

Parker Street Waste Site Public Involvement Plan Meeting
Keith Middle School Community Room
May 8, 2013
6:00-8:00pm

Questions and Comments received during the meeting related to the City's work which were not answered that evening

New Bedford High School

1. What are the courses of action being considered to remediate the soil and groundwater located underneath the Mechanical Room?

Operation of the hydraulic control system prevents migration of the localized impacted groundwater and soil vapor to other portions of the building. Since concerns were first identified in this area, chlorinated volatile organic compound (VOC) concentrations in groundwater and soil vapor have diminished significantly. Polychlorinated biphenyl (PCB) impacts have diminished and continue to be evaluated.

For remediation, the City and TRC are evaluating alternatives such as excavation and off-site disposal as well as in-situ (i.e., in-place) remedies like surfactant flushing and subsurface heating.

- Excavation would involve dewatering, structural support measures, excavation shoring, and mechanical excavation, and would cause significant interruption to the normal activities in the Mechanical Room.
- Surfactant flushing and subsurface heating would facilitate the remediation of soil and groundwater impacts without the need for excavation and could be performed in conjunction with the operating hydraulic control system. This approach involves flushing chemicals out of the ground using a detergent (i.e., surfactant) and water mixture. The surfactant is injected into an area of impacted soil and flushes out chemicals that are adhered to the soil as it moves through the soil toward recovery wells that pump the chemicals to the surface for treatment. The subsurface would be heated by pumping hot water from the school's boiler through the soil prior to the surfactant application to increase the surfactant's effectiveness. This approach would be preceded by a pilot study to evaluate performance metrics for the technique.

As noted at the meeting, any remedy officially proposed would be documented in a Modified Immediate Response Action (IRA) plan that would be subject to public comment.

2. Please provide the community with a copy of the Power Purchase Agreement (PPA) that the City entered into with Consolidated Edison (ConEd) for the solar facility that is to be installed at HS-8 (area between the two northern parking lots on NBHS' campus).

The PPA documents for HS-8 are included at the end of the response summary ["Solar (PV) Generation Net Metering Power Sales Agreement, Execution Copy 3/14/13"]. The document is currently in the signature process, so final dates have not been filled in yet.

3. What are the long-term savings (in dollars) that the City expects to realize by having a solar facility at HS-8? Who will these savings benefit – the City in general, or a specific area (such as the neighborhoods closest to NBHS)?

Based on current projections, the City stands to save in excess of \$200,000 over the 20-year contract. Since the system will be connected behind the high school meter, NBHS will realize the savings.

4. When is the last time unit ventilator (univent) and HVAC filters were changed at NBHS? When were all of the air units (intake and exhaust) last checked to ensure that they are properly balanced? Please provide dates.

According to the School Department, NBHS' Plant Engineers perform a complete changeover of filters twice a year. Typically the changeover is done during the February vacation and due to funding, after July. As of February 2013, the first filter changeouts for this calendar year were completed.

As far as properly balancing all of the air units, this is typically performed during the commissioning process, and later as needed. Commissioning of mechanical equipment is a relatively new process that assesses the design parameters to the current construction status. This process was not performed at the time of the school's construction in the 70's and it's rarely performed after the project is operational.

5. What is the School Department's expected timeframe for replacing the windows at NBHS?

The School Department's Director of Facilities has added the proposed NBHS window replacement to the School Department's Capital Plan; it is listed as an early #3 priority. As window replacement is a facilities improvement and is not required as a remedial measure, the actual timeframe for window replacement will be dependent upon funding.

The following items are listed in priority:

- #1 priority has 30 items,
- #2 Priority has 30 items,
- #3 Priority has 44 items and the
- #4 Priority has 30 items.

Acquired Residential Properties

6. Can work at these properties be delayed until Fall 2013 so as not to interfere with abutters' summer plans?

The City will consider delaying the work at the acquired properties until Fall 2013. The ultimate decision on when to conduct work at the acquired properties will depend on a number of factors including DPI's schedule for other City projects and school considerations.

7. How did the January 2013 air results compare to the previous rounds of air sampling conducted at KMS? Do certain areas of the school appear to have worse air quality than others?

The sampling and analysis of vent stack and indoor air at Keith Middle School (KMS) is described in the Revised Long-Term Monitoring and Maintenance Implementation Plan (LTMMIP), revision 5.5, dated August 2012. Indoor air sampling has been performed at KMS since 2006.

The polychlorinated biphenyl (PCB) Risk-Based Air Concentration (RBAC) Action Level of 0.05 micrograms per cubic meter [$\mu\text{g}/\text{m}^3$] has been developed for KMS and is used as an initial indicator to evaluate the presence of PCB air concentrations above background levels. As shown on the attached Figure 5-1 and Table 4-3 (from the January 2013 KMS Sampling Report), air sample results collected from the beginning of the monitoring program (before the opening of Keith Middle School), up to and including the most recent sampling event, have consistently been below this Action Level. All prior monitoring reports, are posted on the City's Parker Street Waste Site website, Keith Middle School page. Air quality throughout the school is fairly uniform and the remedy appears to be effective.

General site questions

8. What have City workers been doing at City Yard? There appears to have been a lot of activity recently with additional paving being done. I am concerned that they are trying to cover up soil that should be investigated.

It is unclear what paving activities this question refers to. The Department of Public Facilities stated that often when masons return to City Yard with excess concrete that has been mixed for use, they will spread it near their shop, which abuts Smith Street. Otherwise, no paving improvements have been conducted at City Yard recently.

9. How much money has been paid to TRC to date? To attorneys on legal actions involving the Parker Street Waste Site? Can those figures be updated on the City's Parker Street Waste Site website quarterly?

For services through May 2013, the City has paid TRC and its subcontractors approximately \$10.7 million which includes costs of drilling, excavation, disposal, soil sampling, groundwater sampling, air sampling, laboratory analysis, groundwater system materials, operation, and maintenance, etc. These costs are included in the over \$36 million that the City is seeking to recover from the responsible parties for the cleanup to date. The activity of the attorneys representing the City in the Parker Street Waste Site Litigation and the communications between the City and these attorneys are protected by Attorney-Client Privilege during the pendency of the litigation. Since there are several cases pending and/or threatened which involve numerous private Parties: individuals, corporations and governmental agencies, it would not be appropriate for the City to share the requested information at this time.

10. How much money is left in the Keith bond (please provide as precise a figure as possible)?

Approximately \$5 million remains in the Keith bond. The City will appropriate sufficient funds to complete required remediation to achieve regulatory closure as it has done in the past. The City will continue to seek compensation through litigation to minimize the City's financial obligation to the cleanup.

General comments

There were a number of general items raised, that although no direct question was asked, the City believes clarification is warranted:

A participant stated that the International Agency for Cancer Research (IARC) has concluded that there is sufficient evidence from human studies to conclude that PCBs are carcinogenic. Please note that all reports and risk assessment work for the Parker Street Waste Site have been routinely completed under the assumption that PCBs constitute a human carcinogen. Therefore, the findings of the IARC do not change the City's approach to response actions.

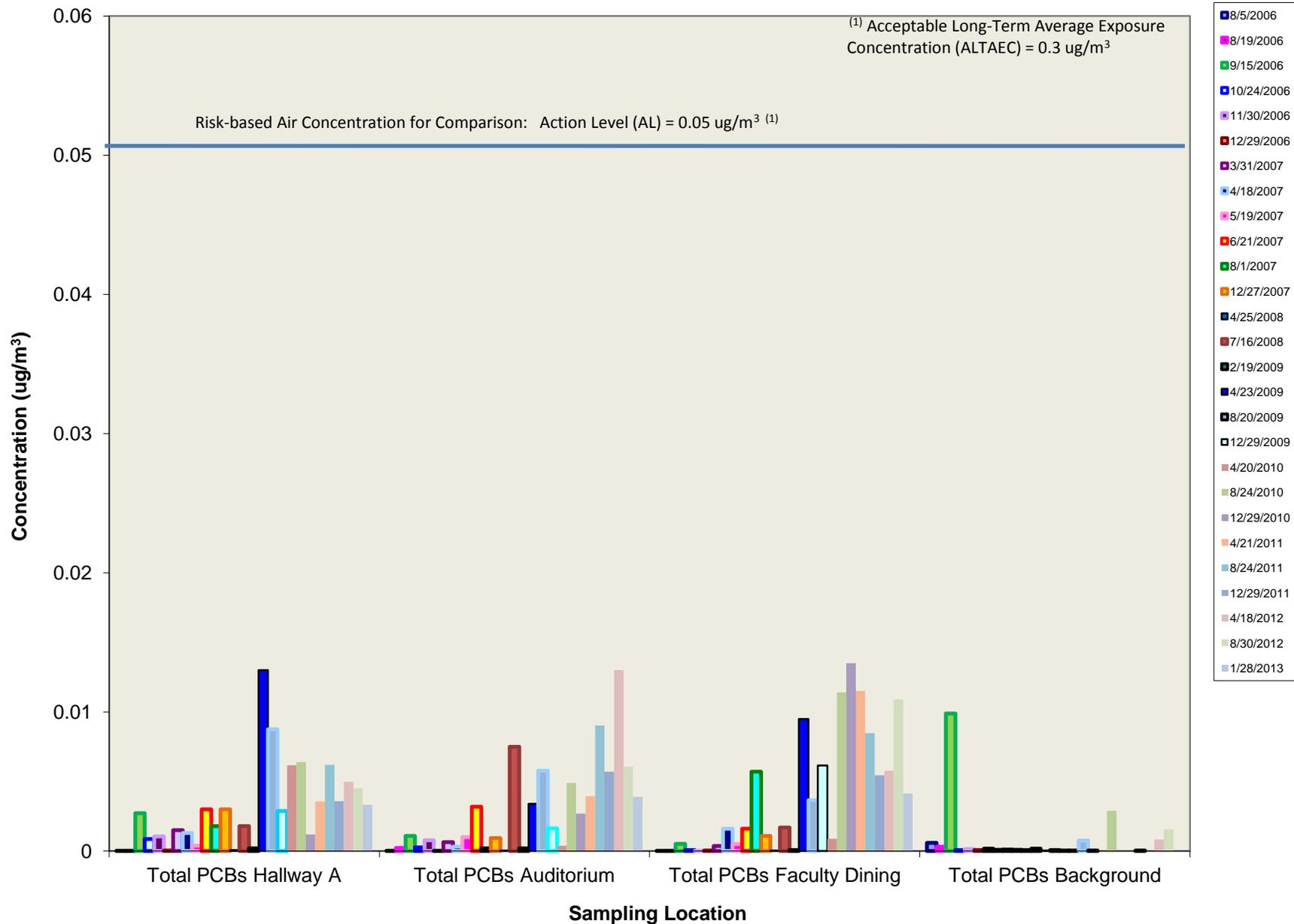
A participant cited a recent study by Sagiv and Korrick to support the assertion that PCBs cause ADHD. To clarify, this study quantified a mathematical association – not a causal association – between PCB exposure and preclinical symptoms related to ADHD. In response to this comment, City consultant Donna Vorhees contacted co-author Susan Korrick M.D. who advised Ms. Vorhees that the study *did not* conclude that PCBs cause ADHD.

A participant read a list of potential PCB-containing materials. The City wishes to express that it is aware of these and other potential PCB-containing materials and that these potential sources have been addressed appropriately through the City's investigation, material removal actions and remediation work in compliance with EPA's TSCA rules.

A participant requested that the Massachusetts Department of Public Health (MassDPH) participate in the next PIP meeting. The City routinely invites MassDPH to participate in each PIP meeting. Individuals interested in MassDPH's convening its own meeting or participating in the next City PIP meeting may consider contacting MassDPH directly.

There has been a recurring participant suggestion to abandon the high school campus due to safety concerns. The City maintains that it has completed comprehensive assessment of potential exposures at the high school campus and has completed multiple risk analyses based on (1) protective assumptions about how people use the building and campus; and (2) the most recently developed toxicity information, which conservatively incorporates safety factors. These studies, available on the City's Department of Environmental Stewardship website, are reviewed by MassDEP, EPA, and independent consultants who work on the behalf of PIP participants. The City solicits comments on these studies and the findings and conclusions are further discussed at PIP meetings. To the extent that a participant disagrees with a specific finding or requires clarification, the City urges any party to submit the item in writing at any time and/or orally during any PIP meeting, at which time the information can be verified, updated, and/or corrected as appropriate. Absent a specific scientific basis to refute the findings and conclusions to date, the City maintains that it has and continues to take appropriate actions to uphold the health and safety of the New Bedford High School's student body and staff.

Figure 5-1. Total PCB Trends in KMS Indoor Air Quality (IAQ) Samples - August 2006 through January 2013



Each bar represents a single measurement. Bars outlined in black represent values reported by the laboratory as nondetect. For charting purposes these nondetect values are plotted as one half the reporting limit.

**Table 4-3. Total PCB Results in KMS Indoor Air Quality (IAQ) Samples
August 2006 through January 2013 (24hr Sample, Method TO-4A [ug/m³])**

| Sampling Date | Hallway Building A | Auditorium Building B | Faculty Dining Building C | Background Outside | Background Outside (DUP) |
|---------------|--------------------|-----------------------|---------------------------|--------------------|--------------------------|
| AL | 0.05 | 0.05 | 0.05 | 0.05 | 0.05 |
| ALTAEC | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 |
| 8/5/2006 | 0.0000069 | 0.00000683 | 0.00000725 | 0.0006 | NS |
| 8/19/2006 | 0.00000665 | 0.00023 | 0.00000665 | 0.00031 | NS |
| 9/15/2006 | 0.00273 | 0.0011 | 0.00052 | 0.00989 | 0.00995 |
| 10/24/2006 | 0.00087 | 0.00027 | 0.00008 | 0.00007 | NS |
| 11/30/2006 | 0.00105 | 0.00079 | 0.00003 | 0.00014 | 0.00014 |
| 12/29/2006 | 0.00005 | 0.0000066 | 0.00005 | 0.00008 | 0.00004 |
| 1/20/2007 | NS | NS | NS | NS | NS |
| 3/31/2007 | 0.0015 | 0.00064 | 0.00037 | 0.000185 | 0.00019 |
| 4/18/2007 | 0.0013 | 0.00031 | 0.0016 | 0.000095 | 0.000095 |
| 5/19/2007 | 0.00038 | 0.001 | 0.00051 | 0.000105 | 0.0001 |
| 6/21/2007 | 0.003 | 0.0032 | 0.0016 | 0.0001 | 0.0001 |
| 8/1/2007 | 0.0018 | 0.00019 | 0.0057 | 0.000075 | 0.000075 |
| 12/27/2007 | 0.003 | 0.00094 | 0.0011 | 0.000185 | 0.000035 |
| 4/25/2008 | 0.00007 | 0.000036 | 0.0000355 | 0.0000355 | 0.0000355 |
| 7/16/2008 | 0.0018 | 0.0075 | 0.0017 | 0.00007 | 0.000037 |
| 12/29/2008 | NS | NS | NS | NS | NS |
| 2/19/2009 | 0.00019 | 0.00019 | 0.000075 | 0.00004 | 0.000039 |
| 4/23/2009 | 0.013 | 0.0034 | 0.0095 | 0.00004 | 0.00004 |
| 8/20/2009 | 0.00875 | 0.00577 | 0.00366 | 0.000759 | 0.00072 |
| 12/29/2009 | 0.00288 | 0.00165 | 0.00616 | 0.00003885 | NS |
| 4/20/2010 | 0.006163 | 0.000384 | 0.000882 | 0.0000614 | 0.000226 |
| 8/24/2010 | 0.0064 | 0.0049 | 0.0114 | 0.0029 | 0.0029 |
| 12/29/2010 | 0.0012 | 0.0027 | 0.0135 | 0.00005 | NS |
| 4/21/2011 | 0.0036 | 0.0040 | 0.0115 | 0.000038 | 0.0002 |
| 8/24/2011 | 0.0062 | 0.0090 | 0.0085 | 0.0000425 | 0.0005 |
| 12/29/2011 | 0.0036 | 0.0057 | 0.0054 | 0.000034 | 0.000033 |
| 4/18/2012 | 0.00499 | 0.0130 | 0.00578 | 0.000832 | 0.000033 |
| 8/30/2012 | 0.00452 | 0.0061 | 0.01090 | 0.00158 | 0.0000395 |
| 1/28/2013 | 0.00333 | 0.0039 | 0.00414 | 0.000078 | NS |

AL = Action Level = 0.05 ug/m³

ALTAEC = Acceptable Long-Term Average Exposure = 0.3 ug/m³

NS = Not Sampled

BOLD = Positive Detection

**SOLAR (PV) GENERATION
NET METERING POWER SALES AGREEMENT**

This Solar (PV) Generation Net Metering Power Sales Agreement (together with all exhibits hereto, this “*Agreement*”) is entered into as of March [REDACTED], 2013 (the “*Effective Date*”), by and between CES NBHS Solar, LLC, a Delaware limited liability company with a principal place of business at 100 Summit Lake Drive, Valhalla, New York 10595, as seller (“*Seller*”), and the City of New Bedford, a municipal corporation having its principal office at 133 William Street, New Bedford, Massachusetts, as buyer (“*Buyer*”). In this Agreement, Seller and Buyer, together with their respective successors and permitted assigns, are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Buyer owns certain facilities and/or property located in the City of New Bedford, Massachusetts, as more fully described on Exhibit A hereto (the “*Property*”), and desires that Seller install, own, operate, maintain and, if applicable, sell or remove a solar photovoltaic generation facility on the Property to permit Buyer to purchase the Net Energy (as hereinafter defined) generated thereby; and

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar (PV) electric generation facilities and of selling the electricity generated thereby and the Environmental Attributes (as hereinafter defined) associated therewith, and desires to install, own, operate, maintain and, if applicable, sell or remove the Solar Energy Facility (as hereinafter defined) on the Property; and

WHEREAS, in furtherance of the foregoing, the Parties desire to enter into this Agreement (including the License attached hereto as Exhibit E (the “*License*”), pursuant to which (among other things), Buyer shall, during the Term (i) license a portion of the Property (the “*Premises*”, as defined therein) to Seller to permit Seller to finance, construct, own, operate, maintain, improve and sell (if applicable) or remove the Solar Energy Facility, and (ii) purchase from Seller, and Seller shall sell to Buyer, all of the Net Energy generated by the Solar Energy Facility, on the terms and subject to the conditions set forth herein; and

WHEREAS, the Parties intend that, pursuant to Section 7701(e)(3) of the Code (as defined herein), this Agreement shall be deemed to be a services contract with respect to the sale to the Buyer of electrical energy produced at an alternative energy facility.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises, representations, warranties, covenants and conditions herein contained, and the Exhibits attached hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer, intending to be legally bound, hereby agree as follows.

ARTICLE I DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined herein, when used without capitalization, and words not defined herein shall be given their common and ordinary meanings.

“Affiliate” means, with respect to a specified Person, any Person that, directly or indirectly, controls or is controlled by or is under common control with the specified Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities or other ownership interests, by contract or otherwise. Affiliate includes, without limitation, any Person that is a principal of a Party by virtue of his, her or its membership in such Party’s governing body or participation in the management and/or operation of such Party.

“Agreement Termination Date” has the meaning set forth in Section 2.1(a).

“Applicable Legal Requirements” means any statute, law (including common law), constitution, treaty, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, injunction, Permit or other binding requirement or determination of or by any Governmental Authority applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, ownership, operation, maintenance, repair, decommissioning and removal of the Solar Energy Facility, as well as the selling and purchasing of Net Energy generated thereby.

“Assets” means the Solar Energy Facility, together with the attendant Environmental Attributes (which shall include, if applicable and segregable, any bi-lateral SREC sales agreements to which Seller is a party that pertain exclusively to the Solar Energy Facility and which are not subject to contractual limitations on assignment).

“AUL” means an Activity and Use Limitation.

“Building” has the meaning set forth in Section 8.5(a).

“Business Day” means a day (beginning at 8:00 a.m. and closing at 5:00 p.m. Eastern Prevailing Time) on which Federal Reserve member banks in Boston, Massachusetts are open for business.

“Buyer’s Knowledge” means the actual knowledge of Buyer, its Affiliates, officials and employees.

“Buyer Provided Documents” means all reports, assessments, structural drawings, investigations or other documents of or regarding the Property and/or the Premises which have been provided to Seller by Buyer on or prior to the Effective Date in accordance with the terms hereof, which include all of such documents as are publicly available as a result of having been filed by Buyer (or any of its commissions, employees, agents, contractors, or other representatives) with or submitted to any Governmental Authority as well as any and all Environmental Permits and which, in any case, are identified on Exhibit A.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Commissioning Completion” means the Solar Energy Facility is mechanically complete, is capable of generating electricity, and has been interconnected to the local distribution system of NStar in accordance with the Interconnection Agreement(s) and the Tariff.

“Concealed Conditions” means subsurface (in the case of a ground-mounted Solar Energy Facility) or otherwise concealed physical conditions (which shall include, in the case of a rooftop Solar Energy Facility, any structural conditions) at the Premises that differ materially from the Documented Site Conditions or those conditions ordinarily expected to exist at a site like the Premises and generally recognized as inherent in construction activities of the type and character as the work to be performed by Seller under this Agreement.

“Confidential Information” means all oral, written or electronic propriety or confidential information of a Party disclosed to the other or its representatives, other than information that: (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving Party in violation of this Agreement; (b) was already known by the receiving Party on a non-confidential basis prior to its disclosure under this Agreement; or (c) becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information. In connection with the above, the Parties acknowledge that notwithstanding the above, Buyer is a public entity which is subject to certain public records disclosure statutes and regulations.

“Contract Year” means each consecutive 12-month period commencing on the Full Operations Date and ending on each subsequent anniversary of the Full Operations Date during the Term.

“DEP” means the Massachusetts Department of Environmental Protection.

“Documented Site Conditions” means those conditions at the Premises that are documented in the Buyer Provided Documents.

“Effective Date” means the date set forth in the recitals of this Agreement.

“Environmental Attributes” means any and all fuel, emissions, air quality or other environmental characteristics (including, without limitation, any offsets, allowances, values,

credits or compliance rights of any kind or character), earned by or attributable to (a) the Solar Energy Facility, and/or (b) the Energy, including those now or hereafter established under or resulting from the Clean Air Act (including Title IV of the Clean Air Act Amendments of 1990) and any other law, rule or regulation of a Governmental Authority that provides for energy or emission-related offsets, allowances, values, credits or compliance rights (including SRECS), but excluding Net Metering Credits.

“Environmental Laws” means all federal, state and local laws, regulations, by-laws and ordinances, including policies and guidelines, orders, consent orders, settlement agreements and judgments of any Governmental Authority relating to pollution, protection of the environment or human health or safety, now or hereafter in effect.

“Environmental Permits” means all federal, state and local authorizations, certificates, permits, franchises, licenses, approvals required by, and any filings made to, any Governmental Authority pursuant to Environmental Laws regarding the Property (including the Premises), including, without limitation, the RAM plan and all RAOs and Partial RAOs.

“Energy” means the amount of electricity either used or generated by the Solar Energy Facility over a period of time, expressed in terms of kilowatt hours (“kWh”) or megawatt hours (“MWh”). Energy does not include Environmental Attributes or Financial Incentives.

“Event of Default” means any event of default as defined in Article VIII of this Agreement.

“Exercise Notice” has the meaning set forth in Section 11.7.

“Exercise Period” has the meaning set forth in Section 11.7.

“Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Assets and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal shall not be a deduction from valuation.

“Final Determination” has the meaning set forth in Section 11.4.

“Financial Incentives” means any and all financial rebates, grants or incentives of whatever form or character earned or available under any law, regulation or program promulgated by any Governmental Authority or utility (including Sections 45 and 48 of the Code or Section 1603 of the American Recovery and Reinvestment Act of 2009) as a consequence of the construction, ownership or operation of the Solar Energy Facility, the sale of Energy generated thereby or the avoidance of the emission of gas, chemicals or other substances into the air, soil or water resulting therefrom, including (without limitation) performance based incentives or rebates, investment or production tax credits or cash grants in lieu thereof and accelerated depreciation.

“Financier” means any individual or entity providing funds or extending credit to Seller for the purpose of developing, constructing, owning, operating, maintaining, repairing, decommissioning or removing the Solar Energy Facility, including, but not limited to, the provision of: (i) development or bridge financing, credit support, credit enhancement or interest rate protection, (ii) construction, term or permanent financing, or (iii) investment capital, working capital or other capital necessary to fund other ordinary business requirements or the establishment of appropriate reserves (including the maintenance, repair, replacement or improvement of the Solar Energy Facility). Financier shall include any entity through which Seller has a lien in connection with the Solar Energy Facility, but shall not include common trade creditors of Seller.

“Force Majeure” means any cause not within the reasonable control of the affected Party (or its Affiliates, employees, agents or other representatives) which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, (a) acts of God (including, but not limited to, high winds, hurricanes or tornados (but in each case only to the extent such event exceeds the design standard set forth in the applicable building code, and not for the lack of sunshine not caused by the actions of any Person), fires, epidemics, landslides, volcanic eruptions, earthquakes, floods, hail or ice storms, meteorites or other objects striking the earth, and any other natural catastrophes); (b) strikes, walk-outs, lock-outs or other industrial disturbances or labor actions or disputes; (c) acts of public enemies, insurrections, military action, war (whether or not declared), riots or other civil disturbances or explosions; (d) sabotage or destruction by a third party of facilities or equipment relating to the performance by the affected Party hereunder; or (e) acts, failures to act or orders of any kind of any Governmental Authority acting in its legislative, executive, regulatory or judicial capacity (including, without limitation, a change in Applicable Legal Requirements) that prohibits the operation of, or purchase of Energy from, the Solar Energy Facility on the Premises (*provided, however, that a Party may not assert an event of Force Majeure to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order*). Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“Full Operations Date” means the date on which the Solar Energy Facility has achieved Commissioning Completion and has commenced delivery Net Energy to the Point of Delivery.

“GIS Certificate” means the emissions reporting and tracking certificate that is assigned pursuant to the Generation Information System maintained by ISO-NE, and which records the environmental attributes associated with the generation of a MWh of electricity by a specific generating unit for the purpose of allowing electricity suppliers to differentiate their products for consumers, to provide the information required on energy disclosure labels, and to comply with state and regional Renewable Portfolio Standards and emissions performance standards.

“Governmental Authority” means any US federal, state, local or municipal government (including any department, commission, board, agency, bureau, political subdivision, instrumentality, official or other regulatory, administrative or judicial authority thereof), independent system operator, regional transmission owner or operator, utility, or any other non-

or quasi-governmental, executive, legislative, judicial, regulatory, administrative, public or statutory body to the extent that the rules and regulations of such body have the force of law.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, excise, ad valorem, gross receipts, transfer or similar taxes), emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purpose charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, local electric distribution company or utility, or other similar entity on or with respect to the Net Energy, regardless of whether such Governmental Charges are imposed upon Buyer or Seller.

“Guaranteed Annual Electric Output” means the minimum amount of Net Energy that is guaranteed by Seller to be generated by the Solar Energy Facility for sale and delivery to Buyer in the applicable Guaranteed Period, as set forth in Exhibit C.

“Guaranteed Period” means, for each Contract Year commencing on the third Contract Year, the average annual amount of Net Energy (measured in kWh/year) produced in the then current Contract Year and the immediately preceding two Contract Years.

“Hazardous Substances” means any pollutants, contaminants, substances, materials, wastes, compounds or chemicals (including petroleum or any byproducts or fractions thereof, lead, friable asbestos and asbestos-containing materials, polychlorinated biphenyls (“PCBs”) and PCB-containing equipment, radon and other radioactive elements) that are regulated as hazardous or toxic by any applicable Environmental Laws.

“Host Customer” means Buyer or, in the event of a Sale in accordance with Section 8.5(a) hereof, a purchaser of the Property (or the portion of the Property on which the Solar Energy Facility is located) for whom the Buyer has executed and delivered an assignment and assumption of this Agreement and of the License and such other documents or instruments as are mutually acceptable to such purchaser and Seller.

“Host Customer Costs” means the cost of performing all of the Host Customer’s obligations under the Interconnection Agreement(s) or the Tariff, such as those pertaining to the reading or testing of meters, but specifically excluding all costs associated with the design, construction, or installation of facilities or metering devices necessary for interconnecting the Solar Facility to the NStar electric power system (via the Host Customer), or any upgrade to NStar’s electric system necessary for the delivery of Net Energy thereto.

“Independent Appraiser” means an individual, mutually acceptable to the Parties (or, in the event they cannot agree, selected by the two appraisers identified by the Parties in accordance with Section 11.3) who is a member of an accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the Fair Market Value of solar energy generating facilities of the size and age and with the operational characteristics of the Solar Energy Facility. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his or her appointment have been) a director,

officer or employee of, or directly or indirectly retained as consultant or adviser to any Party or their respective Affiliates.

“Initial Term” has the meaning set forth in Section 2.1.

“Interconnection Agreement(s)” means one or more Interconnection Service Agreements entered into with NStar authorizing the interconnection of the Solar Energy Facility with the local electric distribution system of NStar, which confirms (unless otherwise agreed by the Parties) the entirety of, or each unit of, the Solar Energy Facility as eligible for treatment as a Municipal Net Metering Facility, and which specifies whether any Net Excess Generation (as defined in the Tariff) shall be subject to allocation or payment.

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

“ISO-NE” means the independent system operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as in effect from time to time.

“kW” means Kilowatt.

“kWh” means Kilowatt hour.

“License” means the Site License with respect to the Premises attached hereto as Exhibit E, the terms and provisions of which are incorporated by reference herein as though fully set forth herein.

“MCP” has the meaning set forth in Section 7.2(h)(vii).

“Metering Device(s)” means any and all revenue quality meters installed by Seller or NStar at or after the Point of Delivery that are necessary or appropriate for the interconnection of the Solar Energy Facility to the NStar local electric distribution system and the calculation of Net Metering Credits, and (to the extent (a) agreed upon by the Parties, (b) allowed under the Tariff and the Interconnection Agreement(s), and (c) the Net Metering Device(s) are not installed) for the registration, recording, and transmission of information regarding the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Buyer.

“Municipal Net Metering Facility” means a Class III Net Metering Facility as defined under 220 C.M.R. 18.02, where the Host Customer is a municipality or other governmental entity, and shall also include a *“Class I Net Metering Facility of a Municipality or Governmental Entity,”* *“Class II Net Metering Facility of a Municipality or Governmental Entity,”* and a *“Class III Net Metering Facility of a Municipality or Governmental Entity”* as each such terms are defined in M.G.L. c. 164, §138, as amended by §27 of c. 359 of the Acts of 2010 of the Commonwealth of Massachusetts, as implemented under regulations promulgated by the Massachusetts Department of Public Utilities and any related tariff adopted by NStar and approved by the Massachusetts Department of Public Utilities.

“MW” means Megawatt.

“MWh” means Megawatt hour.

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

“Net Energy” means the actual and verifiable amount of Energy generated by the Solar Energy Facility and delivered to Buyer at the Point of Delivery in excess of any Energy consumed by the Solar Energy Facility, as metered in kWh at the Metering Device or Net Metering Device, as applicable, and that conforms to Applicable Legal Requirements and the Tariff.

“Net Energy Price” means the price set forth on Exhibit C.

“Net Metering” means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00.

“Net Metering Credits” has the meaning set forth in 220 C.M.R. § 18.00, as implemented by the Tariff.

“Net Metering Device(s)” means any and all revenue quality meters installed by Seller at or before the Point of Delivery necessary or appropriate for the registration, recording, and transmission of information regarding the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Buyer; *provided, however*, that to the extent agreed upon by the Parties and allowed under the Tariff and the Interconnection Agreement(s), the Net Metering Device(s) may not be installed, in which case the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Buyer shall be determined by the Metering Device(s).

“NStar” means NStar Electric Company, the regulated local electric distribution company for Buyer, together with its successors and assigns.

“Operation Termination Date” has the meaning set forth in Section 2.1(a).

“Parker Street Waste Site Litigation” has the meaning set forth in Section 7.3(a)(v).

“Partial RAO” has the meaning set forth in Section 3.3(a)(iii).

“Party” or “Parties” has the meaning set forth in the preamble.

“Permanent Solution” has the meaning set forth in Section 7.2(h)(vii).

“Permits” means all state, federal, and local authorizations, certificates, permits, franchises, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the Solar Energy Facility.

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

“Point of Delivery” means the point of delivery for Net Energy from Seller to Buyer, as further set forth on Exhibit C attached hereto.

“Pre-Existing Environmental Conditions” means Hazardous Substances which are on the Property as of the Effective Date.

“Preliminary Determination” has the meaning set forth in Section 11.4

“Premises” has the meaning set forth on Exhibit A attached hereto.

“Proceeding” means any action, suit, claim, hearing, proceeding, arbitration, investigation, inquiry, audit or mediation by or before any Governmental Authority.

“Production Shortfall” means the amount, expressed in kWh, by which the actual amount of Net Energy delivered to the Point of Delivery for sale to Buyer in any Guaranteed Period is less than the Guaranteed Electric Output for that Guaranteed Period.

“Production Shortfall Charge” has the meaning set forth on Exhibit C.

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

“Prospective Replacement Sites” has the meaning set forth in Section 8.5(c)(ii).

“Prudent Solar Industry Practice” means those practices generally recognized by the solar industry, including Seller, in the northeastern United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost, consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements. Prudent Solar Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Purchase Option” has the meaning set forth in Section 11.1.

“Purchase Price” has the meaning set forth in Section 11.5.

“RAM Plan” has the meaning set forth in Section 3.3(a)(i).

“RAO” has the meaning set forth in Section 3.3(a)(iii).

“Renewal Term” has the meaning set forth in Section 2.1(b).

“Seller’s Plans and Specifications” has the meaning set forth in Section 3.3(a)(i).

“Seller Termination Value” has the meaning set forth on Exhibit C.

“Solar Energy Facility” means the new and previously unused solar (PV) power electrical generation facility to be constructed, owned, operated and maintained by Seller, together with all appurtenant facilities, including, but not limited to, the Net Metering Device (if any), Metering Device, any interconnection facilities, any transformers and any and all other equipment or materials required to interconnect the Solar Energy Facility to the Point of Delivery and to the NStar local electric distribution system, and any and all Substantial Alterations, additions, replacements or modifications thereto, all to be located on or adjacent to the Premises and as further set forth in Exhibit B.

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

“SRECs” means Solar Carve-Out Renewable Attributes as defined in 225 C.M.R. § 14.02 (or, as of the date hereof, the environmental attributes associated with one MWh of generation eligible for compliance against the Massachusetts Renewable Energy Portfolio Standard set forth in 225 C.M.R. 14.00).

“Special Buyer Termination Damages” has the meaning set forth on Exhibit C.

“Substantial Alteration” has the meaning set forth in the License.

“Survey” has the meaning set forth in Section 3.3(a)(vii).

“Target Operations Date” means eighteen (18) months after the Effective Date.

“Tariff” means the NStar tariff M.D.P.U. No. 162B for interconnection for distributed generation and net metering services, effective as of October 1, 2009, and any subsequent amendments and approvals thereto.

“Term” has the meaning set forth in Section 2.1(a).

“Title Report” has the meaning set forth in Section 3.3(a)(vii).

“Transfer Date” has the meaning set forth in Section 11.9.

“URAM Plan” means Utility Release Abatement Measure Plan approved by the DEP covering electrical conduit trenching and other related subsurface work pertaining to the Solar Energy Facility on the Property.

1.2 Construction. For purposes of this Agreement, except as otherwise expressly provided herein or the context otherwise requires, (a) the terms “hereof”, “herein”, “hereunder”, “hereby”, “herewith” and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision, (b) references to an Article, Section, paragraph, clause, Exhibit or Schedule are references to an Article, Section, paragraph, clause, Exhibit or Schedule of this Agreement, (c) the words “include”, “includes” and “including”, when used herein, shall be deemed to be modified by the words “without limitation”, (d) references to any law, rule or regulation shall refer to the same as lawfully amended, modified, codified, replaced or reenacted and in effect, (e) reference to any agreement (including this Agreement) or instrument means such agreement or instrument as lawfully amended or modified and in effect from time to time in accordance with the terms hereof or thereof (as applicable), (f) words using the singular or plural number also include the plural or singular number, respectively, (g) references to a gender includes each other gender, (h) reference to a Person includes such Person’s successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity, and (i) in relation to periods of time, the term “from” means “from and including”; the term “to” means “to but excluding”; and the term “through” means “through and including”.

ARTICLE II TERM

2.1 Term.

a. The term of this Agreement (the **“Term”**) shall commence on the Effective Date, and, unless terminated earlier pursuant to the provisions of this Agreement or renewed as provided in paragraph (b) of this Section 2.1, shall continue until 11:59 PM on the one hundred twentieth (120th) day after the twentieth (20th) anniversary of the Full Operations Date (the **“Initial Term”**; the **“Agreement Termination Date”**); *provided, however*, that the rights and obligations of the Parties under Section 4.1 shall terminate on the day of such 20th anniversary of the Full Operations Date (the **“Operation Termination Date”**), and Seller thereafter shall remove the Solar Energy Facility in accordance with the provisions of this Agreement, including but not limited to Article IV of the License.

b. The Parties, upon mutual written agreement entered into at least one year prior to the expiration of the Initial Term and at least six months prior to the first Renewal Term (as defined below), may renew this Agreement for up to two additional periods of five (5) years each (each, a **“Renewal Term”**), in which case the Agreement Termination Date shall be 11:59 PM on the one hundred twentieth (120th) day after the 25th or 30th anniversary of the Full

Operations Date (as applicable), and the Operation Termination Date shall be the day of such anniversary of the Full Operations Date; *provided, however*, that the Parties shall negotiate a revised Net Energy Price and schedule of Seller Termination Values for each such Renewal Term.

2.2 Early Termination.

a. Seller may terminate this Agreement, without penalty or any liability to Buyer whatsoever, at any time prior to the achievement of the Full Operations Date upon five Business Days' prior written notice to Buyer:

i. If Seller reasonably determines, either as a result of discovery of Concealed Conditions, or a material change in Applicable Legal Requirements from that in effect as of the Effective Date, or a material increase in the cost or time required to comply with Applicable Legal Requirements (including obtaining the Permits) and/or to complete the Interconnection Agreement with NStar, that installation of the Solar Energy Facility would not be economically profitable, technically feasible, or timely; or

ii. If any of the conditions precedent to construction set forth in Section 3.3(a) have not been satisfied on or before the 270th day after the Effective Date (*provided, however*, that, in the case of the failure of a condition other than that set forth in Section 3.3(a)(v), in lieu of terminating this Agreement, the Parties may mutually agree to extend the date by which such conditions precedent shall be satisfied by up to 60 days, in which event Seller may terminate this Agreement if such conditions are not satisfied by such extended date); or

iii. Upon the occurrence of the events described in the last sentence of Section 6.3(f).

b. Buyer may terminate this Agreement, without penalty or any liability to Seller whatsoever, upon five Business Days' prior written notice to Seller:

i. If the Full Operations Date has not occurred on or prior to the 180th day following the Target Operations Date, unless such failure of occurrence is due to (i) Force Majeure, or (ii) the failure of NStar to have completed the interconnection construction work and to have performed the witness test required for its approval of the interconnection, or (iii) the failure of any of the conditions set forth in Sections 3.3(a)(i)-(iii) or (vi) to be satisfied on or prior to the 180th day following the Effective Date, in which event such 180 day period shall be extended by an amount of time equal to the length of the Force Majeure, or the period required to secure such approval or obtain the satisfaction of all such conditions, as applicable, provided that Seller has used and continues to use reasonable efforts to secure the same; or

ii. Upon the occurrence of the events described in the last sentence of Section 6.3(f).

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

3.1 Title.

a. Except as otherwise set forth in this Agreement or the Interconnection Agreement, Seller shall own, retain title to, and be the legal and beneficial owner of, the Solar Energy Facility, all Energy (including Net Energy) prior to the Point of Delivery, all Environmental Attributes and Financial Incentives attendant thereto, and all Permits. For the avoidance of doubt, Seller alone shall be entitled to all of the tax attributes of the Solar Energy Facility and the Energy, and shall have sole right to claim depreciation or cost recovery deductions, energy tax investment and production credits, energy grants and any other Financial Incentives of any kind or nature.

b. Buyer shall timely cooperate with and assist Seller, upon request and if reasonably necessary, in obtaining all Environmental Attributes and Financial Incentives now or hereafter available in connection with the Solar Energy Facility, including by (i) promptly executing such documents or instruments as may be necessary or desirable to effectuate or evidence Seller's (or its assignee's) right, title and interest in and to such Environmental Attributes or Financial Incentives, (ii) using commercially reasonable efforts to timely assist Seller (or the Solar Energy Facility) to satisfy any applicable qualification standards and (iii) taking any other actions reasonably requested by Seller.

c. Buyer shall not encumber the Solar Energy Facility with any mortgage, pledge, lien or license.

3.2 License. Subject to the requirements of Section 3.3 and Seller's rights under Section 2.2, Seller shall construct, operate, maintain, repair and remove the Solar Energy Facility on the Premises pursuant to and in accordance with this Agreement and the License. Seller shall not encumber the Premises with any mortgage, pledge, lien or license.

3.3 Construction, Maintenance, and Monitoring of Solar Energy Facility.

a. Conditions of Construction/Installation. Seller's commencement of construction and installation activities with respect to the Premises is subject to the following conditions, the satisfaction of which shall be confirmed in a written certificate signed by an authorized Person on behalf of Buyer (*provided, however*, that their satisfaction shall not affect Seller's rights under Section 2.2(a)(i)):

i. Buyer shall have provided a true and correct copy of the Response Abatement Measure Plan (the "**RAM Plan**") or URAM Plan, as applicable, in the form approved by the DEP, to Seller, which RAM Plan or URAM Plan shall have incorporated the Solar Energy Facility in conformity with the plans and specifications Seller provided to Buyer on December 20, 2011 as the same may be modified from time to time, ("**Seller's Plans and Specifications**"), and Buyer shall have complied in all respects with such RAM or URAM Plan;

ii. Buyer shall have prepared the Premises for the installation, operation and maintenance of the Solar Energy Facility in accordance with the Site Preparation Scope of Work to be performed by the City described in Exhibit A;

iii. Buyer shall have prepared and filed with the DEP, and provided a true and complete copy to Seller of, a Response Action Outcome (the "**RAO**") or Partial Response Outcome (the "**Partial RAO**") relative to the Premises in form and substance reasonably acceptable to Seller, and the DEP shall have accepted and approved the same, and no institutional controls (whether pursuant to an AUL or otherwise) shall have been, or be reasonably expected to be imposed with respect to the Premises, except for such controls that: (i) shall be performed by Buyer and (ii) in Seller's judgment shall not unduly interfere with, increase the costs of, or otherwise adversely affect the construction, operations, or maintenance of the Solar Energy Facility;

iv. Seller shall have obtained all Permits;

v. NStar shall have approved Seller's interconnection application;

vi. Seller shall have requested and obtained from the Massachusetts Department of Environmental Protection a concurrence letter or such other form of protection against liability for Pre-Existing Environmental Conditions, and containing such other provisions, as Seller determines to be acceptable; and

vii. Seller shall have obtained a title report, accompanied by copies of all recorded documents affecting the Property (the "**Title Report**") and an ALTA land survey of the Property, prepared by a licensed land surveyor (the "**Survey**"), and shall have completed its review of the Buyer Provided Documents, each of which shall not depict any defects, encumbrances, encroachments or other matters of title that Seller, in its sole and absolute discretion, determines to be objectionable and which shall otherwise be acceptable to Seller in its sole and absolute discretion.

b. Seller Obligations. Seller, at its sole cost and expense (subject to satisfaction of the conditions set forth 3.3(a) above), and in accordance with Prudent Solar Industry Practice, shall:

i. design, finance and procure the equipment and materials necessary to construct the Solar Energy Facility;

ii. apply for, diligently pursue, and use commercially reasonable efforts to negotiate to final form the Interconnection Agreement(s);

iii. install, own, operate and maintain (except when otherwise expressly required by NStar) the Metering Device, Net Metering Device (if required), and other facilities or equipment, and procure and maintain all insurance, required by NStar under the Interconnection Agreement(s) or otherwise;

iv. construct, own, operate, and maintain the Solar Energy Facility in good condition and repair (normal wear and tear excepted), in accordance with Applicable Legal Requirements and industry standards, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instructions and specifications, applicable requirements of the insurance policies maintained by Seller with respect to the Solar Energy Facility as set forth in the License, and the terms of this Agreement;

v. reasonably monitor the Solar Energy Facility performance such that any malfunction causing a material loss of Energy production may promptly be discovered and rectified;

vi. except as otherwise set forth herein, have responsibility for the costs and performance of construction of the Solar Energy Facility, procuring and maintaining insurance on the Solar Energy Facility, and (subject to the terms set forth on Exhibit C) paying any real or personal property taxes on the Solar Energy Facility;

vii. bear the risk of loss in case of a casualty of the Solar Energy Facility (except to the extent such casualty is caused by: (a) the negligence or willful or intentional misconduct of Buyer or any of Buyer's Affiliates, officials, employees, agents, contractors or other representatives, or (b) the breach by Buyer of any of its obligations under M.G.L.c. 21E, in which events Buyer shall bear such risk of loss); and

viii. remove the Solar Energy Facility from the Premises upon the termination of expiration of this Agreement, unless the Purchase Option is exercised by Buyer.

c. Contracting.

i. Generally. Seller may, in its reasonable discretion, elect to use contractors in performing all or any of its obligations hereunder; provided that (i) the use of such contractors shall be subject to the approval of Buyer, not to be unreasonably conditioned, withheld or delayed, (ii) all such contractors shall possess the requisite certification from the Massachusetts Division of Capital Asset Management for all work to be performed, and (iii) Seller shall remain liable to Buyer for the full and complete performance by such contractors of such obligations under this Agreement.

ii. Insurance. Seller shall cause any such contractor to carry adequate workers' compensation insurance and such other insurance as is specified in the License.

iii. Bonding. Seller shall cause any such contractor to furnish, for Seller's and Buyer's benefit (*i.e.*, naming Seller and Buyer as dual obligees), construction performance and payment bonds, issued by a surety licensed to do business in the Commonwealth and whose name appears on U.S. Treasury Department Circular 570, in industry standard form and in an amount equal to the estimated cost to procure and install the Solar Energy Facility. Any dispute between the Parties with respect to the application of the proceeds of any such bond shall be resolved pursuant to the provisions of Section 6.2 herein.

iv. Prevailing Wages; Domicile. Seller shall pay prevailing wages to any contractors engaged by it to construct the Solar Energy Facility, and use reasonable efforts to retain contractors domiciled in the City of New Bedford. The Parties acknowledge that Seller intends to retain Beaumont Solar Co. or Alteris Renewables, Inc. to construct the Solar Energy Facility and that each such contractor meets the requirements set forth in this Section 3.3(c).

d. Buyer Obligations.

i. Except as specifically set forth therein or elsewhere in this Agreement (including the License), Buyer shall have no obligation to perform any of the obligations of Seller set forth in Sections 3.3(b) or (c), and Seller shall be solely responsible therefore.

ii. Buyer shall make available to Seller and its contractors, subcontractors and representatives, for their reasonable use during installation and construction activities hereunder, all utilities existing on the Property as of the Effective Date (without burden or surcharge to, and with no obligation imposed on Buyer to upgrade or otherwise extend, such utilities) and a reasonable location to maintain a secure storage space for all materials, tools and equipment (it being acknowledged that Seller shall remain responsible for such security). Buyer agrees not to interfere with, or otherwise impede, Seller's (or its contractors' or subcontractors') performance hereunder.

3.4 Operations Manual; Training; Emergencies. On the Full Operations Date, Seller shall deliver to Buyer an operations, maintenance and parts manual covering the Solar Energy Facility. In addition, Seller, or Seller's agents, will train Buyer's representative(s) on business-as-usual maintenance and monitoring operations of the Solar Energy Facility and on emergency preparedness and response. Notwithstanding the foregoing, Buyer shall have no right to perform any maintenance or repair on the Solar Energy Facility without Seller's prior written consent, except in the case of an emergency where immediate action on the part of Buyer is reasonably necessary for safety reasons or as otherwise permitted under the License, in which event Buyer's representatives shall at all times comply with all safety and other operating procedures reasonably established by Seller and all Applicable Legal Requirements. In any event, Buyer shall promptly inform Seller upon discovery of a material malfunction or other emergency condition with respect to the Solar Energy Facility to enable Seller to commence repair or other corrective action and Seller shall use commercially reasonable efforts to promptly repair or take such other corrective action as may be required. Unless otherwise specified in written notice provided to the other Party, the following Persons shall be notified in the event of an emergency:

If to Seller: Asset Manager
CES NBHS Solar, LLC
c/o Consolidated Edison Solutions, Inc.
100 Summit Lake Drive, Suite 410
Valhalla, New York 10595
(914) 286-7723
vanderpasj@conedsolutions.com

If to Buyer: Ronald Labelle
Department of Public Infrastructure
City of New Bedford
1105 Shawmut Avenue
New Bedford, Massachusetts 02746
(508) 979-1550
ronald.labelle@newbedford-ma.gov

3.5 Notice of Full Operations Date. Subject to the provisions of this Agreement, Seller shall notify Buyer when the Solar Energy Facility has achieved the Full Operations Date.

3.6 Decommissioning Reserve. No later than two (2) years prior to the expiration of the Initial Term, Seller shall establish and thereafter maintain in an escrow account, with an agent and on terms that are reasonably acceptable to the Parties, an amount equal to \$20 per kW of installed capacity of the Solar Energy Facility, as security to pay for the removal of the Solar Energy Facility from the Premises upon expiration of the Agreement.

ARTICLE IV PURCHASE AND SALE OF NET ENERGY

4.1 Sale and Purchase of Net Energy. Commencing on the Full Operations Date, Seller agrees to sell and deliver, and Buyer agrees to purchase and accept, at the Point of Delivery one hundred percent (100%) of the Net Energy generated by the Solar Energy Facility.

4.2 Price. Buyer shall pay Seller for the Net Energy sold and delivered, as metered by the Metering Device or Net Metering Device, as applicable, at or before the Point of Delivery, at the applicable Net Energy Price, as set forth in Exhibit C.

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

a. Seller specifically warrants and agrees that it, instead of Buyer, shall pay or refund to NSTAR, in accordance with paragraph 3.3 of Exhibit G to the Tariff, all amounts resulting from Seller's failure to operate the Solar Energy Facility in accordance with the

representations and warranties made under the Interconnection Agreement, and shall indemnify Buyer for any such sums Buyer may be required to pay as a result of such failure.

4.4 Governmental Charges.

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

b. Seller is responsible for any personal property taxes attributable to its ownership of the Solar Energy Facility (subject to the terms of Exhibit C and the other provisions of this Agreement). Without limiting Buyer's obligations under Exhibit C and elsewhere in this Agreement, Buyer shall not impose Governmental Charges upon Seller that are not applicable on a municipal-wide basis.

c. Buyer shall pay to Seller the amount of any transfer, sales, use, value-added or gross receipts tax or other Governmental Charges that are imposed upon the sale or delivery of Net Energy to Buyer, and such amount shall be separately stated on Buyer's invoice unless, prior to the Effective Date, Buyer has provided Seller with valid evidence of its exemption from such Governmental Charges.

d. Upon exercise of the Purchase Option, Buyer shall promptly pay any and all taxes arising as a result of transfer of legal and beneficial title to the Solar Energy Facility and other Assets.

4.5 Guaranteed Electric Output.

a. Seller guarantees that the Solar Energy Facility will produce the Guaranteed Electric Output in each applicable Guaranteed Period.

b. In the event that a Production Shortfall exists in any Guaranteed Period, unless (i) excused by *Force Majeure*, or (ii) attributable to an outage caused or requested by Buyer, Seller shall pay to Buyer, as liquidated damages and not as a penalty, within thirty (30) days of the end of such Guaranteed Period, the Production Shortfall Charge set forth in Exhibit C for each kWh of such Production Shortfall. Seller's payment of the Production Shortfall Charge shall be Buyer's sole and exclusive remedy for Seller's failure to cause the Solar Energy Facility to produce the Guaranteed Electric Output in each applicable Guaranteed Period and any such failure shall under no circumstances constitute or give rise to an Event of Default hereunder.

4.6 Environmental Attributes and Financial Incentives. This Agreement does not include the sale to Buyer of any Environmental Attributes or Financial Incentives. Buyer may not, under this Agreement or otherwise, make any claim of title to any SRECs or the corresponding energy in regards to a renewable portfolio standard, emission offset, or other environmental disclosure or similar regulatory requirement or to any Financial Incentives. To the extent any SRECs or other Environmental Attributes or any Financial Incentives are allocated to Buyer by operation of law or regulation, Buyer shall cooperate fully with Seller to disclaim any rights thereto and therein and shall promptly allocate, assign, and, if received by Buyer, pay the same to Seller, without cost to Seller.

4.7 Net Metering Credits. Except as otherwise set forth in this Agreement and the Tariff, all interest in and title to any and all Net Metering Credits generated or created during the Term in connection with the operation of the Solar Energy Facility and the delivery of Net Energy to Buyer, together with the right to allocate such Net Metering Credits or receive cash payments in connection with the surrender or transfer of such Net Metering Credits, shall rest solely with Buyer.

ARTICLE V METERING AND BILLING

5.1 Billing. On or before the tenth (10th) day of each month following the Full Operations Date during the Term (or if such day is not a Business Day, the next succeeding Business Day), Seller shall calculate the amount due and payable to Seller for the Net Energy produced and delivered to Buyer pursuant to Exhibit C, with respect to the immediately preceding month, and shall forward to Buyer an invoice, including such calculation with sufficient detail for Buyer to verify the same. Adjustments to bills shall be made in accordance with ISO-NE rules, policies and procedures and other Applicable Legal Requirements.

5.2 Payment. Buyer shall pay all invoices within sixty (60) days of its receipt of the same. All such invoices shall be paid by a mutually agreeable method to the account designated by Seller. Amounts due as a result of any billing adjustment made in accordance with ISO-NE rules, policies and procedures shall not be subject to any interest charge in favor of Buyer or Seller. Any payment not made within the time limits specified herein shall bear interest at the Interest Rate from the date which is fifteen (15) days after the date on which such payment was required to have been made through and including the date such payment is actually received by Seller; *provided, however*, that Buyer shall have the right to set off against any such payment any and all amounts Seller acknowledges in writing are owed and due by it to Buyer under this Agreement. Such interest shall accrue on a non-compounded basis.

5.3 Net Metering Equipment. Unless the Metering Device and the Net Metering Device are the same, in which case the provisions of the Tariff shall control, Seller shall provide, install, own, operate and maintain the Net Metering Device. Seller shall maintain and test the Net Metering Device generally in accordance with the same terms and conditions applicable to the Metering Device installed for the purpose of delivering Energy to NStar and the calculation of Net Metering Credits, but in any event on no less than an annual basis.

a. Readings of the Net Metering Device shall be conclusive as to the amount of Net Energy delivered to Buyer; provided, that if the Net Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Net Energy shall be determined in the following sequence: (i) by estimating by reference to quantities measured during periods of similar conditions when the Net Metering Device was registering accurately; or (ii) if no reliable information exists as to the period of time during which such Net Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction was equal to the lesser of (x) six months or (y) one-half of the period from the date of the last previous test of such Net Metering Device through the date of the adjustment.

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

c. The following steps shall be taken to resolve any disputes regarding the accuracy of the Net Metering Device:

i. If either Party disputes the accuracy or condition of any Net Metering Device, such Party shall so advise the other Party in writing.

ii. Each Party shall, within fifteen (15) days after receiving such notice from the other, advise the other Party in writing as to its position concerning the accuracy of such Net Metering Device, stating its reasons for taking such position.

iii. If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause such Net Metering Device to be tested.

iv. If a Net Metering Device is found to be inaccurate by not more than 0.5%, any previous recordings of the Net Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Net Metering Device shall bear the cost of inspection and testing of the Net Metering Device.

v. If a Net Metering Device is found to be inaccurate by more than 0.5% or if such Net Metering Device is for any reason out of service or fails to register, then (a) Seller shall promptly cause the Net Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (b) the Parties shall estimate the correct amounts of Net Energy delivered during the periods affected by such inaccuracy, service outage or failure to register, and (c) Seller shall bear the cost of inspection and testing of the Net Metering Device. If as a result of such adjustment the quantity of Net Energy for any period is decreased (such quantity, the "***Net Energy Deficiency Quantity***"), then Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Net Energy Deficiency Quantity. If as a result of such adjustment the quantity of Net Energy for any period is increased (such quantity, the "***Net Energy Surplus Quantity***"), then Buyer shall pay for the Net Energy Surplus Quantity.

5.4 Records and Audits. Seller will keep, for a period of 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 Buyer may, at its sole cost and expense, and upon reasonable notice to Seller, examine Seller's records pertaining to such transactions during Seller's normal business hours.

5.5 Dispute.

a. If a Party, in good faith, disputes an invoice as provided in this Agreement, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate per annum, from and including the due date through and including the date such payment is actually received by Seller. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate per annum. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice; invoices not disputed prior to this date shall be deemed accepted. If the Parties are unable to resolve a payment dispute under this Section, the Parties shall follow the procedure set forth in Section 14.5.

b. In the event of a dispute with NStar with regard to Buyer's monthly electrical bills or the calculation of Net Metering Credits, Buyer and Seller each agree to take all commercially reasonable measures with respect to which it has legal capacity to facilitate and expedite resolution of such a dispute and to act at all times during such review within its legal capacity.

ARTICLE VI OBLIGATIONS OF THE PARTIES

6.1 Net Metering.

a. The Parties intend for the Solar Energy Facility (or each unit thereof) to qualify for Net Metering as a Solar Net Metering Facility, as set forth in M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00 and the Tariff.

b. Subject to the provisions of this Agreement, each of Buyer and Seller agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all applications and procurement of all Permits necessary for the Solar Energy Facility to be eligible for and participate in Net Metering.

c. On and after the Effective Date, the Parties commit to each other in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering and cause the Solar Energy Facility (or each unit thereof) to be eligible for Net Metering, so long as any such amendment will materially benefit a Party without resulting in material detriment to the other Party; *provided, however*, that the Parties agree that in no event shall any such amendment require Buyer to pay (on an aggregate, all-in basis) more for Net Energy under this Agreement than it would for electricity procured from NStar and the City's current competitive electric supplier or, in the event Buyer purchases electricity for the Property through the South Coast Electric Power Group (or its successor), the current all-in rate for large commercial customers as defined by NStar.

d. On and after the Effective Date, the Parties commit to each other in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this

Agreement to conform to the Applicable Legal Requirements regarding Net Metering and cause the Solar Energy Facility (or each unit thereof) to be eligible for Net Metering in the event the Applicable Legal Requirements are modified such that the Solar Energy Facility no longer is eligible for Net Metering, so long as any such amendment will materially benefit a Party without resulting in material detriment to the other Party; provided, however, that the Parties agree that in no event shall any such amendment require Buyer to pay (on an aggregate, all-in basis) more for Net Energy under this Agreement than it would for electricity procured from NStar and the City's current competitive electric supplier or, in the event Buyer purchases electricity for the Property through the South Coast Electric Power Group (or its successor), the current all-in rate for large commercial customers as defined by NStar.

6.2 Dispute Resolution.

a. If, in connection with the provisions of Section 3.3(c)(iii) or Section 6.1, the Parties are not able to reach agreement on the application of the proceeds of any performance or payment bond, or terms of any such amendment to this Agreement, respectively, the Parties agree to submit the matter to mediation before a mutually acceptable mediator to be conducted in the Boston, Massachusetts office of JAMS; *provided, however*, that the Parties agree that in no event shall any such mediation require Buyer to pay (on an aggregate, all-in basis) more for Net Energy under this Agreement than it would for electricity procured from NStar and the City's current competitive electric supplier or, in the event Buyer purchases electricity for the Property through the South Coast Electric Power Group (or its successor), the current all-in rate for large commercial customers as defined by NStar. The period of mediation shall commence upon the appointment of the mediator, and shall not exceed thirty (30) days unless otherwise agreed in writing by the Parties; *provided, however*, that (i) no Party shall be obligated to continue mediation after participating in such proceedings for three (3) full days, and (ii) during such 30 day period, the Parties shall endeavor in good faith to select a mutually acceptable arbitrator from among those identified by JAMS (it being acknowledged that the Parties may request additional candidates from JAMS successively until an arbitrator is selected or the period during which the parties may mutually agree upon an arbitrator has expired (unless extended by the Parties)). Each Party shall bear its own costs of the mediation, and the fees of the mediator shall be shared equally by the Parties.

b. If, at the end of such thirty (30) day mediation period (or earlier, if mediation has terminated pursuant to clause (i) of Section 6.2(a)), the Parties have not settled the dispute, such dispute shall, on demand of either Party, be submitted to JAMS arbitration as an optional expedited arbitration (or comparable) proceeding, pursuant to the rules of JAMS; *provided, however*, that the Parties agree that in no event shall any such arbitration require Buyer to pay (on an aggregate, all-in basis) more for Net Energy under this Agreement than it would for electricity procured from NStar and the City's current competitive electric supplier or, in the event Buyer purchases electricity for the Property through the South Coast Electric Power Group (or its successor), the current all-in rate for large commercial customers as defined by NStar. The arbitration proceedings shall be conducted in Boston, Massachusetts before a neutral and qualified arbitrator mutually acceptable to the Parties. If the Parties have failed to agree upon an arbitrator during the mediation period or within fifteen (15) days of the making of a demand for arbitration, whichever is later, the Parties shall request that JAMS appoint an arbitrator, provided

that such Person shall (i) have knowledge of and experience in the energy/utility industry, (ii) have served as an arbitrator or judge for at least five (5) years, and (iii) have no prior affiliation or relationship with any Party (or their respective Affiliates, principals, employees or agents). The period for arbitration shall commence upon the appointment of the arbitrator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue arbitration shall be in the sole discretion of each Party. Each Party shall bear its own costs of the arbitration, and the arbitrator's fees shall be shared equally by the Parties. The Parties acknowledge that the arbitrators' subpoena power is not subject to geographic limitation, and that the arbitrator shall have the right to award the relief that he or she deems proper, consistent with the terms of this Agreement. The award and decision of the arbitrator shall be conclusive and binding on all parties, and judgment upon the award may be entered in any court of competent jurisdiction. Any right to contest the validity or enforceability of the award shall be governed exclusively by the United States Arbitration Act.

c. The Parties agree that each Party's rights under this Section 6.2 shall constitute such Party's sole and exclusive remedy with respect to recovery for any losses or damages incurred by such Party in connection with the occurrence of the events set forth in, or the termination of this Agreement under, Section 6.1.

6.3 Seller's Obligations.

a. Records. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority, NEPOOL, ISO-NE, NStar, or as may be reasonably required by Buyer.

b. Progress Reports. Prior to the Full Operations Date, Seller shall provide Buyer with a monthly e-mail report, as soon as practicable after the end of each month, regarding the progress with respect to the permitting, financing, construction, and operations of the Solar Energy Facility or such other data concerning the Solar Energy Facility as Buyer may, from time to time, reasonably request.

c. Outage Notifications. Commencing with the Full Operations Date, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Solar Energy Facility may be mechanically inoperable for more than a 24-hour period.

d. Compliance with Law. Seller shall perform its obligations under this Agreement in compliance with the Applicable Legal Requirements, and construct, operate, maintain and decommission the Solar Energy Facility in accordance with Applicable Legal Requirements. Seller shall comply, and shall require its employees to comply, with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable state statutes and regulations affecting job safety.

e. License. Seller shall comply with the provisions of the License.

f. Interconnection. Seller shall use commercially reasonable efforts to obtain at its sole cost all approvals and agreements required for Seller's interconnection of the Solar Energy

Facility to Buyer's equipment and to assist Buyer in obtaining the approvals and agreements necessary for Buyer to connect its equipment to the local electric distribution grid maintained by NStar. Seller will promptly inform Buyer of all significant developments relating to such interconnection matters. Buyer will cooperate fully with Seller on all such matters and shall provide Seller with such information as Seller may reasonably request in connection with Seller's procurement of, and Seller's assistance in procurement of, such approvals and agreements. Buyer shall not make any material changes to its electrical equipment on the Property after submission by Seller of the utility interconnection application unless such changes would not adversely affect NStar's approval of such interconnection and Seller otherwise consents thereto, which consent shall not be unreasonably conditioned, withheld or delayed. If any material changes in plans and/or specifications to the Solar Energy Facility or the interconnection of Buyer's facilities are required by NStar, then Seller shall submit such changes to Buyer for its approval, which shall not be unreasonably conditioned, withheld or delayed; *provided, however*, that if such changes require additional equipment beyond that set forth on Exhibit B or any material upgrades to the infrastructure not previously agreed by the Parties, then either Party may terminate this Agreement unless the Parties agree otherwise.

g. Interconnection. Seller shall pay any fee imposed by the Tariff or otherwise in connection with the filing of the Interconnection Application.

6.4 Buyer's Obligations.

a. Host Customer Obligations. Buyer shall act as the Host Customer, as defined in 220 C.M.R. §18.02, for the Solar Energy Facility. To the extent that NStar elects not to purchase Net Metering Credits from Buyer, Buyer shall be responsible for allocating Net Metering Credits to Buyer's designees. Except in the case of the termination of this Agreement on account of a default by Buyer, Seller shall have no claim on, or responsibility regarding, such Net Metering Credits.

b. Financing Arrangements.

i. Subject to the terms and conditions of this Agreement, Buyer shall, upon prior written request by Seller and at Seller's expense, execute a consent and agreement with respect to a collateral assignment hereof in favor of any Financier(s) in a form reasonably acceptable to Buyer in its sole discretion, provided that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

ii. Buyer acknowledges that the Financier(s) may have other or further requests with respect to the assignment of the Agreement (such as requests for legal opinions or certificates from Buyer) and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer, at Seller's expense, will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith.

c. Compliance with Law. Buyer shall perform its obligations under this Agreement in compliance with the Applicable Legal Requirements.

d. License; Maintenance and Security. Buyer shall comply with the provisions of the License.

e. Cooperation. Buyer shall timely and reasonably cooperate with and assist Seller so that Seller can meet its obligations under this Agreement and under the License. Buyer agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all Permits necessary for the design, construction, engineering, operations, maintenance and deconstruction of the Solar Energy Facility and to act at all times during such review in good faith and within its legal capacity. This provision is not intended to and shall not be construed to imply that Buyer has the authority to direct the outcome of any application submitted to any independent local permit issuing authority nor that Buyer has the independent or concurrent authority to issue any Permits for the Solar Energy Facility. The Parties agree that, in the event either Party is sued by a third-party in connection with the any Permit, approval or any other matter related to the Solar Energy Facility, this Agreement or the License, the defending Party will immediately notify and consult with the other Party. The Parties further agree that they will work together in good faith to expeditiously defend such action and shall coordinate their defense efforts subject to any restrictions imposed by Applicable Legal Requirements.

f. Environmental Matters. Buyer shall promptly furnish to Seller, on an on-going basis throughout the Term and without necessity of request, all information, data, studies, analyses, tests, monitoring, notices, reports or other communications of any kind concerning the Property's compliance with Environmental Laws and Environmental Permits as Buyer may possess, receive, file or submit or to which it otherwise has access from time to time, including, without limitation, any release or suspected or threatened release of Hazardous Substances at, on, about, under or from the Property, or any Proceeding initiated or threatened by any Person alleging liability under Environmental Laws, or seeking or imposing investigatory, remedial or corrective obligations under Environmental Laws.

**ARTICLE VII
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties by Seller. As of the Effective Date, Seller represents and warrants to Buyer as follows:

- a. Organization. Seller is a Delaware limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware.
- b. Capacity. Seller has full legal capacity to enter into and perform this Agreement.
- c. Enforceability. The execution, delivery and performance of this Agreement (including the License) has been duly authorized by all necessary corporate action on the part of Seller, and each Person executing this Agreement on behalf of Seller has full authority to do so and to fully bind Seller. This Agreement has been duly executed and delivered by Seller and, assuming due authorization, execution and delivery by Buyer, constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be affected by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws affecting creditor's rights generally and by the application of equitable principles.
- d. No Conflict; Approvals. Neither the execution and delivery of this Agreement by Seller, nor compliance by Seller with the terms hereof, will (i) conflict with, or violate any constitutive documents of Seller, (ii) violate, breach or constitute a default (with or without the giving of notice or lapse of time or both) under any material agreement by which Seller is bound or by which its properties or assets may be affected, or (iii) violate any law, rule or regulation or Permit applicable to Seller. No consent from any Person (other than those which have been obtained) is required in connection with the due authorization, execution and delivery and performance of this Agreement by Seller.
- e. Litigation. There is no pending or, to Seller's knowledge, threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding could reasonably be expected to affect the validity or enforceability of this Agreement or the License or Seller's ability to carry out its obligations hereunder or thereunder.
- f. Information. None of the documents or other written or other information furnished by or on behalf of Seller to Buyer or Buyer's agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

7.2 Representations and Warranties by Buyer. Buyer represents and warrants to Seller as follows.

- a. Organization. Buyer is a municipal corporation having its principal office at 133 William Street, New Bedford, Massachusetts.
- b. Capacity. Buyer has full legal capacity to enter into and perform this Agreement.
- c. Enforceability. The execution, delivery and performance of this Agreement (including the License) have been duly authorized by all necessary action on the part of Buyer, and each Person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer. This Agreement has been duly executed and delivered by Buyer and, assuming due authorization, execution and delivery by Seller, constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be affected by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws affecting creditor's rights generally and by the application of equitable principles.
- d. No Conflict; Approvals. Neither the execution and delivery of this Agreement by Buyer, nor compliance by Buyer with the terms hereof, will (i) conflict with, or violate any constitutive documents of Buyer, (ii) violate, breach or constitute a default (with or without the giving of notice or lapse of time or both) under any material agreement by which Buyer is bound or by which its properties or assets may be affected, or (iii) violate any law, rule or regulation or Permit applicable to Buyer. No consent from any Person (other than those which have been obtained) is required in connection with the due authorization, execution and delivery and performance of this Agreement by Buyer. Notwithstanding the foregoing, this Agreement is subject to the provisions of a RAM Plan or URAM Plan to cover electrical conduit trenching and other related subsurface work, the filing of a RAO or Partial RAO with an AUL and approval of their terms by the DEP, and possibly other documents required by the DEP with respect to the Property, all of which documents shall be in a form reasonably acceptable to Seller and Buyer.
- e. Litigation. There is no pending or, to Buyer's Knowledge, threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding could reasonably be expected to affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations hereunder.
- f. Information; Accuracy of Description of the Premises. On or prior to the Effective Date, Buyer has provided to Seller true and complete copies of the Buyer Provided Documents. Such Buyer Provided Documents constitute all of the reports, assessments, structural drawings, investigations and other documents of or regarding the Premises that, to Buyer's Knowledge, exist as of the Effective Date, whether or not such documents have been filed by or on behalf of Buyer with or submitted to any Governmental Authority. Buyer acknowledges that Seller is relying upon the information contained in such Buyer Provided Documents and all other documents and information provided by Buyer hereunder, and, consequently, represents and warrants to Seller that none of such Buyer Provided Documents or other documents or information furnished by or on behalf of Buyer to Seller or Seller's agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein

or therein, in the light of the circumstances in which they were made, not misleading. The description of the Premises set forth in Exhibit A is complete and accurate in all respects.

g. Title; Electrical Systems. Buyer owns the Property, and, subject to the provisions of the RAM Plan or URAM Plan, RAO or Partial RAO, and any AUL that is filed with and approved or otherwise issued by the DEP with respect to the Property, there are no outstanding rights in favor of any other Person that interfere with the rights of Seller under this Agreement. Buyer agrees to comply with the terms of any RAM Plan or URAM Plan, RAO or Partial RAO, AUL, or any other requirement of the DEP with respect to the Property.

h. Environmental Matters. Except as set forth on Exhibit D

i. To Buyer's knowledge, Buyer has obtained, possesses, is in compliance with and has made all necessary filings for issuance or renewal of, all material Environmental Permits applicable to the Property, and all such Environmental Permits are appended to Exhibit D.

ii. To Buyer's knowledge, Buyer is, and during the past five (5) years has been, in material compliance with Environmental Laws applicable to the Property.

iii. Except with respect to matters that have been settled or resolved with no ongoing liabilities or obligations (or for matters set forth in the RAM Plan, the URAM Plan, the RAO and AUL as to which Buyer agrees to comply in all respects), Buyer has not received any written notice of any Proceeding regarding any actual or alleged violation of, or liability under Environmental Laws, or any investigatory, remedial or corrective obligations under Environmental Laws, in each case with respect to the Property, nor is any such Proceeding threatened to Buyer's Knowledge.

iv. To Buyer's Knowledge, the Buyer has not caused the release of Hazardous Substances at, on, about, under or from any of the Property which would reasonably be expected to give rise to material liability under Environmental Laws.

v. To Buyer's Knowledge, there are no Events: (i) that would prevent continued compliance by the Buyer with Environmental Laws and the requirements of Environmental Permits applicable to it or the operation of the Property in the same manner as presently operated or as contemplated by this Agreement, or (ii) based upon the acts or omissions of the Buyer, that would result in the liability of Buyer under any applicable Environmental Laws.

vi. Buyer has delivered to Seller true, correct and complete copies of all reports, studies, analyses, tests, permits and monitoring possessed by the Buyer pertaining to the Property's compliance with applicable Environmental Laws and Buyer's liability under applicable Environmental Laws, including, but not limited to (as applicable) landfill and/or waste site closure design, remediation requirements, operation and maintenance requirements, testing and monitoring.

vii. Buyer has achieved and shall maintain or arrange for the maintenance of a Permanent Solution (as defined in the Massachusetts Contingency Plan, 310 CMR 40.0000

(“MCP”) of the Pre-Existing Environmental Conditions in accordance with M.G.L. c. 21 E and the MCP at the Property, meeting the Standard of Care (as defined in 309 CMR 4.02) in effect as of the time of the submittal of the Permanent Solution to the DEP.

7.3 Pre-Existing Environmental Conditions; Parker Street Waste Site Litigation.

a. Seller acknowledges and agrees that:

i. all activities on the Premises, including but not limited to the construction, operation, maintenance, decommissioning and removal of the Solar Energy Facility, shall be conducted in compliance with Applicable Legal Requirements;

ii. Applicable Legal Requirements may prohibit and/or require the use of certain construction, operation, maintenance and removal procedures in connection with the use of the Premises for a solar energy facility;

iii. the Premises have been the subject of certain prior uses and activities as set forth on Exhibit A attached hereto;

iv. Seller is familiar with the Documented Site Conditions and has visited the Property and, subject to its review and approval of any all RAM or URAM Plans, RAOs or Partial RAOs, and any AUL and Buyer’s compliance with the terms thereof, has determined that the Property is suitable for the installation, operation, and maintenance of the Solar Energy Facility; and

v. Seller is aware that there is on-going litigation regarding the Parker Street Waste Site (the “*Parker Street Waste Site Litigation*”), of which the Premises was or is a part.

b. Buyer represents, warrants, acknowledges, covenants and agrees that:

i. Seller disclaims and shall have no liability for Pre-Existing Environmental Conditions and for claims of any nature by any existing or future party to the Parker Street Waste Site Litigation that currently exist or may hereafter arise.

ii. Seller bears no responsibility for any Pre-Existing Environmental Conditions on the Property whatsoever, except to the extent such Pre-Existing Environmental Conditions are exacerbated by the acts or omissions of Seller. Buyer, for and on behalf of itself and all its successors in title and assigns, hereby waives, relinquishes, and releases Seller, Seller’s Affiliates and its and their respective employees and agents from, and covenants not to sue Seller Seller’s Affiliates and its and their respective employees and agents for, any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) of any and every kind or character, known or unknown, which Buyer might assert or allege against Seller (or Seller’s Affiliates and its and their respective employees or agents) at any time by reason of or arising out of Pre-Existing Environmental Conditions, except to the extent such Pre-Existing Environmental Conditions are exacerbated by the acts or omissions of Seller.

iii. Seller bears no responsibility for any claims of any nature by any party or future party to the Parker Street Waste Site Litigation that have arisen or may hereafter arise or be asserted in connection with such litigation. Buyer, for and on behalf of itself and all its successors in title and assigns, hereby waives, relinquishes, and releases Seller, Seller's Affiliates and its and their respective employees and agents from, and covenants not to sue Seller, Seller's Affiliates and its and their respective employees and agents for, any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Buyer might assert or allege against Seller (or Seller's Affiliates and its and their respective employees or agents) at any time by reason of or arising out of the Parker Street Waste Site Litigation.

iv. As between Buyer and Seller, Buyer is and shall be solely responsible for all Pre-Existing Environmental Conditions on the Property, except to the extent such Pre-Existing Environmental Conditions are exacerbated by the acts or omissions of Seller.

c. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT:

i. SELLER ACKNOWLEDGES AND AGREES THAT BUYER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO ENVIRONMENTAL, GEOTECHNICAL OR STRUCTURAL CONDITIONS, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE;

ii. SELLER ACKNOWLEDGES AND AGREES THAT IT SHALL ACCEPT THE PREMISES "AS IS, WHERE IS, WITH ALL FAULTS;"

iii. SELLER HAS NOT RELIED AND WILL NOT RELY ON, AND BUYER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO MADE OR FURNISHED BY BUYER, ITS EMPLOYEES, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT BUYER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING; AND

iv. SELLER ACKNOWLEDGES THAT THE NET ENERGY PRICE REFLECTS AND TAKES INTO ACCOUNT THAT SELLER'S USE OF THE PREMISES IS "AS-IS."

d. The Parties acknowledge and agree that the remedies available upon any breach of one or more representations, warranties, covenants or agreements contained herein by a Party (including the failure by a Party to comply with Applicable Legal Requirements) shall be as set forth in Article VIII hereof.

ARTICLE VIII
TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer:

- a. Buyer fails to make any payment of uncontested amounts owed under this Agreement within thirty (30) days after such payment is due, and payment of such is not made within ten (10) days of Seller's written notice to Buyer of such failure.
- b. Buyer fails to perform or comply with any material covenant or obligation set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from Seller to Buyer; provided that if Buyer proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved, using commercially reasonable efforts, to cure the same within the said thirty (30) days, Buyer's time to do so shall be extended by the time reasonably necessary to cure the same.
- c. Any representation or warranty made by Buyer in this Agreement is false or misleading.
- d. Buyer defaults under the License.
- e. Buyer enters into a binding agreement to sell or lease the Property or the Premises or otherwise effectuates a sale or lease of the Property or the Premises without the express written consent of Seller, which Seller may withhold or condition in its sole discretion.
- f. Buyer: (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (iv) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; or (v) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets.

8.2 Events of Default by Seller. The following shall each constitute an Event of Default by Seller.

- a. Seller fails to make any payment of uncontested amounts owed under this Agreement within thirty (30) days after such payment is due, and payment of such uncontested amount is not made within ten (10) days of Buyer's written notice to Seller of such failure.

b. Seller fails to perform or comply with any material covenant or obligation set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from Buyer to Seller; provided that if Seller proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved, using commercially reasonable efforts, to cure the same within the said thirty (30) days, Seller's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Any representation or warranty made by Seller in this Agreement is false or misleading.

d. Seller defaults under the License.

e. Seller: (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (iv) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; or (v) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets.

8.3 Force Majeure.

a. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

b. If an event of *Force Majeure* affecting either Party continues for a period of one hundred eighty (180) days or longer, the performing Party may treat such an event as an Event of Default and may terminate this Agreement.

8.4 Remedies for Default.

a. Notice of Termination. Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying

such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which in the case of the Operation Termination Date shall be not more than thirty (30) days after the giving of such notice, and in the case of the Agreement Termination Date shall be one hundred twenty (120) days after such Operation Termination Date, and this Agreement shall terminate upon such termination dates specified in such notice as though such dates were the dates originally set forth herein for the termination hereof.

b. Buyer Remedies. In the event this Agreement is terminated as a result of an Event of Default of Seller:

i. Provided that Buyer has not provided Seller notice of a request for an Appraisal pursuant to Section 11.2, (x) Buyer shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination; and (y) Seller shall remove the Solar Energy Facility from the Premises in accordance with the provisions of the License.

ii. Provided that Buyer has provided Seller notice of a request for an Appraisal pursuant to Section 11.2, Buyer shall continue to purchase Net Energy and to make payments therefore under the Agreement until Buyer either exercises its right to purchase the Solar Energy Facility and related assets for the Purchase Price or notifies Seller that it will not provide Seller with an Exercise Notice pursuant to Section 11.7, in which case Seller shall thereafter remove the Solar Energy Facility from the Premises in accordance with the provisions of the License.

iii. Except in the case of termination due to an event of *Force Majeure*, Seller shall pay to Buyer, immediately upon demand, the then-applicable Special Buyer Termination Damages amount as liquidated damages and not as a penalty, it being expressly agreed by the Parties that actual damages suffered by Buyer as a result of such termination will be substantial, but difficult to ascertain with precision, and that the applicable Special Buyer Termination Damages amount is a reasonable approximation of such damages. Buyer and Seller hereby expressly agree that the Special Buyer Termination Damages amount is a fair and reasonable estimate of the actual damages that Buyer would suffer upon termination of this Agreement. Receipt of such Special Buyer Termination Damages shall be Buyer's sole and exclusive remedy with respect to recovery for any losses incurred by Buyer in connection with its termination of this Agreement.

c. Seller Remedies. In the event this Agreement is terminated as a result of an Event of Default of Buyer:

i. Except in the case of termination due to an event of *Force Majeure*, Buyer shall pay to Seller, immediately upon demand, the then-applicable Seller Termination Value as liquidated damages and not as a penalty, it being expressly agreed by the Parties that actual damages suffered by Seller as a result of such termination will be substantial, but difficult to ascertain with precision, and that the applicable Seller Termination Value is a reasonable

approximation of such damages. Buyer and Seller hereby expressly agree that the Seller Termination Values set forth herein are fair and reasonable estimates of the actual damages that Seller would suffer upon termination of this Agreement. Receipt of such Seller Termination Value shall be Seller's sole and exclusive remedy with respect to recovery for any losses incurred by Seller in connection with its termination of this Agreement.

d. Removal of Solar Energy Facility. Seller shall remove the Solar Energy Facility from the Premises in accordance with the License, at Seller's sole cost and expense.

e. Effect of Termination. The termination or expiration of this Agreement shall not relieve either Party from obligations that accrued prior to the effective date of termination or expiration. Certain provisions of this Agreement shall survive the expiration or termination hereof, as set forth in Section 14.17.

ARTICLE IX REMEDIES AND LIMITATION OF LIABILITY

9.1 Remedies. Subject to the limitations set forth in this Agreement (including, but not limited to, Sections 4.5(b), 8.4 and 9.4), Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of the other Party's non-performance under this Agreement.

9.2 Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT (INCLUDING THE LICENSE), NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATING TO THE PROVISIONS OF THIS AGREEMENT (INCLUDING THE LICENSE), IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY. NOTWITHSTANDING THE FOREGOING, NONE OF THE PAYMENTS SPECIFIED AS PAYABLE HEREUNDER, WHETHER UPON THE TERMINATION OF THIS AGREEMENT OR OTHERWISE, SHALL BE DEEMED TO BE CONSEQUENTIAL DAMAGES.

9.3 Waivers.

a. No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's agent. Consent or approval of Seller or Buyer to any act or matter must be in writing and shall apply only with respect to the particular act or matter in which such consent or approval is given and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. Seller or Buyer may restrain any

breach or threatened breach of any covenant or agreement herein contained, but the mention herein of any particular remedy (other than as set forth in Sections 4.5(b), 8.4 and 9.4 of this Agreement) shall not preclude either Seller or Buyer from any other remedy it might have, either in law or in equity. The failure of Seller or Buyer to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Except as set forth in this Agreement, any right or remedy of Seller or Buyer herein specified or any other right or remedy that Seller or Buyer may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

9.4 Failure to Achieve Full Operations Date. In the event that (i) Seller fails to achieve the Full Operations Date on or before twenty-four (24) months after the date on which all of the conditions to construction set forth in Section 3.3(a) are satisfied (except to the extent such failure is excused by an event of *Force Majeure*, in which case such 24-month period shall be extended for each day of *Force Majeure*, or is already the subject of a day-for-day extension under Section 2.2, or is caused by the breach by Buyer of any representation, warranty, covenant or agreement contained in this Agreement) and (ii) this Agreement has not been terminated by Buyer or Seller pursuant to Section 2.2, Seller shall pay to Buyer the amount of \$15.06 per day¹, as liquidated damages and not as a penalty, until the Full Operations Date is achieved; provided, however, that in no event shall Seller be required to pay an amount exceeding \$11,000 in the aggregate². Notwithstanding Buyer's right to terminate this Agreement pursuant to Section 2.2 and 8.2, if Buyer elects to accept liquidated damages under this Section 9.4, then such liquidated damages shall constitute Buyer's sole and exclusive remedy for Seller's failure to achieve the Full Operations Date as provided in this Section 9.4. Upon payment by Seller of an amount equal to the maximum limitation set forth in this Section 9.4, this Agreement shall terminate, and neither Party shall have any continuing obligation to the other hereunder.

ARTICLE X ASSIGNMENT, SUBLETTING, MORTGAGE

10.1 Assignment by Seller. Seller shall not assign or in any manner transfer this Agreement or any part thereof without the prior written consent of Buyer, which consent may not be unreasonably conditioned, withheld or delayed, except that in connection with any assignment or transfer of this Agreement (i) to an Affiliate of Seller, (ii) as a result of the sale of the equity or

¹ Calculation to be the anticipated difference between the value of a Net Metering Credit and the Net Energy Price (each measured on a per kWh basis), multiplied by the Guaranteed Annual Electric Output, and then divided by 365.

² Insert daily amount, multiplied by 730.

substantially all of the assets or solar assets of Seller; and (iii) to any Financier(s) as collateral security for obligations under the financing documents entered into with such Financier(s), subject to the terms and conditions of this Agreement, no prior notice to or consent of Buyer is required, provided that in each such case Seller shall promptly notify Buyer after the date of assignment or transfer, and provided further that in the event of an assignment or transfer pursuant to clause (i), the financial condition, creditworthiness and operational ability of such Affiliate or transferee are sufficient (in Buyer's reasonable judgment) to permit such Affiliate or transferee to satisfy its obligations under this Agreement. Buyer shall consent to an assignment or other transfer if such assignee or transferee shall deliver evidence reasonably satisfactory to Buyer that assignee or transferee is sufficiently creditworthy and has adequate technical expertise to perform the obligations of Seller under this Agreement. Notwithstanding the foregoing, Seller may sell, transfer, assign or pledge its interest in any monies due under this Agreement (provided that Buyer will not pay any monies owed hereunder to any Person other than Seller without advance written direction from Seller).

10.2 Financing by Financier(s). Seller may assign or transfer its interest in the Solar Energy Facility for the purpose of obtaining financing, which may include equity and/or debt, provided that Seller shall give Buyer notice of the existence of such assignment or transfer, together with the name and address of the assignee or transferee, within thirty (30) days of the execution of such assignment or transfer.

10.3 Release of Seller.

a. Seller shall be relieved from its obligations under this Agreement:

i. by any whole disposition of Seller's interest in this Agreement in compliance with Section 10.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by all of the terms of this Agreement, unless the Parties agree otherwise; and

ii. in the event of any foreclosure by Financier(s), in which case Financier(s) shall substitute for Seller for purposes of this Agreement; *provided, however*, that Financier subsequently shall be entitled to assign its right under this Agreement in accordance with the provisions of Section 10.1.

b. Absent express written consent of Buyer, the execution of a security interest in this Agreement or the Solar Energy Facility, or any assignment from a Financier to another Financier, shall not relieve Seller from its obligations under this Agreement.

10.4 Financier Provisions. Any Person that holds or is the beneficiary of a first position security interest in this Agreement or the Solar Energy Facility shall, for so long as its security is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Article X. No such security interest shall encumber or affect in any way the interests or rights of Buyer under this Agreement.

a. Financier's Right to Possession, Right to Acquire and Right to Assign. Pursuant to the provisions of this Section, a Financier shall have the right: (i) to assign its security

interest; (ii) to enforce its lien and acquire title to the Solar Energy Facility by any lawful means; and (iii) to take possession of and operate the Solar Energy Facility or any portion thereof and to perform all obligations to be performed by Seller hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement. Buyer's consent shall not be required for a Financier's acquisition of the encumbered interest created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

b. Notice of Default; Opportunity to Cure. A Financier shall be entitled to receive notice of any default by Buyer, provided that such Financier shall have first delivered to Buyer a notice of its interest in this Agreement or in the Solar Energy Facility in the form and manner, if any, provided by state laws, rules, regulations, Seller's procedures, and the provisions of this Agreement. If any notice shall be given of the default of Seller and Seller has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice from Buyer that Seller has failed to cure such default and such Financier shall have thirty (30) days after such additional notice to cure any such default or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and diligently pursue such cure to completion within such time as Seller would have been allowed pursuant to this Agreement but as measured from the date of such additional notice. Financier(s) shall have priority over Buyer to cure any default by Seller pursuant to this Agreement or the License, or to take possession of the Solar Energy Facility and to operate the Solar Energy Facility, if necessary.

c. Cross-Default. Any security interest in this Agreement or the Solar Energy Facility shall not contain any cross-default provisions relating to other loans of Seller (or any Affiliate of Seller) that are not incurred solely for the ownership, construction, maintenance, operation, repair or financing of the Solar Energy Facility.

10.5 Assignment by Buyer.

a. Buyer shall not assign or in any manner transfer this Agreement or any part hereof without the prior written consent of Seller, which consent may be conditioned or withheld in Seller's sole discretion. Notwithstanding the foregoing, Seller shall consent to an assignment or other transfer if such assignee or transferee shall deliver evidence reasonably satisfactory to Seller that assignee or transferee is sufficiently creditworthy and has adequate technical expertise to perform the obligations of Buyer under this Agreement and executes a release, indemnity and covenant not to sue agreement in form and substance acceptable to Seller.

b. Buyer shall be relieved from its obligations under this Agreement by any whole disposition of Buyer's interest in this Agreement in compliance with Section 10.5, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by all of the terms of this Agreement, unless the Parties agree otherwise.

ARTICLE XI SOLAR ENERGY FACILITY PURCHASE AND SALE OPTION

11.1 Grant of Purchase Option. For and in consideration of the payments made by Buyer under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Seller hereby grants Buyer the right and option to purchase all of Seller's right, title and interest in and to the Assets for their Fair Market Value on the terms set forth in this Agreement (the "**Purchase Option**").

11.2 Buyer Request for Appraisal of Solar Energy Facility Value. Provided that Buyer is not in default under this Agreement, Buyer shall have the right, upon the earlier of (a) one hundred eighty (180) days prior to the end of the Term, (b) after the eighth (8th) anniversary of the Full Operations Date, or (c) upon the occurrence of an Event of Default of Seller, to provide a notice to Seller requiring a determination of the Purchase Price as set forth below.

11.3 Selection of Independent Appraiser. Within fifteen (15) days of Seller's receipt of a notice provided under Section 11.2, Seller and Buyer shall each propose an Independent Appraiser. If Seller and Buyer do not agree upon the appointment of an Independent Appraiser within such fifteen (15) day period, then at the end of such fifteen (15) day period, two proposed Independent Appraisers shall, within ten (10) 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 Seller and Buyer. Such selection shall be final and binding on Seller and Buyer.

11.4 Determination of Purchase Price.

a. The selected Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Fair Market Value in accordance with Section 11.5 (the "**Preliminary Determination**").

b. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Seller and Buyer, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Buyer shall each have the right to object to the Preliminary Determination within twenty (20) days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within fifteen (15) days after the expiration of such twenty (20) day period, the selected Independent Appraiser shall issue its final determination (the "**Final Determination**") to Seller and Buyer, which shall be set forth in a written opinion delivered to the Parties and shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. The Independent Appraiser shall in all events act in good faith to determine Fair Market Value. 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.

11.5 Calculation of Purchase Price. The purchase price (the "**Purchase Price**") payable by Buyer for the Assets shall be equal to the Fair Market Value as determined by the Independent Appraiser in its Final Determination.

11.6 Costs and Expenses of Independent Appraiser. Seller and Buyer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

11.7 Exercise of Purchase Option.

a. Buyer shall have ninety (90) days from the date of the Final Determination (such period, the “**Exercise Period**”), to exercise the Purchase Option, at the Purchase Price set forth in the Final Determination. Buyer must exercise its Purchase Option during the Exercise Period by providing a notice (an “**Exercise Notice**”) to Seller. Once Buyer delivers its Exercise Notice to Seller, such exercise shall be irrevocable.

b. Promptly following receipt of Buyer’s notice pursuant to Section 11.2, Seller shall make the Assets, including records relating to the operations, maintenance, and warranty repairs, available to Buyer for its inspection during normal business hours.

11.8 Terms of Asset Purchase. On the Transfer Date (a) Seller shall surrender and transfer to Buyer all of Seller’s right, title and interest in and to the Assets, (b) Buyer shall pay the Purchase Price, by certified check, bank draft or wire transfer, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing representations as to due organization, authorization, no conflicts, enforceability and title only, and such other terms and conditions as are usual and customary for a sale of assets made on an as-is, where-is basis (except that Seller shall at its expense remove any encumbrances placed on the Solar Energy Facility by Seller, any Affiliate of Seller, or any Financier, and shall assign to Buyer, to the extent assignable, any manufacturer or other similar warranties for the Solar Energy Facility as are still in effect), together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Assets in Buyer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the Assets to Buyer.

11.9 Transfer Date. The closing of any sale of the Assets (the “**Transfer Date**”) pursuant to this Section 11.9 will occur no later than thirty (30) days following the date of the Exercise Notice, unless extended by agreement of the Parties.

ARTICLE XII INDEMNIFICATION

12.1 Indemnification of Buyer.

a. Seller shall indemnify, save harmless and defend Buyer and each of its officials, employees, agents, and assigns (the “**Buyer Indemnified Parties**”) from and against all liabilities, losses, damages, penalties, costs, and expenses (including reasonable attorneys’ fees), that may be imposed upon or incurred by or asserted against any Buyer Indemnified Party by reason of any of the following occurrences during the Term, except to the extent such liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys’ fees arise out of or result from the negligence or wrongful acts of any Buyer Indemnified Party:

- i. any breach by Seller of its representations, warranties, covenants or obligations contained in this Agreement (including the License);
- ii. any negligence or willful misconduct on the part of Seller or any of its agents, contractors, servants, employees, subtenants, licensees or invitees in connection with its performance hereunder; or
- iii. any failure on the part of Seller or any of its Affiliates, agents, subcontractors, servants, employees, licensees or invitees to comply with all Applicable Legal Requirements.

b. In case any action or proceeding is brought against any Buyer Indemnified Party by reason of any claim which is the subject of this Section 12.1, Seller, upon written notice from Buyer, shall defend such action or proceeding at Seller's expense to the reasonable satisfaction of Buyer.

ARTICLE XIII INSURANCE

13.1 Insurance. Article III of the Site License is hereby incorporated by reference herein as though fully set forth herein.

ARTICLE XIV MISCELLANEOUS

14.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or facsimile transmission.

The communications shall be sent to the following addresses:

If to Buyer:

City of New Bedford
Office of the Solicitor
133 William Street
New Bedford, MA 02740
Boston, MA 02109
Attn: City Solicitor
Tel: (508) 979-1460
Fax: (508) 979-1515
Email: john.markey@newbedford-ma.gov

If to Seller:

CES NBHS Solar, LLC
c/o Consolidated Edison Solutions, Inc.
100 Summit Lake Drive
Valhalla, NY 10595
Attn: Vice President
Tel: 914-286-7095
Fax: 914-686-1413
Email: pernam@conedsolutions.com

with a copy to:

CES NBHS Solar, LLC
c/o Consolidated Edison Solutions, Inc.
100 Summit Lake Drive
Valhalla, NY 10595
Attn: Secretary
Tel: 914-286- 7041
Fax: 914-686-1413
Email: mapellip@conedsolutions.com

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

14.2 Confidentiality.

a. Except to the extent provided in Applicable Legal Requirements, upon compliance with the provisions of clause (b) of this Section 14.2, neither Party shall (i) use for any purpose other than to perform this Agreement, or publish or disclose to any Person any Confidential Information of the other without the other Party's prior written consent, and (ii) permit knowledge of and access to Confidential Information to any Person other than those of its Affiliates, attorneys, accountants, representatives, agents and employees who have a need to know such information for the purpose of performing this Agreement (provided that the applicable Party shall remain liable for compliance with this Section 14.2 by such Persons).

b. If a Party is requested or required to disclose Confidential Information of the other (i) in connection with any administrative or regulatory approval or filing process in connection with its performance of this Agreement or the conduct of its business, (ii) otherwise in accordance with any law, statute, regulation, order, U.S. stock exchange rule or legal process (including, without limitation, any freedom of information law), or (iii) to its accountants in connection with an audit, that Party may disclose the Confidential Information, or a portion thereof, as requested or required, provided however, that in the case of clause (b)(ii), to the extent permitted by law, such Party shall notify the other Party of the requested or required disclosure, consult with the other Party regarding the same and, if requested by the other Party, challenge the disclosure or seek (or permit the other Party to seek) a protective order or other

remedy to reduce the extent of such disclosure or to prevent such information from being disclosed or otherwise becoming part of the public domain.

14.3 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any arbitrator or court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired; and provided, further, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with Applicable Legal Requirements and the intent of the Parties.

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

14.5 Dispute Resolution; Consent to Jurisdiction. Other than disputes arising under Section 3.3(c)(iii) or Article VI of this Agreement (the resolution of which shall be governed by the provisions of Section 6.2), all disputes arising under this Agreement shall be resolved as set forth in this Section 14.5. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any controversy, dispute or claim that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiation between the senior officers or officials of the Parties. The controversy, dispute or claim shall be considered to have arisen when one Party sends the other Party a written notice thereof. The period for informal negotiation shall be thirty (30) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot resolve any controversy, dispute or claim between them through informal negotiation, the sole venue for judicial enforcement shall be the federal courts located in Boston, Massachusetts or courts of the Commonwealth of Massachusetts located in Suffolk County, Massachusetts. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the Commonwealth of Massachusetts in respect of actions, suits or proceedings arising out of or in connection with this Agreement.

c. In any judicial action, each party shall pay its own costs, fees and expenses.

14.6 Headings and Captions. The headings and captions in this Agreement are intended for convenience of reference only, do not form a part of this Agreement, and shall not be considered in construing this Agreement.

14.7 Press Releases. Seller shall not issue a press release or make any public statement with respect to this Agreement or the Solar Energy Facility without the prior written agreement of Buyer with respect to the form, substance and timing thereof. Notwithstanding the foregoing, Seller may make any such press release or public statement if it is advised by its legal counsel

that such a press release or public statement is required by law, regulation or stock exchange rule (in which event the Parties shall use their reasonable good faith efforts to agree as to the form, substance and timing of such release or statement).

14.8 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.

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

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

14.11 No Broker. Seller and Buyer each represents and warrants to the other that it has not dealt with any broker in connection with the consummation of this Agreement or the License, and in the event of any brokerage claims against Seller or Buyer predicated upon prior dealings with the other Party, the Party purported to have used the broker agrees to defend the same.

14.12 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

14.13 Nondiscrimination. Seller agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or Person seeking to provide goods or services to Seller. Seller shall comply with all applicable federal and state laws prohibiting discrimination in employment or public accommodation.

14.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

14.15 Further Assurances. Each Party shall execute, acknowledge and deliver such documents and assurances and take such other action consistent with the terms of this Agreement and the License that may be reasonably requested by the other for the purpose of effecting or confirming the transactions contemplated hereby and thereby or otherwise in furtherance of the purposes hereof and thereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

14.16 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

14.17 Survival. The provisions of Sections 4.4 (Governmental Charges), 4.6 (Environmental Credits and Value), 5.4 (Records and Audits), 5.5 (Dispute), 6.1 (Net Metering), 6.2 (Dispute Resolution), 7.2(h) (Representations and Warranties – Environmental Matters), 7.3 (Pre-Existing Environmental Conditions), 9.1(Remedies), 9.2 (Limitation of Liability), 9.3 (Waivers), Articles 11 (Solar Energy Facility Purchase and Sale Option), 12 (Indemnification) and 14 (Miscellaneous), and Exhibits A, B, C, D and E shall survive the expiration or earlier termination of this Agreement, *provided, however*, Seller's rights and obligations under Sections 4.4 (Governmental Charges) and 4.6 (Environmental Credits and Value) shall terminate as of the Transfer Date if Buyer exercises its option to purchase the Assets.

14.18 No Limitation of Regulatory Authority. The Parties acknowledge and agree that Buyer is a municipal entity, and that nothing in this Agreement or the License shall be deemed to be an agreement by Buyer to issue or cause the issuance of any approval, authorization or permit, or to limit or otherwise affect the ability of Buyer or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with applicable law..

14.19 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty or standard of care with reference to, or any liability to or benefit for, any Person not a Party to this Agreement. This provision is not intended to limit the rights of a Financier under Article X of this Agreement.

14.20 Entire Agreement. This Agreement (including all its exhibits), together with the License (including its exhibits), contains the entire agreement between Seller and Buyer with respect to the subject matter hereof and thereof, and supersedes and renders null and void any and all other understandings, agreements, representation or warranties, whether written and oral, between the Parties relating to such subject matter.

[Signature page to follow.]

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

BUYER

SELLER

City of New Bedford, Massachusetts

CES NBHS SOLAR, LLC

By: _____
Jonathan F. Mitchell, Mayor

By: _____
Jorge J. Lopez
Title: President and CEO

Approved as to Form:

By: _____
John A. Markey, Jr., Esq.
City Solicitor

Agreement as to Procurement:

By: _____
Shannon Shreve, Esq.

By: _____
Debra Travers
Procurement Officer

List of Exhibits to Agreement

- Exhibit A – Description of the Property/Premises
- Exhibit B – Description of Solar Energy Facility
- Exhibit C – Net Energy Price and Terms
- Exhibit D – Buyer Environmental Disclosures
- Exhibit E – Site License
- Exhibit F – Form of Subordination and Non-Disturbance Agreement

EXHIBIT A

DESCRIPTION OF THE PREMISES

Address: 230 Hathaway Blvd., New Bedford, MA 02740

Legal Description:

City of New Bedford Assessor's Map 75, Parcel 12, more particularly described in a deed recorded in Book 182, Page 47 at the Bristol County South Registry of Deeds of Massachusetts.

Legal Owner: City of New Bedford, 131 William Street, New Bedford, MA 02740

Prior Uses and Activities at the Premises: The site is part of the Parker Street Waste Site and is a vacant open area between two paved parking lots north of the New Bedford High School building.

Special site conditions or disclosures: The City of New Bedford has identified the presence of PCBs and other chemicals at the site and is proceeding with a Response Action Outcome

Covenants, Restrictions, Easements, Agreements or Reservations:

The proposed PV array will have a non-penetrating support structure with concrete ballast type foundation (the size and weight of concrete ballast will be determined during the preliminary design phase). The PV modules will be tilted and distanced as to minimize shading between panel rows and maximize savings for the City. The bottom edge of the PV modules will be raised above the surface resulting in a maximum height of six feet off the surface. The PV source circuit conductors from the PV modules will be run above ground and terminate in combiner boxes. The output from the combiner boxes will be enclosed in metallic conduit and will run above ground and terminated at the inverter. The inverter will be supported by an 8" thick re-enforced concrete pad. The inverter's output circuit will exit the inverter enclosure from the bottom or side and be routed in conduit underground to the proposed point of interconnection located in the NBHS main electrical room—preferably tapping the incoming conductors of the Main Disconnect Panel (on the load side of the revenue meter). Optionally, the inverter may be located closer to the electrical room, outside, on a concrete pad large enough to include a second inverter and switchgear to support an expansion of the proposed system with a roof-mounted system. The entire PV array and the inverter pad, will be surrounded by an 8' high perimeter fence with two locked access gates (one for a vehicle and one for personnel). The PV array will have a 15' set back from the perimeter fence creating a 15' perimeter service road and additional safety buffer around the PV panels.

Site Preparation Scope of Work to be performed by the City:

The City will be solely responsible for covering the soil with crushed stone having a minimum bearing pressure of 300 psf to support the PV structure, inverter concrete slab and occasional vehicular operations and prevent the structure from sinking or shifting over time. The surface will also prevent plant or weeds from growing through and allow for proper surface water drainage and ground water recharge with a maximum slope of 3%--preferably with a downward

slope to the south to reduce shading between rows of PV modules. The civil engineering site design will meet all required local and state codes. The City will also install an 8' perimeter fence to surround the array and inverter pad. A Licensed Site Professional licensed by the Board of Registration of Hazardous Waste Site Cleanup Professionals (or any successor organization) will determine whether fence posts would be allowed to penetrate the soil or alternatively be supported by a concrete ballast. Protection to the inverter pad will include 6" in diameter concrete filled, steel bollards. The underground conduit from the inverter pad to the point of emergence from the ground (in the vicinity of the proposed point of interconnection) will be buried, supported, covered and accessible per the requirements of the National Electrical Code 2011. The size of the conduit will be determined in the preliminary design phase of this project. An additional communications conduit will be provided and buried alongside the inverter output circuit

Description of the Premises (as further shown on the attached plan drawing): area between existing parking lots located north of the New Bedford High School building.

Access Area: All roadways, driveways and walkways that may exist at the Property from time to time, as well as lobby, stairways, elevator and other common areas of the building located on the Property to provide Seller with ingress and egress to and from the Premises. Access will be granted during the following hours: Monday to Friday: 7 AM – 8PM and Saturday 8 AM – 5 PM.

Construction Area: The area identified between the parking lots and the path of underground conduit from the array to the point of interconnection (POI) in the New Bedford High School main electrical room.

Utility Area: The point of interconnection will be on the supply side of the main disconnect breaker. AC conduit will run underground from the field of the array to a new switchgear located in the New Bedford High School main electrical room.

EXHIBIT B

DESCRIPTION OF THE SOLAR ENERGY FACILITY

| | |
|--|---|
| <p>Solar Energy Facility Component Manufacturers</p> | <p>PV Modules: Suntech, Trina, Yingli or equivalent</p> <p>Inverter: SMA TL24</p> <p>Rack: Panel Claw Panda Bear</p> <p>DAS: AlsoEnergy</p> <p>City of New Bedford is required to make available at the facility a vacant high speed internet router position for the purpose of connecting the solar system's inverter DAS for monitoring and billing.</p> |
| <p>Nameplate Capacity</p> | <p>0.506 MW (DC)</p> |
| <p>Estimated Annual Energy Production</p> | <p>651,164 kWh</p> |
| <p>Interconnection Budget</p> | <p>The system will not require a new service from NSTAR. However, the proposed POI may require an upgrade of the existing switchgear to facilitate interconnection. The budgeted allowance for upgrading the switchgear is \$60,000.</p> |
| <p>Preliminary Specifications:</p> | <p>Ballasted ground mounted PV system.</p> |
| <p>Appurtenant Facilities</p> | <p>None.</p> |

EXHIBIT C

NET ENERGY PRICE AND TERMS

| | |
|---|---|
| GUARANTEED ANNUAL ELECTRIC OUTPUT | 500,000 kWh/year in Contract Year 1, thereafter reduced on an annual basis by .50% per year |
| NET ENERGY PRICE | <p>\$0.129/kWh ^{1,2,3,4}</p> <p>¹ in the event that the project does not qualify for 50 percent bonus depreciation, the rate will be increased by \$0.017/kWh.</p> <p>² price above is subject to a 0% escalator per annum</p> <p>³ price assumes no property taxes payable on the solar facility.</p> <p>⁴ If the total actual cost of service upgrade is more or less than the amount in interconnection budget in Exhibit B of the contract, the Net Energy Price will be adjusted on a pro-rata basis by \$0.0025/kWh per \$10,000 difference.</p> |
| ASSESSMENT ADJUSTMENTS | Not applicable |
| POINT OF DELIVERY | NSTAR service meter (new) located on or adjacent to the Premises, subject to the mutual agreement of the Parties and the provisions of the Interconnection Agreement(s). |
| PRODUCTION SHORTFALL CHARGE | Not applicable. |
| SPECIAL BUYER TERMINATION DAMAGES | The amount equal to the Production Shortfall Charge that would have been owed if no Net Energy was delivered by Seller to Buyer for the two year period immediately preceding the Termination Date. |

SELLER TERMINATION VALUES

| Contract Year | Termination Value |
|----------------------|--------------------------|
| Contract Year 1 | \$ 1,557,278 |
| Contract Year 2 | \$ 1,384,757 |
| Contract Year 3 | \$ 1,183,888 |
| Contract Year 4 | \$ 997,192 |
| Contract Year 5 | \$ 810,497 |
| Contract Year 6 | \$ 694,671 |
| Contract Year 7 | \$ 659,937 |
| Contract Year 8 | \$ 625,204 |
| Contract Year 9 | \$ 590,470 |
| Contract Year 10 | \$ 555,736 |
| Contract Year 11 | \$ 521,003 |
| Contract Year 12 | \$ 486,269 |
| Contract Year 13 | \$ 451,536 |
| Contract Year 14 | \$ 416,802 |
| Contract Year 15 | \$ 382,069 |
| Contract Year 16 | \$ 347,335 |
| Contract Year 17 | \$ 312,602 |
| Contract Year 18 | \$ 277,868 |
| Contract Year 19 | \$ 243,135 |
| Contract Year 20 | \$ 208,401 |

EXHIBIT D

BUYER'S ENVIRONMENTAL DISCLOSURES

EXHIBIT E**FORM OF SITE LICENSE**

This Site License (together with all exhibits hereto, this “*License*”) is entered into as of _____, [2013] (the “*Effective Date*”), by and between CES NBHS Solar, LLC, a Delaware limited liability company with a principal place of business at 100 Summit Lake Drive, Valhalla, New York 10595, as seller (“*Seller*”), and the City of New Bedford, a municipal corporation having its principal office at 133 William Street, New Bedford, Massachusetts, acting by and through the New Bedford School Committee, as buyer (“*Buyer*”). In this License, Seller and Buyer, together with their respective successors and permitted assigns, are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.” The terms and conditions of that certain Solar (PV) Generation Net Metering Power Sales Agreement between the Parties dated as of the date hereof (the “*Agreement*”), are incorporated herein, and all capitalized terms not otherwise defined herein shall have the same definition as set forth in the Agreement. In the event of any discrepancy between the terms of the Agreement and those of this License, the terms of the Agreement shall govern so long as the Agreement remains in full force and effect, unless expressly otherwise provided herein.

ARTICLE I
THE PREMISES

1.1 Premises. Buyer, for and in consideration of the covenants, and agreements contained herein and in the Agreement on the part of Seller to be kept and performed, does hereby license unto Seller, and Seller does hereby accept from Buyer, upon and subject to the conditions hereinafter expressed, the Premises for the sole and exclusive purpose of designing, constructing, installing, operating, maintaining, repairing, cleaning, replacing, decommissioning and removing the Solar Energy Facility, together with the non-exclusive right to investigate (including any subsurface geotechnical investigation), improve, modify and use the Access Area described on Exhibit A to the Agreement for pedestrian and vehicular access to and egress from the Premises, plus the right to use the Construction Area and Utility Area described on Exhibit A to construct electric interconnection lines to connect the Solar Energy Facility to the facilities of Buyer and to the NStar electric distribution grid, as contemplated by the Agreement (such purposes, collectively, the “*Permitted Use*”). Seller’s use and occupancy of the Premises under this License are subject to the following:

- a. any encumbrances shown on the survey of the Premises;
- b. covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A to the Agreement;
- c. present and future zoning laws, ordinances, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal

authority, to the extent now or hereafter having jurisdiction over the use of the Premises for the Permitted Use;

d. the condition and state of repair of the Premises as the same may be on the Effective Date;

e. all water charges, electric charges, and sewer rents, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the Permitted Use; and

f. full compliance by the Seller with all Applicable Legal Requirements.

Buyer represents and warrants that as of the date hereof and as of the Effective Date that there are no unrecorded encumbrances, covenants, restrictions, easements, agreements, reservations or deed restrictions that would prohibit construction of the Solar Energy Facility or the Permitted Use.

1.2 Obligations. Buyer shall not be required to make any expenditure, incur any obligation, or incur any liability in connection with this License or the ownership, construction, operation, maintenance, or repair of the Solar Energy Facility throughout the Term, except as otherwise provided in this License or the Agreement. Seller hereby assumes the full and sole responsibility for the condition of the Premises as it may affect Seller's construction, operation, repair, demolition, maintenance, and management of the Solar Energy Facility. Notwithstanding the foregoing, the Parties agree that Seller shall not be liable for any conditions on the Property or the Premises arising from or related to acts or omissions occurring prior to or after the Effective Date, except to the extent arising from or related to Seller's negligence or willful misconduct.

1.3 Ownership of the Solar Energy Facility. Unless and until Buyer purchases the Solar Energy Facility in accordance with the terms of the Agreement, Buyer shall have no right, title or interest in the Solar Energy Facility (or any component thereof) and Seller (or Financier) shall be the exclusive legal owner thereof. All equipment comprising the Solar Energy Facility is and shall remain Seller's personal property and shall not become fixtures, notwithstanding the manner in which the same are affixed to any real property of Buyer, and shall not be security for the obligations of Seller under this License or the Agreement. Subject to Seller's obligations under the Agreement, Seller may remove all or any portion of the Solar Energy Facility at any time. Buyer hereby waives any statutory or common law lien it might otherwise have in or to the Solar Energy Facility or any portion thereof.

1.4 Additional Use. Except with the prior express written consent of Buyer, Seller shall not use the Premises for any purpose other than the Permitted Use.

ARTICLE II SELLER'S DUTIES

2.1 Governmental Approval. Seller will obtain at its sole cost all Permits required for Seller's use of the Premises, the Permitted Use, and the Solar Energy Facility from any and all

Governmental Authorities having jurisdiction in the matter. Seller will promptly inform Buyer of all significant developments relating to the issuance of such Permits. If any changes in such plans and/or specifications are required by any Governmental Authority, then Seller shall submit such changes, if any, to Buyer for its approval, which shall not be unreasonably conditioned, withheld or delayed.

2.2 Contractors. Prior to and at all times during the course of construction and maintenance of the Permitted Use:

a. Seller will cause Seller's contractor(s) to carry (and cause each such contractor to cause its subcontractors to carry) adequate workers' compensation insurance and such other insurance as is specified in this License;

b. Seller will pay prevailing wages to all construction and maintenance contractors engaged by Seller, and Seller will (unless otherwise not available) hire contractors domiciled in the City of New Bedford to perform maintenance on the Solar Energy Facility.

2.3 As-built Plans. Within ninety (90) days following the Full Operations Date, Seller shall prepare and deliver to Buyer detailed as-built plans accurately depicting the Solar Energy Facility, including, without limitation, all underground structures.

2.4 Duty to Maintain.

a. Maintenance; Repairs. Subject to reasonable wear and tear, Seller shall (i) to the extent necessary to perform the Permitted Use, maintain the surface area of the Premises in good condition and repair, (ii) conduct all required maintenance and make all repairs to the Solar Energy Facility, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and (iii) maintain and keep the Solar Energy Facility in accordance with Prudent Solar Industry Practice. Such obligations, in addition to Seller's obligations to maintain and repair the Solar Energy Facility, shall include, but not be limited to, maintaining the Solar Energy Facility in accordance with the terms of the Agreement, and taking all actions necessary or desirable to comply with the Applicable Legal Requirements. Subject to the foregoing, Seller shall have no obligation to repair or maintain the Property. Buyer shall conduct all required maintenance and make all repairs to the Property (including the Premises), interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, to the extent necessary to reasonably allow Seller to use the Premises for the Permitted Use. Buyer shall not, in the performance of its duties under this Section 2.4 or otherwise, unreasonably interfere with, disturb or otherwise affect the integrity or operation of the Solar Energy Facility.

b. Seller shall be responsible for maintaining the security fence surrounding the Premises so as to prevent access to the Premises by anyone other than Seller's and Buyer's authorized personnel.

c. Security. Notwithstanding Seller's obligation to maintain the security fence surrounding the Solar Energy Facility, Buyer shall take commercially reasonable measures to prevent Persons other than Seller's employees and agents from entering on or near the Premises, subject only to Buyer's rights of entry as set forth herein.

d. Utilities. Seller shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges.

e. Compliance With Laws. Seller, at Seller's expense, shall comply with all Applicable Legal Requirements.

2.5 Alterations. Seller shall have the right from time to time both before and after the completion of the Solar Energy Facility and at Seller's sole cost and expense to make additions, alterations and changes, structural or otherwise, in or to the Premises as are reasonably required to conduct the Permitted Use in compliance with the provisions of this License, subject, however, in all cases to the following:

a. Seller shall not commence or make any alteration which would tend to (i) materially change the general design, use, character or structure of the Solar Energy Facility, or (ii) reduce or impair, to any material extent, the use of the Solar Energy Facility for the generation of electricity, subject to applicable laws and safety standards (any such alteration, a "***Substantial Alteration***") without prior written notice to and consent from Buyer, which consent shall not be unreasonably conditioned, withheld or delayed.

b. Any Substantial Alteration shall be conducted under the supervision of a contractor, architect or engineer selected by Seller and approved in writing by Buyer, which approval shall not be unreasonably conditioned, withheld or delayed, and no such Substantial Alteration shall be made except in accordance with detailed plans and specifications prepared and approved in writing by such contractor, architect or engineer and by Buyer (Buyer's approval not to be unreasonably conditioned, withheld or delayed).

c. Any alteration or Substantial Alteration shall be made with reasonable dispatch (*Force Majeure* events excepted), in a good and workmanlike manner, and in compliance with all Permits and Applicable Legal Requirements.

d. At or prior to completion of any Substantial Alteration, Seller will provide Buyer with complete copies of any final plans and specifications therefore not previously provided.

2.6 No Liens on Premises. Seller shall not create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien or any mortgage upon the Premises, and Seller will not suffer any other matter or thing arising out of Seller's use and occupancy of the Premises whereby the estate, rights and interests of Buyer in the Premises or any part thereof might be impaired.

2.7 Discharge. If any mechanic's, laborer's or materialman's lien, or any mortgage, shall at any time be filed against the Premises as a result of Seller's activities, Seller, within ten (10) days after notice to Seller of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Seller shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Buyer may, but shall not be obligated to, discharge the same either

by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Buyer and costs and expenses reasonably incurred by Buyer in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Buyer's making of the payment of the cost and expenses, shall be paid by Seller to Buyer within ten (10) Business Days of Buyer's invoice therefore.

2.8 Taxes. Seller shall pay, in accordance with the terms of the Agreement, all property (real or personal) taxes assessed which are attributable to its ownership of the Solar Energy Facility (subject to the terms of Exhibit C to the Agreement and the other provisions of the Agreement).

ARTICLE III INSURANCE

3.1 Commercial General Liability Insurance. During the Term, and except to the extent otherwise required by Applicable Legal Requirements or by the Interconnection Agreement, Seller at its cost shall maintain commercial general liability insurance on the Premises that is written on an occurrence basis insuring against liability for bodily injury and property damage arising from the Permitted Use, the Solar Energy Facility, or Seller's use or occupancy of the Premises, in standard form with a general aggregate limit of not less than \$4,000,000, a products-completed operations aggregate limit of not less than \$2,000,000, and a per occurrence limit of not less than \$2,000,000 for bodily injury and property damage, with a commercially-reasonable deductible, and which shall include operations and contractual liability coverage, bodily injury liability, explosion and collapse hazard coverage, and products and completed liability coverage. The policy limits may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Buyer shall be listed as an additional insured on Seller's general liability policies on a primary, non-contributory basis, with the insurer waiving all rights of subrogation against Buyer.

3.2 Property Insurance – Personal Property. During the Term, Seller at its cost shall maintain on all of its personal property on or about the Premises and on the Permitted Improvements a policy of "all risk" property insurance in an amount equal to the full replacement value thereof, with a commercially-reasonable deductible, and containing a replacement cost coverage endorsement. Such insurance shall also include, if applicable, flood and earthquake perils in such amounts and with such deductibles as are approved by Buyer, which approval shall not be unreasonably conditioned, withheld or delayed.

3.3 Workers' Compensation Insurance. If applicable, during the Term, Seller shall at its cost maintain workers' compensation insurance and employer's liability insurance in accordance with the applicable requirements of federal and Massachusetts law.

3.4 Insurance Companies. All insurance required under this License shall be issued by insurance companies authorized to do business in the Commonwealth of Massachusetts, with a claims paying ability rating of A-, VIII, or better, and a financial class of V or better, as rated in the most recent edition of AM Best's Insurance Reports.

3.5 Policy Delivery, Payment Evidence. Concurrently with the execution and delivery of this Agreement and not less than thirty (30) days prior to the expiration dates of the policies furnished pursuant to this Article III, certificates of insurance shall be delivered by Seller to Buyer. All such certificates of insurance shall identify Buyer as an additional insured on Seller's commercial general liability policy.

3.6 Notice of Cancellation. Each certificate of insurance delivered hereunder, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty (30) days prior written notice to Buyer.

ARTICLE IV SURRENDER ON TERMINATION

4.1 Surrender and Removal of Property.

a. On the date that is the twentieth (20th) anniversary of the Full Operations Date (the "***Operation Termination Date***"), Seller shall peaceably and quietly leave, surrender and yield up unto Buyer the Premises.

b. Seller shall be required, at Seller's sole expense, within one hundred twenty (120) days after the Operation Termination Date to decommission the Solar Energy Facility, remove the Solar Energy Facility from the Premises and appurtenant areas, and return the Premises and appurtenant areas to approximately their original condition. Notwithstanding the foregoing, any foundations for the Solar Energy Facility may be left in place, provided that, for above ground-mounted systems, all bolts and other protrusions from such foundations are cut off at a minimum of three (3) feet below grade; roadway grading may remain in place provided that the roadway surfacing (if any) is removed and the remaining subgrade is de-compacted and revegetated. Furthermore, any other components of the Solar Energy Facility may be left in place, subject to the prior express written consent of Buyer, which consent shall not be unreasonably conditioned, withheld or delayed; and any other below ground components of the Solar Energy Facility shall be left in place at the election of Buyer.

i. Notwithstanding anything to the contrary contained elsewhere in this License, any waiver in whole or in part of the foregoing requirement to decommission and remove the Solar Energy Facility shall require the written approval of the Buyer (which requirement shall be deemed to be satisfied upon exercise of the Purchase Option in accordance with the Agreement). Unless Buyer exercises the Purchase Option under the Agreement, any property, improvements, or portion of Solar Energy Facility left on the Premises after the passage of one hundred twenty (120) days after the Operation Termination Date may, at the option of Buyer, be deemed to have been abandoned, and either may be retained by Buyer as its property, or may be disposed of in such manner as Buyer may see fit and at Seller's sole cost; provided, however, that Buyer's election to retain all or any portion of the Solar Energy Facility as its property shall relieve Seller from any liability for its failure to remove such Solar Energy Facility; and provided further, however, that the foregoing shall not apply to any property, improvements or Solar Energy Facility of Seller that are not timely removed if the failure to remove is caused by an

event of *Force Majeure* or the negligent acts or omissions of Buyer (in which in either case the time period for removal shall be extended on a day for day basis).

ii. Notwithstanding the foregoing, Seller shall not be required to perform any of the obligations under this subsection (b) in the event that Buyer, as Buyer, under the Agreement, exercises its right to acquire the Assets of Seller pursuant to the Agreement.

4.2 Title. In the event that Buyer elects to retain any portion of the Solar Energy Facility then existing on the Premises as Buyer's property pursuant to Section 4.1(b)(i) above, title to such portion of the Solar Energy Facility shall automatically vest in Buyer without the necessity of any deed, conveyance or bill of sale thereon.

ARTICLE V BUYER'S RIGHTS AND OBLIGATIONS

5.1 Quiet Enjoyment.

a. Buyer covenants that Seller shall quietly have, hold and enjoy the Premises throughout the Term and any extensions thereof. Buyer warrants and agrees that, throughout the Term and any extensions thereof:

i. any other uses of the Premises by Buyer or any third party shall not unreasonably interfere with the Permitted Use and the operational and solar requirements of the Solar Energy Facility; and

ii. Buyer shall, in good faith, use its best efforts to protect Seller's quiet enjoyment of its rights hereunder.

b. Buyer's failure to carry out any of its obligations and duties under this Section 5.1 shall constitute an Event of Default, and Seller shall be entitled to all of its rights and remedies with respect to such default as provided in the Agreement. Notwithstanding the foregoing, Buyer's exercise of its rights of self-help, entry and inspection to the extent contained herein shall not be considered a breach of the covenant of quiet enjoyment.

5.2 No Liens on Solar Energy Facility. The Solar Energy Facility may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Buyer, whether with Buyer's interest in the Property or otherwise, and Buyer shall not cause or permit the Solar Energy Facility or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Buyer. Furthermore, Buyer shall not create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien upon the Solar Energy Facility, except in accordance with and subject to the provisions of this License or the Agreement.

5.3 Inspection and Entry. During the course of construction and completion of the Solar Energy Facility and any Substantial Alteration thereto, Seller shall maintain all plans, shop drawings, and specifications relating to such construction which Buyer, its agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining

whether the work conforms to the provisions of the Agreement and this License. Buyer may, upon reasonable prior notice to Seller, and when accompanied by an employee or agent of Seller (unless Seller does not make such employee or agent available to Buyer), enter upon the secured portion(s) of the Premises for the purpose of ascertaining their condition or whether Seller is observing and performing the obligations assumed by it under this License, all without hindrance or molestation from Seller. Buyer shall also have the right to enter upon the Premises, upon reasonable prior notice to Seller, for the purpose of exercising its rights herein or for otherwise maintaining any real property or building which comprises all or any portion of the Premises. Buyer shall at all times comply with all reasonable safety and other operating procedures established by Seller, and with all Applicable Legal Requirements.

5.4 Buyer's Right to Cure – Rights, Costs and Damages. If Seller fails to make any payment required under the Agreement beyond the expiration of all applicable notice and grace periods, or shall default in the performance of any material covenant, term, provision, limitation, or condition contained in the Agreement beyond the expiration of all applicable notice and grace periods (hereafter, collectively, a “**Triggering Event**”), Buyer, without being under any obligation to do so and without waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Seller, (i) immediately upon notice in the case of Emergency (as defined in Section 5.5) or if necessary to protect public health or safety, or (ii) in any other case, only if Seller shall fail to make such payment or remedy such default within sixty (60) days after Buyer notifies Seller in writing of such default (or such longer period as may be required due to the nature of such default provided Seller has commenced and is diligently prosecuting a cure). Except in the case of an Emergency or other event that requires an immediate response, Buyer's performance of Seller's obligations is subordinate to the right of any Financier to first cure such Seller obligations under the Agreement.

5.5 Public Safety. Buyer shall, as promptly as possible, notify Seller of the occurrence of any event or the existence of any condition or circumstance that, in Buyer's reasonable judgment, poses an imminent threat or hazard to public health or safety (an “**Emergency**”). Buyer shall have the right (but not the obligation), to the extent permitted by Applicable Legal Requirements, to enter the Premises for the sole purpose of responding to the dangerous condition; provided that any actions taken by Buyer upon such entry shall be limited to those reasonably necessary to respond to the Emergency. Seller shall respond to such Emergency as promptly as possible (which period of time shall not exceed 48 hours), and take all measures necessary to address the condition that gave rise to the Emergency.

5.6 Buyer's Right to Repair Premises. If the Solar Energy Facility is mounted on a portion of the Premises that requires Buyer's repair, including, but not limited to, sub-surface piping repairs, Seller agrees that it shall bear the cost of moving the Solar Energy Facility, if necessary, once during the Term to allow Buyer to repair the Premises. This will include removing the Solar Energy Facility from the Premises (or a portion thereof, as applicable), storing the Solar Energy Facility components at Seller's expense or as arrangements allow for storage at the building, and re-installing the Solar Energy Facility as per the approved design and plans; provided, however, that (i) Buyer shall provide Seller with at least thirty (30) days' prior written notice of its intent to repair the Premises, (ii) Buyer shall complete all repair activities with thirty (30) days, weather permitting, and (iii) any repair of the Premises by Buyer shall be suitable to

support the continued operation of the Solar Energy Facility, as it existed and operated prior to such repair. Should Buyer's repair of the Premises exceed thirty (30) days, weather permitting (a "**Disruption Period**"), Buyer agrees to reimburse Seller for lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of the Net Energy or any reduced sales of SRECs, Net Energy Credits or Environmental Attributes during the Disruption Period. Seller agrees that it will defend, indemnify and hold harmless Buyer for the cost of any damages incurred as a result of Seller's removal, storage, and re-installation of the Solar Energy Facility.

5.7 Buyer Tools. Buyer may, during the progress of any work performed by Buyer under this License (including but not limited to Sections 2.4(a), 2.4(b), and 5.6), keep and store upon the Premises all necessary materials, tools, supplies and equipment, provided that Buyer shall use reasonable efforts to minimize the impact thereof on the normal operation of the Premises, and provided the risk of loss of such materials, tools, supplies, and equipment is that of Buyer unless such loss results from the negligence or intentional misconduct of Seller, or of Seller's agent, employee, or contractor. Buyer agrees to promptly remove such materials, tools, supplies, and equipment from the Premises upon completion of Buyer's work.

5.8 Lien of Mortgage; Subordination and Non-Disturbance Agreement. This License and Seller's rights hereunder shall not be subject or subordinate to the lien of any mortgage, deed of trust or other security agreement (collectively, a "**Mortgage**") now or hereafter affecting the Property. As of the Effective Date, Buyer represents and warrants that the Property is not subject to a Mortgage. Buyer shall not subject the Property to a Mortgage after the Effective Date without contemporaneously therewith procuring for the benefit of Seller a subordination and non-disturbance agreement, duly executed by the Property's mortgagee, substantially in the form attached hereto as Exhibit 1 (or with such changes thereto as the Parties may agree), affirming such subordination and Seller's right not to be disturbed by such mortgagee provided that Seller is not in default under this License following application of any cure or grace period (the "**Subordination and Non-Disturbance Agreement**"), which Subordination and Non-Disturbance Agreement shall promptly be recorded in the Bristol County Registry of Deeds. In any event, the lien of any Mortgage shall not cover the Solar Energy Facility, Seller's moveable trade fixtures or any personal property of Seller located in or on the Premises.

ARTICLE VI DAMAGE OR DESTRUCTION

6.1 Seller Repair and Restoration. If, at any time during the Term, the Solar Energy Facility shall be substantially damaged or destroyed and rendered inoperable by fire or other occurrence of any kind (other than as a result of Seller's negligence or intentional misconduct), Seller shall either (a) repair or replace the Solar Energy Facility at its sole cost and expense, or (b) elect to terminate the Agreement, in which case such termination shall be treated as a termination by Seller for *Force Majeure*, and Seller shall decommission and remove the Solar Energy Facility and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date, except as otherwise specified herein. Such removal, repair or replacement,

including such changes and alterations as aforementioned and including temporary repairs, are referred to in this Article as the “*Work*.”

6.2 Conditions of the Work.

a. Except as otherwise provided herein, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of Agreement and this License.

b. If the Work shall not have been commenced within one hundred eighty (180) days of the date of the casualty or other occurrence, or such longer period as may be reasonably required to adjust the insurance, achieve final plans and obtain all necessary Permits, or if such Work after commencement shall not proceed with due diligence (any *Force Majeure* event excepted), Buyer may treat such failure as an Event of Default by Seller and (if applicable) terminate the Agreement.

**ARTICLE VII
ENVIRONMENTAL CONDITIONS**

7.1 Seller’s Obligations With Respect to Hazardous Substances.

a. Seller shall not cause, suffer or allow any Hazardous Substances to be used, generated or stored on, under or at the Premises without first receiving Buyer’s written consent, which may be withheld in Buyer’s reasonable discretion, provided, however, that Seller may store and use at the Premises such Hazardous Substances as are customarily used to construct and maintain the Solar Energy Facility, so long as the same are stored, used and disposed of in compliance with Applicable Legal Requirements and the location of any such storage is approved by Buyer.

b. Seller shall use commercially reasonable efforts to minimize any risks from the Permitted Use and the Solar Energy Facility to the environment.

c. Storage of all oil and Hazardous Substances shall be in compliance with Applicable Legal Requirements. No storage tanks may be installed without Buyer’s consent, which may be withheld in its sole discretion.

7.2 Notices of Release of Hazardous Substances. Seller shall promptly notify Buyer of all Releases (as such term is defined in M.G.L. c. 21E) of Hazardous Substances on the Premises arising from the Solar Energy Facility or the performance of Seller’s obligations under the Agreement and this License (such oral notification to promptly be followed with a written notification), including, without limitation, all Releases of Hazardous Substances for which Seller has an obligation to report under M.G.L. c. 21E or other Applicable Legal Requirements, and all material notices, orders, fines, or communications of any kind received by Seller from any Governmental Authority or third party concerning the presence or potential presence of Hazardous Substances on the Premises, the migration or suspected migration of Hazardous Substances from the Premises to other property, or the migration or suspected migration of Hazardous Substances from other property to the Premises.

[signatures follow]

IN WITNESS WHEREOF, the Parties have executed this License under seal as of the Effective Date.

BUYER

SELLER

City of New Bedford, Massachusetts
LLC

CES NBHS SOLAR,

By: _____
Jonathan F. Mitchell, Mayor

By: _____

Name: _____

By: _____
Jonathan F. Mitchell, Chairman
New Bedford School Committee

Approved as to Form:

By: _____
John A. Markey, Jr., Esq.
City Solicitor

Agreement as to Procurement:

By: _____
Shannon Shreve, Esq.

By: _____
Debra Travers
Procurement Officer

EXHIBIT F

**FORM OF SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“*Agreement*”) is entered into as of _____ (the “*Effective Date*”) by and between [LENDER] (together with any other holder of the Loan (as defined below) and its/their respective successors and assigns, the “*Mortgagee*”) and **CES NBHS SOLAR, LLC** (together with its successors and assigns, “*CES*”), with reference to the following facts:

A. The City of New Bedford, a municipal corporation (the “*Owner*”), owns a fee interest in the real property described on Schedule I attached hereto (the “*Property*”).

B. Mortgagee has made or intends to make a loan (the “*Loan*”) to Owner.

C. To secure the Loan, Owner has or will encumber the Property by entering into a mortgage or deed of trust in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “*Mortgage*”) to be recorded in the land records.

D. CES occupies a portion of the Property (the “*Licensed Premises*”) pursuant to the Site License attached as Exhibit E to that certain Solar (PV) Generation Net Metering Power Sales Agreement dated as of _____ between Owner, as licensor, and CES, as licensee (as amended and in effect on the date hereof, the “*License*”).

E. CES and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, CES and Mortgagee agree as follows:

1. **Definitions.** Capitalized terms used and not defined herein have the meanings set forth in the License. For purposes of this Agreement, the following terms shall have the following meanings:

“*Foreclosure Event*” means: (i) any foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which a Mortgagee becomes the owner of the Property; or (iii) delivery by Owner to Mortgagee (or its designee or nominee) of a deed or other conveyance of Owner’s interest in the Property in lieu of any of the foregoing.

“*Former Owner*” means Owner and any other party that was Owner under the License at any time before the occurrence of any attornment under this Agreement.

“**Offset Right**” means any right or alleged right of CES to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Owner pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against CES’s payment obligations or performance of CES’s other obligations under the License, arising (whether under the License or under applicable law) from Owner’s breach or default under the License.

“**Successor Owner**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

“**Termination Right**” means any right of CES to cancel or terminate the License arising (whether under the License or under applicable law) from Owner’s breach or default under the License.

2. **Subordination.** The License, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the terms conditions and provisions of the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. **Nondisturbance, Recognition and Attornment.**

a. **No Exercise of Mortgage Remedies Against CES.** So long as the CES is not in default under the License beyond any applicable grace or cure periods (an “**Event of Default**”), Mortgagee shall not (i) terminate or disturb CES’s possession of the Licensed Premises under the License, or (ii) name or join CES as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires CES to be made a party thereto as a condition to proceeding against Owner or prosecuting such rights and remedies. In the latter case, Mortgagee may join CES as a defendant in such action only for such purpose and not to terminate the License or otherwise adversely affect CES’s rights under the License or this Agreement in such action.

b. **Recognition and Attornment.** Upon a Successor Owner taking title to the Property (i) such Successor Owner shall be bound to CES under all the terms and conditions of the License; (ii) CES shall recognize and attorn to such Successor Owner as CES’s direct licensor under the License; and (iii) the License shall continue in full force and effect as a direct license, in accordance with its terms, between such Successor Owner and CES.

c. **Further Documentation.** The provisions of this Article 3 shall be effective and self-operative without any need for Successor Owner or CES to execute any further documents. CES and Successor Owner shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within thirty (30) days of such request.

4. **Mortgagee’s Right to Cure.** Notwithstanding anything to the contrary in the License or this Agreement, before exercising any Offset Right or Termination Right:

d. Notice to Mortgagee. CES shall provide Mortgagee with notice of the breach or default by Owner giving rise to same (the “**Default Notice**”) and, thereafter, the opportunity to cure such breach or default as provided for below.

e. Mortgagee’s Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Owner under the License in which to cure the breach or default by Owner. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Owner, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

5. Miscellaneous.

f. Notices. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postage pre-paid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

If to the Mortgagee, at:

[_____
[_____
[_____
[_____]

If to CES, at:

CES NBHS Solar, LLC
c/o Consolidated Edison Solutions, Inc.
100 Summit Lake Drive
Valhalla, NY 10595
Attn: Vice President
Tel: 914-286-7095
Fax: 914-686-1413

with a copy to:

CES NBHS Solar, LLC
c/o Consolidated Edison Solutions, Inc.
100 Summit Lake Drive

Valhalla, NY 10595
Attn: General Counsel
Tel: 914-286- 7041
Fax: 914-686-1413

g. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Owner, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to CES of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

h. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and CES regarding the subordination of the License to the Mortgage and the rights and obligations of CES and Mortgagee as to the subject matter of this Agreement.

i. Interaction with License and with Mortgage. This Agreement constitutes full compliance with any provisions in the License that provide for subordination of the License to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

j. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligation to CES with respect to the License. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Owner provided for in this Agreement.

k. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State in which the Licensed Premises are located, excluding such State's principles of conflict of laws.

l. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

m. Due Authorization. Each party hereto represents to the other that it has full authority to enter into this Agreement, which has been duly authorized by all necessary action on the part of such party.

i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee and CES have caused this Agreement to be executed as of the date first above written.

MORTGAGEE:

[_____]

By: _____
Name:
Title:

CES:

CES NBHS SOLAR, LLC

By: _____
Name:
Title:

OWNER'S CONSENT

Owner consents and agrees to the foregoing Agreement, which was entered into at Owner's request. The foregoing Agreement shall not alter, waive or diminish any of Owner's rights or obligations under the Mortgage or the License. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with CES. Owner is not a party to the above Agreement.

OWNER:

THE CITY OF NEW BEDFORD

By: _____

Name:

Title:

Dated: _____, _____

STATE OF _____)
) ss.
COUNTY OF _____)

On the ___ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On the ___ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public