L-6559

SOLAR POWER SERVICES AGREEMENT

between

("Provider")

and

City of Newton, Massachusetts

("Customer")

May [10], 2019

(the "Effective Date")

SOLAR POWER SERVICES AGREEMENT

THIS SOLAR POWER SERVICES AGREEMENT (this "Agreement") is made effective as of May 10, 2019 (the "Effective Date"), between Newton Municipal III LLC, a Delaware limited liability company ("Provider"), and the City of Newton, Massachusetts, a municipal corporation and political subdivision of the Commonwealth of Massachusetts ("Customer"). Provider and Customer are sometimes referred to individually as a "Party" and collectively as the "Parties."

BACKGROUND

WHEREAS, Provider has offered to sell Solar Services (as hereafter defined) produced by certain solar photovoltaic systems to Customer as provided in and subject to the provisions of this Agreement, and Customer is willing to purchase the Solar Services as provided in and subject to the provisions of this Agreement; and

WHEREAS, in order to enable this Agreement, Provider and Customer are entering into the Lease for the Leased Premises located in Newton, Massachusetts (see Schedule 1 attached hereto) between Provider and Customer bearing the same date as this Agreement, which will host the above solar photovoltaic systems for the production of electricity and corresponding Alternative On-Bill Credits/Net Metering Credits, and Provider will, at its sole cost, install, maintain, own and operate the systems at the Leased Premises; and

WHEREAS, Provider intends to qualify the Facilities under the SMART Program (defined below) as either Alternative On-Bill Credit Generation Units (as defined in 225 CMR §20.02) or Behind-the-meter Solar Tariff Generation Units (as defined in 225 CMR §20.02), to provide Customer with Alternative On-Bill Credits (defined below) or Net Metering Credits (defined below) available from the LDC pursuant to the SMART Program, and to retain for its own account all other incentives available under the SMART Program; and

WHEREAS, Customer is or shall be the Host Customer (as defined below) of the Facilities;

WHEREAS, Provider desires to deliver to Customer, as Host Customer, all of the electricity generated by the BTM Facilities (defined below) during the Term, and Customer desires to pay for all of such electricity and receive the right to allocate all of the Alternative On-Bill Credits/Net Metering Credits (as applicable) generated by all of the Facilities for use in offsetting the electric utility bills associated with other Customer utility accounts in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I.
DEFINITIONS

1.01 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Affiliate" means, with respect to any Person, any other Person directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

"Agreement" means this Solar Power Services Agreement, including the Schedules attached hereto.

"Alternative On-Bill Credits" or "AOBC" has the meaning set forth in the SMART Program Regulations.

"Annual Facilities Degradation Factor" means the factor expressed in percent by which the Guaranteed Annual Solar Services Output of the Facilities shall decrease each Contract Year as set forth in Schedule 4.

"Applicable Law" means any and all applicable constitutional provisions, laws, statutes, rules, regulations, ordinances, bylaws, treaties, orders, decrees, judgments, decisions, certificates, holdings, injunctions, registrations, licenses, franchises, permits, authorizations, guidelines, Governmental Approvals, the SMART Program Regulations, the Net Metering Rules, and any and all approvals, consents or requirements of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Bankrupt" means that a Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) 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; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) 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; (vii) 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; (viii) causes or is subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Bankruptcy Code" has the meaning set forth in Section 7.02.

"BTM Facility" means a "Behind-the meter Solar Tariff Generation Unit" as defined in the SMART Program Regulations.

"Business Day" means Monday through Friday, 9 a.m. to 5 p.m., Eastern Standard Time or Eastern Daylight Time as applicable, exclusive of federal legal holidays or state legal holidays in the Commonwealth of Massachusetts.

"Cap Allocation" has the meaning set forth in the Net Metering Rules.

"Commercial Operation" means with respect to a Facility, that a Facility is ready for regular, daily operation, has been interconnected to the LDC, has been accepted by the LDC (to the extent required), and is capable of producing electricity at full or substantially full capacity, and has been installed in accordance with Applicable Law.

"Commercial Operation Date" means the first day on which a Facility achieves Commercial Operation, as defined herein, as certified in writing by Provider to Customer in a notice of Commercial Operation.

"Construction Commencement Date" means, with respect to a Facility, the date on which all Governmental Approvals for construction of such Facility have been obtained by Provider and construction activities for the installation of such Facility have commenced.

"Contract Year" means, with respect to a Facility, a 365-day period commencing on the Commercial Operation Date, and each subsequent 365-day period thereafter.

"CORI" has the meaning set forth in Section 4.08.

"Customer" has the meaning set forth in the preamble hereof.

"Customer Default" has the meaning set forth in Section 8.02(a).

"Customer Facility-Specific Default" has the meaning set forth in Section 8.02(a)(ii).

"Customer Misconduct" has the meaning set forth in Section 10.02(a).

"Decommissioning Assurance" has the meaning set forth in Section 6.05.

"Delivery Point" means, (a) with respect to a BTM Facility, the point at which such BTM Facility interconnects to the Customer's intertie with the LDC on the Customer's side of the LDC Metering Device, or (b) with respect to a FTM Facility, the point at which such FTM Facility interconnects to the LDC System.

"Dispute" has the meaning set forth in Section 9.01.

"DPU" means the Massachusetts Department of Public Utilities

"Early Termination Fee" has the meaning set forth in Section 8.03(b).

"Effective Date" has the meaning set forth in the preamble hereof.

"Environmental Attributes" means the characteristics of electric power generation by the Facilities that have intrinsic value separate and apart from the energy and arising from the perceived environmental benefit of the Facilities or the energy produced by the Facilities including but not limited to all environmental attributes or renewable energy credits, including carbon trading credits (including greenhouse gas offsets under any Applicable Law pursuant to the Regional Greenhouse Gas Initiative), or certificates, emissions reduction credits, emissions allowances, green tags and tradable renewable credits, environmental and other attributes that differentiate the Facilities or energy produced by the Facilities from energy generated by fossil fuel based generation units, fuels or resources, characteristics of the Facilities that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or mercury, or other base or chemical, soot particulate matter or other substances attributable to the Facilities or the compliance of the Facilities or energy with the law, rules and standards of the United Nations Framework convention on Climate Changes or the Kyoto Protocol or the UNFCCC or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator of any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and reporting rights. Environmental Attributes do not include Environmental Incentives, Rebates, Alternative On-Bill Credits or Net Metering Credits.

"Environmental Incentives" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) tax credits, incentives or depreciation allowances established under any federal or state law, (ii) fuel-related subsidies or "tipping fees" that may be paid to accept certain fuels, and (iii) other financial incentives in the form of credits, tax write-offs, reductions or allowances under Applicable Law attributable to the Facilities or electricity, including all incentives pursuant to the SMART Program (other than Alternative On-Bill Credits or Net Metering Credits), and all reporting rights with respect to such incentives. Environmental Incentives do not include Environmental Attributes, Rebates, Alternative On-Bill Credits or Net Metering Credits.

"EPC Agreement" means an engineering, procurement and construction agreement between the Provider and the Prime Contractor for the Facilities.

"Exercise Notice" has the meaning set forth in Section 13.07.

"Exercise Period" has the meaning set forth in Section 13.07.

"Facility" or "Facilities" means each solar electric generating facility at each of the Leased Premises as set forth in Schedule 2, which consists of modules, inverters, and other related equipment and assets. For avoidance of doubt, except as otherwise expressly provided herein, the term "Facility" as used in this Agreement shall correspond with the term "Solar Tariff Generation Unit" as used in the SMART Program Regulations.

"Facility Assets" means each and all of the assets of which a Facility is comprised, including solar energy panels, mounting systems, inverters, integrators, and other related equipment and components installed on the Leased Premises, electric lines and conduits required to connect such equipment to the Delivery Point and the LDC Facilities, protective and associated equipment, improvements, Meters, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Facilities.

"Facility Loss" means loss, damage or destruction of a Facility or Facility Assets that prevents or limits a Facility from operating in whole or in part, resulting from or arising out of casualty, condemnation or Force Majeure. Loss, damage or destruction of a building or other structure in which or upon which a Facility is installed, which prevents or materially impairs Provider's access to and/or use of such Facility for the uses intended hereunder, shall be deemed a Facility Loss for the purposes of this Agreement.

"Facility-Specific Default" has the meaning set forth in Section 8.01(a)(i).

"Fair Market Value" means the price for the purchase of a Facility or the Facilities that would be established in an arm's-length transaction between an informed and willing buyer and an informed and willing seller, neither being under any compulsion to act, as determined by an Independent Appraiser.

"Final Appraised Value" has the meaning set forth in Section 13.04.

"Final Determination" has the meaning set forth in Section 13.04.

"Force Majeure Event" has the meaning set forth in Section 8.04.

"FTM Facility" means an "Alternative On-bill Credit Generation Unit" as defined in the SMART Program Regulations.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of, or required to be issued by or on behalf of, any applicable Governmental Authority or LDC.

"Governmental Authority" means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to Customer, acting other than in its capacity as Customer hereunder), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

"Governmental Charges" means all applicable federal, state and local taxes (including, without limitation, real and personal property taxes, sales, use, gross receipts or similar taxes), governmental charges, costs, expenses, charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed, assessed, and/or authorized by a Governmental Authority, the LDC or other similar entity, on or with respect to the Facilities, Property, Solar Services, Net Metering

Credits/Alternative On-Bill Credits (including, without limitation, solar customer charges) and/or this Agreement.

"Guaranteed Annual Solar Services Output" means the minimum amount of Solar Services that is guaranteed by the Provider to be generated by the Facilities, in the aggregate, in a Contract Year as shown in Schedule 4.

"Hazardous Substances" means those substances defined, classified, or otherwise denominated as a "hazardous substance", "toxic substance", "hazardous material", "hazardous waste", "hazardous pollutant", "toxic pollutant" or oil in any Applicable Law or in any regulations promulgated pursuant to the Applicable Law.

"Host Customer" has the meaning set forth in the Net Metering Rules.

"Independent Appraiser" means an individual 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 Facilities. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Provider, any Affiliate of Provider, or Customer.

"Interconnection Service Agreement" has the meaning set forth in the SMART Program Regulations.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

"kWh" means kilowatt-hour.

"LDC" or "Local Distribution Company" means the local electric distribution company providing interconnection and net metering services for the Facilities, as of the Effective Date being Eversource (also previously referred to as NSTAR Electric).

"LDC Metering Device" means one or more meters furnished and installed by the LDC for the purpose of measuring the electricity delivered by the LDC to the Host Customer and delivered by the Host Customer to the LDC.

"LDC System" means the electric distribution system operated and maintained by the LDC.

"Lease" means that certain Solar Facilities Lease Agreement by and between the Customer and Provider of even date herewith.

"Leased Premises" has the meaning set forth in the Lease.

"Lender" means any third-party entity providing financing (including tax equity, cash equity, debt, credit support, lease financing or other financing) to Provider with respect to any Facility . It shall not mean Provider's trade creditors.

"Meter" means with respect to a Facility, the utility-grade, revenue quality meter(s) installed by Provider and used for the registration, recording, and transmission of information regarding the amount of Solar Services generated by a Facility.

"Net Metering" shall have the meaning set forth in M.G.L. c.164, s.138 and 220 CMR 18.02.

"Net Metering Credit" has the meaning set forth in M.G.L. c.164, s.138-140 and 220 CMR 18.00.

"Net Metering Rules" means the rules promulgated by DPU pursuant to, among others, M.G.L. c. 164, ss. 138-140, 220 CMR 11.04, 220 CMR 18.00, 220 CMR 8.00 and DPU docket 11-10 (Order Adopting Net Metering Rules), and DPU Docket 11- 11-E (Order on Exceptions to Definition of Unit and Facility), each as amended and extended periodically.

"Party" means Provider or Customer.

"Parties" means Provider and Customer.

"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.

"Prime Contractor" means the entity that is the counterparty to the EPC Agreement with Provider.

"Production Shortfall" means the amount, expressed in kWh or AOBC, as applicable, by which the actual amount of Solar Services generated by all of the Facilities, in the aggregate, in any Contract Year is less than the Guaranteed Annual Solar Services Output for such Contract Year, as set forth in Section 2.02, provided that, if the Facilities fail to produce the Guaranteed Annual Solar Services Output in a given Contract Year, as adjusted by the Annual Facilities Degradation Factor shown in Schedule 4, but in the immediately subsequent Contract Year, the Facilities deliver an amount equal to (i) the then-applicable Guaranteed Annual Solar Services Output for such subsequent Contract Year, plus (ii) the shortfall in the amount of the Guaranteed Annual Solar Services Output from the preceding Contract Year, then there shall be deemed to be no Production Shortfall for the Facilities for such preceding Contract Year.

"Property" has the meaning set forth in the Lease, and includes the Leased Premises.

"Provider" has the meaning set forth in the preamble hereof.

"Provider Default" has the meaning set forth in Section 8.01(a).

"Provider Termination Payment" has the meaning set forth in Section 8.03(a).

"Purchase Price" has the meaning set forth in Section 13.05.

"Purchase Option" has the meaning set forth in Section 13.01.

"Rate" means the retail electric energy rate from the LDC for the applicable Facility, at the rate class set forth in Schedule 2.

"Rebates" shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems but does not include grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law. Rebates do not include Environmental Attributes, Environmental Incentives, Alternative On-Bill Credits or Net Metering Credits.

"Regional Greenhouse Gas Initiative" means the greenhouse gas initiative created by Regional Greenhouse Gas Initiative, Inc..

"Shortfall Payment" has the meaning set forth in Section 2.02(b).

"Site Plan" means, for each Facility, a plan depicting landscaping, tree trimming, tree removal, and tree replacement, EV charging station locations, type, and number, and the locations, within and upon the Premises, of Facility components, including interconnection arrangements and access points, as revised by final as-built drawing(s) and subsequent revisions depicting any Facility alterations, and incorporated in Schedule 2 hereto.

"SMART Program" has the meaning set forth in the SMART Program Regulations.

"SMART Program Regulations" means 225 CMR 20.00, *et. seq.,* as amended from time to time.

"SMART Tariff" means the tariff to implement the incentive program contemplated under the SMART Program to be filed by the LDC, which is approved by DPU and as from time to time amended.

"Solar Services" means (i) for the BTM Facilities, the electricity generated by the BTM Facilities and delivered from the BTM Facilities to Customer at the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the applicable Meter; and (ii) for the FTM Facilities, the Alternative On-Bill Credits delivered to Customer as a result of the electricity generated by the applicable FTM Facilities and delivered from the applicable FTM Facilities to the LDC.

"Solar Services Payment" has the meaning set forth in Section 3.01.

"Solar Services Rate" means, (a) for the BTM Facilities, the price per kWh of Solar Services delivered to the Delivery Point, and (b) for the FTM Facilities, the price per Alternative On-Bill Credit delivered to the Customer, as set forth in Schedule 3.

"SORI" has the meaning set forth in Section 4.08.

"Stated Rate" means a fluctuating interest rate per annum equal to the lesser of (i) the Prime Rate as stated in the "Bonds, Rates & Yields" section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, (ii) ten percent (10%) or (iii) the maximum interest rate permitted by Applicable Law. In the event that the Prime Rate is no longer published in The Wall Street Journal or such publication is no longer published, the Stated Rate shall be set using a comparable index or interest rate selected by Customer and reasonably acceptable to Provider. The Stated Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred and sixty-five (365) days and the actual number of days for which such interest is due.

"Statement of Qualification" shall have the meaning set forth in 225 CMR 20.00, as from time to time amended.

"Subcontractor" means an entity that has a contract with the Prime Contractor to perform a portion of the work under the EPC Agreement.

"System of Assurance" has the meaning set forth in the Net Metering Rules.

"Term" has the meaning set forth in Section 6.01.

"Termination Payment" means the Early Termination Fee or the Provider Termination Payment, as applicable.

"Test Energy" means Solar Services generated by a Facility and delivered to the Delivery Point prior to the Commercial Operation Date for such Facility, provided that such generation is eligible for Alternative On-Bill Credits or Net Metering Credits.

"Transfer Date" has the meaning set forth in Section 13.07.

ARTICLE II.
DELIVERY OF SOLAR SERVICES; GUARANTEES

2.01 Purchase Requirement.

(a) This Agreement provides the terms and conditions upon which the Provider shall, or shall cause its contractors to, design, construct, maintain and operate the Facilities on the Leased Premises. During the Term, Customer agrees to purchase (i) one hundred percent (100%) of the Solar Services produced by each BTM Facility and metered by a Meter, and (ii) all the Alternative On-Bill Credits transferred to Customer as a result of the electricity produced by each FTM Facility and delivered by Provider to the LDC. Each Facility shall be as described in Schedule 2 hereto. The rights and obligations of the Parties with respect to each Facility are separate and independent from the rights and obligations of the Parties with respect to each other Facility. In furtherance of the foregoing, the Parties acknowledge and agree that for purposes of Article VIII of this Agreement, the Parties shall have the right to declare a default, to terminate this Agreement and to exercise remedies for default as provided in Article VIII only as to the applicable

Facility and the calculations pursuant to any Termination Payments will be made as to the applicable Facility.

(b) Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Provider shall sell and make available to Customer, and Customer shall purchase and take delivery of all of the Solar Services generated by the Facilities at the applicable Solar Services Rate as specified in Schedule 3. For the BTM Facilities, Customer shall take delivery of at the Delivery Point, all electricity that is part of the Solar Services. Customer acknowledges that electricity produced by the Facilities is intermittent as available energy product and the Alternative On-Bill Credits are variable, and that Customer is solely responsible for meeting any and all of its energy needs not met from Facility-generated electricity at Customer's cost and expense. Prior to the Commercial Operation Date, Provider shall make available to Customer and Customer shall take delivery of at the Delivery Point, any Test Energy produced by any BTM Facilities as measured by the Meters installed with each such BTM Facility. Customer shall pay for the Test Energy at a rate equal to Solar Services Rate applicable on the Commercial Operation Date.

(c) The purchase of Solar Services by Customer hereunder does not include Environmental Attributes, Environmental Incentives or any other attributes of ownership of the Facilities, title to which shall rest solely with Provider (except with respect to Environmental Attributes to the extent required to be transferred to the LDC under the SMART Program which shall transfer to the LDC at the Delivery Point), but shall include all Alternative On-Bill Credits or Net Metering Credits. Customer shall not report to any Person that any Environmental Attributes and Environmental Incentives relating to the Solar Services or the Facilities belong to any Person other than Provider. At Provider's request, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's right, title and interest in and to the Environmental Attributes and Environmental Incentives relating to the Solar Services.

(d) Title to and risk of loss of the Solar Services produced by the BTM Facilities will pass from Provider to Customer at the Delivery Point. Title to and risk of the applicable Alternative On-Bill Credits generated by the electricity production of the FTM Facilities shall pass to Customer upon Customer's receipt of these Alternative On-Bill Credits. Provider warrants that the Solar Services will be free and clear of all liens, security interests, claims, and other encumbrances when Customer makes payment therefor.

2.02 Guaranteed Annual Solar Services Output.

(a) Provider guarantees that the Facilities will produce the Guaranteed Annual Solar Services Output in each Contract Year, as adjusted by the Annual Facilities Degradation Factor shown in Schedule 4, provided that, if the Facilities fail to produce the Guaranteed Annual Solar Services Output in a given Contract Year, as adjusted by the Annual Facilities Degradation Factor shown in Schedule 4, but in the immediately subsequent Contract Year, the Facilities deliver an amount equal to (i) the then-applicable Guaranteed Annual Solar Services Output for such subsequent Contract Year, plus (ii) the shortfall in the amount of the Guaranteed Annual Solar Services Output from the preceding

Contract Year, then Provider shall be deemed to have satisfied its obligations under this Section 2.02(a) for such preceding Contract Year. For each Facility, on the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Guaranteed Annual Solar Services Output shall be decreased by the Annual Facilities Degradation Factor.

(b) Subject to clause (c) below, in the event that a Production Shortfall for the Facilities exists in any Contract Year and such Production Shortfall is not cured in the subsequent Contract Year as set forth in Section 2.02(a), Provider shall be required to issue a credit to Customer ("Shortfall Payment") in an amount calculated as follows:

Shortfall Payment for BTM Facilities ($) = Production Shortfall (kWh) x (Rate ($/kWh) - Solar Services Rate ($/kWh)); provided that in no event shall such rate difference exceed $0.04 per kWh. Shortfall Payment for AOBC Facilities ($) = Production Shortfall (kWh) x Discount to AOBC rate.

(a) For purposes of calculating a Shortfall Payment under clause (b) above, the Production Shortfall shall be adjusted as reasonably determined by Provider due to failure, damage or downtime attributable to Customer or third parties, general utility outages or any failure of any electric grid, Facility Loss, Force Majeure, breaches or omissions of Customer of any of its obligations hereunder, and for any production in the immediate subsequent Contract Year in excess of the Guaranteed Annual Solar Services Output for such Contract Year. Credit of the Shortfall Payment, as described herein, shall be Customer's sole remedy against Provider for failure to meet the Guaranteed Annual Solar Services Output. Provider shall credit Customer for the Shortfall Payment on the invoice immediately following the end of the Contract Year for which the applicable Production Shortfall is calculated.

(b) Facilities Disruptions

(i) The Parties agree that at any time during the Term of the Agreement, Customer shall be afforded a period of up to eight (8) days per calendar year per Facility (which shall be prorated for the first calendar year based on the number of months in operation) (the "Allowed Disruption Time") to be allocated by Customer to the Facility locations, during which the designated Facilities may be temporarily shut down and taken out of operation by Provider so that Customer may perform roofing work. Customer may accumulate and roll-over such days which are unused in a calendar year into subsequent calendar years; provided, that Customer may not accumulate or use more than 30 days in any calendar year per Facility. Customer agrees to and shall pay Provider an amount with respect to such work equal to Provider's actual and documented removal, storage, and replacement costs in the event that it is required to remove and reinstall its

Facility Assets at a Facility to enable Allowed Disruption Time. Only Provider or its contractors may remove and reinstall the Facility Assets.

(ii) If the Customer requires that all or a portion of the System be temporarily shut down and taken out of operation for an amount of time exceeding the Allowed Disruption Time, except for repairs directly resulting from damage caused by Provider or by those for whom the Provider is legally liable, Customer agrees to and shall pay Provider an amount with respect to such work equal to Provider's actual and documented removal, storage, and reinstallation costs plus any estimated Solar Services not delivered and any lost SMART Tariff revenue during such outage. Following Customer's notice to Provider containing an assurance that an appropriation has been made for payment of the estimated removal, storage, and reinstallation costs (plus amounts owed for estimated Solar Service not delivered and any lost SMART Tariff revenue, if applicable) in the required amount, Provider shall arrange for removing, storing and re-installing the System at the Leased Premises. Customer shall reimburse Provider (or, at the Provider's option, make payment directly to the applicable contractor or vendor on Provider's behalf) for the actual documented costs of such removal, storage and reinstallation of the System (plus amounts owed for estimated Solar Services not delivered and any lost SMART Tariff revenue, if applicable) payable under this Section 2.02 (d)(ii) within thirty (30) days following receipt of an invoice from Provider, including reasonably acceptable back up information, with respect thereto. Customer and Provider may agree to increase the Solar Services Rate to reimburse Provider for any costs of removal, storage and reinstallation of the System in lieu of payments upon terms mutually acceptable to the Parties at such time. Provider shall provide full documentation of these losses and costs, together with inputs, calculations and assumptions).

(iii) Customer agrees to coordinate such repair work with Provider and use commercially reasonable efforts to minimize the period of time in which a Facility or portion thereof is taken out of operation and to mitigate the Provider's loss of revenues by attempting to schedule repair work during times of day and year when insolation is at a minimum. Customer shall provide at least ninety (90) days' prior notice of the need for any extended temporary removal in excess of three (3) consecutive days.

(iv) With respect to any Facility which has been temporarily shut down and taken out of operation as provided in this Section 2.02(d), the Solar Services output of such shut down Facility shall be estimated by Provider for the period of such shutdown using a PVSyst model and adjusted for the Annual Facilities Degradation Factor and such estimated output shall be added to actual Facility output for purposes of determining whether the Guaranteed Annual Solar Services Output has been satisfied. Provider shall submit to Customer its calculations, input and assumptions used to determine its estimate of Solar Services output during such a shutdown.

(iv) The Parties recognize that during the Term of the Agreement, temporary (not to exceed three (3) consecutive days) shut-offs of a Facility may be necessary as a result of emergency conditions affecting the LDC System outside the control of the Parties and that such shut offs also may protect the Facilities and the Premises from damage ("Emergency Shutoffs"). For the avoidance of doubt, such

Emergency Shutoffs may be performed by the Customer or other Governmental Authority, including the local fire department. Provider will train Customer's representative(s) on Provider operations and monitoring (for informational purposes only), first responder safety and emergency preparedness and response, it being acknowledged by Customer that Customer shall not operate the Facilities, except in the case of an emergency where immediate action on the part of the Customer is reasonably necessary for safety reasons. In the event of an emergency where immediate action on the part of Customer is reasonably necessary for safety reasons, Customer may, but is not obligated to, shut down or disconnect the Facilities and provide immediate notice to Provider, but otherwise Customer shall not be permitted to perform any maintenance or repair on the Facilities. In the event of an Emergency Shutoff, the Customer shall not be liable to Provider for any lost revenue payments under Section 2.02(d)(ii) of this Agreement during the period of any Emergency Shutoff. Any output of the affected Facilities during such Emergency Shutoffs shall be estimated by Provider in the same manner as specified in Section 2.02(d)(iii). Such output shall be added to actual output of the Facilities output for purposes of determining whether the Guaranteed Annual Solar Services Output has been satisfied.

ARTICLE II. PRICE AND PAYMENT

2.01 Consideration. Notwithstanding any other provision of this Agreement, Customer shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services delivered to Customer. For any billing period, the Solar Services Payment shall equal the product of the Solar Services output, as metered at each Delivery Point, or in the case of Alternative On-Bill Credits, the amount of the Alternative On-Bill Credits transferred to Customer, for that period multiplied by the relevant Solar Services Rate as specified in Schedule 3 to this Agreement. Provider shall invoice Customer on a monthly basis, on or about the first Business Day of each calendar month. The first invoice shall include any production that occurred prior to the initial invoice date, including any Test Energy as provided in Section 4.01(d) below, provided Customer receives Solar Services for such production. The last invoice shall include production only through the date on which the Agreement expires or is earlier terminated. Customer shall pay any Solar Services Payment invoiced within thirty (30) days of receipt thereof, subject to the other provisions of this Agreement. The Solar Services Rate shall be subject to adjustments as set forth in Schedule 3 and elsewhere in this Agreement.

2.02 Method of Payment. Customer shall make all payments under this Agreement by check or electronic funds transfer to the account designated by Provider. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at the Stated Rate, subject to the other provisions of this Agreement.

2.03 Confirmation of Alternative On-Bill Credits/Net Metering Credits.

(a) During the first Contract Year with respect to each Facility, Provider or its contractor shall comply with the requirements set forth in this Section 3.03(a). Provider or its contractor shall assist Customer in confirming that 100% of the anticipated

Alternative On-Bill Credits/Net Metering Credits allocable to Customer hereunder have been properly credited against Customer's monthly utility bills at the appropriate Alternative Bill Credits/Net Metering Credit kWh dollar values. Customer shall forward to Provider or its contractor the LDC monthly utility bills for the accounts listed on the LDC's Net Metering Service Form ("Schedule Z"). Provider or its contractor shall review such bills and compare them to Provider's or its contractor's records with regard to production by the Facilities during the period covered by such bills to confirm that the correct amount of Alternative On-Bill Credits/Net Metering Credits are appearing on the LDC bills at the appropriate Alternative On-Bill Credits/Net Metering Credit kWh dollar value. If Customer, Provider or its contractor believes that there is an error in the allocation of Alternative On-Bill Credits/Net Metering Credits to the applicable LDC bills, or an error in the Alternative Bill Credits/Net Metering Credit kWh dollar values applied, Provider or its contractor shall contact the LDC on Customer's behalf and attempt to obtain the information necessary to confirm whether the Alternative On-Bill Credits/Net Metering Credits have been correctly credited and applied, and shall assist Customer in obtaining any missing Alternative Bill Credits/Net Metering Credits total dollar value from the LDC, provided that neither Party hereto shall be required to incur any out of pocket costs, including without limitation any legal fees or consultant costs, in order to do so.

(b) In addition, commencing at the end of the first Contract Year and continuing for each Contract Year thereafter, Provider or its contractor shall comply with the requirements set forth in this Section 3.03(b). Within ninety (90) days following the end of each Contract Year, Provider or its contractor shall prepare a reconciliation of the Alternative On-Bill Credits/Net Metering Credits allocable to such Contract Year, based on the Facilities' production during such Contract Year, and the amount of Alternative On-Bill Credits/Net Metering Credits credited to Customer's accounts by the LDC, and the Alternative Bill Credits/Net Metering Credit kWh dollar values during such period. If there is any discrepancy between the amount of Alternative On-Bill Credits/Net Metering Credits allocable to the accounts and the actual amount credited to the accounts or the Alternative Bill Credits/Net Metering Credit kWh dollar values, Provider or its contractor shall contact the LDC on Customer's behalf and attempt to obtain the information necessary to determine how such discrepancy occurred, and shall assist Customer in obtaining any missing Alternative Bill Credits/Net Metering Credits total dollar value from the LDC, provided that, as aforesaid, neither Party hereto shall be required to incur any out of pocket costs, including without limitation any legal fees or consultant costs, in order to do so.

(c) Customer shall reasonably cooperate with Provider or its contractor in connection with Provider's or its contractor's efforts to fulfill its obligations set forth in Section 3.03(a) or (b), including authorizing Provider or its contractor to contact the LDC on Customer's behalf in connection therewith.

2.04 Payment Disputes. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Agreement at any time within thirty (30) days of receipt of the Contract Year reconciliation provided by Provider pursuant to Section 3.03(b). In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or

invoice adjustment on the applicable payment due date, and to give notice of the objection to the other Party. If a Dispute arises with respect to any invoice, such Dispute shall be resolved pursuant to Article IX hereto.

2.05 Change in Law. In the event that a change in Applicable Law occurs, including without limitation, a change in the Massachusetts net metering statute, SMART Program, Net Metering Rules, LDC tariffs, LDC customer charges, or the administration of interpretation thereof by DPU, Massachusetts Department of Energy Resources, or the LDC ("Change in Law") which (a) materially restricts the ability of Provider to deliver Solar Services generated by the Facilities to Customer or the ability of electricity generated by the Facilities to be delivered to the LDC or the ability of Customer to receive Alternative On-Bill Credits/Net Metering Credits, or (b) otherwise materially impacts the ability of either Party to perform its obligations under this Agreement, including changes in Applicable Law (i) that result in a material increase in Provider's costs of construction and installation, or operation of one or more Facilities, and (ii) relating to taxes or the Internal Revenue Code, then, upon a Party's receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Law. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty (120) days, Provider may terminate this Agreement without penalty for such termination, provided, however, that the Parties shall remain subject to any liabilities and obligations under this Agreement that had arisen prior to the date of termination, or from a provision of this Agreement that expressly survives termination, provided further that during the aforesaid one hundred twenty (120) day negotiation period, Customer shall not be required to make Solar Services Payments if Customer is not receiving Solar Services, Alternative On-Bill Credits and/or Net Metering Credits. No early termination charges shall apply to a termination on account of a Change in Law event.

2.06 Changes in Environmental Incentives. In the event a change in Applicable Law occurs that results in additional or fewer Environmental Incentives attributable to any Facility, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Law.

2.07 Prevailing Wage. Provider hereby certifies and agrees that it is aware of the provisions of Massachusetts General Law, Chapter 149 as they pertain to the Facilities, which refers to the prevailing wage rate minimums as set forth by the Massachusetts Department of Labor and Industries, 100 Cambridge Street, Boston, MA 02202. The appropriate prevailing wage regulations relating to the Facilities will be upheld and in force throughout all appropriate times under this Agreement.

2.08 Technology Support Payment. Provider shall pay Customer (or its vendors) twenty thousand dollars ($20,000) in the aggregate within thirty (30) days of the Construction Commencement Date of the first Facility to achieve its Construction

Commencement Date as reimbursement for fees and expenses incurred by Customer in connection with review of contractual, engineering, and other technical documents related to all the Facilities.

ARTICLE III.
CONSTRUCTION AND OPERATION

3.01 Development and Commercial Operation Date/Deadline.

(a) Design and Construction. Provider will, at its sole cost and expense, cause the Facilities to be designed, engineered, permitted, installed and constructed pursuant to good and prudent industry practice, Applicable Law, Governmental Approvals and the applicable requirements of any Governmental Authority, and shall be responsible, as the interconnection customer for the Facilities, for all costs and expenses associated with and arising from interconnection of the Facilities to the LDC System ("Development"). Provider shall be solely responsible for the Development of the Facilities. Prior to the Construction Commencement Date, Provider shall coordinate with and receive input from the Customer's designated technical staff and submit final Facility design drawings (in both hard copy and electronic form, with two sets of hard copies) for approval by the Customer, such approval not to be unreasonably withheld, conditioned or delayed. If Customer fails to approve or provide comments on such Facility design drawings within ten (10) business days of receipt, then such Facility design drawings shall be deemed approved by Customer. If, after the Construction Commencement Date, there are further proposed changes to the final Facility design drawings, the Parties shall follow the foregoing procedures with respect to such proposed changes.

(b) Commercial Operation Date. Provider shall provide Customer with notice of the anticipated Commercial Operation Date not later than five (5) calendar days prior to the anticipated Commercial Operation Date. Within seven (7) calendar days of any Facility achieving Commercial Operation, Provider shall certify to the Customer in writing the date on which such Facility achieved Commercial Operation. Provider shall use diligent and commercially reasonable efforts to cause all Facilities to achieve Commercial Operation within ninety (90) days of each other.

(c) Commercial Operation Deadline. Provider shall use diligent and commercially reasonable efforts, in accordance with good and prudent industry practices, to cause the Commercial Operation Date for each Facility to occur on or before one year from the Effective Date.

(d) Testing. Provider shall conduct such testing of the Facilities as may be required by the LDC and Applicable Law including, without limitation, M&V Option B pursuant to Section 6.12 in the Federal Energy Management Program (FEMP) M&V Guidelines (Version 4.0) (November 2015) and any successor provisions. Provider shall notify Customer of the results of any such testing. Customer will purchase all Test Energy under the provisions of this Agreement.

(e) EV Parking. For 10% of all parking spaces under each Facility that is a carport structure, Provider shall install conduit runs from such parking spaces to the electrical supply so that Customer can install, at its sole cost an expense, a Level 2 charging station at such parking spaces.

(f) Tree Replacement. The Lease Agreement in Schedule 1 outlines the requirements for tree replacement.

3.02 Operations. The Facilities shall be owned, operated, maintained, repaired and, at the expiration or earlier termination of this Agreement (in whole or in part following a Facility-Specific Default or Customer Facility-Specific Default) unless Customer has exercised the Purchase Option, removed by or for Provider at its sole cost and expense with reasonable diligence and in a commercially reasonable manner, and in accordance with its Interconnection Service Agreement with the LDC, Applicable Law, Governmental Approvals, the applicable requirements of any Governmental Authority, and good and prudent industry practices.

3.03 Metering.

(a) Monitoring System. Provider shall install a performance monitoring system. Such system shall at minimum meet the requirements for reporting actual production of electricity to the LDC and any appropriate state or regional agency. Such system shall include at minimum a state-of-the-art remote data acquisition system (DAS) designed to gather and record system parameters as well as weather related parameters including power, sunlight, wind speed and air temperature from a local area weather station. The monitoring system shall also include data logging and historical data collection capabilities to ensure Customer can observe system performance over time. Provider shall also provide a portable data monitoring LED display. Such display shall be web-enabled to demonstrate real-time or near real-time performance, and a link may be included on Customer's website.

(b) Metering Equipment. At each Facility location, Provider shall install and maintain a Meter.

(c) Measurements. Customer shall have access to all Meter data at all times through the data acquisition system to be installed by Provider. Such data shall be made available on a web site supplied by the Provider. Customer shall have access to each Meter upon prior written notice to Provider. Readings of the Meter shall be conclusive as to the amount of Solar Services delivered to Customer; provided, that if the Meter is out of service, is discovered to be inaccurate by more than two percent (2%), or registers inaccurately, measurement of Solar Services shall be determined in the following sequence: (i) by reviewing available inverter logs showing the hours of operation and kWh generated; (ii) by estimating by reference to quantities measured during periods of similar conditions when Meter was registering accurately; or (iii) if no reliable information exists as to the period of time during which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy was equal to (A) if the period of inaccuracy can be determined, the actual period during which inaccurate

measurements were made; or (B) if the period of inaccuracy cannot be determined, one-half (1/2) of the period from the date of the last previous test of such Meter through the date of the adjustments, provided, however, that, in the case of clause (B), the period covered by the correction shall not exceed twelve (12) months.

(d) Testing and Correction; Customer's Right to Request Tests. If a Meter is out of service, or discovered or believed to be inaccurate, each Party and its consultants and representatives shall have the right to request and witness a test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the applicable Meter. Provider shall provide at least ten (10) days prior written notice to Customer of the date upon which any such test is to occur. In the event of any testing of a Meter by Provider, Provider shall prepare a written report, to the satisfaction and approval of the Customer, which shall not be unreasonably withheld, setting forth the results of each such test, and shall provide Customer with copies of such written report not later than thirty (30) days after completion of such test.

(e) Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(i) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(ii) The non-disputing Party shall, within fifteen (15) days after receiving such notice from the disputing Party, advise the other Party in writing as to its position concerning the accuracy of such Meter and state reasons for taking such position. If the Parties are unable to resolve the dispute, then either Party may cause the Meter to be tested by an agreed upon and disinterested third party.

(iii) If the Meter is found to be inaccurate by two percent (2%) or less, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter. If the Meter is found to be inaccurate by more than two percent (2%) or if such Meter is for any reason out of service or fails to register, then (A) Provider shall promptly cause any Meter found to be inaccurate to be replaced or adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Solar Services delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 4.03(c) above, and (C) Provider shall bear the cost of inspection and testing of the Metering. If as a result of such adjustment the quantity of Solar Services for any period is decreased (such quantity, the "Solar Services Deficiency Quantity"), Provider shall reimburse Customer for the amount paid by Customer in consideration for the Solar Services Deficiency Quantity by crediting such amount against Customer's payment obligations under this Agreement. If as a result of such adjustment the quantity of Solar

Services for any period is increased (such quantity, the "Solar Service Surplus Quantity"), then, on the next invoice issued by Provider hereunder, Provider shall invoice for and Customer shall pay for the Solar Services Surplus Quantity at the Solar Services Rate applicable during the applicable Contract Year.

3.04 Outages. Provider shall be entitled to suspend delivery of electricity to any applicable Meter for the purpose of maintaining and repairing a Facility and such suspension of service shall not constitute a breach of this Agreement; *provided that* Provider shall use commercially reasonable efforts, in accordance with good and prudent industry practices, to minimize any interruption in service to Customer, shall comply with all requirements of the LDC in connection with any suspension, and shall be responsible for any Production Shortfall during such suspension of service.

3.05 Host Customer. At Provider's request, Customer shall take any reasonable action and execute any documents that are necessary to designate Customer as the LDC customer of record for the LDC Metering Device and otherwise establish Customer as the Host Customer for such Facilities for purposes of the Net Metering Rules and the SMART Program as necessary. Provider and Customer agree to seek approval from the LDC for the Facilities to receive Rate classification that returns the greatest financial benefit to the Customer. Provider or its contractor shall prepare any such documents, including Schedule Z, and Customer shall reasonably cooperate with Provider's or its contractor's preparation of such documents, including, without limitation, by providing information on Customer's existing other accounts with the LDC. Notwithstanding anything to the contrary in this Agreement, Provider or its contractor shall be responsible, at its cost, to (1) perform, on behalf of Customer, all obligations imposed upon Customer, as Host Customer, by the LDC, the Net Metering Rules, and the SMART Program as applicable, except for the obligation(s) to execute any documents that the LDC requires to be executed by the Host Customer; (2) perform all obligations imposed by the LDC upon Provider, as interconnection customer, including, but not limited to, the execution of an Interconnection Service Agreement with the LDC; (3) pay for all costs and expenses associated with securing the Cap Allocation for Customer; (4) subject to Section 6.02(f), pay all costs and expenses associated with the interconnection of the Facilities to the LDC System, including all charges associated with the installation, operation, maintenance and replacement of the Meter. Customer shall reasonably cooperate with Provider or its contractor in connection with Provider's efforts to fulfill its obligations set forth in this Section 4.05, and shall execute such documents required by the LDC to be executed by the Host Customer. Except as specifically set forth in this Section 4.05, Provider shall not be responsible for any other payments, charges, fees or costs incurred by Customer under any retail customer (or similar) agreement with the LDC for the Facilities. Customer agrees and understands that any such other payments, charges, fees or costs imposed upon Provider by the LDC shall be offset with a corresponding increase to the Solar Services Rate. Customer shall have the right, in its capacity as Host Customer, but not the obligation, to access the Facilities and Meters during business hours upon reasonable advance notice to Provider for the purpose of verifying Provider's compliance with this Agreement and the Interconnection Service Agreement executed by Provider and the LDC, subject to Provider's safety and security protocols, provided that any exercise or failure to exercise such right shall not relieve

Provider of its obligations hereunder, nor operate as a waiver of any right, remedy, claim or defense of Customer under this Agreement or at law or in equity. The Solar Services Rates set forth on Schedule 3 assume that the Facilities are accepted into Block 4 and Tranche 2 of the SMART Program. If the Facilities are not accepted into Block 4 and Tranche 2 of the SMART Program, then the Solar Services Rates set forth on Schedule 3 shall be equitably adjusted to restore the economic benefits under this Agreement to Provider as contemplated as of the Effective Date. Promptly upon receipt of acceptance into the SMART Program, Provider shall provide written notice to Customer confirming the applicable Block and Tranche of the SMART Program for the Project and the adjusted Solar Services Rate (the "SMART Notice"). If adjusted Solar Services rate reflects an increase of more than 15% over the initial Solar Services Rate the Customer shall have the right to terminate this Agreement upon written notice to Provider for a period of ten (10) business days following receipt of SMART Notice by Customer (the "SMART Notice Period"). If the Customer has not provided such notice of termination within the SMART Notice Period, Customer shall be deemed to have waived its right to terminate pursuant to this Section 3.05 and the Solar Services Rate shall be as set forth in the SMART Notice. Customer understands and acknowledges that Provider will not begin procurement of equipment or submit a Notice-to-Proceed to construct the Facilities until the SMART Notice Period has expired or Customer has affirmatively waived in writing its right of termination under this Section 3.05.

3.06 Net Metering Facility. Customer and Provider acknowledge that, except as otherwise noted on Schedule 2, the Facilities will be comprised solely of the Net Metering Facilities of a Municipality or Other Governmental Entity (referred to by the Net Metering Rules), and agree not to take any action inconsistent with such regulatory status of the Facilities (including, without limitation, terminating or amending the Schedule Z in a manner inconsistent with such status). For the avoidance of doubt, the Parties acknowledge that pursuant to the current Net Metering Rules, in order to obtain and preserve such status, no Schedule Z for a Net Metering Facility of a Municipality or Other Governmental Entity may allocate Alternative On-Bill Credits/Net Metering Credits to the account of any individual or of any entity that is not a city, town, federal agency or department, state agency or department, or any entity that is not approved by DPU as an "Other Governmental Entity." Customer and Provider acknowledge that, pursuant to the Net Metering Rules, the maximum amount of generating capacity currently eligible for net metering by a municipality or other governmental entity is the Public Entity Net Metering Limit (as defined in the Net Metering Rules). Accordingly, Customer covenants that, unless the Net Metering Rules are changed to increase such limit, it shall not serve as the Host Customer of Net Metering Facilities (inclusive of the Facilities) with an aggregate capacity more than the Public Net Metering Limit. Provider shall use its diligent and commercially reasonable efforts to obtain approval of interconnection and a Cap Allocation, and Customer shall reasonably cooperate with Provider in those efforts.

3.07 Performance Bonds. Prior to the date of execution of this Agreement, Provider has caused its Prime Contractor to provide to Customer evidence satisfactory to Customer of such Prime Contractor's bonding capacity. Prior to commencement of construction of the Facilities, Provider will provide to Customer copies of any and all payment and performance bonds issued to Provider by Provider's Prime Contractor with

respect to the construction of the Facilities. Such payment and performance bonds provided by Prime Contractor shall be equal to 100% of the contract value of the EPC Agreement. Failure to provide such payment and performance bonds shall be a Provider Default. Customer acknowledges that this Agreement itself is not a construction contract and, therefore, Provider is not able to procure its own payment and performance bonds for construction of the Facilities.

3.08 CORI. Upon notice to Provider, Customer may conduct checks of the Criminal Offender Record Information ("CORI") maintained by the Massachusetts Criminal History Facilities Board, and the Sex Offender Record Information ("SORI") maintained by the Massachusetts Sex Offender Registry Board for any officer or employee of the Provider or of the Prime Contractor or a Subcontractor or any Person who will work on the Facilities on the Properties. The Customer may refuse to allow any such Person to work on the Properties if the Customer, in its sole discretion, determines that such Person is not suitable for work on the Properties based upon the results of such CORI or SORI. All Provider employees and Prime Contractor or Subcontractor employees who will work on the Properties shall complete forms related to CORI and SORI and present identification at the Department of Education, Education Center, 110 Walnut Street, Newtonville MA, which Customer may rely upon to initiate a CORI and SORI search.

ARTICLE IV.
TITLE TO FACILITIES

4.01 Title to Facilities. Unless Customer purchases any Facility and subject to Provider's rights under Article XI, Provider shall retain title to and be the legal and beneficial owner of each Facility at all times. Absent further written election by Provider, the Facilities shall (i) remain the personal property of Provider and shall not attach to or be deemed a part of, or fixture to, the Leased Premises, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code. Customer warrants and represents that it shall not place a lien on any Facility. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the Facilities in order to protect its title to and rights in the Facilities. In the event of any such filing, Provider shall promptly notify Customer. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the Facilities or be deemed to operate the Facilities for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code, as amended, and the provisions of this Agreement shall be construed consistently with the intention of the Parties. The Parties intend this Agreement to be treated as a "service contract" within the meaning of section 7701(e)(3) of the Internal Revenue Code. As between the Parties, Provider shall retain the exclusive right to take or sell all Facilities products, including capacity and all Environmental Attributes and Environmental Incentives. Provider shall not retain the right to take or sell the Solar Services (including any Alternative On-Bill Credits/Net Metering Credits corresponding to such Solar Services) purchased by Customer hereunder. Notwithstanding the foregoing, the Parties acknowledge that the property taxation of the Facilities shall be subject to Section 5.04(c) of this Agreement.

4.02 Ownership of Rebates; Customer Rebate Assistance. All Rebates available in connection with the Facilities are owned by Provider. Customer shall reasonably cooperate with Provider, at Provider's sole cost and expense, in obtaining all Rebates currently available or subsequently made available in connection with the Facilities.

4.03 Exclusive Control. As between the Parties, Provider shall at all times be deemed to be in exclusive control of the Solar Services until title transfers to Customer.

4.04 Governmental Charges.

(a) Provider is responsible for Governmental Charges attributable to Provider for income received under this Agreement.

(b) Customer shall pay directly or reimburse Provider on an after-tax basis for all Governmental Charges for sales and use taxes that may be imposed by any Governmental Authority on the sale of Solar Services to Customer. Customer shall provide Provider with its exemption certificate or documentation which may be necessary for Provider to demonstrate to such Governmental Authority that no sales or use taxes should be imposed on Customer as a municipal corporation.

(c) In the event Customer's tax assessor intends to assess real or personal property taxes against Provider (or any designated third party) due to Provider's ownership of the Facilities or occupancy of the Leased Premises, the Parties shall enter into a payment in lieu of taxes agreement ("PILOT Agreement") under the authority of and in accordance with General Laws Chapter 59, §38H, as amended, prior to the assessment of any such tax to establish a stable, levelized payment structure regarding payment of such taxes for the Term. If, notwithstanding the foregoing, real or personal property taxes are assessed by Customer's tax assessor against Provider or if Provider is required to make payments under a PILOT Agreement, Provider shall forward such bill to the Customer at the address specified in Section 14.17 for payment by the Customer. Such tax payments or payments in lieu of real or personal property taxes shall be paid by the Customer on behalf of the Provider. If Provider is required to pay any real or personal property taxes or payments under a PILOT Agreement directly, Customer shall reimburse Provider for such payment within thirty (30) days of receipt of an invoice from Provider.

(d) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Solar Services hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request, provide all necessary documentation to evidence such exemption or exclusion.

ARTICLE V.
TERM OF AGREEMENT

5.01 Term. With respect to each Facility, the initial term of this Agreement shall commence on the Effective Date and end on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date for the last Facility to

achieve Commercial Operation occurs (the "Term"), unless terminated earlier pursuant to this Agreement.

5.02 Early Termination by Provider. In the event that any of the following events or circumstances occur after the Effective Date but prior to the Construction Commencement Date for a given Facility, Provider may (at its sole discretion) terminate the Agreement with respect to such Facility by amending Schedule 2 to remove the applicable Facility from this Agreement upon delivery of an amended and restated Schedule 2 to Customer, in which case the amended and restated Schedule 2 shall be effective for all purposes of this Agreement upon delivery to Customer, and neither Party shall have any liability to the other Party with respect to such removed Facility, except for any liability arising prior to the date of such termination.

(a) There exist site conditions at the Leased Premises for the applicable Facility (including environmental site conditions) or construction requirements which, despite Provider's examination of such Leased Premises before execution of this Agreement, were not known and could not reasonably have been known as of the Effective Date, and which will substantially increase the cost of the construction of such Facility. This right of termination may only be exercised, as to an affected Facility, if Provider first notifies Customer of such conditions and requests a reasonable adjustment to the Solar Services Rate (if such an adjustment would completely mitigate the impact of such site condition), and Customer does not agree, in its sole discretion, to such adjustment.

(b) There is a material, adverse change in the Environmental Attributes, Environmental Incentives related to the Facilities or the Rebates, regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that will materially and adversely affect the economics of the installation and ownership of the Facilities for Provider and its investors, including any Lender.

(c) Provider is unable, after having expended good faith diligent efforts, to obtain financing for the Facilities on reasonable terms and conditions.

(d) Provider, is unable, through no fault of its own and despite its diligent efforts, to obtain all Governmental Approvals and any related permits and approvals of any Governmental Authority or from the LDC for installation and operation of the Facilities and for the sale and delivery of Solar Services, Alternative On-Bill Credits or Net Metering Credits to Customer, on the terms and conditions contemplated by the terms of this Agreement and reasonably acceptable to Provider;

(e) Provider is unable, through no fault of its own and despite its diligent efforts, to obtain a Statement of Qualification for the Facilities (or, in the reasonable discretion of the Provider determines that the Facilities are not capable of meeting the applicable construction timelines) under, the SMART Program; notwithstanding the foregoing, if the SMART Program is succeeded by a new program which is materially and adversely different than the SMART Program, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be

necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Law, and if the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty (120) days after the commencement of negotiations or if no negotiation occurs, within one hundred twenty (120) days after either Party requests negotiation, Provider may terminate this Agreement; such termination shall not be considered a termination for default and neither Party shall have any further obligation hereunder after such termination;

(f) the LDC imposes or charges more than one hundred thousand dollars ($100,000) for interconnection application costs, utility upgrade costs and utility impact study costs (said amount being the amount Provider reasonably anticipates as the cost of interconnection and upgrades, if any, as of the Effective Date); provided that such right of termination may be exercised only if (1) Provider requests a reasonable adjustment to the Solar Services Rate for such interconnection costs and Customer, in its sole discretion, does not agree within a reasonable time thereafter (not to exceed 45 days), such agreement to be evidenced by an amendment to this Agreement executed by Customer and Provider; or (2) Provider requests that Customer pay any such interconnection and utility costs over one hundred thousand dollars ($100,000) directly to the LDC (or as otherwise agreed) and Customer does not agree to make such payment within a reasonable time thereafter (not to exceed 45 days);

(g) Customer does not execute an Interconnection Service Agreement as Host Customer with the LDC on the LDC's standard form, within thirty (30) days after receipt of such agreement from the LDC or Provider;

(h) Upgrades are required to Customer's existing electrical infrastructure, structural infrastructure or roof and Customer elects, in its sole discretion, not to pay for such upgrades, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any such upgrades;

(i) Solely with respect to the applicable Facility, Provider has determined that the roofs of the buildings at such Property do not have sufficient load-bearing capacity to support a Facility and all related foot traffic and construction activities and/or the infrastructure of the buildings or the ground at such Property cannot support a Facility.

5.03 Early Termination by Customer. Customer may terminate this Agreement, as specified below, without penalty, in which case neither Party shall have any liability to the other Party for such termination:

(a) Solely with respect to the affected Facility or Facilities, upon thirty (30) days' notice to Provider in the event that an application for interconnection for such Facility or Facilities has not been filed with the LDC within forty-five (45) days of the Effective Date;

(b) Solely with respect to the affected Facility or Facilities, upon thirty (30) days' notice to Provider in the event Provider has failed to achieve the Construction

Commencement Date for such Facility or Facilities within forty-five (45) calendar days after receipt of all applicable Governmental Approvals for such Facility or Facilities, including the fully-executed Interconnection Service Agreement between Provider and the LDC, a Statement of Qualification, and a Cap Allocation, or Provider has failed to achieve the Commercial Operation Date for such Facility or Facilities prior to the expiration of the reservation period of the applicable Cap Allocation from the administrator of the System of Assurance, or such other date as may be authorized under the SMART Program Regulations or Net Metering Rules, unless the Parties agree to amend this Agreement to restore the economic benefits to each Party with respect to the affected Facility or Facilities as originally contemplated as of the Effective Date. The Construction Commencement Date for a given Facility may be extended equitably, by agreement of the Parties, due to (i) Force Majeure Events, including winter weather conditions preventing Provider from beginning physical work, or (ii) other impediments to beginning physical work caused by the Customer or a third party;

(c) Solely with respect to the affected Facility or Facilities, upon thirty (30) days' notice to Provider in the event that Provider has not prepared, at its cost, an application for a Cap Allocation with respect to such Facility or Facilities with all supporting documentation, within forty five (45) days of Provider's receipt of (1) written notice from the LDC approving interconnection of the applicable Facility or Facilities with the LDC System, (2) a fully-executed Interconnection Service Agreement for such Facility, and (3) all non-ministerial permits for such Facility, it being understood by Customer that Customer must apply to the System of Assurance for a municipal ID, grant Provider representative status and submit the Cap Allocation application to the Administrator of the SMART Program or System of Assurance of Net Metering Eligibility.

5.04 Removal of Facilities at Expiration or Termination. Unless Customer has exercised the Purchase Option, Provider shall, at Provider's expense, remove all of its tangible property comprising the Facilities from the Leased Premises and restore the condition of the Property to its original condition, normal wear and tear excluded, upon the expiration or earlier termination of the Agreement (in whole or in part following a Facility-Specific Default or Customer Facility-Specific Default) in accordance with and as set forth in the Lease.

5.05 Security for Facility Removal. Beginning on the fifteenth (15th) anniversary of the Commercial Operation Date for the last Facility to achieve Commercial Operations, Customer may request that Provider provide decommissioning assurance in the form of a bond or an escrow account established with a nationally recognized financial institution pursuant to such financial institution's form of escrow agreement that is reasonably acceptable to the Parties, to secure the costs to remove the Facilities in an amount not to exceed two hundred thousand dollars ($200,000) ("Decommissioning Assurance"), which amount shall be pro-rated for any Facility that does not achieve Commercial Operations or is otherwise terminated. Provider shall select the form of Decommissioning Assurance. If Provider selects an escrow account, each year, starting in Contract Year 15 (or such later year requested by Customer), Provider shall fund one-fifth (or such other pro-rated amount as required) of the required amount. Customer and Provider shall enter into a mutually acceptable escrow agreement with respect to the release

of such funds. The requirement for Decommissioning Assurance shall automatically terminate upon Customer's purchase of the Facilities but otherwise shall remain in effect until each Facility is removed after expiration or termination of this Agreement. Not later than sixty (60) days after Provider's removal of the Facilities and restoration of the Properties is completed, Customer shall release, disclaim or return to the Provider any remaining unexpended portion of the Decommissioning Assurance, including any interest accrued thereon.

ARTICLE VI.
REPRESENTATIONS AND WARRANTIES

6.01 Each Party represents and warrants to the other as of the Effective Date:

(a) Organization; Existence; Good Standing. Such Party is duly organized, validly existing and in good standing in the jurisdiction of its organization. Such Party has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and the Lease, and such Party has taken all requisite corporate, body politic or other action, and obtained all necessary authorizations, to approve the execution, delivery and performance of this Agreement and the Lease.

(b) Binding Obligation. This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to creditors' rights generally.

(c) No Litigation. There is no litigation, action, proceeding or investigation pending or, to such Party's knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would materially affect its ability to carry out the transactions contemplated herein.

6.02 Customer Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366. Customer acknowledges and agrees that, for purposes of this Agreement, Provider is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code (the "Bankruptcy Code"), and Customer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Customer is a debtor.

6.03 Additional Representations by Customer.

(a) All consents and approvals necessary to the Customer's execution, delivery and performance of this Agreement and the Lease have been obtained, no further action needs to be taken in connection with such execution, delivery and performance. The execution and delivery of this Agreement and the Lease, consummation of the transactions contemplated herein and therein, and fulfillment of and compliance by Customer with the provisions of this Agreement and the Lease, will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Customer, including but not limited to, competitive bidding, public notice, open meetings, or prior appropriation requirements. Customer will execute and acknowledge when appropriate all

documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement and the Lease.

(b) If Customer's performance under this Agreement depends upon the appropriation of funds by its governing body, and if the governing body fails to appropriate the funds necessary for performance, then the Customer shall provide written notice to Provider, and Customer may terminate this Agreement effective at the end of the then-current fiscal year without further obligation except for the payment of the Early Termination Fee and for any services already performed by Provider prior to the effective date of termination. Customer covenants to include the payments required to fulfill its obligations under this Agreement in any annual (or other) budget submitted for approval by the appropriate governing body and to take all necessary action to ensure funds are available at all necessary times to satisfy its obligations hereunder.

(c) Except as previously disclosed in writing to Provider, to Customer's knowledge there are no facts, circumstances or other matters that may interfere with or delay the construction and installation of the Facilities.

(d) (1) to Customer's knowledge, none of the Property is in violation of Environmental Laws; (2) to Customer's knowledge, none of the Facilities is proposed to be located in, on or around any property where Hazardous Substances or other contamination has been released into the soil or groundwater in violation of Environmental Laws; (3) Customer has not received written notice from any Governmental Authority of any actual or potential violation of or liability under any Environmental Laws with respect to the Property. As used herein "Environmental Laws" means any law, act, order, by-law, regulation, judgment, decree of or by any Governmental Authority and all licenses and permits which may at any time be applicable to a Party's rights and obligations hereunder and which are for the protection of the environment or human health and safety including but not limited to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act.

ARTICLE VII.
DEFAULT AND FORCE MAJEURE

7.01 Provider Defaults.

(a) Provider Default Defined. The following events shall be defaults of this Agreement by Provider (each a "Provider Default"):

(i) If Provider breaches any material term of this Agreement (excluding the failures set forth in sub-sections (a)(ii)-(a)(v) of this Section 8.01), and (A) if such breach can be cured within thirty (30) days after Customer's notice to Provider of such breach and Provider fails to cure within such thirty (30) day period, or (B) if such breach cannot reasonably be cured within such thirty (30) day period despite Provider's prompt

commencement and diligent pursuit of a cure, if Provider fails to promptly commence and diligently pursue and complete said cure within a reasonable period of time, provided that no cure period shall exceed one hundred twenty (120) days. Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, if a breach of a material term of this Agreement (or an Event of Default under the Lease, as discussed in sub-section (a)(v)) relates solely to one or more Facilities, including, but not limited to, a breach of Sections 2.02, 4.01, or 4.02 that relates solely to one or more Facilities, subject to the cure periods set forth in this Section 8.01(a)(i), the breach of such material term shall be deemed a Provider Default solely with respect to such Facility or Facilities, and for no other Facility or Facilities (a "Facility-Specific Default");

(ii) Provider becomes Bankrupt;

(iii) Provider fails to provide credit for any undisputed Production Shortfall under Section 2.02(b), unless such failure is cured within thirty (30) days from Provider's receipt of "notice of termination," or "notice of default"; provided, however, that if any such failure occurs three or more times in any three hundred sixty five (365) day period, even if such failure is cured as aforesaid, such occurrence shall constitute a Provider Default;

(iv) Provider sells or conveys any Facility to an entity that is exempt from taxation under Section 501 of the Internal Revenue Code; or

(v) Provider commits an Event of Default (including a Property-Specific Default) under and as defined in the Lease and Provider, in its capacity as Lessee, fails to cure such default within the cure periods set forth in the Lease.

7.02 Customer Defaults.

(a) Customer Default Defined. The following events shall be defaults with respect to Customer (each, a "Customer Default"):

(i) Customer fails to pay Provider any undisputed amount due Provider under this Agreement within thirty (30) days from receipt of written notice from Provider stating the existence (and the amount) of such past due amount;

(ii) Customer breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice to Customer of such breach and Customer fails to so cure, or (B) if such breach cannot reasonably be cured within such thirty (30) day period despite Customer's prompt commencement and diligent pursuit of a cure, Customer fails to commence and diligently pursue and complete said cure within a reasonable period of time, provided that no cure period shall exceed one

hundred twenty (120) days, Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, if a breach of a material term of this Agreement (or an Event of Default under the Lease, as discussed in sub-section (a)(v)) relates solely to one or more Facilities, subject to the cure periods set forth in this Section 8.02(a)(ii), the breach of such material term shall be deemed a Customer Default solely with respect to such Facility or Facilities, and for no other Facility or Facilities (a "Customer Facility-Specific Default");

(iii) Customer becomes Bankrupt; or

(iv) Customer commits an Event of Default (including a Lessor Property-Specific Default) under and as defined in the Lease and Customer, in its capacity as Lessor, fails to cure such default within the cure periods set forth in the Lease.

7.03 Remedies for Event of Default. If at any time an Event of Default with respect to a Party (a "Defaulting Party") has occurred and is continuing beyond the applicable notice and cure periods, the other Party (the "Non-Defaulting Party") shall, without limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or Applicable Law, have the right to any of the following: (i) by notice to the Defaulting Party, to designate a date, not earlier than thirty (30) days after the date such notice is effective, as an early termination date in respect of this Agreement and terminate this Agreement on such early termination date, provided that, for a Facility-Specific Default or a Customer Facility-Specific Default, such termination shall only apply to the affected Facility or Facilities, and for the avoidance of doubt, with respect to any termination for a Facility-Specific Default caused by a Facility or Facilities failing to reach Commercial Operation in accordance with the deadlines set forth in Sections 4.01(b) or (c), such termination shall be solely with respect to such affected Facility or Facilities, and such termination shall not affect any Facility or Facilities that have complied with Sections 4.01(b) and (c); (ii) to withhold any payments due to the Defaulting Party under this Agreement with respect to the affected Facility or Facilities; (iii) to suspend performance due to the Defaulting Party under this Agreement, provided that, for a Facility-Specific Default or Customer Facility-Specific Default, such suspension shall only apply to the affected Facility or Facilities, and (iv) to exercise all other rights and remedies available under this Agreement to the Non-Defaulting Party.

(a) Customer Rights upon Termination for Default. In the event that Customer is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.03, Customer shall, at its sole and exclusive option and in its sole and absolute discretion require Provider to remove the Facilities from the Leased Premises as provided in Section 6.04 above and pay to Customer the amount set forth in Schedule 6 for the year in which termination occurs (the "Provider Termination Payment"). Notwithstanding the foregoing, if the termination arises from a Facility-Specific Default and such termination is limited to a Facility or Facilities, then the Parties shall amend and restate Schedule 2 to remove such Facility from the terms of this Agreement, and Customer, at its sole and exclusive option and in its sole and absolute discretion, may require Provider to remove

the applicable Facility or Facilities from the Leased Premises as provided in Section 6.04. In the event that Customer elects any of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Customer as a result of termination of this Agreement with respect to the applicable Facility or Facilities, subject, however, to subsection (f) below.

(b) Provider Rights upon Termination for Default. In the event that Provider is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.03, Provider shall, at its sole and exclusive option and in its sole and absolute discretion, remove the Facilities and Customer shall pay an early termination fee in the amount set forth in Schedule 5 for the Contract Year in which termination occurs (the "Early Termination Fee") plus reasonable costs for removal of the Facilities. Notwithstanding the foregoing, if the termination arises from a Customer Facility-Specific Default and such termination is limited to a Facility or Facilities, then, at Provider's option, the Parties shall amend and restate Schedule 2 to remove such Facility from the terms of this Agreement and to equitably adjust the Guaranteed Annual Solar Services Output on a pro rata basis to reflect the removal of such Facility, Provider, at its sole and exclusive option and in its sole and absolute discretion, may remove the applicable Facility or Facilities from the Leased Premises as provided in Section 6.04, and Customer shall pay the Early Termination Fee solely with respect to the applicable Facility or Facilities plus Provider's reasonable costs for removal of the Facilities. In the event that Provider elects the foregoing remedy, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to Provider as a result of termination of this Agreement with respect to the applicable Facility or Facilities, subject, however, to subsection (f) below.

(c) Termination Payment Notice. In the event that a Non-Defaulting Party elects to require payment of the Termination Payment as provided in Section 8.03 herein, then the Non-Defaulting Party will notify the Defaulting Party of the amount due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall pay the applicable Termination Payment and any amount otherwise due and outstanding under this Agreement to the Non-Defaulting Party within thirty (30) days after the effectiveness of such notice.

(d) Closeout Setoffs. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the Defaulting Party under this Agreement, any amounts due and owing to the Defaulting Party under this Agreement.

(e) Remedies Cumulative. Except as otherwise provided in Sections 8.03(a) and 8.03(b) and elsewhere in this Agreement, the rights and remedies contained in this Section 8.03 are cumulative with the other rights and remedies available under this Agreement.

(f) Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights

and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

7.04 Force Majeure. A "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party was unable to overcome such act or event with the exercise of due diligence, including, to the extent that the foregoing conditions are satisfied, any delay on the part of the LDC relating to interconnection of a Facility. Notwithstanding any other term hereof, no payment obligation of Customer under this Agreement may be excused or delayed as the result of a Force Majeure Event, unless as a result of such event or Provider's efforts (or lack thereof) to overcome such an event, Customer does not receive Solar Services, Alternative On-Bill Credits or Net Metering Credits, in which event Customer shall not be required to pay for Solar Services not received, or for Solar Services for which corresponding Alternative On-Bill Credits or Net Metering Credits have not been received, by Customer. Force Majeure will not be based on (i) Customer's inability to economically use Solar Services purchased hereunder, or (ii) Provider's inability to sell Solar Services at a price greater than the Solar Services Rate under this Agreement. A Party claiming a Force Majeure Event shall not be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall promptly notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter. A Force Majeure event shall not include ordinary or reasonably foreseeable fluctuations in insolation/sunlight or be based on the economic hardship of either Party. If a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a continuous period of twelve (12) months, then the other Party shall be entitled to terminate the Agreement upon ten (10) days' prior written notice, provided that, if such Force Majeure Event relates solely to a given Facility or Facilities, such termination shall be limited to the affected Facility or Facilities. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Provider's obligation to remove the applicable Facility or Facilities and restore the Leased Premises in accordance with the Lease, and any such liabilities that have accrued or arise from events occurring prior to such termination).

7.05 Limitation of Remedies, Liability and Damages.

(a) 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 will be the sole and exclusive remedy, the obligor's liability will 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 will be limited to direct actual direct damages only, and such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Except for payment of the Termination Payments or except as otherwise provided herein, in no event shall either Party be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, including but not limited to, loss of profits or revenue, downtime costs, loss of use of any property, cost of substitute equipment or facilities, whether arising in tort, contract or otherwise, provided that, the loss of value of any Environmental Incentives, if any, shall be deemed direct not consequential damages. This Section 8.05 shall survive termination of this Agreement. For greater clarity, the Parties agree that the Termination Payments do not constitute consequential, incidental, punitive, exemplary or indirect damages.

(b) CUSTOMER ACKNOWLEDGES THAT SOLAR SERVICES FROM THE FACILITIES ARE INTERMITTENT, AND CUSTOMER IS RESPONSIBLE FOR MEETING ANY AND ALL OF ITS ENERGY NEEDS NOT MET FROM THE FACILITIES-GENERATED ENERGY AT CUSTOMER'S SOLE COST AND EXPENSE. CUSTOMER IS RESPONSIBLE FOR INSTALLATION AND OPERATION OF ANY EQUIPMENT ON CUSTOMER'S SIDE OF THE DELIVERY POINT NECESSARY FOR ACCEPTANCE AND USE OF THE SOLAR SERVICES.

(c) No Waiver of Massachusetts Tort Claims Act. Except as provided in Article VIII, nothing contained in this Agreement shall constitute a waiver of the limitations on liability of Customer under the Massachusetts Tort Claims Act, General Laws Chapter 258, as from time to time amended.

7.06 Lender's Rights Following Provider Default. Notwithstanding any contrary term of this Agreement:

(a) Lender, as collateral assignee and if allowed pursuant to its contractual arrangement with Provider, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. Lender shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Facilities, subject to the terms of this Agreement.

(b) Lender 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 Provider hereunder or cause to be cured any default of Provider in the time and manner provided by the terms of this Agreement. Nothing herein requires Lender to cure any default of Provider (unless Lender has succeeded to Provider's interests) to perform any act, duty, or obligation of Provider under this Agreement, but Customer hereby gives Lender the option to do so, provided any such cure, act, duty or obligation is performed in accordance with the terms of this Agreement.

(c) Upon the exercise of remedies under its security interest in the Facilities, including any sale thereof by Lender, whether by judicial proceeding or under any power of sale, or any conveyance from Provider to Lender (or any assignee of the

Lender) in lieu thereof, Lender shall give notice to Customer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Provider Default, unless the act of exercising such remedy itself constitutes a Provider Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Customer shall enter into a new power purchase agreement with Lender or its assignee on substantially the same terms as this Agreement.

7.07 Lender Cure Rights. Customer shall not exercise any right to terminate or suspend this Agreement unless Customer has given prior written notice to each Lender of which Customer has notice of its intent to terminate or suspend this Agreement. Customer's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Lender shall have one hundred twenty (120) days after Provider's cure period expires to cure the condition, except that with respect to any payment defaults, Lender's cure period shall be ninety (90) days after Provider's cure period expires. Customer's and Provider's obligations under this Agreement shall otherwise remain in effect, and Customer and Provider shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

7.08 Continuation Following Cure. If pursuant to an exercise of remedies by Lender, Lender or its assignee acquires title to or control of the Facilities and this Agreement, and cures all defaults under this Agreement existing as of the date of such change in title or control within the time periods described in Section 8.07 in the manner required by this Agreement, then this Agreement shall continue in full force and effect.

7.09 Notice of Defaults and Events of Default. Customer agrees to deliver to each Lender a copy of all notices that Customer delivers to Provider pursuant to this Agreement.

7.10 Third Party Beneficiary. Notwithstanding any contrary provisions contained in this Agreement, Customer agrees that Lender is a third party beneficiary of Section 8.06 through Section 8.09.

ARTICLE VIII.
DISPUTE RESOLUTION

9.01 Disputes regarding changes in and interpretations of the terms or scope of the Agreement and denials of or failures to act upon claims shall be resolved according to the following procedures:

(a) Notice of Dispute/Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof (the "Dispute"), the Parties shall attempt to resolve the Dispute informally for a period not to exceed thirty (30) days. If the Parties do not resolve the Dispute either Party may, by written notice to the other, request more formal negotiations as provided for hereunder. The written notice invoking these further

negotiations shall set forth in reasonable detail the nature, background and circumstances of the Dispute. During a thirty (30) day period following a Party's receipt of said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the Dispute.

(b) In the event that any Dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, cannot be settled or resolved by the Parties during the thirty (30) day period of good faith negotiations provided for above, then either or any Party hereto may resort to any and all available judicial forums, as provided for under Section 14.07 of this Agreement.

ARTICLE IX.
INSURANCE, CASUALTY AND CONDEMNATION

9.01 Provider shall maintain, throughout the Term the insurance set forth in subsections (a) through (e) of this Section 10.01, and Customer shall maintain, throughout the Term the insurance set forth in subsections (a) through (d) of this Section 10.01, in each case with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required. Customer may self-insure for the types of risks covered by Commercial General Liability, Workers' Compensation Insurance and Automobile Liability Insurance, so long as such self-insurance provides the coverages and limits required under this Agreement.

(a) Workers' Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability insurance in the amount of $500,000 by accident, each accident/$500,000 by disease, each employee/$500,000 by disease, policy limit.

(b) Commercial General Liability Insurance, written on an occurrence based ISO form with limits no less than $2,000,000 each occurrence and $4,000,000 aggregate limit. Commercial General Liability insurance shall include personal injury liability, broad form property damage liability, products/completed operations liability and broad form contractual liability.

(c) Automobile Liability Insurance, written on a standard form that complies with all laws of the Commonwealth of Massachusetts with a combined single limit of no less than $1,000,000.

(d) Excess Liability Insurance, written on an occurrence based ISO form with limits of not less than $2,000,000 each occurrence and $5,000,000 aggregate, which shall be following form, providing coverage over commercial general liability insurance and automobile liability insurance.

(e) Professional Liability Insurance, written on a standard form that covers errors and omissions, with limits no less than $2,000,000 each claim and $4,000,000 aggregate.

(f) As to any policy for Commercial General Liability Insurance, Automobile Liability Insurance, or Excess/Umbrella Liability Insurance that either Party

purchases under this Agreement, each Party shall name the other Party as an additional insured by endorsement to such policy. The additional insured endorsement shall state that the other Party is an additional insured on a primary and non-contributory basis and the policy shall not contain a cross-suit exclusion that excludes coverage for a claim brought by an additional insured. If Customer self-insures for the types of risks covered by Commercial General Liability Insurance and/or Automobile Liability Insurance, the requirement that Provider be named as an additional insured on such policy shall not apply.

(g) Each Party shall furnish to the other Party satisfactory proof of such insurance on the first anniversary of the Commercial Operation Date for the last Facility that achieves Commercial Operations and each subsequent anniversary of such date thereafter during the Term. Upon the request of a Party, the other Party shall provide a complete and accurate copy of any insurance policy described herein within 30 days of the request.

(h) Provider may satisfy the insurance obligations above by ensuring that the Prime Contractor provides and maintains such insurance coverage. Promptly following receipt of a request from Customer, Provider shall deliver to Customer evidence of the Prime Contractor's insurance coverages.

9.02 Facilities Loss.

(a) Risk of Loss. Provider shall bear the risk of any Facility Loss, except to the extent such Facilities Loss results from the negligence of Customer or Customer's agents, representatives, vendors, employees, contractors, (collectively, "Customer Misconduct"). Provider shall have the sole right to collect all insurance proceeds from any property insurance policy carried by Provider in connection with the Facilities.

(b) Partial Loss. In the event of any Facility Loss that results in less than total damage, destruction or loss of a Facility, this Agreement will remain in full force and effect with respect to such Facility and Provider will, at Provider's sole cost and expense, subject to the provisions below, repair or replace the such Facility. Subject to M.G.L. c. 258, to the extent applicable, to the extent of any Facility Loss that results in less than total damage, destruction or loss of a Facility, and is caused by Customer Misconduct, Customer shall promptly upon demand therefore from Provider pay any and all costs and expenses of such repair or replacement, including any lost revenues for sales of Solar Services and loss of Environmental Attributes and Environmental Incentives based upon the estimated energy production capacity of the Facility in the relevant Contract Year, to the extent permitted by Applicable Law, all of which shall be deemed direct and not consequential damages for purposes of Section 8.05(a). Subject to M.G.L. c. 258, to the extent applicable, in the event a Facility Loss is caused by Customer Misconduct, then after written demand from Provider, Customer shall pre-pay or post security acceptable to Customer for any repair expenses reasonably estimated by Provider. Customer shall pay such amounts within thirty (30) days of receipt of written demand from Provider.

(c) Total Loss. In the event of any Facility Loss that, in the reasonable judgment of Provider, results in total damage, destruction or loss of a Facility, Provider shall, within sixty (60) days following the occurrence of such Facility Loss, notify Customer whether Provider is willing, notwithstanding such Facilities Loss, to repair or replace such Facility. In the event that Provider notifies Customer that Provider is not willing to repair or replace such Facility following a total Facility Loss, this Agreement will terminate automatically with respect to such Facility effective upon the effectiveness of such notice, and Provider shall within a reasonable time remove the Facility from the Leased Premises in accordance with Section 6.04. Subject to M.G.L. c. 258, to the extent applicable, if such Facility Loss was caused by Customer Misconduct, Customer shall pay to Provider, as liquidated damages, the Early Termination Fee as of such termination date plus Provider's costs of removal and all other direct costs incurred by Provider, all of which shall be deemed direct and not consequential damages for purposes of Section 8.05(a). Customer shall pay such amounts within thirty (30) days of receipt of written demand from Provider.

(d) In the event that Provider notifies Customer that Provider is willing to repair or replace the Facilities following a total Facility Loss, the following shall occur, (i) this Agreement will remain in full force and effect with respect to such Facility, (ii) Provider will repair or replace the Facility as quickly as practicable, and (iii) if such Facility Loss has been caused partially or totally by Customer Misconduct, Customer shall promptly upon demand therefore from Provider pay any and all costs and expenses of such repair or replacement, lost revenues for sales of Solar Services, loss of Environmental Attributes and Environmental Incentives, in each case based upon the estimated energy production capacity of the Facilities in the relevant Contract Year, all of which shall be deemed direct and not consequential damages for purposes of Section 8.05(a). After written demand from Provider, in the case of Customer Misconduct, Customer shall pre-pay or post security acceptable to Provider for any repair expenses reasonably estimated by Provider. Customer shall pay such amounts within thirty (30) days of receipt of written demand from Provider.

ARTICLE X.
ASSIGNMENT

10.01 Generally. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Customer and their respective successors and permitted assigns. Except as provided in this Agreement, neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Article XI shall be null and void *ab initio.*

10.02 Assignment by Customer.

(a) Customer shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be

unreasonably withheld, conditioned or delayed; provided, however, that without Provider's prior written consent, Customer may sell Alternative On-Bill Credits/Net Metering Credits corresponding to the Solar Services to another "municipality or other governmental entity," as that phrase is defined in the Net Metering Rules, provided that Customer shall be responsible to pay for such Solar Services in accordance with this Agreement notwithstanding any such sale.

(b) Customer shall deliver notice to Provider not less than thirty (30) days in advance of any proposed transfer of the Properties, which such transfer shall be subject to the prior written consent of Provider, in its sole discretion. Customer agrees that this Agreement shall survive any transfer of the Properties. In furtherance of the foregoing, Customer agrees that it shall cause any purchaser, assignee, or mortgagee of the Properties to execute and deliver to Provider an assignment and assumption of this Agreement and the Lease simultaneously with the transfer of the Properties to such purchaser, assignee or mortgagee. Such assignment and assumption agreements shall contain an acknowledgement by the purchaser, assignee or mortgagee that it has no interest in the Facilities and shall not gain any interest in the Facilities by virtue of the transfer, other than the rights of Customer hereunder.

10.03 Assignment by Provider. Notwithstanding anything to the contrary herein, Provider may assign all or a portion of its rights and obligations hereunder to (i) to one or more Affiliates of Provider, (ii) to any Person succeeding to all or substantially all of the assets of Provider, (iii) to an entity that acquires one or more Facilities or, prior to the construction of the Facilities, the development rights thereto (each, a "Permitted Transfer") so long as the assignee has demonstrable experience in operating and maintaining solar photovoltaic systems comparable to the Facilities; and has demonstrable financial capability to maintain the Facilities and perform the obligations of Provider under Section 2.02, the sufficiency of which shall be determined by the Customer. In the event of any Permitted Transfer, Provider shall provide advance written notice to Customer of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee as of the closing of such transaction will assume all or a portion of the Provider's rights and obligations under this Agreement. Customer agrees to promptly execute any document reasonably requested in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof. If such Permitted Transfer is a full assignment of all of Provider's rights, and obligations under this Agreement, then Provider shall have no further liability arising under this Agreement after the effective date of the assignment.

10.04 Financing Provisions. Notwithstanding any contrary provisions contained in this Agreement, including without limitation Section 11.03(a) and 11.03(b), Customer specifically agrees, without any further request for prior consent but with advance written notice to Customer which will identify any such assignee, to permit Provider to assign, transfer or pledge its rights under this Agreement and its rights and title to the Facilities for the purpose of obtaining financing or refinancing in connection with the Facilities (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction or any debt financing) and to sign any consent, agreement, amendment or estoppel reasonably requested by Provider or its Lenders to acknowledge and evidence such

agreement; provided, however, that such agreement does not adversely affect the rights of Customer or materially alter the obligations owed to Customer under the terms of this Agreement.

ARTICLE XI.
INDEMNIFICATION

11.01 To the extent permitted by Applicable Law, Provider shall indemnify, defend, and hold harmless the Customer and all of its officers, employees, boards, commissions, and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind ("Losses") from or to third parties which arise out of the performance of Provider's obligations hereunder, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions of the Provider, its employees, agents, Prime Contractors, Subcontractors, other separate contractors or anyone directly or indirectly employed by them or anyone for whose acts Provider is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Customer, but the Provider's obligation to pay Losses shall be reduced in proportion to the percentage by which the Customer's negligent or intentional acts, errors or omissions caused the Losses.

11.02 To the extent permitted by Applicable Law, Customer shall indemnify and hold harmless Provider and all of its officers, employees, directors, members, managers, agents, and other representatives from and against any and all Losses from or to third parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Customer, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of Provider, but the Customer's obligation to pay Losses shall be reduced in proportion to the percentage by which the Provider's negligent or intentional acts, errors or omissions caused the Losses. Notwithstanding the foregoing, the extent of the Customer's indemnification shall not exceed the Customer's liability for the negligent acts or omissions of its employees as governed by Massachusetts General Laws Chapter 258.

11.03 Survival of Provisions. The provisions of this Article XII are in addition to and not in limitation of any other rights and remedies available to Customer or Provider and shall survive the expiration or termination of this Agreement.

ARTICLE XII.
PURCHASE OPTION

12.01 Grant of Purchase Option. For and in consideration of the payments made by Customer under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Provider hereby grants Customer the right and option to purchase all of Provider's right, title and interest in and to each Facility on the terms set forth in this Agreement (the "Purchase Option"). With respect to a given Facility, the Purchase Option shall be exercisable on the tenth (10th) and

fifteenth (15th) anniversary of the Commercial Operation Date of such Facility, or upon expiration of the Term (such date, the "Purchase Option Date"). To exercise the Purchase Option, Customer shall give advance written notice to the Provider during the Exercise Period (defined below) following a Final Determination (defined below).

12.02 Customer Request for Appraisal of Facilities Value. Not earlier than 270 days, or later than one hundred and eighty (180) days prior to the Purchase Option Date, provided Customer is not then in default, Customer shall have the right to provide a notice to Provider requiring a determination of the Fair Market Value of the applicable Facility. Fair Market Value shall be determined pursuant to Section 13.03 and 13.04 by the Independent Appraiser.

12.03 Selection of Independent Appraiser. Within twenty (20) Business Days after receipt of a notice provided under Section 13.02, Customer and Provider shall mutually agree upon an Independent Appraiser. If Provider and Customer do not agree upon the appointment of an Independent Appraiser within thirty (30) days, then at the end of such thirty (30) day period, two proposed Independent Appraisers (one proposed by each Party) shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Provider and Customer. Such selection shall be final and binding on Provider and Customer absent fraud.

12.04 Determination of Purchase Price. The selected Independent Appraiser shall, within thirty (30) days of appointment, make a determination of the Fair Market Value (the "Final Determination") which shall specify the final appraised value ("Final Appraised Value") of the applicable Facility. Upon making such Final Determination, the selected Independent Appraiser shall provide such Final Determination to Provider and Customer, together with all supporting documentation that details the calculation of the Final Determination. Except in the case of fraud or manifest error, the Final Appraised Value of the selected Independent Appraiser shall be final and binding on the Parties as the "Fair Market Value" hereunder.

12.05 Calculation of Purchase Price. The purchase price ("Purchase Price") payable by Customer for the applicable Facility shall be equal to the higher of the Early Termination Fee or the Final Appraised Value as determined by the Independent Appraiser in its Final Determination.

12.06 Costs and Expenses of Independent Appraiser. If Customer provides an Exercise Notice, Provider and Customer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser. If Customer declines to provide an Exercise Notice, Customer shall be responsible for all of the costs and expenses of the Independent Appraiser.

12.07 Exercise of Purchase Option. Customer shall have one hundred twenty (120) days from the date of the Final Determination (such period, the "Exercise Period") to exercise the Purchase Option, at the Purchase Price. Customer must exercise its

Purchase Option during the Exercise Period by providing a notice (an "Exercise Notice") to Provider, and specifying a closing date for the purchase and sale of the applicable Facility (the "Transfer Date"). Once Customer delivers its Exercise Notice to Provider, such Exercise Notice shall be irrevocable except due to fraud of Provider or fraud or manifest error of the Independent Appraiser.

12.08 Terms of Facilities Purchase. On the Transfer Date (a) Provider shall surrender and transfer to Customer all of Provider's right, title and interest in and to the transferred Facility, including Environmental Attributes and Environmental Incentives accruing on or after the Transfer Date, and Provider shall retain all liabilities arising from or related to the Facility Assets that accrued prior to the Transfer Date, (b) Customer shall pay the Purchase Price and any other amounts then due and payable hereunder, by wire transfer and shall assume all liabilities arising from or related to the Facility Assets that accrue from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment and assumption of contract rights containing no representations or warranties, except as to title, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the transferred Facility in Customer on an AS IS, WHERE IS basis, and (ii) deliver such other commercially reasonable ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the Facility Assets to Customer. Provider shall, at its expense, remove any and all liens, security interests, and other encumbrances placed on the transferred Facility, including without limitation those placed by Provider, an Affiliate, or Lender, and shall assign to Customer all manufacturer or other similar warranties for the Facility that remain in effect as of the Transfer Date.

12.09 Transfer Date. The closing of any sale of a Facility pursuant to this ARTICLE XIII will occur no later than thirty (30) days following delivery of the Exercise Notice.

ARTICLE XIII.
MISCELLANEOUS

13.01 Additional Documents. Upon the receipt of a written request from a Party, the other Party shall, at the cost and expense of the requesting Party, execute such additional reasonable documents, instruments, estoppels, consents, confirmations and assurances, and take such additional reasonable actions as are reasonably necessary to carry out the terms of this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

13.02 Integration; Attachments. This Agreement, together with the Schedules attached hereto, including the Lease, constitutes the entire agreement and understanding between Provider and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

13.03 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, accepted standards of performance within the solar photovoltaic power

generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

13.04 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Customer.

13.05 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The failure of Provider or Customer to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision in any other instance, or of any other provision in any instance. No single or partial exercise of any right under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right; and no waiver of any breach of or default under any provision of this Agreement shall constitute or be construed as a waiver of any subsequent breach of or default under that or any other provision of this Agreement.

13.06 Survival. The obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement to the extent necessary to give them full effect, including, but not limited to, the Parties' indemnification obligations, Provider's obligation to pay all Governmental Charges under Section 5.04(a) and Provider's removal obligation under 6.03 and 6.04.

13.07 Governing Law; Jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to any choice of law principles. Any legal action or proceeding with respect to or arising out of this Agreement shall be brought in the federal courts of the District of Massachusetts. By execution and delivery of this Agreement, Provider and Customer accept, generally and unconditionally, the jurisdiction of the aforesaid courts. Provider and Customer hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of *forum nonconveniens*. Provider agrees that service of process may be effected upon it by certified mail or federal express, with proof of receipt, at the address provided in Section 14.17 (Notices).

13.08 Severability. Subject to the other terms of this Agreement: Any term, covenant or condition in this Agreement that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Agreement to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Agreement, or of such provision in other jurisdictions. The Parties shall use good faith efforts to negotiate to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as possible corresponds to the spirit and purpose of such ineffective provision.

13.09 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

13.10 Relation of the Parties. The relationship between Provider and Customer shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

13.11 Injunctive Relief. The Parties acknowledge that a violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such a violation or breach, and regardless of any other provision contained in this Agreement, such Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

13.12 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

13.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

13.14 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a public utility, an electric utility, an investor owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator.

13.15 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed by the Person against whom recourse is sought, or such recourse is otherwise permitted under the terms of this Agreement or Applicable Law.

13.16 Notices. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider:

Newton Municipal III, LLC
c/o Ameresco, Inc.
111 Speen Street, Suite 410 Framingham,
MA 01701
Attention: Vice President, PV Grid-Tie

With a courtesy copy to:

If to Customer:

City Solicitor
City of Newton
City Hall
1000 Commonwealth Avenue
Newton Center, MA 02459
Email: law@newtonma.gov

or at such other address as may be designated in writing to the other Party. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand-delivered, or sent by (a) registered or certified U.S. Mail, postage prepaid, (b) commercial overnight delivery service, or (c) email attachment, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand-delivered, or upon transmission when sent by email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail. Customer shall deliver to any Lender, concurrently with delivery thereof to Provider, a copy of each notice of Provider Default given by Customer under Section 8.01 of this Agreement, and no such notice shall be effective absent delivery to the Lender, provided that Customer shall not be required to deliver such a notice to more than one Lender or to more than one address at any given time, and provided further that such Lender is identified in this Agreement or in a writing signed by Provider and delivered to Customer in accordance with this Section 14.17. In the event more than one Lender or more than one address is identified by Provider, Customer shall be in compliance with the preceding sentence of this Section if it delivers a copy of the notice of Provider Default to any one such Lender and at any one such address, unless the notice to Customer identifying a Lender and address expressly states that such Lender and such address supersedes any prior Lender and address identified by Provider, in which event Customer shall deliver said notice to such Lender at such address.

13.17 Additional Qualifications. Notwithstanding anything to the contrary in this Agreement:

(a) Customer shall not be required to execute documents or instruments, or take any actions or omit from taking any actions, subsequent to the execution of the

Agreement which will materially or unreasonably increase Customer's risk or obligations under the Agreement, or result in the waiver of any of Customer's rights or remedies under the Agreement or at law or in equity, as reasonably determined by Customer.

(b) Any requirement that Customer cooperate or assist Provider shall not require Customer to interfere with, or influence, the independent executive, regulatory, judicial, licensing, permitting, taxing or legislative functions of any department, board, committee, official, body or commission of Customer in its capacity as a municipality.

(c) The Agreement shall be subject to Applicable Law.

(d) Customer does not waive any of the rights, remedies, defenses and immunities afforded Customer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Customer hereby reserves. Furthermore, the Provider shall have no recourse whatsoever against City officials, boards, commissions, committees, advisors, designees, agents or its employees other than injunctive relief or declaratory relief, arising out of any provision or requirement of this Agreement or because of enforcement of this Agreement.

(e) Nothing herein shall interfere with the duties of the City Assessor in the calculation, assessment and collection of any taxes.

13.18 M.G.L. c. 62C, § 49A Certification. The Provider hereby certifies under penalties of perjury that it has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

13.19 Disclosure of Beneficial Interests. Provider shall complete, sign and file the certification and disclosure required by G.L. c. 7C, s. 38, with respect to the Lease.

13.20 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Customer of energy produced at an alternative energy facility.

IN WITNESS WHEREOF intending to be legally bound hereby, the Parties have executed this Solar Power Services Agreement as of the Effective Date.

By: _____
Name: James J. Walker
Title: Vice President, PV Grid-Tie

City of Newton, a municipal corporation and a political subdivision of the Commonwealth of Massachusetts

By: its Mayor

_____
Ruthanne Fuller

Approved as to form:

_____
Assistant City Solicitor

_____

Schedule 1

Lease Agreement

[Attached]

Schedule 2

Facilities

Facility	Address	Rate Class	Facility Type (BTM/FTM)	KW DC	KW AC
Ed Center Roof	100 Walnut Street, Newton, MA	G-2	BTM	80.7	66.6
Fire Station #3 Roof	31 Willow Street, Newton, MA	G-2	BTM	62.9	66.6
Zervas Elementary School Roof	30 Beethoven Avenue	B-7	BTM	166.5	133
FA Day Middle School	21 Minot Place	B-7	BTM	192.4	166

Schedule 3

Solar Services Rate

For each Billing Cycle in which the System delivers electricity, the aggregated price per kWh of Solar Services shall be $0.08/kWh ("Solar Services Rate") for the Facilities.

The Solar Services Rates set forth on Schedule 3 assume that the Facilities are accepted into Block 4 and Tranche 2 of the SMART Program. If the Facilities are not accepted into Block 4 and Tranche 2 of the SMART Program, then the Solar Services Rates set forth on Schedule 3 shall be equitably adjusted to restore the economic benefits under this Agreement to Provider as contemplated as of the Effective Date. Promptly upon receipt of acceptance into the SMART Program, Provider shall provide written notice to Customer confirming the applicable Block and Tranche of the SMART Program for the Project and the adjusted Solar Services Rate (the "SMART Notice"). If adjusted Solar Services rate reflects an increase of more than 15% over the initial Solar Services Rate the Customer shall have the right to terminate this Agreement upon written notice to Provider for a period of ten (10) business days following receipt of SMART Notice by Customer (the "SMART Notice Period"). If the Customer has not provided such notice of termination within the SMART Notice Period, Customer shall be deemed to have waived its right to terminate pursuant to this Section 3.05 and the Solar Services Rate shall be as set forth in the SMART Notice. Customer understands and acknowledges that Provider will not begin procurement of equipment or submit a Notice-to-Proceed to construct the Facilities until the SMART Notice Period has expired or Customer has affirmatively waived in writing its right of termination under this Section 3.05.

Schedule 4

Guaranteed Annual Solar Services Output

The estimated annual output and Guaranteed Annual Solar Services Output with respect to the System shall be in accordance with the following schedule. The Guaranteed Annual Solar Services Output for each Contract Year shall be eighty percent (80%) of each Estimated Annual Output for the applicable year based on actual weather and insolation data.

Guarantee Amount	
Estimated First Year's Solar PV Production	600,383
Guarantee Percentage	80%
Annual Facilities Degradation Factor	0.5%
Contract Year	***Guarantee Amount (kWh)***
1	480,306
2	477,905
3	475,515
4	473,138
5	470,772
6	468,418
7	466,076
8	463,745
9	461,427
10	459,120
11	456,824
12	454,540
13	452,267
14	450,006
15	447,756
16	445,517
17	443,289

18	441,073
19	438,868
20	436,673

Shortfall Payment for BTM Facilities ($) = Production Shortfall (kWh) x (Rate ($/kWh) - Solar Services Rate ($/kWh)); provided that in no event shall such rate difference exceed $0.04 per kWh. Shortfall Payment for AOBC Facilities ($) = Production Shortfall (kWh) x Discount to AOBC rate.

Schedule 5

Early Termination Fee

Termination Occurs at the end of Year:	Early Termination Fee (Excluding cost of removal)
1	$1,831,099
2	$1,674,359
3	$1,523,927
4	$1,372,069
5	$1,218,684
6	$1,063,665
7	$1,026,889
8	$988,241
9	$947,591
10	$904,798
11	$836,635
12	$781,110
13	$722,577
14	$660,828
15	$596,840
16	$529,258
17	$457,834
18	$382,301
19	$302,374
20	$217,750

Early Termination Fee is not payable prior to the Commercial Operation Date.

Early Termination Fee excludes cost of system removal.

At Expiration (the end of Initial Term), the Early Termination Fee shall be deemed to be zero (0).

Schedule 6

Provider Termination Payment

If User is entitled to an Owner Termination Payment, then such Owner Termination Payment shall be in an amount equal to the present value (discounted at five percent (5%)) of the cash flow equal to the product of:

(A) $0.04 per kWh,

Multiplied by:

(B) The Guaranteed Annual Electric Output in each such remaining Contract Year.

Plus:

(C) The Structured Tax Payment in each such remaining Contract Year.

Calculated payment values are as follows:

DEVELOPER TERMINATION PAYMENT CALCULATION

Provider Termination Payment RAte ($/kWh):	$ 0.0400
Rate:	5.00%

Year of Termination	Maximum Days Each Termination Year (Excludes Leap Year)	Guaranteed Annual Electric Output (KWh)	Daily Guaranteed Annual Electric Output (KWh)	Maximum Payment for Maximum Days	Maximum Developer Termination Payment
1	365	480,306	1,316	$ 19,212	$ 230,219
2	365	477,905	1,309	$ 19,116	$ 222,518
3	365	475,515	1,303	$ 19,021	$ 214,528
4	365	473,138	1,296	$ 18,926	$ 206,233
5	365	470,772	1,290	$ 18,831	$ 197,620
6	365	468,418	1,283	$ 18,737	$ 188,670
7	365	466,076	1,277	$ 18,643	$ 179,366
8	365	463,745	1,271	$ 18,550	$ 169,692
9	365	461,427	1,264	$ 18,457	$ 159,627
10	365	459,120	1,258	$ 18,365	$ 149,151
11	365	456,824	1,252	$ 18,273	$ 138,244
12	365	454,540	1,245	$ 18,182	$ 126,883
13	365	452,267	1,239	$ 18,091	$ 115,045
14	365	450,006	1,233	$ 18,000	$ 102,707
15	365	447,756	1,227	$ 17,910	$ 89,842
16	365	445,517	1,221	$ 17,821	$ 76,424
17	365	443,289	1,214	$ 17,732	$ 62,424
18	365	441,073	1,208	$ 17,643	$ 47,814
19	365	438,868	1,202	$ 17,555	$ 32,562
20	365	436,673	1,196	$ 17,467	$ 16,635

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/24/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J Gallagher Risk Management Services 470 Atlantic Avenue Boston MA 02210	CONTACT NAME: PHONE (A/C, No, Ext): 617-261-6700 FAX (A/C, No): 617-646-0400 E-MAIL ADDRESS:
INSURED AMERINC-17 Newton Municipal III LLC 111 Speen Street, Suite 410 Framingham , MA 01701	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Steadfast Insurance Company — 26387 INSURER B : Zurich American Insurance Company — 16535 INSURER C : James River Insurance Company — 12203 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** 1968503896 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [ ] LOC OTHER:	Y		GLO585238806	12/31/2018	11/30/2019	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 2,000,000 $ 500,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY [ ] SCHEDULED AUTOS X HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY	Y		BAP585238706	12/31/2018	11/30/2019	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
C	X UMBRELLA LIAB [X] OCCUR EXCESS LIAB [ ] CLAIMS-MADE DED RETENTION $	Y		00087963-0	12/31/2018	11/30/2019	EACH OCCURRENCE AGGREGATE $	$ 5,000,000 $ 5,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [N] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC595394506	12/31/2018	11/30/2019	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A B	Professional Liability Installation Floater			EOC- 6692743-08 PWG455350515	12/31/2018 11/30/2018	11/30/2019 11/30/2019	Limit	$5,000,000 $15,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Education Center, Fires Station #3/HQ, Zervas Elementary School & FA Day Middle School Roof Top Solar Arrays

The City of Newton is an Additional Insured as respects to the General Liability, Automobile Liability and Excess Liability policies if required by written contract or agreement, pursuant to and subject to the policy's terms, definitions, conditions and exclusions.

The insurance provided in the General Liability, Automobile Liability and Excess Liability policies is primary and any other insurance shall be excess only, and not contributing if required by written contract or agreement.

CERTIFICATE HOLDER

City Solicitor
City of Newton
1000 Commonwealth Avenue
Newton Center MA 02459

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Patrick J. Veale