

## Attachment B

### Commonwealth Solar II Participant's Agreement

**Whereas**, the Massachusetts Clean Energy Technology Center, a public instrumentality of the Commonwealth of Massachusetts ("MassCEC") is offering financial assistance in the form of rebates under the Commonwealth Solar II Rebate Program Manual Solicitation No. 2011-CS II Version 8.0 (the "Program Manual") for the design and construction of solar photovoltaic projects;

**Whereas**, the Applicant (the "Primary Installer") has submitted the Application on behalf of the PV Project Host Customer (the "Host Customer") and, in the case of third-party ownership, the PV System Owner (the "System Owner") (the Primary Installer, Host Customer and System Owner together the "Applicant Parties", and together with MassCEC, the "Parties") for the installation of a solar photovoltaic system (the "PV Project"), as described in the Commonwealth Solar Commercial Application (the "Application");

**Whereas**, MassCEC has deemed the PV Project eligible for a rebate ("Rebate"); and

**Whereas**, as a condition of their participation in the Commonwealth Solar II Rebate Program (the "Program"), the System Owner agrees to enter into and abide by the terms of this Participant's Agreement (hereinafter referred to as the "Agreement").

**Now, therefore**, for good and valuable consideration, Applicant Parties agree as follows:

1. Applicant Parties represent that they satisfy all eligibility requirements set forth in the Program Manual and that they will comply with all terms and conditions set forth herein and in the Program Manual.
2. Installation Contract. System Owner has entered into a contract with the Primary Installer to design and construct the PV Project (the "Installation Contract") which requires, in part, that the Primary Installer meet all requirements set forth in the Program Manual and incorporated by reference herein.
3. The PV Project.
  - a. *Performance of the Work*. System Owner shall ensure that the PV Project is installed and completed in accordance with the specifications set forth in the Application and that the PV Project satisfies all eligibility requirements set forth in the Program Manual, including the Minimum Technical Requirements. System Owner is responsible for ensuring that the installed PV Project continuously complies with the Minimum Technical Requirements on an ongoing basis for its useful life. For purposes of this Agreement the term "useful life" shall mean a period not less than ten (10) years from the date of Project Completion.
  - b. *Rebate Rescission/Reduction*. MassCEC reserves the right, acting in the sole exercise of its discretion, to rescind the award of the Rebate in the event of noncompliance with this Agreement, including the Program Manual or other document incorporated by reference. Furthermore, where there are proposed changes to the scope of a PV Project, MassCEC will not provide an adjusted Rebate that is more than the originally approved Rebate. Notwithstanding the foregoing, MassCEC reserves the right, at its sole discretion, to adjust the Rebate amount in a manner proportionate to proposed changes from the approved Application.
  - c. *PV Project Location Change*.
    - i. *General*. Changes to the physical location of some or all of the components, except in the case of warranty replacements, of an installed PV Project during the first ten (10) years of the PV Project's useful life are prohibited (a "Location Change"). In the event that MassCEC receives information concerning a Location Change and confirms that a Location Change has occurred, MassCEC shall rescind Rebates that have not yet been paid to the designated Payee (as identified in the Application) and seek repayment of any portion of the Rebate that has been paid. System Owner agrees that if it has received the Rebate and subsequently makes a Location Change within the first ten (10) years of the PV Project Completion Deadline (as defined in Section 3(e) and set forth in the rebate award letter), it shall notify and return the full amount of the Rebate to MassCEC. Examples of a prohibited Location Change include, but are not limited to, moving the specific site of a solar installation or transferring a PV Project to a property other than the one set forth in the Application.
    - ii. *Third Party Ownership*. In the event that the site of the PV Project itself is not owned by or under control of the System Owner, both System Owner and Host Customer, as applicable, agree that a Location Change may not be made within the first (10) ten years of the PV Project's useful life unless

one of the following conditions are met: 1) the Host Customer ceases to own the site, ceases to conduct business operations at the site and/or vacates the site; 2) the System Owner's lease, or other rights to occupy and use the premises, change in a way that prevents the System Owner from operating the PV Project; 3) the Host Customer or System Owner defaults or materially breaches on its obligations under the agreement (e.g., a lease) establishing System Owner's rights of access and use to the Host Customer's property; or 4) the Host Customer or System Owner declares bankruptcy. In these cases, and with prior written approval from MassCEC, which the MassCEC shall grant or deny at its sole discretion, the Host Customer or System Owner may relocate the PV Project within the Commonwealth of Massachusetts to a location served by an investor-owned utility or a municipal light plant that contributes to MassCEC.

- d. *Project Completion.* The System Owner and Primary Installer shall work cooperatively to achieve PV Project Completion within the timeframes specified in the Program Manual. For purposes of the Agreement, "Project Completion" shall mean that the installation has been completed and interconnected in accordance with the Minimum Technical Requirements and inspected and approved by the authorities having jurisdiction over official permitting and interconnection. Failure to achieve Project Completion within the specified timeframes may result, at MassCEC's sole discretion, in forfeiture of all or a portion of the Rebate. MassCEC shall consider, at its sole discretion, written requests for an extension of the Project Completion Deadline specified in the rebate award letter sent to the System Owner. Consideration of a requested time extension shall be strictly limited to circumstances that are beyond the control of the System Owner or Primary Installer.
4. Rebate Payment. MassCEC shall pay the Rebate to the Payee designated in the attached Application within sixty (60) days after MassCEC's receipt and acceptance (as determined at its sole discretion) of a Project Completion Form and the associated back-up documentation demonstrating that the installation has reached Project Completion and has met all Minimum Energy Efficiency Requirements as described in the Program Manual. Upon meeting the aforementioned requirements and with no changes to the system or its ownership, the Payee shall be paid a Rebate in an amount calculated in accordance with the incentive calculated for the Project set forth in the attached Application. System Owner acknowledges that, even though it may have chosen to have the Rebate paid directly to a third party Payee, System Owner may still be considered the taxable entity for Federal and State tax purposes. However, System Owner agrees that nothing herein constitutes or shall be construed as tax advice and System Owner should consult a tax advisor.
5. Natural Disaster Relief Adder. Applicant parties applying for the Natural Disaster Relief Adder will receive award notification and payment of the adder separately from the Commonwealth Solar II Rebate. This adder will be paid directly to the Payee as designated in the attached Application. For Third-Party owned systems, the Applicant Parties must complete and submit Attachment F with the application backup documentation.  
Indemnification. To the fullest extent permitted by law, the Applicant Parties, for themselves individually, shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MassCEC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) Applicant Parties' breach of any of the terms of this Agreement or any false representation of the Applicant Parties under this Agreement and/or the Application, or (ii) any negligent acts or omissions or reckless or intentional misconduct of the Applicant Parties or any of the Applicant Parties' agents, officers, directors, employees, contractors or subcontractors. Without limiting the foregoing, the Applicant Parties, for themselves individually, shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by the Applicant Parties, individually, or any of its agents, officers, directors, employees, contractors or subcontractors.
6. System Owner Responsibilities
  - a. The System Owner acknowledges that it is solely responsible for directing and controlling all PV Project decisions, including, but not limited to:
    - i. Selecting and entering into a written contract with the Primary Installer, including requiring documentation that any workers, contractors, or subcontractors employed on the PV Project have valid licenses issued by the Commonwealth of Massachusetts to perform the required work and are in compliance with all applicable laws, rules, and regulations related to employment in the Commonwealth including, but not limited to, those laws pertaining to workmen's compensation, non-discrimination and eligibility to work in the United States;

- ii. Preparing all plans, drawings, and specifications;
  - iii. Procuring equipment and obtaining appropriate warranties from the equipment vendor(s) and/or Primary Installer(s);
  - iv. Obtaining all permits required by state, local, or federal law or regulation to perform the work required to complete the PV Project and complete interconnection to the electric utility grid;
  - v. Construction means, methods, techniques, sequences, and procedures;
  - vi. Supervising and directing work performed to complete the PV Project;
  - vii. Safe operations and maintenance of the PV Project, including any required replacement of parts; and
  - viii. Agreement upon the selected Commonwealth Solar II Rebate Payment terms.
- b. System Owner agrees that it shall abide by the Commonwealth's rules regarding employment discrimination when selecting the Primary Installer, equipment vendor(s), and/or subcontractor(s) for the PV Project.
- c. The Applicant Parties for themselves individually agree to comply with all local, state, and federal tax laws. The Applicant Parties for themselves individually acknowledge that the rebates may be considered taxable income to the Applicant Parties in this Agreement by the U.S. Internal Revenue Service and the Massachusetts Department of Revenue. In addition, a rebate tax liability may exist whether the payment is made directly to one of the parties or on its behalf. Furthermore, the Applicant Parties for themselves individually acknowledge that MassCEC will issue Form(s) 1099, if applicable, to each System Owner that is awarded a rebate through the Commonwealth Solar II Rebate Program in each taxable year during which incentive Rebate payments are made by MassCEC. As a result, MassCEC will need to receive a completed W-9 Form from each awarded System Owner, prior to remittance of the rebate payment. A template W-9 Form and corresponding instructions will be included in the award packet for the System Owner to complete and return to MassCEC's finance department. It shall be the sole responsibility of the Applicant Parties, individually, to seek professional advice and determine the tax consequences of any such incentive Rebate payments.
- d. System Owner (and Host Customer, if applicable) agrees to allow MassCEC, or its agents, to enter onto the site of the PV Project to inspect the installed PV Project during the first ten (10) years of its useful life.
- e. System Owner (and Host Customer, if applicable) agrees to participate, upon MassCEC's request, in other information gathering activities required to prepare case studies, monitoring and evaluation studies, or other educational materials that may be beneficial to MassCEC or the public to disseminate knowledge gained as a result of the Program.
7. Disclaimer: MassCEC has not investigated, and MassCEC expressly disclaims any duty to investigate any company, product, service, process, procedure, design, or other matter regarding the installation of the PV on the PV Project by the Primary Installer presented in the Application. The approval of the Rebate does not constitute an endorsement, warranty, or guaranty of any kind or circumstance by MassCEC of any company, product, service, process, procedure, design or other matter regarding the installation of the PV on the PV Project by the Primary Installer, equipment vendor and/or subcontractor(s) for the PV Project. The entire risk of use of any Primary Installer, equipment vendor, company, product, service, process, procedure, or design is assumed by the System Owner as part of its obligations under this Agreement.
8. Self-Installation Requirements: MassCEC will allow Rebates to be paid for a photovoltaic self-installation project and will exempt such project from the Turnkey Contract Requirement, set forth in the Program Manual.
9. Insurance: MassCEC recommends that every Installer purchase and maintain adequate insurance coverage until completion of the PV Project. MassCEC also recommends that the Applicant Parties discuss the types and amounts of coverage maintained and the appropriateness of those coverages for the PV Project. Applicant Parties acknowledge the sufficiency of the types and amounts of insurance coverage maintained and the appropriateness of those coverages for the duration of the PV Project. The carrying of any of the insurance required hereunder shall not be interpreted as relieving the Applicant Parties of any responsibility to MassCEC, and the amount and type of insurance coverage will in no way be construed as limiting the scope of indemnification under this Agreement.
10. Consumer Disclosure – Renewable Energy Certificates. The System Owner or its designee shall have title to the PV Project non-energy attributes and the associated Renewable Energy Certificates ("RECs"). The RECs may have a financial value to the System Owner.

11. Mediation / Arbitration. In the event of any dispute concerning the Parties' respective rights and obligations under this Agreement, the Parties hereby agree to submit such dispute to binding arbitration ("Arbitration"). If any of the Parties' requests mediation prior to Arbitration, the Parties will work in good faith to mediate their dispute through a jointly selected mediator. The Parties to any such dispute shall share the fees of the mediator or arbitrator jointly, and shall be individually responsible for any legal fees they may respectively incur.
12. The following documents are incorporated by reference into this Agreement:
  - a. The Program Manual, including but not limited to Minimum Energy Efficiency Requirements and Minimum Technical Requirements,
  - b. The Commonwealth Solar Rebate Application attached, including any additional information submitted by the Applicant Parties as requested by MassCEC.

**Certification and Acknowledgement of Compliance**

**System Owner Certification of Compliance**

(System Owner must initial on the line next to each statement below)

I, as the System Owner, hereby certify and acknowledge that:

\_\_\_\_\_ I, as the System Owner, have reviewed the shading analysis for my proposed PV project with my Applicant/Primary Installer/Integrator, and certify that the system meets the “80% of optimal output” requirement, as outlined in the Minimum Technical Requirements (Attachment D).

\_\_\_\_\_ I, as the System Owner, certify that I have a turnkey contract in place with my Applicant/Primary Installer/Integrator for the system outlined in my Application. I have reviewed the turnkey contract and certify that:

- The project site in the contract matches the project site in the Application;
- The system size and specifications in the contract match that of the Application;
- The total cost listed in the contract matches that of the Application;
- The rebate “Payee” listed in the contract matches the Application; **and**
- The contract includes the five (5) year warranty language outlined in the Minimum Technical Requirements (Attachment D).

\_\_\_\_\_ I, as the System Owner, attest and acknowledge that I have discussed with my Applicant/Primary Installer/Integrator their current levels of insurance, and we have mutually determined that such levels adequately meet my PV Project’s need.

\_\_\_\_\_ *For Third Party Owned Projects Only (If not applicable, please write “N/A”):* I, as the System Owner, certify that I have a Memorandum of Understanding (“MOU”), Power Purchase Agreement (“PPA”), or solar leasing arrangement in place with the Host Customer identified in the Application.

\_\_\_\_\_ *For Projects Applying for Natural Disaster Relief Adder (If not applicable, please write “N/A”):* I, as the System Owner, acknowledge the requirements for this adder. For third-party owned projects, I acknowledge that the Host Customer will receive the direct benefit of this adder through reduced PPA or lease pricing.

**Acknowledgement**

The undersigned hereby certify and acknowledge that:

He/She has read and understands all of the terms and conditions of the Commonwealth Solar II Rebate Program Manual, Participant’s Agreement (Attachment B), and Minimum Technical Requirements (Attachment D) and specifically agrees to be bound by their contents, including all the requirements that must be completed in order to receive the Rebate Payment.

This Agreement entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

<b>APPLICATION NUMBER (if Expedited):</b> CS2-	<input type="checkbox"/> <b>Check here for Non-Expedited Applications</b>
<b>APPLICANT (PRIMARY INSTALLER/INTEGRATOR)</b>	<b>SYSTEM OWNER</b>
Printed Name of Applicant/Installer:	Printed Name of System Owner:
Signature:	Signature:
Date:	Date:
<b>HOST CUSTOMER (if different)</b>	
Host Customer Company or Organization:	Printed Name of Host Customer
Signature of Host Customer Authorized Representative	Date: