

# Template for Group Net Metering Agreements for Vermont Municipal and School District Solar Projects

## I. Introduction

Solar power can offer many benefits such as reducing energy costs, stabilizing and predicting energy expenses and reducing greenhouse gas emissions. This Template for Group Net Metering Agreements has been drafted to help municipalities and school districts take advantage of these benefits. The Template was a collaborative effort by the Vermont School Boards Association, Vermont Superintendents Association - School Energy Management Program, Vermont Public Service Department, Vermont Natural Resources Council, and several Vermont attorneys<sup>1</sup>, and coordinated by the Vermont League of Cities and Towns. The goal of the collaboration was to create a template of potential contract provisions to help guide municipalities and school districts through the process of "going solar," and to help them identify, modify and craft provisions that best suit their goals and financial needs.

This Template is offered to school districts and municipalities to provide a general framework for a potential group net metering contract with a solar developer (or other third-party system owner). It is intended to help municipal and school district officials better understand standard contract provisions as well as highlight issues that should be considered. It is meant to serve as a starting point for consideration and negotiation and is not meant to supplant the need to retain legal counsel when negotiating a long-term solar contract (or other legal agreement). Municipal and school district officials, therefore, are strongly recommended to work with an attorney with expertise in these types of agreements.

## II. Important Considerations

Here are some of the important issues to consider as your municipality or school district explores the idea of going solar:

- What are the current and future electrical needs of your municipality or school district?
- Have you assessed those needs? If not, do you know how to do so?
- Is solar power a viable option for your school district or municipality?
- Would the array of solar panels be placed on municipal or school district property or elsewhere?
- What issues need to be addressed if the facility is on municipal or school district property?
- How can you evaluate whether a Solar Power Purchase Agreement<sup>2</sup> is the preferred option for meeting the school district's or municipality's electricity needs? What are the benefits? What are the risks?

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<sup>1</sup> Ethan McLaughlin, Esq. of Gravel & Shea PC drafted the agreement template, and it was also reviewed by the following attorneys who assisted VLCT and the Vermont School Boards Association: Paul Giuliani, Esq. and Joslyn Wilschek, Esq. of Primmer, Piper, Eggleston & Cramer PC, and Brian Monaghan, Esq. and Ed Adrian, Esq. of Monaghan, Safar, Ducham PLLC.

<sup>2</sup> A Solar Power Purchase Agreement is defined below in Section III A. Transaction Structure.

- How can municipalities and school districts protect themselves against unnecessary risks?
- What are the legal purchasing requirements for school districts and municipalities?
- Does it make sense to partner with a third-party developer to finance, install and operate the system?

Third-party developers are able to take advantage of significant federal tax credits that help reduce the cost of solar projects. These tax credits are not available to municipalities and school districts which do not pay federal taxes. Municipalities and school districts can still benefit from these tax credits if the third-party developer takes advantage of the credits and passes on those financial benefits to the municipality or school district in the form of a lower Service Price. This Group Net Metering Agreement Template allows school districts and municipalities to partner with third-party developers to finance, install and operate and manage the solar arrays. Please note: the current federal tax incentives will be significantly reduced in 2017 unless Congress takes action to extend these benefits.

### **III. Group Net Metering Agreement Template**

It is not expected that this Template and all of its provisions will be suitable for all net metering arrangements. Every provision in this Template may be subject to negotiation and change, depending on the facts and circumstances of your particular transaction. The Group Net Metering Agreement Template and accompanying commentary address many potential issues but not all of these issues will be present in any single transaction. Likewise, not every issue that may potentially arise in the course of a transaction will, or can be, covered by or addressed in this Template.

Given the potential variations in the facts and circumstances involved in any solar project, the Group Net Metering Agreement Template should not be considered as establishing any standards of general practice nor shall it constitute legal advice. This Template and accompanying commentary are not a substitute for a lawyer's careful exercise of judgment in a specific transaction and do not purport to measure the reasonableness of a lawyer's judgment in any situation. While the notes/commentary included in the Template may include discussion of Vermont laws, rules and regulations and some U.S. federal and state tax considerations in structuring and negotiating a solar project transaction, the discussion does not constitute, and is not intended to constitute, legal advice or tax advice.

The laws, rules, regulations, orders and tariffs governing solar projects and tax statutes and regulations are subject to change, amendment and/or repeal at any time, and their application is fact-sensitive. The Group Net Metering Agreement Template and the discussion in the commentary are no substitute for legal and tax advice from qualified legal and tax advisors who are familiar with the current law and the facts at hand. The authors and publishers of this Template assume no obligation to update the Template to reflect any changes in applicable laws, rules, regulations, orders, tariffs, tax statutes or regulations or other changes in facts and/or circumstances that may occur. The authors and publishers of the Group Net Metering Agreement Template make no representations or warranties regarding the legality or enforceability of any provision in the Template or otherwise, and disclaim any implied warranties whatsoever.

### **A. Transaction Structure**

The Group Net Metering Agreement Template is structured for use in connection with a “third-party” ownership model also known as a Solar Power Purchase Agreement. Under this kind of model a separate private party (the “System Owner”) constructs, pays for and operates a qualifying solar electricity generating system (the “System”) and instructs the electric utility to allocate all or a portion of the electricity generated by the System to electricity meters of the municipality or school district (the “Customer”). The Customer receives savings or monetary credits on its electric utility bills for each kilowatt hour of electricity produced by the system and allocated to its meters, which reduces the amount that the Customer is required to pay to the electric utility (such savings and credits are “Net Metering Credits”). The Customer, in turn, agrees to pay the System Owner for the Net Metering Credits allocated to its meters during the term of the Agreement.

An advantage of the third-party ownership structure is that the System Owner bears the risk and responsibility for permitting, constructing, financing and operating the System. The Customer pays no money up front and is only required to pay for Net Metering Credits that are allocated to its meters. If the System cannot be permitted or constructed, or fails to produce output, the Customer simply pays its electric utility what it otherwise would in the absence of the Agreement. As described above, because the System Owner is a private party, it can take advantage of the tax credits and other tax benefits and incentives (which are unavailable to municipalities and school districts that do not pay federal income tax) that help make construction and operation of the solar facility economically viable.

The System may be located on land that is owned by the Customer or on separate land that is owned or leased by the System Owner. The Group Net Metering Agreement Template can be used for both scenarios. However, where the System will be located on land that is owned by the Customer, the Customer and the System Owner will need to enter into a separate lease agreement for that land. The publishers of the Group Net Metering Agreement Template intend to publish a Lease Agreement Template for these transactions at a later date. In the meantime, Customers that wish to enter into a group net metering arrangement can retain legal counsel to prepare a lease agreement or to review a lease agreement provided by a potential System Owner.

### **B. System Size and Estimated Output**

The standard provisions of the Group Net Metering Agreement Template require the Customer to pay for all of the Net Metering Credits that are allocated to its meters. The Customer is responsible for using the credits. This is the way that net metering arrangements are typically structured throughout the country. Customers should be careful to ensure that the system size and the estimated output of the System are appropriate for the Customer's current and future electricity usage. For any school district or municipality that is considering going solar – and entering into one of these contracts – consider approaching it the same way you would if you were going to put a system on your own home or business. What are your energy needs and realities today? What are your future goals? How important is renewable energy to your school district or municipality?

Look at your current energy realities right now. What are you spending? How much are you relying on fossil fuels? What are your goals? Have you made efficiency investments? Do you want to? Did you know that the most energy efficient school buildings use about half of the electricity of inefficient school buildings? Who can help answer these questions? School district officials can work with the School Energy Management Program, and Efficiency Vermont is a resource for municipal officials.

Exhibit "D" of The Group Net Metering Agreement Template provides alternative language that the parties may agree to include in order to cap the amount the Customer pays at the amount of its avoided costs (costs that would otherwise be payable to the electric utility). If this option is selected, the Customer would never be required to pay more to the System Owner during any contract year than it would pay to its electric utility. If the Customer does not pay for all of the Net Metering Credits that are allocated to its meters, then the System owner has the right to change the allocations, add additional customers, or terminate the agreement with the Customer. Selecting this option is generally favorable to the Customer, but may not be acceptable to all System Owners and financing sources, as the revenue to the System Owner will now depend upon both the production of the System and the usage by the Customer.

### **C. Purchasing Requirements**

Vermont municipalities and school districts have different legal requirements for purchasing. In general, Vermont law does not require municipalities to solicit bids for purchases, but some municipalities have imposed their own procurement procedures through the adoption of a purchasing policy or governance charter, which procedures must be adhered to. Even if not required to do so, municipalities considering entering a contract should solicit proposals from more than one solar developer. School districts, on the other hand, are required by statute to solicit three or more bids for the acquisition of "items or services" costing in excess of \$15,000 for the "construction, purchase, lease, or improvement of any school building."

### **D. Voter Approval**

The answer to the question of whether these agreements must be subject to public vote depends on the location of the solar array. If a solar array will not be located on municipal or school district property, then voter approval is not generally a prerequisite for entering into a solar contract. However, if an array will be maintained on school district or municipal property that is leased to the solar developer, the answer is not as straightforward. As previously recommended, municipal and school district officials should engage an attorney as early as possible to help with this and other issues.

Paul Giuliani, Esq. of Primmer, Piper, Eggleston and Cramer recommends that school districts should gain an understanding of the interplay between 16 V.S.A. § 562(7) and 16 V.S.A. § 3741 which address leases of certain school property.

When it comes to municipal property, the VLCT Municipal Assistance Center has advised municipal officials for many years that the legal requirements for the sale or "conveyance" of municipal property under 24 V.S.A. § 1061 would also apply to a long-term lease. Although the law does not define the word "conveyance," VLCT's conservative interpretation of its meaning

includes the transfer of interest - such as a long-term lease or easement - in municipal property and therefore necessitates compliance with that statute.

According to 24 V.S.A. § 1061, notice of the terms of a proposed sale of municipal property must be posted in at least three public places in the municipality and published in a local newspaper. If no voter-backed petition regarding the sale is received by the selectboard, the sale may go through as proposed. On the other hand, if a voter-backed petition is received, the selectboard must ask the voters at the next special or annual meeting whether or not the municipality should convey the property. As an alternative to this procedure, the selectboard may go directly to the voters and present the question for approval of the conveyance at an annual or special meeting. Taking these steps early in the process of considering a solar contract should allow ample time to complete the project.

As with this and other relevant issues, since Vermont law regarding long-term leasing of school district or municipally-owned property is not clear, attorneys may have different opinions about how the law applies to the unique circumstances of a specific solar project. The question of whether a public vote is necessary should be explored with an attorney as soon as the decision is made to explore a solar group net metering project.

#### **E. Service Price**

There are many different ways to structure the pricing provisions of a group net metering arrangement. The Group Net Metering Agreement Template employs a so-called "floating rate," where the Service Price is calculated based on a percentage of the monetary value of the Net Metering Credits that are allocated to the Customer's meters. This is the most common pricing structure employed in Vermont for group net metering arrangements with municipalities and schools. Alternative pricing structures, such as fixed-rate pricing, are discussed in the commentary, but use of alternative structures may require substantial modifications to the Group Net Metering Agreement Template, and the Template should not be used for a fixed-price arrangement without the assistance of legal counsel.

#### **F. Payment**

The Group Net Metering Agreement Template allows the parties to select at the time of signing whether the Customer will pay for Net Metering Credits as such credits are generated, or pay for credits as they are used/consumed by the Customer. This is significant because solar systems produce significantly more power in the summer than they do in the winter, and excess credits may build up on a Customer's utility bill during the summer only to be consumed in the winter when the System's production is lower. Net Metering Credits that are not used within twelve (12) months will expire. All of this is discussed in more detail in the comments section of the Template.

#### **G. Renewable Energy Credits**

The Group Net Metering Agreement Template allows the parties to specify whether the renewable energy credits attributable to the output of the system will be owned by the System Owner or the Customer. The significance of this choice is discussed in additional detail in the commentary that accompanies the agreement template.

#### IV. Resources

Several resources that could be helpful to Vermont municipalities and school districts are included in this section, but this is by no means a comprehensive list.

Many Vermont municipalities and school districts have already entered third-party solar agreements. Learning from them about their experiences may be very helpful. The people and organizations listed below can information about specific group net metering solar projects and the entities involved as well as additional information:

- Vermont Public Service Department: Anne Margolis, Renewable Energy Development Manager at 802-828-3058 or [anne.margolis@state.vt.us](mailto:anne.margolis@state.vt.us). Website: [www.publicservice.vermont.gov/topics/renewable\\_energy](http://www.publicservice.vermont.gov/topics/renewable_energy)
- School Energy Management Program: Norm Etkind, Director, VSA - SEMP at [semp@vtvsa.org](mailto:semp@vtvsa.org) or 802-229-1017. Website: [www.vtvsa.org/school-energy-management-program.php](http://www.vtvsa.org/school-energy-management-program.php)
- Vermont Natural Resources Council and the Vermont Energy & Climate Action Network could potentially offer guidance on potential best options and strategies. Website: [www.vecan.net](http://www.vecan.net) or contact Johanna Miller, VNRC at [jmiller@vnrc.org](mailto:jmiller@vnrc.org) or 802-223-2328 ext. 112.
- Renewable Energy Vermont is the trade association of renewable energy businesses. Find potential solar installers/contractors at [www.revermont.org](http://www.revermont.org).
- Vermont Law School Energy Clinic, Institute for Energy and the Environment. Email: [energyclinic@vermontlaw.edu](mailto:energyclinic@vermontlaw.edu) or website: [www.vermontlaw.edu/academics/clinics-and-externships/energy-clinic](http://www.vermontlaw.edu/academics/clinics-and-externships/energy-clinic)
- Efficiency Vermont website: [www.encyvermont.com/index](http://www.encyvermont.com/index)

Municipal and school district officials are strongly recommended to work with an attorney with expertise in group net metering agreements for solar projects as well as municipal or school district law as applicable. Attorneys at the following Vermont law firms have expertise in these areas:

Dinse Knapp McAndrew  
209 Battery St, #2, Burlington, VT 05402  
Tel: 802-864-575  
Website: <http://www.dinse.com/>

Gravel & Shea PC  
76 St. Paul Street, 7th Floor  
P. O. Box 369  
Burlington, VT 05402  
Tel: 802-658-0220  
Website: [www.gravelshea.com](http://www.gravelshea.com)

Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
Website: [www.msdt.com](http://www.msdt.com)

Primmer Piper Eggleston & Cramer PC  
100 East State Street  
P.O. Box 1309  
Montpelier, VT 05601  
Tel: 802 223 2102  
Website: [www.primmer.com](http://www.primmer.com)

Tarrant, Gillies and Richardson  
44 E State St., Montpelier, VT 05602  
Tel: 802-223-1112  
Website: [www.tgrvt.com](http://www.tgrvt.com)

**TEMPLATE FOR GROUP NET METERING AGREEMENTS**

**FOR VERMONT MUNICIPAL AND SCHOOL DISTRICT SOLAR PROJECTS\***

This Group Net Metering Agreement (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date")

BY AND BETWEEN

"System Owner"

Name: \_\_\_\_\_, a \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

AND

"Customer"

Name: \_\_\_\_\_, a \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_.

**COMMENT**

The Parties must insert the name, state of organization and entity type for each Party. For example, "ABC Solar Development Company, LLC, a Vermont limited liability Company." The addresses and contact information specified above will be used for all notices under the Agreement.

Background

1. System Owner intends to construct a \_\_\_\_\_ kW (DC) \_\_\_\_\_ kW (AC) net metered photovoltaic electricity generating facility (the "System") at \_\_\_\_\_ (the "System Site"). The System and the System Site are described in further detail on Exhibit "A" hereto.

**Check one:**     The System Site is owned by Customer and leased to System Owner.

The System Site is not owned by Customer.

\* Please refer to the Cover Memo for additional information.



**COMMENT**

This Agreement can be used both for Projects that are located on the Customer's property and for Projects that are not. If the System will be located on property owned by the Customer, the Parties will need to enter into a separate Lease Agreement.

2. System Owner intends to petition the Vermont Public Service Board for a Certificate of Public Good to construct, install and operate the System as a group net-metering system pursuant to 30 V.S.A. § 219a and § 248.

**COMMENT**

This Agreement contemplates a fact pattern in which the Parties sign this Agreement before the System Owner has obtained a Certificate of Public Good and before the System is constructed and placed in service. If the actual fact pattern is different, the Parties should modify this Agreement accordingly.

3. System Owner estimates that the System will be installed on or before \_\_\_\_\_, 20\_\_\_\_ (the "Estimated Commissioning Date").

4. The Customer is a customer of \_\_\_\_\_ (the "Utility") and desires to combine electric meters with System Owner to join the net metering group associated with the System to offset and reduce Customer's Utility billing and charges (the "Group").

**COMMENT**

List the name of the Customer's electric utility here. The System must be constructed and interconnected to the Utility in the same service territory as the Customer. For example, if the Customer's electric utility is Washington Electric Cooperative, Inc., then the System must be interconnected with the distribution system of Washington Electric Cooperative, Inc. and be located within that utility's service territory.

5. Following the installation of the System, the Utility will allocate credits for the kilowatt hours of electricity output generated by the System to the designated electric meters of the members of the Group (each, a "Group Member") pursuant to allocation instructions provided to the Utility. The Customer Meters and Utility accounts and instructions for allocating Output from the System to such Customer Meters and accounts are set forth on Exhibit "C" hereto. Each kilowatt hour of electricity allocated to a designated electric meter of a Group Member will result in corresponding bill credits being allocated or applied to the Utility bills or against the usage or charges for such meter and/or result in other economic benefits or savings being realized, credited, allocated, offset or otherwise applied by the Utility to the electricity usage, Utility bills, accounts, charges or fees for such meter on account of such kilowatt hour of Output, including any credits allocated to such meter in excess of the charges or usage for meter during any applicable Utility billing period (such credits, offsets, benefits and savings attributable to the Output of the System, collectively, "Net Metering Credits").

6. The Customer desires to engage the services of the System Owner, become a Group Member, and receive the benefits of Net Metering Credits attributable to the Output of the System pursuant to the terms and conditions set forth in this Agreement.

N O W , T H E R E F O R E ,

In consideration of the premises and the mutual covenants and agreements herein set forth, the Parties hereby agree as follows:

**Section 1. Definitions.** Capitalized terms used herein but not otherwise defined herein shall have the following meanings:

“Administrator” means the administrator and designated person (as defined in 30 V.S.A. § 219a(g)(1)) of the Group.

“Agreement” has the meaning given to such term in the introductory paragraph of this Agreement.

“Avoided Utility Costs” means, for any Meter during any period, the net amount by which the charges, fees and costs that would otherwise be payable to the Utility with respect to such Meter, including any electricity usage thereunder, are reduced or otherwise avoided on account of membership in the Group Net Metering Arrangement contemplated by this Agreement, the allocation of Output to such Meter, or the application of Net Metering Credit Value to the Utility bills for such Meter with respect to such period.

“Conditional Early Termination Date” means \_\_\_\_\_, 20 \_\_\_\_.

**COMMENT**

The Customer and the System Owner each have the right to terminate this Agreement if certain milestones are not completed by the Conditional Early Termination Date.

“Contract Year” means a twelve (12) month period during the Term of this Agreement that begins on the Service Commencement Date or on the annual anniversary of the Service Commencement Date, as applicable.

“Certificate of Public Good” means a Certificate of Public Good to construct and install the System and operate the System as a group net-metering system pursuant to 30 V.S.A. § 219a and § 248.

“Customer” means the Person listed as the “Customer” in the introductory paragraph of this Agreement.

“Customer Meters” means all of the Customer’s electricity Meters with the Utility listed in Exhibit “C”, as amended from time to time. Any Meters included at Customer’s request or direction in the Group Net Metering Arrangement contemplated by this Agreement shall be deemed to be Customer Meters, even if a third party is the Utility account holder for such Meter.

“Construction Preconditions” has the meaning set forth in Section 4(b).

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

“Estimated Commissioning Date” has the meaning set forth in paragraph 3 of the Background Section of this Agreement.

“Estimated Year One Output” means the System Owner’s estimate set forth on Exhibit “A” to this Agreement of the future Output of the System for the twelve (12) month period beginning on the Service Commencement Date.

**COMMENT**

The Estimated Year One Output is an estimate of the Customer’s anticipated allocation of the electricity generated by the System.

“Excess Output” has the meaning set forth in Section 6(c).

“Excess Output Credit” has the meaning set forth in Section 6(c).

“Expiration Date” means the \_\_\_\_\_ year anniversary of the Service Commencement Date.

“Financing Source” or “Financing Sources” means, either in the singular or collectively, as applicable, the persons or entities lending money, extending credit or providing debt, equity or lease financing for or secured by the System and any trustee or agent acting on any such person or entity’s behalf.

“Force Majeure Event” has the meaning set forth in Section 12(b).

“Group Member” has the meaning set forth in paragraph 5 of the Background section of this Agreement.

“Group Net Metering Arrangement” means an agreement between one or more electric utility customers, located within the same service territory, to combine multiple electricity meters in order to share and allocate electricity generated by a qualified renewable-generation facility.

“kWh” means a kilowatt hour of electricity.

“Lease Agreement” has the meaning set forth in Section 12(a)(iii)(D).

“Meters” shall mean each of the electric meters of the members of the Group to which credit for electricity generated by the System may be allocated from time to time, including each of the electricity meters listed in Exhibit “C” hereto.

“Net Metering Credits” has the meaning set forth in paragraph 5 of the Background section of this Agreement.

“Net Metering Credit Value” means, for each kWh of Output allocated to a Customer Meter: (a) the monetary value of any bill credits applied to the Utility bills for such Meter or against the charges in such Utility bill on account of such kWh of Output, plus (b) the monetary value of any other economic benefits realized, credited, allocated, offset or otherwise applied by the Utility to the electricity usage, Utility bills, accounts, charges or fees for such Customer Meter on account of such kWh of Output, including any credits allocated to such Customer Meter in excess of the charges or usage for such Customer Meter during any applicable billing period.

**COMMENT**

The manner in which net metering benefits are calculated and applied to the Customer’s bill by the Utility depends on the rate class of the specific Customer Meter, the manner in which the System is interconnected to the Utility, the “solar adder” incentive in effect for the Utility on the date the System is commissioned, and the tariff and practices of the Utility. This Agreement uses a broad definition of “Net Metering Credit Value” to capture all of the potential ways that net metering benefits may be allocated or applied to a Customer Meter and the Customer’s Utility bills.

For most solar net metering arrangements with school districts and municipalities, the System will be interconnected directly to the Utility and serve Customer Meters on “demand” and “time of use” rate schedules. In this scenario, the Utility will apply a monetary credit to the bill for such Meter, calculated by multiplying the kWhs allocated to such Meter by the Utility’s residential rate. During the first ten years after a solar System is commissioned, the Customers will receive an additional bill credit equal to the number of kWhs allocated to the Meter multiplied by the Utility’s solar adder incentive in effect at the time the System is commissioned.

“Output” means electricity produced by the System, measured in kWh, that is delivered to the Utility and for which corresponding Net Metering Credit Value is allocated or otherwise credited or applied by the Utility to the electricity usage or charges for one or more Customer Meters.

“Party” means System Owner or Customer, as applicable, and “Parties” means System Owner and Customer.

“Payment Date” has the meaning set forth in Section 7(b).

“Permits” has the meaning set forth in Section 4(a).

“Person” means any natural person, partnership, trust, estate, association, corporation, limited liability company, nonprofit corporation, governmental authority or agency or any other individual or entity.

“Regulatory Event” has the meaning set forth in Section 21.

“Renewable Energy Credits” means all “tradable renewable energy credits” as defined in 30 V.S.A. § 8002(8) associated with a single unit of energy generated by the System. For the avoidance of doubt, Renewable Energy Credits shall not be deemed to include electric energy or any mandatory or voluntary federal, state or local renewable energy rebates, subsidies, incentive payments, tax credits, grants or other monetary benefits or incentives related to the System.

“School Closure” has the meaning given to such term in Section 12(c).

“Services” means any and all of the services provided by the System Owner to the Customer pursuant to this Agreement, including admitting the Customer as a Group Member, administration of the Group Net Metering Arrangement contemplated hereby, and the allocation of Net Metering Credits to the Customer Meters.

“Service Commencement Date” means the first date on which the System actually delivers Output to the Utility, which subsequently results in Net Metering Credits for such Output being allocated by the Utility to Customer’s electricity bills.

“Service Price” is defined in Exhibit “B” to this Agreement.

“System” has the meaning given to such term in paragraph 1 of the Background of this Agreement, as further described on Exhibit “A”.

“System Site” has the meaning given to such term in paragraph 1 of the Background of this Agreement, as further described on Exhibit “A”.

“System Owner” the Person listed as the “System Owner” in the introductory paragraph of this Agreement.

“12-Month Period” has the meaning given to such term in Section 6(c).

“Unused Credits” has the meaning given to such term in Section 6(c).

In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

**Section 2. Group Net Metering Agreement.** This Agreement creates an obligation by the Customer to pay System Owner for the Services, including the benefits of Net Metering Credits

attributable to electricity generated by the System and allocated to the Customer Meters in accordance with the Allocation Instructions.

**Section 3. Administrator and Designated Person.** System Owner shall have the right to designate, from time to time, the Administrator for the Group.

**Section 4. Permits and Approvals; Conditions.**

(a) Permits and Approvals. System Owner shall endeavor to obtain all permits and approvals required for the construction, installation, start-up and operation of the System, including the Certificate of Public Good (collectively, "Permits"), and to complete the commissioning of the System on or before the Estimated Commissioning Date. All costs and expenses of obtaining any Permits, including all costs, fees and expenses for professional services, shall be the sole responsibility of System Owner.

**COMMENT**

The System Owner is responsible for permitting and building the System, including securing a group-net-metering Certificate of Public Good for the System from the Vermont Public Service Board.

(b) Construction Preconditions. Notwithstanding the foregoing, System Owner shall have no obligation to proceed with construction and installation of the System, unless the following conditions precedent (collectively, the "Construction Preconditions") have been satisfied or waived by System Owner on or prior to the Conditional Early Termination Date:

- (i) System Owner shall have obtained all Permits that the System Owner deems necessary or desirable, each in form and substance satisfactory to the System Owner: (A) for the construction and installation of the System, (B) for the provision of Services to the Customer under this Agreement, and (C) for the Net Metering Arrangement contemplated hereby, and all such approvals, permits, licenses and authorizations shall be in force and effect.

**COMMENT**

This Agreement allocates the risk and expense of permitting the System to the System Owner. Obtaining all of the permits for a System generally requires a substantial investment of time and money by the System Owner, with no guaranty that the necessary Permits can be obtained on acceptable terms or at all. A System Site may contain "fatal flaws," which result in Permits being denied or delayed or make the development of the System prohibitively expensive (for example, if the System Site contains a protected species habitat or environmental contamination, or if interconnection with the Utility will require especially costly upgrades to Utility infrastructure, or if the permitting of the project is litigated or opposed in a material respect by a governmental agency or authority). Fatal flaws may not be apparent or foreseeable until after this Agreement is signed.

- (ii) System Owner shall have obtained any necessary easements, leases, licenses, consents and approvals and real property and other rights necessary or desirable for the construction, installation, operation and maintenance of the System.
- (iii) System Owner shall have obtained all funding and financing commitments for the System from one or more Financing Sources on terms acceptable to System Owner, in its sole discretion.

(c) Service Commencement Date. System Owner shall notify Customer of the Service Commencement Date within 5 days of its occurrence.

**Section 5. Allocation Instructions.** On or before the Service Commencement Date, System Owner shall instruct the Utility to allocate credit for the Output of the System to the Customer Meters in accordance with the allocation instructions attached hereto as Exhibit “C” (the “Allocation Instructions”). System Owner and Customer acknowledge that adjustments to the Allocation Instructions may become necessary or desirable from time to time on account of changes in rate schedules and electricity usage as between the Customer Meters. System Owner and Customer shall cooperate in good faith to identify the optimum allocation of the Output of the System, which maximizes the net savings and benefits realized by Customer and the amount of the Service Price payable to System Owner hereunder.

**Section 6. System Output.**

(a) System Owner’s estimate of the Estimated Year One Output was prepared by or on behalf of System Owner using the National Renewable Energy Laboratory’s PVWatts program or otherwise using practices and methods generally accepted within the solar power industry with respect to solar systems similar to the System.

(b) Customer acknowledges and agrees that: (i) the Output from the System will vary from time to time; (ii) System Owner provides no warranty or guarantee of any particular level of Output of the System; (iii) during any Utility billing period during the term of this Agreement, Customer’s Utility charges for the Customer Meters may exceed the Net Metering Credits attributable to Output of the System for such billing period (for example, if Customer’s electricity usage exceeds the Output of the System); (iv) Customer is solely responsible for paying any and all Utility charges in excess of the Net Metering Credits allocated to Customer; and (v) System Owner is not a utility or an electricity provider and does not assume any regulatory or statutory obligations of a utility or electricity provider.

(c) In the event that the Output of the System during any period of twelve (12) consecutive monthly Utility billing periods (each, a “12-Month Period”) beginning after the Service Commencement Date exceeds the Estimated Year One Output (the “Excess Output”) and as a result of such Excess Output, the Net Metering Credit Value attributable to Output from the System that is allocated to Customer Meters for Utility billing periods during such 12-Month Period exceeds the Avoided Utility Costs for such Customer Meters for such period, such that Net Metering Credits attributable to such Excess Output expire for non-use (“Unused Credits”), then, to the extent such Unused Credits are attributable to Excess Output, the amount of the Service Price paid by Customer with respect to such Unused Credits, if any, shall be credited against the Service Price payable to the System Owner for future payment periods (“Excess Output Credit”) until such Excess Output Credit is exhausted. Upon the termination of this Agreement, the System Owner shall pay Customer the amount of any accrued but unused Excess Output Credit, if any, for 12-Month Periods ending prior to such termination, which payment shall be made within 45 days of the end of the Utility billing period during which such termination occurs. With respect to any 12-Month Period ending after the termination of this Agreement, any Excess Output Credit for such year shall be refunded by System Owner to Customer within 45 days of the end of the Utility billing period during which such 12-Month Period ends.

**COMMENT**

The System Owner is required to provide an estimate of the Output that will be allocated to the Customer during the first year of the System’s operation. The actual Output of the System, however, will depend on the weather and vary from day-to-day, month-to-month and year-to-year. The System Owner does not guarantee a particular level of Output, but has a strong incentive to ensure that the System Output is maximized, because the System Owner will only receive payments to the extent the System produces.

The standard Service Price provisions of this Agreement require the Customer to pay for all Output allocated to the Customer Meters, however in the event that the actual Output of the System exceeds the Estimated Year One Output for any 12-Month Period, and the Customer pays for Net Metering

Credits generated during such period that expire for non-use, the Customer will be entitled to a credit against future payments to the System Owner.

**Section 7. Service Price; Billing and Payment.**

(a) Service Price. Customer agrees to pay System Owner the Service Price for Services set forth on Exhibit “B” hereto.

(b) Billing and Payment. System Owner shall bill the Customer monthly for the Service Price. All payments under this Section 7 shall be due and payable within thirty (30) days of the Customer’s receipt of an invoice from the System Owner (the “Payment Date”).

**COMMENT**

The standard language of this Agreement provides for monthly billing based on the actual Net Metering Credit Value credited or otherwise applied within the corresponding Utility billing period. Calculating this amount each month may requires monthly forwarding of Utility statements by the Customer and preparation and review of invoices, which some Customers and System Owners find administratively burdensome. Some System Owners and Customers prefer an alternative billing method, where the Customer pays a flat monthly fee based on an estimated monthly service price, subject to an annual adjustment.

(c) Late Payment Charge. If the System Owner does not receive payment in full within ten (10) business days after the Payment Date, then the System Owner shall have the right to impose a late payment charge of one percent (1%) upon the unpaid balance, including any prior unpaid late payment charges. The late payment charge shall be assessed on such unpaid balance once each month after it is initially imposed on an unpaid balance, until such balance is paid.

**Section 8. Ownership of the System.** Nothing in this Agreement shall have the effect of passing to the Customer or any other Person any right, title or interest in or to the System or any electric energy, mandatory or voluntary federal, state or local renewable energy rebates, subsidies, incentive payments, tax credits, grants or other monetary benefits or incentives related to the System, all of which shall be the sole property of the System Owner and its affiliates and assigns, as applicable.

**Section 9. Ownership of Renewable Energy Credits.** All Renewable Energy Credits generated or otherwise attributable to the Output allocated to the Customer Meters shall be the property of the Party selected below as the owner of the Renewable Energy Credits (the “REC Owner”): (*check one only*)

\_\_\_ Customer

\_\_\_ System Owner

If the Parties do not select a REC Owner above, then the System Owner shall be deemed to be the REC Owner. The REC Owner shall have the right to sell, transfer, grant, convey or assign such Renewable Energy Credits to any other person in the REC Owner’s sole discretion. The other Party agrees to provide any acknowledgements, consents or approvals reasonably requested by the REC Owner to validate the System Owner’s rights to and ownership of the Renewable Energy Credits. No Party shall make any environmental claims regarding the System or the Output allocated to the Customer Meters without the permission of the REC Owner.

**COMMENT**

The electricity and corresponding net metering credits generated by solar power facilities, on the one hand, and the environmental attributes of solar power, on the other hand, are distinct commodities that may be sold separately. The tradable units representing the environmental attributes associated with solar power are referred to in this Agreement as Renewable Energy Credits. Renewable Energy Credits are generated over time, based on the System's electricity output. Only the owner of the Renewable Energy Credits may claim to be using "green energy," "renewable energy," "solar power" or similar terms, or claim any other environmental benefits from the solar facility, such as reduced carbon generation.

Typically, all Renewable Energy Credits associated with the electricity produced by the System will be the property of the System Owner. There is an active market for sales of Renewable Energy Credits, and the proceeds from such sales are part of the System Owner's revenue stream. The buyer of the Renewable Energy Credits is typically a utility that is required to buy renewable power pursuant to a renewable portfolio standard or other regulatory requirement. The buyer of the Renewable Energy Credits is deemed to have purchased solar power if it pairs the Renewable Energy Credits with a corresponding amount of electricity.

Customers that need or desire to make environmental claims about using renewable power from the System (for instance, to satisfy carbon neutrality standards) can do so if the parties agree that the Customer will retain ownership of the Renewable Energy Credits. This will typically result in a higher Service Price. Customers can also make environmental claims if they buy Renewable Energy Credits on the open market, which may be less expensive.

**Section 10. Covenants.**

(a) Reports. If requested by System Owner, Customer shall provide System Owner with copies of all Utility bills and invoices received by the Customer from the Utility with respect to the Customer Meters and the allocation of any net Metering Credits thereto. To the extent such bills and invoices are available from the Utility via an electronic platform, Customer may satisfy its obligations under this Section 10 by giving the System Owner access to such online information.

**COMMENT**

The System Owner may need to review the monthly invoices and statements of the Customer from time to time to verify the amount of the Net Metering Credits allocated to the Customer Meters. The Group Net Metering Agreement Template requires the Customer to provide the System Owner with copies of such invoices and statements to the extent requested by the System Owner. If the System is located in the service territory of a Utility that automatically provides the Administrator with a monthly summary of the generation of the System and the calculation and application of Net Metering Credits among the meters in the group, the System Owner may not need to make such a request.

(b) Exclusivity. Without the prior written consent of the System Owner, the Customer shall not enter into a Group Net Metering Arrangement with any person or entity, other than System Owner, during the Term with respect to any Customer Meter or connect any individual net metering system to a Customer Meter, to the extent doing so would prevent such Customer Meters from being part of the Group Net Metering Arrangement contemplated by this Agreement or restrict or prevent the System Owner from allocating Output to such Customer Meters or otherwise adversely affect the Group Net Metering Arrangement contemplated hereby, the Net Metering Credit Value attributable to Output allocated to the Customer Meters, or the Parties' rights and the performance of their obligations under this Agreement.



**COMMENT**

Under current net metering rules, a customer utility account may only be part of one net metering Group at a time. This means that a Customer Meter cannot be part of two net metering Groups at any given time.

(c) Utility. Customer shall remain a customer of the Utility in good standing at all times during the Term hereof. Customer shall not take any action to cause any Customer Meter to be disconnected or removed from the Utility's service without obtaining System Owner's prior written consent, which shall not be unreasonably withheld if Customer designates one or more replacement meters on the same rate schedule and with substantially similar usage within the same Utility service territory to be added to Exhibit "C" hereto as a Customer Meter.

(d) Further Assurances. Customer, from time to time, on written request of System Owner, shall perform such further acts, including execution of documents, as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or regulatory approvals pertaining to the subject matter hereof.

(e) Authorization. System Owner and the Administrator are hereby authorized to making any filings and submissions to the Utility and any applicable regulatory bodies, individually or on behalf of the Group or any Group Member, as may be necessary from time to time to carry out the terms of this Agreement.

(f) Insurance. The System Owner shall procure and maintain, at its sole cost and expense, a general policy of liability insurance against property damage, personal injury or death, in an aggregate amount of at least One Million Dollars (\$1,000,000.00). Customer shall be named as additional insured under such policy.

**Section 11. Representations and Warranties.**

(a) The Customer hereby represents and warrants to System Owner as follows:

- (i) Binding Obligation. This Agreement has been duly authorized by all necessary action of Customer, and constitutes a legal, valid and binding obligation of the Customer, enforceable against Customer in accordance with the terms hereof.
- (ii) Customer further represents and warrants to System Owner that Customer is a customer of the Utility in good standing and each of the Customer Meters is subject to the Utility rate class indicated opposite such Customer Meter on Exhibit "C" hereto.

(b) System Owner hereby represents and warrants to the Customer as follows:

- (i) Binding Obligation. This Agreement has been duly authorized by all necessary action of System Owner, and constitutes a legal, valid and binding obligation of System Owner, enforceable against System Owner in accordance with the terms hereof.
- (ii) The System Site is located within the service territory of the Utility.

**Section 12. Events of Default.**

(a) The occurrence of any of the following events shall be an "Event of Default" with respect to the applicable Party under this Agreement:

- (i) With respect to the System Owner, if the System fails to provide any Output during any continuous one hundred twenty (120) day period starting after the Service Commencement Date or for one hundred and eighty (180) days during any twelve (12) month period starting after the Service Commencement Date (“Non-Delivery Period”); provided, however, that non-operation of the System for the duration of a Force Majeure Event (as defined in Section 12(b) below) or for any period during which Customer is in default hereunder shall not be used in calculating the Non-Delivery Period; and provided, further, that the System Owner’s failure to deliver Output following the Non-Delivery Period shall not be a default so long as the System Owner, at its option, pays to the Customer an amount equal to \_\_\_\_\_ percent (\_\_\_%)<sup>3</sup> of the monetary value of the Net Metering Credits that would have been credited, allocated or otherwise applied to the Customer Meters in the ordinary operation of the System based on the average Output of the System during the same billing period in the two most recent years of operation (or in the absence of prior periods, based on the estimated monthly output of the System), on a monthly basis until such time as the System Owner restores delivery of Output for the System.

**COMMENT**

The Customer needs a remedy in the event that the System is out of operation for a substantial period of time. However, there may be legitimate reasons why a System Owner may need more than the 120 days to restore the operation of the System in the event of a catastrophic system failure or casualty event. For example, it may take time to collect insurance proceeds, pursue warranty claims, secure financing for repairs, or it may not be practical to commence a significant repair during the winter months. As a compromise, the model Group Net Metering Agreement allows the System Owner to avoid a termination after the Non Delivery Period by making payments that allow Customer to realize the same financial benefits they would receive if the System were operational.

- (ii) With respect to the Customer, Customer fails to make any payment on the due date therefore, and such failure continues for a period of ten (10) business days after the applicable due date.
- (iii) With respect to either Party:
- (A) The other Party voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition (and in the event of an involuntary filing only, such involuntary bankruptcy petition continues un-dismissed for a period of sixty (60) days after the filing thereof).
- (B) The other Party breaches or fails to perform any material covenant, agreement or obligation set forth in this Agreement or any other Agreement of the Parties appended hereto or the other Party makes any misrepresentation or breaches any material representation or warranty contained herein, and such breach, failure or misrepresentation remains uncured ninety (90) days or more after the Party claiming default provides written notice to the other Party, specifying the provision pursuant to which the alleged default has occurred. The Party accused of default shall have ninety (90) days from the date of the notice to cure the default. In the event that the defaulting Party shall fail to cure the default within ninety (90) days, the non-defaulting Party shall be entitled to send a notice of

<sup>3</sup> The percentage specified here should mirror the discount applied in calculating the Service Price in Exhibit “B”. For example, if the Customer pays a Service Price equal to 90% of the value of the Net Metering Credits, the percentage specified in Section 12(a)(i) would be 10%.

termination of this Agreement to the defaulting Party and shall be entitled to pursue any and all remedies available at law or in equity.

- (C) System Owner ceases to hold any Permit required for the Group Net Metering Arrangement contemplated hereby or for the lawful construction or operation of the System that results in a lack of legal rights on the part of the System Owner or the System to continue to operate; provided, however, that the foregoing shall not result in an Event of Default if, (1) such Permit is no longer required at such time, or (2) System Owner, within 30 days after becoming aware of such suspension, revocation or cancellation, commences and diligently pursues efforts to obtain a replacement of such Permit.
- (D) If System Owner and the Customer are parties to a Lease Agreement whereby the Customer leases the System Site to the System Owner (the "Lease Agreement"), the termination of the Lease Agreement or the occurrence of an Event of Default (as defined in the Lease Agreement) with respect to the other Party.

(b) Force Majeure. Neither System Owner nor Customer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event (as defined below). Notwithstanding any provision herein to the contrary, Customer shall only be obligated to make payments for the Output and Net Metering Credits actually allocated to the Customer under this Agreement for any period during which the System Owner or Customer experiences a Force Majeure Event. A "Force Majeure Event" means any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of due diligence, cannot be prevented, avoided or removed by such Party, (ii) such event is not due to such Party's negligence or intentional misconduct, (iii) such event is not the result of any failure of such Party to perform any of its obligations under this Agreement, (iv) such Party has taken reasonable steps to mitigate the consequences and effects of such event, and (v) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken to comply with this Agreement. Subject to the foregoing conditions, Force Majeure Events may include: strikes or other labor disputes, other than strikes or labor disputes solely by employees of the Party declaring the Force Majeure Event or as a result of such Party's failure to comply with a collective bargaining agreement; adverse weather conditions and other acts of nature; earthquakes; war, acts of terrorism, riots or civil unrest; provided, that Force Majeure Events shall not include any inability to make any payments that are due hereunder or to any third party or to procure insurance required to be procured hereunder.

(c) School Closure. If Customer is a Vermont public school or public school district, and if as a result of any change in any Vermont or federal law, rule, regulation, or general vote of the electorate of such district, one or more facilities of Customer serviced by Customer Meters are closed or Customer is merged or consolidated with another school district, and as a result of which Customer will no longer be a customer of the Utility in good standing or any Customer Meter will be disconnected or removed from the Utility's service and such School Closure will otherwise have a material adverse effect upon the System Owner's rights and financial returns under this Agreement (a "School Closure"), then Customer shall provide System Owner with the maximum advance notice reasonably possible of the date on which such School Closure is to become effective. Customer shall designate one or more replacement meters of Customer (or its successor, as applicable) on the same rate schedule and with substantially similar usage (and in any event, sufficient usage to use the Net Metering Credits generated by the System) within the same Utility service territory to be added to Exhibit "C" hereto as a Customer Meter. If no such meters of Customer (or its successor, as applicable) exist or are available for such purpose, Customer and System Owner shall diligently endeavor and cooperate in good faith to mitigate the System Owner's damages by locating a replacement customer to purchase the Services and Net Metering Credits that would otherwise

be allocated to the Customer hereunder, on terms substantially similar to the terms hereof. System Owner shall have the right to terminate this Agreement or modify the allocation instructions attached hereto at any time from and after receipt of notice of any pending School Closure, so as to accommodate any replacement customers and otherwise mitigate System Owner's damages. Subject to compliance with the forgoing terms and conditions, Customer shall have the right to terminate this Agreement without further obligation upon one hundred eighty days (180) days notice to System Owner delivered on or after any such School Closure if such School Closure, could reasonably be expected to result in the Avoided Utility Costs for the Customer Meters for the remainder of the Term becoming \_\_\_\_ percent (\_\_\_%)<sup>4</sup> or less than the amount of the Service Price that would otherwise be payable to System Owner hereunder.

#### **COMMENT**

The Group Net Metering Agreement Template includes generous cure periods and Force Majeure provisions. Although these terms are favorable to the Developer, the author believes these terms are reasonable in light of the disproportionate consequences and effects of periods of non-performance on the System Owner and the severe effects of termination on the System Owner and financing source.

#### **Section 13. Financing Source Cure Rights Upon System Owner Event of Default.**

Notwithstanding anything in this Agreement to the contrary, upon the occurrence of an Event of Default as to System Owner, or any event that with notice the passage of time or both would constitute or be reasonably likely to result in an Event of Default:

(a) A Financing Source, as collateral assignee, shall be entitled to exercise, in the place and stead of System Owner, any and all rights and remedies of System Owner under this Agreement in accordance with the terms of this Agreement. A Financing Source shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(b) A Financing Source shall have the right, but not the obligation, to pay all sums due by System Owner under this Agreement and to perform any other act, duty or obligation required of System Owner thereunder or cause to be cured any Event of Default of System Owner thereunder in the time and manner provided by the terms of this Agreement. Financing Source will not be required, but will have the option, to cure any default or Event of Default of System Owner under this Agreement or to perform any act, duty or obligation of System Owner under this Agreement.

(c) Upon a Financing Source's exercise of remedies pursuant to any security interest in the System, including any sale of the System by such Financing Source, or any conveyance from System Owner to a Financing Source (or any assignee of such Financing Source) in lieu of such Financing Source's exercise of its remedies, the Financing Source will give notice to Customer of the transferee or assignee of this Agreement. Any such exercise of remedies or conveyance shall not constitute an Event of Default under this Agreement.

(d) In the event of any rejection or other termination of this Agreement under the United States Bankruptcy Code, at the request of the Financing Source made within one hundred twenty (120) days of such termination or rejection, Customer will enter into a new agreement with the Financing Source or its assignee having substantially the same terms and conditions as this Agreement.

(e) If the Financing Source or its assignee, pursuant to an exercise of remedies by the Financing Source, shall acquire title to or control of System Owner's assets related to the System and shall, within the later of the time periods described in Section 12(a)(iii) or thirty (30) days after such exercise of remedies (so long as notice of termination pursuant to Section 14(b)(iii) has not been given

<sup>4</sup> The percentage specified here should mirror the discount applied in calculating the Service Price in Exhibit "B". For example, if the Customer pays a Service Price equal to 90% of the value of the Net Metering Credits, the percentage specified in Section 12(c) would be 10%.

prior to such exercise of remedies and in no event longer than one hundred eighty (180) days after notice of any uncured default if Customer elects to terminate after such one hundred eighty (180) day period), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person, then System Owner, the Financing Source or its assignee shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(f) To the extent a Financing Source or any assignee or transferee of a Financing Source succeeds to the interests of the System Owner under this Agreement (such that such Person is deemed to be the System Owner for purposes of this Agreement), pursuant to this Section 13 or otherwise, such Financing Source shall be bound by all of the undertakings and responsibilities of the System Owner hereunder.

(g) The rights of any Financing Party to acquire or transfer the System shall be subject to such Financing Party and transferee filing all necessary notices to and obtaining all necessary approvals of any governmental entities as may be required in connection any applicable laws, rules, regulations or Permits in connection with any such acquisition or transfer.

#### **COMMENT**

Payments under this Agreement will be a critical source of repayment for any Financing Source, and the termination of this Agreement would adversely affect the collateral value of the System as a whole. Allowing a Financing Source to step into the shoes of the System Owner and cure Events of Default is beneficial for the Customer and attractive to potential Financing Sources.

#### **Section 14. Term and Termination.**

(a) Term. This Agreement will have a term beginning on the Effective Date and ending on the Expiration Date, or until the earlier termination of this Agreement pursuant to this Section 14 (the "Term").

(b) Early Termination.

(i) System Owner Termination Rights. System Owner shall have the right, but not the obligation, to terminate this Agreement upon thirty (30) prior written notice to Customer:

(A) if, despite System Owner's commercially reasonable efforts, on or prior to the Conditional Early Termination Date of the System:

(1) The Construction Preconditions are not satisfied or waived by System Owner;

(2) Owner has not obtained an executable interconnection agreement from the Utility for the System on terms and conditions reasonably satisfactory to System Owner or the costs of interconnecting the System to the Utility's distribution system would make construction or operation of the System infeasible or not economically viable, as determined in System Owner's sole discretion;

(3) The System Owner is unable to reach Financial Closing for the financing of the construction or operation of the System. For purposes of this Agreement, "Financial Closing" shall mean the execution of financing documents with a lender providing for the construction financing or permanent financing of the System, on terms and conditions satisfactory to System Owner, in System

Owner's sole discretion, and the fulfillment of all conditions precedent to the initial availability of funds thereunder; or

- (4) If System Owner reasonably determines that the requirements of the Permits required to construct or operate the System would make construction or operation of the System infeasible or uneconomic.
- (B) If, prior to the Service Commencement Date, System Owner reasonably determines that: (i) there exist System Site conditions (including environmental conditions) or construction requirements that were not known by System Owner as of the Effective Date and that could materially increase the cost of the development or construction of the System or materially and adversely affect the electricity production from the System as designed, (ii) there has been a material adverse change in the rights of System Owner to construct or operate the System; or (iii) there are easements, covenants, conditions or restrictions or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.
- (ii) *Customer Termination Rights.* From and after the Conditional Early Termination Date, Customer shall have the right to terminate this Agreement upon thirty (30) days notice to System Owner:
  - (A) If any of the following conditions are not satisfied at or prior to the Conditional Early Termination Date:
    - (1) System Owner shall have obtained any necessary and material easements, leases, licenses, consents and approvals and real property and other rights necessary for the construction, installation, operation and maintenance of the System; and
    - (2) System Owner shall have obtained all Permits necessary: (1) for the construction and installation of the System, including the Certificate of Public Good, (2) for the provision of Services to the Customer under this Agreement, and (3) for the Net Metering Arrangement contemplated hereby, and all such approvals, permits, licenses and authorizations shall be in force and effect.

Then from and after the Conditional Early Termination Date, Customer shall have the right to terminate this Agreement upon thirty (30) days prior written notice to System Owner, so long as construction of the System has not commenced prior to the date such notice was given to the System Owner and such conditions are not satisfied, waived or cured prior to the expiration of such thirty (30) day notice period.

- (B) Prior to the Service Commencement Date, Customer shall have the right to terminate this Agreement upon thirty (30) days prior written notice to System Owner if the planned or anticipated size, nameplate capacity or estimated annual electricity generation of the System changes as compared to the size, capacity and estimate specified in the description of the Solar Project attached hereto as Exhibit "A" such that the Estimated Year One Output to be allocated to Customer changes by more than ten percent (10%), unless Customer has agreed to such changes in writing. System Owner shall promptly notify Customer of any such changes and provide Customer with an updated calculation of the Estimated Year One Output prepared in accordance with Section 6(a).

- (C) Customer shall have the right to terminate this Agreement upon thirty (30) days prior written notice to System Owner if the Service Commencement Date does not occur within One Hundred Eighty (180) days after the Estimated Commissioning Date and the Service Commencement Date has not occurred at or prior to the time of such termination.
- (iii) Subject to the Financing Source rights set forth in Section 13 hereof, upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the option, but not the obligation, to terminate this Agreement upon providing written notice of termination to the defaulting Party.
- (c) All payment obligations of Customer, and all rights and remedies of the Parties hereto, arising prior to the termination of this Agreement shall survive the termination thereof.

**Section 15. Assignment.** Except as set forth in Section 16, neither Party may assign or transfer this Agreement to any other Person without the other Party's prior written consent, and any attempted assignment or transfer without such consent shall be void.

**Section 16. Cooperation in Financing.** Customer shall reasonably cooperate with System Owner's efforts to obtain financing for the System, and hereby consents to the collateral assignment of this Agreement to any Financing Source of System Owner. Customer agrees to provide such other ordinary and reasonable acknowledgments and certifications in respect of this Agreement as may be reasonably requested from it by any actual or potential Financing Source, provided, however, that System Owner shall pay or reimburse Customer for all reasonable costs incurred by Customer in connection with such cooperation, including reasonable attorney's fees; and further, provided, that in no event shall Customer be required to sign or otherwise deliver any consent or agreement that modifies or alters the terms of this Agreement or the rights and obligations of the Parties hereunder. System Owner may assign or transfer its interest, rights and obligations and collaterally assign to Financing Sources all or any part of System Owner's rights, interests or obligations under this Agreement. Customer agrees and acknowledges that any such Financing Sources shall have the right to enforce all provisions herein as an intended third-party beneficiary.

**COMMENT**

Payments from the Customer will be the primary source of income from the System. As a result, evaluating the creditworthiness of the Customer will be a significant underwriting consideration for any Financing Source. Customer's cooperation with the reasonable requests of the System Owner's Financing Sources, including delivery of estoppel certificates confirming that this Agreement remains in full force and effect and the absence of Events of Defaults, may be necessary to secure financing for the construction of the System.

**Section 17. Limitation of Liability.** Each Party agrees to waive any claim or right against the other for indirect, incidental, consequential or punitive damages, other than as a result of, or to the extent arising out of, personal injury, death, intentional misconduct or third party claims (to the extent such damages are awarded to any such third party). Neither Party shall be liable to the other for or, as a result of, any proceeding in which rates are reviewed or established for either Party by the Vermont Public Service Board or similarly authorized entity.

**Section 18. Notices.** All notices, requests, demands, claims and other communications (each, a "Notice") hereunder shall be in writing, addressed to the intended recipient as set forth on the first page of this Agreement, or to such other person or address as the Party entitled to such Notice shall have specified by written notice to the other Party given in accordance with the provisions of this Section. Any such Notice shall be deemed duly given on the earliest of: (i) when delivered personally to the recipient; (ii)

one (1) business day after being sent to the recipient by reputable overnight courier services (charges prepaid); (iii) one (1) business day after being sent to the recipient by facsimile transmission or electronic mail with confirmation of receipt; or (iv) four (4) business days after being mailed to the recipient by certified or registered mail, postage prepaid.

**Section 19. Entire Agreement.** This Agreement, including the exhibits, schedules and attachments hereto, supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter, and there are no covenants, promises, agreements, conditions or understandings, written or oral, except as set forth herein.

**Section 20. Amendment.** This Agreement may not be amended, waived or modified except by an instrument in writing executed by the Party against whom such amendment, waiver or modification is to be enforced.

**Section 21. Severability.** Any provision of this Agreement that is not essential to the purpose of this Agreement, or that is capable of being modified or replaced in a manner that gives effect to the original underlying intent of the Parties and to the intended economic benefits to the Parties in all material respect, that is declared or rendered unlawful, invalid or unenforceable by any applicable court of law or regulatory agency or deemed or rendered unlawful, invalid or unenforceable because of a statutory or regulatory change, including any order of the Vermont Public Service Board or any change in the Utility's tariff (individually or collectively, such events are referred to as a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement, and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the original underlying intent of the Parties and to the intended economic benefits to the Parties. If a Regulatory Event occurs, the Parties shall cooperate in good faith and use their best efforts to reform the Agreement in order to give effect to the original underlying intent of the Parties and to the intended economic benefits to the Parties, to the greatest extent reasonably practical.

**Section 22. Waiver of Rule of Construction.** The Parties waive the benefit of any rule that this Agreement is to be construed against one Party or the other.

**Section 23. Fees and Expenses.** Each Party will bear its own fees and expenses incurred in connection with the preparation, negotiation and execution of this Agreement.

**Section 24. Effect of Agreement.** This Agreement shall not be construed as a contract of agency, partnership, joint venture, surety or guaranty. The Parties agree that this Agreement is, and shall be construed as, a service contract under Section 7701(e) of the Internal Revenue Code of 1986, as amended, and not a lease.

#### **COMMENT**

The first sentence of this Section clarifies that the Parties do not intend to create a contract of agency, partnership or joint venture. These are special legal relationships that give rise to duties, obligations and rights beyond those specified in this Agreement, which could have unintended consequences for the Parties.

In order for the System Owner to receive the tax benefits and incentives attributable to the System, rather than Customer, this Agreement must not be regarded as a "lease" of the System to the Customer. Section 7701(e) of the U.S. Internal Revenue Code of 1986, as amended, provides a safe harbor for treating solar agreements like this one as services contracts rather than as leases, so long as certain criteria are satisfied.



**Section 25. Choice of Law.** This Agreement shall be governed and construed in accordance with the internal laws of the State of Vermont, without giving effect to principles of conflict of laws that would require the application of any other law.

**Section 26. Jurisdiction.** Any action or proceeding arising out of or related to this Agreement shall be brought in the State of Vermont, or, if it has or can acquire jurisdiction, in the United States District Court of the District of Vermont. Customer and System Owner each hereby irrevocably consents to and submits to the exclusive jurisdiction of each such court and waives any objection it may ever have to venue or convenience of forum. Customer and System Owner acknowledge and agree that this Section constitutes a voluntary and bargained-for agreement between the Parties.

**COMMENT**

Some parties may prefer to provide for mediation, arbitration or other alternative dispute resolution procedures as an alternative to or condition to commencing litigation.

**Section 27. Additional Terms and Conditions. (check only one)**

The additional terms and conditions specified on Exhibit “D” hereto apply to this Agreement.

No additional terms and conditions apply to this Agreement.

If the Parties have checked above to indicate that additional terms and conditions specified on Exhibit “D” apply to this Agreement, then Exhibit “D” shall be incorporated into this Agreement by reference. In the event of any conflict between the terms of this Agreement and the terms set forth on Exhibit “D”, the terms set forth in Exhibit “D” shall control. Notwithstanding the foregoing, if the Parties have indicated that no additional terms and conditions apply or if no selection is indicated above, then Exhibit “D” shall have no force or effect.

**COMMENT**

The Parties may specify additional terms and conditions or amend or modify the body of this Agreement using Exhibit “D”. The comment to Exhibit “D” includes an amendment that shifts how certain risks are allocated between the Customer and the System Owner. Under the default Service Price provisions of this Agreement, the Customer is responsible for purchasing all net metering credits that are allocated to it. Under the amended terms and conditions in the Comment to Exhibit “D”, the Service Price payable by the Customer during any Contract Year may be capped at the amount of the savings actually realized on the Customer’s Utility bills. As amended, Customer is not responsible for paying for net metering credits that expire for non-use. But if a Customer fails to use and pay for all of the net metering credits that are allocated to it, such that net metering credits expire without payment to the System Owner, the System Owner will have the right to modify the Customer’s allocation or terminate this Agreement (unless the Customer agrees to pay for such expired credits). These terms are not included in the standard formulation of the Agreement, because they may not be widely acceptable to developers and financing sources (or appropriate for all transactions). Although some developers and financing sources may be comfortable with these terms, others may not. Customers that require inclusion of the terms specified in the Comments to Exhibit “D” may be limiting themselves to a smaller pool of potential counterparties and bidders, which could result in a higher Service Price.

[\*\*Signature Page Follows on Separate Page\*\*]

IN WITNESS WHEREOF the Parties do hereby execute this Agreement as of the \_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CUSTOMER:**

Customer Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name of Signatory: \_\_\_\_\_  
Title: \_\_\_\_\_

**SYSTEM OWNER:**

System Owner Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name of Signatory: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit “A”**

**Description of System**

The System shall consist of an array of photovoltaic panels with an aggregate facility-rated output of \_\_\_\_\_ kW (AC) with an aggregate panel wattage of \_\_\_\_\_ kW (DC) located at the System Site as further described below:

**\*\*\*INSERT SYSTEM DESCRIPTION HERE, INCLUDING ESTIMATED YEAR ONE OUTPUT\*\*]**

**Estimated Year One Output:**

For the twelve (12) month period beginning on the Service Commencement Date, System Owner estimates that the Output of the System that will be allocated to the Customer Meters will be \_\_\_\_\_ kWh (the “Estimated Year One Output”). The System Owner estimates that the total electricity that will be generated by the System during such period will be \_\_\_\_\_ kWh.

**SYSTEM SITE DESCRIPTION:**

**\*\*\*INSERT SYSTEM SITE DESCRIPTION HERE\*\*]**

**COMMENT**

The final design and specifications for a System may not be known at the time that the Group Net Metering Agreement is executed. Changes in the System design and specifications are not uncommon during the course of the permitting, interconnection and construction process. Customers should anticipate occasional amendments to the System Description and site plan as an ordinary part of the development and construction process.

Where the System will be located at a System Site that is not owned by the Customer and the Customer is required to buy all of the Output allocated to it, the estimated Output of the System is a very important aspect of the System Description. General and approximate descriptions of the System that allow some flexibility to the System Owner are typically acceptable to Customers, in light of the Customer’s right to termination the Agreement if a change in the System results in a change of 10% or more to the Estimated Year One Output.

For projects that will be sited on land leased from the Customer, it is important for the Customer to maintain approval rights over the System Design and site plan. This Agreement assumes that any such approval rights will be set forth in the Lease.

**Exhibit “B”**

**Service Price**

The Customer shall pay the System Owner a fee for the Services (the “Service Price”) equal to \_\_\_\_\_ percent (\_\_\_\_%) of the Net Metering Credit Value attributable to Output from the System (*check one only*):

\_\_\_\_\_ that is allocated to the Customer Meters.

OR

\_\_\_\_\_ that is allocated to the Customer Meters and applied to reduce the amount payable to the Utility with respect to the Customer’s electricity usage and charges for the Customer Meters. In the event that all or any portion of the Net Metering Credit allocated to a Customer Meter for any Utility billing period exceeds the applicable electricity usage and charges for such period, such that the balance of the Net Metering Credit is rolled over to Utility bills for subsequent billing periods, then no Service Price for such excess Net Metering Credits shall be due until such excess credits are actually applied to reduce the amount payable by the Customer to the Utility; provided, however, that Net Metering Credits allocated to the Customer Meters that expire for non-use shall be deemed to be applied to reduce the amount payable by the Customer to the Utility at the time of expiration.

**COMMENT**

The standard Service Price employs a floating rate based on a percentage of the monetary value of the net metering credits and other benefits allocated to the Customer Meters on account of electricity generated by the System and allocated to the Customer Meters. The Agreement presents the parties with two options for when the Service Price will become payable.

If the first option is selected, the Customer will pay the Service Price for all Output that is generated and allocated to the Customer’s Utility bill during a billing period, rather than as the net metering credits are actually used by the Customer. Solar facilities produce significantly more Output in the summer months, so a Customer may build up and pay for a surplus of net metering credits that the Customer may not use until the winter months when System Output is lower. Unused bill credits expire after 12 months, unless the Utility voluntarily allows such credits to last longer (which the Utility is not obligated to do).

If the second option is selected, payment of the Service Price becomes due at the time net metering credits are actually applied to reduce the usage and charges on the Customer’s Utility bill. Under the standard provisions of the Group Net Metering Agreement Template, it is the Customer’s obligation to use and pay for the net metering credits attributable to the Output that is allocated to it. Therefore, any bill credits that expire for non-use after 12 months are deemed to be used at the time of expiration. Note that the second option is disfavored by many System Owners on account of the administrative burdens of tracking the Customer’s usage, which depends in part on the reporting practices of the Utility. Although some Utilities provide the administrator of the System with comprehensive reports that make this task easier to accomplish, this option may not be practical if the Utility’s reporting practices are less robust.

Alternative Service Price – Fixed Price Per kWh of Output. A common pricing structure is for the Customer to agree to pay a fixed price for each kWh of Output allocated to its meters. This option

allows the customer to lock-in a fixed price for its electricity for an extended period of time. Unlike the other options presented above, the Customer bears the risk associated with changes in electricity prices. The benefits of the net metering arrangement to the Customer will increase as electricity prices rise. But if electricity prices fall below the fixed price agreed to in the contract, the Customer may pay more for electricity than it would in the absence of this Agreement. This pricing option is not presented in the current version of the model Group Net Metering Agreement only because: (a) the use of fixed price contracts has not been as widespread in Vermont for net metering arrangements with municipalities and school districts; and (b) because a number of changes may be required to reflect the different allocation of risk between the parties. The omission of this pricing option from the Group Net Metering Agreement Template does not reflect any opinion of the authors, publishers or sponsors as to the viability or desirability of a fixed-rate Service Price. An alternative version of this Agreement for a fixed price Service Price Structure may be published at a later date if there is sufficient stakeholder demand. Parties desiring to enter into a fixed-rate agreement in the interim should consult with a Vermont lawyer to amend and modify this Agreement appropriately.

For all purposes of this Agreement, including the calculation of the Service Price (*check all that apply*):

- In no event shall the Net Metering Credit Value per kWh of Output allocated to a Customer Meter be deemed to be less than \$0.\_\_\_\_ per kWh (the “Floor”).
- In no event shall the Net Metering Credit Value per kWh of Output allocated to a Customer Meter be deemed to be greater than \$0.\_\_\_\_ per kWh (the “Cap”).
- No Floor or Cap shall apply.

If no selection is indicated above, no Floor or Cap shall apply.

**COMMENT**

A minimum Net Metering Credit Value, known as a “Floor,” is often requested or required by developers and financing sources. A “Floor” is often desirable to the extent it helps “bookend” the risk to lenders and other financing sources from a significant decline in electricity rates and corresponding Net Metering Credit Values, but shifts some of the risk of significantly lower electricity rates onto the Customer. Customer’s are often willing to accept this risk on the grounds that it only comes into to pay in a scenario where they would be paying less than they are now. A “Cap” is less common, but allows the Customer to capture the benefits if electricity rates or corresponding Net Metering Credit Values exceed a specified threshold. These provisions are not included in all net metering agreements, but may be desirable to the Parties or beneficial for obtaining financing for the project. If no Floor or Cap applies, the System Owner will bear 100% of the risks and receive 100% of the benefits associated with fluctuating utility prices.

**Exhibit “C”**

**Allocation Instructions**

System Owner shall instruct the Utility to allocate credits for the kilowatt hours of electricity generated by the System each month to the Meters set forth below in the following order of priority until the monthly electricity usage, charges and fees for each Meter are fully offset and satisfied:

**System Owner Meter:**

<b>Priority</b>	<b>Account Name</b>	<b>Account #</b>	<b>Meter #</b>	<b>Rate Class</b>
1				

**Customer Meters:**

<b>Priority</b>	<b>Account Name</b>	<b>Account #</b>	<b>Meter #</b>	<b>Rate Class</b>
2				
3				
4				
5				

**COMMENT**

Where the Group will include other third-party customers, the relative rights and priorities of any such third parties should be specified in this Exhibit. Electricity generated by the System may alternatively be allocated on a percentage basis (by specifying a percentage of the generation to be allocated in lieu of specifying a priority). The following language can be substituted in this Exhibit “B” when allocation will occur on a percentage basis:

*System Owner shall instruct the Utility to allocate credits for the kilowatt hours of electricity generated by the System each month to the Meters set forth below in the following percentages:*

**System Owner Meter:**

<b>Percentage</b>	<b>Account Name</b>	<b>Account #</b>	<b>Meter #</b>	<b>Rate Class</b>
__ %				

**Customer Meters:**

<b>Percentage</b>	<b>Account Name</b>	<b>Account #</b>	<b>Meter #</b>	<b>Rate Class</b>
__ %				
__ %				
__ %				
__ %				

Exhibit “D”

Additional Terms and Conditions

[None.]

COMMENT

Under the standard Service Price provisions of this Agreement, the Customer is responsible for purchasing all net metering credits that are allocated to it. Set forth below is provision that modifies the Service Price terms in Exhibit “B” such that the Service Price payable by the Customer during any Contract Year is capped at the amount of the savings actually realized on the Customer’s Utility bills. As amended, Customer is not responsible for paying for net metering credits that expire for non-use. But if a Customer fails to use and pay for all of the net metering credits that are allocated to it, such that net metering credits expire without payment to the System Owner, the System Owner will have the right to modify the Customer’s allocation or terminate this Agreement (unless the Customer agrees to pay for such expired credits). These terms are not included in the standard formulation of the Agreement, because they may not be widely acceptable to developers and financing sources (or appropriate for all transactions). Although some developers and financing sources may be comfortable with these terms, others may not. Customers that require inclusion of the terms specified in the Comments to Exhibit “D” may be limiting themselves to a smaller pool of potential counterparties and bidders, which could result in a higher Service Price. Parties that wish to include this provision should insert the text below into Exhibit “D”.

*Exhibit “B” to this Agreement is hereby amended by adding the following language to the end of such Exhibit “B”:*

*Service Price Limited to Avoided Utility Costs. Notwithstanding anything in this Agreement to the contrary, in no event shall the Service Price payable by the Customer to the System Owner during any Contract Year exceed the Avoided Utility Costs for the Customer Meters for such Contract Year; provided, however, in the event that the aggregate amount of the Service Price payments actually paid by the Customer to System Owner during any Contract Year exceeds the Avoided Utility Costs for the Customer Meters for such Contract Year, then the amount of such excess shall be credited against the Service Price payable to the System Owner for future payment periods (“Excess Service Price Credit”) until such Excess Service Price Credit is exhausted. Upon the termination of this Agreement, the System Owner shall pay Customer the amount of any accrued but unused Excess Service Price Credit for Contract Years ending prior to such termination, which payment shall be made within 45 days of the end of the Utility billing period during which such termination occurs. With respect to any Contract Year ending after the termination of this Agreement, any Excess Service Price Credit for such year shall be refunded by System Owner to Customer within 45 days of the end of the Utility billing period during which such Contract Year ends.*

*Customer shall promptly notify System Owner of any actual or anticipated change in Customer’s electricity usage or with respect to the Customer Meters that results, or could reasonably be expected to result, in the Avoided Utility Costs for the Customer Meters for such Contract Year being less than the amount of the Service Price that would otherwise be payable to System Owner hereunder (an “Adverse Usage Change”). Examples of such Adverse Usage Changes may include energy efficiency improvements made by Customer, the closing or change in usage of a building serviced by a Customer Meter, or the disconnection of a Customer Meter. Customer agrees to use commercially reasonable efforts, and cooperate with System Owner in good faith to mitigate the economic effects on the System Owner of such Adverse Usage*

*Change, including modifying the Allocation Instruction or identifying and making available additional Meters of Customer, if any, for inclusion in this Group Net Metering Arrangement as Customer Meters. If an Excess Service Price Credit is generated for any Contract Year or an Adverse Usage Change occurs, then System Owner shall have the right, upon 30 days prior written notice to Customer, to terminate this Agreement or modify the allocation instructions attached hereto or allocate generation to third parties, in each case so as to mitigate the economic impact on System Owner of any such event, unless Customer refunds or waives its rights to any such Excess Service Price Credits or the Customer waive its rights to Excess Service Price Credits which may arise as a result of such Adverse Usage Change, as applicable.*