

**INTER-GOVERNMENTAL NET METERING CREDIT PURCHASE AGREEMENT
BETWEEN THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND THE TOWN OF CHILMARK**

This Inter-Governmental Net Metering Credit Purchase Agreement (“Agreement”) is entered into this ___ day of _____, 2016 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Seller”) and the Town of Chilmark, Massachusetts (“Buyer”).

RECITALS

A. Seller is engaged in renewable energy initiatives located on the Cape and Vineyard through distributed generation (“DG”) projects, including procuring and/or selling long-term electric supply or other energy-related goods or services, for the benefit of its Cooperative Members.

B. Developer (as defined herein) plans to construct a ~ 2,250 kW AC solar photovoltaic project (the “Facility”) at the Property (as defined in Exhibit A hereto).

C. Pursuant to a separate Net Metering Credit Purchase Agreement between Developer and Seller (“Developer CPA”), Developer desires to deliver to the Host Customer (as defined herein) all of the electricity generated by the Facility during the Term and Seller desires to pay for Net Metering Credits associated with a portion of the electricity generated by the Facility during the Term and receive from the Host Customer an allocation of a corresponding portion of the Net Metering Credits so that Seller may use the Net Metering Credits to offset electric utility bills associated with certain Accounts (as defined herein) of Buyer and other participating Cooperative Members or other governmental entities.

D. Buyer has reserved a portion of its total municipal load in connection with Facility (as set forth in Exhibit B hereto). Buyer desires to purchase Buyer’s Percentage Share (as determined by and set forth in Exhibit B of the Agreement) of the Production Share (as defined in Exhibit A of the Agreement). The remaining percentage of the Production Share shall be sold by Seller to other participating Cooperative Members or other governmental entities.

E. Seller is willing to sell to Buyer Buyer’s Percentage Share of the Production Share, if any, generated by the Facility for the Term set forth herein and subject to the terms and conditions and at the prices set forth in this Agreement.

F. The Production Share generated by the Facility shall be net metered pursuant to St. 2008, c. 169, §78, the Green Communities Act, the applicable rules and regulations promulgated by the Department of Public Utilities (the “Department”), and the Tariffs (as defined herein).

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE I: DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Accounts” shall have the meaning set forth in Exhibit C hereto.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Property or the Facility, or any part thereof or to any condition or use thereof, and all licenses, Permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the use and occupancy of the Property for the installation, operation, ownership, maintenance and removal of the Facility, as well as the selling and purchasing of power or Net Metering Credits therefrom.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Buyer’s Allocation” has the meaning set forth in Exhibit B hereto.

“Buyer’s kWh Reservation” has the meaning set forth in Exhibit B hereto.

“Buyer’s Percentage Share” has the meaning set forth in Exhibit B hereto.

“Commercial Operation” means, with respect to the Facility, that the Facility is ready for regular, daily operation, has been interconnected to the LDC system, has been accepted by the LDC (to the extent required) and is capable of producing Energy, all as evidenced by the LDC’s issuance of a notice of authorization to interconnect with respect to the Facility.

“Commercial Operation Date” means the first day on which the Facility achieves Commercial Operation, as certified in writing by Developer to Seller in a notice of Commercial Operation Date.

“Commercially Reasonable” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics, and Applicable Legal Requirements.

“Cooperative Member” means any municipality, county or political subdivision thereof, or other body politic, that has duly joined Seller as a cooperative member. Although Buyer is a Cooperative member, Buyer shall be excluded from this definition under this Agreement.

“Department” means the Massachusetts Department of Public Utilities or its successors.

“Developer” means Dartmouth Solar Farms, LLC or any assignee or successor.

“Developer Meter” means the revenue quality meter installed by Developer at the Facility needed for the registration, recording and transmission of information regarding the amount of Energy generated by the Facility.

“Developer CPA” has the meaning set forth in the Recitals.

“Effective Date” means the date set forth in the introductory paragraph of the Agreement.

“Energy” means the amount of electricity generated over a period of time by the Facility, expressed in terms of kWh or MWh.

“Environmental Attributes” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facility and/or its electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (v) tax credits, incentives or depreciation allowances established under any federal or state law, and (vi) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of wind generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facility and/or its electricity generation.

“Event of Default” means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

“Event of Termination” means any event of termination as defined in Section 8.1 of this Agreement.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. 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. Notwithstanding anything in the Agreement to the contrary, *Force Majeure* shall not mean: (a) inclement weather affecting construction, start-up, operation or decommissioning of the Facility; (b) unavailability of sun; (c) unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to a qualifying event of *Force Majeure*; (d) any nonpayment under this Agreement or any third party agreement; or (e) economic hardship of either Party. Force Majeure shall include Force Majeure claims by Developer under the definition of the term under the Developer CPA.

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, excluding Seller and any Cooperative Members, including, without limitation, Buyer.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), charges, emission allowance costs, duties, tariffs, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Energy or this Agreement.

“Host Customer” has the meaning given this term in the Net Metering Rules.

“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 mutually acceptable to both the Seller and 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” means the New England independent system operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as amended, superseded or restated from time to time.

“kW” means Kilowatt.

“kWh” means Kilowatt hour.

“Metering Device” means the meter furnished and installed by the LDC for the purpose of measuring the electricity delivered by the LDC to the Facility and delivered by the Facility to the LDC.

“**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 Facility in excess of any Energy consumed by the Facility as metered in kWh at the Meter, and in conformance with Applicable Law and the Tariff.

“**Net Metering**” shall have the meaning set forth in the Net Metering Rules.

“**Net Metering Credit(s)**” means the monetary value of the excess electricity generated by a net metering facility, as currently stated as of the Effective Date under “Net Metering Credits” in the Tariff, and is calculated as of the Effective Date by the LDC according to 220 C.M.R. 18:04 and the Tariff §1.06.

“**Net Metering Rules**” means, collectively and as amended from time to time, the Massachusetts net metering statute, M.G.L. c. 164, §§ 138 – 140, the Massachusetts net metering regulations, 220 C.M.R. 18.00 *et seq.*, orders issued by the Department relating to Net Metering and the associated net metering tariff of the Distribution Company.

“**Parties**” means Buyer and Seller collectively, and their respective successors and permitted assignees.

“**Party**” means Buyer or Seller individually, and their respective successors and permitted assignees.

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

“**Person**” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

~~“**Prime Rate**” means the rate published from time to time in the “Money Rates” section of *The Wall Street Journal*, as the prime lending rate. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.~~

“**Production Share**” shall have the meaning set forth in Exhibit A.

“**Public Cap Allocation**” means an assurance that a Host Customer will receive Net Metering Services (as defined in the Net Metering Rules) within the Public Cap (as defined in the Net Metering Rules) upon the Host Customer’s receipt of notice of authorization to interconnect from the LDC.

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

“**Term**” has the meaning set forth in Article IV (Term).

“**Termination Date**” means the earlier to occur of: (a) the last day of the Term; or (b) the effective date of any earlier termination of this Agreement pursuant to the terms hereof.

ARTICLE II: OBLIGATION TO MODIFY AGREEMENT

2.1 Obligation to Modify Agreement Pursuant to Rules and Regulations Under the Green Communities Act or other Actions by Governmental Authority. Upon implementation by the Department or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding Net Metering, the Parties shall be obligated to amend this Agreement to conform to such rule(s) and/or regulation(s) to the extent that such amendments are Commercially Reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

ARTICLE III: PURCHASE AND SALE

3.1 Sale and Purchase.

(a) Subject to Developer CPA Section 4.1 (Net Metering as Condition Precedent), and Article IX (Force Majeure), Buyer shall purchase and Seller shall sell Buyer’s Percentage Share of the Production Share generated by the Facility, during the Term as specified in Exhibits A and B hereto.

(b) Subject to Section 3.3, Buyer and Seller acknowledge that Seller shall not be obligated to deliver a certain amount of Net Metering Credits or Production Share from the Facility.

(c) Buyer shall not enter into any other energy agreements that would interfere with Buyer’s ability to take Buyer’s Percentage Share of the Production Share under this Agreement.

(d) Pursuant to M.G.L. c. 40, §4A, Buyer shall not be exempt from liability pursuant to M.G.L. c. 44, §31.

3.2 [RESERVED].

3.3 Production Shortfall Damages. Buyer and Seller acknowledge that, pursuant to the Developer CPA, if Seller receives a payment or credit for production shortfall damages for the

Facility, Seller shall flow such payment or credit through to Buyer, as applicable, based on Buyer's Percentage Share.

3.4 Environmental Attributes and Capacity. The Parties acknowledge that, other than the Net Metering Credits that are allocated to Buyer's Accounts under the Net Metering Rules, Environmental Attributes and any rights or credits relating to the generating capacity of the Facility shall remain the property of Developer and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Developer in its sole discretion and for its sole benefit. Buyer shall, upon Seller's request as required by Seller pursuant to the Developer CPA, take whatever actions are reasonably necessary from time to time in order for the Developer to claim the benefits of all Environmental Attributes and capacity rights or credits other than the Net Metering Credits allocated to the Accounts.

3.5 Net Metering Credits. Pursuant to Exhibit C hereto, Buyer shall provide to Seller the Accounts to be listed on Schedule Z for the Interconnection Agreement for the Facility.

(a) For any Net Metering Credits associated with the Production Share that are allocated, Buyer shall be allocated by the LDC the Net Metering Credits produced by such DG Projects to the Accounts in accordance with Buyer's Percentage Share of the Production Share.

(b) If the LDC elects to purchase rather than allocate Net Metering Credits for the Facility and Seller receives the value of such Net Metering Credits from Host Customer or Developer, then Seller shall use Commercially Reasonable efforts to deliver to Buyer the Net Metering Credit value from the Facility equal to Buyer's Percentage Share of the Production Share for the Facility.

(c) Regardless of whether Buyer receives an allocation of Net Metering Credits pursuant to Section 3.5(a) or whether Buyer receives a payment for Buyer's Percentage Share of the value of the Net Metering Credits purchased by the LDC, Buyer must pay the price for Production Share as set forth in Exhibit B hereto.

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

3.7 Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of the Net Metering Credits are to be exempted from or not subject to one or more Governmental Charges, either Party shall, promptly upon the other Party's request therefore, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion.

ARTICLE IV: TERM

4.1 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall end at the earlier of 11:59 PM on the day preceding the twenty fifth (25th) anniversary of the Effective Date, or such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

ARTICLE V: METERING AND BILLING

5.1 **Billing.** As soon as practicable after Seller's receipt of an invoice from Developer in accordance with Section 6.1(a) of the Developer CPA, Seller shall calculate the amount due and payable to Seller pursuant to Exhibits A and B hereto, with respect to the immediately preceding month (or immediately preceding Billing Period (as such term is defined in the Tariff) for the Facility, and shall forward to Buyer an invoice, including such calculation, with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month or Billing Period. Buyer acknowledges that in accordance with Section 6.1(a) of the Developer CPA, Seller's invoice to Buyer under this Section 5.1 will occur after the LDC issues a special ledger bill to the Host Customer that identifies the Net Metering Credits associated with Buyer's Percentage Share to Buyer's Accounts for the Net Metering Credits from the Facility's prior Billing Period(s). The Parties acknowledge that the LDC's allocation of the Net Metering Credits to Buyer's Accounts will happen within a matter of days of the LDC's issuance of the special ledger bill to the Host Customer. In the event that the LDC elects to purchase Net Metering Credits from the Host Customer for the Facility, Buyer and Seller acknowledge and agree that rather than send Buyer an invoice under this Section 5.1 for a particular Billing Period, Seller will deliver to Buyer the Net Savings attributable to Buyer for Buyer's Percentage Share of the Net Metering Credits associated with the Facility for such Billing Period. For purposes of this Section 5.1, Net Savings shall mean the difference between the dollar value of the Net Metering Credits associated with Buyer's Percentage Share for an LDC Billing Period and the Price set forth in Exhibit B for Net Metering Credits associated with Buyer's Percentage share for such LDC Billing Period. Seller shall remit the Net Savings to Buyer as soon as practicable upon receipt of Seller's net savings remitted by the Developer as set forth in Section 6.1(a) of the Developer CPA. Seller shall also provide Buyer with sufficient detail for Buyer to verify Seller's calculation of the Net Savings. For the avoidance of doubt, if Seller remits Net Savings to Buyer rather than issuing an invoice under this Section 5.1, Buyer shall have no obligation to remit payment to Seller under Section 5.2.

5.2 **Payment.**

(a) Within fifteen (15) days of the receipt of Seller's invoice pursuant to Section 5.1 (Billing), Buyer shall pay Seller any amounts due and payable hereunder for Buyer's Percentage Share of the Production Share delivered or allocated to Buyer during the prior month. All such invoices shall be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Seller.

(b) At Seller's direction, Buyer shall issue the payment for Net Metering Credits to the account for the Master Lockbox and Security Agreement set forth in Section 6.2 of the Developer CPA, as identified by Seller.

5.3 Metering.

(a) The Parties acknowledge that Developer is responsible under the Developer CPA to arrange for the LDC to furnish and install the Metering Device and that Developer is responsible for arranging compliance with any LDC customer requirements relating to the LDC access to the Metering Device. The Parties further acknowledge that Seller may, in accordance with Section 6.5 of the Developer CPA, make a reasonable request to Developer to seek to arrange for testing by the LDC of the accuracy of the Metering Device to investigate and remedy any apparent inaccuracy of the Metering Device. Buyer may reasonably request that Seller make such request to Developer in accordance with the Developer CPA, provided that, in the event that the LDC undertakes a test of the Meter due to Buyer's request to Seller, and such test is accurate within the margin allowed by the applicable criteria in the Tariff, Buyer shall pay for the reasonable costs of Developer attributable to such Meter test.

(b) In the event that the LDC Metering Device(s) is for any reason out of service or fails to register, and as a result, the LDC refuses to allocate in accordance with Schedule Z or otherwise to purchase the Net Metering Credits associated with the Production Share generated during that affected period, Seller shall have no obligation to Buyer with respect to those Net Metering Credits.

5.4 Dispute. If a Party, in good faith, disputes an invoice, as described in this Article V, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article V, the Parties shall follow the procedure set forth in Article X (Dispute Resolution; Governing Law).

ARTICLE VI: PARTIES' OBLIGATIONS

6.1 Seller's Obligations.

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

(b) For the duration of the Term, Seller shall provide Buyer with access to information regarding the operations of or other data concerning the Facility.

(c) For the duration of the Term, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Facility may be mechanically inoperable for more than a seven (7) day period.

6.2 Buyer's Obligations.

(a) Buyer shall exercise reasonable efforts to respond to requests of Developer in connection with Developer's financing of the Facility, provided that Buyer shall be under no obligation to enter into an Agreement that would materially adversely affect the Buyer.

(b) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any Permit, license or similar authorization necessary for the Project, including, without limitation, assisting Seller with the Interconnection Agreement required by the LDC for Net Metering, in particular Schedule Z.

(c) Buyer shall exercise reasonable efforts to ensure that public statements made by or on behalf of Buyer accurately reflect the ownership of Environmental Attributes under this Agreement.

(d) Buyer shall cooperate fully in ~~the~~providing such information to Developer and Seller in connection with Developer's preparation of documents related to Developer's Public Cap Allocation.

(e) Buyer shall exercise good faith efforts to arrange for the charges for its electricity purchases from competitive electricity suppliers (if any) to be billed through its LDC invoices.

6.3 Net Metering.

(a) Each Party's obligations under this Agreement are subject to the Facility qualifying for Net Metering under the Net Metering Rules.

(b) Subject to the provisions of this Agreement, Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the Facility to be eligible for and participate in Net Metering.

(c) So long as any such amendment will materially benefit a Party without material detriment to the other Party, 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 ensure that the Facility is eligible for Net Metering.

ARTICLE VII: REPRESENTATIONS AND WARRANTIES

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

- (a) Seller has full legal capacity to enter into the Agreement;
- (b) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of Seller has full authority to do so and to fully bind Seller; and
- (c) Seller knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of the Agreement or Seller's ability to carry out its obligations under the Agreement.

7.2 Buyer's Representations and Warranties. As of the Effective Date of the Agreement, Buyer represents and warrants to Seller as follows:

- (a) Buyer has full legal capacity to enter into the Agreement;
- (b) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer; and
- (c) Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of the Agreement or Buyer's ability to carry out its obligations under the Agreement.

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES

8.1 Termination. Subject to Section 8.4 (*Force Majeure*), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Either Party may terminate the Agreement in the event that either Developer or Seller has elected to terminate the Developer CPA in accordance with Section 8.2 (*Force Majeure*) of the Developer CPA. Seller shall promptly deliver to Buyer copies of any notices of termination of the Developer CPA issued or received by Seller.
- (b) Seller may terminate the Agreement in the event of an Event of Default by Buyer pursuant to Section 8.2 (Events of Default by Buyer).

(c) In the event that the Developer CPA is terminated, Seller may terminate this Agreement, and may exercise any other remedy provided for in this Agreement or otherwise allowed by law.

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

(a) Buyer breaches any curable non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) days after notification by Seller of the breach.

(b) Buyer fails to make any payment due under the Agreement within forty-five (45) days after such payment is due unless such payment is contested.

(c) If any material representation or warranty made by Buyer in Article VII (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and Buyer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within twenty one (21) Business Days of written notice from Seller.

(d) Any other curable material breach of the Agreement by Buyer not specifically enumerated above, which Buyer fails to cure within thirty (30) days after notification by Seller of the breach.

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Events of Default in this Section 8.2 are subject to, among other things, specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.3 Events of Default by Seller. It shall constitute an Event of Default by Seller if Seller breaches any material obligation under the Agreement that proves to have a material adverse effect on Buyer or Seller and fails to cure the breach within thirty (30) Business Days after notification by Buyer of the breach. Events of Default in this Section 8.3 are subject to specific performance and monetary damages pursuant to Section 8.5.

8.4 Force Majeure. Seller shall be excused from performance of its obligations under the terms of this Agreement to the extent that Developer is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Developer CPA and Seller gives notice and details of the Force Majeure to Buyer as soon as practicable of Developer's non-performance (and in any event within five (5) Business Days after the Force Majeure first prevents performance by Developer), then Seller will be excused from the performance of Seller's obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). During the period in which, and to the extent that, obligations of Seller are excused under this section, Buyer will not be required to perform or resume performance of its obligations to Seller corresponding to the obligations of Seller excused by Force Majeure.

8.5 Remedies.

(a) Remedies for Event of Default. If at any time an Event of Default with respect to a defaulting Party has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or applicable law, shall have the right to (i) withhold any payments due to the defaulting Party under this Agreement, (ii) suspend performance due to the defaulting Party under this Agreement, and (iii) exercise all other rights and remedies available at law or in equity to the non-defaulting Party, including recovery of all reasonably foreseeable damages, whether direct or indirect. For Seller, such damages may include, without limitation, lost revenues in connection with any failure by Buyer to purchase Buyer's Percentage Share of the Production Share from Seller hereunder in accordance with the terms hereof. In addition and without limiting the foregoing, if Seller is the non-defaulting Party, Seller shall have the right to sell Buyer's Percentage Share of the Production Share produced by the Project to persons other than Buyer and recover from Buyer any loss in revenues resulting from such sales. For Buyer, such damages shall include, without limitation, any and all damages available at law or equity. Each Party agrees that it has a duty to exercise Commercially Reasonable efforts to mitigate damages that it may incur as a result of the other Party's default under this Agreement.

(b) The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

(c) Except as expressly provided in this Agreement, it is specifically agreed and understood that neither Party will be responsible to the other for any special or punitive damages whatsoever arising out of this Agreement or anything done in connection herewith. This Section 8.5(c) shall apply whether any such damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty or otherwise.

~~(d)~~ ~~(d)~~—After the Termination Date of the Agreement, Buyer shall have no further obligation to purchase Buyer's Percentage Share of the Production Share from the Project or to make any payment whatsoever under the Agreement, except for payments for obligations arising or accruing prior to the Termination Date. After the Termination Date, the Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the Project, subject to Section 11.10 (Survival).

~~(d)~~(e) Limitation on Warranties.—Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied. Without limiting the foregoing, Seller does not warrant or guarantee the amount of Energy or Production Share to be generated by the Project.

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ARTICLE IX: ASSIGNMENT

9.1 No Assignment Without Permission. Section 10.4 of the Developer CPA requires Developer's consent for the assignment or other transfer of this Agreement. Subject to that requirement and the following, the rights and obligations created by the Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto:

(a) Seller Assignment. Seller may assign, subcontract or delegate all or a portion of its rights, privileges or obligations under the Agreement to any Person, subject to the prior written approval of Buyer, such consent not to be unreasonably withheld; provided that prior notice to or consent of Buyer shall not be required for an assignment by Seller to any of Seller's individual Cooperative Members or individual members of the Cape Light Compact.

(b) Buyer Assignment. Buyer shall not assign, subcontract or delegate its rights, privileges or obligations under the Agreement without the prior written approval of Seller, such consent not to be unreasonably withheld or delayed.

Notice of any assignment that does not require prior written approval shall be provided to the other Party as soon as practicable. If a Party fails to obtain prior written approval of the non-assigning Party to the extent required for an assignment under this Section 9.1, such assignment is voidable by such non-assigning Party.

ARTICLE X: DISPUTE RESOLUTION; GOVERNING LAW

10.1 Dispute Resolution. Unless otherwise expressly provided for in the Agreement, the dispute resolution procedures of this Article X shall be the exclusive mechanism to resolve disputes arising under the Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding the Agreement. Any dispute that arises under or with respect to the Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for

judicial enforcement shall be Barnstable County Superior Court, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of the Agreement.

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

ARTICLE XI: MISCELLANEOUS

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

If to Buyer:

TOWN OF CHILMARK
401 Middle Road
PO Box 119
Chilmark, MA 02535-0119
Attn: Town Manager
Tel: 508-645-2101

Email: execsec@chilmarkma.gov

If to Seller:

Cape & Vineyard Electric Cooperative, Inc.
P.O. Box 427/SCH
Barnstable, MA 02630
Attn: President
Tel: (508) 375-6891
Fax: (508) 362-4136

with a copy to:

Jeffrey M. Bernstein, Esq.
BCK Law, P.C.
271 Waverley Oaks Road, Suite 203
Waltham, MA 02452
Tel: (617) 244-9500
Fax: (802) 419-8283
Email: jbernstein@bck.com

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the Agreement; (b) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the Agreement; or (c) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the Agreement. Either Party may change its address and contact Person for the purposes of this Section 11.1 by giving notice thereof in the manner required herein.

11.2 Entire Agreement; Amendments; Binding Effect. The Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. The Agreement may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto. The Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

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

11.4 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

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

11.6 Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of the Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

11.7 Severability. If any section, phrase or portion of the Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of the Agreement and the benefits to the Parties are not substantially impaired.

11.8 Further Assurances. From time to time and at any time at and after the execution of the

Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the Agreement.

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

11.10 Survival. Termination of the Agreement for any reason shall not relieve Seller or Buyer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article X (Dispute Resolution; Governing Law), which shall survive the expiration or termination of the Agreement.

11.11 Counterparts; Scanned Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

11.12 Reports; Compliance with M.G.L. c. 40, Section 4A. Seller shall prepare an annual report which shall be provided, without charge, to Buyer and each of its Cooperative Members no later than sixty (60) days after the close of its fiscal year. Seller shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. Seller agrees that it will perform regular audits of such records. Periodic financial statements shall be issued to Buyer and all Cooperative Members. Seller's officers responsible for this Agreement shall give appropriate performance bonds. Seller shall comply with all other applicable provisions of M.G.L. c. 40, §4A.

11.13 Special Terms and Conditions Exhibit. Buyer understands and agrees that this Agreement is Seller's standard form inter-governmental agreement for project development, and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions, such terms and conditions will be set forth in Exhibit D attached here (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

11.14 Developer CPA. A form of the Developer CPA between the Developer and Seller is attached hereto as Exhibit E and hereby incorporated by reference into this Agreement.

[Signature page to follow.]

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

SELLER

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

By: _____
Name: _____
Title: President

By: _____
Name: _____
Title: Vice-President

P.O. Box 427
Superior Court House
Barnstable, MA 02630
(508) 375-6891 (voice)
(508) 362-4166 (fax)

BUYER

TOWN OF CHILMARK

By: _____
Name: _____
Title: _____

401 Middle Road
PO Box 119
Chilmark, MA 02535-0119

List of Exhibits to Agreement

- Exhibit A – Description of the Facility and Production Share
- Exhibit B – Buyer’s Reservation of Municipal Load, Buyer’s Percentage Share, and Price
- Exhibit C – Buyer’s Accounts
- Exhibit D – Special Terms and Conditions
- Exhibit E – Form of Developer CPA

EXHIBIT A

DESCRIPTION OF THE FACILITY AND PRODUCTION SHARE

- (I) Definition of Property. The Facility shall consist of a 2,250 kW (AC) solar photovoltaic array. The Property shall be the real property located at 661 Hixville Road, Dartmouth, Massachusetts. The array will be a ground-mounted system and will use inverters to connect direct current (DC) electricity into alternating current (AC) electricity suitable for feeding in the electric grid, through an LDC metering device.
- (II) Definition of Production Share. “Production Share” shall be Seller’s Allocation Percentage of the Net Metering Credits generated by the Facility and allocated to Seller from Host Customer pursuant to the Developer PPA. “Seller’s Allocation Percentage” shall have the same meaning as the term “Buyer’s Allocation Percentage” as defined in the Developer CPA.
- (III) Amendment of this Exhibit. Subject to the terms and provisions of Exhibit A, Seller shall have the right to amend this exhibit from time to time as reasonably necessary throughout the Term of this Agreement to modify its Production Share as permitted or required by the Developer CPA.

EXHIBIT B

BUYER'S RESERVATION OF MUNICIPAL LOAD, BUYER'S PERCENTAGE SHARE, AND PRICE

(a) Subject to the provisions below and pursuant to Section 3.1(c), Buyer has reserved 30,000 kWh of its municipal load in connection with the Facility ("Buyer's kWh Reservation"). Subject to the provisions below, Buyer shall be allocated Net Metering Credits associated with a projected 16,921 kWh of Net Energy ("Buyer's Allocation") from the Facility, which equals ~~seven point sixty nine one and 93/100~~ percent (1.93%) of the total Production Share ("Buyer's Percentage Share"), priced as set forth below. The Parties acknowledge and agree that the actual Buyer's Percentage Share received by Buyer may be slightly higher or lower based on administration of the distribution of all percentage shares from the Facility (including Buyer's Percentage Share) in accordance with the LDC's accounting and Schedule Z requirements, provided that any difference between Buyer's Percentage Share and the percentage actually received by Buyer will be *de minimis*.

Pursuant to Sections 5.1 and 5.2, for any month during the Term when Production Share is delivered to Seller, the price shall be \$0.10 per kWh of Net Energy for which a Net Metering Credit is allocated to Buyer (the "**Price**"), provided however, that Buyer's Price shall also include an additional administrative adder of \$0.01 per kWh of Net Energy for which a Net Metering Credit is allocated to Buyer. Seller will invoice Buyer for the administrative adder on a quarterly basis, providing Buyer with an invoice that contains sufficient detail for Buyer to verify the calculation and the total amount due and payable for the administrative adder. Buyer shall pay Seller for the administrative adder within twenty-one (21) days of receipt of Seller's invoice. All such invoices shall be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Seller. For the avoidance of doubt, Buyer's quarterly payments to Seller for the administrative adder will not be paid into the financial account associated with the Master Lockbox and Security Agreement referred to in Section 5.2(b) of this Agreement.

Buyer and Seller acknowledge that Buyer's Allocation above is based on the projected annual Net Energy from Seller's total Production Share from the Facility and that in any given year, the actual production of Net Energy from the Facility may be more or less than projected. For this reason, the projected Buyer's Allocation shown above may change from time to time depending upon the actual production of Net Energy from the Facility. provided that, in no event shall Buyer be obligated to purchase more than Buyer's kWh Reservation. In addition, pursuant to Section III of Exhibit A, Buyer's Allocation may change in the event that there is an amendment to Seller's Production Share under the Developer CPA. Seller will not need to amend this Exhibit B upon a change to Buyer's Allocation.

(b) The Term for provision of Production Share under the Agreement shall be as provided in Article IV (Term).

(c) The price does not include any applicable Governmental Charges.

(d) Buyer's actual kWh of Production Share shall be determined on an annual basis according to Buyer's Percentage Share; provided that, in no event shall Buyer be obligated to purchase more than Buyer's kWh Reservation as defined in (a) above.

(e) Seller may amend Buyer's Percentage Share of the total Production Share under this Agreement in the event that: (i) a Cooperative Member or other purchaser that initially requested to reserve kWh of Electricity from the total Production Share elects not to enter into a net metered power sales agreement with Seller, or terminates its net metered power sales agreement with Seller; or (ii) pursuant to Subsection (g) below, Buyer and Seller mutually amend this exhibit to increase or decrease Buyer's kWh Reservation, or Seller and another Cooperative Member or other purchaser, pursuant to subsection (g) of Exhibit B of another net metered power sales agreement, amend such other Cooperative Member or other purchaser's requested, provided that, in all such instances, Buyer's Percentage Share shall not obligate Buyer to purchase more than Buyer's kWh Reservation.

(f) Upon mutual assent of the Parties, the Parties may amend this exhibit to increase or decrease Buyer's kWh Reservation.

(g) Pursuant to Section 3.5 of the Agreement, if the LDC elects to purchase rather than allocate Net Metering Credits for the Facility and Seller has received such Net Metering Credits from Host Customer or Developer, then Seller shall use Commercially Reasonable efforts to deliver to Buyer the Net Metering Credit value from the Facility equal to Buyer's Percentage Share of the Production Share for the Facility.

EXHIBIT C

BUYER'S ACCOUNTS

Upon Seller's written request, which may include electronic mail, in order to facilitate Developer's preparation of the Schedule Z(s), Buyer shall promptly provide to Seller the electric utility accounts with the LDC to be listed on Schedule Z for the Interconnection Agreement for the Facility ("Accounts"), including the following information regarding each such Account:

- LDC customer name
- Account billing address
- LDC account number
- Annual LDC electricity charges
- Annual kWh usage
- Percentage of Buyer's Percentage Share of Production Share to be allocated to such account

Without reducing Buyer's Percentage Share of the Production Share, Buyer may from time to time request an adjustment in the proportionate percentages of Net Metering Credits to be allocated to each individual Account, and may remove or add individual Accounts, by providing such written request to Seller. Buyer acknowledges that any such request cannot be inconsistent with its obligations under the Agreement.

Seller shall promptly review such request and coordinate with Developer with respect to the filing with the LDC of an amended Schedule Z (or of amended Schedule Zs, as the case may be) pursuant to the then-applicable Net Metering Rules. The Parties acknowledge that the timing of the LDC's implementation of such an adjustment to the percentages set forth on a Schedule Z shall be in the control of the LDC and Buyer may continue to receive allocations of Net Metering Credits under previously agreed percentages until the LDC has implemented the requested amendments. Seller shall use Commercially Reasonable efforts to facilitate the LDC's implementation of such amendments.

EXHIBIT D

**SPECIAL TERMS AND CONDITIONS APPLICABLE TO
THIS INTER-GOVERNMENTAL NET METERING CREDIT PURCHASE
AGREEMENT**

EXHIBIT E

FORM OF DEVELOPER CPA