host, Debtor shall issue the Payment Instructions pursuant to and in accordance with Section 6(a)(i).⁵

9. **Events of Default.** The occurrence of any one or more of the following events shall constitute an “*Event of Default*” under this Agreement.

(a) If Debtor spends or uses any Funds disbursed to it from the Lockbox Account in violation of the terms and conditions of this Agreement;

(b) If Debtor fails to comply with any of the terms and conditions of this Agreement (including Section 8(g)) and such failure has not been cured within [five (5) Business Days] following written notice from Secured Party; or

(c) If the Debtor becomes Bankrupt.

Upon the occurrence of an Event of Default, Secured Party shall be entitled only to exercise the remedies set forth in Sections 6 (Disbursements from Lockbox Account) and 11 (Remedies). However, nothing herein shall be interpreted to limit any other remedy available under the EMS Agreement with respect to events of default or a breach of such agreement.

10. **Confidential Information.** Except as provided in this Section 10, no Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the disclosing Party’s prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents, actual and potential lenders and investors, and employees who have a need to know related to this Agreement. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by the applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall notify the other Party of the required disclosure, such that the disclosing Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain. This Section shall

⁵ *N.B. If the local electric distribution company elects to allocate net metering credits to electric accounts rather than purchase the net metering credits from Debtor, the parties will in good faith consider any necessary amendments to this section in order to document the timing and process for a PV System that has multiple off-takers (i.e., Funds from more than one Inter-Governmental Net Metered Power Sales Agreement may be deposited into the subaccount for a particular EMS Agreement).*

survive for a period of one (1) year following the expiration or termination of this Agreement.

11. **Remedies.** Secured Party may, at, or at any time after, the occurrence of an Event of Default of Debtor, direct Bank, in writing, to pay over to the applicable Project Company (or to the Secured Party on behalf of the applicable Project Company) all or any part of the Funds specified by Secured Party in such written direction, without demand or notice to Debtor; provided, however, that Secured Party shall not be entitled to instruct Bank to disburse Funds to the Project Companies (or to the Secured Party on behalf of the Project Companies) in excess of the amounts set forth in Section 6(a)(ii); provided, further, that Funds shall be deemed to be not available if, in the reasonable determination of Bank, they are subject to a hold, dispute or legal process preventing their withdrawal. Promptly receiving such written direction, Bank shall pay over to the Project Companies (or to the Secured Party on behalf of the Project Companies) all of the Funds or the part thereof specified in such written direction, as the case may be. For the avoidance of doubt, upon the occurrence and during the continuation of an Event of Default of Debtor, Debtor and its officers, agents and other representatives shall not have any authority to withdraw any amounts from, to draw upon or otherwise exercise any authority or power with respect to the disposition of funds in the Lockbox Account or amounts held therein or payable therefrom, and Bank shall not permit Debtor to do any of the foregoing.

12. **Limitation of Liability.** **IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES PLUS REASONABLE ATTORNEYS' FEES AND COST OF LITIGATION, AND SUCH DIRECT, ACTUAL DAMAGES INCLUDING REASONABLE ATTORNEYS' FEES AND COST OF LITIGATION SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. 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.**

13. **Role as Fiscal Agent.** Debtor may designate its member, Barnstable County (the "County"), to act as its fiscal agent pursuant to an administrative services agreement to set forth the County's authority and responsibilities in this regard.

14. **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. The sole venue for any legal action or proceeding with respect to this Agreement and any action for enforcement of any judgment in respect

thereof is Barnstable County Superior Court, and by execution and delivery of this Agreement, Debtor hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. EACH OF DEBTOR AND SECURED PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

15. **Assignment.** No Party may assign or subcontract any of its rights or obligations under this Agreement; provided, however, that Secured Party may with only prior notice to Debtor and Bank, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement to Financier(s) for security purposes in connection with any financing or other financial arrangements regarding the PV System and Debtor shall, upon request, execute and deliver to Secured Party and such Financiers a consent to assignment and a legal opinion in form and substance reasonably satisfactory to such Financiers.

16. **Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to:

if to Secured Party:

If to Debtor:

Ms. Margaret Downey, Clerk
Cape & Vineyard Electric Cooperative, Inc.
P.O. Box 427
Superior Court House
Barnstable, Massachusetts 02630
(508) 375-6636 (voice)
(508) 362-4136 (fax)

If to Bank:

Notices hereunder shall be deemed properly served (i) 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; (ii) 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; (iii) 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 or (iv) if by facsimile or other electronic transmission, when received by another party, if received prior to 5 p.m., recipient's time, on a Business Day, or on the next Business Day, if received later than 5 p.m., recipient's time. Any party may change its address and contact person for the purposes of this Section 16 by giving notice thereof in the manner required herein.

17. **Entire Agreement; Amendments.** 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. This Agreement may only be amended or modified by a written instrument signed by all Parties hereto.

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

19. **No Joint Venture.** Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of another 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.

20. **Joint Workproduct.** This Agreement shall be considered the workproduct of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.

21. **Waiver.** No waiver by any Party hereto of any one or more defaults by any 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 any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) 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.

22. **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.

23. **Cooperation.** The Parties agree that they shall use Commercially Reasonable efforts in good faith and in full cooperation with the other Parties to secure any approvals required to implement this Agreement and to otherwise carry out their obligations hereunder.

24. **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.

25. **Survival of Obligations.** Termination of this Agreement for any reason shall not relieve any Party of any obligation accrued or accruing prior to such termination.

26. **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.

[Remainder of Page Left Intentionally Blank]

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

Secured Party:

[INSERT]

By: _____
Name/Title:

Debtor:

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

By: _____
Name/Title:

By: _____
Name/Title:

Bank:

[INSERT]

By: _____
Name/Title:

Exhibit A

**List of EMS Agreements
(All originals on file with CVEC)**

[TBD]

Exhibit B

**List of Inter-Governmental Net Metered Power Sales Agreements
(All originals on file with CVEC)**

[TBD]

Exhibit C

**List of Inter-Governmental Project Development Agreements
(All originals on file with CVEC)**

[TBD]

Exhibit D

Form of Payment Instruction

Pursuant to Section 6(a) [(i) or (ii)] of the Lockbox and Security Agreement dated _____, 2013, the undersigned hereby instructs the Bank to make a disbursement in the amount of [insert] from the subaccount for the [Identify EMS Agreement] of the Lockbox Account to the account specified in Section 6[(b) or (c)].

[Debtor] [Secured Party] hereby represents and warrants that [Debtor] [Secured Party] is entitled, pursuant to the Lockbox and Security Agreement, to instruct the Bank to make the disbursement in the manner, at the times and in the amounts set forth in this Payment Instruction.

Exhibit E

Exceptions to Section 8(c) (Representations, Warranties and Covenants of Debtor)

A few individuals have vocalized strong opposition to the Cape & Vineyard Electric Cooperative, Inc. ("CVEC") over the course of the past two years. The opposition is focused on CVEC and one of its members, the Cape Light Compact ("CLC"), a sister entity to CVEC.

CVEC became aware of this opposition in 2010 while it was pursuing the development of wind projects on Cape Cod. These individuals routinely objected to the wind projects and to the CLC's provisions of funding for CVEC's development of the wind projects.

These same few individuals now routinely object to CVEC's and the CLC's operations in general. Due to a considerable amount of public comment from one individual in particular, a resident of Connecticut, CVEC is generally aware that many agencies within the state government and all local governments on Cape Cod and Martha's Vineyard have received various verbal and written complaints regarding CVEC and the CLC. However, the only such allegations of which CVEC has had to or has responded to are written administrative claims filed by such individuals with Massachusetts state agencies.

CVEC is directly aware of the petition below stemming from claims made by one of these individuals. CVEC has delivered a copy of such petition to the Contractor and its Financier. The petition referenced below implicates the CLC and by reference CVEC because the CLC provides funding to CVEC and is scheduled to do so through the Fiscal Year 2015. As noted below, the office of Attorney General has taken no action to date in respect of this petition.

ITEM	DATE	STATUS
Petition By A Single Individual To The Attorney General's Office And The Office Of Ratepayer Advocacy On Behalf Of Residential, Commercial & Industrial Consumers For Injunction Against & Investigation Of The Cape Light Compact And Cape & Vineyard Electric Cooperative	Filed on September 14, 2012 with the Office of the Attorney General	No formal action on the Petition taken to date by Office of the Attorney General.

To CVEC's actual knowledge, without independent inquiry, (x) none of the allegations or complaints referenced above and (y) none of the complainants filing or alleging verbal or written complaints have standing to initiate any court proceeding, which in either case would materially adversely affect CVEC's ability to execute, deliver or perform its obligations under any Energy Management Services Agreement, Inter-Governmental Project Development Agreement, Inter-

Governmental Net-Metered Sales Agreement or Power of Attorney or under the Master Lockbox and Security Agreement.

EXHIBIT N
FORM OF IRREVOCABLE LIMITED POWER OF ATTORNEY

IRREVOCABLE LIMITED POWER OF ATTORNEY
[EMS Reference]

[Date]

KNOW ALL MEN BY THESE PRESENTS:

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC., a Massachusetts cooperative corporation (the “Grantor”), does hereby make, constitute and appoint [____], a [____], and its successors and assigns (the “Attorney-in-Fact”) as its true and lawful attorney-in-fact with full, sole and exclusive power and authority to act, for the purpose of performing the obligations and exercising and enforcing the rights of Grantor with respect to Sections 3.1 (*Sale and Purchase*) except for direct costs of Grantor and the operational cost adder, in each case, as set forth in Section (b)(i) of Exhibit A, 3.2 (*Take-or-Pay for Net Energy Delivered to Point of Delivery*) and 6.2(e) (*Buyer’s Obligations - Net Metering*) of the Inter-Governmental Net Metered Power Sales Agreement, dated as of [____] (the “Inter-Governmental PSA”), between Grantor and Host Town and Section 2.1 (*Leased Premises*) and Sections 8.2(d) and 8.2(e) (*Events of Default by Host Town*) and 8.5(d) and 8.5(e) (*Remedies*) of the Inter-Governmental PDA (such rights, together with the rights of Grantor under other provisions of the Inter-Governmental PSA or Inter-Governmental PDA that are reasonably necessary and/or integral to the exercise or enforcement of the aforementioned rights and do not expand upon the aforementioned specifically enumerated rights, collectively, the “Specified Rights”), including, but not limited to, the right to recover damages due to Grantor and the power to execute all documents and instruments and taking all such other actions and executing any instrument or making such communications (including with the Host Town) which the Attorney-in-Fact may reasonably deem necessary or advisable in connection with such agreements; provided, however, that the Attorney-in-Fact’s sole and exclusive power and authority to act as provided above shall apply only in situations in which Grantor fails to make any payment due under the EMS Agreement (defined below) within forty-five (45) Business Days after such payment is due (unless such payment is contested in good faith by Grantor, Grantor is complying with the dispute resolution provisions of Section 14.1 of the EMS Agreement and such dispute has not yet been resolved or determined pursuant to said section, or Grantor is complying with the dispute resolution provisions of Section 8.5(c) of the Inter-Governmental PDA and such dispute has not yet been resolved or determined pursuant to said section) or (b) Grantor becomes Bankrupt. Upon the Attorney-in-Fact being able to exercise its rights under this Section 18.1 of the EMS Agreement, thereafter and for the remainder of the period while Grantor is in default under the EMS Agreement, User shall act solely and exclusively at the direction of the Attorney-in-Fact, and cease from otherwise acting, with respect to the Specified Rights.

This limited power of attorney is irrevocable and coupled with the following security interest: Grantor hereby assigns, grants, pledges, conveys and transfers to the Attorney-in-Fact a lien on all the estate, right, title and interest of Grantor in and to the Specified Rights; provided, however, that in no event shall the Attorney-in-Fact have any right to become party to either the

Inter-Governmental PSA or the Inter-Governmental PDA or directly foreclose upon Grantor's interest in the Specified Rights.

The Grantor agrees to not amend, modify, assign or terminate the Specified Rights as such rights are set forth in the Inter-Governmental PSA and the Inter-Governmental PDA as of the date hereof, if such amendment, modification, assignment or termination would materially adversely affect the Attorney-in-Fact, without the prior written consent of the Attorney-in-Fact.

Any capitalized terms used but not defined herein shall have the meaning assigned to them in the Energy Management Services Agreement for Solar Photovoltaic System, dated as of [_____] (as amended, amended and restated, modified or supplemented from time to time, the "EMS Agreement"), by and among Grantor and the Attorney-in-Fact.

This limited power of attorney shall be governed by and construed in accordance with the laws of the [Commonwealth of Massachusetts].

IN WITNESS WHEREOF, the Borrower has caused this Irrevocable Limited Power of Attorney to be executed by its officer or representative thereunto duly authorized as of the date first written above.

CAPE & VINEYARD ELECTRIC COOPERATIVE,
INC.,

a Massachusetts cooperative corporation, as Grantor

By: _____

Name:

Title:

Commonwealth of Massachusetts
County of _____

On _____, before me, _____, a Notary Public personally appeared, _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the Commonwealth of Massachusetts that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (seal)

EXHIBIT O
SCHEDULE OF EXCEPTIONS
TO SECTION 10.1(C) OF THE EMS AGREEMENT

A few individuals have vocalized strong opposition to the Cape & Vineyard Electric Cooperative, Inc. ("CVEC") over the course of the past two years. The opposition is focused on CVEC and one of its members, the Cape Light Compact ("CLC"), a sister entity to CVEC.

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Governmental Net-Metered Sales Agreement or Power of Attorney or under the Master Lockbox and Security Agreement.