

Please note, the official version of this RFQ is posted to the Commonwealth of Massachusetts's Central Registry. Any updates or questions will be posted through the registry.

**REQUEST FOR QUALIFICATIONS  
ENERGY MANAGEMENT SERVICES  
TOWN OF DUXBURY, MASS  
878 TREMONT STREET  
DUXBURY, MA 02332**

**1. SOLICITATION AND PROPOSAL PROCESS**

The Town of Duxbury, MA (the “*Issuer*”) is issuing this Request for Qualifications (“*RFQ*”) to solicit statements of qualifications (“*qualifications*” or “*responses*”), under M.G.L. c. 25A, § 11I, from solar energy developers (“*respondents*”) to:

- (1) Install and operate solar photovoltaic energy systems (“*Solar Energy System*” or “*System*”) at capped municipal landfill site off of Mayflower Street: (the “*Premises*”);
- (2) Furnish the Issuer with solar-generated electricity produced by the System(s); and,
- (3) Assist the Town in evaluating additional sites for solar energy systems.

Duxbury is a community of approximately 15,000 residents located in South Shore region of Massachusetts. The Town is governed by a Board of Selectman, Town Manager and Town Meeting. Duxbury has a full-time planning director to facilitate the success of this project. It is the desire of the Town to site one or more solar projects for the benefit of its citizens, the environment, and reduce reliance on foreign sources of energy. A Request for Qualifications (RFQ) is being issued to allow the Town to evaluate multiple options and determine the project and financial arrangement that best meets the Town’s interest.

Qualifications from respondents, as required in accordance with all terms and specifications contained herein, will be received by:

Scott J. Lambiase, Director of Inspectional Services  
Town of Duxbury  
878 Tremont Street  
Duxbury, MA 0332  
(781)-934-1100

Until: September 15, 2011, noon.

A Pre-Submission Conference will commence on August 23, 2011 at 10:00 am in Town Hall Mural Room, 878 Tremont Street, Duxbury.. Following the conference, optional tours of the Premises will be offered by the Town.

Responses must be submitted in a sealed outer package addressed to:

Scott J. Lambiase, Director of Inspectional Services  
Town of Duxbury  
878 Tremont Street  
Duxbury, MA 0332

Within each envelope or package, the respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the statement of qualifications on behalf of the respondent.

Within a sealed envelope within the outer package, respondent shall enclose three (3) hard copies and one (1) single-file electronic version (in Adobe Acrobat (pdf) format and on a CD-ROM) of the statement of qualifications. The sealed envelope shall be marked with the respondent's *company name*, and plainly marked in the lower left hand corner:

“Response to Solar Energy RFQ - Hold for Public Opening.”

It is the respondent's responsibility to see that its statement of qualifications is delivered within the time and at the place prescribed. No qualifications shall be opened by the Issuer until the time set for opening (the “**Public Opening**”). Withdrawal and modification of responses shall be governed by Section 3 of this RFQ.

All qualifications should be written in ink or typed. If there is any correction with whiteout, the person signing the statement of qualifications must initial the correction.

A respondent filing a statement of qualifications thereby certifies that (1) no officer, agent, or employee of the Town of Duxbury has a pecuniary interest in the statement of qualifications; (2) the statement of qualifications is made in good faith without fraud, collusion, or connection of any kind with any other prospective respondent for the same RFQ, and (3) the prospective respondent is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

The right is reserved, as the interest of the Issuer may require, to reject any or all qualifications, to waive any technical defect or informality in qualifications received, and to accept or reject any qualifications or portion thereof.

All questions pertaining to this RFQ should be referred to Town Planner Tom Broadrick via facsimile at 781-934-1137 or electronic mail at [broadrick@town.duxbury.ma.us](mailto:broadrick@town.duxbury.ma.us) prior to 4:00 p.m. on September 15, 2011.

One (1) copy of this RFQ will be furnished to respondents on request. It is the respondent's responsibility to check prior to the Public Opening for any updates issued as a result of questions or changes needed in this RFQ.

## 2. SCHEDULE

Pre-Submission Conference with the Town	August 23, 2011
Questions Due to the Town	September 5, 2011
Responses to Questions/Addenda Issued by the Town	September 12, 2011
Qualifications Due to the Town	September 15, 2011, noon
Public Opening of Qualifications	September 15, 2011, 1:00 pm
Final Negotiations	October 6, 2011
Anticipated Selection of Most Qualified Respondent	October 15, 2011

## 3. GENERAL TERMS AND CONDITIONS

3.1 Receipt and Opening of Responses. Sealed qualifications will be accepted by the Town of Duxbury until the time indicated in the schedule in Section 2 above and will then be publicly opened in the presence of at least two witnesses. Issuer will prepare a register of responses available for public inspection.

3.2 Form of Response. Qualifications must be submitted on and in accordance with the forms attached to this RFQ in Appendix A. No change shall be made in the phraseology of the form or in the item or items mentioned herein. The response must contain the name and proper address of the respondent, be signed by a responsible member of the respondent with his/her signature and official title, and include certification of site visitation, following the form of Appendix A1. Except as otherwise provided in this RFQ, responses that are incomplete, contain any omissions, erasures, alterations, additions or irregularities of any kind may be rejected.

3.3 Submission of Responses.

(a) Packages containing responses must be sealed and addressed as specified in Section 1 above.

(b) The Town Manager or his designee shall decide when the specified time has arrived to open responses and no response received thereafter will be considered.

(c) Any respondent may withdraw or modify its response by written request at any time prior to the established time of the Public Opening. Telephone responses, amendments or withdrawals will not be accepted.

(d) After the Public Opening, a respondent may withdraw, but may not modify, its response except in a manner that is not prejudicial to the interest of the Town or to fair competition. Negligence on the part of the respondent in preparing the response confers no rights for the modification of the response after it has been opened.

(e) Responses received prior to the Public Opening will be securely kept unopened. No responsibility will attach to an officer or person for the premature opening of a response not properly addressed and identified.

(f) Any deviation from the requirements of this RFQ must be noted in writing and attached as a part of the response. The respondent shall indicate the item or part with the deviation and indicate how the response deviates from the requirements.

(g) Any respondent taking exception to, or questioning any of the provisions, procedures, conditions, or specifications herein stated should make such exceptions known to the Town Manager, in writing, by September 5, 2011.

(h) Any change or interpretation made as a result thereof will be mailed or emailed to all prospective respondents. Should a respondent still not be satisfied, the respondent may, in the response, set out and stipulate the exception, with enough explanation to be understood by the Town. The Town may, at its discretion, accept or reject any or all exceptions.

(i) The Town may in its discretion waive any and all informalities or allow the respondent to correct them.

3.4 Evaluation of Responses. The Issuer will utilize an evaluation system, rank the qualified respondents and identify the three most qualified respondents. It is the responsibility of each respondent to provide information, evidence or exhibits that clearly demonstrate the respondent's ability to satisfactorily respond to project requirements and the factors listed on the qualifications forms. The evaluation process may include verification of references, confirmation of financial information and may include examination of other information as the Town deems appropriate. The Town will conduct interviews as required by M.G.L. c. 25A, Sec. 11I, and such additional interviews as it may deem necessary to evaluate the respondents. The Town may require public presentations by respondents. The Town reserves the right to request or obtain additional information about any and all responses.

A responsive respondent is a respondent that demonstrably possesses the skill, ability, financial resources, and integrity necessary to faithfully perform the work contemplated by this RFQ.

Each responsive statement of qualifications from a qualified respondent will be evaluated and ranked solely according to the criteria set forth in this RFQ. Each such response will be assigned a rating of *highly advantageous*, *advantageous*, *not advantageous*, or *unacceptable* with respect to each criterion and a composite rating will then be generated for each such response.

The Town shall select the three most qualified respondents, as required by M.G.L. c. 25A, 11I.

The Town will enter into negotiation of an energy management services (EMS) contract (and related agreements) (collectively, "the *contract*") with the most qualified respondent (see Appendix D for sample contract). If the Town and the most qualified respondent are unable, within sixty (60) days following the Town's notice of commencement of negotiations with a

respondent (or such longer period of time as the Town may deem appropriate), to negotiate a satisfactory contract with that respondent at a price the Town determines to be fair, competitive, and reasonable, the Town shall continue in compliance with M.G.L. c. 25A, Sec. 11I.

The Town may cancel this procurement when it determines that cancellation serves the best interests of the public. The Town may reject, in whole or in part, any and all planned or proposed project measures, when it determines that rejection serves the best interests of the public.

All substantive inquiries from prospective respondents concerning this RFQ must be submitted in writing and may be shared with other prospective respondents. All responses to substantive questions shall be in writing and will be simultaneously distributed to all recipients of the RFQ.

3.5 Statement of Qualifications. The statement of qualifications must consist of the following documents:

(a) Documentation evidencing that the respondent is responsible, demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work required by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with M.G.L. c. 149, § 44D.

(b) All certificates of eligibility and update statements required pursuant to M.G.L. c. 25A, § 11I.

(c) Certification of financial interest disclosure and of non-collusion, signed and submitted on the form attached to this RFQ as Appendix A2.

(d) Certification of compliance with state tax laws, reporting of employees and contractors, and withholding and remitting of child support, as required by M.G.L. c. 62C, § 49A, signed and submitted on the form attached to this RFQ as Appendix A3.

(e) Letter of transmittal, signed by an individual authorized to bind the respondent contractually, certifying that the respondent will, if selected to negotiate the contract with the Town, be prepared to promptly and actively participate in such negotiations.

(f) Certification that the respondent, if ultimately awarded a contract, will guarantee completion of all work required within due dates or the time periods needed.

3.6 Contract Requirements. The statement of qualifications must demonstrate the respondent's willingness and ability to comply with the following expected contract requirements:

(a) *Surety Bond.* The selected bidder will be required to provide a surety bond equal to 5% of the contract price.

(b) *Insurance.* The selected bidder(s) shall be required to provide the Town with proof of insurance submitted to the Town as stipulated in the attached sample contract. The Town of Duxbury must be named as an additional insured.

(c) *Prevailing Wages.* To the extent applicable, compliance with Massachusetts “prevailing wage” laws.

(d) *Subcontracting.* Except to the extent contemplated in the statement of qualifications and permitted in the contract, the contract will prohibit assignment or subcontracting without the Town’s express prior approval.

(e) *Indemnification.* The contract will require that the contractor hold harmless and indemnify the Town of Duxbury and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys’ fees and costs) brought against any of them arising from the contractor’s work or any subcontractor’s work under the contract.

(f) *Compliance with Laws.* The contract will require compliance with all federal, state and municipal laws, ordinances, rules and/or regulations, including labor laws and laws against employment discrimination.

(f) *Governing Law; Venue.* All contracts entered into by the Town shall be governed by the Laws of the Commonwealth of Massachusetts. Any disputes shall be resolved within the venue of the Commonwealth of Massachusetts.

3.7 Any contract resulting from this RFQ shall meet the requirements set forth in M.G.L. c. 25A, § 11I and will include, to the extent required by the Town, the Town’s standard contract terms.

3.8 Submission of a statement of qualifications shall be conclusive evidence that the respondent has examined the Premises and is familiar with all the conditions of this procurement.

Upon finding any omissions or discrepancy in this RFQ, the respondent shall notify the Town immediately so that any necessary addenda may be issued. Failure of the respondent to completely investigate the Premises and/or to be thoroughly familiar with the conditions of this procurement (including plans, specifications and all addenda) shall in no way relieve the respondent from any obligation with respect to its statement of qualifications.

#### **4. PURPOSE**

The Town of Duxbury desires to evaluate a site(s) for solar photovoltaic energy systems and purchase solar-generated energy for use by the Town in buildings and facilities located on Town-owned properties. An overview of selected municipal energy consumption is provided in Appendix C. The Town seeks qualifications from entities in the business of planning, designing, financing, installing, owning, operating and maintaining solar power electric generation facilities to finance, install, own, operate and maintain a solar power electric generation facility (the “*System*”), on the Premises (the “*Project*”). The Town, subject to Town Meeting approval,

desires to purchase from the selected bidder all of the electricity generated by the Systems for a period of ten (10) years (the “*Term*”) or more.

The selected respondent will own the System and will be responsible for the design, engineering, permitting, installation, testing, operation, maintenance, repair and decommissioning of the System, including, without limitation, procurement of the solar photovoltaic equipment and related services (the “*Solar Energy System Assets*”).

In addition, the Town seeks assistance in evaluating additional municipal sites for solar photovoltaic energy systems, either ground-mounted or roof-mounted. Bidders may suggest other possible locations and/or a methodology by which other locations would be added to those sites identified in this RFQ and the benefits they believe additional sites would provide to the Town.

To the extent feasible, the Town also wishes to coordinate and connect the solar array with a soon to be built municipal police station sited on property adjacent to the proposed project.

It is the Town’s expectation that the Project will generate sufficient energy savings to fund the full cost to the Town of the Project. More specifically for purposes of this RFQ, it is the Town’s expectation that the contract will result in net electricity cost savings to the Town over the life of the contract.

## **5. PROJECT SITE AND EXISTING SITE CONDITIONS**

5.1 Property Description. The Premises are described in Appendix B attached to this RFQ.

5.2 Site Conditions. Before submitting a statement of qualifications, each respondent will be responsible for obtaining such additional studies and data concerning conditions (surface, subsurface and underground facilities) at the Premises or otherwise, which may affect the respondent’s ability to promptly negotiate the contract if selected, or which the respondent otherwise reasonably deems necessary to develop a statement of qualifications to undertake the Project in accordance with the terms and conditions of this RFQ.

## **6. SCOPE OF WORK TO BE ADDRESSED**

6.1 Key Project Elements. The selected respondent and the Town will enter into an EMS contract in the form of Appendix D, pursuant to which the contractor will: (a) obtain from the Town the right to install, operate and maintain the System on the Premises, and (b) sell electric power generated by the System to the Town.

The selected respondent will be responsible for designing, financing, operating and maintaining the System, and obtaining all necessary permits and approvals (e.g., building permits).

At the end of the Term, the contractor will retain ownership of the System and be required to remove the System, unless the Town decides to negotiate a new contract with the selected respondent or exercise any right of purchase that is included in the contract. The contract will

include a requirement for the posting of a financial assurance mechanism to ensure that the System is removed.

The EMS Contract is a standard performance-based contract involving the generation and purchase of guaranteed quantities of electricity at a specified price. The respondent's proposal must include:

- (a) guaranteed annual electricity output (kWh/year); and
- (b) annual system degradation factors.

It is expected that the selected respondent will pursue tax credits and incentives, rebates, and other benefits that are available and/or may become available in the future. The respondent's proposal shall include a plan for the disposition and/or assignment of: (a) any environmental or other attributes (such as RECs, SRECs, greenhouse gas offsets, or forward capacity market payments) that are generated in connection with the operation of the Systems; (b) any tax credits or incentives generated in connection with the operation of the Systems; and (c) any grants or rebates obtained in connection with the installation of the Systems (such as from Commonwealth Solar).

The bidder's proposal shall include a plan to collect energy data at the facilities to assist the Town in evaluating the performance of the solar PV system(s).

The bidder's proposal shall include a plan for how it will allocate any financial impacts on its Price Proposal caused by changes in law.

The generation capacity of the Systems generally should not exceed the expected "base load" electric consumption requirements of the Town of Duxbury municipal facilities. To the extent that generation is not coincident with the Town's load, the bidder's proposal must include a plan for the disposition of any power in excess of what will be purchased by Town (e.g., net metering, offsets, or sale into the wholesale power grid for the selected bidder's own account).

6.2 Role of the Town. To facilitate the development of the Project, it is expected that the contract will require The Town to:

- (a) Provide reasonable access to the Premises to obtain data (whether required or reasonably requested by the contractor);
- (b) Grant to the contractor sufficient access and occupancy rights to allow the selected respondent to undertake the Project at the Premises;
- (c) Provide access for the installation, maintenance, and ongoing operation of the System;
- (d) To the extent reasonable and appropriate, provide information to the contractor to assist the contractor in securing any remaining permits for the Project, including but not limited to local board approvals; and
- (e) Cooperate with the contractor to the extent reasonable and appropriate on remaining issues with respect to access, construction and interconnection.

## 7. PROPOSAL REQUIREMENTS

Contents should include:

7.1 Transmittal Letter. Each proposer's response should include a transmittal letter signed by a party authorized to make a formal bid on behalf of the proposer. The letter shall clearly indicate that the proposer has carefully read all the provisions in the RFQ and should include a brief overview of the respondent's proposal. Transmittal letters should also acknowledge receipt and understanding of any Addenda associated with the project.

7.2 Qualifications.

Company Profile:

- (a) Year founded and number of continuous years in business. Status (private or publicly-held). Minimum of 5-years in business is required.
- (b) Number of employees in local branch office at the time of submittal (full time employees, excluding contractors).
- (c) Corporate Office location
- (d) Local Office location.

Licensing:

- (a) Provide a list of all relevant State-Specific Contracting Licenses held, including classification and number.
- (b) List any Electrical, Structural and/or Mechanical Engineering Licenses held by firm members, including classification and number.

Insurance:

- (a) Please provide evidence of the insurance limits held by your firm, including but not limited to:
  - Commercial General Liability Limits (per occurrence and aggregate), Commercial Automobile Liability Limits (per occurrence and aggregate), Professional Liability Limits (per occurrence and aggregate), Workers' Compensation Insurance, and any Umbrella/Other Coverage
- (b) Financially viable insurance rating.

Project Team:

- (a) Team leader identification for the entire proposal, including full contact information.
- (b) Identification of each business entity, person or firm involved in the proposal and their role (design, installation, permitting, equipment supply by component, operations and maintenance, etc.)
- (c) Resumes of personnel directly involved with the development of the proposed systems. Provide evidence of NABCEP-certified INSTALLER, Professional Engineer (P.E.), and Master Electrician.

Safety:

- (a) List your firm's Experience Modification Rate (EMR) for each of the past three years.
- (b) List your firm's OSHA ratings (Recordable Incidence Rates and Lost Workday Incident Rates) for the past three (3) years.

Capital Finance Structure:

- (a) Provide a description of the relevant financing structure (PPA) for the proposed project. Detail any unique features that your model offers in comparison to traditional PPA (third-party financing) structures.
- (b) Provide a list of five (5) past solar PV systems installed by your company and operating under a Power Purchase Agreement (PPA), including the number of kW's per project, length of contract and project name.
- (c) Provide evidence that your firm has the ability to secure financing for the total installed cost of the system proposed in response to this RFQ. This should be in the form of a commitment letter from the anticipated funding source.

7.3 Solar Project Experience

- (a) List the number, size (in kW DC) and location of PV projects completed in Massachusetts within the past 3 years over 20-kW in size.
- (b) List the total capacity (in kW DC) of operational solar electric installations completed by your company to date.
- (c) Evidence of incorporating "renewable energy" into elementary educational curriculum.
- (d) List the total capacity (in kW DC) of solar electric systems installed via the following methods:
  - Roof-mounted systems
  - Carport/Shade Structure mounted systems
  - Ground-mounted systems
- (e) List of previously installed/bid module technologies including Brand, module rating and technology type (crystalline, thin-film, etc.). If your company has any proprietary and/or exclusive corporate affiliation to any materials, equipment, or manufacturers related to the Work, please state those relationships.

#### 7.4 References

- (a) Describe *currently operating* non-residential grid-connected PV systems greater than 250 kW DC that your company installed and commissioned within the past three (3) years (*not in development*). A minimum of 5 completed projects must be listed. For each, please provide the following information:
  - System Size (kW DC)
  - Host Customer's and/or Owner's name with contact person's name, email, address, phone number
  - Location
  - Date Completed
  - Indicate if the installation was for multiple sites.
  - Any other installation-specific information that may be relevant
- (b) Briefly describe any *currently contracted yet incomplete* projects including project size (in kW DC), customer name and contact (if available), and estimated completion date.
- (c) List at least one example of a large (100KW) installation within 60 miles of Duxbury that could be visited for a representative sample of the firm's work.
- (d) DCAM certification in "energy management services" with an average contractor evaluation rating of 85 or more.

#### 7.5 Proposed Solar PV System

- (a) System Components: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at a minimum modules, inverters and ballasted mounting system). Specification sheets for any proposed technologies are encouraged.
- (b) Design: Include Preliminary Drawings for the proposed solution that include (at a minimum):
  - System size (in kW DC and kW AC)
  - List of proposed equipment
  - Location of modules (including tilt)
  - Location of inverters
  - Any other site-specific information that will aid in overall evaluation.
- (c) Schedule: Include a Preliminary Project Implementation Schedule that accounts for milestones in the Design, Construction and Closeout Stages. Milestones should include (at a minimum):
  - Award & Contract Negotiation
  - Design Period
  - Permitting

- Installation
- System Commissioning (Energizing)
- Delivery of Closeout Documentation.

7.6 System Performance Monitoring, Warranty and Service (O&M)

- (a) **Monitoring Solution:** Indicate if and how you provide system performance monitoring via a data acquisition system (DAS). Provide a detailed description of your DAS system and provide a detailed description of the end-user interface.
- (b) **Warranties:** Describe any warranties associated with the install, including full system coverage and/or warranties associated with individual components.
- (c) **Operations & Maintenance Services:** The Proposer will provide Operation & Maintenance (O&M) services for the full term of the Solar Power Purchase Agreement. Please describe the proposed O&M procedures for the system, detailing duties performed and if the contract will be maintained with the Proposer or a third-party provider. Please briefly describe your experience providing such services for similar installations and name the key personnel in charge of handling O&M services.
- (d) Provide a list of systems that are currently under O&M contract with the Respondent, including the number of MWs per project, length of contract and project name.

**8. PRELIMINARY PROJECT SCHEDULE**

Following are key milestones for the Project. Expected dates for their completion should be provided in the response to this solicitation.

<b>Milestone</b>	<b>Milestone Date (to be provided by respondent)</b>
Secure System Equipment and Assets	
Completion of Balance of System Design	
Mechanical Completion	
Substantial Completion	
Commercial Operation	
Final Completion	

## 9. MINIMUM EVALUATION CRITERIA

At a minimum, respondents shall meet the following requirements:

- (a) Timely submit the statement of qualifications.
- (b) Complete and fully execute the forms as provided in this RFQ (Appendix A).
- (c) Provide a copy of the appropriate licenses, accreditations, and the like required by federal, state, and/or local authorities with respect to the services contemplated by this RFQ.
- (d) A statement that the respondent is not debarred, suspended or otherwise prohibited from practice by any federal, state, or local agency.
- (e) Complete and submit a disclosure of beneficial interest in real property transaction as required.
- (f) Correctly follow all other terms and conditions of this RFQ.

Qualifications will be evaluated by the Town, using comparative criteria set forth as follows:

9.1 Approach and Schedule. The statement of qualifications shall include an explanation of how the respondent will approach the various tasks, including scheduling, methods and sources. To conform to the requirements of M.G.L. c. 25A, § 11I, the qualifications should, among other things, describe the quality of the products proposed, a methodology for determining energy savings (meaning, in the case of this RFQ, net savings on the Town's electricity costs over the life of the contract), and a proposed timeframe for performance of the contract.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.2 Respondent Qualifications and Experience. Specialized experience is required in a series of work areas. Qualifications must clearly demonstrate full knowledge, understanding, and experience in the methods, techniques and guidelines required for the performance of the required work. All elements within this factor are of equal importance.

Capacity and capability of the respondent to perform the work on schedule and be responsive to the Town's concerns should be clear. The Town may evaluate the respondent's ability to form successful working relationships and communications with the Town.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.3 Personnel Qualifications and Availability. Specialized experience is required of the proposed project personnel to undertake the work assignments. Qualifications must clearly demonstrate the capability, academic background, training, certifications and experience of the proposed personnel (not just of the respondent). The availability of the proposed staff is also of crucial importance and must be demonstrated. Specific project responsibility of staff to be assigned to the Projects must be included, as well as professional background and caliber of previous experience of key persons and of each consultant to be assigned to the Project.

If sub-consultants will be employed, similar information must be provided and the portions to be sub-consulted must be identified. (There is no penalty for use of sub-consultants; the qualifications of the entire team will be evaluated.)

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.4 Performance Record of Respondent. A list of references of at least three (3) recent contracting officers on on-site energy generation projects); references must include telephone number and affiliation, as well as a brief explanation of referenced work to permit comparisons with the nature, magnitude and complexity of the Project. The respondent shall indicate the individuals on staff who had responsibility for each project and whether or not these people are still employed by the respondent.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.5 Project Understanding. The respondent must demonstrate a comprehension of the role and function of this contract in meeting the needs of the Town. In addition to the understanding of the scope and approach, the respondent must demonstrate the following, which will be considered in the selection:

- Knowledge of current issues and state-of-the-art technologies.
- Experience demonstrated on similar projects.
- Demonstrated expertise and ability for rapid turnaround and flexibility on short-term projects.
- Capability to effectively direct multiple simultaneous work assignments.
- Ability to integrate and utilize interdisciplinary study teams effectively on assignments requiring a variety of skills and expertise from in-house resources.
- Ability to provide the necessary skills and expertise from in-house resources.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation

- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.6 Relevant Specific Knowledge/Experience: Local knowledge and experience. The respondent must demonstrate knowledge of the locality as evidenced by prior work experience in the Town and region.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.7 Relevant Specific Knowledge/Experience: Landfill closure, permitting and redevelopment experience. Given that one of the selected sites lies within a municipal landfill site, the respondent must clearly demonstrate experience in permitting and redevelopment with respect to environmentally complex sites, including landfills.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.8 Relevant Specific Knowledge/Experience: Experience identifying feasible sites. The Town is seeking an evaluation of other potential sites for ground-mounted or roof-mounted solar in the Town. The respondent should clearly demonstrate experience in identifying municipal sites for solar energy projects and conducting feasibility studies.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.9 Relevant Specific Knowledge/Experience: Public grant funding experience. The Town believes that securing public grant funding for the Project will be important to development of the Project on terms most beneficial to the Town. The respondent must clearly demonstrate both experience and success in securing federal and state grant funding and support for renewable energy activities.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.10 Relevant Specific Knowledge/Experience: Energy and environmental policy experience. The Town believes that expert knowledge of relevant energy and environmental laws and regulations (including the Massachusetts Green Communities Act), and experience with implementation of programs related to such laws and regulations, will facilitate the appropriate and efficient planning, structuring, financing and implementation of the Project. The respondent should demonstrate such knowledge and experience.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.11 Relevant Specific Knowledge/Experience: Leveraging project educational value. The Town is interested in using the Project as an educational tool for schoolchildren and/or community groups. The respondent must demonstrate its experience and explain its approach with respect to leveraging the educational value of solar energy systems.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.12 Ability to Contribute to Local Economic Development. The Town believes that solar energy development can contribute to economic development and job creation/job retention in the Town of Duxbury. The bidder must demonstrate its ability to contribute to the local economy including the use of local businesses and workers.

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

9.13 Thoroughness of Statement of Qualifications

- a. Unacceptable: No explanation
- b. Not Advantageous: Incomplete explanation
- c. Advantageous: Complete explanation
- d. Highly Advantageous: Most extensive, clear and compelling explanation

## **10. APPENDICES**

### **Appendix A – Statement of Qualifications Forms**

Appendix A1 – Respondent Information Form

Appendix A2 – Certificate of Non-Collusion

Appendix A3 – Attestation Regarding Filing of Tax Returns

### **Appendix B – Description of Premises**

**Appendix C – Municipal Energy Usage Data**

**Appendix D – Sample Contract**

**APPENDIX A1  
RESPONDENT INFORMATION FORM**

TO: Scott J. Lambiase, Director of Inspectional Services  
Town of Duxbury

The undersigned has read the Request for Qualifications (RFQ) and has carefully examined all specifications/ evaluation criteria therein. The undersigned certifies that he/she has visited the Premises and that there are no known obstacles to prevent the prompt negotiation and execution of an agreement with the Town of Duxbury. The undersigned acknowledges that the Town of Duxbury may reject all qualifications, or waive portions of the RFQ for all qualifications, if it deems it in the best interests of the public.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Respondent Information**

Name of Respondent: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Primary Contact: \_\_\_\_\_

Title of Primary Contact: \_\_\_\_\_

Primary Contact Phone Number: \_\_\_\_\_

Primary Contact Fax Number: \_\_\_\_\_

Primary Contact Email Address: \_\_\_\_\_

**APPENDIX A2  
CERTIFICATE OF NON-COLLUSION**

The undersigned certifies, under penalties of perjury, that this statement of qualifications has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

---

(Signature)

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(Name of person signing qualifications)

---

(Name of business)

**APPENDIX A3**  
**ATTESTATION REGARDING FILING OF TAX RETURNS**

TO: Scott J. Lambiase, Director of Inspectional Services  
Town of Duxbury

Pursuant to M.G.L. c. 62C, § 49A, I certify under the penalties of perjury that the undersigned respondent, to the best of his/her knowledge and belief, has filed all state tax returns and paid all state taxes required under law.

---

Social Security Number or  
Federal Identification Number

---

Signature of Individual or Officer

---

Date

---

Name of Corporation

## **APPENDIX B DESCRIPTION OF PREMISES**

The site identified by the Town for the installation of solar PV systems include:

- Mayflower Street capped landfill area (ground-mounted)

A brief description of the site follows. Site orthophotograph provided at the end of this Appendix.

### **1. Mayflower Street capped Landfill**

The Mayflower Street capped Landfill is located off of Mayflower Street. The landfill was capped in 1979 with two feet of fill material, including an impervious slayer of clay materials and a layer of loam and seed for stabilization. The impervious layer of material and the total capping extend to the bottom of slopes as they meet existing ground. Extensive monitoring wells were installed in 1988 and again in 1991, which showed no evidence of a leachate problem.

The capped landfill area has no direct abutters, a perimeter fence, and is approximately 150 yards to three-phase power.

The capped landfill area is adjacent to the site selected for a new municipal police station, which is still in planning and design stage. It is not expected that said police station will interfere with the solar project.

The town recognizes that to make the project more economically feasible it may be necessary to prune or reduce the vegetation and tree coverage directly encircling the proposed solar array to increase useable area (currently approx. 2 acres.)



**The green shaded portion is the approximate boundary of the capped landfill area. The entire parcel outlined in red is 18.99 acres.**



**APPENDIX C  
MUNICIPAL ENERGY USAGE DATA**

<b>Location</b>	<b>Building Size</b>	<b>Annual consumption (kWh)</b>
	<b>Gross Square feet</b>	<b>2010</b>

Public Schools	663,356	3,236,482
Municipal Buildings	275,000*	2,200,000

\* approximate figure

**APPENDIX D  
SAMPLE CONTRACT**

## ENERGY MANAGEMENT SERVICES CONTRACT

THIS ENERGY MANAGEMENT SERVICES CONTRACT (“*Agreement*”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_ (the “*Effective Date*”), by and between \_\_\_\_\_, a \_\_\_\_\_ of the Commonwealth of Massachusetts (“*User*”) and \_\_\_\_\_, a \_\_\_\_\_ corporation (“*Owner*”). User and Owner are sometimes hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

**WHEREAS**, User desires to purchase solar-generated electricity for use by User in one or more buildings located on the property of the User (the “*Premises*”), all as set forth in Exhibit A attached hereto;

**WHEREAS**, Owner is in the business of financing, installing, owning, operating and maintaining solar power electric generation facilities;

**WHEREAS**, Owner proposes to finance, install, own, operate and maintain solar energy facilities (the “*Systems*”) on the Premises, as more particularly set forth in Exhibit B attached hereto, on the Site:

**WHEREAS**, User proposes to grant to Owner a lease pursuant to this Agreement to allow Owner to install, operate, maintain and remove Systems on the Premises for the purposes and subject to the conditions set forth herein, all as further specified in the solar lease provisions (the “*SLP*”) set forth in Exhibit C attached hereto; and

**WHEREAS**, Owner desires to sell to User, and User desires to purchase from Owner, all of the Electricity generated by the Systems during the Term for use in the Facility, and otherwise in accordance with the terms of this Agreement, all as further specified in the solar power purchase provisions (the “*SPPP*”) set forth in Exhibit D attached hereto.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, User and Owner agree as follows.

### 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:

“*Affiliate*” means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“**Agreement**” means this Energy Management Services Contract, including all Exhibits and attachments hereto.

“**Annual System Degradation Factor**” means the factor expressed in percent by which the Guaranteed Annual Electric Output of the System shall decrease from one Contract Year to the next Contract Year as set forth in Exhibit C.

“**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.

“**Appraised Value**” means the fair market value assigned to the System, and any other power sales agreements, emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements to which Owner is a party and which are assignable to User, as determined by the Independent Appraiser.

“**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.

“**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 Premises’ electrical system, has undergone testing as provided herein, has

been accepted by User and (to the extent required, the LDC), is in compliance with Applicable Legal Requirements in all respects, and is capable of producing Electricity.

“**Commercial Operation Date**” means the first day on which the System is ready for Commercial Operation, as certified in writing by Owner to User in the Notice of Commercial Operation.

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

“**Construction Commencement Date**” means the date of commencement of actual preparation or construction activities on the Premises in connection with the installation of the System.

“**Costs**” means (i) all reasonable attorneys’ fees and expenses incurred by the relevant Party in connection with the termination of this Agreement, and (ii) all reasonable costs and expenses incurred by the relevant Party in removal of the System from the Premises; provided that in the case of clauses (i) and (ii), the relevant Party uses commercially reasonable effort to mitigate such Costs.

“**Decommissioning Assurance**” means adequate financial assurance, in a form reasonably satisfactory to User and in the amount set forth in Exhibit C hereto, that is established and thereafter maintained by Owner upon and after the Commercial Operation Date, to fully cover the cost of decommissioning the System and restoring the Premises as specified in the SLP.

“**Delivery Point**” means the agreed location or locations on the Premises where Electricity is to be delivered and received under this Agreement, as further set forth in Exhibit C attached hereto.

“**Early Termination Date**” shall have the meaning ascribed to it in Section 8.2.

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

“**Electricity**” means the actual and verifiable amount of electricity generated by the Systems and delivered to User at the Delivery Point for use by User on the Premises, as metered in whole kilowatt-hours (kWh) at the Metering Device, and that conforms to the applicable LDC and/or authoritative regulatory body standards. The Electricity delivered to User at the Delivery Point shall be deemed to be equal to the electric energy measured at the Metering Device; actual energy losses between the Metering Device and the Delivery Point shall not affect the Electricity.

“**Electricity Price**” shall mean the amount paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto.

**“Electricity Price Increase Factor”** means the amount, expressed as a percentage, by which the Electricity Price shall increase from one Contract Year to the next Contract Year, as set forth in Exhibit C attached hereto.

**“Environmental Attributes”** means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) financial based incentives under the Commonwealth Solar Initiative, (ii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iii) Solar Renewable Energy Credits or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iv) tax credits, incentives or depreciation allowances established under any federal or State law, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Electricity generated by the System during the Term and in which Owner has good and valid title.

**“Events of Default”** has the meaning set forth in Section 8.1.

**“Excess Electricity”** means any Electricity produced by the System in excess of the instantaneous usage requirements of User.

**“Force Majeure”** means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of the Claiming Party, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) User’s inability to economically use Electricity purchased hereunder, or (ii) Owner’s ability to sell Electricity at a price greater than the Electricity Price under this Agreement.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to User), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

**“Governmental Charges”** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Electricity or this Agreement.

**“Guaranteed Annual Electric Output”** means the minimum amount of electricity that is guaranteed by the Owner to be generated and by the System in a Contract Year, as set forth in Exhibit C.

**“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.

**“Independent Appraiser”** means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Owner, any Affiliate of Owner, or User.

**“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 User and reasonably acceptable to Owner. 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 municipality in which User is located, as set forth in Exhibit C.

**“LDC Commodity Rate”** shall mean the commodity rate charged by the LDC for Electricity in the municipality in which User is located.

**“LDC Retail Rate”** means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the LDC in any Contract Year for Electricity that is delivered in the municipality in which User is located, and shall include, without limitation, all electric commodity charges, transmission, distribution or other delivery charges, ancillary service charges, transition, renewable energy, efficiency, or competitive service charges, taxes, and other fees and charges in place.

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

**“Lease Area”** means the area on the Premises in which User grants Owner a lease to install and operate the System, as set forth in Exhibit A.

**“Maximum Electricity Price”** means the maximum Electricity Price, measured as a percentage of the then applicable LDC Rate, that may be charged under this Agreement, as set forth in Exhibit C attached hereto.

“**Metering Device**” means any and all revenue quality meters installed by Owner at or before the Delivery Point necessary or appropriate for the registration, recording, and transmission of information regarding the amount of Electricity generated by the System and delivered to the Delivery Point for use by User or otherwise for delivery into the LDC System.

“**MTC**” means the Massachusetts Technology Collaborative.

“**Net Metering**” shall have the meaning set forth in M.G.L. c.164, s.138 and 220 CMR 11.04.

“**Net Metering Credit**” shall mean the applicable credit paid to an eligible Class I, Class II, Class III, or Neighborhood net metering facility, as the case may be, as set forth in M.G.L. c.164, s.138-140.

“**Outside Construction Commencement Date**” means [\_\_\_\_\_] days after the Effective Date.

“**Outside Commercial Operation Date**” means the later of (i) [\_\_\_\_\_] days after the Construction Commencement Date, or (ii) [\_\_\_\_\_] days after the Effective Date.

“**Owner**” has the meaning set forth in the Preamble.

“**Person**” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

“**Premises**” has the meaning set forth in Exhibit A, and shall include the Lease Area.

“**Production Shortfall**” means the amount, expressed in kWh, by which the actual amount of Electricity generated by the System in any Contract Year is less than the Guaranteed Annual Electric Output for that Contract Year.

“**Purchase Price**” shall have the meaning ascribed to it in Section 12.5 of this Agreement.

“**Release**” means any release, migration, seepage, discharge, disposal, leak or spill of Hazardous Materials, including without limitation as any of the foregoing may be defined in or pursuant to any of the Applicable Legal Requirements.

“**SLP**” means the lease for the use of the Premises granted by User to Owner, the provisions of which are set forth in Exhibit D attached hereto.

“**SPPP**” means the solar power purchase provisions set forth in Exhibit C attached hereto.

“**System**” means the solar electric generating facility, including but not limited to the System Assets, that produces the Electricity sold and purchased under this Agreement, all as further set forth in Exhibit B attached hereto.

“**System Assets**” means each and all of the assets of which the System is comprised, including Owner’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, 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 Loss**” means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure).

“**Term**” shall have the meaning set forth in Section 2.1 herein.

“**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 Sections 7.1(d)(i) or 7.3 herein.

“**Termination Payment**” means an amount payable by a Party to the other Party in the event of termination of this Agreement as a result of an Event of Default, as set forth in Exhibit E attached hereto.

“**User**” has the meaning set forth in the introductory paragraph of this Agreement.

## TERM

Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date.

Extension of Term. User shall have the option, but not the obligation, to extend the Term for up to one (1) consecutive periods of five (5) years each (each such extension, an “**Extension Term**”), upon providing ninety (90) days prior written notice to Owner, unless this Agreement has been earlier terminated by either Party pursuant to Sections 7.1(d)(i), 7.3 or 8.2(a) hereof.

Achievement of Commercial Operation. Owner shall commence construction of the System by the Outside Construction Commencement Date, and achieve Commercial Operation of the System by the Outside Commercial Operation Date (the “**Milestone Dates**”).

## FACILITY OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL

Title. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the System shall be with the Owner.

Site Lease Agreement. Owner shall install, operate, maintain, repair and remove the System on the Premises pursuant to and in strict conformance with the SLP.

Construction, Maintenance, and Monitoring of System by Owner. Owner shall, at its sole cost and expense, (i) construct, operate, and maintain the Systems in accordance with Applicable Legal Requirements, in good condition and repair in accordance with applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, applicable requirements of the insurance policies maintained by User (copies of which to be provided to Owner) or Owner with respect to the System, and the terms of this Agreement, all as further set forth in Exhibits B, C, and D attached hereto, and (ii) monitor the System performance to ensure that any System malfunction causing a loss of Electricity will be discovered and rectified in accordance with industry standards.

Operations Manual; Training. Owner shall deliver to User an operations, maintenance and parts manual covering the System. In addition, Owner will train User's representative(s) on business-as-usual maintenance and monitoring operations of the System and on emergency preparedness and response. Notwithstanding the foregoing, User shall have no right to perform any maintenance or repair on the System without Owner's prior written consent, except in the case of an emergency where immediate action on the part of User is reasonably necessary for safety reasons

[Reserved]

Notice of Commercial Operation. Subject to the provisions of this Agreement, Owner shall notify and represent to User when the System has achieved Commercial Operation ("**Notice of Commercial Operation**"), and shall in such notice certify to User the Commercial Operation Date.

Removal of the System. Except as otherwise provided herein, Owner shall, within thirty (30) days following the end of the Term and at Owner's sole cost and expense, remove the System from the Premises and restore the Premises to its original condition, normal wear and tear excluded.

User's Right to Acquire the System. The Parties agree if this Agreement is terminated due to the expiration of its initial Term or any extension thereof, and User notifies Owner of User's intention to exercise the Purchase Option pursuant to Section 12.1, then User shall temporarily waive Owner's duty to comply with Section 3.7 for a period of up to one hundred twenty (120) days following the effective date of such termination, and such waiver shall expire if, on or before the expiration of such period, User has not notified Owner of its election to exercise the Purchase Option and further extend the waiver of Owner's duty to comply with Section 3.7.

Massachusetts Solar Renewable Portfolios Standard Carve Out.

The Parties acknowledge and agree that Owner shall act as the agent of User solely for the purpose of submitting any and all information and applications required for the User to participate in the Massachusetts Renewable Portfolio Standard Solar Carve Out.

In connection with the above, User shall assign any incentive payment obtained from the Solar Carve Out to Owner, and Owner shall use such payment to defray the capital cost of the System and reduce the price for Electricity that is charged by Owner to the User.

During the Term of this Agreement, Owner shall at all times comply with any obligations or requirements that are imposed on an “Installer” by the Solar Carve Out, including but not limited to those concerning reporting requirements, minimum technical requirements, minimum insurance requirements, minimum energy efficiency requirements, and any requirement to pay prevailing wages.

## PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

### Purchase and Sale of Electricity.

Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Owner shall make available to User, and User shall take delivery of at the Delivery Point, all of the Electricity generated by the System.

Notwithstanding the provisions of Section 4.1(a) above, in the event that the System produces Excess Electricity, then the Parties agree that:

if the System and User are eligible for Net Metering, and at the election of User, then (a) User shall purchase such Excess Electricity at the Electricity Price, (b) Owner shall transmit such Excess Electricity into the LDC System on behalf of and for the account of User, and (c) User shall be entitled to any and all Net Metering Credits issues by the LDC in response to such transmission; and

if the System and User are not eligible for Net Metering, or if User elects not to utilize the provisions of subsection 4.1(b)(ii) above, then (a) User shall not purchase such Excess Electricity, and (b) Owner may sell such Excess Electricity into the LDC System on behalf of and for its own account.

### Price for Electricity.

Except as set forth in Section 4.1(b) above, User shall pay Owner for the Electricity, as metered at the Metering Device, at the applicable Electricity Price. The payment to be made by User to Owner shall equal the Electricity for the relevant period multiplied by the Electricity Price for such period.

The Electricity Price for the first Contract Year of the Term (and any extension thereof) shall be as stated in the SPPP. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Electricity Price shall be increased by the applicable Electricity Price Increase Factor.

Maximum Electricity Price. Notwithstanding the provisions of Section 4.3(a) above or the SPPP, the Parties agree that in no event shall the Electricity Price exceed the Maximum Electricity Price.

Adjustments to Electricity Price. In all cases, any adjustments in the Electricity Price shall be made to the nearest thousandth of a cent.

Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Owner to User at the Delivery Point. Owner warrants that it will deliver the Electricity to User at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

Governmental Charges.

Owner is responsible for local, state and federal income taxes attributable to Owner for income received under this Agreement.

Owner is responsible for all real property taxes attributable to the System.

Owner is responsible for any Governmental Charges attributable to the sale of Electricity from Owner to User or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of Electricity to User at the Delivery Point or to the LDC System.

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

Guaranteed Annual Electric Output.

Owner guarantees that the Systems will produce the Guaranteed Annual Electric Output in each Contract Year, as adjusted by the Annual System Degradation Factor. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Guaranteed Annual Electric Output shall be decreased by the Annual System Degradation Factor.

In the event that a Production Shortfall exists in any Contract Year, Owner shall pay to User, within thirty (30) days of the end of such Contract Year, the LDC Retail Rate for each kWh of such Production Shortfall.

## ENVIRONMENTAL ATTRIBUTES

Title to Environmental Attributes. All Environmental Attributes relating to the System or the Electricity will be and remain property of Owner. Owner shall have all right, title, and interest in and to any and all Environmental Attributes that relate to the Electricity during the Term, and User shall have no right, title or interest in or to any such Environmental Attributes.

Reporting of Ownership of Environmental Attributes. Owner shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Electric Output. User shall not report to any Person that any Environmental Attributes relating to the Electric Output belong to any Person other than Owner.

Further Assurances. At Owner's request and expense, User shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Owner's right, title and interest in and to the Environmental Attributes relating to the Electricity. If the standards used to qualify the Environmental Attributes to which Owner is entitled under this Agreement are changed or modified, User shall at Owner's request and expense use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

## METERING DEVICE AND METERING

Metering Equipment. The Parties acknowledge and agree that Owner shall provide, install, own, operate and maintain the Metering Device. Owner shall maintain and test the Metering Device in accordance with Applicable Legal Requirements, but on no less than an annual basis.

Measurements. Readings of the Metering Device shall be conclusive as to the amount of Electricity delivered to User; *provided*, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 6.3, or registers inaccurately, measurement of Electricity shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Metering Device was registering accurately; or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 6.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, *provided, however*, that, in the case of clause (ii), the period covered by the correction under Section 6.3 shall not exceed six months.

### Testing and Correction.

User's Right to Conduct Tests. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Owner to verify

the accuracy of the measurements and recordings of the Metering Device. Owner shall provide at least twenty (20) days prior written notice to User of the date upon which any such test is to occur. Owner shall prepare a written report setting forth the results of each such test, and shall provide User with copies of such written report not later than thirty (30) days after completion of such test. Owner shall bear the cost of the annual testing of the Metering Device and the preparation of the Metering Device test reports.

Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy.

The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing.

Owner shall, within fifteen (15) days after receiving such notice from User, or User shall, within such time after having received such notice from Owner, advise the other Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.

If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the Metering Device to be tested.

If the Metering Device is found to be inaccurate by not more than 2%, any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 6.3(b)(i) shall bear the cost of inspection and testing of the Metering Device.

If the Metering Device is found to be inaccurate by more than 2% or if such Metering Device is for any reason out of service or fails to register, then (a) Owner shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (b) the Parties shall estimate the correct amounts of Electricity delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 6.2, and (c) Owner shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Electricity for any period is decreased (such quantity, the “*Electricity Deficiency Quantity*”), Owner shall reimburse User for the amount paid by User in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Electricity for any period is increased (such quantity, the “*Electricity Surplus Quantity*”), User shall pay for the Electricity Surplus Quantity at the Electricity Price applicable during the applicable Contract Year.

LOSS, DAMAGE OR DESTRUCTION OF SYSTEM;  
FORCE MAJEURE

System Loss.

Owner shall bear the risk of any System Loss, except to the extent such System Loss results from the gross negligence of User or User's agents, representatives, customers, vendors, visitors, employees, contractors, or invitees (collectively, "*User Misconduct*").

In the event of any System Loss that results in less than total damage, destruction or loss of the System, this Agreement will remain in full force and effect and Owner will, at Owner's sole cost and expense, subject to Section 7.1(c) below, repair or replace the System as quickly as practicable.

To the extent that any System Loss that results in less than total damage, destruction or loss of the System, and is caused by User Misconduct, User shall promptly upon demand therefore from Owner pay any and all costs and expenses of such repair or replacement.

In the event of any System Loss that, in the reasonable judgment of Owner, results in total damage, destruction or loss of the System, Owner shall, within twenty (20) Business Days following the occurrence of such System Loss, notify User whether Owner is willing, notwithstanding such System Loss, to repair or replace the System.

In the event that Owner notifies User that Owner is not willing to repair or replace the System, this Agreement will terminate automatically effective upon the effectiveness of such notice and Owner shall promptly remove the System from the Premises in accordance with Section 3.7. If such System Loss has been caused, in total or partially, by User Misconduct, User shall, within ten (10) Business Days following such termination, pay to Owner, as liquidated damages and not as a penalty, the Termination Payment applicable as of such termination date. If such System Loss has not been caused, in total or partially, by User Misconduct, Owner shall, within ten (10) Business Days following such termination, pay to User as liquidated damages and not as a penalty, the Termination Payment applicable as of such termination date.

In the event that Owner notifies User that Owner is willing to repair or replace the System, the following shall occur, (A) this Agreement will remain in full force and effect, (B) Owner will repair or replace the System as quickly as practicable, and (C) if such System Loss has been caused, in total or partially, by User Misconduct, User shall promptly upon demand therefore from Owner pay any and all costs and expenses of such repair or replacement.

Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "*Claiming Party*") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume

performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure for a consecutive period of six (6) calendar months or longer, the non-Claiming Party may terminate this Agreement, in whole or in part, without any liability to the Claiming Party as a result of such termination and Owner shall promptly remove the System from the Premises.

## EVENTS OF DEFAULT; REMEDIES

Events of Default. An “*Event of Default*” means, with respect to a Party (a “*Defaulting Party*”), the occurrence of any of the following:

the failure to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after receipt of written notice;

any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied, if capable of being remedied, within twenty (20) Business Days after receipt of written notice;

such Party becomes Bankrupt;

such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within three (3) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party, or (ii) the occurrence of a default by the insurer of such Party under any insurance policy provided hereunder;

such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of such Party under this Agreement;

failure by the User to achieve the Milestone Dates, except due to an event of Force Majeure; or

failure to comply with the terms of the SLP.

Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “*Non-Defaulting Party*”) shall, without (except as otherwise provided in Section 8.3) limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or applicable Law, have the right:

(a) by notice to the Defaulting Party, to designate a date, not earlier than twenty (20) Business Days after the date such notice is effective, as an early termination date (“**Early Termination Date**”) in respect of this Agreement; (b) to withhold any payments due to the Defaulting Party under this Agreement; and (c) to suspend performance due to the Defaulting Party under this Agreement. In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date.

**User Rights Upon Termination for Default.** In the event that User is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, User shall, at its sole and exclusive option and in its sole and absolute discretion, either (a) require Owner to remove the System as provided in Section 3.7 above and pay the Termination Payment, or (b) exercise the Purchase Option provided in Section 12.1 below and require the Owner to pay the Termination Payment. In the event that User elects either of the foregoing remedies, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to User as a result of termination of this Agreement subject, however, to Section 8.8 below. Owner’s liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived by User.

**Owner Rights Upon Termination for Default.** In the event that Owner is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, Owner shall, at its sole and exclusive option and in its sole and absolute discretion, remove the System and require User to pay the Termination Payment to Owner. In the event that Owner elects the foregoing remedy, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to Owner as a result of termination of this Agreement subject, however, to Section 8.8 below. User’s liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived by Owner.

**Termination Payment Notice.** In the event that a Non-Defaulting Party elects to require payment of the Termination Payment as provided in Section 8.3 or 8.4, then, as soon as practicable after calculation of the Termination Payment by such Party, the Non-Defaulting Party will notify the Defaulting Party of the amount of the Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall pay the Termination Payment and any amount otherwise due and outstanding under this Agreement to the Non-Defaulting Party within thirty (30) Business Days after the effectiveness of such notice.

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

**Remedies Cumulative.** Except as provided in Sections 7.1, 7.3, 8.3 and 8.4, the rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## INVOICING AND PAYMENT

Invoicing and Payment. All invoices under this Agreement will be due and payable not later than [\_\_\_\_\_] (\_\_) days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day). Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Agreement at any time within three (3) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the date paid.

Interest. If either Party shall fail to pay the other Party any sum required to be paid within five (5) Business Days after the payment due date, interest on the unpaid amount shall accrue at the Interest Rate from and including the payment due date to but excluding the date the payment is received.

Netting and Setoff. The Parties will net any and all mutual debts and payment obligations that are due and owing under this Agreement.

Records and Audits. Each Party will keep, for a period not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions during such other Party's normal business hours.

## REPRESENTATIONS AND WARRANTIES; USER ACKNOWLEDGEMENT

Representations and Warranties. Each Party represents and warrants to the other Party that: (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Legal Requirements; (b) this Agreement, and each document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other Applicable Legal Requirements affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court; (c) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing; (d) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and (e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

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

## LIMITATIONS

Limitation of Remedies, Liability and Damages. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

Limitation on Warranties. Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

## SYSTEM PURCHASE AND SALE OPTIONS

Grant of Purchase Option. For and in consideration of the payments made by User under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which

are hereby acknowledged by the Parties, Owner hereby grants User the right and option to purchase all of Owner's right, title and interest in and to the System and the Environmental Attributes on the terms set forth in this Agreement (the "**Purchase Option**").

User Request for Appraisal of System Value. Not later than (a) 180 days prior to the end of the Initial Term or any Extension Term, or (b) in the Event of Default with respect to Owner in the notice under Section 8.3, User shall have the right to provide a notice to Owner requiring a determination of the Purchase Price in accordance with Sections 12.4 and 12.5.

Selection of Independent Appraiser. Within twenty (20) Business Days of Owner's receipt of a notice provided under Section 12.2, Owner and User shall each propose an Independent Appraiser. If Owner and User do not agree upon the appointment of an Independent Appraiser within such twenty (20) Business Day period, then at the end of such twenty (20) Business Day period, two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Owner and User. Such selection shall be final and binding on Owner and User.

Determination of Purchase Price.

The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Purchase Price in accordance with Section 12.5 (the "**Preliminary Determination**").

Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Owner and User, together with all supporting documentation that details the calculation of the Preliminary Determination. Owner and User shall each have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the selected Independent Appraiser shall issue its final determination (the "**Final Determination**") to Owner and User, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the selected Independent Appraiser shall be final and binding on the Parties.

Calculation of Purchase Price. The purchase price (the "**Purchase Price**") payable by User for the System and the Environmental Attributes shall be equal to the Appraised Value as determined by the Independent Appraiser.

Costs and Expenses of Independent Appraiser. Owner and User shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

Exercise of Purchase Option.

User shall have twenty (20) Business Days from the date of the Final Determination (such period, the “**Exercise Period**”), to exercise the Purchase Option, at the Purchase Price set forth in the Final Determination. User must exercise its Purchase Option during the Exercise Period by providing a notice (an “**Exercise Notice**”) to Owner. Once User delivers its Exercise Notice to Owner, such exercise shall be irrevocable.

Promptly following receipt of User’s notice pursuant to Section 12.2, Owner shall make the System and the Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, available to User for its inspection during normal business hours.

Terms of System Purchase. On the Transfer Date (a) Owner shall surrender and transfer to User all of Owner’s right, title and interest in and to the System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the System and the Environmental Attributes prior to the Transfer Date, (b) User shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System, and the Environmental Attributes in User, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System and the Environmental Attributes to User.

Transfer Date. The closing of any sale of the System (the “**Transfer Date**”) pursuant to this Article will occur no later than thirty (30) Business Days following the date of the Exercise Notice.

## CONFIDENTIALITY

### Confidentiality.

Neither Party will use any Confidential Information for any purpose except such Party’s performance under this Agreement. Furthermore, neither Party will disclose any Confidential Information to any third party (other than (and then only for purposes permitted by this Agreement) the Party’s or the Party’s Affiliates’ officers, employees, lenders, counsel, accountants or advisors (collectively, “**Representatives**”) who have a need to know such information for the purposes permitted by this section and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein) except in order to comply with the requirements of any applicable Law or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Entity; *provided, however,* that each Party will use reasonable efforts to prevent or limit any such disclosure.

“**Confidential Information**” means any non-public confidential or proprietary information of a Party or its Affiliates or any of its or their Representatives relating to this Agreement and the System and revealed to the other Party or its Affiliates or any of its or their Representatives during the Term.

The obligations of the Parties under this Article will survive for a period of two (2) years from and after the termination of this Agreement.

## DISPUTE RESOLUTION AND ARBITRATION

Notice of Dispute/Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the twenty (20) Business Day period following said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party may, during said twenty (20) Business Day period, request the utilization of the services of a professional mediator, and the other Party or parties to this dispute shall cooperate with such request and share equally the reasonable costs of such mediator.

### Arbitration.

In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, cannot be settled or resolved amicably by the Parties during the twenty (20) Business Day period of good faith negotiations provided for above, then either or any Party hereto may submit said controversy, claim or dispute for arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“**AAA Rules**”); *provided, however*, that notwithstanding any provisions of such AAA Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in the Massachusetts Rules of Civil Procedure, as and to the extent that the arbitrator deems fair and reasonable. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein. The arbitrator shall have no authority to award any relief which could not be awarded by a court applying the laws of the Commonwealth of Massachusetts. The decision of the arbitrator shall be final, binding, and nonappealable except for fraud or lack of jurisdiction.

Any Party desiring arbitration shall serve on the other Party or parties and the Boston Office of the American Arbitration Association, in accordance with the AAA Rules, its Notice of Intent to Arbitrate (“**Notice**”). The Notice shall be served within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the

date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

A single, neutral arbitrator shall be selected by the Parties, who is generally familiar with the factual and legal issues that relate to the purchase and sale of electrical energy generated by solar energy facilities on the basis of power purchase agreements. In the event that the Parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the AAA Rules.

The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration.

If a controversy, claim or dispute arises between the Parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the Parties and any third party, which controversy, claim or dispute arises out of or relates to the same Transaction or series of Transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; *provided, however*, that any such third party must be a Party to an agreement with any of the parties which provides for arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, must consent to arbitration as provided for hereunder.

All arbitration proceedings shall be held in Boston, Massachusetts. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

Acknowledgment of Arbitration. EACH PARTY UNDERSTANDS THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTE OR NEED OF INTERPRETATION PERTAINING TO THIS AGREEMENT. AFTER SIGNING THIS AGREEMENT, EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE AND THAT IS COVERED BY THE ARBITRATION PROVISION. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO IMPARTIAL ARBITRATION AS SET FORTH IN THIS AGREEMENT.

## NOTICES

Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day

that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

User:

Owner:

## ASSIGNMENT; BINDING EFFECT

### Assignment; Binding Effect.

Owner shall not, without the prior written consent of User, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void; provided, however, that Owner may, with only prior notice to User, assign, pledge or transfer all or any part of, or any right or obligation under this Agreement for security purposes in connection with any financing or other financial arrangements regarding the System (each, a “*Permitted Transfer*”); *provided further, however*, that assignee shall assume all of Owner’s obligations under this Agreement in writing. Owner shall deliver notice of any Permitted Transfer to User in writing as soon as reasonably practicable.

Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

## LIMITATION OF LIABILITY

Limitation of Liability. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

## MISCELLANEOUS

Amendment and Restatement; No Effect on Existing Guaranty; Contract Drafting. The Parties acknowledge that they jointly participated in the drafting of this Agreement, jointly participated in the choice of language used in this Agreement, and have each reviewed all of the terms of this Agreement. This document has not been proffered by one Party to the exclusion of the other Party. If any ambiguous word or phrase is found in this Agreement, the canon of construction requiring that any such word or phrase be construed against the drafter shall not be applied to determine the true meaning of that ambiguous word or phrase.

Waiver. No waiver by either Party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. Any provisions adjudged to be invalid or unenforceable shall be severed from the Agreement and the remaining provisions shall continue in full force and effect. The Parties shall negotiate promptly and in good faith to fashion contractual provisions to be observed in place of any provisions adjudged to be invalid or unenforceable to achieve as nearly as possible the commercial results contemplated by this Agreement.

Headings. The headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

Entire Agreement; Amendment. This Agreement and any Exhibits referenced herein shall constitute the entire agreement of the Parties as to the subject matter addressed herein. There are no other agreements between the Parties concerning the subject matter of this Agreement. This Agreement and its Exhibits may not be altered, modified, supplemented, terminated or discharged except by way of an instrument in writing executed by both Parties.

Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without resort to any principles of law that would call for the application of the laws of any other jurisdiction. Each of the Parties consents to the jurisdiction of the federal courts of the Commonwealth of Massachusetts with respect to all disputes arising under or out of this Agreement.

Consent to Service of Process. Each Party hereby consents to service of process in the Commonwealth of Massachusetts in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same

instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission is binding upon the other Party as an original.

No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

Nondiscrimination. Tenant agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Tenant, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Tenant shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement or the attached SLP shall be deemed to be an agreement by User to issue or cause the issuance of any Approval, or to limit or otherwise affect the ability of the User or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

Survivorship. The provisions of Sections 3.7, 3.8, 8.7, 8.8, 9.5, 11.1, 11.2, 13.1, 14.1 through 14.8, 15.1, 17.1, 18.1, 18.7, 18.8, 18.10, 18.11, 18.13, Exhibit C, Exhibit D, Sections 1.2, 3.5, 4.9, 5.1, 5.2, 5.3, 6.2, 7.1, 7.2, 8.3, 8.4, and Exhibit E shall survive the expiration or earlier termination of this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties hereto have executed this ENERGY MANAGEMENT SERVICES CONTRACT under seal as of the day and year first above written.

<b>USER:</b>	<b>OWNER:</b>
By: _____ [SIGNATURE]	By: _____ [SIGNATURE]
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

**DESCRIPTION OF THE PREMISES**

Address:

Legal Description:

**Description of the Lease Area:**

The Lease Area shall further include such additional space within the Building [\*\*\**to be defined*] and on the roof of the Building for the installation, operation and maintenance of utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary and convenient equipment and appurtenances (collectively, the “*Cabling Space*”) running between and among the Floor Space, the Rooftop Space, the Delivery Point [\*\*\**all to be defined*], and all necessary electrical and other utility sources located within the Building or on the Property, together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Premises and in and through the Building to and from the Premises for the purpose of installation, operation, inspection, maintenance, repair and improvements of the System. The Floor Space, Rooftop Space, Delivery Point and Cabling Space are hereinafter collectively referred to as the “*Lease Area*” and are as shown on the *Site Plan of Lease Area* attached to this Exhibit A. In the event there are not sufficient electric and other necessary utility sources located within the Building or on the Premises to enable Owner to transmit Electricity generated by the System to the Delivery Point, User agrees to grant Owner or the LDC the right to install such utilities on, over and/or under the Premises and through the Building as necessary for Owner to operate the System, provided, however, the location of such utilities shall be as reasonably designated by User.

EXHIBIT B

**DESCRIPTION OF THE SYSTEM**

SOLAR ENERGY SYSTEM:	System Manufacturer: _____
	Nameplate Capacity: _____
	Approximate Annual Energy Production:
	_____ kWh
	Location: _____
	Preliminary Specifications:
	_____
SOLAR ENERGY SYSTEM ASSETS:	Mounting Systems _____
	Tracking Devices: _____
	Inverters: _____
	Integrators: _____
	Related Equipment: _____
	Electric Lines: _____
	Permits: _____
	Contracts: _____

EXHIBIT C

**SOLAR POWER PURCHASE PROVISIONS**

GUARANTEED ANNUAL ELECTRIC OUTPUT	_____ kWh/year
ANNUAL SYSTEM DEGRADATION FACTOR	____% per year
ELECTRICITY PRICE	\$_____ per kWh during the first Contract Year of the Term
ELECTRIC PRICE INCREASE FACTOR	____% per year
MAXIMUM ELECTRICITY PRICE	____% of LDC Retail Rate
LDC	_____
PERFORMANCE BOND AMOUNT	\$ _____
DECOMMISSIONING ASSURANCE AMOUNT	\$ _____

## EXHIBIT D

### **SOLAR LEASE PROVISIONS**

The terms and conditions of the Agreement are by this reference incorporated herein as though fully set forth herein and all capitalized terms not otherwise defined herein shall have the same definition as set forth in the Agreement. In the event of any discrepancy between the terms of the Agreement and the terms of this Lease, the terms of the Agreement shall govern this Lease, unless expressly provided otherwise herein.

### **THE PREMISES**

**Premises.** User, for and in consideration of the covenants and agreements on the part of Owner contained herein and in the Agreement, does hereby lease unto Owner, and Owner does hereby take from User, 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. Owner's use of the Lease Area is subject to the following:

present and future zoning laws, ordinances, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises;

the condition and state of repair of the Premises as the same may be on the Effective Date; and

full compliance by the Owner in all respects with all Applicable Legal Requirements.

**As-Is Lease of the Premises.** Owner accepts the Lease Area after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and non-uses. Owner accepts the Lease Area in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by User and without recourse to User, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Lease Area or the Premises or any part thereof may be put. User 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. Notwithstanding the above, the Parties agree that Owner 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 Owner's negligence or willful misconduct.

### **Ownership of the System.**

**Title to System.** Subject to the rights provided to User pursuant to other terms hereof, the System and all alterations, additions, improvements or installations made thereto by Owner and all Owner property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Owner (“***Owner Property***”). In no event shall any Owner Property be deemed a fixture, nor shall User, nor anyone claiming by, through or under User (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Owner Property at any time except as otherwise provided herein. User shall have no ownership or other interest in the System or any System Assets or other equipment or personal property of Owner installed on the Premises, and Owner 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, User hereby waives any statutory or common law lien that it might otherwise have in or to the System and other System Assets or any portion thereof.

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

**No Expenditures.** Owner and User acknowledge and agree that User shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease or the ownership, construction, operation, maintenance, repair, or removal of the System.

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

### PERFORMANCE OF OWNER’S OBLIGATIONS

**Cures - Rights, Costs and Damages.** If Owner shall default in the performance of any material covenant, term, provision, limitation, or condition contained in this lease beyond the expiration of all applicable notice and grace periods (hereafter, collectively, a “***Triggering Event***”), User, without being under any obligation to do so and without waiving such default, may remedy such other default for the account of Owner, 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 Owner 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 Owner has commenced and is diligently prosecuting a cure), after User notifies Owner in writing of User’s intention to remedy such other default. All costs reasonably incurred by User to

remedy such default (including, without limitation, all reasonable attorney's fees), shall be at the expense of Owner.

**Step-in Rights/Step-out.** Regardless of whether User exercises its rights pursuant to Section 2.1 of this SLP, User shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements, to take possession of the System and to operate the System upon the occurrence of a Triggering Event until Owner demonstrates to the reasonable satisfaction of User that the events giving rise to the Triggering Event have been cured, and that Owner has taken all reasonably necessary steps to ensure that such events shall not re-occur. User shall not be liable to Owner for any damages, losses or claims sustained by or made against Owner as a result of User's exercise of possession and operational control of the System except to the extent such damages, losses or claims result from the negligence or willful misconduct of User.

## OWNER'S DUTY TO MAINTAIN

### **Maintenance; Repairs.**

Owner shall take good care of the Lease Area and the System, conduct all required maintenance and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the System in first class order, repair and condition ("***Owner's Maintenance Obligations***").

User shall have no duty or liability to Owner with respect to the maintenance, repair or security of the Premises, the System or any access areas.

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

Notwithstanding the foregoing in Section 3.1(c) above, User acknowledges, agrees, and accepts that activities conducted by or on behalf of Owner on the Premises relating to the System may interfere with User's maintenance of the Premises or User's conduct of business thereon. Owner agrees to take all commercially reasonable measures to minimize such interferences.

**Utilities.** Owner shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. User shall have no duty or liability to Owner with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by User or any third party, nor shall User have any liability to Owner (including, without limitation, liability for lost revenue) arising from User's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Owner desires to

undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by User, Owner may do so at Owner's expense subject to the approval of User, which shall not be unreasonably withheld.

**Compliance with Laws; Professional Standards.** Owner, at Owner's expense, shall diligently and fully comply with all Applicable Legal Requirements. In addition, Owner shall ensure that the System is operated and maintained in a professional manner by appropriately trained and qualified individuals

**Performance Bond.** No later than the thirty (30) days following the Effective Date, Owner shall provide (or cause its contractor or other third party to provide) User with a performance bond from an issuer with a Best's rating of not less than "A" and in a form and amount reasonably acceptable to User (the "***Bond***"), which bond shall be in an amount sufficient to secure Owner's obligations with respect to the construction of the System under this Agreement or, prior to completion of construction and commissioning of the System, Owner's removal and restoration obligations under this Agreement, in the amount set forth in the SPPP. The Bond shall remain in effect until sixty (60) days after delivery by Owner to User of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by User, (b) User has provided notice to Owner of a dispute regarding the completion of the System in accordance with the provisions of this lease, in which case the Bond shall remain in effect until the resolution of such dispute, (c) User provides the issuer of the Bond written notice authorizing the expiration of the Bond, or (d) this lease is terminated pursuant to the provisions hereof and Owner has fulfilled its removal and restoration obligations under the Agreement.

**Decommissioning Assurance.** Upon the issuance of the Notice of Commercial Operation, Owner shall establish and maintain thereafter adequate financial assurance, in a form subject to the reasonable approval of User, to fully cover the cost of decommissioning the System and restoring the Premises as specified in this lease and the Agreement (such assurance, the "***Decommissioning Assurance***"). Depending on the circumstances, and subject to User's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide User with adequate rights to access the Decommissioning Assurance in the event of Owner's failure to comply with its System removal and Premises restoration obligations under the Agreement.

**Re-Roofing (if roof-mounted System(s)).** If re-roofing is contemplated by User, Owner agrees that it shall bear the cost of moving the System, if necessary, once during the Term to allow User to re-roof the Building. This will include removing the System from the roof, storing the System components at Owner's expense or as arrangements allow for storage at the Building, and re-installing the System as per the approved design and plans. Owner agrees that it will defend, indemnify and hold harmless User for the cost of any damages incurred as a result of Owner's removal, storage, and re-installation of the System. Owner agrees to reinstall the System in a manner that will not jeopardize the warranty of the new roof as installed.

## CONSTRUCTION AND OPERATION OF PERMITTED USE

**General Description.** Except as otherwise specified herein, the System shall consist solely of the improvements described in *Exhibit B* of the Agreement.

**Governmental Approval.** Except as otherwise specified herein, or otherwise obtained prior to the Effective Date, Owner will obtain at its sole cost all approvals and permits required under the Applicable Legal Requirements for Owner's use of the Premises and for the System from any Governmental Authority having jurisdiction in the matter. Owner will promptly inform User of all significant developments relating to the issuance of such approvals or permits. User will reasonably cooperate with Owner in procuring such approvals; provided, however, that the parties acknowledge and agree that this Agreement does not impose an affirmative obligation on the User to issue or procure any approval or to engage in any action or inaction inconsistent with the proper exercise of the User's regulatory authority. If any changes in such plans and/or specifications are required by any Governmental Authority, then Owner shall submit such changes, if any, to User for its approval, which shall not be unreasonably conditioned, withheld or delayed.

**Construction Commences Promptly.** Owner shall commence the construction of the System promptly following the Effective Date and will proceed diligently and continuously thereafter until completion, subject to a Force Majeure Event.

**Completion Requirements.** Owner will arrange for the construction of the System in a good, careful, proper and workmanlike manner in accordance with good engineering practices, the Request for Proposals which resulted in the Agreement (the "*RFP*"), and with all Applicable Legal Requirements. The System will, when completed, comply with all Applicable Legal Requirements and the RFP.

**Insurance.** During the course of construction and operation of the System, Owner will carry or cause Owner's contractor(s) to carry (and cause each such contractor to cause its subcontractors to carry) adequate workers' compensation insurance and such other insurance as is required by the MTC's Commonwealth Solar Initiative.

**Interconnection with Electric Distribution Grid.** Owner will obtain at its sole cost all approvals and agreements required for Owner's interconnection of the System to the LDC System. Owner will promptly inform User of all significant developments relating to such interconnection matters.

**Access to and Use of the Premises.** Owner 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, and to any documents, materials and records of User relating to the Premises that Owner reasonably requests in conjunction with these activities. Owner shall provide User reasonable notice of all activities conducted by or on behalf of Owner on the Premises relating to the System. During any such

activities, Owner, and its sub-contractors, agents, consultants and representatives shall comply with User's reasonable safety and security procedures (as may be promulgated from time to time), and Owner 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 User's activities.

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

**Removal of the System.** Upon expiration or termination of the Agreement, Owner shall at its sole cost and expense remove from the Premises the System, and any associated equipment or other personal property owned by Owner.

## MECHANIC'S LIENS

**No Liens.** Owner 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 or the System or the income therefrom and Owner will not suffer any other matter or thing arising out of Owner's use and occupancy of the Premises whereby the estate, rights and interests of User in the Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this lease.

**Discharge.** If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or the System, Owner, within ten (10) days after notice to Owner 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 Owner shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, User 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 User and costs and expenses reasonably incurred by User in connection therewith, together with interest thereon at the Interest Rate from the respective dates of User's making of the payment of the cost and expenses, shall be paid by Owner to User within ten (10) Business Days of User's invoice therefor.

**User's Obligations.** User 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.

## RIGHT TO INSPECT AND ENTER

**Inspection and Entry.** During the course of construction and completion of the System and any substantial alteration thereto, Owner shall maintain all plans, shop drawings, and

specifications relating to such construction which User, 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 lease. User may, upon reasonable prior notice to Owner, enter upon the Lease Area and inspect the System for the purpose of ascertaining their condition or whether Owner is observing and performing the obligations assumed by it under this lease, all without hindrance or molestation from Owner.

**Examination of Books of Account.** User shall, upon five (5) Business Days' prior notice to Owner, have the right, at User's expense, to examine, during normal business hours and at Owner's place of business, the books of account and other records in Owner's possession, custody, or control pertaining to Owner's obligations hereunder or under the Agreement.

**Notice of Damage.** User shall promptly notify Owner of any matter it is aware of pertaining to any damage to or loss of the use of the System(s) or that could reasonably be expected to adversely affect the System(s).

## INDEMNIFICATION

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

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

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

any negligence on the part of Owner or any of its agents, contractors, servants, employees, subtenants, licensees or invitees in, on or about the Premises or in connection with the System;

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

any failure on the part of Owner or any of its agents, contractors, servants, employees, subtenants, 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 User Indemnified Party by reason of any such claim, User may elect that Owner defend such action or proceeding. Upon written

notice from User of such election, Owner shall defend such action or proceeding at Owner's expense to the reasonable satisfaction of User.

**Survival.** The provisions of this Article 7 shall survive the expiration or earlier termination of the Agreement.

## MISCELLANEOUS

### **Quiet Enjoyment.**

User covenants that so long as no Event of Default has occurred and is continuing, Owner shall quietly have and enjoy the Lease Area during the Term. User's exercise of self-help pursuant to Article 2 of this lease and rights of entry and inspection pursuant to Article 6 of this lease shall not be considered a breach of the covenant of quiet enjoyment. Subject to the specific provisions of this lease permitting the same, User shall have the right to enter upon the Premises at reasonable times for purposes related to the System of this lease and no such entry which complies with the provisions of this lease permitting the same shall be considered a breach of the covenant of quiet enjoyment.

Owner shall operate, maintain and repair the System in a manner that will not obstruct or interfere with User's use of the Premises or the rights of any other occupants of the Premises and Owner will not injure or annoy any occupants of the Premises. In the event interference occurs, Owner agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the User. Owner will use its best efforts to maintain its System in a manner that does not interfere with the Premises or improvements to the Premises. User 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.

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

**Subordination to Existing Leases, Easements and Rights of Way.** Owner acknowledges and understands that the Agreement, this SLP, and all rights of Owner are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the User with respect to the Premises. User reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere (including shading) with Owner's use of the Premises and the operation of the System.

**Hazardous Materials.** Owner agrees to comply with all applicable laws pertaining to the use, storage and disposal of Hazardous Materials ("*Environmental Laws*") at the Premises.

Owner shall indemnify, defend and hold harmless User 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 Owner or Owner's representatives at the Premises. In addition, Owner shall reimburse User for any and all costs related to investigation, clean up and/or fines incurred by User for non-compliance with Environmental Laws, that are caused by Owner or Owner's representatives at the Premises. User reserves the right to inspect the Leased Area for purposes of verifying compliance with these Hazardous Materials requirements.

**EXHIBIT E**

**TERMINATION PAYMENT SCHEDULE**

<b>Early Termination Occurs in Year:</b>	<b>Early Termination Fee (including costs of removal)</b>	<b>Early Termination Fee (excluding costs of removal)</b>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
At expiration	\$0	\$1

