

APPENDIX E

Department of Transportation Required Land Lease Provisions

REQUIRED LEASE PROVISIONS for uses at MaineDOT Solar PV Installation Sites

The form of any contract ultimately entered into between MaineDOT and a solar developer will depend, in part, on the content of the proposals that are submitted in response to this Request for Proposals (the “RFP”) and will likely include a land lease of the area of land necessary to implement the proposed development of a solar photovoltaic generation system (the “Project”). The land lease will likely include an initial due-diligence period before the full lease provisions go into effect.

Any interested party submitting a proposal thereby agrees that, in the event a contract is entered into, the contract will include (along with other provisions agreed to by the parties) the provisions set forth below. This list of provisions is not intended to be all-inclusive but includes the provisions MaineDOT will require that may differ from that of a typical commercial lease or be unique to state government contracts.

While nothing herein precludes MaineDOT from agreeing to changes to the provisions set forth below, respondents should not assume that MaineDOT will agree to such changes. All activities, requirements and other conditions set out in these lease provisions shall be borne by the lessee at its sole cost and expense.

1. Use of Leased Premises.

The leased premises shall be used only for the purposes of constructing, installing and operating the Developer’s Project. Any additional use shall be permitted only with the written consent of MaineDOT. For Projects occurring at the Augusta State Airport site, uses of the leased premises are subordinate to and may not conflict with or violate the airport’s operations, Federal Aviation Administration (“FAA”) Grant Assurances or any other applicable laws. For Projects occurring at the Interstate-95 interchange sites, uses of the leased premises are subordinate to any may not conflict with or violate Federal Highway Administration (“FHWA”) or State of Maine regulations governing the Interstate-95 highway right of way or other adjacent state or state-aid highways. In the event any applicable laws, rules or regulations clearly conflict with the express terms of the lease, the terms of laws, rules and regulations shall be controlling. Lessee shall be obligated to comply with any changes when such compliance is required by federal or state law or regulation.

2. **Acceptance of Leased Premises.**

Lessee acknowledges that lessee is fully familiar with the condition of the leased premises and lessee accepts the leased premises in their condition on the effective date of the lease, “AS IS, WHERE IS, WITH ALL FAULTS,” including latent and patent defects or conditions. MaineDOT has made and MaineDOT expressly makes no representations or warranties as to the fitness of the leased premises for any particular purpose, including, without limitation, (a) its soundness for the construction, development and operation of a photovoltaic solar facility, (b) the availability of any utilities serving the leased premises, (c) the existing zoning, or (d) the physical condition of the leased premises. Lessee will obtain all necessary and proper permits and approvals to construct, develop and operate the approved use of the leased premises at lessee’s sole expense. MaineDOT shall not be required to take any action in connection with such approvals, permits and work, and lessee assumes sole responsibility for obtaining same (and the sole risk if any such approvals or permits shall not be granted); provided, however, if MaineDOT’s joinder in any such application is required as a matter of law, MaineDOT will join in such application, provided MaineDOT shall not be required to incur any expense in connection therewith.

3. **Taxes and Utilities.**

- a. Lessee shall pay any and all taxes assessed on its leasehold interest in the leased premises and on all its infrastructure, equipment or personal property located on the leased premises.
- b. Lessee shall pay for all utilities consumed directly on the leased premises.

4. **Insurance.**

- a. During the term of the lease or any renewal thereof, Lessee shall, at its own expense, procure, maintain in force, and provide a certificate of insurance on a standard Acord form (or the equivalent) evidencing the lessee’s general liability, professional liability and any other relevant liability insurance policies that may be associated with its construction, installation, operation and maintenance of Project on the leased premises. The general liability assumed by Lessee pursuant to the lease shall include indemnifying, defending and holding harmless the State of Maine, the City of Augusta (*for the Augusta State Airport Site only*) and their

respective officers, employees, agents and representatives with respect to any and all claims, demands, causes of action, losses, expenses or damages resulting in death, personal injury or property damage. At a minimum, lessee shall provide certificates of insurance demonstrating the following:

- i. Workers’ Compensation insurance for all employees entering on the leased premises in accordance with the requirements of the Workers’ Compensation laws of the State of Maine.
- ii. The lessee shall have, and shall ensure that its subcontractors have, Commercial General Liability, Professional Liability, or Negligent Acts, Errors and Omissions insurance, as appropriate, providing coverage for bodily injury and property damage liability for all hazards of the Project including premise and operations, products and completed operations, contractual, and personal injury liabilities. The policy shall include collapse and underground coverage as well as explosion coverage if explosion hazards exist. Required policies must remain in place for all periods of the Project, including all phases of site development and operation. Aggregate limits shall apply on a per-site basis. Minimum acceptable limits are:

General aggregate limit.....	\$2,000,000
Products and completed operations aggregate	\$1,000,000
Each occurrence limit.....	\$1,000,000
Personal injury aggregate.....	\$1,000,000

- iii. The Contractor shall have Automobile Liability insurance against claims for bodily injury, death or property damage resulting from the maintenance, ownership or use of all owned, non-owned and hired automobiles, trucks and trailers. Minimum acceptable limit is:

Any one accident or loss... \$1,000,000 per occurrence

- b. Additional Insured. Each insurance policy, with the exception of Workers’ Compensation and Professional Liability insurance, shall list

the State of Maine as an additional insured. *(at the Augusta State Airport Site, the City of Augusta shall also be named as an Additional Insured)*

- c. Defense of Claims. Each insurance policy shall include a provision requiring the carrier to investigate, defend, indemnify, and hold harmless all named insureds against any and all claims for death, bodily injury, or property damage, even if groundless. The lessee's insurer shall name MaineDOT as a released party on any release or settlement agreement for settled claims *(and the City of Augusta, in connection with the Augusta State Airport site)*.
- d. Primary Insurance. The insurance coverage provided by the lessee shall be primary insurance with respect to the State of Maine, its officers, agents, and employees *(and with respect to the City of Augusta for the Augusta State Airport site)*. Any insurance or self-insurance maintained by the State of Maine *(or the City of Augusta)* for its officers, agents, and employees is in excess of the lessee's insurance and shall not contribute with it.
- e. Certificates of insurance shall be provided to MaineDOT prior to the execution of the lease, as well as any new or renewal certificates within ten (10) days of any such renewal. Lessee shall notify MaineDOT in writing as to any amendment to or cancellation of such policies.
- f. Lessee shall, in good faith, ensure that coverage does not lapse. However, in the event of a lapse in coverage, lessee shall immediately notify MaineDOT and shall have 10 days to cure any defects and restore coverage. If coverage is not fully restored within 10 days, MaineDOT reserves the right to immediately terminate the lease upon written notice to lessee and MaineDOT will be entitled to immediate possession.
- g. Deductibles and Self Insurance Retentions. Any deductibles and self-insured retentions must be declared to and approved by MaineDOT.
- h. Acceptability of Insurers. Insurance is to be placed with insurers or reinsurers approved and licensed by the Maine Bureau of Insurance to conduct insurance business in the State of Maine.

5. **Indemnification.**

Lessee shall indemnify, defend and hold the State of Maine (*and the City of Augusta, in the case of the Augusta State Airport site*), including their officers, agents and employees, harmless from and against all claims, actions, causes of action, demands, suits, judgments, costs, losses, liabilities, damages and expenses, including all actions for contribution and/or indemnity and for reasonable attorneys' fees arising out of the following actions or inactions:

- a. Failure by lessee to perform any of the terms or conditions of the lease;
- b. Any injury or damage occurring on or about the leased premises due to negligence of lessee or its agents, employees or representatives;
- c. Any mechanics lien or security interest filed against the leased premises, or the equipment or materials used by lessee to benefit the leased premises or its commercial activities.

6. **Maintenance of the Leased Premises.**

- a. Lessee shall, at its expense, be responsible for all maintenance of the leased premises and all maintenance, capital repairs, and replacements of any improvements constructed or installed thereon. Lessee shall keep the leased premises in good condition and repair suitable for the primary use of the leased premises.
- b. MaineDOT shall not be responsible for any damages to or loss of any property of the lessee, its officers, employees, agents, servants, patrons or any other person or persons, except when such damage or loss is caused directly by the negligence of MaineDOT, its officers, employees, agents, or servants.

7. **Leasehold Improvements.**

Any improvements, equipment or related improvements installed or constructed on the leased premises shall be subject to all applicable federal, state and local laws including, without limitation, any applicable zoning, land use and building

ordinances or codes of the City of Augusta. Copies of all plans for the construction or installation of such improvements showing the location, design and character thereof shall be filed with the City of Augusta in connection with the local permitting process.

8. **Decommissioning.**

- a. Upon expiration or termination of the land lease, if MaineDOT declines any provided option for renewal or purchase of the lessee's Project infrastructure, the lessee will decommission and remove all Project system components from the leased premises and will surrender the leased premises in a condition reasonably comparable to that existing prior to the land lease, reasonable wear and tear excepted, which shall include grading and seeding the surrendered property to provide adequate grass coverage , all at the lessee's sole cost and expense. System decommissioning and removal includes the removal of all related equipment, including but not necessarily limited to: any perimeter fences, any concrete or steel foundations, all metal structure (mounting racks), all PV modules, alternators, generators, aboveground and underground cables, transformers, inverters, switch boxes, and other fixtures.
- b. MaineDOT may require the lessee to secure appropriate decommissioning bonds to ensure the availability of funds to accomplish all necessary decommissioning activities.

9. **Additional General Terms and Conditions.**

- a. Lease provisions shall include a requirement that the design of the lessee's Project be consistent with the system design submitted by MaineDOT in its approved interconnection application to Central Maine Power Company ("CMP"). Construction of the lessee's Project shall be initiated by an established date and shall be completed, commissioned and in operation by an established date, as such dates are set out in the lessee's proposal submitted in response to MaineDOT's RFP. In connection therewith, lessee shall be required to enter into an interconnection agreement with Central Maine Power Company by a date that supports the lessee's proposed timeline.
- b. When performing site work in preparation for infrastructure installation,

geotechnical review by MaineDOT may be required based on location of conduit installation for interconnection points or for other reasons.

Unless approved by MaineDOT, existing drainage patterns shall not be altered. If any unknown hazardous and/or contaminated materials are encountered during the construction of the lessee's Project or an unexpected, reportable environmental incident occurs, lessee must stop work and contact the Maine Department of Environmental Protection immediately. The lessee shall be responsible for all costs associated with environmental impacts arising out of, resulting from, or attributable to operations or actions conducted on the leased premises by the lessee, its employees, agents or contractors prior to the expiration of lessee's associated land lease, including environmental impacts that may not become apparent until after such land lease has terminated.

- c. All traffic control/safety plans that become necessary during construction of lessee's Project must be approved in advance by MaineDOT's Region Engineer at MaineDOT's sole discretion.
- d. Lessee shall be required to develop an appropriate entrance to the leased premises at the location directed by MaineDOT. Specific entrance locations have been established for safety purposes and have been approved by the Federal Highway Administration where applicable and are not negotiable.
- e. Project installations shall not adversely affect the safety, design, construction, operation, maintenance, or stability of existing MaineDOT properties or assets, and shall not interfere with or impair MaineDOT's mission to "responsibly provide our customers the safest and most reliable transportation system possible, given available resources". Construction, operation and maintenance activities shall be coordinated with MaineDOT to ensure that MaineDOT operations are not disrupted.
- f. All Project construction, maintenance and operation activities must comply with MaineDOT's Pollinator Friendly Planting and Maintenance Plan as set out in MaineDOT's RFP.
- g. All equipment installed on the leased premises shall meet all applicable building codes. All equipment shall be UL listed.

- h. If the leased premises are protected by a locked gate, MaineDOT (*or, in the case of the Augusta State Airport, its designated airport manager*) or other designee shall be provided with keys and be allowed to access the leased premises at any time to deal with emergency circumstances affecting the safe operation of the airport. Access may also be granted to the police or other law enforcement officials as necessary to circumvent criminal activity.
- i. During the term of the lease, it may become necessary to institute and carry forward extensive programs of construction, expansion, maintenance and repair on MaineDOT's adjacent properties and infrastructure. Lessee recognizes that, during such times, it may be inconvenienced by such programs. Lessee agrees that MaineDOT shall not be liable for such inconvenience or disruption, except for reasonable or proportional abatement of fees and rents during the period of impaired use directly affecting the use of the leased premises.
- j. (*In the case of the Augusta State Airport site*) During state or national emergencies, times of war, or times of other critical need, MaineDOT shall have the right to authorize the lease or use of the airport or any part thereof by the United States for use by its armed forces, the Maine National Guard, or for any other state- sanctioned use determined to be in the best interest of the state's welfare and, if said lease or use materially interferes with any rights of lessee, lessee may terminate its lease under the same terms and conditions as therein provided.

10. Mortgages and Encumbrances.

- a. Subordination. For the avoidance of doubt, the parties intend that MaineDOT's fee title and reversionary interest in the leased premises shall not be subject or subordinate in any respect to or affected in any manner by the foreclosure of (or the exercise of any other remedies under) any mortgage granted by lessee on the lease or the leasehold interest created thereunder.
- b. Lender Protections. *The specific language of this section is negotiable and will be more fully defined when drafting the lease*, but it is MaineDOT's intention that lessee shall be permitted, without MaineDOT's prior approval (but with prior written notice), to enter into

lending arrangements that encumber the leasehold estate, any appurtenances thereto, and any equipment and improvements thereon, provided that, in the event of lessee's default, a lender shall not acquire any greater interest in the leased premises than the lessee has under the terms of the lease, and no such lending arrangement shall extend to or encumber MaineDOT's fee title or its reversionary interest or estate in and to the leased premises.

11. Termination.

- a. MaineDOT shall have the right to terminate the lease in its entirety, upon or after the occurrence of one or more of the following events:
 - i. If lessee abandons the leased premises or fails to perform any act or acts or render any service required to be performed or rendered by it under the terms of the lease, and if lessee fails to remedy any such default in a manner reasonably satisfactory to MaineDOT within thirty (30) days following receipt of written notice to remedy the same;
 - ii. If lessee's actions or failure to act violate either the FAA requirements or any applicable federal, state or local regulation.
 - iii. If lessee becomes bankrupt, insolvent, files for reorganization under available bankruptcy laws, seeks protection from or makes an assignment for the benefit of creditors, or has a receiver or trustee appointed for its operations.
 - iv. If involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of lessee are instituted against lessee, or a receiver or trustee is appointed for all or substantially all of lessee's property, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after institution or appointment.
 - v. If MaineDOT elects to terminate the lease for any of the reasons specified herein, MaineDOT shall give lessee written notice by certified mail, return receipt requested, that lessee is in default, and lessee shall thereafter have thirty (30) days within which to cure

such default to avoid termination. In the event lessee does not cure such defaults within this thirty-day period, or reasonable progress is not being made toward correction of such defaults, at MaineDOT's sole discretion, then the lease may be terminated without further notice.

- b. The lease may be terminated by mutual, written agreement of the parties.
- c. *(In the case of the Augusta State Airport site)* The lease shall terminate if required by the FAA in its sole discretion.

12. Transfer of Ownership.

A transfer in the ownership of the lessee shall result in the termination of the lease at MaineDOT's discretion unless MaineDOT is given ninety (90) days advance notice in writing of lessee's intent to transfer ownership, and MaineDOT does so approve of the transfer, in which event the lease shall remain in full force and effect.

13. Rules and Regulations.

Lessee agrees during the term of the lease and any renewals thereto to use the leased premises in a manner consistent with the following rules, regulations and policies, as such may be amended:

- a. Any applicable rules, regulations, circulars, and orders of the United States of America Department of Transportation or the Federal Aviation Administration (the "FAA");
- b. All applicable federal, state and local laws, rules and regulations;
- c. All security requirements as imposed by the Transportation Security Agency (the "TSA");
- d. Common industry practice;

14. **Subordination.**

The rights of the lessee under the lease shall be subordinate to the provisions of any existing or future agreements between MaineDOT and any other governmental entity relative to the operation or maintenance of MaineDOT's adjacent airport or highway infrastructure, including but not limited to any agreement that has been or may be required as a condition precedent to the expenditure of federal or state funds for the development or improvement of MaineDOT's adjacent airport or highway infrastructure. This subordination of rights shall in no way lessen the substantive rights of the lessee pursuant to the terms of the lease.