

EXHIBIT 1

**LEASE AGREEMENT WITH WATER
SUPPLY DISTRICT OF ACTON**

LEASE AGREEMENT

This LEASE AGREEMENT (“Lease”) made and entered into this _____ day of ____ (the “Effective Date”), by and between _____ with a usual place of business at _____, a Massachusetts company [*or* licensed to do business in the Commonwealth of Massachusetts] (“Lessee”), and the Water Supply District of Acton, a Massachusetts water district with a principal place of business at 693 Massachusetts Avenue, Acton, Massachusetts in Middlesex County, Massachusetts (“Lessor”). Lessor and Lessee are sometimes referred to collectively hereinafter as the “Parties.”

RECITALS

A. Lessee is the developer, owner, and operator of solar energy generation equipment and facilities suitable for the production and delivery of electrical energy.

B. Lessor is a Massachusetts water district and is the owner of certain real property located at 16 Knox Trail and 56 Lawsbrook Road and adjoining properties, Acton, Massachusetts 01720, more particularly described in Exhibit A attached hereto (“the Property”).

C. Lessee desires to (i) lease a portion of the Properties (the “Premises”) from Lessor, as shown on Exhibit B attached hereto, for purposes of constructing, installing, owning, operating and maintaining Solar Facilities (as hereinafter defined in Section (4.1)(a) below), and (ii) obtain certain ancillary rights affecting the Premises for purposes incidental thereto as more fully set forth below.

D. Lessor agrees to lease the Premises to Lessee for the purposes set forth in this Lease and to grant Lessee certain ancillary rights, all on the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meaning set forth below:

1.1 “Interest Rate” means the rate of interest equal to one percentage point over the rate of interest announced by The Wall Street Journal as its “prime” or “base” lending rate on the Solar Commencement Date, or if such rate can no longer be determined, the base or prime rate advertised by such other commercial bank having an office in New York, NY agreed to by the Parties.

1.2 “Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets and allowances, howsoever entitled, directly or indirectly attributable to the generation from the Solar Facilities and their displacement of conventional energy. Environmental Attributes include but are not

limited to: (1) any benefit accruing from the renewable nature of the generation of energy from the Solar Facilities, (2) any avoided emissions of pollutants to the air, soil or water; (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs); (4) displacements of energy generation by fossil fuel sources; (5) any reporting rights to these avoided emissions such as Green Tag Reporting Rights; (6) any certificates, attributes or other premiums or additional value for renewable, clean or green energy generation, or avoided emissions; and (7) any production tax credits or related generation subsidies.

1.3 “Environmental Incentives” include, but are not limited to, (i) federal, state or local production tax credits associated with the construction, purchase, operation, and/or maintenance of the Solar Facilities, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Facilities that are applicable to a local, state or federal income taxation obligation, (iii) grants or subsidies in support of renewable energy, (iv) emission reduction credits encumbered or used by the Solar Facilities for compliance with local, state, or federal operating and/or air quality permits, and all rebates, benefits, credits, reductions, tax deductions, offsets, Solar Renewable Energy Certificates (“SRECs”), and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or operation of the Solar Facilities.

1.4 “Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Lease or from complying with conditions required under this Lease if such act or event, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and are beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance, “Force Majeure” may include without limitation: an act of God or the elements; explosion, fire, epidemic, landslide, or mudslide; sabotage; terrorism; lightning, earthquake, flood or similar cataclysmic event; an act of public enemy, war, blockade, civil insurrection, riot, or other civil disturbance; or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

1.5 “Interconnection Agreement” means an agreement entered or to be entered between the Lessee, as owner and operator of the Solar Facilities, and the local electric utility, EverSource.

1.6 “Interconnection Facilities” means all improvements the purpose of which is to transmit electrical power from the Solar Facilities to a utility grid or other system, including, without limitation, transformers, and electrical transmission lines.

1.7 “Power Purchase Agreement” means that certain agreement between the Water Supply District of Acton and the owner and operator of the Solar Facilities for the sale and purchase of electric power generated on the Premises.

1.8 “Photovoltaic Facilities” means any photoelectric cells or other equipment designed for the collection and/or generation of electrical power from solar radiation, including without limitation, solar panels, associated support structures, racking, floatation

devices, braces, wiring, and related equipment.

1.9 “Tax Agreement” means the agreement entitled “Agreement for Payment in Lieu of Taxes for Real Property and Personal Property” entered or to be entered between the Solar Facilities owner and the Town of Acton, concerning the real estate and personal property taxation on the Premises generally at 16 Knox Trail and 56 Lawsbrook Road, Acton, MA as shown in Exhibit B.

1.10 “Hazardous Materials” means (i) any material, substance, product, petroleum, petroleum product, derivative, compound or mixture, mineral, including but not limited to asbestos and asbestos containing materials, gas, radon, radioactive materials, chemical, flammable explosives, medical waste or other pollutant, urea formaldehyde foam insulation, lead, polychlorinated biphenyl, in each case whether naturally occurring, man-made or the by-product of any process that is toxic, harmful or hazardous or acutely hazardous and that may cause damage to human health or the environment, safety or real Premises, or (ii) any material or substance sustaining a cause of action or claim under any Environmental Law, whether or not such material or substance is defined as hazardous as such under any Environmental Law and whether such substance is now or hereafter designated as hazardous, under any Environmental Law, or by any environmental agency or otherwise.

1.11 “Environmental Laws” means all federal, state and local laws, ordinances, rules, regulations and legally enforceable policies and guidelines regarding the environment, human health or safety (herein “Environmental Laws”) applicable to the Premises, or the use thereof, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), Resource Conservation & Recovery Act (42 U.S.C. Sect. 6901 et seq.), Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), Toxic Substances Control Act (15 U.S.C. Sect. 2601 et seq.) the Clean Air Act (42 U.S.C. Sect. 7401 et seq.), and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sect. 9601 et seq.); and Massachusetts General Laws Chapter 21E and the Massachusetts Contingency Plan

2. Premises.

2.1 Lease Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises consisting of approximately 12.4 acres as shown on Exhibit B and described as “Premises” on said Exhibit B (See Exhibit B for outline of Premises) commencing on the Construction Commencement Date (as hereinafter defined) and terminating on the expiration of the Term (as hereinafter defined), subject to extensions, in accordance with the terms and conditions set forth herein. The parties acknowledge and agree that Lease Payments and other charges under this Lease shall not commence until the Construction Commencement Date pursuant to Section 2.2.1 below.

As used herein, the term “Premises” means of that portion of the Property as set forth on Exhibit B. The term “Remaining Lessor Property” means the Property, exclusive of the Premises. Throughout the Term of the Lease, Lessee and its employees, contractors, vendors, licensees and invitees shall have non-exclusive, reasonable access to, over and upon the Remaining Lessor Property from public ways within the Town of Acton for access to and from the Premises.

2.2 Term. The term of this Lease shall be composed of:

2.2.1 A construction period commencing upon the date following the execution of this Lease (the "Construction Commencement Date") and expiring upon the date commercial operation of the Solar Facilities commences (the "Solar Commencement Date") (from the Construction Commencement Date until the Solar Commencement Date, herein referred to as the "Construction Term"); provided however that the Construction Term shall not commence after _____ and in all events the Solar Commencement Date shall commence no later than _____. Lessee shall deliver written notice to Lessor of the date construction activities will commence on the Premises (the "Notice of Commencement"). Lessee shall also deliver written notice to Lessor of the Solar Commencement Date. If Lessee does not achieve the Solar Commencement Date by the deadline specified, then this Lease may be terminated by Lessor and be subject to the applicable provisions of Section 12, infra.

2.2.2 A term of twenty (20) years, beginning on the Solar Commencement Date ("Term").

2.2.3 Notwithstanding anything to the contrary herein, the effectiveness of this Lease shall be subject to approval by vote of the Water Supply District of Acton Board of Commissioners.

2.3 Payments to Lessor

2.3.1 The Schedule of Lease Payments in Exhibit C shall commence on the Solar Commencement Date and continue throughout the Term or any extended Term. The total amount of Lease Payments for each year shall be payable in monthly installments, payable in advance, on the first day of each and every calendar month of the Term. If the Solar Commencement Date shall occur on a date other than the first day of a calendar month, the Lease Payment for such month shall be adjusted on a per diem basis.

For purposes of example, if the Solar Commencement Date occurs on _____, the first Lease Payment shall be determined as follows: \$ _____ ÷ ____ days = \$ per day; Number of days in remainder of month = _____ days x \$ _____ = \$ _____ is the amount of First Lease Payment.

All payments shall be addressed and directed to the Treasurer, Water Supply District of Acton, 693 Massachusetts Avenue, P.O. Box 953, Acton, MA 01720.

2.4 Solar Facilities. Lessee shall be the sole legal and beneficial owner and operator of the Solar Facilities, which Solar Facilities may be upgraded or replaced with similar or dissimilar technology; provided, however, that if such upgrade or replacement may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld. The Solar Facilities shall remain the personal property of Lessee and shall not attach to or be deemed a part of, or become a fixture to, the Premises. At all times, Lessee shall have one hundred percent (100%) of all right, title and interest in and to all SRECs, Green Tags, Green Tag Reporting Rights, Environmental Incentives and other items of whatever nature relating to Environmental Attributes and Environmental Incentives of the Solar Facilities. Lessor acknowledges that Lessee will receive federal tax credits and accelerated depreciation on the Solar Facilities directly related to the construction and continued operation of the Solar Facilities and Lessor acknowledges that such tax credits and accelerated depreciation are the sole right and property of Lessee. Lessor shall execute and furnish any instrument and/or take any action reasonably requested by Lessee to perfect, confirm or maintain the Lessee's right, title and interest in the items described in the preceding two sentences so long as all costs and expenses associated with such required action are borne solely by Lessee. Lessee will be responsible for the planning, construction, operation and maintenance of the Solar Facilities at Lessee's sole cost and expense and shall be solely responsible for the cost of maintaining the Premises in a manner consistent with a 'triple net' lease and in compliance with the MA Department of Environmental Protection regulations pertaining to renewable energy development, operation and maintenance within Wellhead Protection Zones 1 & 2. Lessee will comply with applicable laws and regulations relating to the operation of the Solar Facilities and the generation and sale of energy, including obtaining and maintaining in effect all relevant approvals and permits.

2.5 Sale of Energy

2.5.1 The Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations (as hereinafter defined) on, the Premises. Any economic benefit from the transmission of energy from the Solar Facilities shall be the sole right, title and interest of Lessee and any economic benefit which is initially credited or paid to the Lessor for such energy, together with any and all Environmental Attributes and/or Environmental Incentives, will be assigned by Lessor to Lessee without delay. Lessor shall also execute and furnish any instrument and/or take any action reasonably requested by Lessee to assign, transfer, perfect, confirm or maintain the Lessee's right, title and interest in the items described in the preceding sentence.

All rights claimed by the Lessee in this Lease for the right to operate the Solar Facilities and to obtain the economic benefits therefrom, whether it be by sale of electricity or by the claim of any of the benefits set forth in the preceding paragraph are subject to any and all applicable regulations of any governmental agency and it shall be the sole responsibility of the Lessee and not the Lessor to comply with same.

Under no circumstances shall the Lessor be responsible for the payment of any claim, charge, fee, permit, application or any other payment of any kind which may be associated with the operation of the Solar Facilities or the transmission of electricity to the local electrical distribution network. All such charges or payments of any type or kind shall be borne by and be timely paid by the Lessee without any credit for or offset against or on account of any payments

which may be due to Lessor from Lessee, whether same be rent, tax payment or any other payments due to the Lessor from Lessee under this Lease.

If the Lessor is required to take action as described in this paragraph, then the Lessee shall bear the cost of such action and reimburse the Lessor for such actual costs, including, but not limited to, reasonable attorney's fees for the Lessor's counsel.

2.5.2 The Parties acknowledge and agree that Lessee will enter into a “Power Purchase Agreement” with the Water Supply District of Acton, the Lessor. This Lease is contingent upon the execution of the Power Purchase Agreement. This Lease shall terminate upon the termination of the Power Purchase Agreement.

2.6 Exclusive Rights of Lessee. For so long as there shall be no Event of Default by Lessee under its obligations under this Lease and for so long as this Lease has not been terminated, the Lessee shall have the sole and exclusive right to conduct operate the Photovoltaic Facilities on the Premises. Lessor shall not grant any rights in the Property that would materially interfere with Lessee's conduct of its operations in derogation of Lessee's sole and exclusive rights and privileges hereunder. For so long as there shall be no Event of Default by Lessee under its obligations under this Lease and for so long as this Lease has not been terminated, without the prior written consent of Lessee, Lessor shall not (i) grant, confirm, acknowledge, recognize or acquiesce in any right claimed by any other person or entity (other than as successor or assignee of the Lessee) to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee, at Lessee's sole cost and expense, in resisting and disputing such claims, or (ii) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including, without limitation any environmental regulation, land use ordinance or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the Solar Facilities on the Premises, except to the extent that such waiver or grant of rights is reasonably required in connection with the development or use of the Remaining Lessor Property.

Lessee further acknowledges and recognizes that this Lease and the Premises, as well as the Remaining Lessor Property, is subject to regulation by the Massachusetts Department of Environmental Protection (DEP).

2.7 The parties acknowledge that this Lease is expressly contingent upon the following (each a “Contingency” and together the “Contingencies”):

2.7.1 Receipt by Lessee of the Planning Board Site Plan Approval from the Town of Acton;

2.7.2 An affirmative agreement with the Town of Acton Board of Selectmen approving the Tax Agreement, in a form and on terms reasonably acceptable to Lessee and Lessor;

2.7.3 Receipt by Lessee of a duly-executed Power Purchase Agreement between Lessee and Water Supply District of Acton, both in a form and on terms reasonably acceptable to Lessor and Lessee;

2.7.4 Lessee entering an Interconnection Agreement with EverSource; and

2.7.5 Lessee obtaining the insurance policies required herein.

Lessor and Lessee shall cooperate in Lessee's efforts to satisfy the Contingencies listed above and to take all reasonable steps to expedite same including, but not limited to, transmitting draft documents and explanatory materials furnished by Lessee, executing appropriate documents after review by Lessor's counsel, if deemed necessary by Lessor at Lessee's expense subject to the terms of Section 10 and limitations below, authorizing entry onto the Premises by Lessee, its employees, agents, engineers, surveyors, and others for purposes related to obtaining the permits including, but not limited to, the survey of the Premises the preparation of a site plan, the preparation of engineering studies or reports in support of the development of the Solar Facilities by Lessee, the preparation of applications and information required under the Interconnection Agreement and such other activities as may be reasonably deemed necessary by the Lessee in preparation for the construction of the Photovoltaic Facilities. Such entry shall be during normal business hours provided that none of same shall disrupt the normal operations on the Property during the conduct of any such activities. In addition, the Lessee shall be solely responsible to restore the Premises to its current condition following any such inspections or tests and all of the contractors, subcontractors or consultants shall be required by the Lessee to be insured for workmen's compensation and to carry public liability insurance. Lessee shall be responsible for any damage to person or Property which may occur as a result of any of these entries onto the Property and shall indemnify and hold lessor harmless from any such personal injury or property damage..

3. Access Rights and Solar License

3.1 Solar License. Lessor hereby grants to Lessee, from the Construction Commencement Date through the end of the Term, a Solar License over and on the Premises, whereby no structure shall be erected on or vegetation be permitted on the Remaining Lessor Property, which will, during daylight, cast a shadow on the Solar Facilities.

3.2 Access. Lessor grants to Lessee the access to the Premises.

4. Use of the Premises.

4.1 Permitted Uses. During the Term, Lessee shall have the right to occupy and use the Premises for solar energy generation, conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "Operations") which shall be limited to the following;

(a) constructing, reconstructing, erecting, installing, maintaining, repairing, improving, upgrading, replacing, relocating, removing, using, monitoring and/or operating existing, additional or new (i) Photovoltaic Facilities and Interconnection Facilities, (ii) electrical production, transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) interconnection and/or switching facilities, transformers and inverters, (v) control boxes and computer and monitoring hardware, (vi) utility installation, (vii)

safety protection facilities, (viii) signs and fences, and (ix) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, sale or other use or conveyance of electricity (all of the foregoing, including the Photovoltaic Facilities and Interconnection Facilities, collectively "Solar Facilities") which Solar Facilities may be replaced with similar or dissimilar technology at Lessee's cost and expense; provided, however, that if such replacement may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld;

(b) Generating, producing, inverting, transforming, and transmitting energy related to the Operations of the Photovoltaic Facilities;

(c) Undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that are necessary, helpful, appropriate, desirable or convenient in connection with, incidental to or to accomplish any of the foregoing purposes so long as they are essential to the Operations of the Photovoltaic Facilities and the sale and transmission of electricity emanating therefrom, and are in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies ("Legal Requirements").

4.2 Lessee's Exercise of Rights. Lessee may, at any time and from time to time after the commencement of the Construction Term and throughout the Term, construct, install, use, maintain, repair, replace and/or relocate any part of the Solar Facilities (including, but not limited to, racks, panels, pipes, electric lines, conduits, wires and/or appurtenant fixtures and equipment and the like, wherever located on the Premises) and otherwise conduct and perform Operations in a manner Lessee deems reasonable and appropriate subject to the Legal Requirements.

5. Design and Construction of Solar Facilities. Lessor acknowledges that the installation of all or a portion of the Solar Facilities may require physically mounting and adhering the Photovoltaic-Facilities on the Premises. Lessor's consent shall not be required for the installation, any reconstruction, maintenance, repair, relocation, removal, alteration or modification of all or any portion of the Solar Facilities; provided, however, that if such installation, reconstruction, maintenance, repair, relocation, removal, alteration or modification may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld. All costs and expenses (including permits or licenses) attributable to any installations by Lessee shall be borne by Lessee. In the event that any contractor, subcontractor, vendor, supplier or any other party for whom Lessee is responsible makes claim of a demand for payment Lien against the Lessors, Lessee shall, within thirty (30) days following notice of such claim or demand, cause such claim or demand to be released and discharged (whether by obtaining and recording or filing a lien discharge, posting a bond as required under statute, or otherwise) at no cost to Lessor. Upon becoming aware of the existence of a claim or demand, the Lessee shall give prompt notice to the Lessor, providing the details of such claim or demand and the identification of the claimant. Lessee shall keep Lessor advised of the steps being taken by Lessee to have the claim or demand released and shall indemnify and hold Lessor harmless from any and all claims, costs and expenses which Lessor may incur in the release of such claim or demand and adverse impact same may have to the Lessor before its removal, including

but not limited to reasonable attorney's fees and the cost of any bond.

6. Maintenance and Repair.

6.1 Maintenance and Repair Obligations of Lessor and Lessee. (a) Lessee shall, for the Term of this Lease, at Lessee's sole cost and expense, maintain and repair the Solar Facilities in accordance with all Legal Requirements.

6.2. Impact on Solar Facilities.

6.2.1 Lessor shall not (and shall not allow any other party to) move, remove, upset, disturb or otherwise handle any of the Solar Facilities except to the extent that it is necessary to take such action in order to prevent imminent damage to tangible property or personal injury, in which event Lessor shall notify Lessee as soon as practicable of the emergency event and the actions taken by or on behalf of Lessor. Lessor shall not be responsible for any action taken by it or its agents, servants, employees in connection or conjunction with such activity. Except in the case of an emergency, in connection with any maintenance or repairs by Lessor or anyone acting by or behalf of Lessor with respect to the Remaining Lessor Property, Lessor shall provide Lessee with not less than thirty (30) days prior written notice of any unavoidable need to move, remove, upset or otherwise handle any of the Solar Facilities.

7. Ownership of Improvements. Subject to Section 24, the Solar Facilities shall at all times remain the property of the Lessee or its successors and assigns and the Lessor shall have no right, title or interest therein. The Solar Facilities shall not be deemed to be fixtures (even if affixed to the Premises) and shall be and remain the sole property of Lessee.

8. Security. After the Solar Commencement Date, Lessee shall implement commercially reasonable measures that Lessee deems necessary or desirable to secure the Solar Facilities at Lessee's sole cost and expense; provided, however, that the plans for any fencing, signage or other security measures which may be visible from the Remaining Lessor Property shall be approved in advance by Lessor, such approval not to be unreasonably withheld. Such measures may, but not necessarily will, include warning signs, fences along the array perimeter or perimeter of the Premises, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the Solar Facilities or injury or damage to persons or property resulting from the Solar Facilities and Operations. It shall be the Lessee's sole responsibility to conform in all such activities to the Legal Requirements of all governmental agencies which have jurisdiction over the Solar Facilities or the Premises.

9. Representations, Warranties and Covenants.

9.1 Representations, Warranties and Covenants of Lessor.

9.1.1 Lessor represents and warrants as follows to the best of Lessor's knowledge: (a) there are no circumstances known to Lessor and no commitments to third parties that may damage, impair or otherwise adversely affect Lessee's Operations, the Solar Facilities or their function including, but not limited to, blocking direct sunlight to the Photovoltaic System; (b) Lessor has good and lawful fee simple title to the Premises and all required legal access for ingress and egress to and from the Premises, free and clear of all mortgages or other liens (c)

Lessor has the full right to enter into this Lease without the consent or approval of any other party; and (d) Lessee shall have quiet and peaceful possession and use of the Premises throughout the term of this Lease.

9.1.2 Lessor hereby agrees, for itself, its agents, employees, representatives, tenants, contractors, successors and assigns, that it will not initiate or conduct activities at any location that it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar Facilities or their functions, including, without limitation, activities that may adversely affect the Photovoltaic System's exposure to sunlight Lessor further covenants for itself, its agents, employees, representatives, tenants, contractors, successors and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Lease; (ii) take any action or permit any action to be taken which will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of energy to or from the Premises or by, over and through the easement areas; (iv) take any action or permit any action to be taken that may impair Lessee's access to the Premises and/or any portion of the Solar Facilities for the purposes specified in this Lease, or (v) plant, maintain or allow any vegetation or erect or maintain or allow any structure or use which will, during daylight, cast a shadow on the Solar Facilities or permit the same to be done by others. To the extent that Lessor is provided with notice of plans to develop or build upon any properties directly adjacent to the Premises, then Lessor shall immediately provide Lessee with notice of such plan to develop or build.

9.2 Representations, Warranties and Covenants of Lessee. Lessee represents, warrants and covenants that: (a) subject to the Contingencies set forth in Section 2.7, Lessee has the full right to enter into this Lease without the consent or approval of any other party; and (b) Lessee shall maintain and repair the Solar Facilities and the Premises in good repair and condition, in a neat and orderly manner and full compliance with requirements of this Lease and any governmental agency or authority having jurisdiction over the Solar Facilities and/or the Premises, including without limitation Environmental Laws.

9.3 Solar Facilities Property of Lessee; Transfer of Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the Solar Facilities, that no portion or component of the Solar Facilities is a fixture, and the Solar Facilities may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Lessor. Lessor agrees that this Lease shall survive any Transfer of the Premises and it shall be the obligation of Lessor to inform any transferee of this Lease and the rights and obligations set forth herein.

9.4 Lessee Rights to Electricity and Environmental Attributes. Subject to the terms and conditions of the PPA, Lessor acknowledges that Lessee and/or its affiliate and/or transferee is the exclusive owner of electricity generated by the Solar Facilities and of the Environmental Attributes and Environmental Incentives of and arising from the Solar Facilities. Lessor shall execute and furnish any instrument and/or take any action reasonably requested by Lessee to perfect, confirm or maintain the Lessee's right, title and interest in the items described in the preceding sentence.

10. Permits and Governmental Approvals. Lessee shall be responsible for obtaining, renewing and maintaining, at its sole cost and expense, any governmental approvals

necessary for the construction and operation of the Solar Facilities, including, but not limited to, the Utility Permits, any zoning variances, building permits, approvals, environmental statements, licenses, authority or other Legal Requirement from any county, state or federal authority (collectively, "Permits"), and shall pay all costs associated therewith. Lessor shall cooperate with Lessee as necessary to obtain any governmental approvals, at no cost or expense to Lessor, provided that Lessee shall reimburse Lessor for its reasonable actual out-of-pocket expenses directly incurred in connection with such cooperation in an amount not to exceed \$5,000.00 in the aggregate, including, but not limited to, reasonable attorney's fees, payable no sooner than the occurrence of the Solar Commencement Date. Lessor agrees to cooperate with and assist the Lessee in applying for any and all Permits that Lessee finds necessary or desirable for the operation of the Solar Facilities, all at Lessee's sole cost and expense.

11. Default and Remedies. The provisions of this Section 11 are subject to the provisions of Section 16 (relating to financing).

11.1 Event of Default Defined. The occurrence of any of the following shall be an "Event of Default" on the part of Lessee:

11.1.1 The failure by Lessee to pay any Rents or taxes when due, and such failure continues for ten (10) days after written notice of such failure to Lessee, provided, however, that Lessor shall not be obligated to provide such written notice more than three (3) times in any twenty-four (24) month period; or

11.1.2 The failure by Lessee to perform any of the other terms and conditions of this Lease and failure to remedy the same within thirty (30) days after receipt of notice from Lessor to do so, provided that in the case of breaches of obligations under this Lease which are susceptible to cure but cannot be cured within thirty (30) days after receipt of notice from Lessor through the exercise of due diligence, so long as the Lessee commences such cure within thirty (30) days after receipt of notice from Lessor and thereafter diligently and continuously pursues such cure, such breach shall not be deemed to create an Event of Default; or

11.1.3 The failure, not timely cured, by Lessee to make any payment or perform any term or condition of the Power Purchase Agreement and/or the Tax Agreement. The breach of any one of the three Agreements shall constitute a breach of all three (3) such Agreements; or

11.1.4 If Lessee shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its assets; or

11.1.5 If there is an entry of an order for relief, or, in the absence of an order for relief, if, within sixty (60) days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution

or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if within sixty (60) days after the appointment without the consent or acquiescence of Lessee of any trustee, receiver or liquidator of Lessee or of any material part of its assets, such appointment shall not have been vacated; or

11.1.6 If the interest of Lessee in the Premises shall be sold under execution or other legal process.

11.2 Bankruptcy Default.

11.2.1 If a petition is filed by, or an order for relief is entered against the Lessee under Chapter 7 of the United States Bankruptcy Code (the "Bankruptcy Code") and the trustee of the Lessee elects to assume this Lease for the purpose of assigning it, the election or assignment, or both, and subject to limitations then in force under the Bankruptcy Code, the same may be made only if all of the terms and conditions of Sections 11 of this Lease are satisfied. If the trustee fails to elect to assume this Lease for the purpose of assigning it within ninety (90) days after his appointment, this Lease will be deemed to have been rejected. The Lessor shall then immediately be entitled to possession of the Leased Premises without further obligation to the Lessee or the trustee, and this Lease will be terminated. The Lessor's right to be compensated for damages in such bankruptcy proceeding, however, shall survive.

11.2.2 If the Lessee files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code or a proceeding that is filed by or against the Lessee under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding.

11.3 Lessor Remedies. At any time following and during the continuance of an uncured Event of Default on the part of Lessee:

11.3.1 Lessor may cure any default by Lessee after Lessee's cure period has expired. If Lessor at any time by reason of Lessee's default pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor as additional rent hereunder, together with any interest due.

11.3.2 Subject to the requirement for notice and right to cure set forth hereinabove, Lessor may terminate Lessee's right to possession of Lessor's Premises upon written notice to Lessee. No act by Lessor other than the giving of such notice to Lessee shall terminate this Lease. This Lease and Lessee's rights and obligations hereunder shall continue as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect Rent, plus accrued interest, if any, when due. Upon termination, and subject to Lessor's compliance with the requirements of applicable laws, Lessor has the right to recover from Lessee the unpaid Rent and/or any other charges due hereunder or any charges, taxes or rents due to Lessor under the Power Purchase Agreement and/or the Tax Agreement, plus interest at the Interest Rate and costs including a reasonable attorney's fee from the date due until the date paid by Lessee.

11.3.3 In the event that Lessor elects to terminate Lessee's right to possession of the Leased Premises pursuant to this Section 11.3 following an Event of Default, Lessor may reenter and take possession of the Premises, and Lessee hereby waives any claim for damages as a result thereof, and Lessee shall be obligated to pay to Lessor as damages on

demand, and Lessor shall be entitled to recover from Lessee, (a) all Additional Rent payable to the date of termination of Lessee's right to possession, plus (b) the cost to Lessor of all reasonable legal and other expenses and costs (including attorney's fees) incurred by Lessor in obtaining possession of the Leased Premises, in enforcing any provision of this Lease, in preserving the Premises during any period of vacancy, in taking reasonable steps to protect its interest in the Premises, in making such repairs as Lessor may reasonably deem necessary or advisable in operating and maintaining the Premises, and in re-letting the Premises, including reasonable brokerage commissions, plus (c) amounts equal to any Additional Rent herein reserved for the balance of the Term less the net amount of rent, if any, which may be collected and received by Lessor from the Premises for a period of time commencing upon termination of Lessee's right of possession and terminating on the sixth (6th) anniversary thereof. During the balance of the Term, Lessor may relet the Premises, or any part or parts thereof (but in no event shall Lessor be obligated to do so), for a term or terms which may at Lessor's option be less than or extend after the Term, and Lessor may grant concessions or charge a rental in excess of that provided in this Lease (and Lessee shall have no right to any excess), plus any damages allowable at law or in equity.

11.3.4 Lessor may sue for and collect any amounts which may be due pursuant to the provisions of the preceding subsections of this Lease from time to time as Lessor may elect, but no such suit shall bar or in any way prejudice the rights of Lessor to enforce the collection of amounts due at any time or times thereafter by a like or similar proceeding.

12. Surrender and Restoration; Holding Over.

12.1 Surrender; Restoration. Upon any termination, surrender, or expiration of this Lease, and subject in all events to Lessors' right of first offer as set forth in Section 24 of this Lease, Lessee shall remove the Solar Facilities and all of Lessee's improvements and shall peaceably deliver to Lessor possession of the Premises or any part thereof, and other rights granted by this Lease. Upon any termination, surrender or expiration of this Lease, Lessee shall restore the Premises to its condition at the Effective Date, taking into account ordinary and reasonable wear and tear since the Effective Date, and shall repair any damage to the Premises as a result of any removal of the Solar Facilities under this Section. Said restoration shall be completed within six (6) months of the termination, surrender, or expiration during the period of time that Lessee requires to complete the restoration of the Premises if said restoration should extend beyond the end of the Term of the Lease. The obligation of the Lessee to the Lessor under the terms of this Lease for the payment of such use and occupancy and associated costs, and taxes is independent of the obligation to restore the Premises and shall not be affected by the provisions of this Section 12.1. Notwithstanding the foregoing, the Lessee shall surrender all roadways or access ways constructed by Lessee upon the Premises or the Remaining Lessor Property upon the expiration or earlier termination of the Lease in their then as-is condition.

12.2 Holding Over. If Lessee shall remain in possession of the Premises without extension after the expiration of the Term, Lessee shall hold as a tenant at sufferance.

13. Insurance

13.1 Public Liability and Property Damage Insurance. Commencing on the date of the Construction Commencement Date and during the remainder of the Term, and except to the

extent otherwise required by Applicable Legal Requirements or by the Interconnection Agreement, Lessee at its cost shall maintain commercial general liability insurance on the Premises that is written on an occurrence basis insuring against all liability for personal injury and property damage arising out of and in connection with the Premises, the Permitted Use or Lessee's use or occupancy of the Premises, in standard form with a general aggregate limit of not less than \$5,000,000, a products-completed operations aggregate limit of not less than \$2,000,000 and a per occurrence limit of not less than \$2,000,000 for bodily injury and property damage, with a deductible amount of \$10,000 and which shall include operations and blanket contractual liability coverage which insured performance of Lessee of the indemnity provisions of this Lease. The Water Supply District of Acton shall be named as an additional insured.

13.2 Property Insurance-Personal Property. Commencing on the date of the Construction Commencement Date and during the remainder of the Term, Lessee at its cost shall maintain on all of its personal property on or about the Premises a policy of "all risk" or "special causes of loss" property insurance, with a deductible amount of \$10,000 and with vandalism and malicious mischief endorsements, to the extent of at least 100 percent of their full replacement.

13.3 Intentionally omitted.

13.4 Workers' Compensation Insurance. Commencing on the date of its Construction Commence Date and during the remainder of the Term, if applicable, Lessee shall at its cost maintain Workers' Compensation Insurance, subject to the statutory limits of the Commonwealth of Massachusetts, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per employee.

13.5 Lessor's Insurance. During the Term, Lessor at its cost shall maintain insurance of the type and in the amount(s) customarily maintained by the Water Supply District of Acton against acts, omissions or negligence by Lessor.

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

13.7 Policy Delivery, Payment Evidence. Concurrent with the delivery of the Notice of Commencement and not less than thirty (30) days prior to the expiration dates of the expiring policies furnished pursuant to this Article 13, certificates of insurance bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to the other Party of such payment shall be delivered by Lessee and Lessor to the other Party.

13.8 Notice of Cancellation. Each certificate of insurance delivered hereunder, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty (30) days prior written notice to the other Party and to any mortgagee named in such policy.

14. Indemnity.

14.1 Lessee shall indemnify, defend and hold harmless Lessor and their respective managers, officers, agents and employees (the "Lessor Indemnitees") from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, and damage or destruction of Premises, including, but not limited to, claims of any utility company or other loss or damage incurred by Lessor, arising out of (a) acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees or contractors and subcontractors; or (b) the material breach by Lessee of any of its obligations under this Lease; or (c) claims made against Lessor by a contractor, subcontractor, laborer, vendor, supplier or any other party for whom Lessee is responsible. The obligation to indemnify shall extend to and encompass all reasonable costs actually incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations pursuant to this Section 14.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessor, the Lessor Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties for which no specific obligation of indemnification has otherwise been given by Lessee. Lessee shall pay any cost that may be incurred by Lessor or the Lessor Indemnitees in enforcing this indemnity, including reasonable attorney's fees.

15. Assignment.

15.1 Lessor's Assignment. The Lessor shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, to a purchase of the Premises, provided that such assignee agrees in writing to be bound by all of the terms and conditions of this Lease. Following such assignment, including the delivery to the assignee of the balance of the any security deposit, if any, given by Lessee to Lessor in accordance with this Lease, (a) the Lessee shall recognize and attorn to the assignee and (b) the assignor shall be automatically released from any and all liabilities and/or obligations arising hereunder from and after the effective date of such assignment to the extent assumed in writing by the assignee. At the request of the Lessor, the Lessee shall execute an estoppel certificate and such other instruments as are reasonably requested by the Lessor to confirm any such assignment and the continuing viability of this Lease.

15.2 Lessee Assignment. Subject to the provisions of Section 16 (relating to financing), Lessee shall not transfer or assign (collectively, an "Assignment") this Lease or any interest therein, without prior written consent of Lessor. Notwithstanding the prior sentence, without Lessor's consent, Lessee may (i) make an Assignment to an affiliate of Lessee or Guarantor (provided that such Assignment shall not release Lessee or Guarantor from its obligations hereunder) or (ii) make an Assignment to a successor in the operation of the assignor's or transferor's assets and/or business by reason of a reorganization, merger, consolidation, sale or foreclosure, where substantially all of such assignor's or transferor's assets are acquired by such successor; provided, however, that in the case of an Assignment described in clause (ii) the assignee or transferee meets all of the Conditions (as defined below). Lessor's consent to any other Assignment shall not be unreasonably withheld if Lessor has been provided with reasonable evidence that the proposed assignee: (x) has comparable experience to that of the initial named Lessee in operating and maintaining photovoltaic solar systems comparable to the Solar Facility; and (y) has comparable financial capability to that of the initial named Lessee and Guarantor (the requirements of (x) and (y) are, collectively, the "Conditions"). Any Assignment in violation of this Article 15 will be null and void.

16. Lessee and Lessor Financing.

16.1 Lessee Financing.

16.1.1 Right to Grant a Security Interest. Lessee or its successors and/or assigns may from time to time, without the prior written consent of Lessor, encumber the interest of Lessee or a successor and/or assignee in this Lease and the rights granted hereunder by one or more security instruments (a "Security Interest"), provided that any Security Interest and all rights acquired under it shall (i) be subject to each and all of the covenants, conditions and restrictions stated in this Lease, including without limitation the right of first offer set forth in Section 24 hereof, (ii) be subject to all rights and interests of Lessor and shall not constitute a lien against Lessor's fee simple interest in the Property and (iii) shall be subordinate to the current or future mortgage lien of the Lessor's current or future mortgagee(s) subject to a non-disturbance agreement executed by such mortgagee and an attornment agreement by Lessee, and further provided, that Lessee or an assignee shall promptly upon the execution of any Security Interest deliver a true copy thereof to Lessor. Without limiting the generality of the foregoing, nothing contained in such Security Interests shall release or be deemed to relieve Lessee from full and faithful observance and performance of the terms, covenants and conditions contained in this Lease to be observed and performed by Lessee or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder, except as expressly provided for herein, and further provided that such Security Interest shall be subordinate to the Security Interest referred to in paragraph 28 given to secure the full and faithful performance of this Lease, the power Purchase Agreement and the Tax Agreement.

16.1.2 Protection of Security Interest. Any Security Interest Holder of any interest of Lessee hereunder shall, for so long as its Security Interest is in existence and until the lien thereof has been extinguished, be entitled to the following protections:

(a) Notice of Default. Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless and until Lessor shall first have given the Security Interest Holder(s) a written notice of Lessee's default and failure to cure same within the period(s) specified in Article 11 and thereafter afforded the Security Interest Holder(s) an opportunity to cure such default within 30 days and the Security Interest Holder(s) shall have failed to effect the cure of such default within 30 days. It is understood that the Lessor shall have the right to give to the Security Interest Holder(s) written notice of the default and demand to cure simultaneously with the notice given to Lessee, and all such cure periods shall run concurrently for 30 days. The Security Interest Holder shall be entitled to remedy any default under this Lease in the manner and on the same terms as granted to Lessee in Article 11 of this Lease.

(c) Right to Perform. The Security Interest Holder shall have the right at any time to pay any Rent due hereunder and to perform or cause to be performed any other obligation of Lessee at or within the time such payment or performance is required under this Lease. Nothing in this Lease shall be construed to obligate the Security Interest Holder to cure any default of Lessee.

(d) Foreclosure. If Lessee's Security Interest Holder becomes the assignee of this Lease by means of foreclosure or transfer in lieu thereof, such Security Interest Holder shall be personally liable under this Lease only for the period the Security Interest Holder remains a successor Lessee hereunder, provided that any subsequent assignee or Lessee shall assume and agree to be bound by all the terms and conditions of this Lease

(e) Re-entry and Repossession. Following (i) any re-entry and repossession of the Premises by Lessor or (ii) any termination of this Lease (whether by rejection of the Lease in any bankruptcy or similar proceeding or otherwise), Lessor shall deliver written notice to the Security Interest Holder indicating the completion of Lessor's re-entry and repossession of the Premises or termination of this Lease.

17. Estoppel Certificate

17.1 Estoppel Certificate from Lessor. At the request of Lessee or a Security Interest Holder, Lessor shall execute, acknowledge and deliver to such Lessee or Security Interest Holder a written statement declaring: (i) either that the Lease is unmodified and in full force and effect, or the manner in which this Lease has been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Lessee's monetary obligations hereunder have been paid in advance; (iii) to Lessor's knowledge, whether Lessee is or is not then in default hereunder; and (iv) to Lessor's knowledge, whether any past defaults of Lessee have been fully cured.

17.2 Estoppel Certificate from Lessee. At the request of Lessor, Lessee shall execute, acknowledge and deliver to Lessor a written statement declaring: (i) either that this Lease is unmodified and in full force and effect, or the manner in which the Lease has been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Lessee's monetary obligations hereunder have been paid in advance; (iii) to Lessee's knowledge, whether the Lessor is or is not then in default hereunder; and (iv) to Lessee's knowledge, whether any past defaults of Lessor have been fully cured.

18. Casualty/Eminent Domain

18.1 Casualty. If any part of the Premises is damaged by fire or other casualty so as to render it inoperable and the Premises substantially unsuitable for operation of the Lessee in its reasonable determination, Lessee shall either promptly restore and repair the Premises or terminate this Lease by providing at least thirty (30) days prior written notice thereof to Lessor and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration of this Lease, and this Lease shall be null and void, without recourse to the Parties, except that the provisions hereof that are stated herein to survive said termination shall so survive. Upon any such termination, Lessee shall be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for any prepaid Rent.

18.2 Eminent Domain. If a taking authority takes all of the Premises by Eminent Domain, this Lease shall terminate as of the date title vests with the taking authority. If a substantial portion of the Premises are taken and the taking, in Lessee's reasonable determination, renders the remaining Premises substantially unsuitable for the operation, Lessee may terminate this Lease by written notice thereof within sixty (60) days of such taking, and on the date so specified, this Lease shall expire as fully as if such date were the date set

forth above for the expiration of this Lease, and this Lease shall be null and void, without recourse to the Lessee, except that the provisions hereof that are stated herein to survive said termination shall so survive including all balances due to the date of termination to Lessor under this Lease, the Purchase Power Agreement and the Tax Agreement. The Lessee will be entitled to share in the taking proceeds in proportion to the values of its ownership interest in the personal property located on the Premises which, for Lessee, may include, if applicable the value of the Premises, moving expenses and business relocation expenses.

19. Notice.

Any notice or communication required, permitted, or contemplated hereunder shall be given in writing, addressed to the Party to be notified at the address or set forth below or at such other address or addresses (s) as a Party may designate for itself from time to time by written notice hereunder and delivered by (a) hand delivery, (b) nationally recognized overnight courier with delivery signature required, (c) registered or certified mail, return receipt requested. Any notice or communication so delivered shall be deemed duly given on the earliest of (i) the actual date received, (ii) the first (1st) business day following the day of depositing such communication with a nationally recognized overnight courier with next day delivery specified, so long as confirmation of delivery is given by such courier service, or (iii) the third (3rd) business day following the day of mailing if mailed by registered or certified mail, return receipt requested.

Lessor: Water Supply District of Acton
Chris Allen, General Manager
P.O. Box 953
693 Massachusetts Avenue
Acton, MA 01720
(978) 263-9107
Chris@actonwater.com

Lessee:

20. Miscellaneous.

20.1 Waiver / Headings / Further Assurances. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. The headings in this Lease are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Lease. The Parties acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against either

Party merely because its counsel has prepared it. Upon the receipt of a written request from

the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

20.2 Memorandum. Lessor and Lessee agree (a) to execute, on the date hereof, a memorandum of this Lease setting forth the pertinent terms of this Lease in accordance with MGL c. 183 § 4.

20.3 Disputes and Choice of Law: Attorneys' Fees. This Lease is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts (without regard to principles of conflicts of laws). Any controversy or claim arising out of, or relating to, this Lease, or to the making, performance, or interpretation thereof, shall be submitted to the jurisdiction and venue of the Superior Court of the Commonwealth of Massachusetts for the County of Middlesex. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS LEASE.

20.4 No Partnership or Sale. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller of electrical energy, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

20.5 Force Majeure. Except as otherwise specifically provided in this Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the terms of this Lease (other than Lessee's obligation to pay Rent or any other sums due herein and to maintain insurance to be in effect), if and to the extent that such delay or failure is directly attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section shall immediately; (i) notify the other Party in writing of the existence of the force Majeure Event, which shall include any information reasonably available regarding the nature and anticipated duration of such Force Majeure Event, (ii) exercise all commercially

reasonable and diligent efforts necessary to continue to perform its obligations hereunder and to minimize delay caused by such Force Majeure Event, (iii) promptly notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If a Force Majeure Event shall have occurred that has prevented either Party from performing any of its material obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days, then either Party shall have the right, but not the obligation, to terminate this Lease upon three (3) days' written notice to the other Party without penalty or further liability. Upon such termination due to a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination or those which expressly survive the termination or expiration of the Lease pursuant to the terms hereof). The suspension of performance shall be of no greater scope and of no longer duration that is reasonably required by the Force Majeure Event.

20.6 Counterparts / Binding Effect / Entire Lease. This Lease and the rights, privileges, duties and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns. This Lease represents the full and complete Lease between the Parties with respect to the subject matter contained herein and supersedes all prior written and oral Leases between the Parties with respect to said subject matter. This Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

20.7 Reserved Rights. Lessor hereby reserves the right at any time and from time to time to make alterations or additions to existing buildings located on the Remaining Lessor Property and/or to construct or alter other buildings or improvements upon the Remaining Lessor Property, provided that such actions do not adversely impact Lessee's Operations or otherwise conflict or interfere with Lessee's rights hereunder.

20.8 Brokerage. Lessor and Lessee warrant to each other that no broker or agent was hired, engaged or consulted with regard to this transaction. Lessor and Lessee hereby agree to indemnify each other against any claim, action or suit for any fee or commission arising out of this transaction.

21. Intentionally omitted.

22. Intentionally omitted.

23. Professional Costs and Expenses. Except as otherwise set forth in Section 10 above, Lessor and Lessee shall each be responsible for the costs and expenses of their own respective legal and other professional consultants in connection with the transaction contemplated herein.

24. Right to Purchase.

24.1 Lessor acknowledges that, under the PPA, Water Supply District of Acton has the right to purchase the Solar Facility from the Lessee on certain dates

set forth in the PPA, and for a purchase price to be determined pursuant to procedures set forth in the PPA (the "Purchase Option").

24.2 Lessor hereby consents to the assignment of this Lease to future owner of the Solar Facilities in connection with a sale of the Solar Facilities.

24.3 Upon: (i) the termination of this Lease at the end of the Term or due to any Event of Default by the Lessee, (ii) each date set forth in the PPA for the exercise of the Purchase Option by the AWD, provided that AWD has not exercised the AWD Purchase Option on or before such date, or (iii) any unpermitted assignment of this Lease, and in all events prior to any sale of the Solar Facilities by the Lessee to any third party (collectively referred to herein as a "Triggering Event"), the Lessor shall have the right to purchase the Solar Facilities from the Lessee, all upon the same terms and conditions, and pursuant to the same procedures, set forth in the PPA with respect to the AWD Purchase Option; provided, however, upon any such purchase, this Lease, the PPA and all related Project documents shall terminate. Lessee shall provide Lessor with not less than sixty (60) days advance written notice of the occurrence or planned occurrence of a Triggering Event.

26. Certification Required Per MGL c. 62C, §49A. By entering this Lease, the duly authorized representative of Lessee certifies, under penalties of perjury, that Lessee has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

27. Disclosure Required of Lessee. Lessor and Lessee acknowledge that Lessee completed and submitted to Lessor a Disclosure of Beneficial Interests, pursuant to MGL c. 7C, § 38, in the general form shown in Exhibit D, attached.

28. Guarantee. _____ has provided a Guaranty of the obligations of the Lessee pursuant hereto which Guaranty is a material inducement to the Lessor in entering into this Lease with Lessee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Lease on their behalf, on the dates set forth below.

LESSOR: Water Supply District of Acton

By: _____

Name: Chris Allen

Title: General Manager

DATE: _____

LESSEE:

By: _____

Name: _____

Title: _____

DATE: _____

SCHEDULE OF EXHIBITS

- A. Plan Showing Remaining Lessor Property
- B. Plan Showing Premises
- C. Lease Payment Schedule
- D. Form for Disclosure of Beneficial Interest in Real Property

EXHIBIT A

PLAN SHOWING REMAINING LESSOR PROPERTY

EXHIBIT B

PLAN SHOWING PREMISES

EXHIBIT C
LEASE PAYMENT SCHEDULE

EXHIBIT D

DISCLOSURE OF BENEFICIAL INTERESTS
IN REAL PROPERTY TRANSACTION

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Asset Management and Maintenance, as required by M.G.L. c. 7C, § 38, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: Water Supply District of Acton

2. Complete legal description of the Property:

A portion of the Town-owned properties located at and known as 16 Knox Trail and 56 Lawbrook Road and adjacent properties, Acton, MA, containing approximately _____ acres of land and being more fully described in _____

3. Type of transaction Sale Lease or rental for twenty (20) year term.

4. Seller(s) or Lessor(s): Water Supply District of Acton

Purchaser(s) or Lessee(s):

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need not be disclosed.*

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name	Title or position
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects;

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT 2

POWER PURCHASE AGREEMENT ("PPA") WITH
WATER SUPPLY DISTRICT OF ACTON

**POWER PURCHASE AGREEMENT
FOR
UNIT CONTINGENT CONTRACT PRODUCTS
BETWEEN
WATER SUPPLY DISTRICT OF ACTON
AND**



This **POWER PURCHASE AGREEMENT FOR UNIT CONTINGENT CONTRACT PRODUCTS** (“Agreement”) is made and entered into as of [REDACTED], 2017 (“Effective Date”) by and between the Water Supply District of Acton (AWD) having a business address at 639 Massachusetts Avenue, Acton, Massachusetts 01720, a Massachusetts water district, hereinafter referred to as “Buyer”, and _____, having its principal place of business at _____ hereinafter referred to as “Seller” (Buyer and Seller are referred to herein individually as a “Party” and collectively the “Parties”).

WHEREAS, Seller will permit, construct, install, own, operate and maintain the Units (as defined below) and wishes to sell to Buyer the Contract Products (as defined below); and

WHEREAS, Buyer serves load and wishes to purchase the Contract Products;

NOW, THEREFORE, in accordance with the foregoing and in consideration of the mutual promises and agreements set forth herein, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Contract Products in accordance with the following provisions:

**ARTICLE 1.
DEFINITIONS**

Any term that is capitalized herein but not defined below or defined elsewhere in this Agreement shall be defined in accordance with the definitions contained in the ISO-New England, Inc. Transmission, Markets and Services Tariff, as it may hereafter be amended from time to time, or a successor set of market rules taking effect within the Term of Agreement (“ISO-NE Rules”).

1.01 “Affiliate” means an “affiliate” of, or a person or entity “affiliated” with, a specific person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified. For this purpose, “control” of any person or entity means ownership of fifty one percent (51%) or more of the voting power of such person or entity.

- 1.02 “Applicable Law” means, with respect to either Party, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
- 1.03 “Bankrupt” means that a Person (as applicable): (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (g) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (h) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) inclusive; or (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 1.04 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday, a holiday recognized by the Commonwealth of Massachusetts or a holiday as defined by the North American Reliability Corporation. A Business Day shall open at 8:00 a.m. and close at 4:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance, shall be the Party from whom the notice, payment or delivery is being sent.
- 1.05 “Buyer’s Indemnitees” has the meaning set forth in Article 13.1.
- 1.06 “Commercial Operations” has the meaning set forth in Article 2.1.
- 1.07 “Commercially Reasonable Efforts” means a level of effort which in the exercise of prudent judgment in the light of facts or circumstances known, or which should reasonably be known, at the time a decision is made, can be expected by a reasonable person to accomplish the desired result in a manner consistent with Good Industry Practice and which takes the performing Party’s interests into

consideration. “Commercially Reasonable Efforts” will not be deemed to require a Party to undertake unreasonable measures or measures that have an adverse economic effect on such Party, including the payment of sums in excess of amounts that would be expended in accordance with Good Industry Practice.

- 1.08 “Contract Price” shall mean \$ _____ per KWh.
- 1.09 “Contract Products” means 100% of the Energy. Contract Products shall not include capacity value, Environmental Attributes, Renewable Energy Certificates or Tax Attributes.
- 1.10 “Contract Year” shall mean the twelve (12) month period commencing with the date of Commercial Operations and each successive full or partial twelve (12) month period thereafter during the Term of Service.
- 1.11 “Credit Rating” means the rating assigned to a Person by Moody’s or S&P for such Person’s long term unsecured debt not supported by third party credit enhancement (other than by repayment of its debt) or, if such Person does not issue long term debt, then the rating then assigned to such Person as a long-term issuer rating by Moody’s or S&P.
- 1.12 “Defaulting Party” has the meaning set forth in Article 11.
- 1.13 “Delay Damages” has the meaning set forth in Article 2.1.
- 1.14 “Delay Damage Date” has the meaning set forth in Article 2.1.
- 1.15 “Delivery Point” has the meaning set forth in Article 5.
- 1.16 “Due Date” has the meaning set forth in Article 7.2.
- 1.17 “Early Termination Date” has the meaning set forth in Article 11.2.
- 1.18 “Effective Date” means the date set forth in the first paragraph of this Agreement.
- 1.19 “Emergency” means any occurrence of events that compromises or, in the judgment of a reasonable person consistent with Good Industry Practice, may compromise the lawful and/or safe operation of the Unit or Buyer’s electric system, as applicable or threatens the health and safety of Persons or damage to property. In the event an Emergency is also a Force Majeure event, then the Party not claiming Force Majeure may terminate this Agreement pursuant to Article 10 if the Force Majeure continues for the period of time specified in Article 10; provided, however, that if an Emergency also constitutes Force Majeure, the obligations of the Parties under Article 3.6 shall not be relieved.
- 1.20 “Energy” shall be measured in kilowatt hours and means the power that: (i) the Unit produces in the form of three phase alternating current having a nominal

frequency of 60 cycles per second, a power factor of 1.0 and a voltage as specified in the Interconnection Agreement; and (ii) meets all requirements set forth in the Interconnection Agreement.

- 1.21 “Enforcement Action” has the meaning set forth in Article 14.4(b)(iii).
- 1.22 “Enforcement Conditions” shall mean the following conditions: (a) a Qualified Assignee is owner of the Unit immediately following the Enforcement Action; (b) the same Qualified Assignee identified in the foregoing subsection (a) assumes each of this Agreement, the Interconnection Agreement and the Lease, (c) all defaults continuing at the time of the Enforcement Action under this Agreement shall be cured by the Qualified Assignee identified in the foregoing subsection (a), (d) the Qualified Assignee identified in the foregoing subsection (a) agrees in writing to be bound by all of the terms and conditions of this Agreement, the Interconnection Agreement and the Lease from and after the date of such assignment and (e) all of Buyer’s costs and expenses, including reasonable attorney’s fees, incurred by Buyer in connection with the Enforcement Action, including the negotiation and execution of any agreements or instruments requested by the Qualified Assignee in connection with such Enforcement Action shall have been paid by Seller or the Qualified Assignee.
- 1.23 “Environmental Attributes” means those attributes that are aspects, claims, characteristics or benefits associated with the generation of a quantity of Energy by the Unit, other than the electric energy produced and that are capable of being measured, including but not limited to those attributes verified or calculated and are documented or classified in the NEPOOL Generator Information System during the Term of Agreement. An Environmental Attribute may include, but is not limited to, one or more of the following identified with a particular megawatt hour of generation: the Unit’s use of a particular renewable energy source, avoided NO_x, SO_x, CO₂, greenhouse gas emissions or avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of applicable law in order to site and develop the Unit itself). Environmental Attributes may or may not be included in the definition or valuation of Renewable Energy Certificates by various certification authorities for use in meeting requirements of renewable portfolio standards under their jurisdiction. Environmental Attributes do not include (i) any Installed Capacity of the Unit, (ii) Ancillary Services, or (iii) Tax Attributes.
- 1.24 “Event of Default” has the meaning set forth in Article 11.1.
- 1.25 “Fair Market Value” has the meaning set forth in Article 19.18.
- 1.26 “FERC” shall mean the Federal Energy Regulatory Commission.
- 1.27 “Financier” has the meaning set forth in Article 14.4.
- 1.28 “Force Majeure” shall mean any cause, occurrence, or condition that is beyond the reasonable control of such Party and prevents the performance of such Party’s

obligation under this Agreement, but in no event shall an event, occurrence or condition caused by the negligence, bad faith or willful misconduct of a Party claiming Force Majeure constitute Force Majeure. Neither economic harm to a Party nor the financial condition of a Party shall constitute Force Majeure hereunder. Force Majeure shall include, without limitation, strike, stoppage in labor, riot, fire, flood, ice, invasion, civil war, insurrection, blockades, embargoes, sabotage, epidemics, explosions, acts of terrorism, military or usurped power, order of any court granted in any bona fide adverse legal proceeding or action (not brought by either Party) and acts of God or public enemies. Force Majeure shall not include any of the following, all of which are solely the responsibility of the affected Party: (i) Buyer's inability economically to use or resell the Contract Products, (ii) Seller's ability to sell the Contract Products at a price greater than the applicable Contract Price, (iii) Buyer's ability to purchase the Contract Products at a price less than the applicable Contract Price, (iv) any other economic hardship or changes in market conditions or (v) failure or breakdown of Seller's equipment or Seller's facilities in instances where such equipment or facilities have not been operated and/or maintained in accordance with Good Industry Practice.

- 1.29 "Forced Outage" has the meaning set forth in Article 3.5.
- 1.30 "Good Industry Practice" means the practices, methods and acts (including, but not limited to, the practices, methods and acts engaged in or approved by engineers and operators generally with respect to solar systems the same as or similar to the Unit) that at a particular time would be expected to accomplish the desired result in a workmanlike manner and in compliance with Applicable Laws and applicable reliability and safety standards, in each case taking into account the written recommendations of manufacturers of equipment and taking reasonable steps to ensure that equipment is not operated in a negligent or reckless manner, in a manner unsafe to workers or the general public, or without regard to the purpose for which equipment was designed. The term "Good Industry Practices" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods of acts generally accepted for the solar power industry with respect to the solar system in question.
- 1.31 "Governmental Approval" means any approval, consent, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority with jurisdiction over (i) a Party, or (ii) a Landlord, or (iii) the Premises.
- 1.32 "Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government and shall also include ISO-New England.
- 1.33 "Guaranteed Energy Amount" has the meaning set forth in Article 4.3.

- 1.34 “Independent Appraiser” means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Unit. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be an Affiliate or Buyer or Seller (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Seller, any Affiliate of Seller, or Buyer, or any Affiliate of Buyer.
- 1.35 “Information” means all records, reports, communications, papers, maps, photographs, financial statements, statistical tabulations, warranty records, maintenance or service agreements or other documentary materials or data, regardless of physical form or characteristics, made, received or otherwise possessed by Seller pertaining to the Unit, any portion thereof, the Interconnection, Interconnection Agreement or this Agreement.
- 1.36 “Interest Rate” has the meaning set forth in Article 7.2.
- 1.37 Intentionally blank.
- 1.38 “Interconnection Agreement” means the interconnection agreement between Utility and Seller that provides for the Unit to be interconnected with Utility’s electricity distribution system.
- 1.39 “Investment Grade Credit Rating” means a Credit Rating of at least BBB- from S&P and/or a Credit Rating of at least Baa3 from Moody’s. In the event of an inconsistency in ratings, a “split rating”, the lower rating shall govern and control.
- 1.40 “Landlord” shall mean the party identified as the “landlord” under the Lease.
- 1.41 “Lease” shall mean the ground lease or other license that Seller has or will enter into to obtain the right to access and control the Premises.
- 1.42 “Letter of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, and substantially in the form attached hereto as Appendix C. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. A Letter of Credit shall be valued at zero unless it expires more than thirty (30) calendar days after the date of valuation.
- 1.43 “Letter of Credit Default” has the meaning set forth in Article 17.1(b).
- 1.44 “Liabilities” means any and all liabilities, losses, fines, obligations, penalties, costs or other expenses of any kind or nature, including reasonable attorneys’, experts’ and accountants’ fees, court costs and other costs of any proceeding,

incurred by a Person, whether arising from claims, demands, causes of action, litigation, lawsuits, proceedings, investigations, judgments, settlements or from any similar type of occurrence whether actual, threatened or filed and regardless of whether groundless, false or fraudulent.

- 1.45 “Material Contract” means any written contract, agreement, license, sublease, lease, easement, sublease, mortgage, instrument, guarantee, commitment, undertaking or other similar arrangement, whether expressed or implied, which either:
- (a) creates a right to lease, use or occupy real estate which is necessary for the operation of the Unit according to Good Industry Practice; or
 - (b) provides rights or benefits for the Seller such that the consequences of a default under or termination of such an arrangement would reasonably be expected to have a material adverse effect upon Seller’s ability to operate the Unit according to Good Industry Practice.
- 1.46 “Monthly Contract Products Charge” has the meaning set forth in Article 4.1.
- 1.47 “Moody’s” means Moody’s Investor Services, Inc., its successors and/or assigns.
- 1.48 “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- 1.49 “Planned Maintenance” means maintenance of the Unit that is planned in advance by Seller.
- 1.50 “Planned Term of Operation” means the period commencing with the date of Commercial Operations and ending at HE 2400 EPT on the day that follows the date of Commercial Operations by [] years.
- 1.51 “Premises” means leased space located at [], which is where the Unit is, or will be, physically located throughout the Term of Service.
- 1.52 “Purchase Date” has the meaning set forth in Article 19.16.
- 1.53 “Purchase Option Price” has the meaning set forth in Article 19.16.
- 1.54 “Qualified Assignee” must be (a) a business organization that (i) has experience that is comparable or superior to that of the initial named Seller in operating and maintaining photovoltaic solar systems comparable to the Unit and providing services comparable to those required by this Agreement and (ii) has financial capability that is comparable or superior to that of the initial named Seller; or (b) business entity that meets the conditions set forth in the foregoing subsections (a)(ii) and delegates the obligations of the “Seller” under this Agreement and of

the “Interconnecting Party” under the Interconnection Agreement to a third-party that meets the criteria set forth in the foregoing subsection (a)(i).

- 1.55 “Qualified Institution” means a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a credit rating of at least A- from S&P and A3 from Moody’s, having at least \$10,000,000,000 in assets.
- 1.56 “Received” has the meaning set forth in Article 7.2.
- 1.57 “Renewable Energy Certificates” or “RECs” means the certificates, which relate to each MWh of generation from the Unit, that are produced, documented or classified in the NEPOOL Generator Information System according to their ability to meet renewable portfolio standards requirements in any New England State or under any applicable federal program.
- 1.58 “Replacement Power Cost” means an amount expressed in \$/kWh equal to the Day Ahead Locational Marginal Price at the Internal Hub having Location ID of 4000 and Location Name Description .H.INTERNAL HUB, as defined in ISO-NE Rules, (“Hub”) averaged across all hours during the relevant Contract Year when Seller failed to deliver the Guaranteed Energy Amount and when the Day Ahead Locational Marginal Price at the Hub is greater than the Contract Price.
- 1.59 “Rolling Period” has the meaning set forth in Article 10.
- 1.60 “Seller’s Credit Support Amount” has the meaning set forth in Article 17.1.
- 1.61 “Seller’s Indemnities” has the meaning set forth in Article 13.2.
- 1.62 “Settlement Amount” shall have the meaning set forth in Article 11.2.
- 1.63 “S&P” means the Standard & Poor's Rating Services (a division of McGraw-Hill, Inc.) or its successor.
- 1.64 “Shortfall Energy” equals the positive difference, if any, obtained by subtracting the total number of kilowatt hours delivered to the Delivery Point for the relevant Contract Year from the Guaranteed Energy Amount.
- 1.65 “Shortfall Payment” shall have the meaning ascribed to such term in Article 4.3(a).
- 1.66 “Standard Insolation Conditions” means that the aggregate available solar irradiation resource at the Premises for all hours in any applicable 12-month period is not more than four percent (4%) below the average amount of the aggregate solar irradiation set forth in the National Renewable Energy Laboratory’s TMY3 dataset located closest to the Premises, and the Parties acknowledge and agree that if the aggregate available solar irradiation resource at

percent (4%) below the average amount of the aggregate solar irradiation set forth in the National Renewable Energy Laboratory's TMY3 dataset, such occurrence shall constitute a Force Majeure, in which case the Seller shall be the affected party.

- 1.67 "Tax Attributes" means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Unit or the output generated by the Unit (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).
- 1.68 "Term of Agreement" has the meaning set forth in Article 2.3.
- 1.69 "Term of Service" has the meaning set forth in Article 2.2.
- 1.70 "Termination Payment" has the meaning set forth in Article 11.2.
- 1.71 "Unit" means the Seller's solar photovoltaic generating facility(s) with total installed capacity of approximately [REDACTED] MW DC, three-phase with protective relays and associated equipment as described in further detail in Appendix A.
- 1.72 "Unit Contingent" means that the Energy to be delivered by Seller to Buyer will be supplied only from the Unit and only to the extent that the Unit is in operation. Seller's failure to deliver Energy under this Agreement is excused only to the extent that, and for the period during which, the Unit is unavailable as a result of a Forced Outage or a Force Majeure event.
- 1.73 "Unit Valuation" has the value set forth in Appendix D for the relevant year.

ARTICLE 2. TERM OF SERVICE

2.1 Commercial Operations.

(a) The Seller shall commence commercial operation of at least [REDACTED] KWs DC, which constitutes eighty-five percent (85%) of the Unit's total capacity, and executed the Interconnection Agreement with Buyer (collectively, "Commercial Operations") on or before [REDACTED], 20__]. If the Unit fails to achieve Commercial Operations by [REDACTED], 20__] ("Delay Damage Date"), and such failure is not due in whole or in part to a Force Majeure event, an Emergency or to the acts or omissions of Buyer that are not a result of Seller's negligence or default, then Buyer shall have the right to invoice Seller for liquidated damages ("Delay Damages") in the amount of thirty-two and a half cents (\$.325) per kWAC per day until Commercial Operations have been achieved. If the Seller commences commercial operation of any portion of the Unit's total capacity before or after the Delay Damage Date then the amount of liquidated

a pro rata basis for the portion of the Unit that is commercially operable until such time as Commercial Operations is achieved, at which time liquidated damages shall no longer be due to Buyer. Within five (5) Business Days of achieving Commercial Operations, Seller shall certify such achievement to Buyer in writing.

(b) If Commercial Operations have not been achieved by Seller for reasons other than a Force Majeure event, an Emergency or to the acts or omissions of Buyer within one hundred eighty (180) calendar days following the Delay Damages Date, then Buyer may terminate this Agreement. Upon any termination in accordance with this Article 2.1 (b), neither Party shall have any further liability to the other with respect to the Unit, except as provided in Article 2.3. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving Commercial Operations would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the damages as agreed to by the Parties and set forth in Section 2.1(a) above are a fair and reasonable calculation of such damages.

(c) By the tenth (10th) calendar day following the end of the calendar month in which Delay Damages first become due and continuing by the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable) or otherwise from time to time after the Delay Damages Date and for up to 120-days following the date that Commercial Operations is achieved or the termination of this Agreement, as applicable, Buyer shall deliver to Seller one or more invoice(s) showing Buyer's computation of Delay Damages and any amount due Buyer in respect thereof. No later than ten (10) calendar days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

(d) If Seller fails to pay Delay Damages when due then Buyer may exercise any remedies available for Seller's default hereunder, which shall include the right to draw on Seller's Letter of Credit in order to pay the Delay Damages due to Buyer hereunder and the right to deduct such amounts from amounts owed by Buyer to Seller for the delivery of Contract Products hereunder.

2.2 Term of Service. Seller shall commence selling the Contract Products, and Buyer shall commence purchasing the Contract Products on hour ending ("HE") 0100 eastern prevailing time ("EPT") on the day that the Seller begins delivering Contract Products from the Unit to the Delivery Point and Seller shall continue selling the Contract Products, and Buyer shall continue purchasing the Contract Products, as provided herein, through the earlier of (i) HE 2400 EPT on the day that follows the date of Commercial Operations by [REDACTED], or (ii) the date on which this Agreement is earlier terminated in accordance with its terms ("Term of Service").

2.3 Term of Agreement. This Agreement shall commence on the Effective Date and the applicable provisions of this Agreement shall continue in effect after termination or expiration hereof to the extent necessary to provide for accountings, final billing, billing adjustments, resolution of any billing dispute, or resolution of any court or administrative

proceeding and payments (“Term of Agreement”). Notwithstanding anything in this Agreement to the contrary, expiration or termination of the Agreement for any reason shall not relieve either Party of any right or obligation accrued or accruing hereunder prior to such expiration or termination, and no expiration or termination of this Agreement shall affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any expiration or termination.

**ARTICLE 3.
TRANSACTION TYPE AND SELLER OBLIGATIONS**

3.1. Transaction Type. This Agreement is for the purchase and sale of the Contract Products. The Seller shall sell the Contract Products pursuant to the terms of this Agreement, and the Buyer shall pay for the Contract Products pursuant to the terms of this Agreement. Seller shall obtain and maintain such authorizations, certificates and approvals as may be required from the FERC as may be required for Seller to make electricity sales to Buyer at the rates and on the terms set forth under this Agreement, which Seller acknowledges is a market-based rate. Seller shall sell Contract Products to Buyer to satisfy Buyer’s annual load for all facilities located in EverSource NEMA territory and shall, at its discretion, sell volumes of Contract Products, in excess of Buyer’s annual load, to any other party.

3.2. Maximize Contract Products. The Parties understand and agree that Seller shall use Commercially Reasonable Efforts consistent with Good Industry Practice to maximize the availability and operation of the Unit in order to maximize the amount of Contract Products that Buyer will receive hereunder. The Parties understand and agree that this is a Unit Contingent Agreement.

3.3. Maintenance Obligation. Seller, at its sole cost and expense, shall provide operation, repair, monitoring and maintenance services to the Unit in accordance with the schedule below as well as in accordance with equipment manufacturer requirements and Good Industry Practice:

(a) At all times perform basic monitoring of the Unit to ensure that the Unit is fully functional and record all meter data including

- Array voltage - VDC (V)
- Grid voltage - VAC (V)
- Array current - IDC (A)
- Grid (injected) current - IAC (A)

Array power - PDC (W)
Grid (injected) power - PAC (W)
Module temperature - (°F)
Ambient temperature - (°F)
Solar radiation - G (W/m²)
Daily/monthly solar insolation - H (J/m²)
Wind speed – v

- (b) At all times maintain service agreement with inverter supplier.
- (c) At all times maintain equipment warranty records.
- (d) At all times, respond to all alarms, alerts and service requests pertaining to the Unit within two (2) Business Days of such alarm, alert and/or service request.
- (e) Within three (3) Business Days of becoming defective or inoperable, replace such defective or inoperable equipment.
- (f) Reasonably prior to the expiration of their respective useful life, replace all inverters, batteries, and other equipment with an expected useful life shorter than the Planned Term of Operation.
- (g) On a quarterly basis beginning three (3) calendar months after the date on which Commercial Operation is achieved prepare and provide to Buyer a performance report. Such performance report shall include a summary of all Energy delivered to the Delivery Point, a summary of all Planned Maintenance and a summary of all Forced Outages and the steps that were taken to resolve such Forced Outages.
- (h) On an annual basis beginning one (1) year after the date on which Commercial Operation is achieved: (i) perform visual and mechanical inspection of Unit, including, but not limited to all PV arrays, electric equipment, mounting structure(s) and the data acquisition system that is part of or integrally related to the Unit; (ii) clean inverter air vents; (iii) clean and change inverter air filters in accordance with manufacturer warranty requirements; (iv) clean and remove dust from inverter heat sinks in accordance with manufacturer warranty requirements; (v) inspect PV array roof penetrations (if applicable) to ensure sealant is applied properly and not degrading. A report of such inspections and all maintenance resulting from such inspections shall be provided to Buyer within sixty (60) calendar days of such inspections and maintenance.

3.4 Information. Seller agrees to provide to Buyer copies of all Information within a reasonable period of time, but in no event later than thirty (30) calendar days, of making or receiving Information pertaining to maintenance and/or repair pertaining to the Unit or any portion thereof or the Interconnection.

3.5 Forced Outage. Seller and Buyer each shall notify the other as soon as practically possible, but in no event later than twenty-four (24) hours following their discovery, of a “Forced Outage”, which is defined as: (a) any material malfunction in the operation of the Unit and/or (b)

any interruption in the delivery of Energy to the Delivery Point. Seller shall use Commercially Reasonable Efforts consistent with Good Industry Practice to fully resolve any Forced Outage as quickly as possible. In all cases, however, Seller shall initiate maintenance activities needed to return the Unit to service within two Business Days of such notice, and Seller shall provide Buyer with an estimate of the time necessary to return the Unit to service. The Seller will notify the Buyer as soon as practicable when the Unit returns to service, but in no event later than twenty-four (24) hours following the Unit's return to service.

3.6 Emergency. Seller and Buyer each shall notify the other upon the discovery of an Emergency condition pertaining to the Unit. If Seller is notified of an Emergency condition by Buyer or otherwise learns of an Emergency condition then Seller shall promptly dispatch appropriate personnel to address such Emergency as quickly as possible in accordance with Good Industry Practice. Buyer maintains the right to disconnect the Unit and/or to otherwise isolate the Unit from Buyer's system as a result of any Emergency condition pertaining to the Unit as determined by Buyer in its sole discretion. In the event of a Buyer's system outage, the Unit shall automatically cease parallel operation and go to standby until the outage condition is resolved. If Buyer requires the Unit to be partially or completely shutdown due to an Emergency pertaining to the Unit then no cost shall be due from Buyer to Seller during the pendency of such Emergency. Without Seller's prior written consent, in no event shall Buyer, or Buyer's agent or Buyer's subcontractor or other party, move, repair, disassemble or otherwise work on the Unit.

3.7 Capacity. Seller understands and agrees that Buyer is a load serving entity and is entering into this Agreement, in part, in order to reduce its apparent load for the purpose of reducing its capacity, transmission, and ancillary service obligations with ISO New England. Seller further understands and agrees that it may not and shall not participate in any demand response program or any other program that credits Seller for capacity with respect to the Unit during the Term of Service. Furthermore, Seller shall not register this Unit with ISO-NE unless it is required to do so by a Governmental Authority with jurisdiction over it.

3.8 Title to Unit. Seller represents that Seller shall have and retain ownership and title to the Unit at all times during the Term of Agreement, except in the event of Buyer's purchase of the Unit pursuant to Article 19.16 hereof and payment of the applicable purchase price; provided, however, that Seller shall have the right to assign, pledge, transfer or convey title to the Unit to a Financier in accordance with Article 14.4 or an assignee in accordance with Article 14.1.

3.9 Load Reduction. The Parties understand and agree that Buyer intends to receive capacity and transmission attributable to the amount by which the Unit reduces Buyer's load during Buyer's annual peak that is coincident with ISO-NE's peak and Buyer's monthly peak and Seller agrees to not take any action that would deprive Buyer of those benefits. If any of such benefits are no longer available as a result of load reduction but become otherwise available, then Seller agrees to work cooperatively with Buyer and to take reasonable actions as needed for Buyer to realize such benefits. Notwithstanding anything else to the contrary in this Agreement, if at any time the Unit may no longer be treated as a load reducer then at Buyer's sole option, the Parties shall make commercially reasonable efforts to take the actions necessary for ISO-NE to credit Buyer for capacity attributable to the Unit. Such efforts may include

accordance with ISO-NE Rules in order for Buyer to receive credit for capacity attributable the Unit.

3.10 Standard of Operation. Seller shall design, obtain and maintain Governmental Approvals, install, operate, and maintain the Unit in good condition and repair, in compliance with all Applicable Laws, in accordance with the Interconnection Agreement and in accordance with Good Industry Practice. Such work shall be at Seller's sole expense.

3.11 NERC Compliance. The Parties understand and agree that the Seller, and not the Buyer, shall be responsible for compliance with the North American Electric Reliability Corporation (NERC) Compliance Monitoring and Enforcement Program as such compliance relates to the Seller's obligations under this Agreement and/or ownership and/or operation of the Unit.

ARTICLE 4. PURCHASE AND SALE OF CONTRACT PRODUCTS

4.1. Price. Beginning on the first day of the Term of Service, Buyer will pay Seller each month an amount equal to the number of kilowatt-hours of Energy, expressed to three (3) decimal places, delivered to the Delivery Point multiplied by the Contract Price ("Monthly Contract Products Charge"). At no time shall Buyer be responsible for losses of Energy from the Unit to the Delivery Point.

4.2. No Sale to Others. Under no circumstances shall Seller sell the Contract Products to any customer in Buyer's service territory. This Article 4.2 shall survive expiration or earlier termination of this Agreement.

4.3. Delivery Shortfalls.

(a) Seller shall guarantee delivery of a minimum of ninety percent (90%) of the kilowatt hours of Energy set forth in Appendix B for the relevant Contract Year to the Delivery Point ("Energy Amount") in each Contract Year. If Seller fails to deliver a minimum of ninety percent (90%) of the Energy Amount then Buyer shall deduct from amounts due to Seller an amount equal to the Shortfall Energy multiplied by the Replacement Power Cost (the "Shortfall Payment"). In the event that any amount of the Shortfall Payment due to Buyer remains outstanding four (4) months following Buyer's determination thereof as set forth in Buyer's notice described in Article 4.3(b) below, Seller shall pay to Buyer the full amount that remains outstanding within ten (10) Business Days of receipt of a demand for payment from Buyer.

(b) In the event Buyer determines that Seller owes a Shortfall Payment, Buyer shall send a written notice to Seller wherein Buyer sets forth such determination in reasonable detail. Seller shall have fifteen (15) Business Days after receipt of such notice to review Buyer's determination and at any time within such fifteen (15) Business Day period send written notice to Buyer under which Seller disputes, in whole or in part, Buyer's determination. Unless otherwise agreed, if Seller disputes, in whole or in part, and undisputed amount of the Shortfall Payment against payments owed to Seller as provided under Article 4.3(a) above and to the extent such off-sets are insufficient, Seller shall pay to Buyer the full amount that is owed after taking into account any off-sets as provided under Article 4.3(a) above. In the event Seller does not send any written notice to Buyer within such period, Seller shall be deemed to have accepted Buyer's

determination. In the event Seller challenges Buyer's determination then the Parties shall use good faith efforts to resolve any disputes promptly. In the event that a disputed amount is resolved in favor of Seller, such amount (to the extent resolved in favor of Seller) shall be promptly reimbursed or paid to Seller. If Seller does not pay such amount when due and the amounts owed by Buyer to Seller are less than the amounts owed from Seller to Buyer, Buyer shall then have the right to draw such amount from Seller's Letter of Credit.

ARTICLE 5. DELIVERY POINT

The Delivery Point for the Contract Products shall be located at the point of interconnection defined in the Interconnection Agreements with EverSource at each of the two solar facilities in Acton, MA. .

ARTICLE 6. METERING

Energy provided by Seller from the Units shall be metered at the Delivery Point using a utility-grade meter(s) and such meter readings shall reflect the actual Energy delivered to the Delivery Point pursuant to Article 5. Seller shall calibrate and maintain metering equipment in accordance with Good Industry Practice and the Interconnection Agreement. If at any time metering equipment associated with the Unit is found to be inaccurate by more than 1.5% then Seller shall cause it to be made accurate by repair or replacement. The meter readings for the period of inaccuracy shall be adjusted by Seller to correct such inaccuracy so far as the same can be reasonably ascertained; otherwise, the inaccuracy will be deemed to have existed for one half (1/2) of the time period which elapsed between the date such equipment last tested accurate and the date that such equipment was found inaccurate. In addition to regular routine tests, which shall be made in accordance with Good Industry Practice, Seller shall cause such equipment to be tested at least once per year and any other time upon request of and in the presence of a representative of Buyer, but in no event may Buyer request more than one test every six months. If such equipment proves accurate within 1.5%, when tested upon request of Buyer in addition to regular routine tests, the expense of such test shall be borne by Buyer. All metering shall be capable of providing real time meter information to Buyer. Seller is responsible for all charges related to the provision of real time remote meter data such as telephone line charges and over the air charges.

ARTICLE 7.
BILLING AND PAYMENT

7.1. Calculation of Monthly Invoice. For each month or portion thereof during the Term of Service, and, except as otherwise expressly provided herein, Buyer shall pay to Seller the Monthly Contract Products Charge. Pending the availability of actual data, computations by Seller of charges for the purposes of billings hereunder may be based upon reasonable estimates made by Seller. Any charges that are based upon estimates shall be trued-up as soon as practicable once actual data becomes available. Errors in arithmetic, computation, meter readings, estimating, or otherwise that affect the accuracy of a bill shall be promptly corrected in a subsequent corrected bill. The Seller shall provide fifteen (15) minutes interval data in a csv file format approved by the Buyer.

7.2. Presentation and Payment. Unless otherwise agreed to in writing by the Parties: (a) Seller shall submit an invoice to Buyer for the Monthly Contract Products Charge as soon as practicable after the end of each calendar month during the Term of Service; (b) the invoice shall identify each input on the bill which is based upon an estimate, in whole or in part; (c) invoices shall be delivered to Buyer by facsimile, by electronic means, including, but not limited to E-mails sent with a return receipt request (the Party receiving a return receipt request shall confirm receipt), or by express mail, pursuant to Article 19.2, followed up by an original invoice delivered by regular mail if so requested by Buyer; (d) all such invoices shall be due and payable in immediately available funds via wire transfer no later than the Due Date, defined as fifteen (15) Business Days after the date on which such invoice is Received; and (e) any amounts not paid by the Due Date shall be deemed delinquent and shall accrue interest from the Due Date to the date of payment at a per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" as the same may change from time to time (or if not published on such day on the most recent preceding day on which published), or any other periodical that may be agreed upon in writing from time to time ("Interest Rate"). For purposes of this Article 7.2, "Received" shall mean the date that the invoice is confirmed successfully delivered by telecopy, express mail or electronic communication. If Buyer fails to pay any amounts when due hereunder, Seller shall have the right to (i) exercise any other remedy available under this Agreement or at law or in equity to enforce payment of such amount plus interest at the Interest Rate and costs of collection, including reasonable attorney fees, and/or (ii) terminate this Agreement and receive a Termination Payment as set forth in Article 11 hereof.

7.3. Challenge of Invoices. Unless otherwise agreed, in the event of a good faith dispute relating to the amounts set forth on any invoice, and provided (a) that the challenging Party is not then in default under this Agreement and (b) that the undisputed portion of the invoice at issue is timely paid, and (c) the documentation regarding the withheld disputed amount is provided to the non-disputing Party on or before the date such disputed amount was due, then: (i) either Party may challenge, in writing, the accuracy of any original or adjusted invoice, provided that no adjustment for any invoice or payment will be made unless the challenge to the accuracy thereof was made prior to the lapse of twenty four (24) months from the receipt thereof; (ii) if a Party does not challenge the accuracy of an original or adjusted invoice within such twenty four (24) month period, such invoice shall be binding upon that Party and shall not be subject to challenge.

7.4. Disputed Invoice. Within the limitation of Article 7.3, each invoice shall be subject to adjustment for true-up from estimated costs to actual costs, errors in arithmetic, computation or estimating, or adjustments related to settlement. Seller may make adjustments pursuant to the preceding sentence to any billing for a period of up to twenty four (24) months from the date of rendering of such original billing in order to reflect differences in Seller's receipt of more current data. The Parties shall use good faith efforts to resolve any billing and payment disputes promptly. Unless otherwise agreed, in case of a dispute to any portion of any invoice, only the non-disputed amount shall be paid in accordance with Article 7.2, provided documentation regarding the withheld disputed amount is provided to Seller by the Due Date. Unless otherwise agreed, upon final determination of the invoice amount, any necessary adjustments in such invoice and the payments thereof shall be made in the invoice submitted in the month following such determination, with interest at the Interest Rate from the original Due Date of the invoice until the date of payment; provided, that, in no event shall Buyer be required to pay interest on the amount of any underpayment of costs caused by adjustment for true-up from estimated costs to actual costs or Seller's error in arithmetic, computation or estimating. Buyer's payment of an invoice (whether or not under protest) shall not affect any legal or equitable rights a Party may have to challenge the invoice within the time limitations established in Article 7.3 above.

ARTICLE 8. TRANSFER OF TITLE

Title to the Contract Products delivered or received hereunder shall transfer from Seller to Buyer at the Delivery Point.

ARTICLE 9. TAXES

Seller shall pay or cause to be paid all taxes on or with respect to the Units and the sale of the Contract Products prior to the Delivery Point. Buyer shall pay or cause to be paid all taxes on or with respect to the purchase of the Contract Products at and after the Delivery Point. Payment of all other taxes which are enacted or become effective or are assessed with respect to the Contract Products after the Effective Date shall be governed by the terms of this Article 9. Nothing shall obligate or cause a Party to pay or be liable to pay any tax for which it is exempt under the law.

Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with the intent of the Parties to minimize the imposition of taxes. Buyer agrees to furnish Seller with all applicable tax exemption certificates and documentation where exemption from applicable taxes is claimed.

ARTICLE 10. FORCE MAJEURE

In the event that either of the Parties should be delayed in, or prevented from performing or carrying out any of the agreements, covenants and obligations under this Agreement by reason of Force Majeure, then, during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments then

due or becoming due) shall be suspended to the extent of such Party's delay or inability to perform. Neither Party shall be liable to the other Party for, or on account of, any loss, damage, injury or expense (including consequential damages and cost of replacement power) resulting from, or arising out of any such delay or prevention from performing; provided, however, the pendency of such suspension will be of no greater scope and of no longer duration than is reasonably required by the Force Majeure, and the Party suffering such delay or prevention shall provide the other Party with written notice as soon as practicable after the occurrence of such event and shall take all reasonable efforts to mitigate the effects of such event of Force Majeure and to remove the cause(s) thereof. Neither Party shall be required by the forgoing provisions to settle a strike affecting it except when, according to its best judgment, such a settlement seems advisable. If a Party claims a Force Majeure for a consecutive period of 120 calendar days or longer or 240 calendar days in the aggregate in each case on a rolling twelve (12) month basis or longer, then, for so long as such Force Majeure is continuing, the Party not claiming a Force Majeure may terminate this Agreement and neither Party shall have any liability to the other as a result of such termination. In addition, if a Party should be delayed in, or prevented from performing or carrying out any of the agreements, covenants and obligations under this Agreement by reason of Force Majeure for a consecutive period of (i) 120 calendar days or longer or (ii) a total of 240 calendar days in three or more rolling twelve (12) month periods (the "Rolling Period") then the Party not impacted by Force Majeure may terminate this Agreement and neither Party shall have any liability to the other as a result of such termination, provided, however, that Buyer shall pay Seller the Contract Price for Contract Products delivered prior to such termination. For the avoidance of doubt and the purpose of clarity, a Force Majeure occurring on a calendar day included in one Rolling Period may not be included in another Rolling Period for the purpose of calculating the 240 calendar days referenced in subsection (ii) hereof.

ARTICLE 11. EVENTS OF DEFAULT

Without limitation of its rights at law, in equity and/or hereunder, either Party shall be entitled to terminate this Agreement upon the occurrence of an Event of Default by the other Party ("Defaulting Party"), as defined in this Article 11. The Party that is entitled to terminate this Agreement pursuant to the prior sentence shall be referred to as "Non-Defaulting Party".

11.1. Events of Default. For purposes of this Agreement, each of the following shall constitute an event of default ("Event of Default") with respect to a Party.

- (a) Failure by the Defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party and provided the payment is not the subject of a good faith dispute as described in Article 7.4.
- (b) The Defaulting Party becomes Bankrupt.
- (c) Failure by the Defaulting Party to perform any material covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 11.1 as a separate Event of Default) and such failure is not excused by Force Majeure, Emergency, Forced Outage, or the acts or omissions of the other Party and such failure continues uncured for more than thirty (30) calendar days after written notice to such Party specifying the nature of such failure; provided, however, that in the event of

an Event of Default that is not reasonably capable of cure within thirty (30) calendar days, the Defaulting Party commences to cure such Event of Default within thirty (30) calendar days and uses Commercially Reasonable Efforts to cure such Event of Default; provided, however, that such cure period shall not exceed ninety (90) calendar days.

(d) Any representation or warranty made by the Defaulting Party in this Agreement is not true and complete in any material respect when made unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) calendar days after written notice to such Party specifying the nature of such misrepresentation, and (ii) such cure removes any adverse affect on the other Party of such fact, circumstance or condition being otherwise than as first represented.

(e) The Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party and/or such resulting or surviving entity is not a Qualified Assignee.

(f) Failure of Seller to provide or maintain credit support as and when required by Article 17.

(g) Failure of Seller to maintain or cause to be maintained insurance for the Unit as set forth in Article 19.15 and such failure is not cured within five (5) Business Days after Buyer notifies Seller of such failure. In this case, Buyer shall be the Non-Defaulting Party.

(h) Seller commits a default under the Interconnection Agreement.

(i) Seller commits a default under the Lease and the Landlord or other grantor of authority terminates such Lease with Seller. In this case, Buyer shall be the Non-Defaulting Party.

(j) Seller fails to comply with Article 4.2. In this case, Buyer shall be the Non-Defaulting Party.

(k) Seller transfers the Unit or any part thereof to any other Person and such transfer is not in connection with an assignment of this Agreement that is permitted pursuant to Article 14. In this case, Buyer shall be the Non-Defaulting Party.

11.2. Settlement Amount. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing beyond the applicable cure period, if any, the Non-Defaulting Party shall have the right to: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) calendar days after such notice is effective, as an early termination date (“Early Termination Date”) to liquidate and terminate this Agreement and (ii) withhold any payments due to the Defaulting Party under this Agreement. If Buyer is the Non-Defaulting Party and establishes an Early Termination Date, then the damages payable by Seller shall equal Buyer’s actual direct damages over the unexpired portion of the Term of Service (as

if the Early Termination Date had not occurred) calculated in a commercially reasonable manner, including, but not limited to, the excess costs of replacement Energy in comparison to the Contract Price over the remaining term of the contract, determined in accordance with the terms hereof. If Seller is the Non- Defaulting Party and establishes an Early Termination Date, then the damages payable by Buyer shall equal Seller's actual direct damages over the unexpired portion of the Term of Service (as if the Early Termination Date had not occurred) calculated in a commercially reasonable manner, which shall be based on the shortfall in revenues derived from replacement Energy sales in comparison to the Contract Price arising from the Buyer Event of Default. In order to mitigate the Seller's damages, Seller may sell all of the Contract Products to any customer for the period of time between such Early Termination Date and the unexpired Planned Term of Operation for so long as the Interconnection Agreement remains in full force and effect and Seller continues to pay Buyer's lease payments.

The Non-Defaulting Party shall determine a single liquidated amount (the "Termination Payment") payable by the Defaulting Party to the Non-Defaulting Party by netting out from the damages payable to the Non-Defaulting Party as a result of the Defaulting Party's breach (as described above) (i) any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 17 and (ii) at the option of the Non-Defaulting Party (a) any amounts due to the Defaulting Party under this Agreement against (b) any amounts due to the Non-Defaulting Party under this Agreement. Notwithstanding the foregoing, all payments due and owing for the Contract Products prior to the Early Termination Date shall be made unless to the extent such amounts are setoff as forth in this Article.

As soon as practicable after an Event of Default, notice shall be given by the Non- Defaulting Party to the Defaulting Party of the amount of the Termination Payment. In no event shall a Termination Payment be due from the Non-Defaulting Party to the Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within ten (10) calendar days after such notice is effective. In connection with such payment, the Non-Defaulting Party shall have the right to draw on any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 17, or otherwise account therefor in a manner consistent with the calculation of the Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, nevertheless immediately pay the total Termination Payment within ten (10) calendar days after receipt of the Non-Defaulting Party's notice of such amount plus any unpaid amounts owing to the Non-Defaulting Party, and, within seven (7) Business Days of receipt of such notice, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. The Non-Defaulting Party shall answer any questions, within two (2) Business Days of receiving such questions, from the Defaulting Party regarding the calculation of the Termination Payment. If the dispute is resolved in favor of the Defaulting Party, the disputed amount shall be refunded within seven (7) Business Days, with interest upon such amount, calculated at the Interest Rate from the date the Termination Payment was paid to the Non-Defaulting Party until the date upon which the refund is made.

ARTICLE 12. LIMITATION OF LIABILITY

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE 13.
INDEMNIFICATION**

13.1 Seller's Indemnity. Seller shall, to the fullest extent permitted by law and except to the extent due to the negligent acts or omissions of the Buyer or Buyer's Indemnities, defend, indemnify and hold harmless Buyer and its directors, officers, managers, agents, employees, and contractors ("Buyer Indemnitees") from, against and with respect to, any and all Liabilities arising out of or relating to any third party claim or action against Buyer or any Buyer Indemnitees arising of the following:

(a) any inaccuracy in any representation or breach of warranty of Seller contained in this Agreement;

(b) any failure by Seller to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it under this Agreement;

(c) the design, construction, ownership, operation and maintenance of the Unit;

(d) any actual or alleged injury or death of Persons or damage to property arising in connection with the operation of the Unit;

(e) any payments owing by Seller to counterparties of Seller, including any expense reimbursement or other payment obligations that Seller may have in connection with the Unit; and

(f) any liabilities arising from or relating to the Unit and the site of the Unit, including, but not limited to, liabilities under any applicable laws addressing health, safety and the protection of the environment.

Notwithstanding anything to the contrary set forth above, Seller shall not be required to indemnify any Buyer Indemnitee for any loss directly caused by the negligence or willful misconduct of such Buyer Indemnitee.

13.2 Buyer's Indemnity. Buyer shall, to the fullest extent permitted by law and except to the extent due to the negligent acts or omissions of the Seller or Seller's Indemnities, defend, indemnify and hold harmless Seller and its directors, officers, managers, agents, employees, and shareholders ("Seller Indemnitees") from, against and with respect to, any and all Liabilities arising out of or relating to any third party claim or action against Seller or any Seller Indemnitees arising out of the following:

(a) any inaccuracy in any representation or breach of warranty of Buyer contained in this Agreement; and

(b) any failure by Buyer to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by Buyer under this Agreement.

Notwithstanding anything to the contrary set forth above, Buyer shall not be required to indemnify any Seller Indemnitee for any loss directly caused by the negligence or willful misconduct of such Seller Indemnitee.

ARTICLE 14. ASSIGNMENT

14.1 Assignments. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective permitted successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person other than Seller and Buyer rights or remedies hereunder. Neither Party shall assign or transfer, in whole nor in part, this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the above, either Party may assign or transfer this Agreement without written consent from the other Party in the case of (a) an assignment or transfer to a successor in the operation of the assignor's or transferor's assets and/or business by reason of a reorganization, merger, consolidation or foreclosure, where substantially all of such assets, including the Unit, are acquired by such successor; or (b) in the case of a transfer or assignment by Seller to a purchaser of the Unit, provided that, in either case, such assignment is

to a Qualified Assignee that has executed an assignment agreement as described in Section 14.2 below and that simultaneously assumes each the Interconnection Agreement and the Lease. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or permitted assigns) expressly consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations hereunder.

14.2 Assignment Agreement. Any assignment or transfer hereunder shall: (a) be in writing, (b) require the performance of all assignor's obligations under this Agreement, including any and all accrued obligations at the time of the Assignment and (c) require the assignee to assume all such obligations. In the event that consent to an assignment or transfer is required pursuant to Article 14.1, above, a copy of the assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such assignment agreement shall be sent to Buyer or Seller, as applicable, not less than ten (10) Business Days before the effective date of such Assignment. In the event that consent to an assignment or transfer is not required pursuant to Article 14.1, above, copy of the assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such assignment agreement shall be provided to Buyer or Seller, as applicable, promptly after the effective date of such Assignment. All of Buyer's costs and expenses, including reasonable attorney's fees, incurred by Buyer in connection with any assignment of this Agreement by Seller, including the negotiation and execution of any agreements or instruments requested by the Seller and/or the assignee in connection with such assignment shall be paid by Seller regardless of whether the assignment is consummated.

14.3 Assignments Not Permitted Void. Any assignment or transfer in violation of this Article 14 will be null and void.

14.4 Financing Accommodations. Buyer acknowledges that Seller may enter into financing agreements in connection with the Unit with an entity that Seller specifies to Buyer in writing (the "Financier") and that Seller's obligations under such financing agreement may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and/or a grant of a security interest and/or a transfer of an ownership interest in the Unit. In order to facilitate Seller's ability to obtain financing, Buyer agrees as follows:

- (a) Consent to Collateral Assignment. Buyer consents to the collateral assignment by Seller to the Financier of this Agreement; provided that such assignment shall not relieve Seller of its obligations hereunder.
- (b) Financier's Default Rights. Notwithstanding any contrary term of this Agreement:
 - i. The Financier, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement.

- ii. The Financier shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Unless the Financier has succeeded to Seller's interests under this Agreement, nothing herein requires the Financier to cure any default of Seller under this Agreement or to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so within the terms and time periods required by this Agreement.
 - iii. Buyer agrees that if a Financier notifies Buyer in writing that an event of default under Seller's financing arrangement has occurred and is continuing and that the Financier has elected to take an enforcement action or otherwise exercise remedies (an "Enforcement Action") with respect to the Unit and/or the replacement of the Seller under this Agreement, then, provided that the Enforcement Conditions are satisfied, (1) the Qualified Assignee that acquires the Unit through such Enforcement Action shall be substituted for the then named Seller under this Agreement and (2) Buyer will recognize such Qualified Assignee as its counterparty under this Agreement and will continue to perform its obligations under this Agreement in favor of the Qualified Assignee.
 - iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financier made within thirty (30) days of such termination or rejection, Buyer shall enter into a new agreement with a Qualified Assignee having substantially the same terms and conditions as this Agreement solely on the condition that before or at the time of entering into such new agreement the Qualified Assignee (A) cures all defaults then existing under this Agreement and (B) pays to Buyer the aggregate amount of (I) all unpaid amounts owed to Buyer under this Agreement, if any, plus (II) the total amount of all reasonable costs, fees, and expenses incurred by Buyer as a result of the rejection or other termination of the Agreement and any resulting suspension of the provision to Buyer of the Contract Products required to be provided to Buyer pursuant to this Agreement and the cost to Buyer of entering into a new agreement prior to the time of entering into such new agreement, including, without limitation, the cost to the Buyer of purchasing replacement Contract Products in excess of the prices in this Agreement and the Buyer's legal fees.
- (c) Acknowledgement and Confirmation. Buyer shall provide an acknowledgement and confirmation in a form provided by the Financier that does not diminish Buyer's rights hereunder and that is reasonably acceptable to the Buyer, which acknowledgement and consent shall not be unreasonably withheld, conditioned, or delayed. Such acknowledgement and confirmation shall be limited to Buyer's acknowledgement of the collateral assignment by Seller to the Financier of this Agreement.

- (d) Payment of Expenses. Seller shall reimburse Buyer on demand for any out-of-pocket costs (including reasonable attorneys' fees and expenses) incurred by the Buyer in connection with each actual or proposed assignment, transfer or Enforcement Action (including the costs of making investigations as to the acceptability of a proposed assignee or transferee) or other act described in this Article 14.4.
- (d) Right to Cure.
- i. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given Seller prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financier shall not have caused to be cured the condition giving rise to the right of termination or suspension within the time periods for cure provided for in this Agreement.
 - ii. If the Financier or its Qualified Assignee, pursuant to an exercise of remedies by the Financier, shall acquire control of Seller's assets and shall, within the time periods described in Article 14.4(d)(i) above, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

ARTICLE 15. CONFIDENTIALITY AND PUBLICITY

15.1 THE PARTIES CONSIDER THE PRICING TERMS OF THIS AGREEMENT TO BE SENSITIVE COMMERCIAL INFORMATION. ACCORDINGLY, THE PARTIES SHALL NOT DISCLOSE THE PRICING TERMS OF THIS AGREEMENT TO ANY THIRD PARTY UNLESS AND TO THE EXTENT REQUIRED TO MAKE SUCH DISCLOSURE BY ACTION OF A COURT OR OTHER GOVERNMENT AUTHORITY OR APPLICABLE LAW. EACH PARTY SHALL ONLY DISCLOSE THE PRICING TERMS IN THIS AGREEMENT AND OTHER CONFIDENTIAL INFORMATION RECEIVED FROM THE OTHER PARTY TO (I) THOSE OF ITS AFFILIATES AND ITS AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, TRUSTEES, CONSULTANTS, AUTHORIZED REPRESENTATIVES, AND ATTORNEYS HAVING A "NEED TO KNOW" IN ORDER TO CARRY OUT THEIR FUNCTIONS IN CONNECTION WITH THIS AGREEMENT AND (II) TO PROSPECTIVE LENDERS AND INVESTORS AND OTHER PROSPECTIVE PURCHASERS OF ENERGY OR OTHER PRODUCTS OF THE UNIT WHICH AGREE TO MAINTAIN THE CONFIDENTIALITY OF THE INFORMATION DISCLOSED. SELLER ACKNOWLEDGES THAT THE BUYER IS A PUBLIC ENTITY AND IS REQUIRED TO COMPLY WITH THE PROVISIONS OF THE MASSACHUSETTS OPEN MEETING AND PUBLIC RECORDS LAWS REGARDING DISCLOSURE OF THE PRICING AND OTHER TERMS OF THIS AGREEMENT.

15.2 Publicity.

(a) The Parties share a common desire to generate favorable publicity regarding the Unit and their association with the Unit. The Parties agree that they will, from time-to-time, issue press releases regarding the Unit and that they shall cooperate with each other in connection with the issuance of such releases. Each Party agrees that it shall not issue any press release regarding the Unit without the prior written consent of the other Party and the other Party agrees not to unduly withhold or delay any such consent.

(b) Subject only to the provision on confidential information in Article 15.1 above, Seller shall have the right to publish any information or statement related to the Unit on its website (or the website of an Affiliate) and through other forms of media. Such information may include, but is not limited to, the location of the Unit, the name of the Buyer and other features of the Unit.

(c) Notwithstanding Article 14.2(A) above, Buyer shall have the right to publicize, without prior approval by Seller, that it is “buying electricity from a solar source” and to display photographs of the Unit in its advertising and promotional materials, *provided*, that any such materials identify Seller as the “developer, owner and operator” of the Unit.

ARTICLE 16.
REPRESENTATIONS AND WARRANTIES

As a material inducement to entering into this Agreement, each Party (or the Party specified, as applicable), with respect to itself, represents and warrants to the other Party throughout the Term of Service:

16.1 Duly Organized and Validly Existing. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement.

16.2 No Consents or Other Authorizations. It has or will obtain when required all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and no consents of any other Party and no act of any other Governmental Authority is required in connection with the execution, delivery and performance of this Agreement other than those which it has or will obtain. In addition, Buyer warrants, with respect to this Agreement, that all acts necessary to the valid execution, delivery and performance of this Agreement have or will be taken and performed as required under all relevant federal, state and local laws, ordinances or other regulations with which Buyer is obligated to comply.

16.3 Due Authorization; No Violation. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a Party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

16.4 Enforceability. This Agreement constitutes a legal, valid and binding obligation of

such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

16.5 No Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other comparable proceeding pending or being contemplated by it or to its knowledge threatened against it.

16.6 Seller's Power. Seller warrants that it has the right to sell the Contract Products hereunder.

16.7 NEPOOL. Buyer warrants that it is a member in good standing of the New England Power Pool.

16.8 Statutes of Limitation. Buyer represents and warrants that the Term of Agreement does not extend beyond any applicable limitation imposed by any relevant federal, state and local laws, ordinances or other regulations with which Buyer is obligated to comply or other relevant constitutional, organic or other governing documents and applicable law.

16.9 Due Diligence. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

16.10 Material Contracts. Seller represents and warrants that, as of the first day of the Term of Service, Seller owns the Unit and has secured all necessary rights to or in any Material Contract.

16.11 Operation in Accordance with Applicable Law. Seller represents and warrants that, as of the first day of the Term of Service, it owns, operates and maintains the Unit in accordance with all Applicable Laws.

ARTICLE 17. CREDIT SUPPORT

17.1. Seller Credit Support.

(a) Within five (5) Business Days after execution of this Agreement, Seller shall provide Buyer with a Letter of Credit issued by a Qualified Institution, substantially in the form attached hereto as Appendix C. The Letter of Credit or a replacement Letter of Credit shall be maintained in at least the following amount: \$50/kW ("Seller's Credit Support Amount"). The Seller shall be required to maintain the Seller's Credit Support Amount until such time as the Seller obtains an Investment Grade Credit Rating at which time the Seller's Credit Support Amount shall be cancelled and returned to the Seller. However, if at any time after the Seller obtains an Investment Grade Credit Rating, (i) the Credit Rating of Seller is lowered by S&P below BBB- and/or by Moody's below Baa3, as applicable, or (ii) Seller fails to maintain a Credit Rating with at least one of S&P or Moody's and such failure is continuing, then Seller shall be required to provide the Seller's Credit Support Amount to Buyer within five (5) Business Days of a request by

Buyer to be held as security for Seller's obligations under this Agreement.

(b) For purposes hereof, it shall be a "Letter of Credit Default" with respect to the Letter of Credit issued by the Qualified Institution on behalf of Seller, upon the occurrence of any of the following events: (i) the Qualified Institution shall fail to maintain a Credit Rating of at least ("A-") by S&P and ("A3") by Moody's, (ii) the Qualified Institution shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the Qualified Institution shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of such Letter of Credit; (iv) such Letter of Credit shall fail or cease to be in full force and effect at any time during the Term of Agreement; (v) the Qualified Institution shall become Bankrupt; or (vi) the Seller or the Qualified Institution shall fail to cause the renewal or replacement of the Letter of Credit to the Buyer at least forty (40) calendar days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Seller in accordance with the terms of this Agreement. If a Letter of Credit Default occurs, then the Seller shall have ten (10) calendar days to cure the event(s) causing the Letter of Credit Default. Notwithstanding any applicable cure period, if any, in the event that the Letter of Credit Default has not been cured at least five (5) Business Days prior to the expiration of the Letter of Credit, Buyer shall have the right to draw on the Letter of Credit and hold the cash proceeds of such Letter of Credit in its general account as security for Seller's obligations under this Agreement. Buyer shall promptly return all such cash collateral held by Buyer in the event that Seller cures the Letter of Credit Default; provided that in no event shall Buyer be required to return such cash collateral if it is applied to amounts owing to Buyer under this Agreement, including Delay Damages and/or a Termination Payment owed by Seller to Buyer under Article 11 above.

ARTICLE 18. DISPUTE RESOLUTION

For any disputes between the Parties under this Agreement the Parties shall be able to pursue all available legal remedies and/or equitable remedies.

ARTICLE 19. GENERAL PROVISIONS

19.1. Waivers. Any waiver at any time by any Party of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any other prior or subsequent default or matter.

19.2. Notices. Any notice, demand, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, except as otherwise provided, and shall be given or delivered by Federal Express or comparable overnight delivery service, postage prepaid, addressed to the Party at the address set forth below. Notwithstanding the foregoing, bills, invoices, credit memos, reports and other communications in the ordinary performance of the respective duties and obligations of the Parties hereunder, may be sent by e-mail or facsimile. Credit memos, reports and other communications may also be sent by first class mail or any other method, whether herein

specifically provided or as the Parties may hereafter adopt. Changes in such address shall be made by notice similarly given.

Notices to Buyer shall be sent to:

Chris Allen, General Manager
Water Supply District of Acton
P.O. Box 953
693 Massachusetts Avenue
Acton, MA 01720
Tel: 978-263-9107
Fax: 978-264-0148

Notices to Seller shall be sent to:

[]

Phone: []

Fax: []

Attention: []

Notices shall be deemed to have been received, and shall be effective, upon receipt. Notices of changes of address by either Party shall be made in writing no later than ten (10) calendar days prior to the effective date of such change; provided, however, that any failure hereof shall not be deemed an event of default or other grounds for termination of the Agreement.

19.3. Headings Not to Affect Meaning. The descriptive headings used for the various Articles and sections herein have been inserted for convenience and reference only and shall in no way affect the meaning or interpretation, or modify or restrict any of the terms and provisions hereof.

19.4. No Consent to Violation of Law. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as those provisions may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

19.5. No Dedication of Facilities. Any undertakings or commitments by one Party to the other Party under this Agreement shall not constitute the dedication of the Unit or Buyer's system or any portion thereof to the public or to the other Party.

19.6. Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Seller and Buyer, or between either or both of them and any other Party.

19.7. Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party hereto.

19.8. Entire Agreement. This Agreement, the attached appendices and the Interconnection Agreement that has been incorporated herein by reference constitute the entire agreement between the Parties and parol or extrinsic evidence shall not be used to vary or contradict the express terms hereof.

19.9. Records. The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least six (6) years such records as may be needed to afford a clear history of all deliveries of Energy pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended. In maintaining or causing to be maintained such records, the Parties shall effect such segregation and allocation as may be needed to properly bill delivery of Contract Products pursuant to this Agreement.

19.10. Audit. Not more than once each calendar quarter, each Party or any third party representative of a Party shall have the right, at its sole expense, to examine the records of the other Party relating to this Agreement during normal business hours upon reasonable notice to the extent necessary to (i) verify any invoice or amounts due and payable pursuant to this Agreement and (ii) examine Seller's repair and maintenance records pertaining to the Unit or any portion thereof.

19.11. Amendment. This Agreement shall be amended or modified only by the mutual written agreement of both Seller and Buyer.

19.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement and any counterpart thereof may be delivered by fax or email and, if this Agreement or any counterpart thereof is delivered by fax or email, it shall, together with the signature(s) or copies of the signature(s) thereon, be treated for all purposes as originals that have been delivered.

19.13. Forward Contract. The Parties acknowledge and agree that this Agreement is a "forward contract" within the meaning of the Bankruptcy Code, and that the Parties are acting as "forward contract merchants" by entering into the Agreement.

19.14. Bankruptcy Code References. The payment of the Settlement Amount constitutes a "margin payment", and the Termination Payment constitutes a "settlement payment" and/or a "transfer" under the Bankruptcy Code and for purposes of determining the Termination Payment by the Non-Defaulting Party, the netting out from the Settlement Amount of the Seller's Letter of Credit, as applicable, held by the Non-Defaulting Party under Article 17 herein shall constitute a "setoff or net out of termination values or payment amounts" under the Bankruptcy Code. "Bankruptcy Code" shall mean the U.S. Bankruptcy Code, 11 U.S.C. Sec. 101 et. Seq., as such may be amended from time to time.

19.15. Insurance. Seller shall, at its sole expense, maintain or cause to be maintained the type of insurance coverage for the Unit and in the amount specified as set forth on and in compliance with the Interconnection Agreement herein by reference as though fully set forth. Seller shall or shall cause all insurance as provided above to include Buyer, its officers, directors, employees and agents as additional insureds. Seller shall provide Buyer with a copy of the additional insured endorsement with the certificate of insurance. Seller shall either: (a) cause all

policies of insurance obtained under this Article to require that the insurance carrier provide 30 calendar days' prior written notice to Buyer before insurance provided under such policies may be reduced or cancelled or (b) within two (2) Business Days of receipt by Seller from its insurance carrier, transmit to Buyer by facsimile a copy of all changes in policy conditions. In addition, Seller's insurance shall be primary for claims involving Seller's acts or omissions, and any other insurance maintained by Buyer shall be excess of and not contributing insurance with Seller's insurance.

19.16. Early Purchase Option. So long as Buyer is not a Defaulting Party, Seller grants to Buyer an option to purchase the Unit on the eight (8th) anniversary of the date of Commercial Operations and every two (2) years thereafter and on the last day of the Term of Service (each a "Purchase Date") for a purchase price (the "Purchase Option Price") equal to the greater of (a) the applicable Unit Valuation as specified in Appendix D and (b) the Fair Market Value of the Unit, as determined pursuant to Article 19.18 hereof. Not less than three (3) months prior to the Purchase Date, Buyer may provide written notice to Seller of Buyer's intent to exercise its purchase option for the Unit. Upon receipt of Buyer's notice, Seller shall specify the Purchase Option Price, and Buyer shall then have a period of ten (10) Business Days after notification to confirm or retract its decision to exercise the purchase option or to request determination of the Fair Market Value of the Unit by appraisal as provided for in Article 19.18. In the latter case, within ten (10) Business Days of the Independent Appraiser's determination, Buyer shall confirm or retract its decision to exercise the purchase option. In the event Buyer confirms its intent to exercise the purchase option, (i) the Parties will promptly execute all documents necessary to (A) cause title to the Unit to pass to Buyer, free and clear of any liens immediately subsequent to the purchase, (B) assign all warranties for the Unit as well as all operation and maintenance contracts to Buyer, (C) assign all contracts related to RECs and Environmental Attributes related to the Unit or the Energy generated by the Unit and (D) assign the Lease to Buyer or, at Buyer's option, terminate the Lease, and (ii) Buyer will pay the Purchase Option Price to Seller. In the event Buyer retracts its exercise of, or fails to timely confirm, the purchase option, all provisions of this Agreement shall continue in full force and effect without regard to the actions taken under this Article 19.16.

19.17. End of Term Purchase Option. Buyer shall have the right to purchase the Unit from Seller at the expiration of the Term of Service at the then Fair Market Value of the Unit. No earlier than twelve months prior to the expiration of such Term of Service and no later than nine (9) months prior to the expiration of the Term of Service, Buyer shall notify Seller of its intent to exercise the option. Within ninety-one (91) calendar days of its receipt of such notice, Seller shall give Buyer its appraisal of the Fair Market Value of the Unit at the end of the Term, and Buyer shall then have a period of ten (10) Business Days after notification to confirm or retract its decision to exercise the purchase option or to request determination of the Fair Market Value of the Unit by appraisal as provided for in Article 19.18. In the latter case, within ten (10) Business Days of the Independent Appraiser's determination, Buyer shall confirm or retract its decision to exercise the purchase option. In the event Buyer confirms its intent to exercise the purchase option, (i) the Parties will promptly execute all documents necessary to (A) cause title to the Unit to pass to Buyer, free and clear of any liens immediately subsequent to the purchase, (B) assign all warranties for the Unit as well as all operation and maintenance contracts to Buyer, (C) assign all contracts related to RECs and Environmental Attributes related to the Unit or the Energy generated by the Unit and (D) assign the Lease to Buyer or, at Buyer's option, terminate the Lease, and (ii) Buyer will pay the Purchase Option Price to Seller. In the event Buyer

retracts its exercise of, or fails to timely confirm, the purchase option, all provisions of this Agreement shall continue in full force and effect without regard to the actions taken under this Article 19.17.

19.18 Determination of Fair Market Value. “Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, for the Unit between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the extent to which the Environmental Attributes and RECs, are included in the sale and immediately available to such buyer, the age and performance of the Unit and advances in solar technology and further assuming that the Unit would be removed from the Premises at the date of determination, de-installed, packed, crated and ready for shipment to such buyer, less the cost that would be incurred by Buyer to restore the Premises to its pre-existing condition. If Buyer requests determination of Fair Market Value by appraisal pursuant to Article 19.16 or Article 19.17, then the Parties shall mutually select an Independent Appraiser to determine the Fair Market Value. If the Parties cannot mutually agree on an Independent Appraiser within ten days, then each Party shall select an Independent Appraiser and the Fair Market Value shall equal the average of the two valuations. Such calculation shall be binding upon the Parties in the absence of fraud or manifest error. Each Party shall be responsible for the fees and expenses of its Independent Appraiser. Such Independent Appraiser(s) shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by such Independent Appraiser shall be binding upon the Parties in the absence of fraud or manifest error. If the Parties mutually agreed on one Independent Appraiser, then each Party shall be responsible for one-half of the fees and expenses of such Independent Appraiser. Notwithstanding anything herein to the contrary, in the event that Buyer exercises its option rights hereunder on more than occasion, then Buyer shall be solely responsible for paying the fees and costs of all Independent Appraisers, regardless if such appraiser is the Independent Appraiser of Buyer or Seller, for all option exercises other than the first option exercise and the option exercise resulting in Buyer’s purchase of the Unit.

19.19 Removal at End of Term of Service. If the Unit is located on Premises that are owned or controlled by Buyer and the Lease does not otherwise provide for the removal of the Unit at the end of the Term of Service, then, unless Buyer exercises its purchase option under Section 19.16 above, Seller shall, within ninety (90) days after the end of the Term of Service, remove the Unit from the Premises at its expense.

19.20 Governing Law and Waiver of Jury Trial. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts, notwithstanding any laws requiring the application of the laws of another state. The Parties agree that sole and exclusive jurisdiction and venue for any action or litigation arising from or relating to this Agreement shall be an appropriate federal court located in the Commonwealth of Massachusetts, provided that such court has jurisdiction. Absent such federal jurisdiction, the Parties agree that sole and exclusive jurisdiction and venue for any action or litigation arising from or relating to this Agreement shall be an appropriate state court located in the Commonwealth of Massachusetts. Each Party agrees to waive all rights to a trial by jury in the event of litigation to resolve any disputes hereunder.

19.21 Material Adverse Change. If the federal government, the Commonwealth of Massachusetts, or ISO-New England, Inc. adopts, enacts, or otherwise imposes a new law, rule or regulation which either makes a Party's performance under this Agreement unlawful, or makes this Agreement unenforceable, and such governmental action does not constitute a Force Majeure event under Article 11 of this Agreement, then the Parties shall negotiate in good faith to amend the terms of this Agreement and to determine the appropriate changes, if any, so that the Party affected by such change in law or regulation is able to lawfully perform its obligations without materially adversely affecting the financial benefit hereunder to the other Party. If the Parties are unable to reach agreement on such appropriate changes then either Party shall have the right to terminate this Agreement, and neither Party shall have any further liability to the other Party, except for the payment of amounts owing prior to the date of termination and except as provided in Article 2.3.

19.22 Further Assurances. In furtherance of the terms and provisions hereof, the Parties agree to collaborate in good faith in order to achieve the performance by each other of their respective obligations hereunder, including by executing and delivering such documents and instruments as reasonably requested by either Party.

REMAINDER OF PAGE LEFT BLANK. SIGNATURES FOLLOW.

Agreed to as of the date set forth above.

SELLER

BUYER

[_____]

Water Supply District of Acton

By: _____

By: _____

Name:

Name:

Title:

Title:

APPENDIX A DESCRIPTION OF UNITS

Location of Units:

Net Plant Output:

Capacity Factor:

Photovoltaic Modules:

Inverter(s):

Mounting Type and Hardware:

Data Acquisition System:

Warranty:

Includes:

Exclusions:

Interconnection Equipment:

Cable Equipment:

System Protection:

Other:

**APPENDIX B
ENERGY AMOUNT**

The Energy Amount commencing on the date of Commercial Operations shall be as given below. Seller shall guarantee providing 90% of the Energy Amount on an annual basis under any and all insolation conditions.

[NOTE: SELLER TO INSERT TABLE]

APPENDIX C
SELLER'S FORM OF LETTER OF CREDIT
IRREVOCABLE LETTER OF CREDIT NUMBER _____

Amount: _____ (USD\$_____)

Date:

Letter of Credit Expiration Date:

Beneficiary Name and Address:

Name of Applicant:

Issuer:

To the above-name Beneficiary:

We hereby issue our irrevocable Letter of Credit in your favor for the account of the above-named Applicant up to the aggregate amount stated above.

Funds under this Letter of Credit, in an amount not to exceed the amount stated above, will be made available to you in accordance with the terms and conditions herein against sight drafts presented at the above address, either in person or by courier or overnight delivery service or facsimile on or before the expiration date, bearing the clause "Drawn under _____ Letter of Credit No. _____, dated _____", and accompanied by both of the following documents:

1. (A) A notarized certificate sworn to and executed by an authorized officer of the Beneficiary reading as follows: "The amount claimed under this Letter of Credit as represented by the sight draft enclosed herewith is due and payable because (a) payment is due to [_____] ("Beneficiary") from [_____] ("Applicant") pursuant to [REASON FOR PAYMENT], (b) Applicant has not made such payment in accordance with the Power Purchase Agreement for Unit Contingent Contract Products, dated as of ____, 20__, between Applicant and Beneficiary and (c) Beneficiary has made written demand upon Applicant for payment. Wherefore, demand is hereby made under your Letter of Credit No. _____ for payment of the Draw amount. Payment should be remitted to _____."; **OR**, (B) a notarized certificate sworn to and executed by an authorized officer of the Beneficiary reading as follows: "An Event of Default (as defined in the Power Purchase Agreement for Unit Contingent Contract Products, between [_____] ("Applicant") and [_____] has occurred and is continuing with respect to the Applicant. Wherefore, demand is hereby made under your Letter of Credit No. _____ for payment of [\$_____][THE ENTIRE UNDRAWN

AMOUNT OF THE LETTER OF CREDIT]. Payment should be remitted to _____.”;
AND,

2. This original Letter of Credit.

We hereby agree with you that sight drafts drawn under this Letter of Credit will be honored in accordance with the terms and conditions stated herein provided the sight draft and required documents are presented to us at the above address on or before the Letter of Credit Expiration Date stated above. Payment of any draft drawn under this Letter of Credit in an amount less than the maximum amount available hereunder shall be recorded by us on the reverse side hereof and this Letter of Credit shall then be returned to you. Multiple and partial drawings are expressly permitted under this Letter of Credit.

This Letter of Credit is governed by the provisions of the Uniform Customs and Practice for Documentary Credits (2007 Version), International Chamber of Commerce Publication No. 600 (“UCP”). As to matters not governed by the UCP, this Letter of Credit is governed by the laws of the Commonwealth of Massachusetts. This Letter of Credit is not transferable.

By: _____

APPENDIX D UNIT VALUATION

[NOTE: Seller to insert.]