COMMERCIAL POWER PURCHASE AGREEMENT

by and between

and

Dated:

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Exhibits

Exhibit A Host Request for Proposals
Exhibit B Supplier Non-Price Proposal
Exhibit C Description of the System
Exhibit D Supplier's Accepted Price Proposal
Exhibit E Description of Premises
Exhibit F Plan of Lease Area

POWER PURCHASE AGREEMENT
COVER SHEET

This Power Purchase Agreement (consisting of this Cover Sheet, the Terms and Conditions, all Exhibits referenced herein and attached hereto, this "Agreement") is made and entered into as of the date set forth and between the parties listed below.

Party A, as seller: _____ ("Supplier")	Party B, as customer: Town of Acton, a political subdivision of the Commonwealth of Massachusetts (the "Host")
Contact:	Contact:
Premises Location: (See Exhibit F for more detail.)	System Descriptions: (See Exhibit C for more detail.) Panel Manufacturer: Capacity: Maximum of _____ kW DC Mounting: Inverter Manufacturer:
Pricing: Initial Supplier kWh Rate: $._____ Escalation Percentage: ____% (See Exhibit D for more detail.)	Duration: Date of Agreement: _____ ("Effective Date") Commercial Operation Date: TBD Term: Initial Term: 20 years from the System's Commercial Operation Date; with one 5 year Extension Term, subject to Applicable Law governing contract extensions.

Supplier and Host shall each be referred to in this Agreement individually as a "Party" and, together, as "Parties".

RECITALS:

WHEREAS, Host owns and occupies the land located at Forest Road and Route 2 in Acton, Massachusetts described in Exhibit E attached hereto (the "Premises") and desires to purchase Solar Services for, among other things, delivery of electricity generated by the System to the Delivery Point;

WHEREAS, Host desires that Supplier install the System, to be located at the Premises, and Supplier is willing to perform the installation of the System;

WHEREAS, Host and Supplier have entered a separate agreement for the use of the Premises, on or before the effective date of this Agreement ("Solar Lease Agreement"), the terms of which are incorporated herein; and

WHEREAS, Supplier desires to sell, and Host desires to purchase, the Solar Services, consisting of the System's electricity production, the operation and maintenance of the System and other services to be provided in accordance with the terms and conditions set forth herein;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Each of the following documents shall be deemed part of this Agreement and are incorporated herein by this reference as though set forth herein in their entirety:

Terms and Conditions
Exhibit A, Host Request For Proposals (RFP)
Exhibit B, Supplier Non-Price Proposal
Exhibit C, Description of System
Exhibit D, Supplier's Accepted Price Proposal, including Earlty Termination Price and Guaranteed Production
Exhibit E, Description of Premises
Exhibit F, Plan of Lease Area
Solar Lease Agreement

2. This Agreement constitutes the entire agreement and understanding between Supplier and Host with respect to the subject matter hereof and supersedes all prior agreements between them relating to the subject matter hereof, which are hereafter of no further force or effect. The Terms and Conditions and the Exhibits, referred to herein, are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail over the terms of the Exhibit and any Exhibit shall be corrected accordingly if inconsistent with this Agreement.

3. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Host and Supplier; provided, that Supplier may unilaterally amend Exhibit C to include the Final Drawings.

4. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts without reference to its principles of conflicts of laws.

5. The relationship between Supplier and Host shall not be that of partners, agents, or joint venturers, 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. Supplier and Host, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk. Neither Party has the right to create an obligation for the other Party.

6. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile transmission of executed copies or signature pages for this Agreement shall be legal, valid and binding execution and delivery for all purposes.

IN WITNESS WHEREOF, the duly authorized officers of the Parties have executed this Power Purchase Agreement as an instrument under seal as of the Effective Date.

Supplier	**Town of Acton**, a political subdivision of the Commonwealth of Massachusetts
BY:	
By:_____ Name: Title :	By:_____ Name: Title: Town Manager

COMMERCIAL POWER PURCHASE AGREEMENT
TERMS AND CONDITIONS

ARTICLE 1

DEFINITIONS.

"***Affiliate***" means any Person who, directly or indirectly controls, is under common control with, or is controlled by, another Person, whether directly or indirectly through one or more intermediaries. For the purposes of this definition, "control" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Applicable Law***" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Premises, the Lease Area or the System, as applicable, or any part thereof or to any condition or use thereof.

"***Approval***" means any approval, lease, permit, inspection, authorization or other consent, from a Governmental Authority or Local Distribution Company, which is or may be required for the performance of a Party's obligations or the exercise of Party's rights, as specified herein.

"***Bankrupt***" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (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 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 with respect to it 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.

"***Billing Months***" (individually, a "***Billing Month***") means the periods for which the Local Distribution Company bills the Host for the purchase of electricity; provided, that no period of time shall be considered a Billing Month hereunder unless such period occurs, or concludes, after the Commercial Operation Date of the first System installed under this Agreement.

"***Commercial Operation Date***" means the tenth (10th) day after the date of Host's receipt of a Completion Notice for the System.

"***Completion Notice***" has the meaning set forth in Section 5.4.3.

"***Contract Year***" means, each successive twelve-month period from each anniversary of the Commercial Operation Date of the first System to be installed under this Agreement to the next anniversary of the Commercial Operation Date; provided, that the first Contract Year will begin on the Commercial Operation Date of the first System installed under this Agreement and end on its first anniversary; for the avoidance of doubt, the second Contract Year will begin on the first anniversary of such Commercial Operation Date and end on its second anniversary.

"***Decommissioning Assurance***" means adequate financial assurance, in a form reasonably satisfactory to Host, that is established and thereafter maintained by Supplier upon and after the Commercial Operation Date, to fully cover the cost of decommissioning the System and restoring the Premises as specified in this Agreement. Depending on the circumstances, and subject to Host's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of Supplier's failure to comply with its System removal and Premises restoration obligations under the Agreement.

"***Delivery Point***" means the agreed location or locations at the Premises where the electricity generated by the System is to be delivered and received under this Agreement.

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

"***Environmental Attributes***" means any offset, credit, benefit, reduction, rebate, 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, RECs, Solar RECs, carbon credits, Green-e products, investment tax credits, production tax credits, forward capacity market credits or other credits earned by or in connection with, or otherwise attributable to, the System, or the electricity produced by the System, under or with respect to the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), any state or federal renewable portfolio standard or renewable energy standard or other

portfolio purchase mandate or requirement, including the renewable portfolio standard of the Commonwealth of Massachusetts, the Regional Greenhouse Gas Initiative or any statute or regulation implementing the foregoing, any federal or other applicable act or regulation relating to carbon emissions or a cap or other limitation thereupon or any other state, federal or other Governmental Authority act, law or regulation that provides offsets, credits, benefits, reductions, allowances or incentives of any kind or nature related to electricity generation, generation capacity or emissions (or the lack or avoidance thereof).

"***Environmental Laws***" means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Action, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Property, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.

"***Environmental Violation***" means (i) a violation or alleged violation of any Environmental Law in connection with the Premises by any person or entity or other source whether related or unrelated to the Host; and (ii) the actual, threatened or alleged presence, release, transportation migration, generation, treatment, processing, storage, use or disposal of Hazardous Materials (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) at, on, or from the Premises by any person or entity or other source, whether related or unrelated to the Host.

"***Equipment Leasing Party***" means any Person now or hereafter leasing the System or any portion thereof to Supplier as part of a financing transaction entered into by Supplier, including an equipment lease, financial lease, sale-leaseback or other leasing transaction.

"***Final Drawings***" means the final stamped engineering drawings for the System, and the installation thereof at the Premises, to be prepared by Supplier at its sole cost and expense after the Effective Date, presented to and approved by Host acting reasonably and included in Exhibit C.

"***Financing Party***" or "***Financing Parties***" means any and all Persons or successors in interest thereof, directly or indirectly, (i) lending money, (ii) extending credit, (iii) investing equity capital or (iv) providing or financing any lease or other arrangement including tax equity investments for or in connection with any of the following: (a) the construction, term or permanent financing of the System; (b) working capital or other ordinary business requirements of the System (including the maintenance, repair, replacement or improvement of the System); (c) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in

connection with the System; or (d) the purchase of the System and the related rights. For avoidance of doubt, "Financing Party" shall include an Equipment Leasing Party, if any, any Person providing any of the foregoing categories of financing to Equipment Leasing Party with respect to the System.

"***Force Majeure Event***" means an event, occurrence or circumstance, or combination thereof, beyond the reasonable control of a Party which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, including, but not limited to: (a) acts of God, terrorism, war, blockade, riot, civil disturbance or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Premises, the Lease Area, the System or a Party's obligations hereunder; (d) explosion, accident or epidemic; and (e) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; provided, that neither the lack of money nor changes in market conditions shall constitute a Force Majeure Event.

"***Governmental Authority***" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"***Hazardous Materials***" means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum produces and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

"***Host***" has the meaning set forth in the preamble hereof.

"***Host Default***" has the meaning set forth in Section 11.2.1.

"***Indemnitee***" means, with respect to Host, a Person indemnified by Supplier pursuant to Section 17.1.

"***Installation Work***" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, substantially in accordance with this Agreement and Supplier's Proposal, as amended, attached hereto as Exhibit B.

"***Interest Rate***" means a fluctuating interest rate per annum equal to the sum of the lesser of (i) the Prime Rate as stated in the "Bonds, Rates & Yields" section of the The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, or (ii) the maximum rate permitted by Applicable Legal Requirements. In the event that such rate is no longer published in The

Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host and reasonably acceptable to Supplier. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

"***Local Distribution Company***" means the local investor-owned electric distribution company that provides electric distribution service to the municipality in which the Host is located.

"***M.G.L.***" means the Massachusetts General Laws, as amended from time to time.

"***Meter***" means a set of instruments meeting applicable electric industry standards installed by Supplier to measure and record the volume and other relevant delivery characteristics of electrical energy produced by the System.

"***O&M Work***" has the meaning set forth in Section 6.1.

"***Persons***" means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"***RECs***" means renewable energy credits, including solar RECs.

"***Supplier***" has the meaning set forth in the preamble.

"***Supplier Default***" has the meaning set forth in Section 11.1.1

"***Supplier kWh Rate***" for the relevant Billing Month has the value provided in the Supplier's Price Proposal, Exhibit D.

"***Premises***" has the meaning set forth in the recitals hereto.

"***Solar Services***" means all of the services provided by Supplier to the Host under this Agreement, including provision of a web-based interface tracking system, generation and delivery of electricity from the System.

"***Supplier Services Payment"*** has the meaning set forth in Section 8.1

"***System***" means one or more integrated solar photovoltaic electricity generating system or System, up to but not including the Delivery Point, as described in overview form in Exhibit C, attached hereto, and as will be described more specifically in the Final Drawings.

"***System Acceptance Testing***" has the meaning set forth in Section 5.4.

"***System Requirements***" has the meaning set forth in Section 5.4.1.

"***Term***" has the meaning set forth in Section 2.1.

ARTICLE 2

TERM

2.1 **Term**. The term of this Agreement (the "Term") shall commence on the Effective Date and, unless terminated earlier, continue until the expiration of the Solar Lease Agreement between the Parties, and any renewal term thereto.

2.2 **Removal of System at Expiration or Termination**. Following an expiration or earlier termination of this Agreement according to its terms in which Host does not exercise its right to purchase the System Supplier shall, at Supplier's sole cost and expense, remove all of the tangible property comprising the System, in accordance with provisions therefor in the Solar Lease Agreement.

ARTICLE 3

CONDITIONS PRECEDENT TO SUPPLIER OBLIGATIONS.

Supplier's obligations under this Agreement with respect to the System are subject to satisfaction of the following conditions:

3.1 **Financing.** Supplier, or its Financing Party, if applicable, shall have secured and received financing for the Installation Work in the amount of the aggregate development and construction costs related thereto, provided however that Supplier shall have made good faith, diligent efforts to secure financing.

3.2 **Governmental Approvals; Confirmation of Availability of Government Incentives**. Supplier and its Financing Party, if applicable, shall have received all governmental permits and approvals necessary to construct and operate the System and received confirmation of availability of the incentives identified in Supplier's Proposal, provided however that Supplier shall have made good faith, diligent efforts to secure necessary approvals.

3.3 **Interconnection**. Host and the Local Distribution Company shall have executed an interconnection agreement with respect to the operation of the System, provided however that Supplier shall have made good faith, diligent efforts to secure necessary approvals.

Any condition under this Section may be waived, by written notice to Host, by Supplier in Supplier's sole discretion, without the consent of Host.

ARTICLE 4

LEASE TO PREMISES.

Host and Supplier have entered into a Solar Lease Agreement providing for the right and obligations of the Parties with respect to the use of the Premises, all of which terms and conditions are incorporated by reference herein.

ARTICLE 5

MONITORING, INSTALLATION AND TESTING OF THE SYSTEM.

5.1 **Scope of Installation Work**.

5.1.1 Supplier shall furnish all labor, materials and equipment to perform the Installation Work, all in accordance with Applicable Law, applicable vendors' and manufacturers' warranties, instructions and specifications, and applicable insurance requirements. Supplier will cause the System to be designed, engineered, installed and constructed in accordance with the Final Drawings, Applicable Law and the terms of this Agreement. Supplier shall perform the Installation Work in accordance with a good and workmanlike manner using only new materials and without causing material damage to any roof on the Premises.

5.1.2 The System shall have the maximum capacity indicated on the Cover Sheet. The actual size of the System shall be substantially in accordance with Supplier's Proposal, Exhibit B, attached hereto.

5.1.3 After completion of the Installation Work, Supplier shall not modify the System in a manner contradictory to the Final Drawings applicable to the System without the consent of Host, which consent shall not be unreasonably withheld, conditioned or delayed. During the Term of this Agreement, Supplier shall comply with obligations imposed on an "Installer" under the Commonwealth Solar Initiative.

5.2 **Performance of Installation Work**.

5.2.1 Supplier may perform Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise limited by local ordinance.

5.2.2 Supplier shall seek to do so in reasonable coordination with the Host and in a manner which limits inconvenience to and interference with Host's and Host's invitees' and employees' use of the Premises to the extent commercially practical.

5.2.3 Supplier shall grant Host, and its authorized representatives, access to and the right, but not the obligation, to observe the Installation Work at all times provided that neither Host nor its authorized representatives shall interfere with the

Installation Work or use or move any Supplier equipment or any System without written authorization from Supplier.

5.3 **Utility Interconnection**. Supplier agrees to manage application for all necessary approvals and permits from any Governmental Authority and the Local Distribution Company, including the submission of applications for interconnection of the System with the Local Distribution Company.

5.3.1 Host agrees to cooperate with Supplier in preparing such applications and securing such approvals by, among other things, providing Supplier with required data and electrical drawings concerning the Premises necessary for the interconnection application process.

5.3.2 Should the Local Distribution Company fail to approve the interconnection of the System within one hundred twenty (120) days of submission, Supplier may terminate this Agreement with respect to the System promptly by providing a written termination notice to Host.

5.3.3 Should the Local Distribution Company require equipment in addition to that shown in Exhibit C, Supplier may either terminate this Agreement or increase the Supplier kWh Rate, in either case by providing written notice to Host. Host may elect, within ten (10) days of receipt of notice from Supplier increasing the Supplier kWh Rate, to terminate the Agreement with respect to the System by providing written notice to Supplier to that effect.

5.4 **System Acceptance Test**.

5.4.1 Supplier shall, at no cost to Host, test the System (with respect to the System, a "System Acceptance Test") to confirm that the System (i) is capable of delivering Solar Services in accordance with the operational requirements that Supplier shall develop and provide to Host (the "System Requirements") and (ii) meets all requirements established by the Local Distribution Company and any Applicable Law.

5.4.2 Supplier shall notify Host not less than three (3) days prior to the conducting of System Acceptance Test and Host shall have the right, but not the obligation, to be present at and observe the System Acceptance Test, at no cost to Supplier.

5.4.3 If the results of the System Acceptance Test indicate that the System is capable of delivering electricity generated by the System to Host for eight (8) continuous hours using such instruments and meters as have been installed for such purposes and the System has been approved for interconnected operation by the Local Distribution Company, then Supplier shall send a written notice to that effect to Host (a "Completion Notice"), accompanied by a copy of the results of the System Acceptance Test.

ARTICLE 6

OPERATION AND MAINTENANCE WORK.

6.1 **O&M Work**. In connection with its delivery of the Solar Services, Supplier shall, at its sole cost and expense and in accordance with Applicable Law, provide operation, repair, monitoring and maintenance services to the System during the Term, including continuous remote monitoring of the System, an annual Premises visit and physical inspection of the System and maintenance of the System and the metering equipment determining the quantity of electricity produced by the System (collectively, the "O&M Work"). Supplier shall perform the O&M Work in accordance with the Final Drawings, Applicable Law and such other prudent solar industry practices in a manner intended to limit inconvenience to and interference with Host's and Host's invitees'and employees' use of the Premises to the extent commercially practical. All maintenance work shall be performed by leased contractors.

6.2 **Malfunctions**.

6.2.1 Host and Supplier each shall notify the other within twenty-four (24) hours following any discovery of any material malfunction in the operation of the System (a "Malfunction"), including any interruption in the supply of Solar Services. Supplier and Host each shall notify the other Party upon the discovery of an emergency condition in the System. If an emergency condition exists, Supplier shall promptly dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner. Supplier shall designate personnel and establish procedures such that Host may provide notice of such conditions requiring Supplier's repair at all times, twenty-four (24) hours per day, including weekends and holidays.

6.2.2 Supplier shall commence repairs to a Malfunction and restore the supply of Solar Services as soon as reasonably possible after any notice received from Host thereof or upon its own discovery of any such Malfunction; provided, that Supplier shall not have the obligation to repair any Malfunction caused by a casualty loss to the Premises, including a casualty loss caused by theft or vandalism, unless insurance proceeds available to Supplier for such purpose are sufficient to repair such a Malfunction (it being acknowledged by Host that under certain circumstances Supplier's Financing Parties, if any, may have discretion to determine whether Supplier may apply such insurance proceeds to such repair work).

6.2.3 Nothing in Sections 6.2.1 and 6.2.2 shall bar the Host or its employees or agents from taking any measure, although not obligated to do so, where immediate action is reasonably necessary, to prevent or mitigate an imminent risk of injury or harm to person or property on account of an emergency condition or hazard.

6.2.4 Supplier shall further provide to Host a manual or such other documentation for the System that includes recommendations or instructions for the proper emergency shutdown of the System.

6.3 **Metering**.

6.3.1 Supplier shall install and maintain the Meter for the System at its sole cost and expense.

6.3.2 **Maintenance and Testing**. Supplier shall maintain the calibration and operation of the Meter for the measurement of the electricity generated by the System and delivered to Host and, if applicable, for the calculations necessary to calculate the reduction in demand charges attributable to the System. Upon Host's written request based on its reasonable assertion that the Meter is functioning incorrectly and submitted not more frequently than annually, Supplier shall test the Meter at its sole cost furnish a copy of metering and testing data for the System produced by the Meter. In addition, promptly following a written request from Host for a special third party test and calibration of the Meter, Supplier shall cause a mutually acceptable qualified party to test the Meter in the presence of representatives of each Party, a report of which will be given to each Party. If Host requests such a test, Host shall bear the cost of testing, unless the Meter so tested is shown to be in error by more than one percent (1%), in which event Supplier shall bear the cost of testing.

6.3.3 **Adjustments**. If testing of the Meter pursuant to Section 6.3.2 indicates that the Meter is in error by more than one percent (1%), then Supplier shall promptly repair or replace the Meter. Supplier shall make a corresponding adjustment to the records of the amount of electricity delivered based on such test results for: (i) the actual period of time when such error caused inaccurate Meter recordings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the last previous test confirming accurate metering or the date the relevant Meter(s) was/were placed into service, but not to exceed two (2) years.

6.4 **Title to System**. Except as otherwise set forth herein and subject to any rights that Host may have to purchase the System as provided in the Solar Lease Agreement, Supplier or one of its Financing Parties, if applicable, shall continue to hold title to, and be the legal and beneficial owner of, the System and the System shall: (a) remain the personal property of Supplier or Supplier's, successors, assigns or Financing Parties, (b) not attach to or be deemed a part of the real estate or fixture to the Premises, (c) at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and (d) be subject to removal by Supplier at the expiration or earlier termination of this Agreement unless purchased by Host as provided in the Solar License Agreement.

ARTICLE 7

PURCHASE OF SOLAR SERVICES.

7.1 **Purchase Requirement**. Host agrees to purchase one hundred percent (100%) of the electricity produced by the System during the Term of this Agreement. The

payment for Solar Services is calculated to include all of the above services in the Supplier kWh Rate.

7.2 Host intends to use all or portion of the purchased electricity at other properties under its ownership. Supplier will assist Host in working with the Local Distribution Company to credit such electricity usage to electric accounts to be designated by Host.

7.3 Host agrees that, during the Term, Host will not select an electricity generation supplier under competitive procurement or otherwise, if any other option exists, that requires, as a condition for service, (a) removal or discontinued operation of the System, (b) imposition of additional charges on Supplier or (c) the purchase from such provider of all electricity requirements to the exclusion of Host's purchase obligations hereunder. Host acknowledges that Supplier is not, and that the provision of Solar Services hereunder shall not cause Supplier to become, an electric utility, a generation company, an aggregator or supplier, an energy marketer or energy broker, as such terms are defined in the M.G.L.

7.4 **Title to Net Metering Credits**. As between Host and Supplier, Host shall be entitled to receive any and all credits from the Local Distribution Company for electricity generated by the System and delivered to the Local Distribution Company.

7.5 **Title to Environmental Attributes**.

7.5.1 As between Host and Supplier, the Environmental Attributes relating to the System or the sale of electricity therefrom will be and remain property of the Supplier or the Host, as specified below:

(a)

(b)

(c)

7.5.2 Each Party, upon request of the other, shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence the right, title and interest, as provided herein, in and to the Environmental Attributes relating to the electricity generated by the System. If the standards used to qualify the Environmental Attributes to which the Party is entitled hereunder are changed or modified, the other Party shall, upon request, use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

7.6 **System's Production Guaranty**. Supplier hereby guarantees to Host that the actual aggregate production in kWh from the System for each of the Contract Years set forth on Exhibit D will meet or exceed the guaranteed aggregate production amount set forth for each such Contract Year. Within thirty (30) days of the end of each applicable Contract Year period, Supplier shall, at its sole option, either pay to Host or apply as a credit to Host's next twelve (12) monthly statements in equal portions, a dollar amount for the shortfall in production equal to the product of the rate that electricity is offered at such time by the Local Distribution Company, including default supply, transmission, distribution and all other applicable charges, multiplied by the positive difference in kWh, if any, between the actual aggregate production of the System during such Contract Year subtracted from the guaranteed aggregate production during such Contract Year period.

ARTICLE 8

PRICE AND PAYMENT.

8.1 **Payment Amount**. Host shall make a payment to Supplier for the Solar Services provided hereunder (the "Supplier Services Payment") with respect to each Billing Month of the Term; provided, that if the first Billing Month hereunder ends within ten (10) days of the Commercial Operation Date of the System, the Payment for such Billing Month shall be included in the Supplier Services Payment for the following Billing Month. The Supplier Services Payment for any Billing Month shall equal the product of (a) the total electricity produced by the System in the relevant Billing Month, on or shortly after the last day of such Billing Month, based on recordings produced by the Meters for the System (the "Monthly Production") and (b) the Supplier kWh Rate for the relevant Month (as specified in Exhibit D attached hereto). Except as may be otherwise expressly provided in this Agreement, no other fees or charges shall be due from Host to Supplier for the Installation Work, nor for any of the Solar Services.

8.2 **Timing and Method of Payment**.

8.2.1 No later than the tenth (10th) day of each Billing Month of the Term after the first full or partial Billing Month, Supplier shall deliver to Host an invoice showing the amount of the Monthly Production for the previous Billing Month and Supplier's computation of the Supplier Services Payment in respect thereof.

8.2.2 Said invoice shall credit to Host for said Billing Month the amount due, if any, as rent from Supplier to Host under the Solar Lease Agreement.

8.2.3 If any amount is due after crediting the monthly rent owed by Supplier to Host, not more than forty-five (45) days after receipt of such invoice Host shall pay to Supplier, by wire transfer of immediately available funds to an account specified in writing by Supplier or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

8.2.4 All payments which are not paid when due shall incur the Interest Rate, as defined in this Power Purchase Agreement.

8.3 **Payment Disputes**. If a Dispute arises with respect to any invoice submitted by, or any payment owed to, Supplier hereunder, the Parties shall attempt to resolve such Dispute amicably. If the Parties cannot resolve the Dispute within thirty (30) days, either Party may submit the Dispute to arbitration in accordance with ARTICLE 12; provided, that during the time a bona fide Dispute is pending the disputing Party shall not be deemed in default under this Agreement and the Parties may not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Neither party may withhold, deduct or set-off against amounts or credits owed by such party to the other party any undisputed amounts during the time that a Dispute is pending.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES.

9.1 **Representations and Warranties Relating to Agreement Validity**. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

9.1.1 it is duly organized and validly existing and in good standing in the jurisdiction of its organization and is qualified to do business in the Commonwealth of Massachusetts;

9.1.2 it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;

9.1.3 it has taken all requisite corporate or other action to authorize and approve the execution, delivery, and performance of this Agreement;

9.1.4 this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms;

9.1.5 to the best of its knowledge, there is no litigation, action, proceeding or investigation pending or threatened on any basis before any court or other Governmental Authority by, against, affecting or involving any of its business or assets (including with respect to Host, the Premises or any interest therein) that would affect its ability to carry out the transactions contemplated herein; and

9.1.6 its execution of, and performance under, this Agreement shall not violate existing Applicable Law or any agreement to which it is a party.

9.2 **Requisite Standards**. Supplier represents and warrants that it has, or has access to, the requisite expertise and sufficient personnel and resources (including necessary supervision and support services) to deliver the Solar Services. Supplier guarantees and warrants to Host that the Installation Work, O&M Work and the delivery

of Solar Services pursuant to this Agreement will comply in all material respects with all Applicable Laws.

9.3 **EXCLUSION OF WARRANTIES**. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE INSTALLATION WORK AND SOLAR SERVICES PROVIDED BY SUPPLIER TO HOST PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO HOST OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE, WHETHER AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SUPPLIER.

ARTICLE 10

TAXES AND GOVERNMENTAL FEES.

Supplier shall pay all documented taxes, fees or charges imposed on, or assessed or charged to Supplier by any Governmental Authority and which arise out of or relate to Supplier's ownership of the System or sale of the Solar Services to Host, including such taxes, fees or charges based on the value, construction, operation or existence of the System at the Lease Area (collectively, "Taxes"). Without limiting the generality of the foregoing, Taxes shall include sales taxes, real and personal property taxes, use, gross receipts, excise, transfer ad valorem taxes and franchise fees. Supplier shall pay all such Taxes when they are due and before any fine, penalty, interest or cost may be added for non-payment.

ARTICLE 11

DEFAULT AND EARLY TERMINATION.

11.1 **Supplier Defaults and Host Remedies**.

11.1.1 **Supplier Defaults**. The following events shall be defaults of Supplier (each, a "Supplier Default"):

(a) Supplier is Bankrupt;

(b) Supplier breaches any material term of this Agreement and such breach remains uncured for sixty (60) days after Host's notice to Supplier of such breach, if curable within sixty (60) days, or Supplier fails to commence and pursue diligently a cure to such breach within sixty (60) days of receiving such notice if a longer cure period is needed, and, in any event, fails to cure within ninety (90) days of receiving such notice; or

(c) Supplier fails to achieve Commercial Operation by the date in the schedule as proposed in Exhibit B, unless the Parties agree to an extension thereof.

11.1.2 **Host's Remedies**. Upon the occurrence of any Supplier Default and during its continuation beyond any applicable cure periods, Host may exercise one or more of the following remedies:

(i) terminate this Agreement immediately upon a Supplier Default pursuant to Section 11.1.1 (a) and with at least fifteen (15) days' written notice upon a Supplier Default pursuant to Section 11.1.1(b) or (c);

(ii) cease making Supplier Services Payments hereunder other than accrued and unpaid amounts for the period prior to termination;

(iii) coincident with its delivery of a notice of termination with respect to a Supplier Default under 11.1.1 (a) or (b), elect to acquire and take control and custody of the System at no cost;

(iv) exercise any other remedy it may have under the Solar Lease Agreement; and

(v) exercise any other remedy it may have at law or equity or under this Agreement.

11.1.3 Notwithstanding the foregoing, in the case of a Supplier Default, Host shall provide the Financing Parties (if any) with notice of such Supplier Default in accordance with the provisions of Section 15.2 and the Financing Parties, as applicable, shall have the right (but not the obligation) for ninety (90) days after receipt of such notice either to cure the Supplier Default on behalf of Supplier, or, upon payment to Host of amounts due from Supplier but not paid by Supplier or upon performance of obligations of Supplier hereunder but not performed by Supplier, to assume, or cause their designee to assume, all of the rights and obligations of Supplier under this Agreement arising after the date of such assumption; provided that such Financing Party shall have the financial capacity to and comparable experience in operating and maintaining photovoltaic systems similar to the System. In the event that any Financing Parties, as applicable, or a designee thereof, assumes this Agreement: (i) Supplier shall be released and discharged from any obligations to Host arising or accruing hereunder from and after the date of such assumption to the extent the assignee assumes the obligations of Supplier under this Agreement; (ii) Host shall continue this Agreement with such Financing Parties, as applicable, or a designee thereof, as the case may be, substituted in the place of Supplier hereunder; and (iii) if the assuming party is the Financing Party such party shall not be personally liable to Host for the performance of its obligations hereunder except to the extent of the interest of the Financing Parties, as applicable, in the System.

11.1.4 **Actions to Prevent Injury**. If any Supplier Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such case, in addition to any other right or remedy that Host may have, Host may (but shall not be obligated to) take such action as Host deems appropriate to prevent such damage or injury. Such action may include, but is not limited to, disconnecting and removing all or a portion of the System.

11.2 **Host Defaults and Supplier's Remedies**.

11.2.1 **Host Default**. The following events shall be defaults of Host (each, a "Host Default"):

(a) Host breaches any material term of this Agreement, and such breach remains uncured for sixty (60) days after Supplier's notice to Host of such breach, if curable within sixty (60) days, or Host fails to commence and pursue diligently a cure to such breach within sixty (60) days of receiving such notice, if a longer cure period is needed, and, in any event, fails to cure within ninety (90) days of receiving such notice; or

(b) Host fails to pay Supplier any amount due Supplier hereunder within thirty (30) days from the date due.

11.2.2 **Supplier's Remedies**. Upon the occurrence of any Host Default and during its continuation, Supplier may exercise one or more of the following remedies:

(a) terminate this Agreement;

(b) suspend the provision of all Solar Services hereunder, including the O&M Work;

(c) remove the System from the premises in compliance with the conditions of Section 2.2; and

(d) exercise any other remedy it may have at law or equity or under this Agreement, subject to the provisions of ARTICLE 12

11.2.3 **Actions to Prevent Injury**. If any Host Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such case, in addition to any other right or remedy that Supplier may have, Supplier may (but shall not be obligated to) take such action as Supplier deems appropriate to prevent such damage or injury. Such action may include, but is not limited to, disconnecting and removing all or a portion of the System in accordance with the same standards that apply under Section 2.2 or suspending the supply of Solar Services to Host.

11.3 **Termination in Consequence of Force Majeure Event**.

11.3.1 If a Force Majeure Event shall have occurred that has materially affected Supplier's performance of its obligations to provide the Solar Services hereunder and shall have continued for a period of at least sixty (60) days, then Host shall be entitled to terminate this Agreement upon thirty (30) days' written notice to Supplier. If at the end of such thirty (30) day period such Force Majeure Event shall still be continuing, this Agreement shall automatically terminate. Upon such termination, neither Party shall have any liability to the other, subject to Section 18.4 (Survival).

11.3.2 Notwithstanding the foregoing, if the System is damaged or destroyed by a Force Majeure Event and Supplier provides written notice to Host that it intends to rebuild the System, then Supplier may, at its sole cost and expense, rebuild or fix the System. Subsequent to replacement and commencement of operation of the replacement System, all terms and conditions of this Agreement will remain in effect including the remaining term of this Agreement; provided, that Supplier must have made good faith efforts to order replacement panels and other necessary equipment within ninety (90) days of the completion of the Force Majeure Event.

11.3.3 Upon the cessation of a Force Majeure Event, the Parties shall continue to perform their respective obligations under this Agreement. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement (other than of a provision that requires payment of money) if and to the extent that any failure or delay in such Parties' performance of one or more of its obligations hereunder is attributable to the occurrence of a Force Majeure Event; provided, that the Party claiming a Force Majeure Event shall (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) promptly exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (d) resume performance of its obligations hereunder as soon as practicable thereafter.

11.3.4 Notwithstanding anything in this Agreement to the contrary, if Supplier claims relief pursuant to a "Force Majeure Event," the obligation of Host to make a Solar Services payment to Supplier on any payment date shall be suspended as of the date that the Force Majeure Event commenced until Supplier notifies Host that it has resumed performance of its obligations under the Agreement; provided, however, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services provided to Host prior to the Force Majeure Event performance interruption.

ARTICLE 12

DISPUTE RESOLUTION.

12.1 Binding Arbitration. The Parties shall meet, confer and negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute"). Any Dispute that is not settled to their mutual satisfaction within the

applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties conducted in Boston, Massachusetts, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that a Party gives notice of its demand for arbitration under this Section. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party and the Parties shall select a single neutral arbitrator. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) days thereafter, then either Party may request that the American Arbitration Association select and appoint a neutral arbitrator who shall act as the sole arbitrator. The arbitrator shall have significant experience with the solar power industry. The Parties may engage in discovery in connection with the arbitration as provided by the Massachusetts statutes and shall be entitled to submit expert testimony or written documentation in such arbitration proceeding. The decision of the arbitrator shall be final and binding upon Supplier and Host and shall be set forth in a reasoned opinion, and award may be enforced thereon by either Supplier or Host in a court of competent jurisdiction; provided, however, that the arbitrator shall not have the authority to award punitive, exemplary or analogous damages. Any award of the arbitrator shall include interest from the date of any damages incurred for breach or other violation of this Agreement at the Interest Rate. The Parties shall each bear the cost of preparing and presenting its own case, provided, however, that the Parties hereby agree that the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the dispute. The cost of the arbitration, including the fees and expenses of the arbitrator, shall initially be shared equally by Supplier and Host, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within one-hundred eighty (180) calendar days of the appointment of the arbitrator.

12.2 Exceptions to Arbitration Obligation. The obligation to arbitrate shall not be binding upon any Party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute or (b) actions to collect payments not subject to a bona fide Dispute or (c) claims permitted hereunder against third parties.

ARTICLE 13

LIMITATION OF LIABILITY.

NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL OR ANALOGOUS DAMAGES, OR LOSSES OR DAMAGES FOR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION OF THIS

AGREEMENT TO THE CONTRARY, SUPPLIER'S MAXIMUM LIABILITY WITH RESPECT TO THE SYSTEM, THE PERFORMANCE, OR FAILURE TO PERFORM, ANY OF THE SOLAR SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED, IN THE AGGREGATE, TO THE AGGREGATE AMOUNT OF FIVE MILLION DOLLARS ($5,000,000). EACH PARTY HEREBY EXPRESSLY WAIVES ANY CLAIM AGAINST AND RELEASES FROM PERSONAL LIABILITY EACH OF THE OFFICERS, DIRECTORS AND EMPLOYEES OF THE OTHER PARTY EXCEPT TO THE EXTENT OF SUCH PERSON'S WILLFUL MISCONDUCT. SUPPLIER AND ITS OFFICERS, AGENTS, EMPLOYEES AND SUBCONTRACTORS, ANY LENDER, EQUITY INVESTOR, FINANCING PARTY, AND ANY DIRECTORS, OFFICERS, MEMBERS, PARTNERS, SHAREHOLDERS AND EMPLOYEES OF THE FOREGOING SHALL HAVE NO LIABILITY WHATSOEVER RELATING TO ANY ENVIRONMENTAL VIOLATION INCLUDING, WITHOUT LIMITATION, THE COSTS OF ASSESSMENT, CONTAINMENT AND REMOVAL OF HAZARDOUS MATERIALS, EXCEPT TO THE EXTENT THAT ANY SUCH CLAIMS ARE DIRECTLY ATTRIBUTABLE TO THE ACTIONS OF SUPPLIER.

ARTICLE 14

ASSIGNMENT AND SUBCONTRACTING

14.1 **Successors and Assigns; Subcontracting**. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns; provided, that Supplier in its discretion may elect to use such certified and leased subcontractors as it may choose in performing any of its obligations hereunder and performance of any obligation of Supplier by any such subcontractor shall satisfy such obligation to the extent of such subcontractor's performance.

14.2 **Assignment by Host**. Host shall not sell, transfer, assign, pledge or cause to be assumed (together, "Assign"; and any such action, an "Assignment") this Agreement, in whole or in part, without the prior written consent of Supplier and its applicable Financing Parties.

14.3 **Assignment by Supplier**. Except as set forth in Section 14.4, Supplier shall not, without the prior written consent of Host, assign this Agreement, in whole or in part; provided, Host's consent to an assignment by Supplier of any of its rights (and/or a delegation of any of its obligations) shall not be unreasonably withheld, delayed or conditioned if Host has been provided with reasonable proof that the proposed assignee: (a) has comparable experience in operating and maintaining a solar electric generating Systems similar to the System; and (b) has the financial capability to maintain the System in the manner required by this Agreement and to perform the obligations under this Agreement; and provided, further, that without the prior consent of Host, Supplier may assign this Agreement to an Affiliate of Supplier. Any assignment shall be conditioned upon the assignee explicitly assuming all of Supplier's obligations under this Agreement. Neither the consent of Host to an assignment, nor the references in this Agreement to

assignees or successors, shall in any way be construed to relieve Supplier (in the event of a partial assignment) or any assignee of the requirement of obtaining the consent of Host to any further assignment of this Agreement. Supplier shall deliver to Host thirty days' (30) advance written notice of its intent to assign this Agreement.

14.4 **Consent to Assignment for Financing or Leasing**. Supplier may seek financing for the ownership of all or a portion of the System under this Agreement, whether by leasing all or a portion of the System from an Equipment Leasing Party or entering into other arrangements with a Financing Party in the form of an equipment Lease, finance Lease, debt, equity, tax equity or other financing arrangement. Notwithstanding any provisions in this Agreement to the contrary, Supplier may collaterally assign, or assign fully in connection with any financing of the System (which may, in connection with such Assignment, permit the Financing Party to further assign collaterally), its rights, and/or obligations hereunder, or the Agreement in its entirety for purposes of securing such financing or leasing arrangement. Host hereby consents to any such Assignment, provided that:

14.4.1 such Assignment shall not create any Lien or other encumbrance on the Premises other than Supplier's rights and obligations contemplated in this Agreement nor on any other real or personal property located on the Site other than the System;

14.4.2 all provisions regarding the entry onto and use of the Premises shall remain in effect;

14.4.3 the Financing Party, as applicable, shall enforce its interest and protect the applicable Lease Area in accordance with Supplier's obligations hereunder;

14.4.4 Host acknowledges that upon and following an event of default under any financing or leasing documents relating to the System, the Financing Parties, if any, may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Supplier thereafter arising under this Agreement; and

14.4.5 If the rights and interests of Supplier in this Agreement shall be assigned, in whole or in part, as herein provided, and the assignee shall agree in a writing submitted to Host to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Host arising or accruing hereunder from and after the date of such Assignment (or, in the case of a partial Assignment, to be bound by the portion of this Agreement so assigned and relevant associated obligations to Host arising or accruing hereunder from and after the date of such Assignment), Supplier shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date (or, in the case of a partial Assignment, released and discharged of the terms and conditions hereof so assigned and the associated obligations hereunder from and after such date), and Host shall continue this Agreement, or the relevant portion of this Agreement with the assignee as if such person had been named as Supplier under this Agreement; provided that such assignee: (a) has experience in operating and maintaining

solar electric generating System similar to the System and in similar geographic location and climate comparable to that in which the System is located and personnel qualifications and performance record contained in Supplier's proposal; and (b) has financial capability to maintain the System in the manner required by this Agreement and to perform the obligations under this Agreement, each substantially similar to that of Supplier; and provided, further, that if Supplier assigns this Agreement, or any portion hereof, to a Financing Party as provided herein, Host acknowledges and agrees that such persons shall not be personally liable for the performance of such assigned obligations hereunder except to the extent of the interest of the Financing Parties in the System. Notwithstanding any such Assignment to one or more Financing Parties or a designee thereof, Supplier shall not be released and discharged from and shall remain liable for any and all obligations to Host arising or accruing hereunder (and, in the case of a partial Assignment, for the obligations accruing after the date of such Assignment with respect to obligations accruing under the unassigned portion of the Agreement). Supplier shall not, however, have any liability for any action or omission of the Financing Party hereunder.

14.4.6 Host agrees to sign, execute and deliver each such instrument or other document as Supplier or its Financing Parties, if any, may reasonably request to satisfy the requirements of any Financing Party with respect to or in connection with any financing or leasing of the System. Host also agrees, to the extent required by a Financing Party, if any, to provide Supplier and/or a Financing Party with such information about Host or the Premises as Supplier or a Financing Party may reasonably request.

14.5 **Rights of Financing Parties**.

14.5.1 A Financing Party may perform, but shall not be obligated to perform, any of Supplier's obligations hereunder, including holding and conveying title to the System. The rights of Supplier hereunder shall apply, to the extent relevant, *mutatis mutandis* to any Financing Party.

14.5.2 Any Financing Party shall each have the benefit of the lease to the Site provided to Supplier.

14.6 **Financing Parties as Third Party Beneficiaries**. The provisions of this Section are for the benefit of any Financing Party as well as the Parties hereto, and shall be enforceable by any Financing Party as express third-party beneficiaries hereof. Host hereby agrees that neither a Financing Party, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Supplier or shall have any obligation or liability to Host with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this Section.

ARTICLE 15

NOTICES.

15.1 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified herein when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next business day if sent at any other time), on the day after being sent when sent by overnight delivery service, or five (5) business days after deposit in the mail when sent by U.S. mail.

15.2 Financing Party Notice. Any notice or other communication which Host shall desire or is required to give to or serve upon a Financing Party in accordance with the terms of this Agreement shall be in writing and shall be served in accordance with the provisions of Section 15.1, addressed to such Financing Party at such party's addresses provided in writing by a Financing Party or by the Supplier , and any notice or other communication which the Financing Party shall desire or be required to give to or serve upon Host shall be deemed to have been duly given or served if sent in accordance with the provisions of Section 15.1 or at such other address as shall be designated by Host by notice in writing given to such Financing Party in accordance with the provisions of this Section 15.1.

15.3 Notice Addresses

Host Address:

Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Supplier Address:

ARTICLE 16

INSURANCE

16.1 **Coverages.** Supplier shall maintain the following insurance coverages in full force and effect throughout the Term:

16.1.1 Workers' Compensation Insurance as may be from time to time required under applicable federal and state law;

16.1.2 Commercial General Liability Insurance on an occurrence (not claims-made) form, including premises and operations, personal injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with minimum combined single limit liability of two million dollars ($2,000,000) in the aggregate and one million dollars ($1,000,000) per occurrence;

16.1.3 Automobile Liability Insurance (including owned, non-owned and hired) with limits of not less than one million dollars ($1,000,000) combined single limit and in the aggregate;

16.1.4 All Risk Property Coverage and Boiler and Machinery Coverage, or All Risk Builder's Risk Insurance during construction, against damage to the System during the Term in an amount not less than the full replacement cost of the System, with commercially reasonable sub-limits and deductibles. Such insurance shall provide for a waiver of the underwriters' right to subrogation against the Lessor; and

16.1.5 Excess Umbrella Liability Insurance in an amount not less than five million dollars ($5,000,000).

16.2 **Certificates of Insurance.** Supplier shall furnish current certificates evidencing that the insurance required under Section 16.1 is being maintained. Each insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered. The Supplier's insurance policies shall be written on an occurrence basis and shall include the Host as an additional insured as its interest may appear.

16.3 **Insurer Qualifications**. All insurance maintained hereunder shall be maintained with companies authorized to do business in Massachusetts and either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

ARTICLE 17

INDEMNIFICATION

17.1 **Indemnification of Host**. Supplier shall indemnify, save harmless and defend Host and its officers, employees, and agents (collectively, the "**Host Indemnified Parties**") from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees, that may be imposed upon or incurred by or asserted against any Host Indemnified Party by reason of any of the following occurrences during the Term:

17.1.1 any breach by Supplier of its obligations, covenants, representations or warranties contained in this lease or made pursuant thereto;

17.1.2 any work or thing done in, on or about the Premises or any part thereof by Supplier, its agents, contractors, subcontractors, servants, employees, or invitees;

17.1.3 any negligence on the part of Supplier or any of its agents, contractors, subcontractors, servants, employees, leasees or invitees in, on or about the Premises or in connection with the System;

17.1.4 any accident, injury, or damage to any person or property occurring in, on or about the Premises or any part thereof, except to the extent caused by the negligence or intentional misconduct of Host or any of its officers, employees or agents; and

17.1.5 any failure on the part of Supplier or any of its agents, contractors, subcontractors, servants, employees, leasees or invitees in, on or about the Premises to fully comply with the Applicable Legal Requirements.

In case any action or proceeding is brought against any Host Indemnified Party by reason of any such claim, Host may elect that Supplier defend such action or proceeding with counsel approved by Host. Upon written notice from Host of such election, Supplier shall defend such action or proceeding at Supplier's expense to the reasonable satisfaction of Host.

17.2 **Survival**. The provisions of this Article shall survive the expiration or earlier termination of the Agreement.

ARTICLE 18

MISCELLANEOUS.

18.1 **Industry Standards**. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance considered to be prudent within the solar power generation industry in Massachusetts 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.

18.2 **Cumulative Remedies**. Except as set forth to the contrary herein, any right or remedy of Supplier or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.3 **Limited Effect of Waiver**. The failure of either Supplier or Host to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, 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.

18.4 **Survival**. In addition to the other provisions of this Agreement that shall survive any expiration or termination hereof in accordance with the explicit terms thereof, the provisions of ARTICLE 1 (Definitions), ARTICLE 10 (Taxes and Governmental Fees), ARTICLE 12 (Dispute Resolution), ARTICLE 13 (Limitation of Liability), ARTICLE 14 (Assignment and Subcontracting), ARTICLE 15 (Notices), ARTICLE 17 (Indemnification) and ARTICLE 18 (Miscellaneous) shall survive the expiration or termination of this Agreement for any reason; provided, that the survival of any particular provision or set of provisions shall be limited in duration if and to the extent such survival is explicitly limited herein or otherwise limited by Applicable Law.

18.5 **Severability**. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

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EXHIBIT A

HOST REQUEST FOR PROPOSALS

EXHIBIT B

SUPPLIER NON-PRICE PROPOSAL

EXHIBIT C

DESCRIPTION OF SYSTEM

EXHIBIT D

SUPPLIER'S ACCEPTED PRICE PROPOSAL

EXHIBIT E

DESCRIPTION OF PREMISES

EXHIBIT F

PLAN OF LEASE AREA