

Execution Copy

**COMMERCIAL POWER PURCHASE AGREEMENT**

by and between

**AMERESCO SOLAR ACTON LLC**

and

**TOWN OF ACTON, MA**

**Dated:**

**December 12, 2011**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>COVER SHEET</b> .....	1
ARTICLE 1 DEFINITIONS.....	4
ARTICLE 2 TERM .....	9
ARTICLE 3 CONDITIONS PRECEDENT TO SUPPLIER OBLIGATIONS. ....	9
ARTICLE 4 LEASE TO PREMISES.....	12
ARTICLE 5 MONITORING, INSTALLATION AND TESTING OF THE SYSTEM.....	13
ARTICLE 6 OPERATION AND MAINTENANCE WORK.....	14
ARTICLE 7 PURCHASE OF SOLAR SERVICES.....	16
ARTICLE 8 PRICE AND PAYMENT.....	18
ARTICLE 9 REPRESENTATIONS AND WARRANTIES.....	19
ARTICLE 10 TAXES AND GOVERNMENTAL FEES. ....	20
ARTICLE 11 DEFAULT AND EARLY TERMINATION.....	20
ARTICLE 12 DISPUTE RESOLUTION.....	24
ARTICLE 13 LIMITATION OF LIABILITY.....	25
ARTICLE 14 ASSIGNMENT AND SUBCONTRACTING.....	25
ARTICLE 15 NOTICES. ....	28
ARTICLE 16 INSURANCE.....	29
ARTICLE 17 INDEMNIFICATION .....	30
ARTICLE 18 MISCELLANEOUS.....	31

Exhibits

Exhibit A	Intentionally Deleted
Exhibit B	Intentionally Deleted
Exhibit C	Description of the System
Exhibit D	Price and Guaranteed Production
Exhibit E	Description of Premises
Exhibit F	Host Termination Payment
Exhibit G	Supplier Termination Payment

**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.

**Supplier:**

Ameresco Solar Acton LLC, a Delaware limited liability company ("Supplier")

**Host:**

Town of Acton, a political subdivision of the Commonwealth of Massachusetts (the "Host")

**Premises Location:**

The Town of Acton Landfill, located at Forest Road and Route 2 in Acton, MA

(See Exhibit E for more detail.)

**Preliminary System Descriptions:**

(See Exhibit C for more detail.)

Final System descriptions and selection will be determined after the detailed engineering design prior to construction.

**Pricing:**

Initial Supplier kWh Rate: \$0.1048 per kWh

Annual Escalation Percentage: 0%

(See Exhibit D for more detail.)

**Duration/Term:** See Section 2.1.

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")

**WHEREAS**, Host desires that Supplier install the System 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, one hundred percent of System's electricity production;

### 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 E, Description of Premises
Exhibit A, Intentionally Deleted	Exhibit F, Host Termination Payment
Exhibit B, Intentionally Deleted	Exhibit G, Supplier Termination
Exhibit C, Description of System	Payment
Exhibit D, Price and Guaranteed Production	

2. This Agreement and the Solar Lease Agreement constitute the entire agreement and understanding between Supplier and Host with respect to the subject matter hereof and supersede 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.

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.

**Ameresco Solar Acton LLC**

**Town of Acton,**  
a political subdivision of the Commonwealth  
of Massachusetts

**BY: Ameresco, Inc., its sole member**

By:   
Name: \_\_\_\_\_  
Title: **Joseph DeManche,**  
**EVP**

By:   
Name: \_\_\_\_\_  
Title: **Town Manager**

Date **12/12/2011**

Date: **12/12/2011**

**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 each calendar month; 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.

**"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

**"Commercial Operation Date"** means the date specified in the Completion Notice.

**"Completion Notice"** has the meaning set forth in Section 5.6.3.

**"Contract Year"** means, each successive twelve-month period beginning on the Commercial Operation Date of the System to be installed under this Agreement; provided, that the first Contract Year will begin on the Commercial Operation Date of the System installed under this Agreement and end on the day preceding 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 the day preceding the second anniversary.

**"Delivery Point"** means the point at which the System is interconnected to Host's intertie with the Local Distribution Company on the Host's side of the Local Distribution Company's electric meter.

**"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) or 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..

**"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 Act, 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 Premises, 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.

**"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) explosion, accident or epidemic; and (d) 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, 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 products 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, and with respect to Supplier, a Person indemnified by Host pursuant to Section 17.2.

**"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.

**"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.

**"Lease Area"** means the area on the Premises in which Host grants Supplier a lease to install and operate the System, as shown on the plan attached as Exhibit F to the Solar Lease Agreement.

**"Local Distribution Company"** means the local regulated electric distribution company that provides electric distribution service to the Host.

**"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. The Local Distribution Company shall install a separate meter which shall be in the name of the Host.

**"Net Metering"** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Local Distribution Company's Tariffs.

**"Net Metering Credits"** has the meaning set forth in 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Local Distribution Company's Tariffs.

**"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.

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

**"Proposed Regulations"** means regulations proposed in D.P.U. 11-11 by the Department of Public Utilities pursuant to M.G.L. c. 164, §139(g) regarding assurance of net metering eligibility. A copy of the Proposed Regulations is attached hereto as Exhibit H.

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

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

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

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

"*Supplier kWh Rate*" is the price for electric energy produced by the System set forth in Exhibit D.

H. "*Supplier Termination Payment*" means the amount set forth in Exhibit

"*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 the solar electrical generating facility installed at the Premises, including but not limited to the System Assets.

"*System Assets*" means each and all of the assets of which the System is comprised, including Supplier's solar energy panels, mounting systems, inverters and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, metering devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

"*System Acceptance Testing*" has the meaning set forth in Section 5.5.

"*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 shall remain in effect until 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date, or such earlier date as provided in Articles 3 or 11.

## ARTICLE 3

### CONDITIONS PRECEDENT TO OBLIGATIONS.

3.1 **Supplier's Conditions Precedent.** Supplier's obligations to proceed with the design and construction of the System under this Agreement and the Lease Agreement are subject to satisfaction of the following conditions. If the following conditions are not met at any time within two-hundred ten (210) days after the Effective Date, then Supplier may terminate this Agreement and the Solar Lease Agreement without being in default and without any liability of any kind to Host or any other party; provided, that Supplier may unilaterally extend such period for up to

an additional one-hundred fifty (150) days by written notice to Host. In the event that Supplier is unable to satisfy or unwilling to waive the Supplier's Conditions Precedent within three-hundred sixty (360) days after the Effective Date, or such later date as the Parties may agree to, either the Supplier in accordance with Section 3.3 or the Host in accordance with Section 3.4 may terminate this Agreement and the Solar Lease Agreement without being in default and without any liability of any kind.

3.1.1 **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.

3.1.2 **Governmental Approvals.** Supplier and its Financing Party, if applicable, shall have received all permits and approvals necessary to construct and operate the System, including without limitation, a final determination that the Major Post-Closure Use Permit from the Massachusetts Department of Environmental Protection allows for installation of the System, in each case on terms and conditions acceptable to Supplier in its sole discretion, provided however that Supplier shall have made good faith, diligent efforts to secure necessary approvals.

3.1.3 **Interconnection.** Host and the Local Distribution Company shall have executed an interconnection services agreement on the Local Distribution Company's standard form and any other documents required by Local Distribution Company with respect to the interconnection and operation of the System.

3.1.4 **Upgrades.** Upgrades exceeding \$10,000 are required to Host's or the Local Distribution Company's existing electrical infrastructure, downstream of the Delivery Point, and (i) Host and the Local Distribution Company decline to agree to pay for such upgrades, or (ii) Host declines to agree to pay an increase in the Supplier kWh Rate to compensate for Supplier's payment of such increased upgrade costs.

3.1.5 **Town Bylaws.** The System, if constructed, would be in violation of Host's zoning bylaws, and Supplier is unable to obtain all required zoning approvals for the System on terms and conditions acceptable to Supplier in its sole discretion and without Supplier having to incur expenses to obtain such approvals which Supplier considers unreasonable in its sole discretion.

3.1.6 **Lease.** Host and Supplier shall have entered into the Solar Lease Agreement providing for the right and obligations of the Parties with respect to the use of the Premises.

3.1.7 **EPA Comfort Letter.** Supplier has received a comfort letter from the U.S. Environmental Protection Agency in form and substance satisfactory to Supplier in its sole discretion.

3.1.8 Intentionally Deleted.

3.1.9 **Host's Conditions Precedent.** Supplier receives written notice that Host has satisfied or unconditionally waived Host's Conditions Precedent in Section 3.2 below.

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. When all of the foregoing conditions precedent are met or waived, Supplier shall notify Host and Host shall, if it has not already done so, apply for assurance of net metering eligibility.

3.2 **Host's Conditions Precedent.** Host's obligations under this Agreement and the Solar Lease Agreement are subject to satisfaction of the following conditions:

3.2.1 **Net Metering Eligibility.** (a) If the Proposed Regulations have been promulgated and are effective, Host shall have received assurance of net metering eligibility, namely a "Cap Allocation" as defined under the Proposed Regulations. (b) If the Proposed Regulations are not effective, then Host is reasonably satisfied that it will either (i) receive the benefit of "Net Metering Services" as defined in the Proposed Regulations once same become effective, or (ii) be eligible for and participate in Net Metering as a Solar Net Metering Facility, pursuant to M.G.L. c. 164 §§138-140, 220 C.M.R. §18.00, and the Tariffs, as may be amended from time to time.

3.2.2 **Upgrades.** If the Local Distribution Company requires upgrades exceeding \$10,000 in cost, in addition to that shown in Exhibit C, and Supplier proposes to increase the Supplier kWh Rate by written notice to Host, then Host may elect to terminate this Agreement by providing written notice to Supplier within ten (10) days after receipt of Supplier's notice.

When all of the foregoing conditions precedent are met or waived, Host shall promptly issue a "Notice to Proceed to Construction" to Supplier.

3.3 **Supplier Right to Terminate for Failure to Meet Conditions Precedent**

3.3.1 Supplier will act diligently and in good faith to satisfy the conditions precedent in Section 3.1 and complete the design for the construction of the System in accordance with the Schedule in Exhibit B of the Solar Lease Agreement. Supplier will provide Host with regular updates on the progress of Supplier's efforts and will provide Host with updated project schedules as the development and construction activities proceed. At any time that Supplier determines that it may require additional time to complete certain activities, it shall advise Host of the reasons for the delay and prepare an updated schedule and provide the same to Host.

In the event Host notifies Supplier that Host is unable to satisfy or unwilling to waive Host's Conditions Precedent, or in the event Host does not give such notice, the Supplier, in accordance with Section 3.3 may terminate this Agreement and the Solar Lease Agreement without being in default and without any liability of any kind.

3.3.2 Supplier may terminate this Agreement and the Solar Lease Agreement pursuant to Section 3.1 upon twenty-one (21) days advance written notice to Host.

3.4 **Host Right to Terminate.** If Supplier is unable to satisfy or unwilling to waive the Supplier's Conditions Precedent within three-hundred sixty (360) days after the Effective Date, or such later date as the parties may agree to, Host may terminate this Agreement and the Solar Lease Agreement by delivering written notice to Supplier of its intention to terminate this Agreement and the Solar Lease Agreement, and the Agreement and the Solar Lease Agreement shall terminate twenty-one (21) days after Supplier's receipt of such notice, provided, that (i) if Supplier provides Host with a written notice within such twenty-one (21) day period stating that it is unable to meet the conditions precedent due to failure of a governmental body to issue a required permit or (ii) failure of the LDC to take any actions for interconnection of the System (which Supplier shall describe in reasonable detail), notwithstanding Supplier's good faith and diligent efforts to cooperate with, to supply all necessary assistance to, to comply with the reasonable requirements of any such third party, and to otherwise overcome such third party impediments, this Agreement shall not terminate.

In the event Host notifies Supplier that Host is unable to satisfy or unwilling to waive Host's Conditions Precedent, the Host may terminate this Agreement and the Solar Lease Agreement without being in default and without any liability of any kind. For greater clarity, Host may not terminate this Agreement under Section 3.2 after Host issues the Notice to Proceed to Construction.

3.5 Upon any termination in accordance with Section 3.3 or Section 3.4, neither Party shall have any further liability to the other, provided that (i) Supplier, at its expense, shall remove any equipment or materials which Supplier has placed on the Premises; (ii) Supplier, at its expense, shall restore any portions of the Premises disturbed by Supplier to their pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement, or under the Solar Lease Agreement, including payment of Initial Rent, prior to termination; and (iv) any provisions of this Agreement that survive the termination of this Agreement pursuant to Section 18.4 shall continue to apply notwithstanding the termination of this Agreement.

**ARTICLE 4  
INTENTIONALLY DELETED.**

**ARTICLE 5**

## DESIGN, PERMITTING, INSTALLATION, TESTING AND MONITORING OF THE SYSTEM.

5.1 **Scope of Installation Work.** Pursuant to the terms of the Solar Lease Agreement, Supplier shall furnish all labor, materials and equipment to perform the Installation Work. 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 and the Solar Lease Agreement. Supplier shall perform the Installation Work in a good and workmanlike manner using only new materials.

5.2 **Capacity.** The System shall have the maximum capacity indicated on Exhibit C, subject to approvals of permitting authorities, including, but not limited to the Massachusetts Department of Environmental Protection, as well as approvals of geotechnical engineers and consultants retained by Supplier.

5.3 **Intentionally Deleted.**

5.4 **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.

5.4.1 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.

5.5 **Net Metering.**

5.5.1 If the pre-conditions required to submit an application for a Cap Allocation under the Proposed Regulations occurs before the Proposed Regulations become effective, and subject to the provisions of this Agreement, each of Host and Supplier agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the System to qualify as Class III Net Metering Facility and for Host to be eligible for Class III Net Metering Credits, pursuant to M.G.L. c. 164, §§138 – 140, 220 C.M.R. §18.00, and the Tariffs, as may be amended from time to time by a Governmental Authority.

5.5.2 If the pre-conditions to submission of an application for assurance of net metering eligibility (such assurance, the so-called "Cap Allocation") occur after the Proposed Regulations become effective, and subject to the provisions of this Agreement, Supplier shall assist Host in submitting the required application and other documentation to obtain assurance of net metering eligibility. Supplier shall pay all required application and reservation fees. In addition, Supplier shall be responsible for filing all documentation, including periodic reports, which are necessary to maintain the Cap Allocation. Supplier will assist Host in preparing such periodic filings.

5.5.3 Host and Supplier acknowledge and agree that Host shall be the Host Customer, as defined in 220 C.M.R. §18.02 of the Distribution Company's Net Metering Tariff, M.D.P.U. No. 163, for the System.

5.6 **System Acceptance Test.**

5.6.1 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 electricity and (ii) meets all requirements established by the Local Distribution Company and any Applicable Law.

5.6.2 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.

5.6.3 If the results of the System Acceptance Test indicate that the System is capable of delivering electricity generated by the System to Host for four (4) 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. Supplier shall designate the Commercial Operation Date of the System in the Completion Notice which shall not be later than 30 days after the System Acceptance Test.

**ARTICLE 6**

**OPERATION AND MAINTENANCE WORK.**

6.1 **O&M Work.** Supplier shall, at its sole cost and expense and in accordance with Applicable Law, perform or cause to be performed all 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, as necessary, 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 Applicable Law 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.

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 electricity 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. The Host's main meter at the Premises which shall be installed by the Local Distribution Company will be in the name of the Host ("*LDC Meter*").

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 such Meter. Supplier, utilizing its own personnel, shall test the Meter, on an annual basis at the time of its annual physical inspection of the System, and also if the Data Acquisition System reports electricity generation (measured in kWh AC) greater than or less than 2% of the calculated, weather-adjusted generation for the period in the preceding year. Such calculations shall be in accordance with North American Board of Certified Energy Practitioners (NABCEP). Such testing, if required, shall be done at Supplier's cost and Supplier shall furnish a copy of the metering and testing data to Host. Such test shall be completed by comparing the System's Meter with a test meter, such as a Hukseflux PV300 system performance meter, or equivalent, for a minimum four-hour period.

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 two percent (2%), 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 one (1) year.

6.3.4 **Correlation with LDC Meter.** Supplier and Host shall each monitor the kWh production registered by the Supplier's Meter and the Net Metering credits issued to the Host by the Local Distribution Company. In the event that either Supplier or Host reasonably believes that there is a discrepancy between the electricity generated by the System as reported by the Supplier's Meter and the LDC Meter, Host and Supplier shall confer and use good faith efforts to cooperatively investigate and remedy such discrepancy in consultation with the Local Distribution Company.

6.4 **Title to System.** 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, notwithstanding the manner in which the System is or may be affixed to any real property of Host and notwithstanding that the System may be physically mounted or adhered to the Premises or structures, buildings and fixtures on 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 Lease Agreement. The System will be owned and operated by or for Supplier. 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.

## ARTICLE 7

### PURCHASE OF ELECTRICITY.

7.1 **Purchase Requirement.** Host agrees to purchase one hundred percent (100%) of the electricity produced by the System as measured by the Meter as and when same is produced during the Term of this Agreement. The price for such electricity is the Supplier kWh Rate set forth on Exhibit D.

7.2 Intentionally Deleted.

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.**

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

7.4.2 If there is a change in law or regulation that eliminates the value of Host's Net Metering Credits, the Parties shall confer to develop a strategy to mitigate the economic loss in the value of the Net Metering Credits. The Parties shall select a mitigation approach that provides the best economic value for the Host, but which approach does not cause Supplier substantial economic loss. Mitigation strategies may include, but are not limited to, having Supplier sell electricity generated by the System to the ISO New England market, to the Local Distribution Company at avoided cost, or to a third party load serving entity. If Supplier sells electricity at avoided cost, such mitigation approach shall involve Host continuing to pay Supplier in accordance with Section 7.1 and Supplier paying over to Host revenue Supplier receives from such sales.

7.5 **Title to Environmental Attributes.** 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.

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 as measured by the Meter in each of the Contract Years set forth on Exhibit D will meet or exceed the "Guarantee Amount (kWh)" for such Contract Years as shown on Exhibit D. Supplier may apply any excess production over the "Estimated First Year's Solar PV Production" shown on Exhibit D, as reduced by the Annual System Degradation Factor, to subsequent Contract Years. By way of example, if the System produces 2,120,000 kWh in Contract Year 2, then the excess production is calculated as follows:

Estimated First Year's Solar PV Production = 2,020,393 kWh reduced by 0.5% Degradation Factor = 2,010,291 kWh. Any production in Contract Year 2 over 2,010,291 kWh may be applied to future Contract Years until exhausted. In is Contract Year 2 example, this overproduction amount = 109,709 kWh.

The Guarantee Amount (and all other figures) set forth on Exhibit D, except the Annual System Degradation Factor, assume a System size and capacity of 1,584kW. The Parties agree to execute an amendment to the Agreement to reflect adjustments to Exhibit D once the final design of the System has been completed and approved. Within thirty (30) days of the end of each applicable Contract Year, 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 \$0.05 per kWh, 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. Supplier shall not be required to meet the production guaranty set forth in this Section 7.6 during the continuance of any Host Default or Force Majeure Event, or while the System remains damaged on account of casualty. The parties agree to use the National Renewable Energy Laboratory's PV Watts calculator to determine the reduction to the Guarantee Amount during such periods of time.

## ARTICLE 8

### PRICE AND PAYMENT.

8.1 **Payment Amount.** Host shall make a payment to Supplier for the electricity produced by the System as measured by the Meter (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 Meter 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. Host shall pay the Supplier Services Payment without offset for any amount owed or claimed to be owed by Supplier; provided, that, subject to Section 7.6, Host may offset for any amount owed by Supplier under the production guaranty.

### 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 Intentionally Deleted.

8.2.3 Not more than thirty (30) days after receipt of such invoice Host shall pay to Supplier 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.

8.3 **Payment Disputes.** If a dispute arises with respect to any invoice submitted by, or any payment owed to, the Parties shall follow the procedures set forth in 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.

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.

Host shall reimburse Supplier for (on an after-tax basis) or pay all sales and use taxes, fees or other similar charges imposed by any Governmental Authority on the sale of electricity to Host. If Host is required by law to withhold or deduct any such taxes from the Supplier Services Payment, then the sum payable will be increased so that, after making all required deductions, Supplier will have received an amount equal to sum it would have received had no such deductions been made. An "after tax basis" means a basis that compensates the Supplier for any income taxes on the payments, assuming full taxability at the composite federal and state income tax rate applicable to Supplier at the time of 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 one-hundred twenty (120) days of receiving such notice.

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 the remedy in clause (a) or one or more of the remedies in clauses (b), (c), (d) and (e):

(a) terminate this Agreement and the Solar Lease Agreement immediately upon a Supplier Default pursuant to Section 11.1.1 (a) and with at least fifteen (15) days' advance written notice upon a Supplier Default pursuant to Section 11.1.1(b);

(b) cease making Supplier Services Payments hereunder during the continuance of the Supplier Default, other than accrued and unpaid amounts for the period prior to the Supplier Default;

(c) Intentionally Deleted;

(d) Suspend performance to the Supplier during the continuance of any Supplier Default; and

(e) exercise any other remedy it may have at law or equity, or under this Agreement, or under the Solar Lease Agreement.

If Host elects to terminate this Agreement and the Solar Lease Agreement, then Host shall choose either of the following options: (a) require Supplier to remove the System and pay the applicable Supplier Termination Payment; or (b) exercise the purchase option provided in the Solar Lease Agreement and require Supplier to pay the applicable Supplier Termination Payment. In the event Host elects termination, the foregoing express remedies and associated measure of damages shall be the sole and exclusive remedy available to Host as a result of termination of this Agreement, provided however that Supplier shall continue to have the obligation to indemnify, defend and save harmless Host on account of claims or assessment of penalties against the Host arising from Supplier's failure to comply with terms and conditions of the landfill post-closure use permit and DEP orders related thereto. Supplier shall pay the Supplier Termination Payment within thirty (30) days after receipt of an invoice from Host. The Supplier Termination Payment shall be pro-rated based on the number of elapsed days in the year payment is to occur.

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 (or shall hire a third party with 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 one-hundred and twenty (120) 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 and remove the System from the Premises in compliance with the Solar Lease Agreement;

(b) suspend performance under this Agreement during the continuance of a Host Default;

(c) Intentionally Deleted; or

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

If Supplier elects to terminate this Agreement and remove the System pursuant to 11.2.2(a) above, then Host shall pay to Supplier the applicable Host Termination Payment in Exhibit G and such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to Supplier as a result of termination of this Agreement. Host shall pay the Host Termination Payment within 30 days after receipt of an invoice from Supplier. The Host Termination Payment shall be pro-rated based on the number of elapsed days in the year payment is to occur. If Host elects to terminate this Agreement, then the Solar Lease Agreement shall terminate as of the same date this Agreement.

**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 6.9 of the Solar Lease Agreement 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 one hundred and eighty (180) 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 repair or replacement and commencement of operation of the replacement or repaired System, all terms and conditions of this Agreement will remain in effect, and the Term of this Agreement shall be extended for each day that the System was not in operations as a result of the Force Majeure Event; 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 prior to the Force Majeure Event performance interruption

11.4 **Termination in Consequence of Host Purchase of System.** In the event that the Host elects to purchase the System pursuant to Article 7 of the Solar Lease Agreement, this Agreement shall terminate effective on the date that ownership of the System is transferred to the Host.

11.5 **Termination in Consequence of Solar Lease Termination.** This Agreement shall terminate at any time and effective as of the date of a termination of the Solar Lease Agreement.

## ARTICLE 12

### DISPUTE RESOLUTION.

If a dispute arises concerning this Agreement, a representative from management of both Parties shall meet within ten business days after either Party gives the other Party written notice of the dispute (the "*Dispute Notice*"). The Dispute Notice shall set forth in reasonable detail the aggrieved party's position and its proposal for resolution of the dispute. If the dispute is not resolved within 30 calendar days after the first meeting of the Parties, either party is free to use any other available remedy in law or at equity. The Dispute Notice is a condition precedent to each Party's right to resort to litigation, provided that during such time as the Parties are meeting, either party may petition a court of competent jurisdiction for injunctive relief. A party's failure to comply with this Section shall entitle the other Party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision.

12.2 The Parties may mutually agree to submit the dispute to non-binding mediation and share the cost of the mediator. The mediation shall take place in Boston, Massachusetts. If the dispute is not resolved within 30 days after the first meeting with the mediator, either Party may resort to any judicial forum for resolution of the dispute.

12.3 The obligation to negotiate a resolution 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 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 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 OR THE SOLAR LEASE 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 AND THE SOLAR LEASE 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 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 Premises 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 similar to Supplier; 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, 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, 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

Host contact for technical and site issues arising with respect to permitting,  
construction, operations and emergencies

Russell Robinson  
Telephone: 978-929-7740  
Facsimile: 978-264-9610  
Mobile: 508-320-6849

**Supplier Address:**

Ameresco Solar Acton LLC  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: General Counsel

Supplier contact for operations and emergencies:

Kevin Sullivan  
Telephone: 508-598-3028  
Facsimile: 508-661-2201  
Mobile: 508-308-5710

Ameresco shall provide a single point of contact for the permitting and  
construction phases of the project.

**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 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. 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. In the event that Supplier receives from its insurer a notice of cancellation or material alteration of its coverage, Supplier shall transmit to Host a copy of such notice not later than two (2) business days after its receipt by Supplier.

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 accident, injury, or damage to any person or property occurring in, on or about the Premises or any part thereof, to the extent caused by the negligence or intentional misconduct of Supplier, its agents, contractors, subcontractors, employees, or invitees. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Host Indemnified Parties but Supplier's liability under this indemnity shall be reduced in proportion to the percentage by which the Host Indemnified Parties negligence or intentional misconduct caused the damages.

17.1.2 any failure on the part of Supplier or any of its agents, contractors, subcontractors, servants, employees, lessees or invitees in, on or about the Premises to fully comply with the Applicable Law.

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 **Indemnification of Supplier.** To the extent permitted by law, Host shall indemnify, defend (at Supplier's option) and hold harmless Supplier and its employees from and against any and all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees 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 of Host, its employees, agents, or subcontractors. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Supplier but Host's liability under this indemnity shall be reduced in proportion to the percentage by which the Supplier's negligence or intentional misconduct caused the damages.

17.3 **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.

*[Remainder of Page Intentionally Left Blank]*

**EXHIBIT A**

**INTENTIONALLY DELETED**

**EXHIBIT B**

**INTENTIONALLY DELETED**

## EXHIBIT C

### DESCRIPTION OF SYSTEM

The System Description below is based on the proposed System. The final System description shall be the Final Drawings.

#### Proposed and Preliminary Description of System

##### **Solar PV Panels:**

1. Manufacturer: LG Electronics
2. Model Number: LG255-S1C
3. Module Wattage: 255W
4. Panel Count: 6,216
5. Type: Monocrystalline Modules
6. Array tilt: 25 degrees from horizontal and oriented due south.
7. Warranty Information: Free from defects in materials and workmanship for 5 years, 90% production through year 12, and 80% production through year 25

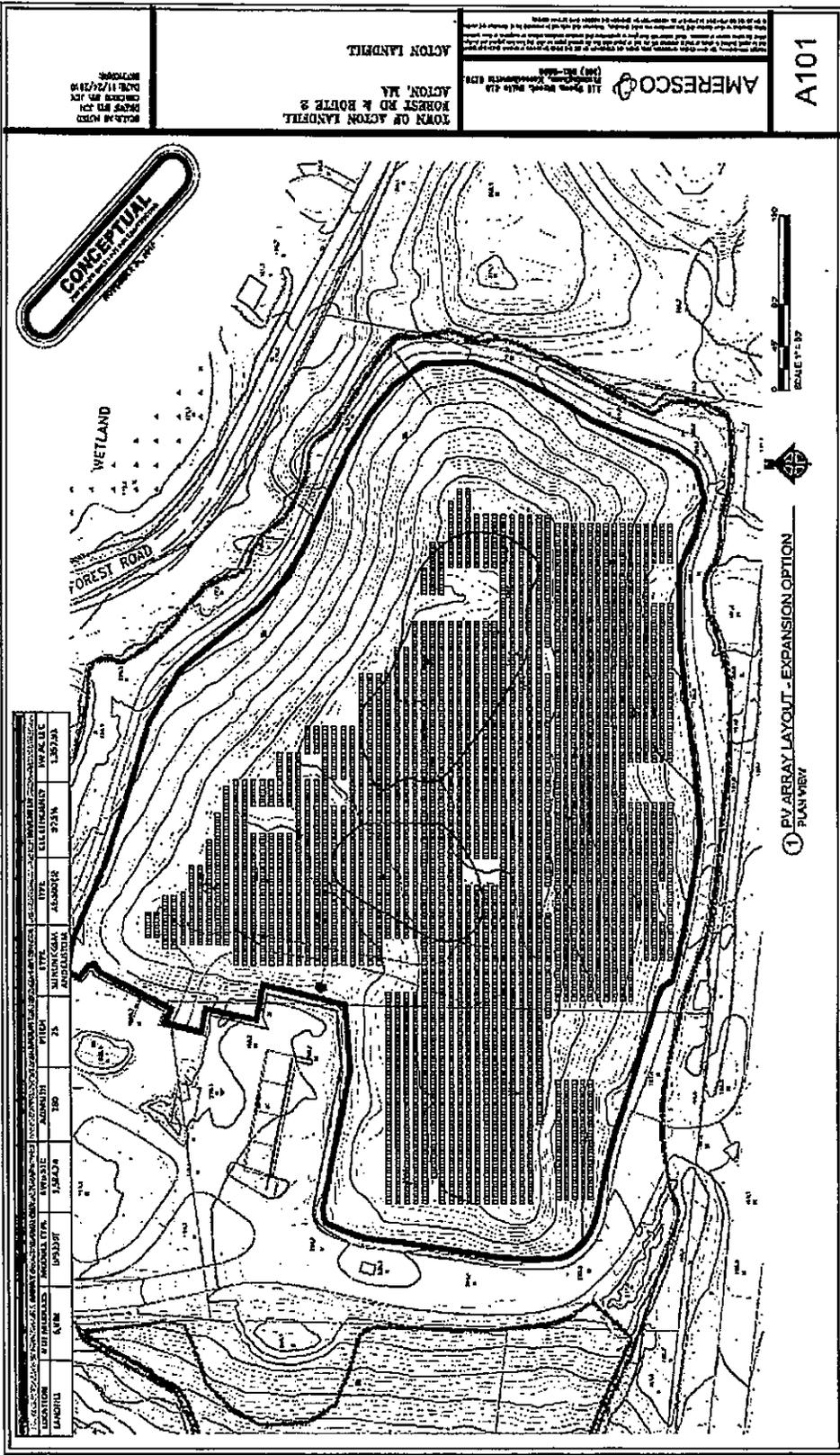
##### **Inverters:**

1. Manufacturer: Advanced Energy
2. Model Number: Solaron 500 kW PV Inverter
3. Number and size to be installed: (3) 500 kW inverters
4. String size and Quantity: Option B - 14 panels per string with 444 total strings.
5. Warranty Information: 20 year warranty

##### **Mounting System**

Sunlink Ground Mount System (GMS) and Custom Design: Both ballasted using concrete ballast blocks with no penetrations to the landfill cap.

A preliminary general layout of the System is shown on the following page.



PROPERTY	OWNER	ADDRESS	ADJACENT	PITCH	TYPE	AREA	DATE
1	1500000	1500000	1500000	1500000	1500000	1500000	1500000
2	1500000	1500000	1500000	1500000	1500000	1500000	1500000
3	1500000	1500000	1500000	1500000	1500000	1500000	1500000
4	1500000	1500000	1500000	1500000	1500000	1500000	1500000
5	1500000	1500000	1500000	1500000	1500000	1500000	1500000
6	1500000	1500000	1500000	1500000	1500000	1500000	1500000
7	1500000	1500000	1500000	1500000	1500000	1500000	1500000
8	1500000	1500000	1500000	1500000	1500000	1500000	1500000
9	1500000	1500000	1500000	1500000	1500000	1500000	1500000
10	1500000	1500000	1500000	1500000	1500000	1500000	1500000

**CONCEPTUAL**  
 LAYOUT  
 FOR THE  
 EXPANSION OF THE  
 SOLAR PANEL ARRAY

**TOWN OF ACTON LANDFILL**  
**ACTON, MA**  
**ROBERT RD & ROUTE 2**

**AMERESCO**  
 111 Green Woods, Suite 410  
 (508) 885-1000  
 1275  
 01915

**A101**

**EXHIBIT D**

**PRICE; GUARANTEED PRODUCTION**

**PRICE**

<i>Start Rate (\$/kWh)</i>	0.1048
<i>Annual Rate Escalator</i>	0%
<i>Initial Term</i>	20
<b><i>Year</i></b>	<b><i>Rate/kWh</i></b>
<b>1</b>	0.1048
<b>2</b>	0.1048
<b>3</b>	0.1048
<b>4</b>	0.1048
<b>5</b>	0.1048
<b>6</b>	0.1048
<b>7</b>	0.1048
<b>8</b>	0.1048
<b>9</b>	0.1048
<b>10</b>	0.1048
<b>11</b>	0.1048
<b>12</b>	0.1048
<b>13</b>	0.1048
<b>14</b>	0.1048
<b>15</b>	0.1048
<b>16</b>	0.1048
<b>17</b>	0.1048
<b>18</b>	0.1048
<b>19</b>	0.1048
<b>20</b>	0.1048

**Guarantee Amount:** Beginning with Contract Year 1, Supplier guarantees 85 % of the Estimated First Year's Solar PV Production set forth below. Each succeeding Contract Year's "Guarantee Amount" listed below shall be reduced by the Annual System Degradation Factor of 0.5%, as shown below:

<b>Guarantee Amount</b>	
<b>Estimated First Year's Solar PV Production</b>	<b>2,020,393</b>
<b>Guarantee Percentage</b>	<b>85%</b>
<b>Annual System Degradation Factor</b>	<b>0.5%</b>
<b>Contract Year</b>	<b>Guarantee Amount (kWh)</b>
<b>1</b>	1,717,334
<b>2</b>	1,708,747
<b>3</b>	1,700,204
<b>4</b>	1,691,703
<b>5</b>	1,683,244
<b>6</b>	1,674,828
<b>7</b>	1,666,454
<b>8</b>	1,658,121
<b>9</b>	1,649,831
<b>10</b>	1,641,582
<b>11</b>	1,633,374
<b>12</b>	1,625,207
<b>13</b>	1,617,081
<b>14</b>	1,608,996
<b>15</b>	1,600,951
<b>16</b>	1,592,946
<b>17</b>	1,584,981
<b>18</b>	1,577,056
<b>19</b>	1,569,171
<b>20</b>	1,561,325

**EXHIBIT E**

**DESCRIPTION OF PREMISES**

Acton Landfill located at Forest Road and Route 2 in Acton, MA. An aerial view of the Landfill is shown on the following page.

The Premises are located on the former site of the Town of Acton, MA landfill. The Landfill was capped in 1988, under the requirements of the Massachusetts Department of Environmental Protection at the time the cap was constructed. The cap was designed by the Town of Acton.

Attached behind is the Release Deed recorded at Middlesex South Registry of Deeds in Book 11701, Page 501 which contains a legal description of the Premises.

PH

V

RELEASE DEED

LINDA S. BURSAW of Acton, Middlesex County, Massachusetts in consideration of the payment of Eighty Thousand (\$80,000) Dollars, receipt of which is hereby acknowledged, grants to the TOWN OF ACTON, a municipal corporation, all of the Releasor's right, title and interest in and to a parcel of land consisting of approximately <sup>14.88</sup>~~10.63~~ acres situated on Route Two and Forest Road in Acton, being shown on a plan entitled "Plan of Land in Acton, Mass. Owned by Edward J. Bursaw Pauline W. Bursaw" dated December 14, 1965, by Harlan E. Tuttle, Surveyor, recorded with Middlesex South District Deeds as Plan No. 544, of 1969, and being further bounded and described as follows:

Beginning at a point on the northerly sideline of the 1950 layout of a State Highway called Route 2 and 432.33 feet west of a Massachusetts Highway Bound, thence running;

- N 82° 54' 29" W along the northerly sideline of the aforementioned Route 2 for a distance of 629.97 feet, thence.
- N 01° 07' 35" E along property of the Town of Acton 623.83 feet, to a stone bound, thence
- S 81° 40' 50" W along property of the Town of Acton for a distance of 334.01 feet to a stone bound, thence
- N 01° 18' 39" W along property of the Commonwealth of Massachusetts for a distance of 531.25 feet to a heap of stones, thence
- N 46° 56' 12" E along property of Almond M. and Irma R. Tewksbury for a distance of 400.63 feet to a point on the westerly side of Forest Road, thence
- Southeasterly along a curve of 789.64 feet radius by the westerly side of Forest Road for a distance of 305.81 feet, thence
- Southeasterly along a curve of 398.55 feet radius, by the westerly side of Forest Road, for a distance of 140.68 feet, thence
- Southeasterly along a curve of 1322.64 feet radius by the westerly side of Forest Road for a distance of 187.67 feet, thence

S 16° 25' 00" E along the westerly side of Forest Road for a distance of 212.00 feet, thence

Southeasterly along a curve of 320.26 feet radius by the side of Forest Road for a distance of 251.19 feet, thence

S 61° 21' 20" E by the side of Forest Road for a distance of 170.97 feet, thence

S 10° 00' 22" W along property of Donald B. and Ruth A. Jackson, for a distance of 85.95 feet, thence

Along a stone wall by the property of Donald B. and Ruth A. Jackson in the following courses and distances:

S 08° 54' 19" W for a distance of 37.91 feet, thence

S 10° 38' 49" W for a distance of 74.65 feet, thence

S 11° 16' 12" W for a distance of 133.46 feet, thence

S 11° 41' 58" W for a distance of 81.89 feet, thence

S 10° 04' 27" W for a distance of 115.90 feet, to the point of beginning.

Together with all of the Releasor's right, title and interest in and to all rights of way, easements and other rights of record or otherwise which are appurtenant to the above described land.

Meaning and intending to convey to the Releasee all of the Releasor's right, title and interest in and to the premises described in a certain Order of Taking adopted by the Selectmen of the Town of Acton dated May 20, 1969 and recorded with said Deeds, Book 11687, Page 313, and the Releasor hereby accepts the above named consideration in full satisfaction and discharge of all the Releasor's claims and demands against the Releasee for damages, costs, expenses or compensation for, on account of or in any way arising out of said taking.

Witness the execution hereof under seal this 27th day  
of June, 1969.

Linda S. Bursaw  
Linda S. Bursaw

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June 27, 1969.

Then personally appeared the above named Linda S. Bursaw  
and acknowledged the foregoing instrument to be her free act  
and deed, before me,

Demetrius E. Boatman  
Notary Public

My Commission Expires: 7-23-71





(A0144723.1 022)

**EXHIBIT F**  
**Host Termination Payment**

<b>Acton Landfill</b>		
<b>Termination Values</b>		
<b>Early Termination Occurs in Year:</b>	<b>Termination Value Excluding Cost of Removal</b>	<b>Termination Value Including Cost of Removal</b>
<b>1</b>	\$ 9,137,272	\$ 9,707,584
<b>2</b>	\$ 8,372,525	\$ 8,948,541
<b>3</b>	\$ 7,747,746	\$ 8,329,522
<b>4</b>	\$ 6,991,608	\$ 7,579,201
<b>5</b>	\$ 6,238,357	\$ 6,831,826
<b>6</b>	\$ 5,358,624	\$ 5,958,028
<b>7</b>	\$ 2,361,700	\$ 2,967,097
<b>8</b>	\$ 1,905,096	\$ 2,516,548
<b>9</b>	\$ 1,407,516	\$ 2,025,083
<b>10</b>	\$ 864,791	\$ 1,488,533
<b>11</b>	\$ 810,192	\$ 1,440,171
<b>12</b>	\$ 752,039	\$ 1,388,318
<b>13</b>	\$ 690,048	\$ 1,332,690
<b>14</b>	\$ 623,776	\$ 1,272,844
<b>15</b>	\$ 552,865	\$ 1,208,424
<b>16</b>	\$ 476,794	\$ 1,138,909
<b>17</b>	\$ 395,119	\$ 1,063,854
<b>18</b>	\$ 307,219	\$ 982,643
<b>19</b>	\$ 212,547	\$ 894,724
<b>20</b>	\$ 110,366	\$ 799,365

**EXHIBIT G  
SUPPLIER TERMINATION PAYMENT**

If Host is entitled to a Supplier Termination Payment, then such Supplier Termination Payment shall be in an amount not to exceed the then present value (discounted at the prevailing prime rate of interest as published in The Wall Street Journal on the day preceding the date of determination) of the cash flows equal to the product of: (i) the positive difference, if any, of the LDC retail rate minus the Supplier kWh Rate at the time of calculation, multiplied by (ii) the number of days remaining in the Term times the expected daily amount of electricity measured in kWh to be delivered under this Agreement, calculated by dividing the Contract Capacity of the System in the first twelve (12) month period from and after the Commercial Operation Date of the System by 365, as shown in the table below. "Contract Capacity" means the Guarantee Amount (in kWh) as adjusted by the Annual System Degradation Factor. In no case shall the result of the amount in clause (i) above exceed five cents (\$0.05) per kWh in calculation of the Supplier Termination Payment.

SUPPLIER TERMINATION PAYMENT EXAMPLE CALCULATION	
Price for commercial available electricity at time of Termination:	
Electricity Price per Exhibit C:	
Difference for this example (\$/kWh)*:	\$ 0.05
Example Prime Rate:	3.25%

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 Seller Termination Payment
1	365	1,717,334	4,705.02	\$ 85,867	\$ 1,197,197
2	365	1,708,747	4,681.50	\$ 85,437	\$ 1,150,239
3	365	1,700,204	4,658.09	\$ 85,010	\$ 1,102,185
4	365	1,691,703	4,634.80	\$ 84,585	\$ 1,052,995
5	365	1,683,244	4,611.63	\$ 84,162	\$ 1,002,633
6	365	1,674,828	4,588.57	\$ 83,741	\$ 951,056
7	365	1,666,454	4,565.63	\$ 83,323	\$ 898,224
8	365	1,658,121	4,542.80	\$ 82,906	\$ 844,094
9	365	1,649,831	4,520.08	\$ 82,492	\$ 788,621
10	365	1,641,582	4,497.48	\$ 82,079	\$ 731,759
11	365	1,633,374	4,475.00	\$ 81,669	\$ 673,462
12	365	1,625,207	4,452.62	\$ 81,260	\$ 613,681
13	365	1,617,081	4,430.36	\$ 80,854	\$ 552,365
14	365	1,608,996	4,408.21	\$ 80,450	\$ 489,463
15	365	1,600,951	4,386.17	\$ 80,048	\$ 424,921
16	365	1,592,946	4,364.23	\$ 79,647	\$ 358,683
17	365	1,584,981	4,342.41	\$ 79,249	\$ 290,693
18	365	1,577,056	4,320.70	\$ 78,853	\$ 220,892
19	365	1,569,171	4,299.10	\$ 78,459	\$ 149,218
20	365	1,561,325	4,277.60	\$ 78,066	\$ 75,609

**Examples at the price difference shown above:**

1) Developer Termination Payment after Year 9 (January 1 of year 10) equals:	\$ 731,759
2) Developer Termination Payment after day 240 in year 14 (125 days remaining in year) equals:	\$ 438,230
3) Developer Termination Payment after Year 14 (January 1 of year 15) equals:	\$ 424,921

**APPENDIX A: SYSTEM OF ASSURANCE OF NET METERING ELIGIBILITY**

Sections

1.	Purpose .....	1
2.	Scope .....	1
3.	Definitions.....	1
4.	Obtaining a Cap Allocation .....	3
5.	Duties of the Administrator and Fees .....	5
6.	Reporting Requirements .....	7
7.	Reservation Periods.....	8
8.	Impact of Facility Changes.....	10
9.	Information Disclosure, Verification, and Host Customer Reporting .....	11
10.	Dispute Resolution.....	11
11.	Small Class I Net Metering Facilities .....	12
12.	Miscellaneous.....	12

1. Purpose

The system of assurance of Net Metering eligibility set forth herein provides prospective Host Customers with an assurance that they will be eligible to receive Net Metering Services under 220 C.M.R. § 18.00 et seq. when they interconnect their Facility. The Department is authorized to develop a system of assurance of Net Metering eligibility, pursuant to St. 2010, c. 359, § 30.

2. Scope

This system of assurance of Net Metering eligibility applies to: (1) Distribution Companies; and (2) Host Customers of Facilities. This is a voluntary process available to all Host Customers, and it is not a prerequisite to receiving Net Metering Services.

3. Definitions

The terms "Agricultural Net Metering Facility," "Class I Net Metering Facility," "Class II Net Metering Facility," "Class III Net Metering Facility," "Customer," "Neighborhood Net Metering Facility," "Net Metering," "Solar Net Metering Facility," and "Wind Net Metering Facility" shall be defined as set forth in G.L. c. 164, § 138. The term "Distribution Company" shall be defined as set forth in 220 C.M.R. § 18.02. Additional terms shall be defined as follows:

Administrator means the qualified person or entity selected by the Department to oversee the process for assurance of Net Metering Services.

Application means the prescribed form containing the information (and including supporting documentation and Certification) necessary to determine eligibility to a Cap Allocation or a position on the Waiting List pursuant to Section 4.

Business Day means a day that is not a Saturday, a Sunday, or a public holiday as observed by the Commonwealth of Massachusetts.

Cap Allocation means an assurance that a Host Customer will receive Net Metering Services upon a Host Customer's receipt of notice of authorization to interconnect.

Certification means a written statement based on knowledge, information, and belief that the relevant claims are true.

Department means the Department of Public Utilities.

Effective Date means the date on which this system of assurance for Net Metering shall first apply as determined by the Department.

Facility means a plant or equipment eligible to become a Class I, II, or III Net Metering Facility.

Host Customer means a Customer with a Class I, II, or III Net Metering Facility that generates electricity on the Customer's side of the meter. Host Customer includes a prospective Host Customer.

Interconnection Service Agreement means the agreement for interconnection service entered into between an interconnecting customer and a Distribution Company, as provided in each Distribution Company's Standards For Interconnection of Distributed Generation.

Net Metering Services means services provided by a Distribution Company to Customers and Host Customers necessary to permit Net Metering, including those related to interconnection, metering, and calculation and billing of Net Metering credits, as specified in the Distribution Company's tariff pursuant to 220 C.M.R. §§ 18.09(2) and (3).

Private Cap means the limit on Net Metering capacity of Facilities that are not covered by the Public Cap, pursuant to St. 2010, c. 359, §§ 27 and 29.

Public Cap means the limit on Net Metering capacity of Public Facilities, pursuant to St. 2010, c. 359, §§ 27 and 29.

Public Facility means a Class II or III Net Metering Facility: (1) that is owned or operated by a municipality or other governmental entity; or (2) of which the municipality or other governmental entity (a) is assigned 100 percent of the output;

(b) is the Host Customer; and (c) if allocating Net Metering credits, allocates only to its own accounts.

Reservation Period means the period for which a Host Customer is entitled to an assurance of Net Metering Services prior to a Facility's receipt of notice of authorization to interconnect.

Small Class I Net Metering Facility means a Class I Net Metering Facility that qualifies for the Simplified Interconnection Process as defined in each Distribution Company's interconnection tariff.

Special Public Facility means a Public Facility for which: (1) the municipality or other governmental entity owns and operates the Facility; and (2) the Facility is located on property that is owned or leased by the municipality or other governmental entity.

Waiting List means a list of Host Customers that would receive a Cap Allocation if there were capacity under the applicable cap, and that may receive a Cap Allocation if capacity becomes available under the applicable cap.

4. Obtaining a Cap Allocation

(A) Transitional Period from Effective Date

If a Facility will interconnect within 90 days of the Effective Date, a Host Customer may be granted a Cap Allocation, provided that the Host Customer: (1) contacts the Administrator within ten Business Days of the Effective Date and identifies the capacity and the type of its Facility as well as whether it would qualify under the Public Cap or the Private Cap; and (2) receives notice of authorization to interconnect within 90 days of the Effective Date. Cap Allocations granted under this section will remain subject to the provisions of Sections 6 and 9. Alternatively, any Host Customer may submit an Application under the provisions of Sections 4(B), 4(C), or 4(D) to seek a Cap Allocation.

(B) Application for a Cap Allocation

Except as provided in Sections 4(A) and 4(D), to receive a Cap Allocation, a Host Customer must submit an Application to the Administrator. Applications shall be submitted to the Administrator only via electronic mail. The date the Administrator receives an Application shall be its "Submission Date." The Application shall include, among other details, a Certification and supporting documentation to establish that the Host Customer has, with respect to the Facility:

- (i) an executed Interconnection Service Agreement, as tendered by the Distribution Company;
- (ii) adequate site control (a sufficient interest in real estate or other contractual right to build the Facility at the location specified in the Interconnection Service Agreement); and
- (iii) except as provided in Sections 4(D) and 7(A)(ii), all necessary governmental permits and approvals to construct the Facility with the exception of ministerial permits, such as a building permit, and notwithstanding any pending legal challenge(s) to one or more permits or approvals.

All Applications shall be accompanied by an application fee, as set forth in Section 5(D).

(C) Cap Allocation under the Public Cap

In addition to the provisions of Section 4(B), a Host Customer who seeks a Cap Allocation under the Public Cap shall submit a Certification and supporting documentation to establish that the Facility is a Public Facility. Evidence of public ownership or operation shall consist of proof that the appropriate authorization has been obtained (e.g., town meeting vote, approval from governing body) for proceeding with a publicly owned or operated Facility. Evidence of 100 percent assignment of output shall consist of a power purchase agreement or other comparable documentation. Evidence that the Host Customer is a governmental entity and will properly allocate Net Metering credits shall consist of Schedule Z of the interconnection application and the executed Interconnection Service Agreement.

(D) Exception for Special Public Facilities

Notwithstanding the provisions of Section 4(B)(iii), a Special Public Facility need not have all governmental permits and approvals before submitting an Application, receiving a Cap Allocation, or receiving a position on the Waiting List. As provided in Section 7(A)(ii), Special Public Facilities must submit all governmental permits and approvals to the Administrator within nine months of being granted a Cap Allocation.

(E) Loss of Cap Allocation or Position on the Waiting List

A Host Customer shall lose a Cap Allocation or place on the Waiting List if it: (1) fails to meet applicable deadlines; (2) makes any changes identified in Section 8(B); (3) submits an Application that contains material misrepresentations; or (4) fails to comply with the verification requirements of Section 9(B).

5. Duties of the Administrator and Fees

(A) General Duties

The Administrator shall have such duties as the Department establishes. All notifications, reports, and documents shall be provided in a form prescribed by the Administrator.

(B) Monitoring and Reporting on Capacity

Each Business Day, the Administrator shall calculate the remaining available capacity under each of the Public and Private Caps for each Distribution Company as the difference between: (1) the capacity of the applicable cap; and (2) the sum of: (a) the aggregate capacity of all Host Customers receiving Net Metering Services, as reported by each Distribution Company each day; (b) the capacity of Host Customers that have been granted a Cap Allocation; and (c) for the Private Cap only, the ten percent of the available capacity reserved for Host Customers with Small Class I Net Metering Facilities, pursuant to Section 11.

To calculate capacity, a Solar Net Metering Facility's capacity shall be 80 percent of the Facility's direct current rating at standard test conditions, and all other Facilities shall be the alternating current nameplate rating.

Each Business Day, the Administrator shall post on a publicly accessible website the remaining available capacity.

(C) Processing Applications

The Administrator shall prioritize complete Applications on a first-come, first-served basis, according to their Submission Date and time. If multiple Applications are received at the same minute, the Administrator shall examine the seconds to determine priority.

The Administrator shall notify the Host Customer: (1) within two Business Days of the Submission Date that the Application was received; and (2) within 15 Business Days of the Submission Date whether the Application is complete or incomplete.

If the Application is complete, the Administrator shall notify the Host Customer of a grant of a Cap Allocation or a position on the Waiting List. The Administrator's notification that an Application is complete does not relieve the Host Customer of the obligations in Sections 6 and 9.

If the Application is incomplete, the Administrator shall notify the Host Customer of the deficiency and the Host Customer may resubmit the Application, which will be deemed a new Application.

The Administrator shall maintain a Waiting List for Host Customers that have applied for a Cap Allocation and been denied a Cap Allocation solely because the Administrator has determined, pursuant to Section 5(B), that no additional capacity is available under the applicable cap.

The Administrator shall notify the Host Customer in writing as soon as is practicable of the Host Customer's loss of its Cap Allocation or place on the Waiting List pursuant to Section 4(E).

(D) Application Fees

The Host Customer must submit a \$XX non-refundable application fee for the Administrator to deem an Application complete.

(E) Reservation Fees

Except as provided in Section 11, no more than 15 Business Days after receipt of notice that an Application is complete, the Host Customer must submit to the Administrator a non-refundable reservation fee of \$XX per kilowatt ("kW") based on the capacity of the Facility. If the Host Customer does not submit the full amount of a reservation fee within 15 Business Days, the Host Customer will forfeit the Cap Allocation and any fees already submitted.

(F) Waiting List

If there is insufficient capacity to accommodate a complete Application for a Cap Allocation, the Administrator shall add the Host Customer to the Waiting List for the applicable Cap. Priority on the Waiting List shall be based on the date and time that the Administrator receives a complete Application.

As Net Metering capacity becomes available (e.g., as a result of an increase to a Distribution Company's peak load, loss of a Cap Allocation, legislative changes, etc.), the Administrator shall offer it to Host Customers on the applicable Waiting List, in order of priority. If the Net Metering capacity offered to a Host Customer on the Waiting List is equal to or more than the amount sought in an Application, the Host Customer may accept the offer and must submit any fees required by Section 5(E). If the Host Customer does not accept the Cap Allocation offered or does not submit all fees within 15 Business Days of the offer, the Administrator shall deem the Application withdrawn, and the Net Metering capacity will be offered to the next Host Customer on the Waiting List.

If the amount of Net Metering capacity offered to a Host Customer is less than the amount sought in an Application, the Host Customer may: (1) accept the offer of a reduced Cap Allocation as provided in Section 8(A)(iv), and submit any fees required by Section 5(E); (2) accept the offer, submit any fees required by Section 5(E), hold the Cap Allocation, and remain on the Waiting List for additional Net Metering capacity; or (3) decline the offer and remain on the Waiting List, while the Net Metering capacity is offered to the next Host Customer on the Waiting List. Reservation periods established under Section 7 shall not begin until a Host Customer has accepted a partial Cap Allocation or received 100 percent of the Cap Allocation requested.

6. Reporting Requirements

(A) Distribution Companies

Each Business Day, each Distribution Company shall report to the Administrator the aggregate capacity of all Host Customers receiving Net Metering Services.

(B) Host Customers

Each Host Customer with a Cap Allocation, or a position on the Waiting List shall submit to the Administrator a quarterly report of its Facility's status indicating either: (1) no change; or (2) changed, with a description of the change.

Such report is due by the last day of each calendar quarter until the end of the quarter in which: (1) the Facility receives notice of authorization to interconnect from the Distribution Company; or (2) a Host Customer no longer has a Cap Allocation or position on the Waiting List.

A Host Customer shall notify the Administrator when its Facility is interconnected. Thereafter, a Host Customer shall report semiannually to the Distribution Company any changes to the Facility's Net Metering capacity.

7. Reservation Periods

(A) Initial Reservation Period

(i) Initial Reservation Period

The Initial Reservation Period begins when: (1) the Administrator notifies the Host Customer of a Cap Allocation that, together with any prior Cap Allocation for a Facility, provides a Cap Allocation equal to the capacity requested by the Host Customer for the Facility; and (2) the Host Customer has submitted all applicable fees under Section 5(E).

The Initial Reservation Period shall be 18 months for Wind Net Metering Facilities and Agricultural Net Metering Facilities, and nine months for Solar Net Metering Facilities and all other net metering facilities.

(ii) Exception for Special Public Facilities

The Initial Reservation Period shall be 27 months for Special Public Wind Facilities and 18 months for Special Public Solar Facilities, provided that the Host Customer obtains all governmental permits and approvals as provided in Sections 4(B) and 4(D) within nine months of the Cap Allocation.

(iii) Request for Extensions

No later than 30 calendar days before the end of the Initial Reservation Period, a Host Customer may request that the Administrator grant an Extended Reservation Period as provided in Section 7(B). The Administrator shall review and respond within 15 Business Days to any Host Customer's request for an extension of the Reservation Period. At the end of the Reservation Period, including the initial Reservation Period and all applicable extensions, the Reservation Period shall automatically expire without further action or notice by the Administrator.

(B) Extended Reservation Periods and Fees

(i) Extended Reservation Period

As provided in Sections 7(B)(ii) and 7(B)(iii), if granted by the Administrator, an Extended Reservation Period begins the first day after the end of the Initial Reservation Period or another extension, provided that the Host Customer has already submitted any applicable fees under this section and has not previously sought the same Extended Reservation Period for the Facility's Cap Allocation.

(ii) Extended Reservation Period for Legal Challenges

Any Host Customer may seek an Extended Reservation Period of up to six months if the Host Customer submits a Certification that a governmental permit or approval for the Facility was subject to a legal challenge during the initial Reservation Period, and the legal challenge remains pending. There is no fee for an extension under this provision.

(iii) Extended Reservation Period for a Fee

A Host Customer with a Cap Allocation may seek an additional Extended Reservation Period for up to six months provided that such Host Customer has submitted a fee of \$XX per kW.

The fee shall be held in escrow by the Administrator and refunded to the Host Customer without interest, provided that the Facility receives notice of authorization to interconnect within six months. The Host Customer shall forfeit the fee if: (1) the Facility does not receive notice of authorization to interconnect within six months; or (2) the Host Customer fails to comply with the requirements of Section 9.

Host Customers with Small Class I Net Metering Facilities shall be exempt from the fee.

(iv) Extended Reservation Period Pending Authorization to Interconnect

When a Facility's interconnection depends only upon receipt of notice of authorization to interconnect, the Reservation Period shall be extended until such notice is received or denied.

8. Impact of Facility Changes

(A) Permissible Changes

The following changes will not invalidate an Application, a Cap Allocation, or a position on the Waiting List:

- (i) A change of the Host Customer and related contact information. Both the Host Customer with the Cap Allocation and the new Host Customer must notify the Administrator of such a change and revise the Application.
- (ii) A change to the Facility ownership and related contact information. The Host Customer shall notify the Administrator of such change and revise the Application.
- (iii) A change in a Host Customer's equipment (e.g., manufacturer, brand, etc.), as long as the change does not invalidate the executed Interconnection Service Agreement with the Distribution Company.
- (iv) A reduction in the amount of Net Metering capacity required. The Host Customer shall notify the Administrator of such a reduction. Based on such notification, the Administrator shall revise the amount of capacity applicable to the Application, a Cap Allocation, or the Waiting List.
- (v) An increase in the amount of capacity included in an Application or Cap Allocation if there is available capacity under the applicable cap and no other Host Customer is on the applicable Waiting List. A Host Customer who requests an increased Cap Allocation must submit the same Certifications required in Section 4 with respect to the additional capacity.

(B) Prohibited Changes

The Host Customer shall report to the Administrator any of the following changes, which will invalidate an Application, a Cap Allocation, and a place on the Waiting List:

- (i) Changes to a Facility that require a Cap Allocation under a different cap (i.e., Public to Private Cap or vice-versa).
- (ii) Changes to the type of technology (e.g., a Solar Net Metering Facility seeks to become a Wind Net Metering Facility).
- (iii) Relocation of the Facility to a non-contiguous property.

As a result of any such changes, the Application will be deemed to have been withdrawn by the Host Customer and the Host Customer must submit a new Application.

9. Information Disclosure, Verification, and Host Customer Reporting

(A) Information Disclosure

The Administrator shall make available on a publicly accessible website an Application and all supporting documentation submitted by a Host Customer except for: (1) an executed Interconnection Service Agreement; and (2) a demonstration of adequate site control. If any documents related to either of the exceptions are otherwise publicly available, the Host Customer must notify the Administrator, and the Administrator shall make such documents available on the publicly accessible website.

(B) Verification

The Host Customer agrees to provide, at any time and without cause, copies of any documents deemed by the Administrator as reasonably necessary to confirm the facts related to a Certification or to investigate any allegation of fraud or misrepresentation in an Application. The Host Customer shall provide the Administrator with any requested documents within ten Business Days of a request.

The Administrator shall retain copies of all documents submitted in connection with an Application for three years from the date an Application is submitted.

10. Dispute Resolution

(A) Informal Resolution

A party aggrieved by actions taken under this system of assurance of Net Metering eligibility may submit a request to the Administrator to resolve a dispute. The Administrator and affected parties shall make a good faith attempt to resolve the dispute informally before any party commences arbitration.

If a dispute is not resolved informally within 30 Business Days of a request, an aggrieved party may initiate arbitration.

(B) Arbitration

The Administrator shall retain a neutral and independent arbitrator to provide services under this Section. The Administrator shall post on its website the

Arbitrator's name and contact information. The party initiating arbitration shall pay the arbitrator's fees and costs.

An aggrieved party shall initiate arbitration by submitting a written request to the arbitrator, with a summary of the dispute. The Administrator shall be a party to any arbitration. Unless otherwise agreed to by the parties, the arbitrator shall render a written decision within 60 days of the initiation. The Arbitrator shall establish the procedures for the arbitration.

A party aggrieved by the arbitrator's decision may petition the Department for an adjudicatory proceeding under G.L. c. 30A.

11. Small Class I Net Metering Facilities

As of the Effective Date, ten percent of the available capacity under the Private Cap shall be reserved for Host Customers with Small Class I Net Metering Facilities. Such Host Customers shall be exempt from the fees required by Sections 5(E) and 7(B). If a Host Customer with a Small Class I Net Metering Facility does not submit an Application, it will not receive a Cap Allocation or a place on the Waiting List, but it will be eligible for Net Metering Services upon receiving notice of authorization to interconnect if there is sufficient capacity within either the ten percent reservation amount or within the remainder of the Private Cap. If there is insufficient capacity upon a Host Customer's receiving notice of authorization to interconnect, the Host Customer of a Small Class I Net Metering Facility shall be assigned a position on the Waiting List by the Administrator upon the Host Customer's request. Nothing in this section shall limit the aggregate capacity available to Small Class I Net Metering Facilities.

12. Miscellaneous

The Department may permit an exception from any provision of the system of assurance of Net Metering eligibility for good cause.

## SOLAR LEASE AGREEMENT

THIS SOLAR LEASE AGREEMENT ("*Agreement*") is made and entered into as of the date this Agreement is executed by the Town of Acton (the "*Effective Date*"), by and between the Town of Acton, a municipality of the Commonwealth of Massachusetts ("*Lessor*") and Ameresco Solar Acton LLC, a Delaware limited liability company ("*Lessee*"). Lessor and Lessee are sometimes hereinafter referred to individually as a "*Party*" and collectively as the "*Parties*."

### SECTION 1.

#### DEFINED TERMS; RULES OF INTERPRETATION

Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement, or as otherwise set forth below:

"*Agreement*" means this Solar Lease Agreement, including all Exhibits and attachments hereto.

"*Applicable Legal Requirements*" 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 or the System, or any part thereof or to any condition or use thereof, and all licenses, permits and other governmental consents which are or may be required for the use and occupancy of the Premises for the installation, operation, maintenance and removal of the System.

"*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 Legal Requirements 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 each applicable calendar month; 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 System installed under this Agreement.

**"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

**"Commercial Operation"** means that the System is ready for regular, daily operation, has been connected to the LDC System, has undergone testing that shows that the System is capable of delivering electricity generated by the System for eight (8) continuous hours using such instruments and meters as have been installed for such purposes and is in compliance with Applicable Legal Requirements in all respects.

**"Commercial Operation Date"** means the date specified in the Completion Notice delivered pursuant to Section 5.4.3 of the PPA.

**"Completion Notice"** means the written notice delivered by the Lessee to the Lessor pursuant to Section 5.4.3 of the PPA that the System has achieved Commercial Operation, and accompanied by a copy of the results of the System acceptance testing.

**"Construction Commencement Date"** means the date when Lessee commences construction of the System, which shall include at a minimum the deployment of equipment and the commencement of site preparation work on the Lease Area.

**"Contract Year"** means each consecutive 12-month period commencing on the Commercial Operation Date.

**"Commercial Operation Date"** means the date specified in the Completion Notice.

**"Decommissioning Assurance"** means an amount equal to \$417,059 to fully cover the cost of decommissioning the System and restoring the Premises as specified in this Agreement.

**"Delivery Point"** means the point at which the System is interconnected to Lessor's intertie with the Local Distribution Company on the Host's side of the Local Distribution Company's electric meter.

**"Early Termination Price"** means, for the applicable Contract Year, either (i) the amount listed on Exhibit D, attached hereto or (ii) the Fair Market Value of the System on an installed and running, or going-concern basis, as determined in accordance with Section 7.1, whichever amount is greater.

**"Effective Date"** is the date first set forth in the introductory paragraph of this Agreement.

**"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) or the laws, rules and standards of the United Nations Framework Convention on Climate Change or the Kyoto Protocol or the UNFCCC or crediting "early action" with a view thereto.

**"Events of Default"** has the meaning set forth in Section 11.

**"Final Drawings"** means the final stamped engineering drawings for the System, and the installation thereof at the Premises, to be prepared by Lessee at its sole cost and expense.

**"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, and is not the result of the negligence of the Claiming Party, and which by the exercise of reasonable due diligence, the Claiming Party is nonetheless unable to overcome or avoid or cause to be avoided, 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) explosion, accident or epidemic; and (d) 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 or any department, agency, bureau or other administrative, regulatory or judicial body of any such government.

**"Hazardous Materials"** 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 the Applicable Legal Requirements or in any regulations promulgated pursuant to the Applicable Legal Requirements.

**"Initial Rent"** means an annual rent amount shown in Exhibit D. Initial Rent shall be paid on a prorated basis for use of the Premises for the number of days from the Effective Date to the Commercial Operation Date as further described herein.

**"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 law. 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 Lessor and reasonably acceptable to Lessee. 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.

**"LDC"** means the regulated electric local distribution company that provides electric distribution service to the Lessor.

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

**"Lessee"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Lessor"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Lease Area"** means the area on the Premises in which Lessor grants Lessee a lease to install and operate the System, as shown on the plan attached hereto as Exhibit F.

**"PPA"** means that certain Commercial Power Purchase Agreement of even date herewith between Lessor and Lessee.

**"Premises"** means certain property owned by Lessor located at 14 Forest Road in Acton, Massachusetts. A legal description of the Premises is set forth in Exhibit E. The Premises shall include the Lease Area.

**"System"** means the solar electric generating facility installed at the Premises, including but not limited to the System Assets.

**"System Assets"** means each and all of the assets of which the System is comprised, including Lessee's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point and the LDC System, protective and associated equipment, improvements, metering devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

**"Term"** shall have the meaning set forth in Section 3.1 herein.

**"Term Rent"** means an annual rental amount equal to the amount for the applicable Contract Year set forth in Exhibit D.

**"Termination Date"** means the earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Agreement as the result of an Event of Default, and (iii) the date of termination pursuant to Section 7 herein.

## SECTION 2.

### THE PREMISES

2.1 **Premises.** Lessor, for and in consideration of the covenants and agreements on the part of Lessee contained in this Agreement, does hereby lease, grant, rent, let and demise unto Lessee, and Lessee does hereby take, accept and lease from Lessor, upon and subject to the conditions hereinafter expressed, the Lease Area on the Premises for the sole and exclusive purpose of constructing, operating, maintaining, repairing and removing the System. Lessee's use of the Lease Area is subject to all Applicable Legal Requirements. Lessor hereby grants to Lessee and its employees, contractors and invitees non-exclusive access across those portions of the Premises not contained within the Lease Area that may be reasonably necessary in connection with Lessee's performance of its obligations hereunder and for vehicular and pedestrian ingress and egress to and from the Lease Area to and from all public ways serving the Premises.

2.2 **Lessor's Duties.**

(a) Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Lease Area or the Premises, except as provided in this section below. Notwithstanding the above, the Parties agree that Lessee shall not be liable for any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date, except to the extent arising from or related to Lessee's negligence or willful misconduct.

(b) Within sixty (60) days after the Effective Date, Lessor shall remove any and all of its equipment, materials, improvements and other items that the parties agree interferes with or obstructs the design or construction of the System. A stockpile of material (so-called "Big Dig" material) in the Lease Area is included in such material to be removed by Lessor, unless Lessee provides written notice within fourteen (14) days of the Effective Date that it intends to make use of such material and requests that it remain in place.

(c) Lessor shall be responsible for the maintenance and operation of the landfill at the Premises. Lessor shall comply with any permits or approvals obtained by Lessee under this Agreement (including, without limitation, the Major Post-Closure Use Permit), from the Massachusetts Department of Environmental Resources, Massachusetts Department of Environmental Protection and any other Governmental Authority having jurisdiction over the Premises, except insofar as Lessee is assigned any such duties herein.

(d) Lessor shall be responsible for mowing the ground cover at the Premises, outside of the Lease Area, and for maintaining (including snow removal) all access existing roads, driveways and customary paths, now maintained by Lessor, to permit Lessee access to the Lease Area, and such other maintenance and snow plowing of any new access ways, proposed and designed by the Lessee, as the Parties may agree to.

(e) Lessor shall facilitate Lessee's activities, in accordance with item 11 in Exhibit H with respect to tree pruning and removal between the System and Route 2 which cause shading, including assisting Lessee in obtaining any required permits or approvals.

### 2.3 Ownership of the System.

(a) Title to System. Subject to Lessor's rights to acquire the System under Section 7 (Purchase of the System), the System, System Assets and all alterations, additions, improvements or installations made thereto by Lessee and all Lessee property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Lessee ("*Lessee Property*"). In no event shall any Lessee Property be deemed a fixture, nor shall Lessor, nor anyone claiming by, through or under Lessor (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Lessee Property at any time except as otherwise provided herein. Except as provided otherwise herein, Lessor shall have no ownership or other interest in the System or any System Assets or other equipment or personal property of Lessee installed on the Premises, and Lessee may remove all or any portion of the

System or any System Assets at any time and from time to time as further provided in the Agreement. Without limiting the generality of the foregoing, Lessor hereby waives any statutory or common law lien for rent or otherwise that it might otherwise have in or to the System and other System Assets or any portion thereof.

(b) **Security Interests in System.** Except as otherwise provided in this Agreement, Lessor acknowledges and agrees that Lessee may grant or cause to be granted to a lender a security interest in the System(s) and in Lessee's rights to payment under the Agreement, and Lessor expressly disclaims and waives any rights in the System at law or in equity pursuant to this Agreement, except as expressly provided otherwise herein. Any security interest shall be subordinate to the interest of the Lessor in the Premises and subject to the terms and conditions of this Agreement.

2.4 **Intentionally Deleted.**

2.5 **No Additional Use.** Except with the prior express written consent of Lessor, Lessee shall not use the Premises for any use other than the installation, operation, maintenance, repair and removal of the System.

### SECTION 3. TERM

3.1 **Term.** The term of this Agreement (the "*Term*") shall commence on the Effective Date and shall remain in effect until 11:59 p.m. on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date, unless earlier terminated under Sections 6, 7 or 11.

3.2 **Preliminary Schedule.** Attached hereto as Exhibit B is a preliminary schedule for the design, permitting and construction of the System. Such schedule shall be updated from time to time by Lessee.

3.3 **Achievement of Commercial Operation.** Lessee shall use its best efforts to achieve the Construction Commencement Date, subject to winter weather delays, no later than 60 days after satisfactory completion of all conditions precedent in Section 3.1 of the PPA. Lessee shall not be required to commence construction during the months when the ground is frozen or anticipated to be frozen. Lessee shall use its best efforts to achieve Commercial Operation of the System within 250 days after the Construction Commencement Date, subject to winter weather delays.

### SECTION 4.

#### RENT

4.1 **Initial Rent.** From the Effective Date until the Commercial Operation Date, Lessee shall pay Lessor Initial Rent, prorated for the number of days from the Effective Date to the Commercial Operation Date. Accrued Initial Rent shall be due in one lump sum on the Commercial Operation Date or upon earlier termination of this

Agreement, whichever comes sooner, after receipt of invoice from Lessor. Following the Commercial Operation Date, the Initial Rent shall no longer be payable.

4.2 **Term Rent.** From and after the Commercial Operation Date, Lessee shall pay Lessor Term Rent for each Contract Year. Term Rent for each Contract Year shall be payable quarterly within thirty days after receipt of invoice from Lessor. The Lessor shall send Lessee invoices on or about January 1, April 1, July 1 and October 1 of each calendar year for the amount due in the immediately preceding quarter of the Contract Year. All rental payments which are not paid prior to the due date shall incur interest at the Interest Rate. The Parties acknowledge that Term Rent consists of (a) an escalating amount, which is \$6,000 in Contract Year 1, and (b) a fixed amount of \$56,980. During the Term, if the Massachusetts Legislature enacts and the Governor signs into law a statutory exemption from all or a portion of ad valorem, real or personal property taxes that is directly applicable to Lessee's ownership of the System or occupancy and use of the Lease Area, then the Term Rent shall be automatically reduced by \$28,490 (one-half of the fixed amount in (b)), in the case of a statutory exemption from 100% of such ad valorem taxes, or such lesser proportionate reduction in the case of a partial statutory exemption, such that the Lessor and Lessee share in equal amounts in the monetary relief afforded by such statutory exemption, all pro rated for any partial year in which the exemption becomes available.

4.3 Intentional Deleted.

4.4 During the Term, to the extent that tax liability for ad valorem, real and personal property taxes and assessments is attributed to the System and Lessee's occupancy and use of the Lease Area and the ownership of the System under Applicable Legal Requirements and not exempt thereunder, Lessor shall allocate all or a portion of rent payments received from Lessee to the payment of such local taxes that would otherwise be due from Lessee. Notwithstanding any local tax liability associated with the Lease Area and System, the Lessee shall not be responsible for, nor required to pay, any amount in excess of the Term Rent, and Lessor shall be responsible for, or shall reimburse Lessee for, any and all liability for local taxes in excess of the Term Rent. If Lessee pays any such local tax liability, Lessor shall reimburse Lessee within thirty days.

## SECTION 5.

### LESSEE'S DUTY TO MAINTAIN

#### 5.1 **Maintenance; Repairs.**

(a) Lessee shall take good care of the Lease Area and the System, and conduct all required maintenance and make all repairs thereto in accordance with the PPA. Lessee shall be responsible for mowing the ground cover within the Lease Area and otherwise maintaining, trimming or pruning vegetation growth at the Premises that could impede insolation of the System. Lessee shall maintain the Lease Area and manage its activities at the Premises in accordance with the requirements in Exhibit H. Except to the extent required under this Agreement, PPA and any permits and approvals

obtained by Lessee for the System (including, without limitation the Major Post-Closure Use Permit), Lessee shall have no obligation for the operation, maintenance of the landfill.

(b) Lessor shall have no duty or liability to Lessee with respect to the maintenance, repair or security of the System.

(c) Nothing in this Agreement shall limit Lessor's ability to maintain the Premises in a reasonable manner consistent with Lessor's current and past practices.

(d) Notwithstanding the foregoing in subsection (c) above, Lessor acknowledges, agrees, and accepts that activities conducted by or on behalf of Lessee on the Premises relating to the System may interfere with Lessor's maintenance of the Premises or Lessor's conduct of business thereon. Lessee agrees to take all commercially reasonable measures to minimize such interferences.

5.2 **Compliance with Laws; Professional Standards.** Lessee, at Lessee's expense, shall diligently and fully comply in all material respects with all Applicable Legal Requirements as they pertain to the occupancy of the Lease Area and conduct of Lessee's business at the Premises.

5.3 **Decommissioning Assurance.** Lessee and Lessor shall establish an escrow to be held by Lessor, unless otherwise agreed, in which Lessee shall fund the Decommissioning Assurance beginning on the first day of the sixteenth (16<sup>th</sup>) anniversary of the Commercial Operation Date at the rate of \$83,412 per year, and continuing for five years. Lessee and Lessor shall enter into an escrow agreement to establish the terms of the release of the escrow or use of the Decommissioning Assurance to be held in escrow. In any case, such escrow account, if held by Lessor, shall be kept separate from Lessor general funds.

## SECTION 6.

### DESIGN, CONSTRUCTION AND OPERATION OF PERMITTED USE

6.1 **General Description.** The System shall consist of the System Assets and the improvements described in Exhibit C of the Agreement.

6.2 **Governmental Approval.** Except as otherwise specified herein, or otherwise obtained prior to the Effective Date, Lessee will use good faith, diligent efforts to obtain at its sole cost all approvals and permits required under the Applicable Legal Requirements for Lessee's proposed use of the Premises from any Governmental Authority having jurisdiction in the matter, such permits and approvals on terms and conditions acceptable to Lessee in its sole discretion. Lessee will promptly inform Lessor of all significant developments relating to the issuance of such approvals or permits. Lessor will reasonably cooperate with Lessee in procuring such approvals; provided, however, that the parties acknowledge and agree that this Agreement does not impose an

affirmative obligation on the Lessor to issue or procure any approval or to engage in any action or inaction inconsistent with the proper exercise of the Lessor's regulatory authority. If any changes in the capacity of the proposed System, the Lessor's use of the Lease Area and Premises as described in this Lease, and the System design, as approved by the Lessor, are required by any Governmental Authority, then Lessee shall submit such changes, if any, to Lessor for its approval, which shall not be unreasonably conditioned, withheld or delayed. Lessor shall have ten calendar days in which to respond with any comments failing which, Lessor shall be deemed to have approved such changes.

6.3 **Construction Commences Promptly; Access.** (a) Lessee shall commence the design, permitting, financing, and then construction of the System promptly following the Effective Date in accordance with the Schedule in Exhibit B. Construction of the System shall comply in all material respects with the provisions of Exhibit A hereto. If Lessee does not commence the Installation Work (as defined in the PPA) within one hundred (100) days after receiving the Notice to Proceed to Construction from Lessor (as required by Section 3.1 of the PPA), then Lessor may send written notice to Lessee of its intention to terminate this Agreement and the PPA, and this Agreement and the PPA shall terminate twenty-one days after Lessee's receipt of such notice; provided, that: (i) if Lessee provides Lessor with a written notice within such twenty-one (21) day period stating that it is unable to commence the Installation Work, due to failure of a governmental body to issue a required permit or failure of the Local Distribution Company to take any actions required for interconnection of the System, (which Lessee shall describe in reasonable detail), notwithstanding Lessee's good faith and diligent efforts to cooperate with, to supply all necessary assistance to, to comply with the reasonable requirements of any such third party, and to otherwise overcome such third party impediments, this Agreement shall not terminate; or (ii) if Lessee provides Lessor with a written notice within that Installation Work will be delayed due to winter conditions, or (iii) if third party litigation seeking to prevent the commencement of Installation Work has commenced and remains unresolved by settlement or final judicial or administrative order, then this Agreement shall not terminate. In the event notice is given under item (i) or (ii) in the preceding sentence, the Parties shall meet and confer to establish a commercially-reasonable deadline for the commencement of the Installation Work.

Upon termination of this Agreement by Lessor pursuant to section 6.3(a) above, neither Party shall have any obligation or liability to the other; provided, that (i) Lessee, at its expense, shall remove any equipment or materials which Lessee has placed on the Premises; (ii) Lessee, at its expense, shall restore any portions of the Premises disturbed by Lessee to their pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement, or under the PPA, including payment of Initial Rent, prior to termination; and (iv) any provisions of this Agreement that survive the termination of this Agreement shall continue to apply notwithstanding the termination of this Agreement.

(b) Lessee shall grant Lessor, and its authorized representatives, access to and the right, but not the obligation, to observe the construction work at all times provided that neither Lessor nor its authorized representatives shall interfere with such work or use, touch or move any Supplier equipment or any System without written authorization from Lessee.

(c) Lessee and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the System, in accordance with Exhibit H and to any documents, materials and records of Lessor relating to the Premises that Lessee reasonably requests in conjunction with these activities. Lessee shall provide Lessor reasonable notice of all activities conducted by or on behalf of Lessee on the Premises relating to the System. During any such activities, Lessee, and its sub-contractors, agents, consultants and representatives shall comply with Lessor's reasonable safety and security procedures (as may be promulgated from time to time), and Lessee and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Lessor's activities.

6.4 **Performance and Payment Bond.** Lessee shall require its major subcontractors to provide payment and performance bonds in the amount of their respective contracts with Lessee. Lessee shall provide copies of such bonds to Lessor upon Lessor's request.

6.5 **Early Completion; Late Completion.**

(a) **Early Completion.** If Lessee completes the Installation Work and achieves the Commercial Operation Date in advance of the schedule in Exhibit B, rent shall be abated by \$235 for each day that the Lessee achieves such early completion.

(b) **Late Completion.** If the Commercial Operation does not occur within twenty-one (21) days the Commercial Operation Date ("**Outside Commercial Operation Date**") as established in the schedule, as updated from time to time, for any reason other than (i) Lessor's failure to perform its obligations hereunder, (ii) delays caused by winter conditions or other severe weather, as documented by Lessee to the satisfaction of Lessor, (iii) on account of Force Majeure or casualty, or (iv) third party litigation that prevents the commencement or completion of Installation Work and remains unresolved by settlement or final judicial or administrative order, then Lessor by written notice shall have the right to assess Lessee liquidated damages ("**Delay Liquidated Damages**"), in the amount of \$235 for each day of delay, in which case Lessee shall not be considered in default of this Agreement under Section 11.1. Notwithstanding the foregoing, Lessee shall not be responsible for Delay Liquidated Damages in the event that Lessee cannot satisfy Outside Commercial Operation Date because the Lessee is missing a permit, approval or Interconnection Agreement necessary to commence construction and/or Commercial Operation of the System, and Lessee is utilizing Commercially Reasonable efforts to secure such permit, approval or

Interconnection Agreement. The Parties recognize the delays, expense and difficulties involved in proving the actual losses or damages in a judicial or other proceeding, and agree that the Delay Liquidated Damages are reasonable compensation to Lessor. Payment of Delay Liquidated Damages shall be Lessor's sole and exclusive remedy for failure to achieve the Commercial Operation Date by the scheduled date; provided, that if Lessee has not achieved Commercial Operation within 180 days after the Outside Commercial Operation Date, then Lessor shall be considered in Default of this Agreement.

6.6 **Completion Requirements.** Prior to commencing construction of the System, Lessee shall provide Lessor a copy of the Final Drawings for Lessor's review and approval, not to be unreasonably withheld or conditioned. After receipt of the Final Drawings, Lessee shall have ten calendar days to review the Final Drawings, after which Lessor shall be deemed to have approved the Final Drawings. Lessee shall commence construction and proceed diligently and continuously thereafter until completion, subject only to construction delays caused by winter weather and ground freezing or on account of a Force Majeure Event. Lessee will arrange for the construction of the System in a good, careful, proper and workmanlike manner in accordance with good engineering practices and with all Applicable Legal Requirements and the Final Drawings. Lessee shall not make any material alteration to the Final Drawings without the consent of the Lessor, not to be unreasonably withheld or conditioned. Lessor shall have five calendar days after receiving written notice of any such alteration to the System in which to review the proposed alteration, after which Lessor shall be deemed to have accepted the alteration as described in Lessee's written notice.

6.7 **Interconnection with Electric Distribution Grid.** Lessee will obtain at its sole cost all approvals and agreements required for interconnection of the System to the LDC System. Lessee will promptly inform Lessor of all significant developments relating to such interconnection matters. Lessee shall not be required to pay for any costs required by the LDC to upgrade, improve, replace or maintain the LDC's distribution system or assets on or about the Premises. Lessor agrees to sign all applications, documents and instruments necessary for interconnection of the System to the LDC System.

6.8 **As-built Plans.** Within ninety (90) days following the issuance of the Completion Notice, Lessee shall prepare and deliver to Lessor detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

6.9 **Removal of the System.**

(a) Upon expiration or termination of the Agreement according to its terms, and unless the Lessor elects to purchase the System pursuant to Section 7, Lessee shall at its sole cost and expense remove from the Premises all of the tangible property comprising the System, including but not limited to all structures built by the Lessee, any fencing and/or barriers to secure the System and any System mounting and other support structures, on a mutually convenient date not later than one hundred and eighty (180)

days after such expiration or termination and shall return the Lease Area to the condition required by the Major Post-Closure Use Permit.

(b) Lessee shall repair any damage it causes in connection with such removal not related to ordinary use and wear.

(c) Not later than sixty (60) days after Lessee's removal of the System and restoration of the Lease Area is completed, Lessor shall release or return to the Lessee the full amount of the Decommissioning Assurance, including any interest accrued thereon.

(d) If Lessee fails to remove or commence substantial efforts to remove the System within one hundred and eighty (180) days of the expiration or of the date that the Agreement terminates, Lessor shall have the right, at its option, to remove the System and restore the Lease Area to its original condition (other than ordinary wear and tear) and Lessee shall reimburse Lessor for reasonable out-of-pocket costs and expenses incurred by Lessor in removing and storing the System and in restoring the Lease Area.

(e) If Lessee fails to reimburse Lessor for such reasonable costs and expenses incurred in removing and storing the System and in restoring the Lease Area within sixty (60) days of its completion of such actions, Lessee shall be deemed to have abandoned the System and Lessor shall have the right to sell the System (and Lessee hereby appoints Lessor as its agent for such purposes in such circumstances) for its scrap value and to retain the proceeds of such sale to the extent of Lessor's costs and expenses, with any excess proceeds to be delivered to Lessee within sixty (60) days of such a sale.

(f) In addition, if Lessee has so abandoned the System, Lessor shall be permitted to access and apply the full amount of the Decommissioning Assurance, including any interest accrued thereon, towards its costs and expenses incurred in connection with its removal, storage and sale of the System and restoration of the Lease Area without any setoff against the amount it may recoup from sale proceeds.

(g) The provisions of this Section survive expiration or termination of this Agreement until the actual removal of the System has been completed hereunder.

6.10 Lessor represents that Lessor owns the Premises in fee simple and has the full right to make and perform this Lease. Lessor covenants that, so long as Lessee pays the rents and observes and keeps the covenants of this Lease on its part to be kept and so long as Lessee complies with the terms of the PPA, Lessee shall have quiet and peaceful possession of the Lease Area free from any hindrance to or interference with Lessee's quiet enjoying thereof, throughout the term of this Agreement, subject to the rights of Lessor and others as provided in other sections of this Agreement.

6.11 Lessor will not conduct any activities on, in or about the Lease Area that have a reasonable likelihood of causing damage or impairment to the System, provided however that nothing herein shall limit Lessor's rights under Section 11.2.6 of this

Agreement and Section 6.2.3 of the PPA and its obligations under Applicable Legal Requirements. Lessor shall take all reasonable steps to limit access to the Lease Area to Lessee and Lessee's employees, invitees and agents. Lessor shall not interfere or permit interference with insolation on and at the Lease Area. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on the Premises, permit the growth of foliage on the Premises or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments that could adversely affect insolation at the Lease Area. Notwithstanding any other provision of this Agreement, the parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this Section 6.11, (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6.11.

## SECTION 7.

### PURCHASE OF THE SYSTEM

7.1 **System Purchase Option; Termination for Convenience** (a) Lessor has the option to purchase the System upon the 7<sup>th</sup> or 12<sup>th</sup> anniversary of the Commercial Operation Date and upon natural expiration of the Term, in each case by delivering written notice ("**Option Notice**") to Lessee at least one hundred twenty (120) days' before each such date. The purchase price for the System shall be the higher of fair market value (as determined below) and the Host Termination Payment for the applicable Contract Year (i.e. if Lessor exercises the option to purchase the System upon the 7<sup>th</sup> anniversary of the Commercial Operation Date, the purchase price would be the higher of fair market value or the Host Termination Payment for Contract Year 7).

(b) **Fair Market Value.** If Lessor provides timely an Option Notice to Lessee, then the Parties will attempt first to agree on the fair market value of the System. If the Parties cannot agree on a value within 30 days from the date the Option Notice is delivered to Lessee, then the fair market value will be determined by an independent appraiser, selected jointly by the Parties. The appraiser will be instructed to determine the value of the System in place at the Premises on an installed and running, or going concern basis. The valuation made by the appraiser will be binding on the Parties, absent fraud or manifest error. In any case, "fair market value" means the price 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. The cost of the appraisal shall be borne by Lessee. Within thirty days after receipt of the appraisal, Lessor shall notify Lessee whether Lessor wishes to purchase the System. If Lessor elects to purchase the System, then on the 7<sup>th</sup> or 12<sup>th</sup> anniversary of the Commercial Operation Date, or on last day of the Term, as the case may be, Lessor shall pay Lessee the purchase price and title to the System shall transfer to Customer as-is, where-is. Lessor and Lessee shall execute all documents reasonably requested by the other to transfer title as aforesaid.

(c) For a period of thirty days following delivery of the Option Notice, Lessor and its agents shall be permitted to inspect the System and all records relating to operation, maintenance and warranties applicable to the System and any then-binding contracts for the sale or Environmental Attributes and revenues derived therefrom. Upon completion of such due diligence, Lessor shall have the right to rescind the Option Notice, and this Agreement will continue in full force and effect.

(d) Upon the payment of the purchase price in accordance with this Section and execution and delivery by Lessee to the Lessor of a bill of sale for the System, (a) title to the System shall pass to the Lessor, free and clear of any liens and encumbrances, and without warranties of any kind except as to title, (b) the remaining period on all third party warranties for the System, and the remaining term of all third party contracts regarding monitoring, operations and/or maintenance of the System, in each case to the extent transferable, will be transferred to the Lessor, (c) as between Lessee and the Lessor, all right, title and interest in and to the Environmental Attributes related to the System arising on and after such date of payment shall accrue to the benefit of or vest in the Lessor or, if applicable, Lessee shall assign to the Lessor rights under any forward sale contract related to such Environmental Attributes as may be in effect as of the date of such payment, if any, but in any case Lessee shall execute and deliver to the Lessor such documentation as may be commercially reasonable to effect such transfer or assignment and (d) this Agreement shall terminate automatically, and (e) Lessor and Lessee shall execute such commercially reasonable documentation as may be required to designate Lessor as the owner of the Environmental Attributes for purposes of registration and verification of the Environmental Attributes.

(e) At the closing of the purchase and sale of the System pursuant to Lessor's option to purchase, and if such closing does not occur on the last day of a Contract Year, Lessee shall receive a credit against the purchase price of the System for (i) pre-paid Term Rent, if any, and (ii) payments made under the PILOT Agreement (if any), in each case pro-rated based on the number of days elapsed in the year in which the closing occurs. Upon the closing, this Agreement shall terminate.

(f) At the closing of the purchase and sale of the System pursuant to Lessor's option to purchase, if Lessor is holding or has control over the Decommissioning Assurance, Lessor shall release or cause to be released such Decommissioning Assurance.

#### SECTION 8. MECHANIC'S LIENS

8.1 **No Liens.** Lessee shall not create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien upon the Premises, including the Lease Area, and Lessee will not cause the estate, rights and interests of Lessor in the Premises or any part thereof to be impaired, except in accordance with and subject to the provisions of this Agreement.

8.2 **Discharge.** If any mechanic's, laborer's or materialman's lien shall at any time be filed by an employee, supplier, subcontractor, sub-subcontractor (including employees of such suppliers or subcontractors), or any agent or other person claiming payment from Lessee against the Premises, Lessee, within thirty (30) days after notice to Lessee of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Lessee shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Lessor and costs reasonably incurred by Lessor in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Lessor's making of the payment of the cost and expenses, shall be paid by Lessee to Lessor within ten (10) Business Days of Lessor's invoice therefor.

8.3 **Lessor's Obligations.** Lessor shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System(s) or any interest therein.

#### SECTION 9.

#### RIGHT TO INSPECT AND ENTER

9.1 **Inspection and Entry.** During the course of construction and completion of the System and any substantial alteration thereto, Lessee shall maintain all plans, shop drawings, and specifications relating to such construction which Lessor, its agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the agreements contained or referenced in this Agreement. Lessor may, upon reasonable prior notice to Lessee, enter upon the Lease Area and inspect the System, subject to Lessee's reasonable security and safety procedures and methods, for the purpose of ascertaining its condition or whether Lessee is observing and performing the obligations assumed by it under this lease, all without hindrance or molestation from Lessee.

9.2 **Intentionally Deleted.**

9.3 **Notice of Damage.** Lessor shall promptly notify Lessee of any matter it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

#### SECTION 10.

#### ASSIGNMENT AND SUBCONTRACTING.

10.1 **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 Lessee in its discretion may elect to use such

certified and licensed subcontractors as it may choose in performing any of its obligations hereunder and performance of any obligation of Lessee by any such subcontractor shall satisfy such obligation to the extent of such subcontractor's performance.

10.2 **Assignment by Lessor.** Lessor 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 Lessee and its applicable Financing Parties.

10.3 **Assignment by Lessee.** Except as set forth in Section 10.4, Lessee shall not, without the prior written consent of Lessor, assign this Agreement, in whole or in part; provided, Lessor's consent to an assignment by Lessee of any of its rights (and/or a delegation of any of its obligations) shall not be unreasonably withheld, delayed or conditioned if Lessor 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 Lessor, Lessee may assign this Agreement to an Affiliate of Lessee. Any assignment shall be conditioned upon the assignee explicitly assuming all of Lessee's obligations under this Agreement. Neither the consent of Lessor to an assignment, nor the references in this Agreement to assignees or successors, shall in any way be construed to relieve Lessee (in the event of a partial assignment) or any assignee of the requirement of obtaining the consent of Lessor to any further assignment of this Agreement. Lessee shall deliver to Lessor thirty days' (30) advance written notice of its intent to assign this Agreement.

10.4 **Consent to Assignment for Financing or Leasing.** Lessee may seek financing for the construction, installation and 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, Lessee 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 and the PPA in its entirety for purposes of securing such financing or leasing arrangement. Lessor hereby consents to any such assignment, provided that:

(a) such assignment shall not create any Lien or other encumbrance on the Premises other than Lessee's rights and obligations contemplated in this Agreement nor on any other real or personal property located on the Premises other than the System;

(b) all provisions regarding the entry onto and use of the applicable Lease Area shall remain in effect;

(c) the Financing Party, as applicable, shall enforce its interest and protect the applicable Lease Area in accordance with Lessee's obligations hereunder from and after the time the Financing Party assumes Lessee's interest in this Agreement;

(d) Lessor 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 Lessee thereafter arising under this Agreement; and

(e) If the rights and interests of Lessee in this Agreement shall be assigned, in whole or in part, as herein provided, and the assignee shall agree in a writing submitted to Lessor to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Lessor 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 Lessor arising or accruing hereunder from and after the date of such assignment), Lessee 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 Lessor shall continue this Agreement, or the relevant portion of this Agreement with the assignee as if such person had been named as Lessee 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 Lessee'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 Lessee; and provided, further, that if Lessee assigns this Agreement, or any portion hereof, to a Financing Party as provided herein, Lessor 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, Lessee shall not be released and discharged from and shall remain liable for any and all obligations to Lessor 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). Lessee shall not, however, have any liability for any action or omission of the Financing Party hereunder.

(f) Lessor agrees to sign, execute and deliver each such instrument or other document as Lessee 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. Lessor also agrees, to the extent required by a Financing Party, if any, to provide Lessee and/or a Financing Party with such information about Lessor or the Premises as Lessee or a Financing Party may reasonably request.

10.5 **Rights of Financing Parties.**

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

(b) Intentionally Deleted.

(c) Financing Parties as Third Party Beneficiaries. The provisions of this Article 10 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. Lessor 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 Lessee or shall have any obligation or liability to Lessor with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to Sections 10.4 and 10.5.

**SECTION 11.**

**DEFAULT AND REMEDIES.**

11.1 **Events of Default.** The following events shall be deemed to be Events of Default under this Agreement:

(a) Lessee fails to pay when due any sum of money becoming due to be paid to Lessor under this Lease, whether such sum be any installment of the rent reserved by this Lease, any other amount treated as additional rent under this Lease, or any other payment or reimbursement to Lessor required by this Lease, whether or not treated as additional rent under this Lease.

(b) Lessee fails to perform or observe any term or condition of this Agreement which, because of its character, would immediately jeopardize Lessor's interest in the Premises (such as, but without limitation, violation of laws governing the discharge of Hazardous Materials).

(c) Lessee fails to comply in any material respect with any term, provision or covenant of this Agreement which is not provided for otherwise in this Section 11 and shall not cure such failure within thirty (30) days after written notice of such failure to Lessee, which period shall be extended for an additional period not to exceed thirty (30) days if such failure cannot be cured within such initial 30-day period provided Lessee has commenced such cure within such period and is diligently prosecuting the same to completion.

(d) Intentionally Deleted.

(e) Lessee is Bankrupt.

(f) Lessee vacates or abandons the Premises.

(g) Lessee's interest in this Lease devolves upon or passes to any person, whether by operation or law or otherwise, except as expressly permitted hereunder.

11.2 **Lessor Remedies.** Upon the occurrence and during the continuance of any of the Events of Default described herein by Lessee, Lessor may exercise the remedy in clauses (a), (b) and (c), or one or more of the remedies in clauses (e), (f), (h):

(a) Lessor may terminate this Lease and the PPA.

(b) Upon such termination of this Lease and the PPA by Lessor due to an Event of Default of Lessee, Lessee shall surrender possession and vacate the Lease Area immediately and deliver possession thereof to Lessor, and Lessee hereby grants to Lessor full and free lease to enter into and upon the Lease Area in such event and to repossess Lessor of the Lease Area and to expel or remove Lessee and any others who may be occupying or be within the Premises and to remove Lessee's signs and other evidence of tenancy and all other property of Lessee therefrom, subject only to the provisions on removal of the System in Section 6.10, without the Lessor being deemed in any manner guilty of trespass, eviction or forcible entry or detainer and without incurring any liability for any damage resulting therefrom, Lessee waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Lessor's right to rent or any other right given to Lessor under this Lease or by operation of law.

(c) Upon such termination of this Lease, Lessor shall be entitled to recover the Supplier Termination Payment provided in the PPA as liquidated damages for termination of the Lease, provided however that Lessee shall continue to have the obligation to indemnify, defend and save harmless Lessor on account of claims or assessment of penalties against the Lessor arising from Lessee's failure to comply with terms and conditions of the landfill post-closure use permit and DEP orders related thereto. The PPA shall terminate as of the same date as this Lease terminates.

(d) Intentionally Deleted.

(e) Until such time as Lessor shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified herein, Lessee shall pay to Lessor upon demand the full amount of all rent, including any amounts treated as additional rent under this Lease and other sums reserved in this Lease for the remaining term, and Lessee agrees that Lessor may file suits from time to time to recover any sums falling due under this section as they become due.

(f) Lessor, without being under any obligation to do so and without waiving any Lessee default, may remedy such other default for the account of Lessee, immediately upon notice in the case of emergency or if necessary to protect public health

or safety, or to avoid forfeiture of a material right, or in any other case only provided Lessee shall fail to remedy such default within thirty (30) days, or such longer period as may be required due to the nature of such default (provided Lessee has commenced and is diligently prosecuting a cure), after Lessor notifies Lessee in writing of Lessor's intention to remedy such other default. All costs reasonably incurred by Lessor to remedy such default (including, without limitation, all reasonable attorney's fees), shall be at the expense of Lessee.

(g) Intentionally Deleted.

(h) If, on account of any breach or default by Lessee in Lessee's obligations under the terms and conditions of this Agreement, it shall become necessary or appropriate for Lessor to employ or consult with an attorney concerning or to enforce or defend any of Lessor's rights or remedies arising under this Lease, LESSEE AND LESSOR EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY.

(i) Pursuit of any remedy in section 11.2(e), (f) and (h) provided in this Agreement shall not constitute a forfeiture or waiver of any rent due to Lessor under this Agreement or of any damages accruing to Lessor by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

(j) No act or thing done by Lessor or its agents during the term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Agreement or accept a surrender of said Premises shall be valid, unless in writing signed by Lessor.

## SECTION 12.

### CASUALTY.

If the Premises is damaged by fire or other casualty whatsoever so that such damage may reasonably be expected to materially and adversely disrupt the Lessee's operations at the Premises for more than ninety (90) days, then the Lessee may at any time following such fire or other casualty so long as such material and adverse disruption is continuing, terminate this Lease upon sixty (60) days written notice to the Lessor. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement, and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Nothing herein shall relieve Lessee from its obligations under Section 6.9(a) to restore the Lease Area. If Lessee does not terminate this Agreement as aforesaid, Lessor may, but shall not be obligated to, exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction. In the event of an award related to eminent domain or condemnation of all or part of the Lease Area, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

If any part of the System is damaged or destroyed due to the gross negligence or willful misconduct of Lessor or Lessor's agents and employees, then Lessor shall promptly upon demand therefore from Lessee pay any and all costs and expenses to repair and replace the System and to reimburse Lessee for any lost revenues for sales of electricity and Environmental Attributes based upon Lessee's estimated energy production capacity of the System in the relevant Contract Year.

### SECTION 13.

#### INSURANCE

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

- (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law;
- (b) 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;
- (c) 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; and
- (d) 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.
- (e) Excess Umbrella Liability Insurance in an amount not less than five million dollars (\$5,000,000).

13.2 **Certificates of Insurance.** Lessee shall furnish current certificates evidencing that the insurance required under Section 13.1 is being maintained. Lessee agrees to give the Lessor thirty (30) days' written notice before the insurance is cancelled or materially altered and shall transmit a copy of any notice of cancellation or material alteration of its coverage not later than two (2) business days after its receipt by Supplier. The Lessee's insurance policies shall be written on an occurrence basis and shall include the Lessor as an additional insured as its interest may appear.

13.3 **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.

#### SECTION 14.

#### INDEMNIFICATION; LIMITATION ON LIABILITY

14.1 **Indemnification of Lessor.** Lessee shall indemnify, save harmless and defend Lessor and its officers, employees, and agents (collectively, the "*Lessor 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 Lessor Indemnified Party by reason of any of the following occurrences during the Term:

(a) any accident, injury, or damage to any person or property occurring in, on or about the Lease Area or any part thereof, to the extent caused by the negligence or intentional misconduct of Lessee, its agents, contractors, subcontractors, employees or invitees. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Lessor Indemnified Parties but Lessee's liability under this indemnity shall be reduced in proportion to the percentage by which the Lessor Indemnified Parties negligence or intentional misconduct caused the damages;

(b) any failure on the part of Lessee or any of its agents, contractors, subcontractors, servants, employees, licensees 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 Lessor Indemnified Party by reason of any such claim, Lessor may elect that Lessee defend such action or proceeding with counsel approved by Lessor. Upon written notice from Lessor of such election, Lessee shall defend such action or proceeding at Lessee's expense to the reasonable satisfaction of Lessor.

14.2 **Survival.** The provisions of this Section 14 shall survive the expiration or earlier termination of the Agreement.

14.3 **Lessee Indemnity.** To the extent permitted by law, Lessor shall indemnify, defend (at Lessee's option) and hold harmless Lessee and its employees from and against any and all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees 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 of Lessor, its employees, agents, or subcontractors. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Lessee but

Lessor's liability under this indemnity shall be reduced in proportion to the percentage by which the Lessee's negligence or intentional misconduct caused the damages.

14.4 **Limitation of Liability.** 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 and 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 damages only. Except as may be expressly provided in this Agreement, in no event shall either party be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages whether arising in tort, contract or otherwise. This Section 14.4 shall survive termination of this Agreement.

## SECTION 15.

### DISPUTE RESOLUTION.

#### 15.1 **Negotiated Resolution**

If a dispute arises concerning this Agreement, a representative from management of both Parties shall meet within ten business days after either Party gives the other Party written notice of the dispute (the "***Dispute Notice***"). The Dispute Notice shall set forth in reasonable detail the aggrieved party's position and its proposal for resolution of the dispute. If the dispute is not resolved within 30 calendar days after the first meeting of the Parties, either party is free to use any other available remedy in law or at equity. The Dispute Notice is a condition precedent to each Party's right to resort to litigation, provided that during such time as the Parties are meeting, either party may petition a court of competent jurisdiction for injunctive relief. A party's failure to comply with this Section shall entitle the other Party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision

The Parties may mutually agree to submit the dispute to non-binding mediation and share the cost of the mediator. The mediation shall take place in Boston, Massachusetts. If the dispute is not resolved within 30 days after the first meeting with the mediator, either Party may resort to any judicial forum for resolution of the dispute.

15.3 **Exceptions.** The obligation to negotiate a resolution 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 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.

## SECTION 16.

**NOTICES.**

16.1 **Notice.** Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified United States Mail, postage prepaid, or by commercial overnight delivery service, 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, 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 United States mail.

16.2 **Financing Party Notice.** Any notice or other communication which Lessor 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 16.1, addressed to such Financing Party at such party's addresses provided in writing by a Financing Party or by the Lessee, and any notice or other communication which the Financing Party shall desire or be required to give to or serve upon Lessor shall be deemed to have been duly given or served if sent in accordance with the provisions of Section 16.1 or at such other address as shall be designated by Lessor by notice in writing given to such Financing Party in accordance with the provisions of this Section.

16.3 **Notice Addresses**

Lessor Address:

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

Lessor contact for technical and site issues arising with respect to permitting, construction, operations and emergencies

Russell Robinson  
Telephone: 978-929-7740  
Facsimile: 978-264-9610  
Mobile: 508-320-6849  
Lessor Contact Address: 14 Forest Road, Acton MA 01720

Lessee Address:

Ameresco Solar Acton LLC  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: General Counsel

Lessee contact for operations and emergencies:

Kevin Sullivan  
Telephone: 508-598-3028  
Facsimile: 508-661-2201  
Mobile: 508-308-5710

Ameresco shall provide notice information with respect to a single point of contact for permitting and construction phases of the project.

16.4 **Address for Rent Payment.** All rent payments under this Agreement shall be sent to the Lessor's address as provided in Section 16.3 and shall be sent by regular first class mail postage prepaid or as otherwise agreed by the Parties.

## SECTION 17.

### MISCELLANEOUS

17.1 **Non-interference.** Lessor may construct, reconstruct, modify or make alterations to the Premises so long as such activities do not materially interfere (including shading) with the operation of the System.

17.2 **No Limitation of Regulatory Authority.** The Parties acknowledge that nothing in this lease shall be deemed to be an agreement by Lessor to issue or cause the issuance of any approval or permit, or to limit or otherwise affect the ability of the Lessor or any regulatory authority of the Lessor to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

17.3 **Subordination to Existing Licenses, Easements and Rights of Way.** Lessee acknowledges and understands that this Solar Lease Agreement, and all rights of Lessee are subject and subordinate to all existing Licenses, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the Lessor with respect to the Premises. Lessor reserves the right to grant additional licenses, easements, Licenses or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere (including shading) with Lessee's use of the Premises and the operation of the System. Lessor covenants that it will cause any third party who may in the future obtain an interest in the Lease Area including any lenders, a commercially reasonable subordination, non-disturbance and attornment agreement with Lessee, providing that each such lien or interest is subordinate to this Agreement, does not and shall not encumber the System or other interest of Lessee in the Lease Area with the effect that in the event of any foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale of such mortgagee's lien, (a) Lessee shall not be named as a defendant therein unless required to be named by applicable law, (b) Lessee's rights and interest under this Agreement or the PPA shall not be affected or

impaired thereby, (c) this Agreement and the PPA shall continue in effect in accordance with their respective terms and (d) Lessee shall recognize any acquirer of title to the Lease Area by any such process as Lessor hereunder so long as the transferee continues to hold such title.

17.4 **Hazardous Materials.** The Lessee shall not, and shall not direct, suffer or permit any of its agents, contractors, subcontractors, employees, licensees or invitees at any time to manufacture or dispose of in or about the Premises any Hazardous Materials, including but not limited to flammables, explosives, and radioactive materials. Lessee agrees to comply with all Applicable Legal Requirements pertaining to the use, storage and disposal of Hazardous Materials at the Premises. Lessee shall indemnify, defend and hold harmless Lessor and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Lessee or Lessee's agents, contractors, subcontractors, employees, licensees or invitees at the Premises. In addition, Lessee shall reimburse Lessor for any and all costs related to investigation, clean up and/or fines incurred by Lessor for non-compliance with Environmental Laws, that are caused by Lessee or Lessee's agents, contractors, subcontractors, employees, licensees or invitees at the Premises. Lessor reserves the right to inspect the Lease Area for purposes of verifying compliance with these Hazardous Materials requirements.

17.5 **Limited Effect of Waiver.** The failure of either Party 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.

17.6 **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 Section 1 (Definitions), Section 10 (Assignment and Subcontracting), Section 14 (Indemnity) Section 15 (Dispute Resolution), Section 16 (Notices), and Section 17 (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 Legal Requirements.

17.7 **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 Legal Requirements 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.

17.8 **Nonrecourse.** The obligations of the Lessor and the Lessee under this Lease are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of the Lessor's officers, employees, agents nor of the Lessee's trustees or board of directors and officers, as the case may be, or any beneficiaries, employees, agents or the like thereof. In no event shall the Lessor ever be liable to the Lessee for any indirect or consequential damages under the provisions of this Lease, and in no event shall the Lessee ever be liable to the Lessor for any indirect or consequential damages hereunder.

17.9 **Authority.** Each Party covenants, warrants and represents that it has full power and authority to enter into this Lease.

17.10 **Notice of Lease.** The Parties shall execute and record in the land records of the county where the Lease Area is located a notice of lease in the form of Exhibit G hereto.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR: TOWN OF ACTON

By:   
Name: Steven L. LeDuc  
Title: Town Manager

Date: 12/12/2011

LESSEE: AMERESCO SOLAR ACTON LLC

By: Ameresco, Inc., its sole member

By:   
Name: Joseph Demanche, EVP  
Title: Joseph Demanche, EVP

Date: 12/12/2011

## EXHIBIT A

### Project & Schedule Management Responsibility

Ameresco assigns a senior Construction Project Manager, who is the single point of contact for the entire design and construction team as well as for regular progress meetings with the Town. The Construction Project Manager uses Microsoft Project to manage the project schedule, Microsoft Solomon software for project budgeting and monitoring; and weekly team meetings to manage construction tasks. We assign an engineer and a construction supervisor to the construction site to manage the daily work of the subcontractors.

Ameresco works to achieve all construction schedules and will consider liquidated damages for schedule delays within our control with appropriate cure periods. Schedule items outside our control, such as the utility interconnection permit are excluded from the liquidated damages provision.

Throughout the project from contract award through operations, Jim Walker, P.E. will be the single point of senior management contact and liaison. Jim will lead the contract negotiations and will work with the Town to make sure the design, permitting, construction, commissioning, and operations of the systems meets or exceeds the requirements of the all parties.

During the operations and maintenance phase, Ameresco will assign an O&M supervisor to monitor the operation of the systems and to solve and problems quickly and efficiently. This person, along with Jim Walker will communicate with the Town as needed for safe and continuous operation of the systems.

### Technical Design Process

Following execution of the Power Purchase Agreement between the Town and a wholly-owned subsidiary of Ameresco, Inc, we will set up a kick-off project meeting with the and begin immediately to:

- 1) Start the 30% detailed design engineering process, including site structural and environmental permitting. Ameresco will use its own staff engineers for the solar PV system design and will subcontract with AMEC for the Environmental Permits. We will also subcontract the site development to Bond Brothers. This part of the process will require additional site visits and review of all available drawings and documents regarding the land sites.

Ameresco will present the 30% and 90% design drawings to the Town and its consultants for review and approval. During the design process, we will also meet with the Town to develop the construction site plan for conforming to the Town's requirements for noise, security, and environmental protection.

- 2) Meet with the appropriate regional MA Department of Environmental Protection (MassDEP) engineer to review any concerns or issues that Ameresco must address in

assisting the Town with the Major Post Closure Landfill Permits (see below for more information).

- 3) File the initial utility interconnection application with NSTAR. We will file the application for a new meter for the Town, thereby obtaining the maximum Net Metering Credit for the Town. The review and approval process with NSTAR could take up to six months. It is possible that NSTAR could require significant capital payments from Ameresco for upgrading NSTAR's facilities to deliver the Net Metered power to the Town. At a minimum, NSTAR will require the Town to provide a deed to the site and an easement for the meter installation.
- 4) Meet with the appropriate state and city permitting authorities.

#### DEP Compliance with Post Closure Use of Capped Landfills

Ameresco will subcontract with AMEC to provide all required environmental permitting, licensing, and stakeholder outreach services. AMEC has local offices in Boston and Westford, MA, and has been actively involved in the siting and permitting of PV installations in Massachusetts. AMEC has specifically worked with MassDEP on the siting of PV facilities on capped landfills, and has worked with both Commissioner Giudice of the Department of Energy Resources and Secretary Bowles of the Executive Office of Energy and Environmental Affairs to pursue PV installation activities at multiple municipal and private locations across the state. AMEC has conducted numerous meetings and hearings with many local communities, including Boards of Selectmen, Mayors, Town Councils, Planning Boards, other municipal officials, and property owners to discuss the merits of PV installations, answer their questions, address their concerns, and to obtain the necessary approvals and authorizations.

AMEC will prepare the draft Major Post Closure Landfill Permit (MPCLP) based on Ameresco's solar PV layout drawings, Bond Brothers site construction layout drawings, MassDEP regulations, and Town Bylaws. Before filing the MPCLP, AMEC and Ameresco will meet with the appropriate regional MassDEP engineer to review any concerns or issues specific to the proposed solar PV design, site construction, and landfill. After receiving the MassDEP suggestions and input, we will complete and file the MPCLP. Based on conversations with the MassDEP regional engineers, we expect the agency may take up to four months to review and approve a MPCLP. We have also been informed that if the MassDEP requires special compliance conditions, the approval process time could take up to eight months. By reviewing the MPCLP with the MassDEP prior to filing the permit, and by using AMEC, a recognized and respected environmental engineering firm, we expect to expedite the approval process.

#### AMEC Permitting Scope of Work

AMEC's Scope of work for all environmental permitting and the high voltage engineering to connect the solar PV system to the 13.8 kV utility line is as follows:

1. Research of available information from the Town of Acton and DEP including geotechnical investigation, as-built design plans of the closed landfill, and

- background information as required by the Post-Closure Use permit (solid waste assignment, landfill property deed, environmental site assessment, and closure permit and closure certification).
2. A wetlands specialist will flag the limits of the wetlands, if any, adjacent to the property and surveyor will field locate the wetland flags, tying the flag locations into existing topographic/site plan. Also, perform a topographic survey of the proposed solar panel locations and tie additional data into existing topographic information.
  3. Preparation of up to 16 design plan sheets to be stamped by a MA licensed Professional Engineer. The design plans will provide detail for the construction of the proposed project and also provide required information for submittal to DEP. Plans are anticipated to include:
    - Cover Sheet
    - Existing Conditions Plan (Site Plan)
    - Landfill Capping Design Plan
    - Post-Closure Use Design Plan
    - Stormwater Drainage/Runoff Control Plan
    - Stormwater Erosion Control Plan
    - Utility Plans (Electrical – 2 sheets)
    - Details (6 sheets)
    - General Construction Notes
    - Electrical Notes and Utility Coordination
  4. Prepare design analysis/calculations including the following:
    - Capping system interface (proposed panels on the existing cap)
    - Geotechnical settlement and stability analysis (based on existing information.
    - Electrical design includes design of raceways and conductors through wetlands to get the DC output of the solar arrays to the inverter location and raceways and conductors from the output of the transformer of the inverter set to a coordinated location for connection to the local utility. AMEC will coordinate the location of the pole and required termination with the local utility to ensure a seamless transition of power from the site. The electrical design will include sheet specifications for the work described above.
    - Qualitative Health and Environment Risk Assessment
    - Post-Closure Monitoring and Maintenance Plan
  5. Prepare environmental permitting applications including a Notice of Intent (NOI) under the Massachusetts Wetlands Protection Act to the Town's Conservation Commission for work within 100' of a wetland, a Stormwater Pollution Prevention Plan (SWPPP) and associated NOI for coverage under the EPA's NPDES General Permit for Construction Activities, and Massachusetts Historical Commission (MHC) Project Notification Form (PNF).

6. Prepare a Major Post-Closure Use Permit application for submittal to DEP (Major Post-Closure – BWP SW 36).
7. Attend meetings including a pre-application meeting with DEP plus additional meeting with Ameresco and the Town.
8. Construction administration - Work with Ameresco and the Contractor on requests for information that arise during the construction activities.
9. Prepare red-lined plans of the solar arrays and any changes in topography based solely on information provided to AMEC by the contractor.

#### Site Preparation and Construction

The site preparation work will be in accordance with the MassDEP approved Major Post Closure Landfill permit and Town Bylaws. The design of the site preparation will be done collaboratively among Ameresco's solar PV engineers, AMEC environmental engineers, and Bond Brothers.

At this time, we expect that Bond Brothers site preparation Scope of Work will include removing and spreading approximately three inches of top soil under the solar PV panels. After removal of the top soil, a geotech membrane will be installed on the landfill. Above the geotech membrane, Bond Brothers will install three inches of gravel to allow for proper drainage and to protect the landfill from rain water runoff from the tilted solar PV panels.

Construction may begin once all permits are obtained from the authorities having jurisdiction. Construction will consist of, but is not limited to:

- assembling and installing the mounting system (By Bond Brothers)
- attaching the panels to the mounting system (By Florence Electric)
- running correctly sized wires in conduit or concrete (By Florence Electric)
- connecting wires to panels, combiner boxes, inverters, transformers (By Florence Electric)
- installing data acquisition system with revenue grade meter (By Florence Electric)
- interconnecting with the closest utility pole (By Florence Electric, in accordance with AMEC's high voltage system design)

#### Commissioning Protocol and Interconnection

Ameresco is committed to providing a highly reliable, properly functioning solar power project. In order to achieve this, Ameresco completes a rigorous testing procedure after project installation.

Following is a summary of the testing and commissioning procedure:

1. Confirm the following via a visual inspection as complying with the approved construction drawing set:

- a. PV module: Quantity, Model, Placement location, Mechanical damage, and Surface soiling.
  - b. Mounting system: Type, Pitch angle, Installation azimuth, and Mechanical damage.
  - c. Inverter: Quantity, Model, Placement location, Mechanical damage, Ventilation clearances, and Code compliant clearances.
  - d. Conduit and wiring: Location, Code compliance, and Mechanical connections are done properly, including:
    - i. Correct type of conduit and connectors are used for the installation environment, and
    - ii. Neatness of installation.
2. Solar array electrical test
- a. PV source circuit (string) validation:
    - i. For each string, measure and record: Correct polarity, Open circuit voltage, Short circuit current, Back of module temperature, and Solar irradiance at plane of array.
    - ii. Use the measured values to correct the string performance to Standard Test Conditions (STC).
  - b. Test all combiner enclosure fuses.
  - c. Ensure all wiring is connected properly. No loose connections.
  - d. Meggar test all conductors and record measurements.
  - e. Inspect proper array and mounting system grounding.
3. Inverter electrical test
- a. Measure utility voltage and make sure correct inverter is installed.
  - b. Test for correct utility connection phase rotation.
  - c. Test for correct solar array voltage polarity at inverter.
  - d. Ensure inverter is properly grounded to utility source.
  - e. Make sure solar array negative is correctly grounded inside the inverter.
  - f. Test inverter startup sequence.
  - g. Test inverter shut down sequence.
  - h. Test anti-islanding protection.
  - i. Test emergency shut down.
  - j. Test interlock safety operation.
4. Complete project as-built documentation. This documentation includes the as-built drawing set as well as the customer O&M manual.
5. Provide Customer training. This will provide the Customer with all of the required information to safely operate the system.

As a requirement of the utility, Ameresco must conduct a witness test in which the inverter is started up and shut down to satisfy. Once this is done and all systems are confirmed to be installed and operating properly, the utility will provide interconnection authorization and the system will commence to be net-metered.

**EXHIBIT B**  
**SCHEDULE**

Milestone	Days	
PPA Executed ("Effective Date")	0	
Start Civil Engineering	+14	After Effective Date
Start 50% Engineering Design for Interconnection Application	+42	After Effective Date
Permitting Commencement Date -- Interconnection Application and Approval from NSTAR	+70	After Effective Date
Start Permitting -- MA DEP Major Post Closure Use Permit	+90	After Effective Date
Permits (Exhibit F Interconnection Service Agreement) Approved and Received from NSTAR	+150-210	After Effective Date
Permits (Major Post-Closure Use Permit) Approved and Received from MA DEP	+210-360	After Effective Date
Supplier's Condition Precedent Deadline	+210	After Effective Date, unless extended ("Final Permitting Date")
Equipment Ordered	+14	After Final Permitting Date
Construction Commencement Date -- Civil Construction Begins	+60	After Final Permitting Date
Start Electrical Construction	+80	After Final Permitting Date
Start Commissioning and Submit Final Interconnection Approval Documentation	+220	After Final Permitting Date
Commercial Operation Date	+250	After Final Permitting Date

## EXHIBIT C

### DESCRIPTION OF SYSTEM

The System Description below is based on the proposed System. The final System Description shall be the Final Drawings.

#### Proposed Description of System

##### **Solar PV Panels:**

1. Manufacturer: BP Solar
2. Model Number: BP 3230T
3. Module Wattage: 230W
4. Panel Count: 6,888
5. Type: Polycrystalline Modules
6. Array tilt: 25 degrees from horizontal and oriented due south.
7. Warranty Information: Free from defects in materials and workmanship for 5 years, 93% production through year 12, and 85% production through year 25

##### **Inverters:**

1. Manufacturer: Advanced Energy
2. Model Number: Solaron 500 kW PV Inverter
3. Number and size to be installed: (3) 500 kW inverters
4. String size and Quantity: Option B - 12 panels per string with 574 total strings.
5. Warranty Information: 20 year warranty

##### **Mounting System**

Sunlink Ground Mount System (GMS) and Custom Design: Both ballasted using concrete ballast blocks with no penetrations to the landfill cap.

A preliminary layout of the System is shown on the following page.



**EXHIBIT D  
To Solar Lease Agreement**

**Rent; Host Termination Payment**

**A. Initial Rent:**     \$6,000/year

**B. Term Rent** (Term Rent may be subject to reduction, as further described in Section 4.2). Term Rent consists of a fixed payment of \$56,980 per Contract Year, not escalated, plus the escalating amount set forth below.

Contract Year	Term Rent (escalating amount)
1	\$6,000.00
2	\$6,060.00
3	\$6,120.60
4	\$6,181.81
5	\$6,243.62
6	\$6,306.06
7	\$6,369.12
8	\$6,432.81
9	\$6,497.14
10	\$6,562.11
11	\$6,627.73
12	\$6,694.01
13	\$6,760.95
14	\$6,828.56
15	\$6,896.85
16	\$6,965.81
17	\$7,035.47
18	\$7,105.82
19	\$7,176.88
20	\$7,248.65

**C. Host Termination Payment**

<b>Acton Landfill</b>		
<b>Termination Values</b>		
<b>Early Termination Occurs in Year:</b>	<b>Termination Value Excluding Cost of Removal</b>	<b>Termination Value Including Cost of Removal</b>
<b>1</b>	\$ 9,137,272	\$ 9,707,584
<b>2</b>	\$ 8,372,525	\$ 8,948,541
<b>3</b>	\$ 7,747,746	\$ 8,329,522
<b>4</b>	\$ 6,991,608	\$ 7,579,201
<b>5</b>	\$ 6,238,357	\$ 6,831,826
<b>6</b>	\$ 5,358,624	\$ 5,958,028
<b>7</b>	\$ 2,361,700	\$ 2,967,097
<b>8</b>	\$ 1,905,096	\$ 2,516,548
<b>9</b>	\$ 1,407,516	\$ 2,025,083
<b>10</b>	\$ 864,791	\$ 1,488,533
<b>11</b>	\$ 810,192	\$ 1,440,171
<b>12</b>	\$ 752,039	\$ 1,388,318
<b>13</b>	\$ 690,048	\$ 1,332,690
<b>14</b>	\$ 623,776	\$ 1,272,844
<b>15</b>	\$ 552,865	\$ 1,208,424
<b>16</b>	\$ 476,794	\$ 1,138,909
<b>17</b>	\$ 395,119	\$ 1,063,854
<b>18</b>	\$ 307,219	\$ 982,643
<b>19</b>	\$ 212,547	\$ 894,724
<b>20</b>	\$ 110,366	\$ 799,365

**EXHIBIT E**

**DESCRIPTION OF THE PREMISES**

**Address: 14 Forest Road, Acton, Massachusetts. An aerial view of the landfill is shown on the following page.**

**Legal Description:**

The Premises are located on the former site of the Town of Acton, MA landfill. The Landfill was capped in 1988, under the requirements of the Massachusetts Department of Environmental Protection at the time the cap was constructed. The cap was designed by the Town of Acton.

Attached is the Release Deed recorded at Middlesex South Registry at Book 11701, Page 501 which contains a legal description of the Premises.



PA

V

RELEASE DEED

LINDA S. BURSAW of Acton, Middlesex County, Massachusetts in consideration of the payment of Eighty Thousand (\$80,000) Dollars, receipt of which is hereby acknowledged, grants to the TOWN OF ACTON, a municipal corporation, all of the Releasor's right, title and interest in and to a parcel of land consisting of approximately <sup>19.88</sup>~~19.63~~ acres situated on Route Two and Forest Road in Acton, being shown on a plan entitled "Plan of Land in Acton, Mass. Owned by Edward J. Bursaw Pauline W. Bursaw" dated December 14, 1965, by Harlan E. Tuttle, Surveyor, recorded with Middlesex South District Deeds as Plan No. 544, of 1969, and being further bounded and described as follows:

Beginning at a point on the northerly sideline of the 1950 layout of a State Highway called Route 2 and 432.33 feet west of a Massachusetts Highway Bound, thence running;

N 82° 54' 29" W along the northerly sideline of the aforementioned Route 2 for a distance of 629.97 feet, thence.

N 01° 07' 35" E along property of the Town of Acton 623.83 feet, to a stone bound, thence

S 81° 40' 50" W along property of the Town of Acton for a distance of 334.01 feet to a stone bound, thence

N 01° 18' 39" W along property of the Commonwealth of Massachusetts for a distance of 531.25 feet to a heap of stones, thence

N 46° 56' 12" E along property of Almond M. and Irma R. Tewksbury for a distance of 400.63 feet to a point on the westerly side of Forest Road, thence

Southeasterly along a curve of 789.64 feet radius by the westerly side of Forest Road for a distance of 305.81 feet, thence

Southeasterly along a curve of 398.55 feet radius, by the westerly side of Forest Road, for a distance of 140.68 feet, thence

Southeasterly along a curve of 1322.64 feet radius by the westerly side of Forest Road for a distance of 187.67 feet, thence

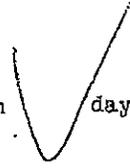
S 16° 25' 00" E. along the westerly side of Forest Road for a distance of 212.00 feet, thence  
Southeasterly along a curve of 320.26 feet radius by the side of Forest Road for a distance of 251.19 feet, thence  
S 61° 21' 20" E by the side of Forest Road for a distance of 170.97 feet, thence  
S 10° 00' 22" W along property of Donald B. and Ruth A. Jackson, for a distance of 85.95 feet, thence

Along a stone wall by the property of Donald B. and Ruth A. Jackson in the following courses and distances:

S 08° 54' 19" W for a distance of 37.91 feet, thence  
S 10° 38' 49" W for a distance of 74.65 feet, thence  
S 11° 16' 12" W for a distance of 133.46 feet, thence  
S 11° 41' 58" W for a distance of 81.89 feet, thence  
S 10° 04' 27" W for a distance of 115.90 feet, to the point of beginning.

Together with all of the Releasor's right, title and interest in and to all rights of way, easements and other rights of record or otherwise which are appurtenant to the above described land.

Meaning and intending to convey to the Releasee all of the Releasor's right, title and interest in and to the premises described in a certain Order of Taking adopted by the Selectmen of the Town of Acton dated May 20, 1969 and recorded with said Deeds, Book 11687, Page 313, and the Releasor hereby accepts the above named consideration in full satisfaction and discharge of all the Releasor's claims and demands against the Releasee for damages, costs, expenses or compensation for, on account of or in any way arising out of said taking.

Witness the execution hereof under seal this 27th  day  
of June , 1969.

Linda S. Bursaw  
Linda S. Bursaw

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June 27, 1969.

Then personally appeared the above named Linda S. Bursaw  
and acknowledged the foregoing instrument to be her free act  
and deed, before me,

Demetri E. Boutman  
Notary Public

My Commission Expires: 7-23-71





**EXHIBIT G  
NOTICE OF LEASE**

RECORDING REQUESTED BY,  
PREPARED BY AND WHEN RECORDED  
RETURN TO:

Ann M. De Kruffyff  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701

(Space above this line for recorder's use only)

**NOTICE OF LEASE**

This Notice of Lease is made this [ \_\_\_\_\_ ], 2011, by and between Town of Acton, Massachusetts ("Lessor") and Ameresco Solar Acton LLC, a Delaware limited liability company ("Lessee" and together with Lessor, the "Parties").

In accordance with the provisions of Massachusetts General Laws Chapter 183, Section 4, as amended, notice is hereby given of the following described lease:

Date of Lease: \_\_\_\_\_

Lessor: Town of Acton, Massachusetts  
472 Main Street  
Acton, MA 01720

Lessee: Ameresco Solar Acton LLC  
111 Speen Street, Suite 410  
Framingham, MA 01701

Leased Premises: A portion of the landfill property owned by Lessor located at 14 Forest Road, Acton, MA, together with the right of access thereto from the public way. A legal description of the Lessor's land upon which the Leased Premises is located is attached hereto as Annex 1. A depiction of the Leased Premises is attached hereto as Annex 2

Initial Term: From \_\_\_\_\_ until 11:59 p.m. on the day preceding the twentieth anniversary of the Commercial Operation Date (as defined in the Commercial Power Purchase Agreement dated \_\_\_\_\_, 2011 between Lessor and Lessee (the "PPA")).

**Leasehold**

**Access Rights:** Appurtenant to the Leased Premises is the non-exclusive right and license, subject to the terms of the Lease for ingress and egress over all adjacent property of Lessor.

**Ownership of**

**the System:** Lessee or Lessee's assigns, will at all times retain title to and be the legal and beneficial owner of the System, which will at all times retain the legal status of personal property of Lessee as defined under Article 9 of the Uniform Commercial Code. The System will not attach to or be deemed a part of, or a fixture to, the Leased Premises, notwithstanding the manner in which the System is or may be affixed to the real property of Lessor.

The term "System" means the solar electric generating facility installed at Lessor's property, including but not limited to the System Assets.

**"System Assets"** means each and all of the assets of which the System is comprised, including Lessee's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on Lessor's premises, electric lines and conduits required to connect such equipment to the Delivery Point and the LDC System (as such terms are defined in the Lease), protective and associated equipment, improvements, metering devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

[Signatures begin on following page]

Executed and effective as of the date first set forth above.

**LESSOR: TOWN OF ACTON**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.  
On this \_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as \_\_\_\_\_ of Town of Acton.

\_\_\_\_\_  
Notary Public  
My commission expires:

**LESSEE:**

**AMERESCO SOLAR ACTON LLC**

**BY: AMERESCO, INC., ITS SOLE MEMBER**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.  
On this \_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as \_\_\_\_\_ of Ameresco, Inc.

\_\_\_\_\_  
Notary Public  
My commission expires:

**Annex 1 to Notice of Lease**

**DESCRIPTION OF LESSOR'S PROPERTY**

See Release Deed recorded at Middlesex South Registry of Deeds at Book 11701, Page 501.

**Annex 2 to Notice of Lease**

**DEPICTION OF LEASED PREMISES**

**EXHIBIT H**

**LESSEE'S DUTIES AT PREMISES**

1. Lessee's use of the Lease Area shall be subject to full compliance by the Lessee in all respects with the terms and conditions of any and all post-closure use permits or orders granted at any time throughout the Term by the Massachusetts Department of Environmental Protection (DEP) regarding the landfill located on the Premises.
2. Lessor may have continued operation or maintenance responsibilities required pursuant to the terms and conditions of any and all post-closure use permits or orders granted at any time throughout the Term by the Massachusetts Department of Environmental Protection regarding the landfill located on the Premises, to be conducted at the sole expense of the Lessor, and Lessee will use its best efforts to cooperate with Lessor's prosecution and completion of such work.
3. Lessee's access to the Premises shall be through the gate off of Route 2, unless alternate arrangements are made with and approved by the Highway Superintendent. The area designated for use as a municipal solid waste transfer station, recycling facility and paved area for stockpiling of Lessor's materials is separate from the Lease Area being used for the System (see Exhibit E) ("*Lessor Use Area*"); provided, that Lessor shall remove the existing clay stockpiles from the Lease Area in accordance with this Agreement. Access to portions of the Lease Area traverses the Lessor Use Area. Lessee shall coordinate with Lessor its access across the Lessor Use Area to minimize interference in the activities conducted in the Lessor Use Area.
4. Intentionally Deleted.
5. Lessee's construction hours shall be limited to the hours of 7:00 a.m. to 7:00 p.m. on weekdays and 8:00 to 5:00 p.m. on Saturdays, provided however that operation of earth-moving vehicles shall not be permitted on weekdays after 5 p.m. and shall not be permitted on Saturday. No construction work (or vehicle delivery) will be conducted on Sunday. The Lessee may request and the Highway Superintendent may approve extension of these hours for reasonable cause.
6. The landfill is equipped with groundwater monitoring wells, drainage facilities, and other utilities. All of these appurtenances are used to monitor or maintain the environmental performance of the landfill and shall not be obstructed or disturbed.
7. Subject to DEP approval, Lessee shall install all proposed utility lines underground between the Lease Area surface, upon completion of grading, and

- the cap. Lessee shall take care not to penetrate the cap and not to interfere with the Lessor's activities conducted in the Lessor Use Area.
8. The System shall be surface mounted with precast or cast in place concrete ballast blocks, or as otherwise approved by DEP and Lessor, and no part of the System foundation will penetrate or adversely impact the landfill cap. Re-grading of the surface of the Lease Area, removal of surface material and restoration shall comply with the Major Post-Closure Use Permit issued by the DEP, and be subject to review and approval, not to be unreasonably withheld, by the Lessor. Other than the clay stockpiles which shall be removed at Lessor's expense, surface material to be removed from the Lease Area is and shall remain the property of the Lessor, and shall be relocated at the Lessee's expense to another area on the Premises, as directed by the Highway Superintendent. Lessee shall not be required to dispose of such material off-site. Any fill or other material brought to the Premises by Lessee that does not remain or is not needed in the Lease Area shall be removed and disposed of according to Applicable Legal Requirements.
  9. The DEP requires regular maintenance of the vegetative cover of the capped landfill. This includes regular mowing to prevent tree growth, long rooted plant growth, and to prevent erosion and damage to the cap. Subject to DEP requirements and unless otherwise directed by DEP, all areas disturbed during construction shall be loamed, seeded and mulched, as soon as practical, and it shall be the Lessee's responsibility throughout the Term to maintain the vegetative cover and prevent erosion within the Lease Area. The Lessee shall submit to Lessor a detailed operations and maintenance plan in compliance with the DEP post-closure permit.
  10. All packing material and construction debris will be the responsibility of the Lessee to remove and properly dispose of off-site.
  11. Lessor anticipates that insolation of the Lease Area will not be adversely affected by any trees or other vegetative growth on the Premises but outside the Lease Area. Lessee shall have the right to maintain, trim and prune other growth adversely affecting insolation of the System and Lease Area, subject to a written design and maintenance plan submitted for review and approval, not to be unreasonably withheld, by the Lessor. In the event that the Lessee determines that trees should be removed, the Lessee shall notify and request approval, not to be unreasonably withheld, of the Town Tree Warden and the Highway Superintendent. Lessee shall at its own cost obtain access permits, as may be required and to the extent necessary by the Massachusetts Department of Transportation, to maintain, trim, prune or remove trees and vegetative growth within the Right of Way of Route 2.
  12. Signage instructing visitors and interested citizens who are in proximity to the System to refrain from trespassing on the Lease Area and of the dangers of

touching of the System will be provided by the Lessee, to the satisfaction of the Highway Superintendent.

13. Intentionally Deleted.
14. Prior to installing System equipment in the Lease Area, the Lessee shall install security fencing around the Lease Area to prevent unauthorized access and damage to the System. The Lessee shall submit to the Highway Superintendent for approval a schematic plan for the security fencing. Security fencing shall comply with any applicable DEP requirements. The Lessee shall provide to the Highway Superintendent a means of access to the Lease Area at all times.
15. The Lessee is responsible for providing its own utility/sanitary services needs during construction in the Lease Area.
16. The Lessor anticipates no additional snowplowing beyond the customary paths and ways plowed now by Lessor's staff. Lessor shall consider providing minor additional snowplowing at the request of Lessee, but in the event that Lessee's access to the Lease Area requires substantial additional snowplowing, Lessee shall be responsible.

**NOTICE OF LEASE**

RECORDING REQUESTED BY,  
PREPARED BY AND WHEN RECORDED  
RETURN TO:

Ann M. De Kruyff  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701

(Space above this line for recorder's use only)

**NOTICE OF LEASE**

This Notice of Lease is made this December 12, 2011, by and between Town of Acton, Massachusetts ("Lessor") and Ameresco Solar Acton LLC, a Delaware limited liability company ("Lessee" and together with Lessor, the "Parties").

In accordance with the provisions of Massachusetts General Laws Chapter 183, Section 4, as amended, notice is hereby given of the following described lease:

Date of Lease: \_\_\_\_\_

Lessor: Town of Acton, Massachusetts  
472 Main Street  
Acton, MA 01720

Lessee: Ameresco Solar Acton LLC  
111 Speen Street, Suite 410  
Framingham, MA 01701

Leased Premises: A portion of the landfill property owned by Lessor located at 14 Forest Road, Acton, MA, together with the right of access thereto from the public way. A legal description of the Lessor's land upon which the Leased Premises is located is attached hereto as Annex 1. A depiction of the Leased Premises is attached hereto as Annex 2

Initial Term: From \_\_\_\_\_ until 11:59 p.m. on the day preceding the twentieth anniversary of the Commercial Operation Date (as defined in the Commercial Power Purchase Agreement dated \_\_\_\_\_, 2011 between Lessor and Lessee (the "PPA")).

Leasehold

Access Rights: Appurtenant to the Leased Premises is the non-exclusive right and license, subject to the terms of the Lease for ingress and egress over all adjacent property of Lessor.

Ownership of

the System: Lessee or Lessee's assigns, will at all times retain title to and be the legal and beneficial owner of the System, which will at all times retain the legal status of personal property of Lessee as defined under Article 9 of the Uniform Commercial Code. The System will not attach to or be deemed a part of, or a fixture to, the Leased Premises, notwithstanding the manner in which the System is or may be affixed to the real property of Lessor.

The term "System" means the solar electric generating facility installed at Lessor's property, including but not limited to the System Assets.

"*System Assets*" means each and all of the assets of which the System is comprised, including Lessee's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on Lessor's premises, electric lines and conduits required to connect such equipment to the Delivery Point and the LDC System (as such terms are defined in the Lease), protective and associated equipment, improvements, metering devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

[Signatures begin on following page]

Executed and effective as of the date first set forth above.

LESSOR: TOWN OF ACTON

By: [Signature]  
Name:  
Title: Town Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 12 day of Dec, before me, the undersigned notary public, personally appeared Steven L. LeDoux, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as known to me of Town of Acton.

[Signature]  
Notary Public **CHRISTINE M. JOYCE**  
My Commission Expires  
September 10, 2015

LESSEE:

AMERESCO SOLAR ACTON LLC

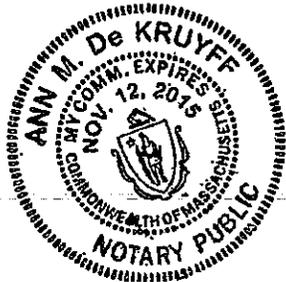
BY: AMERESCO, INC., ITS SOLE MEMBER

By: [Signature]  
Name:  
Title: Joseph DeManche, EVP

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 12<sup>th</sup> day of December, before me, the undersigned notary public, personally appeared Joseph DeManche, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Executive Vice President of Ameresco, Inc.



[Signature]  
Notary Public  
My commission expires: 11-12-15

**Annex 1 to Notice of Lease**

**DESCRIPTION OF LESSOR'S PROPERTY**

See Release Deed recorded at Middlesex South Registry of Deeds at Book 11701, Page 501.

**Annex 2 to Notice of Lease**

**DEPICTION OF LEASED PREMISES**

**Attached behind**

