ENERGY MANAGEMENT SERVICES AGREEMENT
FOR SOLAR PHOTOVOLTAIC SYSTEM
BETWEEN
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
CAPE SOLAR THREE, LLC

Standard Form/(v. 07.01.11)

Chatham Landfill
## TABLE OF CONTENTS

### ARTICLE I: DEFINED TERMS; RULES OF INTERPRETATION

- 1.1 Defined Terms ............................................. 2

### ARTICLE II: OBLIGATION TO MODIFY AGREEMENT ............................................. 9

### ARTICLE III: TERM ............................................. 10

- 3.1 Conditions Precedent ............................................. 10
- 3.2 Term ............................................. 10
- 3.3 Early Termination ............................................. 10

### ARTICLE IV: OWNERSHIP, INSTALLATION, OPERATION,
MAINTENANCE, AND REMOVAL ............................................. 13

- 4.1 Ownership of the PV System ............................................. 13
- 4.2 Site Access ............................................. 14
- 4.3 Quiet Enjoyment ............................................. 14
- 4.4 Subordination ............................................. 15
- 4.5 As-Is Acceptance of the Premises ............................................. 15
- 4.6 Construction of PV System by Contractor ............................................. 15
- 4.7 Duty to Maintain ............................................. 18
- 4.8 Late Completion and Contractor Payments ............................................. 21
- 4.9 Inspection and Entry ............................................. 22
- 4.10 Operations Manual; Training ............................................. 22
- 4.11 Removal of the PV System ............................................. 22
- 4.12 Abandonment of PV System ............................................. 22
- 4.13 User’s Right to Acquire the PV System ............................................. 22

### ARTICLE V: PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES ......23

- 5.1 Purchase and Sale of Net Energy ............................................. 23
- 5.2 Price for Net Energy ............................................. 23
- 5.3 Title and Risk of Loss of Net Energy ............................................. 23
- 5.4 Net Metering ............................................. 23
- 5.5 Governmental Charges ............................................. 24
- 5.6 Guaranteed Annual Energy Output ............................................. 24

### ARTICLE VI: ENVIRONMENTAL ATTRIBUTES ............................................. 25

- 6.1 Title to Environmental Attributes ............................................. 25
- 6.2 Reporting of Environmental Attributes ............................................. 25

### ARTICLE VII: METERING DEVICE(S) AND METERING; BILLING ............................................. 25

- 7.1 Metering Equipment ............................................. 25
- 7.2 Measurements ............................................. 25
- 7.3 Testing and Correction ............................................. 26
- 7.4 Billing ............................................. 27
- 7.5 Payment ............................................. 27
ARTICLE V: LOSS, DAMAGE OR DESTRUCTION OF PV SYSTEM; FORCE MAJEURE

8.1 PV System Loss .................................................................................................................. 28
8.2 Performance Excused by Force Majeure ........................................................................... 29
8.3 Termination Due to Force Majeure ................................................................................... 29

ARTICLE IX: DEFAULT; TERMINATION; REMEDIES .......................................................... 29
9.1 Events of Default by User .................................................................................................. 29
9.2 Events of Default by Contractor ...................................................................................... 30
9.3 Remedies .......................................................................................................................... 31
9.4 Closeout Setoffs .............................................................................................................. 32
9.5 Unpaid Obligations .......................................................................................................... 32

ARTICLE X: REPRESENTATIONS AND WARRANTIES; USER ACKNOWLEDGEMENT ...................................................................................... 32
10.1 Representations and Warranties by User ......................................................................... 32
10.2 Representations and Warranties by Contractor ............................................................... 33
10.3 Host Town’s Representations and Warranties in Inter-Governmental PDA ............... 33
10.4 User’s Representation and Covenants regarding Inter-Governmental PDA and Inter-Governmental Cooperative Net Metered Power Sales Agreement ................................................... 34
10.5 User Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366 ....................................................................................................................... 34
ARTICLE XV: NOTICES

ARTICLE XVI: ASSIGNMENT; BINDING EFFECT; FINANCIER PROVISIONS
16.1 Assignment; Binding Effect
16.2 Financier Provisions

ARTICLE XVII: MISCELLANEOUS
17.1 Entire Agreement; Amendments; Binding Effect
17.2 Expenses
17.3 No Joint Venture
17.4 Joint Workproduct
17.5 Waiver
17.6 Severability
17.7 Further Assurances
17.8 Headings and Captions
17.9 Survival
17.10 Counterparts; Scanned Copy
17.11 Good Faith
17.12 Nondiscrimination
17.13 No Limitation of Regulatory Authority
17.14 Special Terms and Conditions
ENERGY MANAGEMENT SERVICES AGREEMENT
FOR SOLAR PHOTOVOLTAIC SYSTEM
BETWEEN
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
CAPE SOLAR THREE, LLC

THIS ENERGY MANAGEMENT SERVICES AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM ("Agreement") is made and entered into as of this 19th day of July 2011 (the "Effective Date"), by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation ("User") and Cape Solar Three, a Delaware limited liability company ("Contractor" and or assigns in accordance with Section 16.1). User and Contractor are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, User and the Town of Chatham, ("Host Town"), a member of User have entered into an Inter-Governmental Project Development Agreement dated July 5, 2011 ("Inter-Governmental PDA") for User to develop a ground-mounted solar photovoltaic system ("PV System") located on Host Town's property (the "Premises"), 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.

“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, hereeto, 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, hereeto.

“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 Contractor in the Project Development Schedule in Attachment G-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 Premises as specified in Section 4.7(i).

"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 may come into effect in the future, 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, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar 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.

"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.

“Expected Annual Energy Output” means the expected amount of Net Energy that is generated by the PV System in a Contract Year as set forth in Exhibit C.

“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 of 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.

"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(j) of this Agreement.

“Notice of Financial Commitment” has the meaning set forth in Section 3.3(a)(iii) of this Agreement.

“Notice of Net Metering Eligibility” means the written notification from User to Contractor confirming the PV System’s eligibility for Net Metering.

“Outside Construction Commencement Date” means three-hundred (300) days for a landfill and four-hundred twenty (420) days for a greenfield after the Effective Date.

“Outside Commercial Operation Date” means January 31, 2013.

“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.

“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.

“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.
ARTICLE III
TERM

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 Net Metered Power Sales Agreement as of or of even date with the Effective Date of this Agreement.

(c) execution by User and Contractor of a guarantee agreement for Decommissioning Assurance and additional security required pursuant to Sections 4.7(i) and 4.7(j) in a form subject to the reasonable approval of User, to cover Contractor's obligations under the Agreement (including, but not limited to, damages for a Production Shortfall, decommissioning assurance, and indemnification).

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 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 ("Notice of Financial Commitment") within 45 days of the receipt of the last final permit or required approval (including interconnection agreements) required to construct the PV System;

(iv) in the event that Contractor has not entered into a binding purchase order for the PV panels, racking system, inverters and transformers within 21 days of the Notice of Financial Commitment;
(v) in the event that User has not provided Contractor with the Notice of Net Metering Eligibility within five (5) days of the Notice of Financial Commitment;

(vi) 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 $0.001 per kWh for each $20,000 per MW required and billed by the Distribution Company, but in no way shall User be obligated to accept such proposal;

(vii) 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, User will extend the deadline for compliance with this subsection (vii) 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;

(viii) in the event that, if the PV System is to be constructed on a closed landfill, Contractor has not secured 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 (viii) in thirty (30) day increments, upon User’s determination, in its reasonable discretion, that Contractor is using Commercially Reasonable efforts to secure such post-closure use permit;

(ix) 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;

(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 seven (7) months of the Effective Date, provided, however, that User will extend the deadline for compliance with this subsection (x) 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; or

(xi) in the event that the Contractor’s PV Electrical System is not substantially complete (DC side-not including Distribution Company work) within eight (8) months of the Notice of Financial Commitment.

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

(i) 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) 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 ninety (90) days of the Effective Date; or

(iii) 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 (“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 Contract:

(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); or

(iii) 4.2(a)(iv) (full compliance with Sections A.1 and A.2 of the Additional Exceptions set forth in Exhibit A-1 hereto).
(d) **Notice/Waiver.** In the case of termination pursuant to subsection (a), User shall provide Contractor with thirty (30) days prior written notice of its intent to terminate within sixty (60) days after the occurrence of the applicable deadline and Contractor and/or Financier shall have thirty (30) days from receipt of such notice of termination to cure. In the case of termination pursuant to subsections (b) and (c) 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 notice pursuant to this subsection (d), 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 XIII (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 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 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 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;

(iii) full compliance with all Environmental Laws at the Premises. Contractor grants User and the Host Town the right to inspect 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”).

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 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 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 and Contractor will not injure or 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 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 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 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 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. Contractor understands and agrees that pursuant to M.G.L. c. 25A, §11C, certain Division of Capital Asset Management certification requirements may apply to Contractor or its subcontractors under this Agreement.
and Contractor and/or its subcontractors shall be responsible for determining and complying with all applicable requirements.

(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 all 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 for installation and/or maintenance subcontractors to install the PV System. For purposes of this Section 4.6(b), “Major Subcontractor” 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 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 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; provided, however, that Contractor shall not commence physical construction on the Premises until User has provided Contractor with the Notice of Net Metering Eligibility. A schedule of milestones related to completion of the PV System is attached as Exhibit G.

(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 reporting 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 reporting 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) Completion Requirements. Contractor will arrange for the construction of the PV System in a good, careful, proper and workmanlike manner in accordance with Good Engineering Practice and with all Applicable Legal Requirements. The PV System will, when completed, comply with all Applicable Legal Requirements.

(i) 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.

(j) 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.

(k) **As-built Plans.** Within ninety (90) days following the issuance of the Notice of Commercial Operation, Contractor shall prepare and deliver to User detailed as-built 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 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 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 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 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 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.

(e) **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) **Initial Performance Assurance.** Within fourteen (14) Business Days of the Effective Date, Contractor shall provide User a Letter of Credit to secure its initial performance obligations, more specifically the obligation to pay damages in the event of an early termination during the design, engineering and permitting stage of development of the PV System pursuant to Section 3.3(e), in a form subject to the reasonable approval of User, in the amount of $10,000, to remain in effect until the Effective Date of the Escrow Agreement referenced in subsection (f) below.

(f) **Major Equipment Assurance.** Within thirty (30) days of 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 J, to satisfy Contractor’s payment obligations for 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.

(g) **Performance and Payment Bond.** At least fifteen (15) days prior to the Construction Commencement Date Contractor, or a Major Subcontractor as defined in Section 4.6(b), 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 inverters) 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 inverters) 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 inverters), 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(f) 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).

(h) **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.

(i) **Decommissioning Assurance.** Upon the issuance of the Notice of Commercial Operation, Contractor shall establish and maintain thereafter adequate financial assurance, in a form subject to the reasonable approval of 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.

(j) Additional Security. Contractor shall provide a performance and payment guarantee for the Term of the Agreement, in the form set forth on Exhibit I to cover Contractor’s obligations under the 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 its parent’s audited financial statements upon the Effective Date and as reasonably requested by User throughout the Term. In the event there has been a material adverse change in the parent company’s finances, User may request that Contractor provide a substitute form of security. Upon receipt of such notice, Contractor shall have thirty (30) days in which to provide such substitute form of security to User. In the event that the security provided by Contractor under Sections 4.7(e), (f), (g), (i) and (j) in connection with this Agreement is revoked, terminated or otherwise fails, and is not replaced within three (3) Business Days for the obligations under 4.7(e), (f) and (g), and thirty (30) days for the obligations under 4.7 (i) and (j), User shall have the right to terminate this Agreement. Upon such termination related to Sections 4.7(e), (f) and (g), User shall have the right to seek early termination remedies in accordance with Section 3.3(e).

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 is missing 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 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 business-as-usual maintenance and monitoring operations 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 Premises and restore the 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.

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.

(c) Security Interest. In consideration for the promises contained in this Agreement, User shall provide Contractor with a security interest in the Net Metering Credits proceeds associated with the sale of Net Energy from the PV System. The Net Metering Credit proceeds will be placed into a financial account in accordance with the form of Lockbox and Security Agreement set forth in Exhibit H attached hereto.

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.

5.5 Governmental Charges.
(a) Contractor is responsible for local, state and federal income taxes attributable to Contractor, if any, for income received under this Agreement. The Parties acknowledge and agree that within thirty (30) days of Contractor’s payment of such local income tax, if levied by a Host Town, Contractor will invoice User for the same, and User will have ninety (90) days to reimburse, or cause Host Town to reimburse Contractor for such local income tax.

(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 or cause Host Town 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. The Parties acknowledge and agree that within thirty (30) days of Contractor’s payment of any Governmental Charge that is normally attributable to the purchaser on the sale of electricity, Contractor will invoice User for the same, and User will have sixty (60) days to reimburse or cause Host Town to reimburse Contractor for such Governmental Charge. User will have no obligation to reimburse Contractor for any Governmental Charge that is normally attributable to the seller of electricity.

(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 therefore, 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 applicable Net Energy Price; and (ii) the Production Shortfall, provided, however, that if User has claimed Net Metering Credits for the PV System, then the amount in this subsection (b)(i) shall be adjusted to reflect the difference between the applicable Net Metering Credit value and the Net Energy Price. 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.

**ARTICLE VI**
ENVIRONMENTAL ATTRIBUTES

6.1 **Title to Environmental Attributes.** All Environmental Attributes existing as of the Effective Date ("Current 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 Current Environmental Attributes that relate to the Net Energy during the Term, and User shall have no right, title or interest in or to any such Current Environmental Attributes. Environmental Attributes which arise due to the enactment of laws or regulations after the Effective Date ("New Environmental Attributes") shall be the property of the User. If, during the first ten years after the Effective Date, User has obtained a credit or other financial incentive for New Environmental Attributes that directly causes Contractor to receive less than the fixed auction price as set forth in 225 C.M.R. 14.05(4)(e) for a Solar Carve-Out Renewable Generation Attribute ("S-REC," as such term is defined at 225 C.M.R. §14.02) associated with the electrical energy output of the PV System, as evidenced by Contractor to the reasonable satisfaction of User, User shall reimburse Contractor for the shortfall between the value of such S-REC as demonstrated by Contractor and the fixed auction price. For the Term of this Agreement, Contractor shall provide User with one-half of the proceeds from any sale of an S-REC associated with the electrical energy output of the PV System valued at $350/MW or more.

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. Contractor shall provide User with quarterly reporting on Contractor’s sale price of S-RECs associated with the electrical energy output of the PV System.

**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, but on no less than an annual basis.

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 annual 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 ±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 ±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 ±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 ±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 a 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, 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 gross 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 kW / 2000 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. 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 PV System. 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 five (5) Business Days after receipt of written notice from the Contractor, or the occurrence of a default by the insurer of User under any insurance policy provided hereunder;
(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.

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 five (5) Business Days after receipt of written notice from the User, or the occurrence of a default by the insurer of Contractor under any insurance policy provided hereunder;

(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;

(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.

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 ninety (90) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional thirty (30) day 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 ninety (90) days after notice aforesaid, and Financier provides Commercially Reasonable written assurances that it will be able to cure such Contractor Event of Default within such 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 process set forth in Section 8.1(c); or

(ii) purchase the PV System pursuant to Article XIII (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) 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; and

(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.

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 or based upon any act or omission of
Host Town or its agents, employees, or contractors under the Inter-Governmental PDA, except as expressly set forth herein.

10.4 User’s Representation and Covenants regarding Inter-Governmental PDA and Inter-Governmental Cooperative Net Metered Power Sales Agreement. User represents to Contractor that the Inter-Governmental PDA and Inter-Governmental Cooperative Net Metered Power Sales Agreement (“Cooperative Power Sales Agreement”) between User and Host Town is 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 Cooperative Power Sales Agreement, 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 Cooperative Power Sales Agreement. If User receives any notice or demand from Host Town under the Inter-Governmental PDA or Cooperative Power Sales Agreement 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 Cooperative Power Sales Agreement.

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. 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 costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees) and lien claims by subcontractors or suppliers or sub-subcontractors and sub-suppliers, causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Contractor of its obligations, covenants, representations or warranties contained in this Agreement, (ii) Contractor’s actions or omissions taken or made in connection with Contractor’s performance of this Agreement; (iii) any claims arising from or based on the violation of Applicable Legal Requirements and orders, or (iv) any claims arising out of or resulting from any and all work performed under this Agreement. Contractor shall not be obligated to indemnify User for costs related to “nuisance lawsuits” that may filed after final permitting for the PV System is complete. For the purposes of this Section 11.2, a “nuisance lawsuit” is a lawsuit where the essence of the claim(s) is that existence of the PV System as sited (as opposed to any design, installation or construction defect) in and of itself constitutes a nuisance.
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.

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 (the “Purchase Price”). The Purchase Price may be adjusted by Contractor upon User’s exercise of the Purchase Option at the Purchase Price as set forth in Exhibit C. 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.
13.4 Determination of Alternate Purchase Price. 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, provided Exhibit C does not contain a Purchase Price, (ii) a Contractor Event of Default in accordance with Section 9.3(c)(ii); or (iii) 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.

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, 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: 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

If to Contractor:

American Capital Energy, Inc.
Attn: Bill Fitzpatrick & Eric McLean
Tyngsboro Road, Suite 4A
North Chelmsford, MA 01863
Tel: (978) 884-2903
Fax: (978) 251-4120
Email:
bfitzpatrick@americancapitalenergy.com
eric.mclean@americancapitalenergy.com
with a copy to:

Robert K. Dowd, Esq.
Robert K. Dowd, P.C.
3141 Hood Street – Suite 650
Dallas, Texas 75219
Tel: (214) 922-9330
Fax: (214) 922-9372
Email: robdowd@sbcglobal.net

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, unless a partial assignment is expressly approved by User in writing. Contractor shall deliver notice of any 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.

(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. 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.

(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. 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. In the event that User dissolves, voluntarily or otherwise, during the term of this Agreement, User’s Member, Barnstable County, will continue to perform User’s administrative obligations under this Agreement, the Inter-Governmental PDA and the Inter-Governmental Cooperative Net Metered Power Sales Agreement (“Project Agreements”), but in no event shall Barnstable County be responsible for any monetary damages or any other non-administrative obligations of User pursuant to the Project Agreements. User shall provide Contractor a written endorsement from Barnstable County acknowledging its obligations pursuant to this Section 17.7 within four (4) weeks after the Effective Date.

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(i) (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 **Countersparts; 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.

*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: [signature]
Name: Margaret J. Downey
Title: Clerk

By: [signature]
Name: Charles S. McLaughlin, Jr.
Title: President

P.O. Box 427
Superior Court House
Barnstable, MA 02630
(508) 375-6636 (voice)
(508) 362-4166 (fax)

CONTRACTOR:
Cape Solar Three, LLC

By: [signature]
Name: [name]
Title: [title]

15 Tyngsboro Road, Suite 4A
North Chelmsford, MA 01863
Tel: (978) 884-2903
Fax: (978) 251-4120

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: PV System Milestones
Exhibit H: Lockbox and Security Agreement
Exhibit I: Form of Guaranty
Exhibit J: Form of Escrow Agreement

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EXHIBIT A

DESCRIPTION OF THE PREMISES

Address: **97 Sam Ryder Road**, Chatham (West), Massachusetts

A certain parcel of land (capped landfill) situated in the Town of Chatham (West), Barnstable County, Massachusetts, comprised of approximately 13.025 acres as shown on the attached Sketch Plan/Photograph (the “Premises”), being a portion of a larger parcel of land of 42.279 acres as shown on a plan entitled “Notice of landfill Operation Plan”, dated April 14, 1999, Prepared by Eldredge, Quigley & Clark for the Town of Chatham, recorded with the Barnstable County Registry of Deeds in Plan Book 549, Page 82.

The Premises shall include all necessary electrical and other utility sources. In the event there are not sufficient electric or other necessary utility sources located on the Premises to enable Cooperative to transmit Net Energy generated by the PV System to the Point of Delivery, Host Town agrees to grant Cooperative, Cooperative’s Contractor(s) or the Distribution Company the right to install such utilities on, over and/or under the Premises, as necessary to operate the PV System, provided, however, the location of such utilities shall **NOT** puncture or damage the vinyl landfill cap and provided the location of such utilities shall be as reasonably designated by Host Town.

The Premises shall further include a non-exclusive right of ingress and egress to the leased property from the south along Water Pollution Control Facility Road. Planning and care will be required to maintain access of the noted road and the adjacent bike path, as shown on the Sketch Plan/Photograph attached below. The non-exclusive right of ingress and egress to the Premises for the purpose of design, procurement, installation, testing, commissioning, operation, inspection, maintenance, repair, improvements and removal of the PV System shall be available for use seven (7) days a week, twenty-four (24) hours a day.

For title see Order of Taking, recorded with the Barnstable County Registry of Deeds in Deed Book 1276, Page 384.
EXHIBIT A-1

ADDITIONAL EXCEPTIONS

A. Cooperative’s use of the Premises shall be subject to the following:

1. Full compliance by the Contractor in all respects with the terms and conditions of current closure documentation governing the landfill on the Premises as referenced in the document entitled CLOSURE PLAN FOR THE CHATHAM SANITARY LANDFILL prepared by Weston and Sampson Engineers, Inc. dated October 1998. This document can be viewed in its entirety at the Chatham Town Offices.

Contractor agrees to read said document and agrees to ask questions regarding such document, if Contractor has questions, and further NOT to proceed with any work on the Premises until such time as the Contractor has had adequate opportunity to review and understand the limitations imposed by the closure documents.

2. Full compliance by Contractor in all respects with the terms and conditions of any and all post-closure use permits or orders granted at any time throughout the Term by the Massachusetts Department of Environmental Protection regarding the landfill located on the Premises.

B. Host Town’s Reserved Uses of the Premises:

1. Host Town may have continued operation or maintenance responsibilities required pursuant to the current closure documentation governing the landfill on the Premises in accordance with the document entitled CLOSURE PLAN FOR THE CHATHAM SANITARY LANDFILL prepared by Weston and Sampson Engineers, Inc. dated October 1998. This document can be viewed in its entirety at the Chatham Town Offices. The Host Town will carry out such responsibilities 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.
EXHIBIT B

DESCRIPTION OF THE PV SYSTEM

The Town of Chatham PV Project is a 1.755 MW solar electric generation facility to be located on at the Town’s closed landfill. The facility will consist of approximately 6,400 +/- photovoltaic modules mounted on a non-penetrating ballasted ground mount system. The 1.755 MW solar array will utilize approximately three inverters 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: ____________________________ |
| Nameplate Capacity: ____________________________ |
| Approximate Annual Energy Production: |
| ___________________________________________ kWh |
| Location: ____________________________________ |
| Preliminary Specifications: |
| ____________________________________________ |

| PV SYSTEM ASSETS: | Mounting Systems ____________________________ |
| Tracking Devices: ____________________________ |
| Inverters: ____________________________ |
| Integrators: ____________________________ |
| Related Equipment: ____________________________ |
| Electric Lines: ____________________________ |
| Permits: ____________________________ |
| Contracts: ____________________________ |
EXHIBIT C

NET ENERGY PRICE PROVISIONS

EXPECTED ANNUAL ENERGY OUTPUT

2,179,700 kWh/year [this number must represent the expected PV System output utilizing PV Watts or a similar software program]

GUARANTEED ANNUAL ENERGY OUTPUT

1,743,700 kWh/year [this number must represent a percentage of the expected PV System output utilizing PV Watts or a similar software program]¹

PV SYSTEM PROBABILITY

P50

PV SYSTEM CAPACITY FACTOR

14.18%

ANNUAL SYSTEM DEGRADATION FACTOR

0.5% per year

NET ENERGY PRICE

$0.0690 per kWh

DISTRIBUTION COMPANY

NSTAR Electric Company

DECOMMISSIONING ASSURANCE AMOUNT

$ 175,000

PROPOSED BUY-OUT AMOUNT FOR THE PV SYSTEM²

Year 7: $3,270,000
Year 10: $3,010,000
Year 12: $2,640,000
Year 15: $1,325,000

¹ The only allowable adjustment to the Guaranteed Annual Output is the Annual System Degradation Factor.
² The buy-out amount for the PV System shall be adjusted by 1+ (costs for utility upgrades incurred by Contractor during the interconnection process in excess of $10,000, as agreed to by Contractor and User pursuant to Section 3.3(a)(vi) of the Agreement) x Buy-out-Year-Factor/ (Performance Bond Amount + Escrow Amount, representing the total Engineering, Procurement and Construction Value), where:
Year 7 Buy-out-Year Factor = 0.52
Year 10 Buy-out Year Factor = 0.41
Year 12 Buy-out Year Factor = 0.35
Year 15 Buy-out Year Factor = 0.19
EXHIBIT D

COMMON TECHNICAL SPECIFICATIONS

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 D.

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 stamped 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-registered PE or architect confirming that the underlying structure 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 pins and penetrating devices.
   c. The design of the PV System shall meet OSHA Part 1926 – Safety and Health Regulations for Construction requirements by proposing, as applicable, a suitable safety monitoring system, a fall management plan, and a fall protection system for the User’s review and approval.
B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. All materials subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. 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:
   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 1R rating for interior electrical room location or NEMA 3R for any exterior or mezzanine location.
   f. The PV System must include underground power connection to/from the modules and the inverter(s) in the interior installation. 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 3R 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 inside the building shall be rigid galvanized steel ("RGS").
   d. All outdoor conduit shall be PVC coated RGS.
   e. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
   f. Exposed cables shall be listed as sunlight resistant.
   g. Specification for conduit materials for wire-run in trench(es).

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](http://www.gosolarcalifornia.ca.gov/equipment/pvmodule.html).
   b. **Mounting System**
      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 shall be designed to meet or exceed requirements of all applicable state and local building codes, including wind speed, snow and seismic load requirements, and penetration restrictions in accordance with a Facility’s capped landfill requirements. The Contractor shall describe and document the wind and snow loads that the PV System is designed to withstand.
      iv. The PV System installation must meet all code and UL requirements with respect to lightning protection. The Contractor must have the building lightning protection system recertified by a contractor that is UL listed for lightning protection systems.
      v. 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 a Massachusetts licensed electrician.
   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 five (5) 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 (“M RET”) 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 carry out these tasks of the commissioning plan to the satisfaction of the User or its representative.

3. The Contractor shall verify that the data acquisition/display system is functioning properly, comparing independent measurements to data acquisition display.

4. 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 operations of the PV System. The training shall cover principles of operation, routine maintenance requirements, on-line data monitoring system, and safety issues that are specific to the PV System installed. 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 in an Excel spreadsheet in a simple and consistent format that is easy to import into the statewide CAMIS database 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. As-built plans showing the final placement of all combiner boxes, connections and conduit placement.
   c. As-built electrical plans, including three line diagrams, and elevation drawings showing the final placement of the electrical equipment and the specific point of connection to the building service AC grounding electrode for the PV System ground.
   d. Trouble shooting guidelines.
   e. PV System maintenance schedule and procedures.
   f. Contact information for technical assistance and parts ordering.
   g. Records of all warranties and serial numbers of all warranted equipment.
EXHIBIT E

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, with
   - $1,000,000 each occurrence;
   - $2,000,000 in the aggregate;
   - $2,000,000 products/completed operations in the aggregate; and
   - $1,000,000 personal & advertising injury.

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.

3. Worker's compensation insurance, in compliance with applicable law, or at a minimum with:
   - Employer's liability limits of $500,000 each accident;
   - $500,000 each employee-disease; and
   - $500,000 policy limit-disease.

4. Comprehensive automobile liability coverage of at least three (3) million dollars, with:
   - $1,000,000 combined single limit bodily injury and property damage.

5. Umbrella liability coverage with single limits, with three (3) million dollars per occurrence, $3,000,000 in the aggregate, and no more than a $10,000 retention.

6. Builder's All Risk property coverage.

Builder's Risk insurance written on special form in the amount of the entire project at the site on a replacement cost basis to include coverage against the perils of fire (with extended coverage) and physical loss or damage including theft, vandalism, malicious mischief, collapse, falsework, testing and startup, temporary buildings and debris removal. Coverage should also include building materials in the course of transit and at temporary storage locations.

7. Additional Insurance Requirements. All insurance (other than workers' compensation insurance) maintained by Contractor shall:

   (i) include as additional insureds User and Host Town.
(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 all named insureds; and

(iii) waive subrogation rights against User and Host Town.

Contractor’s insurance limit requirements (other than workers’ compensation insurance) may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

B. **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.

A. **Commercial general liability insurance** written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations 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.
EXHIBIT G

PV SYSTEM MILESTONES

The Project Development Schedule, including Construction Commencement Date, is set forth in Attachment G-1.

1. 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.

2. 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.

3. The Notice of Financial Commitment within forty-five (45) days of the receipt of the receipt of the last final permit or required approval (including interconnection agreements) required to construct the PV System,

4. Binding purchase order for the PV panels, racking system, inverters and transformers within twenty-one (21) days of the Notice of Financial Commitment.

5. 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.

6. 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 seven (7) months of the Effective Date.

7. 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.

8. PV Electrical System substantially complete (DC side-not including Distribution Company work) within eight (8) months of the Notice of Financial Commitment.
EXHIBIT G-1

PROJECT DEVELOPMENT SCHEDULE
EXHIBIT H

FORM OF LOCKBOX AND SECURITY AGREEMENT

THIS LOCKBOX AND SECURITY AGREEMENT ("AGREEMENT"), is dated ________________, 2011 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").

RECATALS

WHEREAS, Debtor is purchasing energy generated by ground-mounted photovoltaic systems ("PV System" or "PV Systems") owned and operated by project companies formed by Secured Party as [direct or indirect parent/affiliate] and sited on Cooperative Members’ land pursuant to an Energy Management Services Agreement entered into between Debtor and Secured Party 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 Cooperative Member(s) pursuant to an Inter-Governmental Net Metered Power Sales Agreement;

WHEREAS, Secured Party desires to secure certain payment obligations from Debtor and Cooperative Members 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.

“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.

“Collateral” shall have the meaning set forth in Section 7 (Grant of Security Interest).

“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.

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

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

“Distribution Company” means NStar Electric Company or any successor thereto.

“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 Secured Party and Debtor is set forth in Exhibit A.
“Funds” means Net Metering Credits which are or may became due and payable by the Distribution Company to Debtor as a result of excess energy generated by a PV System.

“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 Cooperative Member is set forth in Exhibit B.

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

“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.

“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 instructing the Bank to disburse Funds. Such notice shall be in substantially the same form as Exhibit C attached hereto and may be transmitted by facsimile or by means of electronic communications.

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

“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.

2. **Term and Termination.** This Agreement shall be effective as of the date the last of the four Parties hereto executes this Agreement (the “Effective Date”) and shall continue so long as any sums due and owing to Secured Party under an EMS Agreement remain unpaid. Upon termination of this Agreement, all collected and available Funds shall be disbursed to Debtor.
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.

4. **Appointment of and Grant of Authority to Bank; Liability of Bank.** Debtor hereby appoints Bank as its 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 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 Cooperative 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.

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

   (a) The Parties acknowledge and agree that Debtor may use the Funds to (i) pay Secured Party any amounts due and owing under the EMS Agreements; and (ii) pay Cooperative Members any amounts due and owing under the Inter-Governmental Net Metered Power Sales Agreements; and

   (b) Secured Party understands and agrees that it may only issue a Payment Instruction if there is an occurrence of an Event of Default as defined in Section 9 below.

6. **Disbursements from Lockbox Account.**
(a) Bank shall disburse the Funds as follows:

(i) Bank shall pay Debtor within [two (2) Business Days] of receiving a Payment Instruction from Debtor to pay Debtor the amount of Funds as set forth in the Payment Instruction, provided, first (i) that Bank has promptly provided a copy of such Payment Instruction to the Secured Party, and (ii) Bank has not received a written notice from Secured Party objecting to such Payment Instruction with two (2) Business Days of such notification; and

(ii) Bank shall pay Secured Party within [two (2) Business Days] of receiving a Payment Instruction from Secured Party to pay Secured Party the amount of Funds as set forth in the Payment Instruction, provided, first (i) that Bank has promptly provided a copy of such Payment Instruction to Debtor, and (ii) Bank has not received a written notice from Debtor objecting to such Payment Instruction with two (2) Business Days of such notification.

(b) All amounts disbursed to Secured Party pursuant to Section 11 (Remedies) of this Agreement shall be paid, in immediately available funds, by wire transfer as follows:

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 the amount of the Funds then held in the Lockbox Account, and the amount of all Funds distributed from said account in accordance with the terms of this Agreement.

(e) Disbursement of Funds shall be suspended in the event that the Debtor or Secured Party sends the other a notice of suspension, with a copy to Bank. In such event, Debtor and Secured Party agree to resolve such dispute according to the dispute resolution procedures under Section 14.1 of the EMS Agreements.

7. **Grant of Security Interest; UCC Filings.** Debtor hereby grants to Secured Party, to secure the payment and performance in full of all of its payment obligations for energy
delivered by Secured Party to Debtor under the EMS Agreements, a security interest in the Funds and the Lockbox Account (collectively, the "Collateral"). Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to (i) file in any filing office in any Uniform Commercial Code jurisdiction any financing statements and amendments thereto evidencing its security interest in the Collateral and (ii) provide any other information required by Section 9 of the Uniform Commercial Code of the Commonwealth of Massachusetts or such other jurisdiction(s) for the sufficiency or filing office acceptance of any financing statement or amendment.

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) 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) Debtor shall include on Schedule Z of the Distribution Company Tariffs (Additional Information Required for Net Metering Service) associated with a PV System, a written notice instructing the payment of the Net Metering Credits directly to the Lockbox Account;

(e) If Debtor shall receive, directly or indirectly from the Distribution Company, any cash or any checks, drafts, or other instruments in payment of Net Metering Credits associated with excess energy from a PV System, Debtor shall immediately endorse and deposit same into the Lockbox Account;

(f) Except for the security interest herein granted and the rights of the Cooperative Members in the Collateral pursuant to the Inter-governmental Net Metered Power Sales Agreements, Debtor shall be the owner of or have other rights in the Collateral 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; and

(g) Debtor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or other encumbrance in the Collateral in favor of any person, other than Secured Party and
the Cooperative Members pursuant to the Inter-governmental Net Metered Power Sales Agreements.

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 and such failure has not been cured within [five (5) Business Days] following written notice from Secured Party; or

   (c) If the Debtor defaults on any payment obligation under the EMS Agreement, provided, however, that there is no pending alternative dispute resolution proceeding or litigation with respect to such default.

Upon the occurrence of an Event of Default, Secured Party shall be entitled only to exercise the remedies set forth in Section 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 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 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, direct Bank, in writing, to pay over to Secured Party all or any part of the Funds specified by Secured Party in such written direction, without demand or notice to Debtor. Promptly receiving such written direction, Bank shall pay over to Secured Party all of the Funds or the part thereof specified in such written direction, as the case may be.
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 a Cooperative 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 of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

15. **No Assignment.** No Party may assign or subcontract any of its rights or obligations under this Agreement.

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; or (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. 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:

AMERICAN CAPITAL ENERGY, INC.

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)


5. Energy Management Services Agreement for Solar Photovoltaic System Between Cape & Vineyard Electric Cooperative, Inc. and Vineyard Solar One, LLC for Edgartown Katama Farm dated ____________.


Exhibit B

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

1. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Barnstable for Barnstable Landfill dated

2. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Brewster for Brewster Landfill dated

3. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Chatham for Chatham Landfill dated

4. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Eastham for Eastham Landfill dated

5. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Edgartown for Edgartown Katama Farm dated

6. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Edgartown for Edgartown Nunnepog dated

7. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Edgartown for Edgartown Pennywise dated

8. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Harwich for Harwich Landfill dated

9. Inter-Governmental Net Metered Power Sales Agreement Between Cape & Vineyard Electric Cooperative, Inc. and the Town of Tisbury for Tisbury Landfill dated
Exhibit C

Form of Payment Instruction

Pursuant to Section 6a [(i) or (ii)] of the Lockbox and Security Agreement dated
__________________, 2011, the undersigned hereby instructs the Bank to make a disbursement
in the amount of [insert] from Lockbox Account.
EXHIBIT I

FORM OF GUARANTY

This Guaranty (the "Guaranty") is made by American Capital Energy, Inc. ("Guarantor"), in favor of Cape & Vineyard Electric Cooperative, Inc. ("CVEC"), a Massachusetts cooperative corporation. 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 certain Energy Management Services Agreements listed on Exhibit A attached hereto (the "EMS Agreements");

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 Agreements 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 Agreements and to induce CVEC to enter into the EMS Agreements; 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 Agreements.

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 uncontemplated, 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, payment of damages upon a Production Shortfall (as defined in the EMS Agreements) and decommissioning obligations under the EMS Agreements.

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 Agreements or any other documents executed in connection with the EMS Agreements;
(c) any modification, extension or waiver of any of the terms of the EMS Agreements;

(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 Agreements 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 Agreements or any transaction under the EMS Agreements; 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
Agreements 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 Agreements;

(k) the invalidity or unenforceability of any of the documents evidencing the EMS
Agreements 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:

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 Guarantor:

American Capital Energy, Inc.
Attn: Bill Fitzpatrick
15 Tyngsboro Road, Suite 4A
North Chelmsford, MA 01863

with a copy to:

American Capital Energy, Inc.
Attn: Robert Dowd
15 Tyngsboro Road, Suite 4A
North Chelmsford, MA 01863
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 effective date of the first executed EMS Agreement and shall continue in full force and effect until the third anniversary of the termination date of the last EMS Agreement to expire.

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 each of the Host Towns (as such term is defined in the EMS Agreements) are intended beneficiaries 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 Agreements 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 invalid, 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 Agreements.
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 an 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:

AMERICAN CAPITAL ENERGY, INC.

By: ______________________

Name: 
Title:

Accepted and Agreed:

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

By: ______________________

Name: 
Title:

By: ______________________

Name: 
Title:
Exhibit A

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


EXHIBIT J
FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of ____________, 2011 ("Escrow Agreement"), is by and between _____________________ ("Depositor");____________________, a _______ ("Contractor"); and __________________, a national banking association, as Escrow Agent hereunder ("Escrow Agent").

BACKGROUND

A. Depositor and Contractor have entered into that certain Energy Management Services Agreement for Solar Photovoltaic System (as amended, the "Underlying Agreement"), dated as of ____________, 2011, pursuant to which Contractor will engineer, procure and construct a solar photovoltaic generation facility in ___________. The Underlying Agreement provides that Depositor shall deposit the Escrow Funds (defined below) in a segregated escrow account to be established and maintained by Contractor and held by Escrow Agent for the purpose of distributing payments to certain Major Subcontractors (as defined in the Underlying Agreement) as provided in Section 4.7(f) of the Underlying Agreement.

B. 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.

C. Pursuant to the Underlying Agreement, Depositor 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.

D. 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 Depositor Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

"Depositor Representative" shall mean the person so designated on Schedule A hereto or any other person designated in a writing signed by Depositor 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.

"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 on the applicable termination date set forth on Schedule A hereto.

"Written Direction" shall mean a written direction executed by Contractor 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.

"Representatives" shall mean the Depositor Representative and the Contractor Representative.

2. **Appointment of and Acceptance by Escrow Agent.** Depositor 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, Depositor will transfer the Escrow Funds to Escrow Agent, 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 Written Direction. Such Written Direction shall contain wiring instructions or an address to which a check shall be sent. Depositor and Contractor acknowledge and agree that prior to the expiration of the Escrow Period, upon Written Direction, Escrow Agent shall disburse amounts required for payment of invoices related to capital equipment, including but not limited to the modules, inverters, transformers, combiner boxes, and racking system. Upon the expiration of the Escrow Period, Escrow Agent shall distribute, as promptly as practicable, the Escrow Funds in the manner described on Schedule A, without any further instruction or direction from the Representatives.

5. **Suspension of Performance; Disbursement Into Court.** If, at any time, (i) there shall exist any dispute between Depositor, 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 Depositor, 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 Depositor 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 Depositor 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. Depositor 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 advisable 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, Depositor 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 Depositor 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 Depositor and Contractor jointly and severally. The obligations of
Depositor 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 Depositor 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 Depositor and Contractor,
the respective rights and obligations of Depositor, on the one hand, and Contractor, on the
other hand, under the Underlying Agreement.

9. Fees and Expenses of Escrow Agent. Depositor and 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 Depositor and Contractor, jointly and severally, in accordance with
Schedule A. The obligations of Depositor and 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 Depositor
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.

Depositor 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 Depositor 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 Depositor 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.

13. 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 United States District Court for the District of Massachusetts shall have jurisdiction over any such proceeding. If such court lacks federal subject matter jurisdiction, the parties agree that the Massachusetts State Court sitting in Boston, Massachusetts shall have jurisdiction. Any of these courts shall be proper venue for any such lawsuit or judicial proceeding and the parties hereto waive any objection to such venue. 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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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 Depositor, Contractor and Escrow Agent.

20. **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.

21. **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.

22. **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 Depositor or Contractor and become financially interested in any transaction in which the Depositor or Contractor may be interested, and contract and lend money to the Depositor 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 Depositor 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 Depositor

By: ________________________

Title: ________________________

__________________________
as Contractor

By: ________________________

Title: ________________________

__________________________
as Escrow Agent

By: ________________________

Title: ________________________
SCHEDULE A

Identifying Information

Depositor
Name:
Address:
Representative
Federal Tax ID:
Telephone:
Fax:

Contractor
Name:
Address:
Representative:
Federal Tax ID:
Telephone:
Fax:

Escrow Period

This Escrow Agreement shall expire upon the [DAY] [MONTH], 20__

Escrow Funds

The Escrow Funds shall be deposited in the following account of the Escrow Agent:
Depository Bank:
Branch Address:
Account Number:
Account Name:

Upon the expiration of the Escrow Period, Escrow Agent shall distribute, as promptly as practicable, the Escrow Funds to the following account:
Depository Bank:
Branch Address:
Account Number:
Account Name:

Escrow Agent Compensation and Reimbursement

Depositor and Contractor shall compensate Escrow Agent for its services in the following manner: