

Master Energy Management Services Agreement

Massachusetts Port Authority and [Contractor]

This Energy Management Services Agreement (hereinafter “**Contract**”) is made and entered into as of _____, 2018 (“**Effective Date**”), by and between the **Massachusetts Port Authority**, a public entity duly organized under the laws of the Commonwealth of Massachusetts (“**Customer**”) and **[Solar Contractor]**, a corporation authorized to do business in the Commonwealth of Massachusetts with a principal place of business at ____ (“**Contractor**”). Customer and Contractor are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Customer owns properties at [location] (each a “**Premises**”), as each property will be described in a separate Attachment 1-[A-X]: Premises and Site Description;

WHEREAS, Contractor intends to develop, finance, install, own, operate, maintain, and decommission multiple solar photovoltaic facilities (collectively the “**Systems**” and each a “**System**”) with an aggregate, nominal capacity of approximately ____ megawatts (MW) direct current (DC) at the Premises to generate electrical power (collectively, the “**Project**”);

WHEREAS, Contractor intends to qualify the Project under the Solar Massachusetts Renewable Target (SMART) Program established pursuant to 225 CMR 20.00 (the “SMART Program”) as an Alternative On-Bill Credit Generation Unit (as defined in 225 CMR 20.02) and to provide Customer with Alternative On-Bill Credits defined below available from the local utility pursuant to the SMART Program; and

WHEREAS, Customer is or shall be the Host Customer of the System;

WHEREAS, Contractor desires to deliver to Customer, as Host Customer, all of the Electricity generated by the Systems during the Term, and Customer desires to pay for all of such electricity and receive the right to allocate all of the Alternative On-Bill Credits generated by the Systems for use in offsetting the electric utility bills associated with other Customer utility accounts in accordance with the terms of this Contract;

WHEREAS, Customer intends to receive lease revenue from all Systems.

NOW THEREFORE, in consideration of the Premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1: MASTER AGREEMENT; ATTACHMENTS; DEFINITIONS

1.1 Master Contract.

- a) This Contract is a master agreement, intended to control the Parties’ rights and obligations as to each System to be developed as part of the Project. Other than the Annual Output Guarantee, the Contract provisions shall apply to each System individually, and the Parties will supplement the various Attachments as to each System as it is developed.

- b) If a System is conveyed for financing purposes (see Section 3.14, regarding financing), at Contractor's request the Parties shall simultaneously amend this Contract to remove that System from the Contract and enter into an agreement identical to this Contract (including the Annual Output Guarantee), except that agreement shall concern that System exclusively.

1.2 Attachments. The following attachments are incorporated into the Contract:

- Attachment 1: Premises and Site Description for each System
- Attachment 2: Site Lease
- Attachment 3: System Description
- Attachment 4: Scope of Work
- Attachment 5: Cost and Generation
- Attachment 6: Operations and Maintenance Schedule
- Attachment 7: Project Schedule

1.3 Definitions. Key terms used within this Contract are defined as follows:

- 1) Access Rights. As defined in Attachment 2-B: Site License, Section 1(a).
- 2) Alternative On-Bill Credits. As defined in the SMART Program regulations as set forth in 225 CMR §20.
- 3) Annual System Degradation Factor. The decreased power output factor expressed in percent by which the Guaranteed Annual Output of the System shall decrease from one Guaranteed Performance Year to the next Guaranteed Performance Year.
- 4) Applicable Law. Any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any governmental authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Premises, the System, the Environmental Attributes, or any part thereof or to any condition or use thereof, and all licenses, permits and other governmental consents which are or may be required for the use and occupancy of the Premises to install, operate, maintain and removal the System.
- 5) Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays. Any reference to "day" in this Contract shall mean a calendar day unless stated as a Business Day.
- 6) Closure Plan. Any post-closure use permit, as same may be amended from time to time by Governmental Authority.
- 7) Commercial Operation. The System is ready for regular, daily operation, has been connected to the Premises' electrical system or interconnected to the grid, has undergone testing as provided herein, has been accepted by Customer and (to the extent required, the Local Distribution Company or LDC), and is capable of producing Electricity.
- 8) Commercial Operation Date ("COD"). The first day on which a System is ready for Commercial Operation, as certified in writing by Contractor to Customer in a Notice of Commercial Operation.

- 9) Contractor. The vendor selected to perform the energy management services solicited through an RFQ under 225 CMR 19.00.
- 10) Contractor Default. As defined in 6.01(c).
- 11) Customer Default. As defined in 6.02(b).
- 12) Delivery Point. The agreed location or locations on the Site where Electricity is to be delivered and received under this Contract
- 13) Department of Energy Resources (“DOER”). An agency of the Massachusetts Executive Office of Energy and Environmental Affairs that develops and implements .
- 14) Easements. The easement rights granted pursuant to each Attachment 2A: *Site Lease*, and each Attachment 2B: *Site License*.
- 15) Electricity. The actual and verifiable amount of electricity generated by the System and delivered to Customer at the Delivery Point for use by Customer on the Site, as metered in whole kilowatt-hours (kWh) at the Metering Device, and that conforms to the applicable LDC and/or authoritative regulatory body standards.
- 16) Electricity Price. The amount paid by Customer to Contractor for each kWh of Electricity sold by Contractor to Customer pursuant to this Contract.
- 17) EMS Annual Report. A report form required by DOER that summarizes the energy or water unit and dollar cost savings. The initial report providing estimated savings must be filed along with the Contract and thereafter within 90 days after the anniversary of the Guaranteed Performance Year.
- 18) Energy Audit. A systematic inspection, verification, and determination of the energy consumption characteristics of a building or facility which:
 - (a) identifies the type, size and rate of energy consumption of such building or facility and the major energy using systems of such building or facility;
 - (b) determines appropriate energy conservation maintenance and operating procedures; and
 - (c) indicates the need, if any, for the acquisition and installation of Energy Conservation Measures or On-site Energy Generation.
- 19) Energy Conservation. A modification of, or change in, the operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include Energy Conservation Measures and any Energy Audits to identify and specify energy and cost savings.
- 20) Energy Conservation Measures. Measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility which is primarily intended to reduce energy consumption.
- 21) Energy Conservation Projects. Projects to promote Energy Conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather

stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in M.G.L. c. 25A, § 11F; and cogeneration systems.

- 22) Energy Management Services (EMS). A program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption that result from such services. The EMS contract may extend for a term not to exceed 20 years. The allowable length of the contract may also reflect the useful life of the cost savings measures.
- 23) Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water and its costs, or operating or maintenance costs resulting from the implementation of Energy Conservation Measures or Projects; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.
- 24) Environmental Attributes. 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 state grant programs, (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 Electricity generated by the System during the Term and in which Contractor has good and valid title.
- 25) Escalation Rate. If applicable, the percentage by which the Electricity Price increases from one Guaranteed Performance Year to the next Guaranteed Performance Year based on the most recent information for gas and electric rates compiled by the Energy Information Administration (EIA) of the United States Department of Energy.
- 26) Established Baseline. A written description of previous fuel, energy, and water consumption data and operating and maintenance costs for the past three years, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed. The description shall be included in the Request for Proposals.

- 27) Expected Annual Output. An average value determined by quantitative modeling using the PVSyst performance model, local weather databases and System design characteristics, subject to change based on the final System size and design parameters. The Expected Annual Output for each System is shown on each System's Attachment 5.
- 28) Financing Party. Any person or persons providing all or a portion of the financing for the Project or for a System, or any person, or persons refinancing any such financing, or any trustee for such person or persons.
- 29) Force Majeure. (i) Acts of God or acts of providence including hurricanes, floods, washouts, lightning, earthquakes, storm warnings and any other adverse weather conditions which directly result in a party's inability to perform its obligations, (ii) acts of government or any agency, subdivision or instrumentality thereof having, claiming, or asserting authority or jurisdiction over the subject matter, when any such act of government directly results in a party's inability to perform its obligations, (iii) acts of civil disorder including acts of sabotage, acts of war, lockouts, insurrection, riot, mass protests or demonstrations, threats of any of the foregoing, and police action in connection with or in reaction to any such acts of civil disorder, when any such acts of civil disorder directly results in a party's inability to perform its obligations, and (iv) failures resulting from fires, washouts, mechanical breakdowns of or necessities for making repairs or alterations to transformers, power lines, switching equipment, machinery, cables, meters or any of the equipment therein or thereon, when any such failure directly results in a Party's inability to perform its obligations.
- 30) Guaranteed Annual Output. The amount of Electricity guaranteed by Contractor to be delivered to Customer annually from the Project. The quantity of Guaranteed Annual Output for each year shall be the total of each System's Expected Annual Output, reduced for each System by the Annual System Degradation Factor, multiplied by 0.825. Each System's Expected Annual Output shall be as stated on Attachment 5: *Cost and Generation*. Calculations used for Guaranteed Annual Output will be consistent with the letter and intent of the most recent version of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines (FEMP Guidelines).
- 31) Guarantee of Generation. The written guarantee of a Contractor warranting the particular electrical energy generation to be derived from the System. Such written guarantee shall: (1) include a detailed description of the equipment to be installed and (2) state the annual amount of electrical energy to be generated in kilowatt hours per year. *See*, Section 5.03, and Attachment 5: *Cost and Generation*.
- 32) Guarantee of Savings. The written guarantee of Contractor, warranting the energy savings to be derived from a particular Energy Conservation Measure, Energy Conservation Project, Energy Management Services, or Energy Savings. Such written guarantee shall include a detailed description of the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in the Contract. The guarantee shall state the annual savings expressed in applicable energy units or (if water savings) in gallons per year and be based on dollars saved by reference to established unit rates.
- 33) Guaranteed Performance Year. The consecutive 12-month period commencing on the Commercial Operation Date and every year following for the term of the Contract.

- 34) Guidelines. A set of clarifications, interpretations, and procedures, including forms and model documents, developed and issued by DOER to assist it in determining compliance with 225 CMR 10.00 or 225 CMR 19.00. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 10.00 or 225 CMR 19.00.
- 35) Hazardous Materials. Those substances defined, classified, or otherwise denominated as a “hazardous substance,” “toxic substance,” “hazardous material,” “hazardous waste,” “hazardous pollutant” “toxic pollutant” or oil in applicable law or in any regulations promulgated pursuant to Applicable Law, ordinary or extraordinary, foreseen or unforeseen.
- 36) Independent Appraiser. An individual who is a member of a national accounting, engineering, or energy-consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the 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, Contractor, any Affiliate of Contractor, or Customer.
- 37) LDC System. The electric distribution system operated and maintained by the LDC.
- 38) Lease or License. As to each System, either the Attachment 2-A: *Site Lease* (for a ground-mount System) or Attachment 2-B: *Site License* (for a roof-mount System), as appropriate to that System, granting either a Site lease, or a Site license to Contractor for the Permitted Uses, which completed Attachment is hereby incorporated into this Contract.
- 39) Local Distribution Company (LDC). The regulated local electric distribution company that provides electric distribution service to Customer.
- 40) Local Governmental Body. A city, town, district, regional school district or county, or an agency or authority thereof, including a housing authority, board, commission, department or instrumentality of a city, town district, regional school district or county, and any other agency that is not a state agency or building authority; or a combination of 2 or more such cities, towns, districts, regional school districts or counties, or agencies or authorities thereof.
- 41) Metering Device. Any and all revenue quality meters installed by Contractor or the LDC at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the amount of Electricity generated by the System and delivered to the Delivery Point for use by Customer or otherwise for delivery into the LDC System.
- 42) On-site Energy Generation. The generation of renewable energy or the cogeneration of electricity and heating or cooling of a generation unit located on or adjacent to a building or structure that utilizes some or all of the energy so generated either directly or indirectly through the SMART Program.
- 43) Outside Construction Commencement Date. Defined on Attachment 7 as to each System type.
- 44) Premises. As to each System, “Premises” means the real property owned by Customer, upon which Contractor will develop that System. Each Premises shall be defined in a separate

Attachment 1: *Premises and Site Description* from time to time as a System is developed under this Contract and each such Attachment 1 is hereby incorporated herein.

- 45) Permitted Uses. The use of the Site to develop, install, construct, interconnect, maintain, operate, repair, replace and decommission the System, and to produce, deliver and sell electricity produced by the System and associated SMART credits and Environmental Attributes.
- 46) Production Shortfall. The amount, expressed in kWh, by which the actual amount of Electricity generated by the Project in any Guaranteed Performance Year is less than the Guaranteed Annual Output for that Guaranteed Performance Year.
- 47) Project. The Systems, collectively.
- 48) Renewable Generation. The electrical energy output of an RPS Class I Renewable Generation Unit or Solar Carve-Out Renewable Generation Unit as defined under 225 CMR 14.00: *Renewable Energy Portfolio Standard – Class I*.
- 49) Request for Proposals (RFP). A written document issued by a Local Governmental Body that invites potential Responsive Offerors to submit proposals outlining their qualifications to perform the Energy Management Services for the Local Governmental Body, a cost proposal, and other information required by 225 CMR 10.00 and the Local Governmental Body.
- 50) Responsive Offeror. A person who has submitted a proposal, which conforms in all respects to the Requests for Proposals and who possesses the skill, ability, and integrity necessary to faithfully perform the work, based upon a determination of competent workmanship and financial soundness in accordance with M.G.L. c. 149, §44D.
- 51) Site. As to each System, “Site” means the Premises for that System, unless Contractor provides a survey of a portion of that Premises, in which case such survey shall be an amendment to this Contract as an updated Attachment A: *Premises and Site Description* regarding that System and “Site” as to that System shall then mean the real property identified in that survey. To avoid doubt, the term “Site” is used whether the Permitted Uses are granted under a Lease or under a License.
- 52) SMART Program. As set forth in the recitals herein.
- 53) SMART Tariff. The tariff incentive under the SMART Program filed by the LDCs and approved by the Massachusetts Department of Public Utilities.
- 54) System. Each of the photovoltaic facilities included in the Project. Each System is described by an Attachment 3: System Description. References to “the System” shall apply to each individual System separately. “System” includes each and all of the assets of which the 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 Site, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, Metering Devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary to construct, operate, and maintain the System.

- 55) System Loss. The loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure), as discussed in Section 5.04.
- 56) Term. As defined in Section 2.5.
- 57) Transfer Date. As defined in Section 2.04(e).
- 58) Update Statement. A form developed by DCAMM, as defined in 810 CMR 4.01, to be completed by a General Contractor and submitted with all proposals.
- 59) Work. That work detailed in Attachment 4: *Scope of Work*.

SECTION 2: PRICE; ENVIRONMENTAL ATTRIBUTES; PURCHASE OPTION; TERM

2.01 Purchase and Sale of Electricity; Delivery of SMART On-Bill Credits; Taxes

Commencing on each System's Commercial Operation Date and continuing throughout the remainder of the Contract Term, Contractor shall make available to Customer, and Customer, as Host Customer (as described in Section 2.7), shall take delivery of all Electricity generated by each System. The LDC will credit Smart On-Bill Credits associated with the System's Electricity to Customer's various LDC accounts as directed by Customer, with Contractor's assistance and cooperation, pursuant to the SMART Program regulations.

- a) Customer shall pay the Electricity Price (as shown on Attachment 5: *Cost and Generation*) to Contractor for Electricity delivered by the System to the Metering Device. The payment made by Customer to Contractor shall equal the quantity of Electricity (in kWh's) delivered to the Metering Device for the relevant period, as measured by the Metering Device, multiplied by the Electricity Price for such period.
- b) Contractor is responsible for local, state, and federal income taxes attributable to Contractor for income received in the form of payments for Electricity under this Contract.
- c) Contractor is responsible for any governmental charges attributable to the sale of Electricity from Contractor to Customer or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of Electricity to Customer at the Delivery Point or to the LDC System.
- d) Both Parties will use reasonable efforts to administer this Contract and implement its provisions to minimize Governmental Charges. In the event any of the sales of Electricity 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 applicable Party with all necessary documentation to evidence such exemption or exclusion.
- e) Contractor shall make good faith efforts to support validation that Alternative On-Bill Credits are appropriately applied to Customer's electric accounts.

- f) Adjustments to Electricity Price. In all cases, any adjustments in the Electricity Price shall be made to the nearest thousandth of a cent. Contractor shall use commercially reasonable efforts to obtain a Statement of Qualification for the System under the SMART Program in Block X.

2.02 Payment Terms

- a) All invoices under this Contract will be due and payable not later than thirty (30) days after receipt of the applicable invoice or on the next Business Day. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the receiving Party.
- b) The Customer may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Contract at any time within three (3) months following the date the invoice (or invoice adjustment) was rendered. Any payments between the parties necessary to resolve any irregularities will be made within thirty days after submission. If, after thirty days, the parties are unable to agree upon the adjustment, the matter shall be submitted to resolution pursuant to Section 3.01: *Dispute Resolution*, and the disputed portion of any additional payment due under this Section shall not be payable until the dispute resolution procedure required in Section 3.01: *Dispute Resolution* has been completed.
- c) 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.

2.03 Title to Environmental Attributes; and System

- a) All Environmental Attributes relating to the System or the Electricity will be and remain property of Contractor. Contractor shall have all right, title, and interest in Environmental Attributes that relate to the Electricity during the Term. Customer shall have no right, title or interest in or to any such Environmental Attributes.
- b) Contractor shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Electric Output.
- c) At Contractor's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Contractor's right, title and interest in and to the Environmental Attributes relating to the Electricity.
- d) If the standards used to qualify the Environmental Attributes to which Contractor is entitled under this Contract are changed or modified, Customer shall at Contractor's request and expense use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.
- e) In no event shall any System be deemed a fixture, nor shall Customer, nor anyone claiming by, through or under Customer, have any rights in or to the System at any time, except as otherwise provided herein. Customer shall have no ownership in the System or other equipment or

personal property of Contractor installed on the Site, other than as expressly provided in the Contract. The Parties shall make any necessary filings to disclaim the System as a fixture on the Site and to place all interested parties on notice of the System ownership.

2.04 Site Lease or Site License

As to each System, the Parties shall complete either an Attachment 2-A: *Site Lease* (for a ground-mount System) or Attachment 2-B *Site License* (for a roof-mount System), as appropriate to that System, and each completed Attachment is hereby incorporated into this Contract. Any Lease or License must be evaluated at least every 5 years for fair market value and the Lease/License rate shall escalate accordingly.

2.05 System Purchase and Sale Options

a) Purchase Option

Upon the sixth, tenth, and fifteenth anniversaries of each System's Commercial Operation Date and no later than (a) 180 days prior to the end of a System's Contract Term or (b) in the Event of Default, Customer shall have the right to provide a notice to Contractor requiring a determination of that System's Purchase Price, which shall be no less than fair market value.

b) Selection of Independent Appraiser

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

c) Determination of Purchase Price

The selected Independent Appraiser will provide a preliminary determination of the Purchase Price within twenty days to Contractor and Customer, together with all supporting documentation that details the calculation of the Purchase Price. The Parties shall each have the right to object to the Purchase Price within twenty Business Days of receiving such Preliminary Determination. The objecting Party will provide a written explanation documenting the reasons for its objection. Within ten days after the expiration of such twenty-day period, the selected Independent Appraiser shall issue its final determination (the "**Final Determination**") to Contractor and Customer, 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) Exercise of Purchase Option

Customer will have thirty (30) days to exercise the Purchase Option, at the Purchase Price set forth in the Final Determination. Promptly following receipt of Customer's notice, Contractor shall make the System and the Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, available to Customer for its inspection during normal business hours.

e) Terms of System Purchase

If Customer exercises its purchase option, Contractor shall transfer the System to Customer within 60 days of the Final Determination (the "*Transfer Date*"), as follows:

- i. Contractor will surrender and transfer to Customer all of Contractor's right, title and interest in and to the System, and the Environmental Attributes, and shall retain all liabilities and rights to payment arising from or related to the System and the Environmental Attributes prior to the Transfer Date.
- ii. Customer will pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System and the Environmental Attributes from and after the Transfer Date.
- iii. Both Parties will execute and deliver a bill of sale and assignment of contract rights warranting title to the assets being conveyed together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System and to the Environmental Attributes in Customer.
- iv. Contractor will 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 System and the Environmental Attributes to Customer.

2.06 Contract Term.

The term of this Contract shall begin on the Effective Date and, as to each System, unless earlier terminated, shall terminate twenty (20) years after that System's Commercial Operation Date, except, subject to current Applicable Law, the term may be extended for up to two (2) five (5) year periods upon the Parties' agreement, but in no event shall the Term extend more than thirty-five (35) years from the Effective Date (the "Term").

2.07 Conditions Precedent.

- a) The respective Party's rights and obligations are expressly conditioned upon the satisfaction in full (or written waiver) of all of the following conditions, which each Party shall pursue diligently and in good faith:
 - i. Contractor has obtained all permits, licenses and other approvals required by Applicable Law for installation and operation of the Systems;
 - ii. Contractor's title examination of the Premises confirms that Customer has good, clear, marketable title to the Premises free and clear of restrictions, encumbrances or liens

affecting Contractor's intended use, and Contractor is satisfied in its sole discretion with the condition of the Premises;

- iii. Contractor shall have obtained all necessary rights-of-way for any construction to be done across or on private property as necessary for the Work;
- iv. Customer shall have entered into all contracts and delivered all other documents required by the LDC in connection with this Contract and the transactions contemplated hereby (the "Utility Documents") to the reasonable satisfaction of Contractor, or the LDC shall have waived the requirements for such Utility Documents;
- v. Without limiting the foregoing condition, Customer shall have delivered a copy of required allocation documents under the SMART Program;
- vi. Contractor shall have entered into all contracts for procurement, construction, installation and operation of the Systems;
- vii. Contractor shall have satisfied itself that the Systems, if constructed, would not be in violation of zoning or land use laws applicable to the Premises, it being acknowledged by Customer that Contractor is under no obligation to apply for or obtain zoning relief;
- viii. The Systems shall have qualified under, and Customer and Contractor shall each have taken actions within their respective control to cause the Systems to qualify under, the SMART Program as Alternative On-Bill Credit Generation Units with any relevant and agreed-upon adders;
- ix. Contractor shall have determined that no upgrades are required to Customer's existing electrical infrastructure, structural infrastructure, or roof, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any such upgrades;
- x. The LDC shall not have required material changes in plans and/or specifications to the Facility or the interconnection of Contractor's facilities that require additional costs or fees for interconnection application costs, utility upgrade costs, and/or utility impact study costs in excess of \$_____ (said amount being the amount Contractor reasonably anticipates as the cost of interconnection and upgrades, if any, as of the Effective Date); provided that Contractor's right of termination hereunder may be exercised only if (1) Contractor requests a reasonable adjustment to the Electricity Price for such interconnection costs and Customer, in its sole discretion, does not agree within a reasonable time thereafter (not to exceed 45 days) such agreement to be evidenced by an amendment to this Contract executed by Customer and Contractor; OR (2) Contractor requests that Customer pay any such interconnection and utility costs over \$_____ directly to the LDC (or as otherwise agreed) and Customer does not agree to make such payment within a reasonable time thereafter (not to exceed 45 days).

- b) Termination. If each of the above conditions precedent are not satisfied, or waived in writing by the appropriate Party, prior to the System's Commercial Operation Date, that Party may terminate this Contract without penalty by providing the other Party with 30 days' notice (the thirtieth day after delivery of the notice shall be the effective date of the termination). Termination in accordance with this Section 2.07(b) shall not release either Party from any

obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

SECTION 3: GENERAL PROVISIONS

3.01 Dispute Resolution

Disputes regarding changes in and interpretations of the terms or scope of the Contract shall be resolved according to the following procedures:

- a) All claims by either party shall be made in writing and submitted to the Customer for a written decision.
- b) Contractor shall not delay, suspend, or curtail performance under the Contract because of any dispute subject to this section.
- c) Within sixty days of submission of the dispute to the Customer, the Customer shall issue a written decision stating the reasons thereof, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within sixty days, he shall notify the parties to the dispute in writing of the reasons and of the date by which the decision shall issue.
- d) Failure to issue a decision within one hundred and twenty-days (or within the additional period specified in such written notice) shall give the petitioner the right to pursue any legal remedies available to him without further delay.

3.02 Change in Law

In the event that a change in Law occurs, including without limitation, a change in the SMART Tariff, or the administration of interpretation thereof by the Massachusetts Department of Public Utilities or the LDC ("Change in Law") which (a) materially restricts the ability of Contractor to deliver Electricity generated by the Systems to Customer or the ability of Electricity generated by the Systems to be delivered to the LDC or the ability of Customer to receive Alternative On-Bill Credits, or (b) otherwise materially impacts the ability of either Party to perform its obligations or receive the economic benefits contemplated under this Contract, including changes in Law that result in a material increase in Contractor's costs of construction and installation, or operation of one or more Systems, then, upon a Party's receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Contract as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Legal Requirements. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty days, either Party may terminate this Contract.

3.03 Conditions beyond Control of the Parties

If performance of this Contract or of any obligation hereunder (other than an obligation to pay any Electricity Price) is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected party, upon giving notice to the other party, shall be excused from such

performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder whenever such causes are removed.

3.04 Labor Laws

- a) The Contractor will obey and abide by all laws and regulations of the Commonwealth relating to the employment of labor and public work.
- b) Contractor shall comply with all federal and state laws, rules, and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. Contractor shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law.

3.05 Prevailing Wage Rate

The Massachusetts Department of Labor Standards (DLS) has established a schedule listing the prevailing minimum wage rates that must be paid to all workers employed on the Contract by either the Contractor or its subcontractors (the “*Schedule*”). Such Schedule shall continue to be the minimum rate of wages payable to workers on this Contract throughout the Term. The Contractor shall not have any claim for extra compensation from the Customer if the actual wages paid to employees on the Contract exceeds the rates listed on the Schedule. The Contractor shall cause a copy of the Schedule to be kept in a conspicuous place at Contractor’s place of business during the Term and at the System Site during System construction (see M.G.L. c.149, §27). If reserve police officers are employed by the Contractor they shall be paid the prevailing wage rate of regular police officers (see M.G.L. c.149, §34B). Prevailing wage schedules may be requested from the following website: <https://www.mass.gov/prevailing-wage-program>.

3.06 Appropriations

- a) The Customer reasonably believes that funds can be obtained sufficient to make all payments due to Contractor under this Contract. The Customer hereby covenants that it will make reasonable and diligent efforts to obtain and maintain funds from which such payments may be made, including making provisions for such payments to the extent necessary in each annual or supplementary budget submitted for the purpose of obtaining funds, and using reasonable efforts to have such portion of the budget approved. Nothing herein shall obligate the Customer to institute legal action before any court, to commence proceedings before any forum, or to institute proceedings in the nature of mandamus against any public official in attempting to obtain said funds.
- b) If Customer is unable to obtain an appropriation of funds sufficient to discharge Customer’s obligations under this Contract, the Contract shall terminate, and Customer shall, to the extent permitted by law, not expend funds for services similar to the Work for a period of 180 days following the Contract termination.

- c) Termination under Section 3.06 shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

3.07 Laws, Regulations, Ordinances, and Standard Practices

- a) Contractor shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws, regulations, rules, ordinances and by-laws, including applicable licensing and permitting requirements, in accordance with sound engineering and safety practices, and in compliance with all reasonable rules or policies of the Customer relative to the properties. Contractor shall be responsible for obtaining all governmental permits, licenses, consents, and authorizations as may be required to perform its obligations hereunder. (See Section 4.9: *Permits and Fees* regarding permits and fees pertaining to the Work).
- b) Contractor shall take due and proper precautions against any injury to adjacent structures and shall hold itself strictly within the rights secured to Contractor by prosecuting the work on private property;
- c) This Contract is made and shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts. Each of the Parties consents to the jurisdiction of the state or federal courts of the Commonwealth of Massachusetts with respect to all disputes arising under or out of this Contract and shall voluntarily and intentionally waive all rights to trial by jury and shall be decided by any court of competent jurisdiction located in Boston, Massachusetts. If any provision of this Contract shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement. If any non-material part of this Contract is held to be unenforceable, the rest of the Contract will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Contract to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 3.01 (regarding dispute resolution) and an arbitrator may reform the Contract as the arbitrator deems just and equitable in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.
- d) The Parties agree to notify each other within 24 hours upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, State or local law, relating in any way to the undertakings of either Party under this Contract.

3.08 Patents and Patent Rights

The Contractor shall indemnify and hold the Customer harmless from all claims and actions due to any actual or asserted infringement upon patent rights in any equipment, material, or process used by Contractor in connection with this Contract.

3.09 Inspection; Site Access; Operations and Maintenance

- a) Contractor shall keep records on a generally recognized accounting basis and calculations kept on file in legible form. Records shall be saved or archived for a period of three (3) years after the termination of this Contract and shall be kept or made available within Massachusetts.
- b) Each Party shall have access to the Site according to the terms of each System's Lease or License (see Attachment 2-A or 2-B), as appropriate.
- c) Contractor shall perform such inspections as will ensure that the Work conforms to Attachment 6: Operations and Maintenance Schedule. The Contractor shall maintain complete inspection records and make them available to the Customer.
- d) The System will, as of the Commercial Operations Date, be free from defects in workmanship and conform to the requirements of this Contract.

3.10 Ownership of Documents

All drawings, reports and other materials prepared by Contractor specifically in performance of this Contract shall remain Contractor's property, except (i) Contractor shall provide copies of as-built plans and operations and maintenance manuals promptly after Commercial Operations Date; and (ii) if Customer purchases the System, Contractor shall provide all System plans, warranties in effect, operations and maintenance manuals, records, and other System operations related material.

3.11 Sales Tax Exemption

Customer is exempt from the assessment of Massachusetts sales and use taxes. Customer shall issue Contractor a tax exemption certificate to use for the purchases of new equipment/systems for the Customer's benefit to complete the Work. Contractor shall not pay any sales or use taxes on any item exempt from Massachusetts sales and use taxes unless authorized by Customer or is ordered by an appropriate taxing authority to remit sales and use taxes.

3.12 Certificates

(a) Contractor certifies as follows:

- 1) **Certificate of Authorization:** If Contractor is a corporation, each person executing this Contract on behalf of the Contractor hereby covenants, represents and warrants that Contractor is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the Customer upon request); and that each person executing this Contract on behalf of the Contractor is an officer of Contractor and that he or she is duly authorized to execute, acknowledge and deliver this Contract to the Customer. Attached hereto as Attachment 8: *Certificates (Authorization, Tax Compliance, and Non-collusion)*.
- 2) **Tax Compliance Certification:** Pursuant to M.G.L. c.62C §49A(b), each person signing this Contract on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, the Contractor has complied with any and all applicable state tax laws. Attached hereto as Attachment 8.

- 3) **Certificate of Non-collusion:** The undersigned certifies under penalties of perjury that this Contract has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals. Attached hereto as Attachment 8.
- (b) **Covenants:** Contractor covenants that: (1) it presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the performance of the Work or which would violate M.G.L. c.268A, as amended from time-to-time, (2) in the performance of this Contract, no person having such an interest shall be employed by the Contractor, and, (3) no partner or employee of the Contractor is related by blood or marriage to any public official or employee of the Customer.
- (c) **Customer Certification:** The Customer certifies that it is duly authorized to execute, acknowledge and deliver this Contract under the provisions of 225 CMR 10.00 or 225 CMR 19.00, to retain Contractor to design, acquire, install and assist in the maintenance of the System to accomplish the Energy Conservation Projects and to provide other services, as more fully set forth herein, subject to all the terms and conditions of this Contract.

3.13 Representations and Warranties

Each party hereto represents and warrants to the other that (i) it has adequate power and authority to enter into this Contract and to perform its obligations hereunder and that (ii) it possesses full authority to execute and deliver this Contract and that it does not contravene any applicable law, rule or regulation.

3.14 Assignment; Financing

As to each System individually,

- (a) Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract, or any part hereof, or its right, title or interest in the same or any part thereof, without (i) prior written notice to the Customer, and (ii) other than assignment permitted under Section 3.14(b) (regarding financing), Customer’s prior written consent as to the assignee’s ability to provide Contractor’s operations and maintenance obligations under this Contract, such consent not to be unreasonably withheld, conditioned or delayed. Contractor shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Contract, without prior written notice to the Customer.
- (b) If Contractor’s rights or property are foreclosed upon or seized, or if a Financing Party exercises any other right under a security agreement granted by Contractor to that Financing Party, Customer shall permit such Financing Party to exercise any and all Contractor rights hereunder, so long as there are no existing uncured Defaults. Customer shall execute any document reasonably requested by any Financing Party to evidence and give effect to the provisions of this Section 3.14(c), subject only to the condition precedent that no Contractor Payment Default exists.

- (c) Customer shall at any time and from time to time, within ten (10) days after a written request by Contractor execute and deliver to Contractor (or to such party or parties as Contractor shall designate, including a Financing Party) the following written statements:
 - (i) (1) certifying whether this Contract is in full force and effect (or modified and stating the modification), (2) stating the dates on which amounts due to Customer have been paid, (3) stating that there are no known defaults existing at the time of execution of the statement, or that defaults exist and the nature of such defaults, and (4) stating that, as of the date of such estoppel certificate, there are no disputes or proceedings under this Contract between Customer and Contractor or, if any such dispute exists, describe the nature of such disputes or proceedings;
 - (ii) (1) recognizing a particular entity as a Financing Party under this Contract and (2) agreeing to accord to such entity all the rights and privileges of a Financing Party hereunder.
- (d) Any costs associated with Customer's compliance with Section 3.14(d) shall be at Contractor's expense.
- (e) At Contractor's request and subject to DOER approval, Customer shall amend this Contract to include any provision reasonably requested by an existing or proposed Financing Party, provided such amendment, in Customer's sole discretion, shall not impair Customer's rights under this Contract.

3.15 Complete Contract.

This Contract, together with any documents incorporated herein by attachment or by reference, shall constitute the entire and exclusive Contract between both parties. This Contract may not be amended or modified except in writing and executed by the Customer and the Contractor.

SECTION 4: THE WORK

4.01 Time for Performance

- (a) Contractor shall proceed with developing and constructing the Project according to Attachment 7: *Project Schedule*. The schedule will be extended as required due to delays caused by permitting authorities, events beyond Contractor's control and without the fault or negligence of the Contractor, including but not limited to events of Force Majeure, unusual delays in deliveries, LDC delays, unavoidable casualties, or due to Customer's actions or failure to perform its obligations under this Contract or to cooperate with the Contractor in the timely completion of the Work, provided Contractor has timely filed all necessary applications and approval requests and has used commercially reasonable and diligent efforts to maintain the schedule. Contractor will notify Customer in writing of the existence, extent of, and reasons for such delay. Contractor shall have no claim for additional compensation because of such delays, but Contractor and Customer may extend the Contract time by revision for such reasonable time, as they shall agree.
- (b) At least thirty days in advance of the anticipated Commercial Operation Date, Contractor will meet with the Customer to assess the progress and remaining work to complete the System.

When the System achieves Commercial Operation, Contractor shall provide a Notice of Commercial Operation, specifying the System's Commercial Operation Date.

4.02 Specifications of Work

Contractor's obligations regarding the Work are specified in Attachment 3: *System Description* and related drawings and plans and any subsequent revisions thereto, and in Attachment 4: *Scope of Work*. Excluded from the Work are any modifications or alterations to the Premises not expressly included within the Work. The requirements of all Applicable Law shall be met at all times. All Work shall be performed in a professional and competent manner.

4.03 Construction Procedures, Changes to Work and Coordination

- (a) Contractor shall supervise and direct the Work using its best ability, skill, attention, and oversight. Contractor shall be responsible for the construction means, methods, techniques, sequences, and procedures.
- (b) Contractor shall perform the Work in such a manner as to not harm the structural integrity or operating systems of any building or facility and shall repair and restore any damage caused by the Work at Contractor's expense.
- (c) Contractor will not create (or allow to continue) any condition deemed to endanger health or safety as defined in Section 5.01: *Workmanship* and if such a condition exists Customer shall have the right to exercise the remedies described therein.
- (d) Contractor shall supply to the Customer the telephone number of a responsible person who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work.
- (e) Contractor and its employees, subcontractors and agents shall not smoke within any building, including basements.
- (f) No material change to the scope or specifications of Work negatively affecting the Site's physical condition shall be made without Customer's prior written consent.

4.04 Relationship with Maintenance Staff

Contractor shall cooperate with Customer's operating and maintenance personnel, train said personnel in operation and maintenance of any equipment installed as part of the Work, and coordinate the Work on a planned and programmed basis. Contractor shall deliver a preventive maintenance schedule and procedures for any equipment installed as part of the Work. No equipment shall be installed which will require additional personnel to be hired by the Customer for the operation or maintenance of said equipment without prior approval of the customer in the form of a revision to the Scope of Work.

4.05 Material and Equipment Installed

- (a) The Customer, in its reasonable discretion, shall make the final determination whether any System installed is as specified in Contractor's Response to the RFQ, which specifications are

incorporated in this Contract by reference, and in the *Scope of Work*. Any material or equipment substitution to the Scope of Work shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended.

- (b) Contractor shall install and, when applicable, operate and maintain, or, if specified in the Contract, train Customer personnel to operate and maintain equipment in a manner that will provide the equipment manufacturers' literature, specifications and instructions.
- (c) All electrical and structural design drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade, if applicable.

4.06 Disposal

- (a) Contractor will be responsible for proper disposal of all non-Hazardous Materials and construction demolition debris. Disposal plans must be documented and appropriate transportation and disposal documents prepared before disposal commences and actual disposal must be documented immediately after disposal.
- (b) Demolition debris can only be disposed of at a DEP and Board of Health licensed municipal sanitary landfill or DEP/EPA licensed recycling facility, which facility must be permitted to receive the type of waste involved.
- (c) Hazardous waste can only be disposed of by a person or entity licensed for special waste disposal.

4.07 Subcontracting

Contractor must use sufficient personnel and adequate equipment to complete the Work. Contractor may not subcontract part of the Work to others unless contemplated in Contractor's Response to the RFP and identified in Attachment 4: *Scope of Work* and permitted by Customer. Contractor may, with the written consent of the Customer in the form of a revision to Attachment 4: *Scope of Work*, substitute a subcontractor for one so identified or, if no subcontractor for a certain trade or task has been so identified, engage one. Contractor shall be responsible for the conduct, acts and omissions, whether intentional or unintentional, of its subcontractor(s) and of persons either directly or indirectly employed by the Contractor, including employees, agents, invitees or suppliers. Nothing in this Contract shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the Customer.

4.08 Safety; Construction Schedule; Security; Equipment Location and Access

- (a) A Site may be occupied during construction. Contractor shall take all necessary precautions to ensure the public safety and convenience of the occupants during construction.
- (b) The Work must be completed in a continuous uninterrupted operation between the hours of 8:00 AM and 4:30 PM on Monday through Friday, unless otherwise authorized in writing by the Customer. No Work is to be done on holidays, Saturdays, or Sundays other than for emergencies or unless agreed to in writing.

- (c) The Contractor is responsible for the security of partially completed Work and for materials or equipment stored at the Premises or at Customer's other properties. Only materials and equipment intended and necessary for immediate use shall be brought into the buildings. As to Systems installed on buildings, equipment and unused materials shall be stored only in the temporary construction areas (see Attachment 2-B) provided in each building at the end of each workday.
- (d) Flammables and combustibles shall be stored only in accordance with Fire Prevention Regulations (527 CMR 1.00-50.00). In the event that the Customer is unable to provide a satisfactory location then Contractor shall provide and pay for suitable storage.

4.09 Permits and Fees

- (a) Other than as stated in Section 4.09(b), Contractor shall secure and pay for any and all permits and governmental fees, licenses, and inspections that are required by federal, state, or town or city governments for proper performance and completion of the Work. All Project entitlements obtained will be the property of Contractor. Customer shall cooperate with Contractor in support of the permit applications. Contractor's list of all anticipated required permits is in Attachment 4: *Scope of Work*.
- (b) The Parties shall cooperatively apply for and obtain a post-closure use permit from the Massachusetts Department of Environmental Protection, and any related permits or approvals necessary for the Permitted Uses on the Site. Contractor shall be responsible for the cost of obtaining the post-closure use permit.
- (c) Nothing in this Contract shall be deemed an agreement by Customer to issue or cause the issuance of any approval or permit, or to limit or otherwise affect the ability of the Customer or any regulatory authority of the Customer to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Law.

4.10 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, and trash collection (see Section 4.14 regarding System interconnection). Customer 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 Customer or any third party, nor shall Customer have any liability to Contractor (including, without limitation, liability for lost revenue) arising from Customer's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security.

4.11 Concealed or Unknown Conditions

If Contractor finds conditions during the Work that are subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, Contractor shall notify Customer of such conditions promptly, prior to significantly disturbing the same, and in no event

later than one (1) Business Day after first observing the conditions. Such conditions may include, but are not limited to, water damage, termite damage, or structural building defects. If such conditions differ materially and cause an increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall submit a written estimate of the material and labor cost increase and time delay. If the Customer concurs with the need, cost estimate, and time delay, the Parties shall make an equitable adjustment to the Electricity Rate or the Project Schedule, or both, upon execution of a Contract amendment. Contractor shall not be entitled to damages for delay.

4.12 Casualty, Condemnation, Damage

- (a) If any fire, flood, other casualty, or condemnation renders a portion of any property described in an Attachment 1-[A-X]: *Premises and Site Description* unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, subject to Section 5.04 (regarding System Loss) the Parties may terminate or modify this Contract as it pertains to the affected System by mutual agreement.
- (b) Customer shall promptly notify Contractor of any matter it is aware of pertaining to any System Loss or that could reasonably be expected to affect adversely the System(s).

4.13 Shutdown of Services

- (a) Contractor hereby acknowledges that continuous operation of services and access to certain Sites is essential to the operation of those Customer properties. If any such service, or access to such Site, or any common area is to be discontinued for any period of time in order to perform the Work, Contractor will give the Customer as much notice in writing as is practicable, but in no event less than seven (7) days in which event the Customer shall, by written response, approve unconditionally or with conditions such shutdown of services. Such conditional approval may include a requirement for the Contractor to provide and pay for temporary services, may limit the time for which services or access may be shut down, or may require other actions, accommodations or expenditures on the part of the Contractor. With respect to fire alarm or other fire protections, Contractor shall also notify the local fire department of any shutdown of service and notify the fire department when such service is restored.
- (b) The Customer acknowledges that such shutdowns may be necessary to perform the Work from time to time and will not withhold approval unreasonably. The Customer agrees to communicate with occupants on plans to shut down services or access and temporary measures, if any, which will be made.

4.14 Interconnection with Electric Distribution Grid.

- (a) Contractor shall secure interconnection approval from the LDC and complete all required tasks to interconnect each System to the LDC System at no cost to Customer, except as stated in Section 4.14(b), including filing interconnection applications and paying application and impact study fees (if required).

- (b) The Electricity Rate includes LDC construction charges of up to the amount shown in Attachment 5: *Cost and Generation*, for each System. If a System's actual interconnection charges exceed the amounts shown on Attachment 5, Customer shall pay the excess amount either, in its discretion, through a Price Adjustment of the Electricity Rate, or by a direct payment to the LDC, as follows:
- Price Adjustment of the Electricity Rate: Contractor shall add a surcharge to the monthly invoice at the rate shown on Attachment 5: *Cost and Generation*. If the proposed Price Adjustment is greater than \$0.01/kWh for any System, Customer may terminate the Contract with respect only to that System.
 - Direct Pay to LDC: Subject to Massport approval, Customer shall directly and timely pay the LDC so as to avoid construction delays. If the proposed payment is greater than the amount stated on the relevant Attachment 5 for that System, Customer may terminate the Contract with respect only to that System. A System's Project Schedule (Attachment 7) shall be extended without cost to Contractor by the amount of any delay caused by Customer's failure to timely pay this amount.
- (c) Contractor will promptly inform Customer of all significant developments relating to interconnection matters.

4.15 Indemnification and Limitation of Liability

- (a) Contractor shall be responsible for the Work and take all precautions for preventing injuries to persons and property in or about the Work and shall bear the costs of all losses or damages resulting from or because of the Work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all material used or employed in carrying out this Contract. Contractor shall assume the defense of, indemnify and hold harmless the Customer, its officers, agents, and employees from all claims, demands, actions, and suits (including all attorneys' fees and costs) brought against any of them arising from the Contractor's work or any subcontractor's work under the Contract, including the following:
- 1) Labor performed or furnished and materials used or employed for the Work;
 - 2) Injuries to any person received or sustained by or from the Contractor and its employees, subcontractors and its employees, any agents, suppliers and invitees in doing the Work, or as a consequence of any improper materials, implements of labor used or employed therein;
 - 3) any breach by Contractor of its obligations, covenants, representations or warranties contained in this Contract or made pursuant thereto; and
 - 4) Any act, omission, or neglect of the Contractor and any employees, subcontractors and employees, agents, suppliers and invitees.
- (b) To the extent permitted by law, neither Party shall be liable to the other Party for any punitive, exemplary, or consequential damages, whether foreseeable or not, arising out of, or in connection with, this Contract. To the extent permitted by law, each Party expressly waives any claim against and releases from personal liability of the other Party's elected official, officer, director, member, partner, and employee, except to the extent of such person's gross negligence or willful misconduct.

SECTION 5: PERFORMANCE AND EVALUATION SUBSEQUENT TO WORK; GUARANTEE

5.01 Workmanship

- (a) Contractor warrants that all equipment, materials and Work shall be free from defects in material, manufacture, workmanship and performance as set forth by the catalogs, bulletins and specifications included within Response to the RFP, or this Contract, whichever is appropriate.
- (b) Contractor shall correct defective equipment, materials or Work within a reasonable period of time as necessary to achieve the Guaranteed Annual Output, unless such defect is a condition deemed to endanger health or safety or is a fire hazard, in which case Contractor shall promptly correct such defect, or Customer may correct such defect and Contractor shall reimburse Customer for its reasonable expenses incurred in performing such correction. Conditions which are deemed to endanger under the State Sanitary Code (105 CMR 410.000) or are fire hazards under Fire Prevention Regulations (527 CMR 1.00-50.00) shall be addressed promptly and jointly, if necessary, by Contractor, assuring that immediate precautions are taken to avoid risk to persons or property, imminent measures are taken to prevent deterioration of condition, occupants are alerted to any dangers or hazards, and steps for final correction taken within twenty four (24) hours.
- (c) All Work shall meet the minimum standards of the Massachusetts Building Code and Massachusetts Electric Code.

5.02 Measurement and Verification of Electricity Generated

- a) The Contractor, or the LDC as appropriate, shall provide, install, own, operate, and maintain the Metering Device. Contractor shall maintain and test the Metering Device in accordance with applicable requirements or, to the extent applicable, in conformance with the Federal Energy Management Program (FEMP) Guide for Measurement and Verification (as amended from time to time), but on no less than an annual basis.
- b) Meter Device readings will be conclusive as to the amount of Electricity delivered to Customer; provided, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to, or registers inaccurately, measurement of Electricity shall be determined in the following sequence:
 - i. by estimating by reference to historical data for quantities measured during periods of similar conditions when Metering Device was registering accurately; or
 - ii. if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it will be assumed that the period of such inaccuracy was equal to (1) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (2) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, provided, however, that the period covered by the correction shall not exceed three months.

5.03 Performance and Guarantees

- a) Contractor guarantees the Project will produce the Guaranteed Annual Output in each Guaranteed Performance Year. If this Contract terminates as to a particular System, the Guaranteed Annual Output shall be reduced in the amount of that System's contribution to the Guaranteed Annual Output, pro-rated for a partial Guaranteed Performance Year.
- b) Contractor shall bear the cost of the annual testing of the Metering Device and the preparation of the Metering Device test reports.
- c) Calculations for verified Electricity generation will be made at least once per Guaranteed Performance Year according to the most recent version of the Federal Energy Management Program (FEMP) Measurement and Verification Guidelines using Option B with continuous direct measurement of energy generated taken at the System level. Verified Electricity generation shall be reported annually to the DOER.

5.04 Performance Remedies

- a) (i) If during a Guaranteed Performance Year a Production Shortfall occurs, Contractor shall pay or credit to Customer an amount equal to the difference between the SMART energy compensation rate and the Electricity Price (\$/kWh), multiplied by the Production Shortfall (kWh). Contractor shall pay such amount to Customer within thirty (30) days of the end of the relevant Guaranteed Performance Year.

(ii) Nothing in this Section 5.04(a) shall prevent Contractor from undertaking System improvements, including installing additional photovoltaic modules or other equipment, at no cost to Customer, to ensure achievement of the Guaranteed Annual Output. Customer's material breach of the Contract shall void the guaranty under this Section 5.04.
- b) Contractor shall bear the risk of any System Loss, except to the extent such System Loss results from the gross negligence of Customer or its agents, representatives, vendors, visitors, employees, contractors, or invitees.
- c) In the event of any System Loss that results in less than total damage, destruction or loss of the System, subject to a Financing Party's approval of reconstructing the System or of expending sufficient insurance proceeds to reconstruct the System, this Contract will remain in full force and effect and Contractor will, at Contractor's sole cost and expense, repair or replace the partial System Loss as quickly as practicable. Contractor shall, within twenty (20) Business Days following the partial System Loss, notify Customer of its intent to repair or reconstruct the partial System Loss. If the partial System Loss occurs within five (5) years of the end of the Term, Contractor shall be obligated to repair or replace the partial System Loss such that at least 60% of the total System (as determined by system output) remains functional through the remainder of the Term.
- d) In the event of System Loss that results in total damage, destruction, or loss, as reasonably judged by the Contractor, that is not caused by negligence or willful actions on the part of the Contractor, the Contractor shall, within twenty (20) Business Days following the occurrence of

such System Loss, notify Customer whether Contractor is willing to repair or replace the System.

- e) In the event of a total System Loss where Contractor notifies Customer that Contractor is not willing to repair or replace the System, Contractor shall promptly decommission the System pursuant to Attachment 2-A or 2-B, and the Contract shall terminate as to that System. If a System is not repaired or replaced, in whole or in part, the Guaranteed Annual Output shall be reduced by that System's contribution, or partial contribution in the case of a partial System Loss, to the Guaranteed Annual Output.
- f) In the event that Contractor notifies Customer that Contractor is willing to repair or replace the System, this Contract will remain in full force and effect and Contractor will repair or replace the System as quickly as practicable, and the Guaranteed Annual Output shall be adjusted to account for the time during which the System was not operational due to the System Loss repair.

5.06 Operation and Maintenance

Contractor shall perform operation and maintenance services for each System according to Attachment 6: *Operation and Maintenance Schedule*.

5.07 As-Built Plans.

Within ninety days following the issuance of the Notice of Commercial Operation, Contractor shall prepare and deliver to Customer detailed, as-built plans accurately depicting the System including, without limitation, all architectural, mechanical, electrical, structural, and control drawings, each stamped by a Massachusetts Registered Professional Engineer (P.E.) for the corresponding discipline. All drawings, reports, and materials prepared by the Contractor specifically in performance of this agreement shall become the property of Customer and shall be delivered to Customer as needed or upon prior to project acceptance.

SECTION 6: OBLIGATIONS OF THE PARTIES

6.01 Obligations of the Contractor; Contractor Default

- a) Contractor acknowledges and agrees that Contractor's obligations hereunder are in the capacity of providing the Work, for the purposes described in the Preamble to this Contract and in said capacity is expected to provide, engineering, design, monitoring, construction management including general contracting as necessary, and other related services as solicited in the RFP/RFQ and as may normally be incidental to these types of professional services. Contractor acknowledges and agrees that any other functions, including, but not limited to, manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein, or as subcontractor, or ownership in whole or in part, or financially affiliated with, a contractor which performs such other function, shall constitute a conflict of interest, which shall constitute a material breach of this Contract unless 1) fully disclosed in the Response to the RFR, and 2) accepted by the Customer under terms which are specified in the Contract. Contractor acknowledges and agrees that this paragraph applies to all its officers and employees.

- b) The following events or conditions shall constitute a Contractor breach of this Contract (a (“**Contractor Default**”) and shall give the Customer the right, subject to Section 6.01(c) (regarding cure periods and notice), without an election of remedies, to proceed and/or terminate this Contract by delivery of written notice declaring termination, upon which event the Contractor shall be liable to the Customer for any and all allowed damages sustained by the Customer:
- (i) Any increase in the Electricity Price for reasons other than those related to changes in the Work;
 - (ii) Any representation or warranty furnished by the Contractor in Contractor’s Response to the RFQ, the system engineering plans and drawings, or this Contract which is false or misleading in any material respect when made;
 - (iii) The filing of bankruptcy by the Contractor or by Contractor’s creditors, an involuntary assignment for the benefit of creditors, or the liquidation of the Contractor;
 - (iv) Any failure by the Contractor to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein; or
 - (v) Subject to Section 4.01(b) (regarding extensions to Project Schedule), Contractor materially fails to meet the System’s Project schedule as shown on Attachment 7: *Project Schedule*.
- c) Before Customer exercises any rights or remedies against Contractor as a result of a Contractor Default, Customer shall simultaneously notify in writing Contractor and all Financing Parties who have given advance notice of their interest in this Contract to Customer, of any failure by Contractor to perform any Contractor obligations under this Contract, which notice shall set forth in reasonable detail the facts pertaining to such failure and specify a reasonable method of cure, as follows:
- Give each Financing Party (i) sixty (60) days’ notice of and the opportunity to cure any Contractor Payment Default, (ii) ninety (90) days’ notice of and the opportunity to cure any Contractor Non-payment Default, and (iii) a reasonable further opportunity to cure a Contractor Non-payment Default if weather or access to the Site is physically difficult, in which case Contractor, or the Financing Party on the Contractor’s behalf, shall notify Customer of the anticipated date for curing the Non-Payment Default and shall begin to diligently undertake the cure within the 90-day period.
- d) Contractor and any Financing Party may cure any Payment Default by paying all then overdue payments in full together with interest thereon at the rate of one and one half percent (1 ½%) per month.
- e) Any termination of this Contract resulting from a Contractor Default specific solely to one or more System shall be effective only as to those Systems, and this Contract shall continue in full force and effect as to all remaining Systems and as to Systems to be developed under its terms.

6.02 Obligations of the Customer; Customer Default

- a) Customer agrees to respond to all requests on a timely basis for the expeditious design, implementation and monitoring of the System.
- b) If Customer fails to perform any of its material obligations hereunder, including, but not limited to those listed in this Section 6.02(b) below (a “*Customer Default*”), Contractor may offset against any amounts owing to Customer hereunder any amounts paid by Contractor to cure such Customer Default together with interest thereon at the rate of one and one-half percent (1½%) per month and exercise any other remedies available under this Contract or Applicable Law, including terminating the Contract. Each of the following events or conditions shall constitute a Customer Default:
 - (i) Any failure by the Customer, without cause, to authorize payment due more than forty-five (45) days after receipt of the invoice therefore;
 - (ii) Any representation by Customer in the RFQ and this Contract is false or misleading in any material respect when made;
 - (iii) Any failure by the Customer to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the Customer demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Customer fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

SECTION 7: INSURANCE AND BOND REQUIREMENTS

7.01 Worker’s Compensation Insurance

Worker’s Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employer’s Liability limits of \$500,000 each accident, \$500,000 disease – each employee and \$500,000 disease-policy limit.

7.02 Commercial Liability

- a. Commercial general liability insurance in limit not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applied per job) and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.
- b. Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.

This policy shall include coverage relating to explosion, collapse, and underground property damage and contractual liability coverage. Contractor shall provide a separate “Owners and Contractor’s Protective Liability” policy in the name of the Customer at the same limits listed

above. The completed operations coverage shall be maintained for a period of 10 years after the Commercial Operations Date.

7.03 Property Coverage

Contractor shall provide the following coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all Work:

Special Perils	Full amount of the System installed cost, as determined by Contractor in its reasonable discretion
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Upon completion of Work, Contractor shall provide an installation floater, in the full amount of the System installed cost, as determined by Contractor in its reasonable discretion, for the requirements set forth above. The policy or policies shall specifically state that they are for the benefit and payable to the Customer, the Contractor, a Financing Party, if required, and all persons furnishing labor or labor and materials for the Work, as their interests may appear.

7.04 Customer as Additional Insured

The Customer shall be named as additional insured on the Contractor's and subcontractor(s)' Liability Policies.

7.05 Certificates of Insurance, Policies

Certificates of insurance, reasonably acceptable to the Customer, shall be submitted to the Customer upon the execution of this Contract and shall be renewed upon expiration of the policies. Certificates shall indicate that the coverage required by section 7.01 through 7.04 is in effect. If the Customer is damaged by Contractor's failure to maintain such insurance, then Contractor shall be responsible for all reasonable costs or damages attributable thereto. Certificates shall note the thirty-day cancellation notice requirement of Section 7.06. All policies shall be issued by companies authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts.

7.06 Cancellation

Cancellation of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and the Customer at least thirty days prior to the effective date thereof.

7.07 Bonds

Contractor shall provide the Customer with 100% payment and performance bonds in the amounts as stated on Attachment 5: *Cost and Generation*, prior to commencing System construction, which bonds shall be from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570 and shall remain in effect for 365 calendar days after the Commercial Operation Date of each System. Contractor shall furnish a certified copy and duplicate of a performance bond, with any Financing Party, if necessary, as co-beneficiary along with the Customer.

IN WITNESS THEREOF, the parties have each caused this Contract to be executed as of the Effective Date by their duly authorized representatives.

[SOLAR CONTRACTOR]

Name _____

By: _____

Title: _____

MASSACHUSETTS PORT AUTHORITY

Name _____

By: _____

Title: _____

MASSACHUSETTS PORT AUTHORITY

[Additional Signatories]

ATTACHMENT 1: PREMISES AND SITE DESCRIPTION

Site Address:

Site Legal Description:

ATTACHMENT 2: SITE LEASE

For the purposes of this Attachment 2-A, “*Site*” means the Site upon which the System identified above is located, as described in the relevant Attachment 1: *Premises and Site Description*. Each System at a particular location is described on Attachment 3. Note that there may be more than one System at a particular location.

The Lease must be evaluated at least every 5 years for fair market value and the Lease rate shall escalate accordingly.

SECTION 1: GRANT. Customer, for and in consideration of the covenants and agreements on the part of Contractor contained herein and in the Contract, does, commencing on the Effective Date and until the expiration of the Term or earlier termination of the Contract in accordance with the terms thereof, lease to Contractor, and Contractor does hereby take from Customer, upon and subject to the conditions hereinafter expressed, the Site, for the sole and exclusive purpose of the Permitted Uses.

SECTION 2: USE OF THE SITE

Contractor’s use of the Site is subject to the following:

- a) Present and future zoning laws, ordinances, resolutions, and regulations in which the Site lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Site; the condition and state of repair of the Site as the same may be on the Effective Date; and full compliance by the Contractor in all respects with Applicable Law.
- b) Subject to Section 6 (regarding Hazardous Waste) and to Section 2(c), Contractor accepts the Site in the current condition or state without any representation or warranty, express or implied in fact or by law, by Customer and without recourse to Customer, as to the nature, condition, usability, the use or uses to which the Site or any part thereof may be put. Customer will not be required to furnish any services or facilities or to make any repairs or alterations in or to the Site.
- c) Notwithstanding Section 2(b), the Parties agree that Contractor shall not be liable for any conditions on the Site arising from or related to acts or omissions occurring prior to the Effective Date, except to the extent arising from or related to Contractor’s negligence or willful misconduct.
- d) Except with the prior express written consent of Customer, Contractor shall not use the Site for any use other than the Permitted Uses.

SECTION 3: ACCESS; SAFETY.

- a) Customer and its agents, consultants, and representatives shall have reasonable access to the Site at all reasonable times (including under emergency conditions) to inspect the Site for the purpose of ascertaining its condition, without hindrance or molestation from Contractor; provided, however, that such access shall not interfere with Contractor’s performance of its obligations hereunder.
- b) Customer shall have access to any documents, materials and records of Customer that Contractor reasonably requests, if any. During the course of construction and completion of the System and any substantial alteration thereto, Contractor shall maintain all plans, shop drawings, and specifications relating to such construction which Customer, its agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the Work conforms to the Contract.

- c) Contractor, and its sub-contractors, agents, consultants and representatives shall comply with Customer's reasonable safety and security procedures (as may be promulgated from time to time, and if provided to Contractor).
- d) Contractor shall install and maintain security measures at each System Site according to local Applicable Law.

SECTION 4: QUIET ENJOYMENT

- a) Customer covenants that so long as no Contractor Default has occurred and is continuing, Contractor shall quietly have and enjoy the Site and the Easements during the Term without hindrance, interruption, suit, trouble or interference of any kind by Customer or any other person or entity claiming (whether at law or in equity) by, through or under Customer. Customer's rights of entry and inspection shall not be considered a breach of the covenant of quiet enjoyment.
- b) Contractor will use reasonable efforts to maintain the System in a manner that does not interfere with the Site or improvements to the Site.

SECTION 5: SUBORDINATION; LIENS

- a) Contractor acknowledges and understands that the Contract is subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the Customer with respect to the Site.
- b) Customer represents and warrants as of the Effective Date that it has good and marketable title to the Site, subject to no liens, easements, options or other encumbrances. Customer shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Site unless Customer shall have given Contractor at least thirty (30) days prior notice thereof, which Notice shall identify the transferee, the area of the Site to be so transferred and the proposed date of transfer. Customer agrees that this Site lease and the Easements granted in this Lease shall run with the Premises and survive any transfer of all or any portion of the Premises. In furtherance of the foregoing, Customer shall cause any purchaser, lessee, assignee, mortgagee, pledge, secured party or party to whom a lien on the Site has been granted to execute and deliver to the Contractor a commercially reasonable document pursuant to which such party acknowledges and consents to Contractor's rights in the Site, the Easements, and the System.
- c) Neither Party shall create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien upon the Site. Subject to a Financing Party's rights (including an assignment of Contractor's interests under this Contract), neither Party shall suffer any other matter or thing arising out of its use and occupancy of the Site whereby the estate, rights and interests of the other Party in the Site or any part thereof might be impaired.

SECTION 6: HAZARDOUS MATERIALS; INDEMNIFICATION

- a) Customer shall maintain the Closure Plan and all permits related to the Capped Site, if any, required by Applicable Law, and shall provide copies of all such permits to Contractor. Customer shall meet all current and future Capped Site maintenance and monitoring requirements. Each Party shall comply with the Closure Plan and all Applicable Law pertaining to the use, storage, and disposal of Hazardous Materials at the Site ("**Environmental Laws**").
- b) Contractor shall indemnify, defend and hold harmless Customer and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Contractor or Contractor's representatives at the Site. In addition, Contractor

shall reimburse Customer for any and all costs related to investigation, clean up and/or fines incurred by Customer for non-compliance with Environmental Laws that are caused by Contractor or Contractor's representatives at the Site.

- c) To the extent permitted by law, Customer shall indemnify, defend and hold harmless Contractor and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from or out of any environmental condition on the Premises that existed on or before the Effective Date or that is caused by Customer or any of its employees, contractors, agents, or invitees following the Effective Date. Customer shall reimburse Contractor for any and all costs related to investigation, clean up and/or fines incurred by Contractor for non-compliance with Environmental Laws that are caused by Customer or Customer's representatives.

SECTION 7: EASEMENTS

- a) Customer shall grant the following easements (the "*Easements*") to Contractor for the following purposes:
 - i) A non-exclusive right of pedestrian, vehicular and equipment access to the Site across or through Customer's property at all times, which is necessary or convenient for ingress and egress to the Site;
 - ii) an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service and data service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect each System to the LDC System, the location of which will be determined by the LDC prior to the Commercial Operation Date;
 - iii) a solar easement, including, but not limited to the right to receive without interference from natural or man-made obstructions all solar energy received by the Site. This solar easement may be defined by Contractor as follows:
 - 1. Easement dimensions expressed in vertical or horizontal angles, or the hours of the day on specified dates during which direct sunlight to the System may not be obstructed, or a combination of these descriptions;
 - 2. Restrictions upon vegetation, structures, and other objects which would impair or obstruct sunlight passage through the easement; and
 - 3. Vegetation trimming that would obstruct sunlight passage through the easement, including any compensation for trimming expenses; and
 - iv) Adequate storage space on the Site convenient to the Site for materials and tools used to construct, install, and maintain the System. Contractor shall be responsible for providing shelter and security for stored items during construction and installation.
- b) Customer's grant of Easements in Sections (7)(a) shall commence on the Effective Date and continue throughout the Term and any extensions of the Term.
- c) If required by the LDC, Customer shall grant to the LDC an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the System to the LDC System, the location of which will be determined by the LDC prior to the Commercial Operation Date. Customer's grant under this Section 7(c) shall commence on its effective date and continue through the Term and any extensions of the Term, unless otherwise required by the LDC.

SECTION 8: DECOMMISSIONING.

- a) Subject to Section 2.04 (regarding Customer's purchase option), promptly following termination of the final Guaranteed Performance Year, or an earlier termination of this Contract following a Contractor Default, Contractor shall cease commercial operation of the System, and shall remove all structures, equipment, security barriers and transmission lines and other facilities from the Site and dispose of all materials contained in the System according to Applicable Law. This Section 8 shall survive any termination of the Contract.
- b) Contractor shall provide decommissioning assurance in the amount of \$10,000/MW (DC) of installed System capacity in the form of a bond or other form of security reasonably acceptable to Customer, to be provided by Contractor within 60 days of COD.

SECTION 9: MISCELLANEOUS.

- a) The Parties shall execute and record with the county where the Site is located the applicable notice of lease, which shall be in form and substance agreed to by the Parties. The cost of preparing and recording shall be borne by Contractor.
- b) Contractor shall maintain the Site, including any vegetative cover, and shall coordinate its maintenance activities with Customer. Customer shall maintain the Premises other than the Site, including removing vegetation from any shading buffer.

Attachment 3 – System Description

ATTACHMENT 4: SCOPE OF WORK

Contractor shall be responsible for the design, permitting, financing, construction, testing & commissioning, and long-term ownership and operation of each System, as well as the associated costs.

Design

System design shall include the proposed PV equipment specified in *Attachment 3 – System Description*, and shall be based on the conceptual layouts provided therein except as may be modified by Contractor to reflect site constraints, permitting requirements or Customer requirements. Engineering drawings and calculations shall be prepared by properly licensed and registered engineering professionals and shall be subject to the approval of the local building official. The Systems shall be designed to meet the performance and output expectations specified in the Contract.

Permitting

Contractor shall be responsible for obtaining all required permits and approvals for the construction and operation of the Systems. The permits anticipated by the Contractor include:

- City site plan and/or zoning approval
- Others TBD based on site
- Building and electrical permits
- Interconnection approval
- SMART tariff reservation

Financing

Contractor, as System owner, shall be responsible for providing construction and permanent financing for the construction and operation of the Systems. Contractor shall be responsible for all costs associated with the turnkey development, construction and operation of the Systems.

Construction

Contractor shall be responsible for turnkey System construction using appropriate and adequate personnel and equipment. Prior to construction commencement, Contractor shall provide a list of subcontractors, along with their intended scope of work, to Customer. Contractor shall construct the Systems as designed and permitted using new, first quality materials and equipment. Upon construction completion, Contractor shall provide a courtesy copy both in electronic and hard copy of System record drawings (“as-builts”) to the Customer.

Testing & Commissioning

Contractor shall test and commission the Systems in accordance with appropriate and industry standard testing and commissioning protocols, and shall repair or replace any defective equipment to ensure a fully functional System capable of meeting the performance and output expectations of the Contract. Contractor shall provide courtesy copies both in electronic and hard copy of all testing & commissioning reports to Customer upon request.

O&M

Contractor shall own and operate the Systems to meet the performance obligations of the Contract. Contractor’s operation and maintenance responsibilities shall be as stated in *Attachment 6 – Operations and Maintenance Schedule*.

Project Team

[Details on contractor and all subcontractors]

ATTACHMENT 5: SYSTEM GENERATION AND COST

ATTACHMENT 6: OPERATIONS AND MAINTENANCE SCHEDULE

GENERAL

This document specifies the operations and maintenance (O&M) requirements for the various Systems proposed in this Contract. The O&M requirements cover the PV modules, inverters, switchgear, DAS, weather station, groundwork, support structures, associated wiring/raceways, etc. Unless noted otherwise, the Contractor has full responsibility for the O&M of the leased/licensed area and all equipment on it for the period stipulated in the EMSA.

Preventative maintenance will be carried out two to four times per year, depending on the site conditions. In addition, Contractor shall coordinate all warranty-related equipment repairs and upgrades with OEM suppliers.

Upon mutual agreement, the parties may amend these O&M requirements after COD of each System to reflect as-built conditions.

GROUND-MOUNTED PV SYSTEMS

1. SITE/GROUNDWORK

- Cut the grass within the footprint of the leased area.
- Vegetation control by use of nylon line trimmers and self-propelled walk-behind brush cutters as well as sit-on mowers where appropriate to maintain optimal performance of PV system and reasonable aesthetics
- Pruning of trees/bushes on the property that inhibit optimal production of the solar array
- Inspect, maintain & repair fence/gate security & oil locks when necessary
- Maintain the permanent access roads as required for O&M services

2. SYSTEM

- Provide Torque checks to the string connections in the combiner boxes
- Test all strings to ensure they are all functioning as expected
- Utilize thermal imaging to detect loose connections or hot spots
- Spot check torque settings on all racking hardware
- Spot check torque settings on all solar panels
- Visually inspect all terminations for corrosion/tightness
- Visually inspect all enclosures for rust, corrosion, moisture, breaks in the seal
- Visually inspect the panels for cracks, discoloring, excess soiling and other problems that could interfere with the proper functioning of the module
- Visually inspect string wiring
- Fasten any wires that have loosened due to wind or vibration
- Clean solar panels with water as needed to remove dust, dirt, pollen, and other soiling substances that can inhibit the proper production of the module
- Check for rust spots on the top of posts where they were struck and driven
- Check for rust spots elsewhere on the posts caused by scratches in transit
- Visually inspect all labels to ensure legibility, and replace as warranted
- Visually inspect all outdoor raceways for damage, and replace as warranted

3. INVERTERS

- Clean air filters

- Check MOV surge protector
- Thermal imaging for loose connections and hot spots
- Touch up exterior paint where needed
- Inspect cooling fans
- Inspect weather stripping for all doors

4. DATA ACQUISITION SYSTEM & WEATHER STATION

- Visually inspect connections to all peripherals
- Clean weather station as appropriate
- Check wire management for loose wires due to wind vibrations
- Check calibration pyranometer
- Visually inspect DAS box for moisture or discoloration
- Inspect connections within the DAS box

5. MONITORING & EMERGENCY RESPONSE

- Perform daily system review, via remote monitoring, to measure proper performance of inverters and production of the modules
- Daily review of metered power vs. modeled power to ensure the system is performing according to expectations
- A software alarm shall notify maintenance personnel of abnormalities occurring within the array
- Clear minor alarms as needed within a reasonable period of time
- Respond to major alarms within 2 hours with remote troubleshooting protocol
- If unable to clear the alarm, have technical personnel on site within 48 hours
- Work with equipment manufacturers to provide technical support, software upgrades, and replacement equipment as required

6. REPORTING

- Provide or coordinate all SREC generation reporting per DOER's SREC II program participation requirements
- Provide or coordinate annual generation and Measurement & Verification reporting per DOER MGL C. 25A requirements
- Provide or coordinate all required reporting under the Interconnection Service Agreement with Eversource
- Provide an annual status report to the Massport regarding the operation of the PV facility and compliance with site lease requirements

CARPORT PV SYSTEMS

1. SITE/STRUCTURE

- Check main supporting beams for cracks or strains
- Check cross beams for any bends, cracks or strains
- Check metal surfaces and components for signs of rusting due to scratches during construction and apply galvanized coating where needed
- Inspect for areas of nesting or bird congregation
- Check security of inverter & oil locks when necessary
- Check raceways for damage and repair/replace as warranted

2. SYSTEM

- Provide Torque checks to the string connections in the combiner boxes
- Test all strings to ensure they are all functioning as expected
- Utilize thermal imaging to detect loose connections or hot spots
- Spot check torque settings on all racking hardware
- Spot check torque settings on all solar panels
- Visually inspect all terminations for corrosion/tightness
- Visually inspect all enclosures for rust, corrosion, moisture, breaks in the seal
- Visually inspect the panels for cracks, discoloring, excess soiling and other problems that could interfere with the proper functioning of the module
- Visually inspect string wiring
- Fasten any wires that have loosened due to wind vibration
- Clean solar panels with water as needed to remove dust, dirt and pollen
- Visually inspect all labels for legibility, and replace as warranted
- Inspect vertical support members for dents, dings or other signs of collision

3. INVERTERS

- Clean air filters
- Check MOV surge protector
- Thermal imaging for loose connections and hot spots
- Touch up exterior paint where needed
- Inspect cooling fans
- Inspect weather stripping for all doors

4. DATA ACQUISITION SYSTEM & WEATHER STATION

- Visually inspect connections to all peripherals
- Clean weather station as appropriate
- Check wire management for loose wires due to wind vibrations
- Check calibration pyranometer
- Visually inspect DAS box for moisture or discoloration
- Inspect connections within the DAS box

5. MONITORING & EMERGENCY RESPONSE

- Perform daily system review, via remote monitoring, to measure proper performance of inverters and production of the modules
- Daily review of metered power vs. modeled power to ensure the system is performing according to expectations
- A software alarm shall notify maintenance personnel of abnormalities occurring within the array
- Clear minor alarms as needed within a reasonable period of time
- Respond to major alarms within 2 hours with remote troubleshooting protocol
- If unable to clear the alarm, have technical personnel on site within 48 hours
- Work with equipment manufacturers to provide technical support, software upgrades, and replacement equipment as required

6. REPORTING

- Provide or coordinate all SREC generation reporting per DOER's SREC II program participation requirements
- Provide or coordinate annual generation and Measurement & Verification reporting per DOER MGL C. 25A requirements
- Provide or coordinate all required reporting under the Interconnection Service Agreement with NSTAR
- Provide an annual status report to Massport regarding the operation of the PV facility and compliance with site lease requirements

ATTACHMENT 7: PROJECT SCHEDULE

- EMSA Execution
- File Interconnection Application
- Design & Permitting (includes filing all local & state permits, except building permits)
- Outside Construction Commencement Date
- Outside Commercial Operations Date