

NET METERING POWER SALES AGREEMENT

This Net Metering Power Sales Agreement (“**Agreement**”) is entered into as of February 22, 2011, (the “Effective Date”) and is by and between Scituate Solar I LLC, a Delaware limited liability company, with a principal place of business at 36 Washington Street, Suite 220, Wellesley, Massachusetts, as seller (“**Seller**”), and the Town of Scituate, a municipal corporation having its principal office at 600 Chief Justice Cushing Highway, Scituate, Massachusetts, as buyer (“**Buyer**”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Buyer desires to purchase solar-generated electricity for use by Buyer, and proposes to lease an approximately 17 acre portion of real property adjacent to the Scituate Municipal Transfer Station located at 280 Driftway, Scituate, Massachusetts (the “**Premises**”) to facilitate the development and operation of a solar (PV) electric generation facility;

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar (PV) electric generation facilities;

WHEREAS, Seller proposes to finance, install, own, operate and maintain the Solar Energy Facility on the Premises;

WHEREAS, Buyer proposes to lease to Seller the Premises to allow Seller to construct, operate, maintain and remove the Solar Energy Facility on the Premises;

WHEREAS, the Parties intend that, pursuant to Section 7701(e)(3) of the Code (as defined herein), this Agreement shall be deemed to be a services contract with respect to the sale to the Buyer of electrical energy produced at an alternative energy facility; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, all of the Net Energy generated by the Solar Energy Facility during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

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

ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Affiliate” means, with respect to Seller, (i) each Person that, directly or indirectly, controls or is controlled by or is under common control with Seller; (ii) any Person that beneficially owns or holds ten percent (10%) or more of any class or voting securities of Seller or ten percent (10%) or more of the equity interest in Seller; or (iii) any Person of which Seller beneficially owns or holds ten percent (10%) or more of the equity interest. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Seller, whether through the ownership of voting securities or by contract or otherwise.

“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, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, ownership, maintenance, repair, decommissioning and removal of the Solar Energy Facility, as well as the selling and purchasing of power therefrom.

“Appraised Value” means the fair market value assigned to the Solar Energy Facility, the Environmental Attributes, and any other power sales agreements, emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements to which Seller is a party and which are not subject to contractual limitations on assignment or which may reasonably arise from the ownership and operation of the Solar Energy Facility, as determined by the Independent Appraiser (collectively, the **“Assets”**).

“Assets” has the meaning set forth in the definition of Appraised Value.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgate thereunder.

“Class III Municipal Net Metering Facility” shall mean a Class III Net Metering Facility as defined under 220 C.M.R. 18.02, where the Host Customer is a municipality or other governmental entity.

“Class III Net Metering Facility of a Municipality or Governmental Entity” shall have the meaning set forth in M.G.L. c. 164, §138, as amended by §27 of c. 359 of the Acts of 2010 of the Commonwealth of Massachusetts, as implemented under regulations promulgated by the Department of Public Utilities and any related tariff adopted by National Grid and approved by the Department of Public Utilities.

“Commissioning Completion” means the Solar Energy Facility is mechanically complete, is capable of generating electricity, and has been interconnected to the local

distribution system of National Grid in accordance with the Interconnection Agreement(s) and the Tariff.

“Concealed Conditions” means subsurface or otherwise concealed physical conditions at the Premises that differ materially from the Documented Site Conditions or those conditions ordinarily expected to exist at a site like the Premises and generally recognized as inherent in construction activities of the type and character as the work to be performed by Seller under this Agreement, and that Seller could not have otherwise discovered through the exercise of reasonable diligence in advance of commencing its performance of its obligations at the Premises.

“Confidential Information” means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party, and is designated as “confidential” by such Party. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party; and (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations. In connection with the above, the Parties acknowledge that notwithstanding the above, Buyer is a public entity which is subject to certain public records disclosure statutes and regulations.

“Contract Year” means each consecutive 12-month period commencing on the Full Operations Date and ending on each subsequent anniversary of the Full Operations Date during the Term.

“Documented Site Conditions” means those conditions at the Premises documented in: (i) the final landfill closure and post-closure plans submitted to the Massachusetts Department of Environmental Protection pursuant to 310 C.M.R. 19.140(4) and approved by Massachusetts Department of Environmental Protection pursuant to 310 C.M.R. 19.140(5); (ii) any post-closure construction plans submitted to Massachusetts Department of Environmental Protection pursuant to 310 C.M.R. 19.143(2); or (iii) any other Applicable Legal Requirements that define the standards of performance for the landfill’s post-closure operations and maintenance, including but not limited to those with respect to improvements and procedures leading to its closure, decommissioning and capping.

“Effective Date” means the date set forth in the recital paragraphs of this Agreement.

“Environmental Attributes” has the meaning set forth in Section 4.6.

“Energy” means the amount of electricity either used or generated over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include capacity credits, credits for Environmental Attributes, or any investment or production

tax credits under Section 45 or 48 of the Internal Revenue Code, or otherwise, to the extent that the Solar Energy Facility receives or is entitled to receive any such credits.

“Event of Default” means any event of default as defined in Article VIII of this Agreement.

“Financier” means any individual or entity providing money or extending credit to Seller for the purpose of procuring, constructing, owning, operating, maintaining, repairing, decommissioning or removing the Solar Energy Facility, including, but not limited to: (i) the construction, term or permanent financing of the Solar Energy Facility; or (ii) investment capital, working capital or other ordinary business requirements for the Solar Energy Facility (including the maintenance, repair, replacement or improvement of the Solar Energy Facility); or (iii) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Solar Energy Facility. Financier shall include any entity through which Seller has a lien in connection with the Solar Energy Facility. “Financier” shall not include common trade creditors of Seller.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados (but not the lack of sunshine); fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by Buyer may not be asserted as an event of *Force Majeure* by Buyer; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“Full Operations Date” means the date on which the Solar Energy Facility has achieved Commissioning Completion and has commenced delivering Net Energy to the Point of Delivery.

“Governmental Authority” means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“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, local electric distribution company, or other similar entity, on or with respect to the Net Energy.

“Guaranteed Electric Output” means, for each Guaranteed Period, the amount of Net Energy (measured in kWh/year) set forth on Schedule 1 to Exhibit C.

“Guaranteed Period” means each Contract Year during the Term, commencing with the third (3rd) Contract Year, through and including the twentieth (20th) Contract Year of the Term.

“Grid Metering Device(s)” means any and all revenue quality meters installed by Seller or National Grid at or after the Point of Delivery that are necessary or appropriate for the interconnection of the Solar Energy Facility to the National Grid local electric distribution system and/or the calculation of Net Metering Credits, and (to the extent agreed upon by the Parties, and allowed under the Tariff and the Interconnection Agreement(s), the Project Metering Device(s) are not installed) for the registration, recording, and transmission of information regarding the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Buyer.

“Host Customer Costs” shall mean the cost of performing all of the Host Customer’s obligations under the Interconnection Agreement(s) or the Tariff, such as those pertaining to the provision of insurance, and the reading or testing of meters, but specifically excluding all costs associated with the design, construction, or installation of facilities or metering devices necessary for interconnecting the Solar Facility to the National Grid electric power system (via the Host Customer), or any upgrade of to the electric system of National Grid’s that is necessary for the delivery of Net Energy to the National Grid electric power system.

“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 Appraised Value of solar energy generating facilities of the size and age and with the operational characteristics of the Solar Energy Facility. 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, Seller, any Affiliate of Seller, or Buyer.

“Interconnection Agreement(s)” shall mean one or more Interconnection Service Agreements entered into with National Grid which authorize the interconnection of the Solar Energy Facility with the local electric distribution system of National Grid, which confirms the entirety of or each unit of the Solar Energy Facility as eligible for treatment as a Class III Municipal Solar Net Metering Facility or Class III Net Metering Facility of a Municipality or Other Government Entity, as applicable, and which specifies whether any Net Excess Generation (as defined in the Tariff) shall be subject to allocation or payment.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (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 Seller and reasonably acceptable to Buyer.) 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 three hundred sixty five (365) days and the actual number of days for which such interest is due.

“ISO-NE” means the independent system operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as amended, superseded or restated from time to time.

“kW” means Kilowatt.

“kWh” means Kilowatt hour.

“Lease” means the Site Lease Agreement executed between the Parties of even date herewith, as such Lease may be amended from time to time.

“Metering Device” means a Project Metering Device or a Grid Metering Device.

“MW” means Megawatt.

“MWh” means Megawatt hour.

“National Grid” means National Grid USA, the local electric distribution company for Buyer, or its successor.

“NEPOOL” means the New England Power Pool and any successor organization.

“Net Energy” means the actual and verifiable amount of Energy generated by the Solar Energy Facility and delivered to Buyer at the Point of Delivery in excess of any Energy consumed by the Solar Energy Facility, as metered in kWh at the Project Metering Device(s) or Grid Metering Device(s), as applicable, and that conforms to Applicable Legal Requirements and the Tariff.

“Net Energy Price” has the meaning set forth on Exhibit C.

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

“Net Metering Credits” shall have the meaning set forth in 220 C.M.R. § 18.00, as implemented by the Tariff.

“Parties” means Buyer and Seller, and their respective successors and permitted assignees.

“Party” means Buyer or Seller, and their respective successors and permitted assignees.

“Permits” means all state, federal, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the Solar Energy Facility.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, or other business entity.

“Point of Delivery” means the point of delivery for Net Energy from Seller to Buyer, as further set forth on Exhibit C.

“Premises” shall have the meaning set forth in the Lease.

“Production Shortfall” means, for each Guaranteed Period, the amount expressed in kWh by which (a) the average of the Net Energy delivered to Buyer in the then current Contract Year and in each of the immediately preceding two (2) Contract Years *is less than* (b) the Guaranteed Electric Output for such Guaranteed Period.

“Production Shortfall Charge” has the meaning set forth on Exhibit C.

“Project Metering Device(s)” means any and all revenue quality meters installed by Seller at or before the Point of Delivery necessary or appropriate for the registration, recording, and transmission of information regarding the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Lessor; provided, however, that to the extent Lessee determines to not install one or more Project Metering Device(s), the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Buyer shall be determined by the Grid Metering Device(s).

“Prudent Solar Industry Practice” means those practices generally recognized by the solar industry, including Seller, in the northeastern United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost, consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements. Prudent Solar Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Solar Energy Facility” means the solar (PV) power electrical generation facility to be constructed (using new and previously unused components), owned, operated and maintained by Seller, with specifications for an aggregate nameplate capacity between approximately 2.0 and 3.0 MW (DC), together with all appurtenant facilities, including, but not limited to, the Project Metering Device(s), Grid Metering Device(s) and any interconnection facilities, and transformers required to interconnect the Solar Energy Facility to the Point of Delivery and the National Grid local electric distribution system, and any and all Substantial Alterations, additions, replacements or modifications thereto, all to be located on or adjacent to the Premises and as further set forth in Exhibit B.

“Solar Net Metering Facility” shall have the meaning set forth in 220 C.M.R. § 18.00.

“Solar RECs” means Solar Carve-Out Renewable Attributes as defined in 225 C.M.R. § 14.02.

“Special Termination Damages” has the meaning set forth on Exhibit C.

“Substantial Alteration” has the meaning set forth in the Lease.

“Tariff” means the National Grid tariffs M.D.P.U. No. 1176 and M.D.P.U. No. 1177 for interconnection for distributed generation and net metering services, as approved in DPU Docket 09-72, and any subsequent amendments and approvals thereto.

“Term” has the meaning set forth in Section 2.1.

“Termination Date” has the meaning set forth in Section 2.1.

ARTICLE II TERM

2.1 Term.

a. The term of this Agreement (the **“Term”**) shall commence on the Effective Date, and, unless terminated earlier pursuant to the provisions of this Agreement, shall continue until 11:59 PM on the day preceding the twentieth (20th) anniversary of the Full Operations Date (the **“Termination Date”**).

b. The Parties, upon mutual written agreement entered into at least one year before the end of the Term, may extend the Term for an additional period of five (5) years, in which case the Termination Date shall be 11:59 PM on the day preceding the twenty-fifth (25th) anniversary of the Full Operations Date.

2.2 Early Termination. Either Party may terminate this Agreement without penalty or any liability to the other Party prior to the achievement of the Full Operations Date as specified below:

a. in the event that Seller has not prepared for submission to National Grid by Buyer a complete interconnection application seeking authorization to construct and interconnect the Solar Energy Facility to the National Grid local electric distribution system within ninety (90) days of the Effective Date;

b. in the event that Seller has not, to the extent applicable, submitted an application to the Massachusetts Department of Environmental Protection for authorization to install the Solar Energy Facility on the landfill at the Premises within ninety (90) days of the Effective Date;

c. in the event that the Interconnection Agreement(s), in form and substance satisfactory to Seller and Buyer, in each of its reasonable discretion, are not finalized and

executed within two hundred ten (210) days of Buyer's submission of the interconnection application, provided, however, that the terminating Party shall give the other Party thirty (30) days prior written notice of its intent to terminate this Agreement if such Interconnection Agreement(s) are not timely obtained, and such notice of termination shall be void if such Interconnection Agreement(s) are obtained within thirty (30) days of the non-terminating Party's receipt of such notice;

d. in the event that Seller has not obtained financing sufficient to purchase, construct, commission, own and operate the Solar Energy Facility within eighteen (18) months of the Effective Date, provided, however, Buyer (subject to the provisions of subsection (e), below) shall not have the right to terminate this Agreement at such time if any final Permit necessary for the construction, financing, or operation of the Solar Energy Facility has not been obtained due to a legal challenge, and Seller is using and continues to use commercially reasonable efforts to obtain such final, non-appealable Permits;

e. except as set forth below, in the event that Seller has not entered into a binding purchase order for the material components of the Solar Energy Facility within eighteen (18) months of the Effective Date; or

f. except as set forth below, in the event that the Full Operations Date does not occur within twenty-four (24) months of the Effective Date.

In the case of termination pursuant to any of subsections (a) through (f) above, the terminating Party shall give the other Party thirty (30) days prior written notice of its intent to terminate within thirty (30) days after the occurrence of the applicable deadline. In the event that a Party fails to provide such notice, the Party shall be deemed to have waived its right to terminate under the applicable subsection in question. Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the deadlines set forth in subsections (e) and (f) above (x) shall be extended for a period equal to the number of days it takes Seller to obtain a final, non-appealable Permit (if applicable) under subsection (b) above in excess of one hundred eighty (180) days after the date of submission of a complete application for such Permit, provided that Seller used and continues to use good faith efforts to secure such Permit, and (y) shall not be extended or otherwise excused by *Force Majeure*. Notwithstanding any other provision of this Agreement, the Parties also acknowledge and agree that provided Seller has used all commercially reasonable efforts to cause National Grid to timely issue the Interconnection Agreement(s) in accordance with the Tariff, the deadline set forth in subsection (c) above shall be extended on a day-to-day basis in the event that National Grid has not tendered to Seller such Interconnection Agreement(s) on or before the one hundred eightieth (180th) day after the date on which Seller filed its application with National Grid under subsection (a) above; *provided however*, that if the Massachusetts Department of Public Utilities, in connection with its Inquiry in Docket 11-11 or in a separate proceeding arising out of that Inquiry, initiates or conducts any rulemaking, investigation or other proceeding the outcome of which reasonably could be expected to materially limit or eliminate the applicability of Net Metering to the Solar Energy Facility, and such Inquiry or proceeding has not been concluded at least thirty (30) days prior to the deadlines set forth in subsection (e) above, then the deadline set forth in subsection (e) above shall be extended until thirty (30) days after the date such Inquiry or proceeding has concluded, and the deadline set forth in subsection (f) above shall be extended two hundred ten (210) days

after the date such Inquiry or proceeding has been concluded. Except as set forth in Sections 3.6 and 9.4 herein, each Party's right to terminate this Agreement in accordance with this Section 2.2 shall constitute its sole remedy for the failure to achieve the milestones specified in this Section 2.2.

ARTICLE III FACILITY OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL

3.1 Title.

a. Except as otherwise set forth in this Agreement or the Interconnection Agreement, as between the Parties during the Term of this Agreement, the Solar Energy Facility (and all equipment comprising such facility), Permits, Energy prior to the Point of Delivery, Environmental Attributes and all tax attributes associated with the Solar Energy Facility or the generation of Energy therefrom shall be owned by Seller, title to such assets shall be retained by Seller, and Seller shall be the legal and beneficial owner of such assets. Further, during the Term, Seller alone shall be entitled to all of the tax attributes of ownership of such assets, including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim the energy tax credit described in Section 48 of the Code, and the right to claim the energy grant described in Section 1603 of the American Recovery and Reinvestment Act of 2009 ("ARRA"), as amended, as well as any other applicable benefits for federal and state income tax purposes.

b. Buyer shall not encumber the Solar Energy Facility with any mortgage, pledge, lien or lease.

3.2 Lease. Seller shall construct, operate, maintain, repair and remove the Solar Energy Facility on the Premises pursuant to and in conformance with the Lease and in accordance with Prudent Solar Industry Practice.

3.3 Construction, Maintenance, and Monitoring of Solar Energy Facility.

a. Seller, at its sole cost and expense, and in accordance with Prudent Solar Industry Practice, shall:

- i. design, finance and procure the Solar Energy Facility;
- ii. apply for, diligently pursue, and negotiate to final form the Interconnection Agreement(s);
- iii. design, construct, own, operate and maintain (except when otherwise expressly required by National Grid) the Project Metering Device(s), Grid Metering Device(s) (as each may be required), and other facilities or equipment, and procure and maintain all insurance, required by National Grid under the Interconnection Agreement(s) or otherwise; *provided, however*, Seller shall not be obligated to assume or pay for any Host Customer Costs;

iv. construct, own, operate, and maintain the Solar Energy Facility in good condition and repair, all in accordance with Applicable Legal Requirements, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, applicable requirements of the insurance policies maintained by Seller with respect to the Solar Energy Facility as set forth in the Lease, and the terms of this Agreement;

v. monitor the Solar Energy Facility performance such that any malfunction causing a material loss of Energy production will be promptly discovered and rectified;

vi. at all times have responsibility for the costs and performance of construction of the Solar Energy Facility, procuring and maintaining insurance on the Solar Energy Facility, and paying taxes on the Solar Energy Facility;

vii. bear the risk of loss in case of a casualty, condemnation or confiscation of the Solar Energy Facility; and

viii. remove the Solar Energy Facility from the Premises upon the termination of expiration of this Agreement, unless the Purchase Option (as defined in Section 11.1 herein) is exercised by Buyer.

b. The Buyer shall have no obligation to perform any of the Seller obligations set forth in subsection (a) above, and Seller shall be solely responsible for the performance of all such obligations.

c. In connection with its performance of the obligations set forth in subsection (a) above, Seller may, in its reasonable discretion, elect to use subcontractors in performing all or any of such obligations, and the performance of any such obligation of Seller by any such subcontractor shall satisfy such obligation; provided, however, that (i) each such subcontractor shall have performed such obligations in accordance with the standards of performance required of Seller under this Agreement; and (ii) Seller shall remain liable to Buyer for the performance of such obligations under this Agreement, notwithstanding Seller's use of such subcontractors.

3.4 Operations Manual; Training. On the Full Operations Date, Seller shall deliver to Buyer an operations, maintenance and parts manual covering the Solar Energy Facility. In addition, Seller will train Buyer's representative(s) on business-as-usual maintenance and monitoring operations of the Solar Energy Facility and on emergency preparedness and response. Notwithstanding the foregoing, Buyer shall have no right to perform any maintenance or repair on the Solar Energy Facility without Seller's prior written consent, except in the case of an emergency where immediate action on the part of Buyer is reasonably necessary for safety reasons or as otherwise permitted under the Lease, *provided, however*, Buyer's representatives shall at all times comply with all safety and other operating procedures reasonably established by Seller and all Applicable Legal Requirements.

3.5 Notice of Full Operations Date. Subject to the provisions of this Agreement, Seller shall notify Buyer when the Solar Energy Facility has achieved the Full Operations Date.

3.6 Concealed Conditions. Prior to the Full Operations Date, Seller may suspend its performance of its obligations under this Agreement if it encounters Concealed Conditions at the Premises.

a. If the presence of or required remedy of such Concealed Conditions could reasonably be expected to cause a material increase in the length of time required for Seller to perform its obligations under this Agreement, Seller shall be entitled to a day-for-day extension in any deadline applicable to such performance under this Agreement.

b. If the presence of or required remedy of such Concealed Conditions could reasonably be expected to cause a material increase in Seller's cost of performance of any of its obligations under this Agreement, Seller shall be entitled to terminate this Agreement upon ten (10) days prior notice to Buyer, and upon such termination the Parties shall have no further rights or obligations under this Agreement or otherwise.

ARTICLE IV PURCHASE AND SALE OF NET ENERGY

4.1 Sale and Purchase of Net Energy. Commencing on the Full Operations Date, Seller agrees to sell and deliver, and Buyer agrees to purchase and accept, at the Point of Delivery one hundred percent (100%) of the Net Energy generated by the Solar Energy Facility.

4.2 Price. Buyer shall pay Seller for the Net Energy sold and delivered, as metered by the Project Metering Device(s) or Grid Metering Device(s), as applicable, at or before the Point of Delivery, at the applicable Net Energy Price, as set forth in Exhibit C.

4.3 Title and Risk of Loss of Net Energy. Title to and risk of loss of the Net Energy will pass from Seller to Buyer at the Point of Delivery. Seller warrants that it will deliver the Net Energy to Buyer at the Point of Delivery free and clear of all liens, security interests, claims, and other encumbrances.

4.4 Governmental Charges.

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

b. Seller is responsible for any personal property taxes attributable to its ownership of the real and Solar Energy Facility.

c. Seller is responsible for any Governmental Charges currently attributable to the sale of Net Energy to Buyer, irrespective of whether imposed before, upon or after the delivery of Net Energy to Buyer at the Point of Delivery. In the event that changes in law or regulation result in a change in the Governmental Charges attributable to the sale of Net Energy to Buyer, the Parties agree to negotiate in good faith a fair and equitable sharing of such charges, *provided, however*, Seller shall have no obligation for any Governmental Charges imposed by Buyer on the

sale of Net Energy or the ownership and operation of renewable or distributed electrical energy facilities subsequent to the Effective Date.

d. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Net Energy 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.

4.5 Guaranteed Electric Output.

a. Seller guarantees that the Solar Energy Facility will produce the Guaranteed Electric Output in each applicable Guaranteed Period.

b. In the event that a Production Shortfall exists in any Guaranteed Period, unless excused by *Force Majeure*, Seller shall pay to Buyer, as liquidated damages and not as a penalty, within thirty (30) days of the end of such Guaranteed Period, the Production Shortfall Charge set forth in Exhibit C for each kWh of such Production Shortfall; provided, however, that in no event shall the Production Shortfall Charge with respect to any single Guaranteed Period exceed the amount of one hundred thousand dollars (\$100,000.00). Seller's payment of the Production Shortfall Charge shall be Buyer's sole and exclusive remedy for Seller's failure to cause the Solar Energy Facility to produce the Guaranteed Electric Output in each applicable Guaranteed Period.

4.6 Environmental Credits and Value. The Agreement shall not include the sale to Buyer of any rights, title or interest in any environmental offsets or allowances, renewable production or investment tax credits, or environmental attributes, value or credits of any kind or nature (other than Net Metering Credits), earned by or attributable to (A) the Solar Energy Facility and (B) the Energy, including, without limitation, those resulting from or associated with the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), renewable energy certificates ("**RECs**") (including but not limited to Solar RECs and associated GIS Certificates), or any other state or federal acts, laws or regulations that provide offsets, allowances, or credits related to energy or emissions (collectively, the "**Environmental Attributes**"). RECs represent the environmental and other non-energy attributes, value and credits of any kind and nature associated with one (1) megawatt hour (MWh) of generation eligible for compliance against the Renewable Energy Portfolio Standard, 225 C.M.R. 14.00, including, but not limited to, any and all Solar RECs, pollution offsets or allowances, and regulatory compliance rights. Buyer may not, under the Agreement or otherwise, make any claim of title to any RECs or the corresponding energy in regards to a renewable portfolio standard, emission offset or other environmental disclosure or similar regulatory requirement. To the extent any tax, RECs, Environmental Attributes or other such credits are allocated to Buyer by operation of law or regulation, Buyer shall cooperate with Seller to disclaim any rights to such credits and attributes and to assign or allocate all such tax, RECs, Environmental Attributes or other such credits, and the value thereof to Seller, without cost to Seller.

4.7 Net Metering Credits. Except as otherwise set forth in this Agreement and the Tariff, all interest in and title to any and all Net Metering Credits generated or created during the Term in

connection with the operation of the Solar Energy Facility and the delivery of Net Energy to Buyer, together with the right to allocate such Net Metering Credits or receive cash payments in connection with the surrender or transfer of such Net Metering Credits, shall rest solely with Buyer.

ARTICLE V METERING AND BILLING

5.1 Billing. On or before the tenth (10th) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Seller shall calculate the amount due and payable to Seller for the Net Energy produced and delivered to Buyer pursuant to Exhibit C, with respect to the immediately preceding month, and shall forward to Buyer an invoice, including such calculation, with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Adjustments to bills shall be made in accordance with ISO-NE rules, policies and procedures and other Applicable Legal Requirements.

5.2 Payment. On or before the fifth (5th) day of the month after Buyer receives an invoice from Seller, Buyer shall pay Seller any amounts due and payable hereunder for Net Energy delivered during the preceding month. All such invoices shall be paid by a mutually agreeable method to the account designated by Seller. Amounts due as a result of any billing adjustment made in accordance with ISO-NE rules, policies and procedures shall not be subject to any interest charge in favor of Buyer or Seller. Any payment not made within the time limits specified herein shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by Seller. Such interest shall accrue at an annual rate equal to the Interest Rate.

5.3 Net Metering Equipment. Unless no Project Metering Device(s) are installed, in which case the provisions of the Tariff shall control, Seller shall provide, install, own, operate and maintain the Project Metering Device(s). Seller shall maintain and test the Project Metering Device(s) generally in accordance with the same terms and conditions applicable to the Grid Metering Device(s) installed for the purpose of interconnecting the Solar Energy Facility local distribution system and the calculation of Net Metering Credits, but in any event on no less than an annual basis.

a. To the extent Project Metering Device(s) are not installed, readings of the Grid Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer; provided, that if the Grid Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Net Energy shall be determined in the following sequence: (i) by estimating by reference to quantities measured during periods of similar conditions when the Grid Metering Device(s) was or were registering accurately; or (ii) if no reliable information exists as to the period of time during which such Grid 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 was equal to (x) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (y) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Grid Metering Device through the date of the adjustments, provided,

however, that, in the case of clause (y), the period covered by the correction shall not exceed six months.

b. To the extent Project Metering Device(s) are installed, readings of the Project Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer; provided, however, that if the Project Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Net Energy shall be determined readings of the Grid Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer; provided further, however, that if the Grid Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Net Energy shall be determined in the following sequence: (i) by estimating by reference to quantities measured during periods of similar conditions when the Grid Metering Device(s) was or were registering accurately; or (ii) if no reliable information exists as to the period of time during which such Grid 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 was equal to (x) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (y) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Grid Metering Device through the date of the adjustments, provided, however, that, in the case of clause (y), the period covered by the correction shall not exceed six months.

c. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Seller to verify the accuracy of the measurements and recordings of the Project Metering Device. Seller shall provide at least twenty (20) days prior written notice to Buyer of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test, and shall provide Buyer with copies of such written report not later than thirty (30) days after completion of such test. Seller shall bear the cost of the annual testing of the Project Metering Device and the preparation of the Project Metering Device test reports.

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

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

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

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

iv. If a Project Metering Device is found to be inaccurate by not more than 2%, any previous recordings of the Project Metering Device shall be deemed accurate, and the

Party disputing the accuracy or condition of the Project Metering Device shall bear the cost of inspection and testing of the Project Metering Device.

v. If a Project Metering Device is found to be inaccurate by more than 2% or if such Project Metering Device is for any reason out of service or fails to register, then (a) the Seller shall promptly cause the applicable Project Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Seller shall bear the cost of inspection and testing of the Project Metering Device. If as a result of such adjustment the quantity of Electricity for any period is decreased (such quantity, the “***Net Energy Deficiency Quantity***”), Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Net Energy Deficiency Quantity. If as a result of such adjustment the quantity of Net Energy for any period is increased (such quantity, the “***Net Energy Surplus Quantity***”), Buyer shall pay for the Net Energy Surplus Quantity.

5.4 Records and Audits. Seller will keep, for a period of 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 Buyer may, at its sole cost and expense, and upon reasonable notice to Seller, examine Seller’s records pertaining to such transactions during Seller’s normal business hours.

5.5 Dispute.

a. If a Party, in good faith, disputes an invoice as provided in this Agreement, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate per annum, from and including the due date through and including the date such payment is actually received by Seller. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate per annum. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Section, the Parties shall follow the procedure set forth in Section 14.5.

b. In the event of a dispute with National Grid with regard to Buyer’s monthly electrical bills or the calculation of Net Metering Credits, Buyer and Seller each agree to take all commercially reasonable measures with respect to which it has legal capacity to facilitate and expedite resolution of such a dispute and to act at all times during such review within its legal capacity.

ARTICLE VI OBLIGATIONS OF THE PARTIES

6.1 Net Metering.

a. Each Party's continuing obligations under this Agreement are subject to the Solar Energy Facility (or each unit thereof) qualifying at all times during the Term for Net Metering as a single Solar Net Metering Facility or separate Solar Net Metering Facilities, subject to the provisions of M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00 and the Tariff.

b. Subject to the provisions of this Agreement, each of Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the Solar Energy Facility to be eligible for and participate in Net Metering or to otherwise provide substantially similar benefits to each Party.

c. So long as any such amendment will materially benefit a Party without material detriment to the other Party, the Parties commit to each other in good faith to make commercially reasonable efforts to cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering and cause the Solar Energy Facility (or each unit thereof) to be eligible for Net Metering or to otherwise provide substantially similar benefits to each Party.

d. In the event that (x) the Solar Energy Facility no longer is eligible for Net Metering, and (y) the Parties do not mutually agree to amend this Agreement pursuant to the provisions of subsection (c) above, then either Party shall have the right to terminate this Agreement, in which event:

i. Seller shall have no further obligation to sell and deliver Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination, and Buyer shall have no further obligation to purchase, receive or otherwise Net Meter any Net Energy from or on behalf of Seller; and

ii. Seller shall have the right, but not the obligation, to continue to maintain the Solar Energy Facility at the Premises pursuant to the provisions of the Lease, and to enter into power supply arrangements with one or more third parties, for the remainder of the then effective Term of the Lease. In the event that Seller elects to continue operations of the Solar Energy Facility pursuant to the preceding sentence, Buyer shall reasonably cooperate with Seller to allow Seller to interconnect directly with National Grid or another Host Customer, in Seller's sole discretion and at Seller's sole cost. The Parties agree that each Party's rights under this subsection (d) shall constitute such Party's sole and exclusive remedy with respect to recovery for any losses or damages incurred by such Party in connection with its termination of this Agreement under this Section 6.1.

6.2 Seller's Obligations.

a. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority, NEPOOL, ISO-NE, National Grid, or as may be reasonably required by Buyer.

b. Seller shall provide Buyer with a monthly e-mail report, as soon as practicable after the end of each month regarding the progress with respect to the permitting, financing,

construction, and operations of the Solar Energy Facility or other data concerning the Solar Energy Facility as Buyer may, from time to time, reasonably request.

c. Commencing with the Full Operations Date, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Solar Energy Facility may be mechanically inoperable for more than a 24-hour period.

d. Seller shall perform its obligations under this Agreement in compliance with the Applicable Legal Requirements, and construct, operate, maintain and decommission the Solar Energy Facility in accordance with Applicable Legal Requirements.

e. Seller shall comply with the provisions of the Lease.

f. Seller shall comply, and shall require its employees to comply, with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable state statutes and regulations affecting job safety.

g. Seller shall use commercially reasonable efforts to obtain at its sole cost all approvals and agreements required for Seller's interconnection of the Solar Energy Facility to Buyer's equipment and to assist Buyer in obtaining the approvals and agreements necessary for Buyer to connect its equipment to the local electric distribution grid maintained by National Grid. Seller will promptly inform Buyer of all significant developments relating to such interconnection matters. Buyer will cooperate with Seller on all such matters and shall provide Seller with such information as Seller may reasonably request in connection with Seller's procurement of, and Seller's assistance in procurement of, such approvals and agreements. If any material changes in plans and/or specifications to the Solar Energy Facility or the interconnection of Buyer's facilities are required by the applicable electric distribution company, then Seller shall submit such changes, if any, to Buyer for its approval, which shall not be unreasonably conditioned, withheld or delayed.

h. Seller shall establish a public awareness program in connection with the Solar Energy Facility. The program will include (i) installation of informational kiosks at the Scituate Town hall and at Scituate schools, (ii) providing real-time feeds on information from the Solar Energy Facility over the internet to the general public, and (iii) assisting Scituate school officials in developing educational programs related to renewable energy. In addition, the program will include three separate seminars (to be conducted within the first school year after the Full Operations Date) for teachers at each of the elementary, middle and high school levels designed to familiarize the teachers with the renewable energy curriculum devised by the National Renewable Energy Laboratory.

i. Seller shall provide to Buyer for Buyer's installation at a place of its choosing not on the Premises a public viewing site proximate to the Premises that contains a sample panel and a plaque that explains the fundamentals of solar (PV) power generation and is suitable for school and group field trips to learn about the Solar Energy Facility and solar power.

6.3 Buyer's Obligations.

a. Buyer shall act as the Host Customer, as defined in 220 C.M.R. §18.02, for the Solar Energy Facility. To the extent that National Grid elects not to purchase Net Metering Credits from Buyer, Buyer shall be responsible for allocating Net Metering Credits to Buyer's designees. Except in the case of the termination of this Agreement on account of a default by Buyer, Seller shall have no claim on, or responsibility regarding, such Net Metering Credits.

b. Subject to the terms and conditions of this Agreement, Buyer shall, upon prior written request by Seller and at Seller's expense, execute a consent and agreement with respect to a collateral assignment hereof in favor of any Financier(s) in a form reasonably acceptable to Buyer in its sole discretion, provided that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

c. Buyer acknowledges that the Financier(s) may have other or further requests with respect to the assignment of the Agreement (such as requests for legal opinions or certificates from Buyer) and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer, at Seller's expense, will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith.

d. Buyer shall perform its obligations under this Agreement in compliance with the Applicable Legal Requirements.

e. Buyer shall comply with the provisions of the Lease.

f. Buyer shall reasonably cooperate with Seller so that Seller can meet its obligations under this Agreement and under the Lease. Buyer agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all local permits and approvals necessary for the design, construction, engineering, operations, maintenance and deconstruction of the Solar Energy Facility and to act at all times during such review within its legal capacity. This provision is not intended to and shall not be construed to imply that Buyer's Board of Selectmen has the authority to direct the outcome of any application submitted to any independent local permit issuing authority nor that Buyer's Board of Selectmen has the independent or concurrent authority to issue any permits or other such approvals for the Solar Energy Facility. The Parties agree that, in the event either Party is sued by a third-party in connection with the any Permit, approval or any other matter related to the Solar Energy Facility, this Agreement or the Lease, the defending Party will immediately notify and consult with the other Party. The Parties further agree that they will work together in good faith to expeditiously defend such action and shall coordinate their defense efforts subject to any restrictions imposed by Applicable Legal Requirements. In addition, Seller agrees that if reasonably requested by Buyer, Seller will reimburse Buyer for any direct third-party costs (including reasonable attorneys' fees) Buyer incurs in such defense, provided that such costs in the aggregate do not exceed twenty-five thousand dollars (\$25,000.00); provided, further, however, that in the event that Buyer's direct third party costs exceed the amount of twenty-five thousand dollars (\$25,000.00), Buyer's obligation to expeditiously defend such action and coordinate defense

efforts with Seller shall only continue for as long as and to the extent that Seller agrees in advance to reimburse Buyer for its direct third party costs which exceed such amount.

g. Buyer shall pay any fee imposed by the Tariff in connection with the filing of the Interconnection Application. Seller shall promptly reimburse Buyer for the amount of such fee.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties by Seller. As of the Effective Date, Seller represents and warrants to Buyer as follows.

a. Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware and is qualified to transact business in the Commonwealth of Massachusetts.

b. Seller has legal capacity to enter into and perform this Agreement.

c. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of Seller has authority to do so and to bind Seller.

d. To Seller's knowledge, there is no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of the Agreement or Seller's ability to carry out its obligations under this Agreement, except as may arise in connection with the Massachusetts Department of Public Utilities Inquiry in Docket 11-11.

e. To Seller's knowledge, none of the documents or other written or other information furnished by or on behalf of Seller to Buyer or Buyer's agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

7.2 Representations and Warranties by Buyer. Buyer represents and warrants to Seller as follows.

a. Buyer is a municipal corporation having its principal office at 600 Chief Justice Cushing Highway, Scituate, Massachusetts.

b. Buyer has legal capacity to enter into and perform this Agreement.

c. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of Buyer has authority to do so and to bind Buyer.

d. To Buyer's knowledge, there are no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable

decision, ruling, or finding would materially and adversely affect the validity or enforceability of the Agreement or Buyer's ability to carry out its obligations under this Agreement, except as may arise in connection with the Massachusetts Department of Public Utilities Inquiry in Docket 11-11.

e. None of the documents or other written or other information furnished by or on behalf of Buyer to Seller or Seller's agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

7.3 Pre-Existing Environmental Conditions.

a. Seller acknowledges and agrees that:

i. the Premises previously was operated by Buyer as a municipal solid waste landfill, which was closed in accordance with applicable law in approximately 2000;

ii. the Premises are subject to on-going maintenance activities pursuant to applicable law;

iii. all activities on the Premises, including but not limited to the construction, operation, maintenance, decommissioning and removal of the Solar Energy facility, must be conducted in conformance with Applicable Legal Requirements;

iv. applicable law may prohibit and/or require the use of certain construction, operation, maintenance and removal procedures in connection with the use of the Premises for a Solar Energy Facility; and

v. Seller is familiar with the condition and all aspects of the Premises; and that it has approved and accepted the same.

b. IT IS UNDERSTOOD AND AGREED THAT BUYER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO ENVIRONMENTAL CONDITIONS, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

c. SELLER ACKNOWLEDGES AND AGREES THAT IT SHALL ACCEPT THE PREMISES "AS IS, WHERE IS, WITH ALL FAULTS". SELLER HAS NOT RELIED AND WILL NOT RELY ON, AND BUYER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO MADE OR FURNISHED BY BUYER, ITS EMPLOYEES, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT BUYER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. SELLER

ALSO ACKNOWLEDGES THAT THE ANNUAL LEASE PAYMENT REFLECTS AND TAKES INTO ACCOUNT THAT SELLER'S USE OF THE PREMISES IS "AS-IS."

d. SELLER REPRESENTS TO BUYER THAT SELLER IS FAMILIAR WITH THE PREMISES AND HAS CONDUCTED INSPECTIONS AND INVESTIGATIONS OF THE PREMISES, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS SELLER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PREMISES AND THE EXISTENCE OR NONEXISTENCE OF CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PREMISES, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF BUYER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. SELLER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY SELLER'S INVESTIGATIONS. SELLER SHALL BE DEEMED, FOR AND ON BEHALF OF ITSELF AND ALL SUCCESSORS IN TITLE, TO HAVE WAIVED, RELINQUISHED AND RELEASED BUYER (AND BUYER'S EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH SELLER MIGHT HAVE ASSERTED OR ALLEGED AGAINST BUYER (AND BUYER'S EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF PHYSICAL CONDITIONS (INCLUDING ENVIRONMENTAL CONDITIONS), VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS OF OR REGARDING THE PREMISES.

ARTICLE VIII TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer.

a. Buyer fails to make any payment of uncontested amounts owed under this Agreement within thirty (30) days after such payment is due, and payment of such uncontested amount is not made within thirty (30) days of Seller's written notice to Buyer of such failure.

b. Buyer breaches or fails to perform or comply with any material covenant or obligation set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from Seller to Buyer; provided that if Buyer proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, Buyer's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Fraud or intentional misrepresentation by Buyer with respect to any of the material covenants or agreements of this Agreement.

d. Buyer has an Event of Default which results in termination under the Lease.

8.2 Events of Default by Seller. The following shall each constitute an Event of Default by Seller.

a. Seller fails to make any payment of uncontested amounts owed under this Agreement within thirty (30) days after such payment is due, and payment of such uncontested amount is not made within thirty (30) days of Buyer's written notice to Seller of such failure.

b. Seller breaches or fails to perform or comply with any material covenant or obligation set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from Buyer to Seller; provided that if Seller proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, Seller's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Fraud or intentional misrepresentation by Seller with respect to any of the material covenants or agreements of this Agreement.

d. Seller has an Event of Default which results in termination under the Lease.

e. Seller fails to achieve the Full Operations Date within thirty-six (36) months of the Effective Date, as such period of time may be extended as a result of *Force Majeure* or pursuant to the last paragraph of Section 2.2.

f. For any reason other than an event of *Force Majeure*, Seller is unable to provide Net Energy to Buyer for one hundred eighty (180) consecutive days in any three hundred sixty-five (365) day period commencing on the Full Operations Date and prior to expiration of this Agreement.

g. Seller: (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 ninety (90) 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 (other than a Leasehold Mortgagee or Financier) 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 (vix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

8.3 Force Majeure.

a. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

b. If an event of *Force Majeure* affecting either Party continues for a period of one hundred eighty (180) consecutive days or longer, either Party may treat such an event as an Event of Default and may terminate this Agreement.

8.4 Termination for Default.

a. Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, and unless such Event of Default is earlier cured by the defaulting Party or, with respect to an Event of Default by the Seller, either Seller or a Financier, this Agreement shall terminate upon any termination date specified in such notice as though such date were the date originally set forth herein for the termination hereof.

b. In the event this Agreement is terminated as a result of an Event of Default of Seller:

i. Provided that Buyer has not provided Seller notice of a request for an Appraisal pursuant to Section 11.2, (x) Buyer shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination; and (y) Seller shall remove the Solar Energy Facility from the Premises in accordance with the provisions of the Lease.

ii. Provided that Buyer has provided Seller notice of a request for an Appraisal pursuant to Section 11.2, Buyer shall continue to purchase Net Energy and to make payments therefore under the Agreement until Buyer either exercises its right to purchase the Solar Energy Facility and related assets for the Purchase Price or notifies Seller that it will not provide Seller with an Exercise Notice pursuant to Section 11.7, in which case Seller shall thereafter remove the Solar Energy Facility from the Premises in accordance with the provisions of the Lease.

iii. Except in the case of termination due to an event of *Force Majeure*, Seller shall pay to Buyer, within thirty (30) days of the Termination Date, the Special Termination Damages amount (in lieu of any other damages related to purchasing replacement power, “cost of cover” damages, or Production Shortfall Charges) set forth in Exhibit C; provided, however, in no event shall the Special Termination Damages exceed in the aggregate two hundred thousand dollars (\$200,000.00). Receipt of such Special Termination Damages shall be Buyer’s sole and exclusive remedy with respect to recovery for any losses incurred by Buyer in connection with its termination of this Agreement.

c. In the event this Agreement is terminated as a result of an Event of Default of Buyer:

i. Seller shall have no further obligation to sell and deliver Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination, and Buyer shall have no further obligation to purchase, receive or otherwise Net Meter any Net Energy from or on behalf of Seller; and

ii. Seller shall have the right, but not the obligation, to continue to maintain the Solar Energy Facility at the Premises pursuant to the provisions of the Lease, and to enter into power supply arrangements with one or more third parties, for the remainder of the then effective Term of the Lease. In the event that Seller elects to continue operations of the Solar Energy Facility pursuant to the preceding sentence, Buyer shall reasonably cooperate with Seller to allow Seller to interconnect directly with National Grid or another Host Customer, in Seller’s sole discretion and at Seller’s sole cost, and Buyer shall promptly transfer to Seller or Seller’s designee any Net Metering Credits that are generated after the effective date of termination and are paid or credited to Buyer by National Grid. The Parties agree that Seller’s rights under this subsection (c) shall constitute Seller’s sole and exclusive remedy with respect to recovery for any losses or damages incurred by Seller in connection with its termination of this Agreement.

ARTICLE IX REMEDIES AND LIMITATION OF LIABILITY

9.1 Remedies. Subject to the limitations set forth in this Agreement (including, but not limited to, Sections 4.5(b), 8.4(b)(iii), 8.4(c)(ii), and 9.4), Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of the other Party’s non-performance under this Agreement.

9.2 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.**

9.3 Waivers.

a. No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's agent. Consent or approval of Seller or Buyer to any act or matter must be in writing and shall apply only with respect to the particular act or matter in which such consent or approval is given and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. Seller or Buyer may restrain any breach or threatened breach of any covenant or agreement herein contained, but the mention herein of any particular remedy (other than as set forth in Section 4.5(b), 8.4(b)(iii), 8.4(c)(ii), 9.4 and 9.5 of this Agreement) shall not preclude either Seller or Buyer from any other remedy it might have, either in law or in equity. The failure of Seller or Buyer to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Except as set forth in this Agreement, any right or remedy of Seller or Buyer herein specified or any other right or remedy that Seller or Buyer may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

c. Waiver of Termination for Convenience. Buyer hereby expressly waives any rights it may have to cancel this Agreement or discharge any of its obligations hereunder on the basis that there may be a right of termination for convenience (whether it be express, implied or constructive) in contracts with public entities.

9.4 Failure to Achieve Full Operations Date. In the event that Seller fails to achieve the Full Operations Date on or before twenty-four (24) after the Effective Date (except to the extent such failure is excused by an event of *Force Majeure*, in which case the twenty-four (24) months shall be extended for each day of *Force Majeure*, or is already the subject of a day-for-day extension under the last paragraph of Section 2.2) and unless this Agreement has not been terminated by

Buyer or Seller pursuant to Section 2.2, Seller shall pay Buyer the amount of three hundred dollars (\$300.00) per day, as liquidated damages and not as a penalty, until the Full Operations Date is achieved. Subject to Buyer's right to terminate this Agreement pursuant to Section 2.2(f) and 8.2(f), Seller's payment of liquidated damages under this Section 9.4 shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Full Operations Date in accordance with this Section 9.4; provided, however, that in no event shall Seller's aggregate liability for liquidated damages under this Section 9.4 exceed one hundred nine thousand five hundred dollars (\$109,500.00).

ARTICLE X ASSIGNMENT, SUBLETTING, MORTGAGE

10.1 Prior Written Consent. Seller shall not assign or in any manner transfer this Agreement or any part thereof without the prior written consent of Buyer, which consent may not be unreasonably conditioned, withheld or delayed, except that in connection with: (i) any assignment or transfer of this Agreement by Seller to an Affiliate of Seller (provided that such Affiliate's financial condition, creditworthiness and operational ability following the contemplated assignment or transfer are sufficient to permit Seller to satisfy its obligations under this Agreement, as reasonably determined by Buyer); and (ii) any assignment to any Financier(s) as collateral security for obligations under the financing documents entered into with such Financier(s), subject to the terms and conditions of this Agreement, no prior notice to or consent of Buyer is required, provided that Seller shall promptly notify Buyer after the date of assignment or transfer. Buyer shall consent to an assignment or other transfer if such assignee or transferee shall deliver evidence reasonably satisfactory to Buyer that assignee or transferee is sufficiently creditworthy and has adequate technical expertise to perform the obligations of Seller under this Agreement.

10.2 Financing by Financier(s). Buyer acknowledges that Seller proposes to finance its interest in the Solar Energy Facility, and therefore specifically agrees without any further request for prior consent to permit Seller to mortgage, assign or transfer its interest in the Solar Energy Facility solely for the purpose of obtaining such financing, which may include equity and/or debt, provided that Seller shall give Buyer notice of the existence of such mortgage, assignment or transfer, together with the name and address of the mortgagee, assignee or transferee, within thirty (30) days of the execution of such mortgage, assignment or transfer.

10.3 Release of Seller. Seller shall be relieved from its obligations under this Agreement:

a. by any whole disposition of Seller's interest in this Agreement in compliance with Section 10.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by all of the terms of this Agreement, unless the Parties agree otherwise; and

b. in the event of any foreclosure by Financier(s), in which case Financier(s) shall substitute for Seller for purposes of this Agreement; provided, however, that Financier subsequently shall be entitled to assign its right under this Agreement in accordance with the provisions of Section 10.1.

Absent express written consent of Buyer, the execution of a security interest in this Agreement or the Solar Energy Facility, or any assignment from a Financier to another Financier, shall not relieve Seller from its obligations under this Agreement.

10.4 Financier Provisions. Any person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or the Solar Energy Facility shall, for so long as its security is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Article X. No such security interest shall encumber the interests or rights of Buyer under this Agreement.

a. Financier's Right to Possession, Right to Acquire and Right to Assign. Pursuant to the provisions of this Section, a Financier shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the Solar Energy Facility by any lawful means; and (iii) to take possession of and operate the Solar Energy Facility or any portion thereof and to perform all obligations to be performed by Seller hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement. Buyer's consent shall not be required for a Financier's acquisition of the encumbered interest created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

b. Notice of Default; Opportunity to Cure. A Financier shall be entitled to receive notice of any default by Buyer, provided that such Financier shall have first delivered to Buyer a notice of its interest in this Agreement or in the Solar Energy Facility in the form and manner, if any, provided by state laws, rules, regulations, Seller's procedures, and the provisions of this Agreement. If any notice shall be given of the default of Seller and Seller has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice from Buyer that Seller has failed to cure such default and such Financier shall have thirty (30) days after such additional notice to cure any such default or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and diligently pursue such cure to completion within such time as Seller would have been allowed pursuant to this Agreement but as measured from the date of such additional notice. Financier(s) shall have priority over Buyer to cure any default by Seller pursuant to this Agreement or the Lease, or to take possession of the Solar Energy Facility and to operate the Solar Energy Facility, if necessary.

ARTICLE XI SOLAR ENERGY FACILITY PURCHASE AND SALE OPTION

11.1 Grant of Purchase Option. For and in consideration of the payments made by Buyer under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Seller hereby grants Buyer the right and option to purchase all of Seller's right, title and interest in and to the Assets on the terms set forth in this Agreement (the "***Purchase Option***").

11.2 Buyer Request for Appraisal of Solar Energy Facility Value. Provided that Buyer is not in default under this Agreement, upon the earlier of (a) one hundred eighty (180) days prior to the end of the Term, or (b) an Event of Default of Seller that has occurred and is continuing

beyond any applicable cure period after the fifth (5th) anniversary of the Full Operations Date, Buyer shall have the right to provide a notice to Seller requiring a determination of the Purchase Price as set forth below.

11.3 Selection of Independent Appraiser. Within fifteen (15) days of Seller's receipt of a notice provided under Section 11.2, Seller and Buyer shall each propose an Independent Appraiser. If Seller and Buyer do not agree upon the appointment of an Independent Appraiser within such fifteen (15) day period, then at the end of such fifteen (15) day period, two proposed Independent Appraisers shall, within ten (10) 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 Seller and Buyer. Such selection shall be final and binding on Seller and Buyer.

11.4 Determination of Purchase Price.

a. The selected Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Appraised Value in accordance with Section 11.5 (the "**Preliminary Determination**").

b. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Seller and Buyer, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Buyer shall each have the right to object to the Preliminary Determination within twenty (20) days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within fifteen (15) days after the expiration of such twenty (20) day period, the selected Independent Appraiser shall issue its final determination (the "**Final Determination**") to Seller and Buyer, 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.

11.5 Calculation of Purchase Price. The purchase price (the "**Purchase Price**") payable by Buyer for the Assets shall be equal to the Appraised Value as determined by the Independent Appraiser in its Final Determination.

11.6 Costs and Expenses of Independent Appraiser. Seller and Buyer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

11.7 Exercise of Purchase Option.

a. Buyer shall have ninety (90) 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. Buyer must exercise its Purchase Option during the Exercise Period by providing a notice (an "**Exercise Notice**") to Seller. Once Buyer delivers its Exercise Notice to Seller, such exercise shall be irrevocable.

b. Promptly following receipt of Buyer's notice pursuant to Section 11.2, Seller shall make the Assets, including records relating to the operations, maintenance, and warranty repairs, available to Buyer for its inspection during normal business hours.

11.8 Terms of Asset Purchase. On the Transfer Date (a) Seller shall surrender and transfer to Buyer all of Seller's right, title and interest in and to the Assets, and shall retain all liabilities arising from or related to the Assets prior to the Transfer Date, (b) Buyer shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the Assets 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 or other terms and conditions as are usual and customary for a sale of assets of similar condition and age as the Assets, together with such other conveyance and transaction documents as are reasonably required to transfer and vest title to the Assets in Buyer, 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 Assets to Buyer.

11.9 Transfer Date. The closing of any sale of the Assets (the "***Transfer Date***") pursuant to this Section 11.9 will occur no later than thirty (30) days following the date of the Exercise Notice.

ARTICLE XII INDEMNIFICATION

12.1 Indemnification of Buyer. Seller shall indemnify and save harmless Buyer and each of its officials, employees, agents, and assigns (the "***Buyer 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 Buyer Indemnified Party by reason of any of the following occurrences during the Term, except to the extent such liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees, are caused by the gross negligence or intentional wrongful acts of the Buyer Indemnified Parties.

a. Any breach by Seller of its obligations, covenants, representations or warranties contained in this Agreement or made pursuant.

b. Any negligence on the part of Seller or any of its agents, contractors, servants, employees, subtenants, licensees or invitees in connection with this Agreement or the Solar Energy Facility.

c. Any failure on the part of Seller or any of its agents, contractors, servants, employees, subtenants, licensees or invitees to comply with any Applicable Legal Requirements.

In case any action or proceeding is brought against any Buyer Indemnified Party by reason of any such claim, Seller, upon written notice from Buyer, shall defend such action or proceeding at Seller's expense to the reasonable satisfaction of Buyer.

**ARTICLE XIII
INSURANCE**

13.1 Insurance. The Insurance provisions in the Lease are hereby incorporated by reference.

**ARTICLE XIV
MISCELLANEOUS**

14.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or facsimile transmission.

The communications shall be sent to the following addresses:

If to Buyer:

Patricia A. Vinchesi, Town Administrator
Town Hall
600 Chief Justice Cushing Way
Scituate, MA 02066
Tel: (781) 545-8741
Fax: (781) 545-8704
Email: pvinchesi@town.scituate.ma.us

with a copy to:

Mark C. Kalpin, Esq.
WilmerHale
60 State Street
Boston, MA 02109
Tel: (617) 526-6176
Fax: (617) 526-5000

Email: mark.kalpin@wilmerhale.com

If to Seller:

Pete Pedersen
Scituate Solar I LLC
c/o Brightfields Development LLC
36 Washington Street, Suite 220
Wellesley, MA 02481
Tel: (781) 431-8101
Fax: (781) 431-8105

Email: ppedersen@brightfieldsllc.com

with a copy to:

Mary Beth Gentleman, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
Tel: (617) 832-1199
Fax: (617) 832-7000

Email: mgentleman@foleyhoag.com

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

14.2 Confidentiality. Except as provided in this Section 14.2, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent.

a. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to this Agreement.

b. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

c. In connection with the above, the Parties acknowledge that Buyer is a public entity that is subject to certain public records disclosure statutes and regulations.

14.3 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired. Provided further, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

14.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

14.5 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 14.5 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot resolve a dispute by informal negotiations, the sole venue for judicial enforcement shall be Plymouth County Superior Court, Massachusetts. Each Party hereby consents to the jurisdiction of such court, and 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.

c. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

d. In any judicial action, the Prevailing Party (as defined below) shall be entitled to an award by the court of payment from the opposing Party of its reasonable costs and fees, including, but not limited to, attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase "**Prevailing Party**" shall mean the Party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

14.6 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof and, with the exception of the Lease to which Seller and Buyer are Parties, supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

14.7 Headings and Captions. The headings and captions in this Agreement are intended for reference only, do not form a part of this Agreement, and will not be considered in construing this Agreement.

14.8 Singular and Plural, Gender. If two or more persons, firms, corporations or other entities constitute either Seller or Buyer, the word "Seller" or the word "Buyer" shall be construed as if it reads "Sellers" or "Buyers" and the pronouns "it," "he," and "him" appearing in this Agreement shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

14.9 Press Releases. Each Party shall be permitted to make public statements with respect to this Agreement or the Solar Energy Facility. Notwithstanding the foregoing, neither Party shall issue a written press release with respect to this Agreement or the Solar Energy Facility without the prior written agreement of the other Party, such agreement not to be unreasonably withheld, conditioned or delayed, with respect to the form, substance and timing thereof; provided, that when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, the Parties shall use their reasonable good faith efforts to agree as to the form, substance and timing of such release or statement.

14.10 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.

14.11 Joint Workproduct. This Agreement shall be considered the workproduct of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

14.12 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including, without limitation, all attorneys' fees and expenses.

14.13 No Broker. Seller and Buyer each represents and warrants to the other that it has dealt with no broker in connection with the consummation of this Agreement, and in the event of any brokerage claims against Seller or Buyer predicated upon prior dealings with the other Party, the Party purported to have used the broker agrees to defend the same.

14.14 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

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

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

14.17 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or

confirming any of the transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

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

14.19 Site Lease. The Parties agree that this Agreement shall take effect and the obligations of the Parties shall arise only upon simultaneous execution by the Parties of the Lease of even date herewith.

14.20 Survival. The provisions of Sections 4.4 (Governmental Charges), 4.6 (Environmental Credits and Value), 5.4 (Records and Audits), 5.5 (Dispute), 6.1 (Net Metering), 9.1 (Remedies), 9.2 (Limitation of Liability), and 9.3 (Waivers), and Articles 11 (Solar Energy Facility Purchase and Sale Option), 12 (Indemnification) and 14 (Miscellaneous) shall survive the expiration or earlier termination of this Agreement for a period of three (3) years, provided, however, Seller's rights and obligations under Sections 4.4 (Governmental Charges) and 4.6 (Environmental Credits and Value) shall terminate as of the Transfer Date if Buyer exercises its option to purchase the Assets.

14.21 Obligation to Modify Agreement Pursuant to Rules and Regulations under the Green Communities Act or other Actions by Governmental Authority. Upon implementation by the Massachusetts Department of Public Utilities, Massachusetts Department of Energy Resources or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding the provision of or eligibility for Net Metering, the Parties shall negotiate in good faith, shall amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

14.22 No Limitation of Regulatory Authority. The Parties acknowledge and agree that Buyer is a municipal entity, and that nothing in this Agreement or the Lease shall be deemed to be an agreement by Buyer to issue or cause the issuance of any approval, authorization, or permit, or to limit or otherwise affect the ability of Buyer or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

14.23 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This provision is not intended to limit the rights of a Leasehold Mortgagee under the Lease or a Financier under Article X of this Agreement.


[Signature page to follow.]

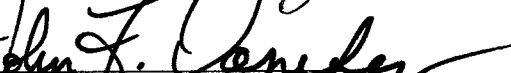
IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

BUYER


Town of Scituate,
a municipal corporation

By: _____
Joseph P. Norton, Selectman


By: 
Richard W. Murray, Selectman

By: 
John F. Danehey, Selectman


By: 
Shawn Harris, Selectman

By: 
Anthony V. Vegnani, Selectman

Approved as to Form:

By: 
Mark C. Kaipin, Esq.
Special Town Counsel

Agreement as to Procurement:

By: 
Patricia A. Vinchesi
Town Administrator

SELLER

Scituate Solar I LLC,
a Delaware limited liability company

By: Brightfields Development LLC,
a Massachusetts limited liability company,
its sole member

By: _____
Norman A. Pedersen III, Manager

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

BUYER

Town of Scituate,
a municipal corporation

By: Joseph P. Norton
Joseph P. Norton, Selectman

By: _____
Richard W. Murray, Selectman

By: _____
John F. Danehey, Selectman

By: _____
Shawn Harris, Selectman

By: _____
Anthony V. Vegnani, Selectman

Approved as to Form:

By: _____
Mark C. Kalpin, Esq.
Special Town Counsel

Agreement as to Procurement:

By: _____
Patricia A. Vinchesi
Town Administrator

SELLER

Scituate Solar I LLC,
a Delaware limited liability company

By: Brightfields Development LLC,
a Massachusetts limited liability company,
its sole member

By: _____
Norman A. Pedersen III, Manager

02/22/2011 14:20 017-032-7000

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

BUYER

Town of Scituate,
a municipal corporation

By: _____
Joseph P. Norton, Selectman

By: _____
Richard W. Murray, Selectman

By: _____
John F. Danehey, Selectman

By: _____
Shawn Harris, Selectman

By: _____
Anthony V. Vegnani, Selectman

Approved as to Form:

By: _____
Mark C. Kalpin, Esq.
Special Town Counsel

Agreement as to Procurement:

By: _____
Patricia A. Vinchesi
Town Administrator

SELLER

Scituate Solar I LLC,
a Delaware limited liability company

By: Brightfields Development LLC,
a Massachusetts limited liability company,
its sole member

By: 
Norman A. Pedersen III, Manager

List of Exhibits to Agreement

Exhibit A – INTENTIONALLY OMITTED

Exhibit B – Description of Solar Energy Facility

Exhibit C – Net Energy Price and Terms

EXHIBIT A

[INTENTIONALLY OMITTED]

EXHIBIT B

DESCRIPTION OF THE SOLAR ENERGY FACILITY

Preliminary Specifications of Major Components of Solar Energy Facility:	Bankable Tier-one photovoltaic modules with warranties of at least 5 years and 25-year performance guarantees, with inverters with a minimum 10 year warranty.
Nameplate Capacity	Between approximately 2.0 and 3.0 MW (DC), as determined by Lessee in its sole discretion, to be evidenced in the final design drawings of the Permitted Improvements.

[To be replaced by Seller upon completion of the final design drawings
for the Solar Energy Facility.]

EXHIBIT C
NET ENERGY PRICE AND TERMS

NET ENERGY PRICE	<u>Contract Years</u>	<u>Net Energy Price</u>
	Contract Years 1 through 3	\$0.084 / kWh
	Contract Years 4 through 6	\$0.089 / kWh
	Contract Years 7 through 9	\$0.095 / kWh
	Contract Years 10 through 12	\$0.100 / kWh
	Contract Years 13 through 15	\$0.105 / kWh
	Contract Years 16 through 18	\$0.112 / kWh
	Contract Years 19 through 20	\$0.119 / kWh

In addition to the amounts provided in the table above, for each kWh of Affected Net Energy delivered to Buyer commencing with the beginning of the month after Seller's receipt of the most recent Assessment, the Net Energy Price (on a per kWh basis) shall be increased by an amount that is equal to: (a) the total amount (in dollars) of such Assessment, *divided by* (b) the amount (in kWh) of Guaranteed Output applicable to such Assessment Period; provided, however, that in the event such assessment subsequently is adjusted by Buyer, the Net Energy Price shall correspondingly be adjusted.

For purposes of calculating the addition to the Net Energy Price set forth in the previous paragraph, initially capitalized terms used and not defined in such paragraph shall have the following meanings:

“Affected Net Energy” means the amount of Net Energy in kWh delivered to Buyer in an Assessment Period up to the applicable portion of the Guaranteed Electrical Output attributable to such Assessment Period.

“Assessment” means the annual property (real or personal) or similar tax assessment(s) issued by Buyer on account of the Solar Energy Facility and Seller's leasehold interest in the Premises.

“Assessment Period” means the period of time covered by an Assessment.

POINT OF DELIVERY	Buyer's side of the Project Metering Device or the Grid Metering Device, as applicable, subject to the mutual agreement of the Parties
-------------------	--

and the provisions of the Interconnection Agreement(s).

PRODUCTION
SHORTFALL
CHARGE

The amount, on a dollars per kWh basis, that is the difference between (a) the average Net Metering Credit that Buyer would have received for the Production Shortfall quantity during the applicable Guaranteed Period, *minus* (b) the average Net Energy Price for such Guaranteed Period, provided, however, if the amount is negative, no payment by Seller (or refund by Buyer) shall be required.

SPECIAL
TERMINATION
DAMAGES

The lesser of (a) the Production Shortfall Charge for then current Guaranteed Period *multiplied by* 2, and (b) \$200,000.00.

Schedule 1 to Exhibit C

<u>Guaranteed Period /</u> <u>Contract Year</u>	<u>Guaranteed Electric Output</u> <u>(kWh)</u>
3	1,995,000
4	1,975,000
5	1,955,000
6	1,934,000
7	1,914,000
8	1,894,000
9	1,874,000
10	1,854,000
11	1,834,000
12	1,814,000
13	1,793,000
14	1,773,000
15	1,753,000
16	1,733,000
17	1,713,000
18	1,693,000
19	1,672,000
20	1,652,000