

ALTERNATIVE ON-BILL CREDIT PURCHASE AGREEMENT

THIS ALTERNATIVE ON-BILL CREDIT PURCHASE AGREEMENT (this “Agreement”) is entered into this _____ day of _____, 202____, by and between [_____] , LLC (“Seller”) and the Auburn Water District, a Massachusetts public water district established by Chapter 585 of the Acts of 1947, as amended (“Buyer”). Seller and Buyer are each referred to herein individually as a “party” and collectively as the “parties.”

1. DEFINITIONS.

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

(a) “Adjusted Annual Expected Performance Output” means the difference between (i) the Annual Expected Performance Output multiplied by the Annual Insolation Factor and (ii) the Excused Output.

(b) “Annual Expected Performance Output” has meaning as defined in Section 3.3.a.

(c) “Affiliate” of a Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the first Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests) of such Person, whether by contract or otherwise.

(d) “Agreement” means this Alternative On-Bill Credit Purchase Agreement and the exhibits and schedules hereto.

(e) “Alternative On-Bill Credit”, means the monetary value of the Delivered Energy commensurate with Buyer’s Allocated Percentage, as calculated pursuant to the Tariff, and (x) credited to Buyer by the Utility on its monthly invoice for electric service at the Retail Service Address or (y) transferred to Buyer by Seller after being issued to Seller by the Utility, in each case, in accordance with the Tariff; and excluding, for the avoidance of doubt, any Solar Incentives or Environmental Attributes; *provided, however*, that Seller shall be entitled in its sole discretion to transfer the Environmental Attributes from the System to the Utility in accordance with the Program rules, in order to have the Alternative On-Bill Credits include the value associated with said Environmental Attributes.

(f) “Annual Actual Insolation” means for each year during the Term, the annual actual insolation in units of kWh/m² measured using the on-site DAS or if no on-site pyranometer exists using reference location agreed to by the Parties in their reasonable discretion.

(g) “Annual Insolation Factor” means for each year during the Term, the Annual Actual Insolation divided by the Annual Expected Insolation for a specific year.

(h) “Annual Expected Insolation” means for each year during the Term, the expected insolation in units of kWh/m² at the Site calculated using PVSYST modeled with meteorological parameters reasonably selected by Seller.

(i) “Applicable Law” means any laws, statutes, ordinances, regulations, rules,

notice requirements, Governmental Approval requirements, court orders, treaties or other international agreements, agency guidelines, principles of law, including the common law, and orders of any Governmental Authority.

(j) “Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

(k) “Business Day” means any day other than a Saturday, Sunday or any other day on which banks in Massachusetts are authorized or obligated to close.

(l) “Buyer Default” has the meaning set forth in **Section 9.2(a)**.

(m) “Buyer Termination Notice” has the meaning set forth in **Section 9.1(b)**.

(n) “Buyer’s Account Information” means the Retail Service Address and Buyer’s account number associated with the Retail Service Address, as set forth in **Schedule 1**.

(o) “Buyer’s Allocated Percentage” means Buyer’s allocated portion, stated as a percentage, of the Delivered Energy in a given month, as set forth in **Schedule 1**.

(p) “Commercial Operation” means that the System: (i) has been constructed in accordance with Applicable Law, (ii) is operational and generating electricity on a commercial basis, (iii) has been interconnected to the Utility’s electric distribution system, and (iv) has received all Government Approvals required to operate and generate electricity.

(q) “Commercial Operation Date” means the date on which the System achieves Commercial Operation, as notified in writing by Seller to Buyer within ten (10) Business Days after such date.

(r) “Contract Year” means each consecutive 12-month period commencing on the Commercial Operation Date.

(s) “Creditworthy” means, if a non-governmental entity, a long-term credit rating (corporate or long-term senior unsecured debt) of, or, if a governmental entity, a general obligation bond rating of (a) Baa3 or higher by Moody’s, (b) BBB- or higher by Fitch IBCA, or (c) BBB- or higher by Standard and Poor’s; or, for non-governmental entities not rated by Moody’s, Fitch IBCA, or Standard and Poor’s, an equivalent credit rating as determined by Seller through review of such non-governmental entity’s (x) most recent three (3) years of audited financial statements with notes, or, if such audited

financial statements are not available, (y) the entity's most recent three (3) years of unaudited financials (prepared by an external accountant, if available) including income and cash flow statements, a balance sheet, and accompanying notes, if any, for each.

(t) "Delivered Energy" means the amount of photovoltaic energy generated by the System and delivered to the Utility as measured at the Production Meter.

(u) "Environmental Attributes" means, without limitation, carbon trading credits, Renewable Energy Certificates or credits, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

(v) "Excused Output" means the kWhs during the relevant calendar year that Seller was unable to produce from the System due to any one or any combination of the following reasons: (i) to Force Majeure; (ii) an emergency situation that threatens injury to persons or property that was not a result of the acts or omissions of Seller; or (iii) the System being prevented from operating, or having its operations diminished or curtailed, other than due to the acts or omissions of Seller.

(w) "Force Majeure" has the meaning set forth in **Section 8.1**.

(x) "Governmental Approval" means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses, and approvals from any Governmental Authority required under Applicable Law for construction, ownership, operation and maintenance of the System or for participation in the Program.

(y) "Governmental Authority" means any (a) federal, national, provincial, state, regional, local, municipal or other government, governmental or public department, central bank, court, tribunal, arbitrator, commission, board, bureau or agency, (b) subdivision, agent, commission, board or authority of any of the foregoing, or (c) any regulatory authority, agency, commission or board of any federal, national, provincial, state, regional, municipal, local or other government.

(z) "Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Site.

(aa) "Invoice Date" has the meaning set forth in **Section 5.2**

(bb) "kWh Rate" means [_____ (____%)] of the Alternative On-Bill Credit for the applicable billing period [or the Alternative On-Bill Credit for the applicable billing period less ____ cents (\$0.0__) per kWh of Buyer's Allocated Percentage for such billing period].

(cc) "Lender" means, any Person who has made or will provide financing to Seller (or an Affiliate of Seller) with respect to the System, including any equity investors.

(dd) "Losses" means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

(ee) "Party" or "Parties" has the meaning set forth in the preamble.

(ff) "Payment" has the meaning set forth in **Section 5.1**.

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

(hh) “Production Meter” means the revenue quality meter installed, operated and maintained by the Utility to measure electricity generated by the System.

(ii) “Qualified Third Party” means a company with at least 10 megawatts (MW) of community or distributed solar, or at least 100 MW of utility scale solar in operation.

(jj) “Renewable Energy Certificate” means any “GIS Certificate” representing a “Generation Attribute” all as described in 225 C.M.R. 14.02, as may be amended from time to time or as further defined or supplemented by Applicable Law.

(kk) “Retail Service Address” is the address at which Buyer receives retail electric service from the Utility, as set forth in **Schedule 1**.

(ll) “Seller” has the meaning set forth in the preamble.

(mm) “Seller Default” has the meaning set forth in **Section 9.1(a)**.

(nn) “Site” means the physical location where the System is to be constructed.

(oo) “Site Lease” means that certain lease of even date herewith by and between Buyer, as landlord, and Seller, as tenant, for the Site.

(pp) “Site Restrictions” means those requirements or limitations related to the Site as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

(qq) “Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and all other solar or renewable energy subsidies and incentives.

(rr) “Solar Massachusetts Renewable Target Program” or “Program” means the rules for the Solar Massachusetts Renewable Target (“SMART”) Program as set forth in 225 C.M.R. 20.00 et seq. promulgated pursuant to Chapter 75 of the Acts of the Commonwealth of Massachusetts of 2016, and the rules and regulations issued pursuant thereto (including the Tariff), as may be amended from time to time or as further defined or supplemented by Applicable Law.

(ss) “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in **Schedule 1** that generates electricity.

(tt) “System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

(uu) “Tariff” means the SMART Program tariff of the Utility, as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals

thereto.

(vv) “Term” has the meaning set forth in **Section 2.1**.

(ww) “Default Termination Fee” means an amount equal to the lesser of (i) [_____] and (ii) one cent (\$0.01) per kWh of Buyer’s Allocated Percentage for the billing period immediately preceding termination of this Agreement.

(xx) “No Cause Termination Fee” means \$[_____].

(yy) “Utility” means the distribution company set forth on **Schedule 1**.

1.2 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of this Agreement.

2. TERM AND TERMINATION.

2.1 Term. The term (the “Term”) of this Agreement shall commence on the date of this Agreement and shall continue for [_____] (___) years from the Commercial Operation Date, unless and until terminated earlier pursuant to the provisions of this Agreement.

2.2 Seller Conditions of this Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) terminate this Agreement upon written notice delivered to Buyer before the Commercial Operations Date, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, provided, however, that if Seller terminates this Agreement pursuant to this Section 2.2, Seller must simultaneously terminate the Site Lease.

(a) There exist site conditions (including environmental conditions and ecological concerns such as presence of wildlife species) at the Site or construction requirements that could not have been reasonably known as of the date of this Agreement and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(b) There has been a material adverse change in (i) the rights of Seller to construct the System on the Site through no fault of Seller, (ii) the Program or Applicable Law, or (iii) the regulatory environment or availability of Solar Incentives (including the failure of the System to qualify for or expiration of any incentive program or tax incentives in effect as of the date of this Agreement).

(c) Seller has not received evidence reasonably satisfactory to it that interconnection services, the Program or Alternative On-Bill Credits will be available with respect to energy generated by the System.

(d) Seller has determined that there are easements, Site Restrictions, other liens or

encumbrances, or other facts, circumstances or developments that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance or removal of the System.

(e) Seller is unable to obtain financing for the System on terms and conditions reasonably satisfactory to Seller.

(f) Buyer's representation and warranty contained in Section 7.2(e) or Section 7.2(f) is no longer true and correct.

(g) A Buyer Default has occurred.

2.3 Early Termination by Buyer without Cause. Buyer may terminate this Agreement without cause and for any reason upon one hundred eighty days (180) prior written notice to Seller ("Notice Period"). During the Notice Period, Seller agrees to use reasonable best efforts to search for a third party with an eligible load to receive Alternative On-Bill Credits. Following the Notice Period, in the event no third party that meets the qualifications listed in Section 11.3(b)(A)-(E) has been identified to assume this Agreement, Buyer may terminate this Agreement, provided that Buyer pays the No Cause Termination Fee to Seller at least five (5) Business Days in advance of the termination date.

2.4 Right to Terminate this Agreement. In addition to other termination rights of a Party set forth herein, (a) Buyer may terminate this Agreement with no payment of any termination fee if the Commercial Operation Date has not occurred within [____] (____) months following the date hereof, or (b) Seller may terminate this Agreement effective one hundred eighty (180) days following delivery of written notice to Buyer if there has been a material adverse change in (i) the Program or Applicable Law, or (ii) the regulatory environment or availability of Solar Incentives for the System or (c) Buyer may terminate this Agreement effective upon written notice delivered to Seller if Buyer no longer operates one or more Retail Service Addresses that is eligible under the Program to subscribe to the System and upon such termination Buyer shall pay Seller the No Cause Termination Fee.

3. SYSTEM OPERATIONS.

3.1 Seller as Seller and Operator. Throughout the Term, Seller or Seller's Lender shall be the legal and beneficial owner of the System at all times, the System shall remain the personal property of Seller or Seller's Lender, and the System will be operated and maintained in accordance with the Tariff and, as necessary, repaired by Seller at its sole cost and expense. Buyer will not have access to the System for any purpose. Buyer will have no ownership, possession right or control of the System, and will have no rights or obligations with respect to the operation and maintenance of the System. This Agreement does not convey to Buyer any right, title or interest in or to any portion of any property (tangible or intangible, real or personal) underlying or comprising any portion of the System or any Solar Incentives or Environmental Attributes.

3.2 Obligations of Parties. The Parties will work cooperatively and in good faith, but at no expense to Buyer, to meet all Program requirements under Applicable Law and the Tariff, including applicable interconnection and Alternative On-Bill Credit requirements. The Parties agree that commencing on the Commercial Operation Date (a) Seller shall deliver Buyer's Allocated Percentage of the Delivered Energy to the Utility, and (b) Buyer (or its designee) shall be entitled to any and all Alternative On-Bill Credits resulting from such delivery. This Agreement does not convey to Buyer any right, title or interest in or to the Delivered Energy.

3.3 Output Guaranty.

(a) Annual Expected Performance Output. Seller estimates that the System should have delivered an “Annual Expected Performance Output” for each full Contract Year beginning on the Commercial Operation Date, which shall be the annual kWh at the Production Meter calculated using PVSYST modeled with Annual Expected Insolation and other meteorological parameters including but not limited to snowfall and allowing for a 0.7% annual degradation in System performance. These values are specified in **Schedule 2**, and are subject to update by Seller by written notice delivered to Buyer within thirty (30) days after the Commercial Operation Date.

(b) Guaranteed Output. Seller hereby guarantees that, for each Contract Year during the Term, Buyer’s Allocated Percentage of Delivered Energy will be at least ninety percent (90%) of the product of Buyer’s Allocated Percentage multiplied by Adjusted Annual Expected Performance Output for that Contract Year (the “Guaranteed Output”). For purposes of calculating whether the Guaranteed Output has been achieved, within forty-five (45) days following the last day of each Contract Year during the Term, Seller shall deliver to Buyer a report (the “Seller’s Report”) describing for such Contract Year: Buyer’s Allocated Percentage, the amount of Excused Output, the Delivered Energy, the inputs used to calculate the Adjusted Annual Expected Performance Output, the Annual Expected Performance Output and whether the Delivered Energy achieves the Guaranteed Output.

(c) In the event that the Buyer’s Allocated Percentage of Delivered Energy for any Contract Year is less than the Guaranteed Output for that Contract Year (the amount of difference being the “Performance Difference”), then Seller shall pay Buyer an amount equal to the product of (i) the Performance Difference multiplied by (ii) the Rate Difference. Payment shall be made within thirty (30) days following receipt of written notice from Buyer of the amount due. “Rate Difference” means the greater of (1) an amount equal to the Alternative On-Bill Credit (or weighted average Alternative On-Bill Credit) in place during the relevant Contract Year set forth in Seller’s Report minus the Buyer’s kWh Rate for the relevant Contract Year, and (2) zero (0).

3.4 Environmental Attributes and Solar Incentives. Buyer’s purchase does not include Environmental Attributes or Solar Incentives. Buyer disclaims any right to Solar Incentives or Environmental Attributes, and shall, at the request of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section. Buyer agrees not to make any statement contrary to Seller’s ownership of all Environmental Attributes and Solar Incentives associated with the System.

3.5 Production Meter. Upon Buyer’s request, Seller shall make available to Buyer, at no cost to Buyer, any and all data in Seller’s possession concerning the production, measurement, and transfer of Delivered Energy, as well as all other information concerning the performance of the System. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Production Meter or other telemetry equipment necessary to accurately report the quantity of Delivered Energy

4. REALLOCATION; ADDITIONAL CAPACITY.

4.1 Reallocation. To enable ongoing buyer balancing across systems, Seller reserves the right, at its option and in its sole discretion, to assign all or a portion of Buyer’s Allocated Percentage among one or more systems that qualify for the Program, so long as such reallocation is also made to other eligible systems in the same Utility’s service territory. The Parties agree to modify any terms of this Agreement as necessary to effectuate or reflect the details of such assignment(s), so long as such modifications do not decrease the benefits to Buyer or increase the potential costs or liabilities to Buyer under this Agreement.

4.2 Additional Capacity. Buyer may elect to purchase Alternative On-Bill Credits associated

with an additional allocation of the Delivered Energy from the System or another system (pursuant to a separate contract) if so available, and if doing so would not violate any terms of the Program or this Agreement.

5. PRICE AND PAYMENT.

5.1 Consideration. In consideration for Seller's delivery of Buyer's Allocated Percentage of the Delivered Energy to the Utility and Buyer's right to receive Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy, Buyer shall pay Seller a monthly payment (the "Payment") for such Alternative On-Bill Credits commencing on the Commercial Operation Date and continuing through the Term, equal to the product of (x) the Alternative On-Bill Credits received by Buyer for the relevant month, multiplied by (y) the kWh Rate. Buyer understands that the kWh Rate is based on the Alternative On-Bill Credit and that, because the Alternative On-Bill Credit will change from time to time, the kWh Rate will increase and decrease during the Term.

5.2 Invoices. Seller shall invoice Buyer on or before the last Business Day of each calendar month (each such date on which an invoice is issued by Seller to Buyer, an "Invoice Date") for the Payment in respect of Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy produced during the calendar month that preceded the month in which the invoice is issued. Buyer's first invoice under this Agreement shall be for the first full calendar month after the Commercial Operation Date in which Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy are issued. For the avoidance of doubt, Buyer shall (i) neither receive nor be entitled to any Alternative On-Bill Credits associated with Delivered Energy prior to the Commercial Operation Date, and (ii) have no obligation to make or any liability for Payments for Alternative On-Bill Credits associated with Delivered Energy prior to the Commercial Operation Date.

5.3 Time of Payment. Buyer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

5.4 Method of Payment. Buyer shall make all Payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by Seller from time to time. If Buyer does not have electronic funds transfer capability, the Parties shall agree to an alternative method for submitting Payments. Except for billing errors or as provided in Section 5.5 below, all Payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Payment of the disputed amount shall not be required until the dispute is resolved in accordance herewith.

5.6 Billing Adjustments Following Utility Billing Adjustments. If, as a result of a Utility billing adjustment that is not due to a Buyer Default, the quantity of Delivered Energy is decreased (the "Electricity Deficiency Quantity") and the Utility reduces the amount of Alternative On-Bill Credits allocated to Buyer for such period, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Delivered Energy allocated to Buyer is increased (the "Electricity Surplus Quantity") and the Utility increases the amount of Alternative On-Bill Credits allocated to Buyer for such period, Buyer shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

6. GENERAL COVENANTS.

6.1 Seller's Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall promptly notify Buyer if it becomes aware of any significant damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

(b) Governmental Approvals. While providing the Installation Work and System Operations, Seller shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Seller and to enable Seller to perform such obligations.

(c) Interconnection Fees. Seller shall be responsible for all costs, fees, charges and obligations required to connect the System to the Utility distribution system ("Interconnection Obligations"), including any fees associated with system upgrades and operation and maintenance carrying charges, as provided in the interconnection procedures of the Utility ("Interconnection Procedures"). In no event shall Buyer be responsible for any Interconnection Obligations.

(d) Compliance with Tariff and Interconnection Procedures. Seller shall cause the System to be installed, maintained and operated in compliance with the Tariff and the Interconnection Procedures.

(e) Buyer's Account Information. Seller shall be responsible for providing Buyer's Account Information to the Utility, in accordance with the Tariff. Seller shall take care to preserve the privacy expectations of Buyer, including by not publicly disclosing Buyer's Account Information. Seller shall not disclose such information to third parties, other than to the Utility or Governmental Authorities in connection with the Program, unless Buyer has provided explicit informed consent or such disclosure is in accordance with the terms of **Section 0** or compelled by Applicable Law.

(f) Communications. Seller shall designate a representative to be available to Buyer to address all operational matters under this Agreement. Seller shall use best efforts to respond to communications from Buyer within five (5) Business Days after receiving Buyer communications.

(g) Insurance Coverage. Seller shall maintain insurance coverage sufficient to repair, restore or rebuild the System in the event of significant damage or loss in the use of the System.

(h) Assumption of Risk. Except as expressly provided otherwise herein, Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the System's eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, or to receive any other grant or subsidy from a governmental entity or other person. The obligation of the Parties hereunder shall be effective regardless of whether the production or sale of the Delivered Energy from the System is eligible for, or receives, any federal or state tax credits.

(i) Site Lease. Seller shall fulfill its obligations under the Site Lease.

6.2 Buyer's Covenants. Buyer covenants and agrees as follows:

(a) Consents and Approvals. Buyer shall ensure that any authorizations required of Buyer under this Agreement are provided in a timely manner. To the extent that only Buyer is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Buyer

shall cooperate with Seller, at no expense to Buyer, to obtain such approvals, permits, rebates or other financial incentives.

(b) Buyer's Account Information. To the extent Buyer's Account Information is not fully set forth in Schedule 1 as of the date of this Agreement, Buyer shall provide Seller with such information within thirty (30) days of the date of this Agreement. Seller may terminate this Agreement effective upon notice to Buyer if any supplemental information provided by Buyer pursuant to this provision is materially different from the information as of the date of this Agreement.

7. REPRESENTATIONS & WARRANTIES.

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

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

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

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

(d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;

(f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and

(g) no Bankruptcy Event has occurred and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in a Bankruptcy Event.

7.2 Specific Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the date of this Agreement that:

(a) Buyer is: (i) an "accredited investor" as that term is defined in Rule 501 of the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"); or (ii) an incorporated municipality or governmental subdivision with total assets in excess of \$5,000,000; provided, however, that notwithstanding the representation and warranty set forth in (i), the Parties agree that this Agreement is not, and is not intended to be, a security under applicable state and federal securities laws;

(b) Buyer is the sole party in interest agreeing to purchase Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy and is acquiring such Alternative On-Bill Credits for its own account and not with a view to the resale or other distribution thereof, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of such Alternative On-Bill Credits in any manner that will violate applicable securities law. Buyer is aware that this Agreement and the Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy have not been registered under the Securities Act or registered or qualified under the securities laws of the state in which Buyer resides or is located based in part upon the representations of Buyer contained herein;

(c) Buyer has been given the opportunity to ask questions of, and receive answers from, Seller concerning the terms and conditions of this Agreement and other matters pertaining to this Agreement, and has been given the opportunity to obtain such additional information necessary in order for Buyer to evaluate the merits and risks of the purchase of Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy to the extent Seller possesses such information or can acquire it without unreasonable effort or expense;

(d) Buyer is not relying on Seller or any of its employees, members of its board of directors (or equivalent body) or officers, or this Agreement with respect to tax and other economic considerations involved in the investment;

(e) Buyer is a retail electric service customer of the Utility and the Retail Service Address is within the same Utility's service territory as the System; and

(f) Buyer is not an "electric company," "generation company," "aggregator," "supplier," "power marketer," or "power broker," each as defined under Mass. Gen. Laws ch. 164.

7.3 Specific Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the date of this Agreement that:

(a) The System does not infringe on any third party's intellectual property; and

(b) Seller: (i) has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended; and (ii) is not an electric utility subject to the rate regulation by any Governmental Authority.

7.4 Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE SITE LEASE, THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY SELLER TO BUYER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO BUYER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

7.5 Taxes And Governmental Fees. Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System, as well as for any and all taxes on the generation, sale, and delivery of Delivered Energy (collectively, "Seller Taxes"). Seller shall not be

obligated for any taxes payable by or assessed against Buyer based on or related to Buyer's overall income or revenues, as applicable. In the event Buyer shall be required by law or regulation to remit or pay any Seller's Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller's Taxes from the amount due to Seller. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

8. FORCE MAJEURE.

8.1 Definition. "Force Majeure" means any act or event that prevents Seller from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of Seller and Seller had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the following conditions, "Force Majeure" shall include acts of God or the public enemy; war; hostilities; epidemic; quarantine; riots; terrorism; fires or explosions, floods, earthquakes, volcanic eruptions, tornados, hurricanes or designated storms per the National Weather Service (<https://www.weather.gov/>) or other natural catastrophes; a Governmental Authority's actions or failure to act; a utility's actions or failure to act; or any event of force majeure under the Interconnection Procedures.

8.2 Excused Performance. Except as otherwise specifically provided in this Agreement, Seller shall not be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure; *provided* that Seller shall as soon as reasonably practical (i) notifies Buyer in writing of the existence of the Force Majeure, (ii) exercises all reasonable efforts necessary to minimize delay caused by such Force Majeure, (iii) notifies Buyer in writing of the cessation or termination of said Force Majeure, and (iv) resumes performance of its obligations hereunder as soon as practicable thereafter.

8.3 Termination in Consequence of Force Majeure. If a Force Majeure shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days or more, then Seller shall be entitled to terminate this Agreement. Upon such termination for a Force Majeure, the Buyer shall be responsible for making any and all payments up to the start of such Force Majeure event.

9. DEFAULT.

9.1 Seller Defaults and Buyer Remedies.

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

(i) Except as otherwise expressly permitted in this Agreement, Seller terminates this Agreement before the end of the Term;

(ii) Seller is in breach of any representation or warranty or fails to perform any material obligation as set forth in this Agreement and (A) if such breach or failure can be cured within thirty (30) days after Buyer's notice of such breach or failure and Seller fails to so cure, or (B) Seller fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;

- (iii) Seller defaults under the Site Lease; and
- (iv) A Bankruptcy Event occurs with respect to Seller.

(b) Buyer's Remedies. If a Seller Default described in **Section 9.1(a)** has occurred and is continuing, Buyer may, in addition to any other remedies available at law or in equity, exercise the following rights and remedies, each of which shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of any one or more of which shall not preclude the simultaneous or later exercise by Seller of any other rights or remedies provided for in this Agreement:

(i) withhold any other payments due Seller under this Agreement until the Seller Default is cured and, if and when such Seller Default is cured, offset such withheld amounts by any reasonable costs incurred by Buyer in connection with such Seller Default, including reasonable attorneys' fees,

(ii) seek specific performance to enforce the provisions of this Agreement, in which case Seller shall reimburse Buyer for any reasonable costs incurred by Buyer in connection with such Seller Default, including reasonable attorneys' fees; and

(iii) terminate Buyer may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided, however, that no termination shall be effective under this Section unless: (A) Buyer has delivered to Seller a notice of its intent to terminate this Agreement, which such notice shall describe the Seller Default that has occurred and is continuing ("Buyer Termination Notice"); (B) sixty (60) days have passed since Seller's receipt of the applicable Buyer Termination Notice; and (C) Seller has not cured the Seller Default set forth in the applicable Buyer Termination Notice as of the time of termination. In the event of a termination under this Section, Buyer shall use reasonable efforts to mitigate its damages. Buyer shall not be required to pay any termination fee for exercising its rights under this Section.

9.2 Buyer Defaults and Seller's Remedies.

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

(i) Except as otherwise expressly permitted in this Agreement, Buyer terminates this Agreement before the end of the Term;

(ii) Buyer fails to make any payment when due in accordance with **Section 5** and such nonpayment is not cured within fifteen (15) days following receipt of a written notice from Seller concerning such nonpayment;

(iii) subject to foregoing clause (ii), Buyer breaches any representation or warranty or any material term of this Agreement and (A) if such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

- (iv) A Bankruptcy Event occurs with respect to Buyer.

(b) Seller's Remedies. If a Buyer Default described in **Section 9.2(a)** has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to **Section 10**,

Seller may exercise the following rights and remedies, each of which shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of any one or more of which shall not preclude the simultaneous or later exercise by Seller of any other rights or remedies provided for in this Agreement:

(i) terminate this Agreement, and, at Seller's option, sell Buyer's Allocated Percentage to one or more persons other than Buyer, and recover from Buyer the greater of (A) the Default Termination Fee minus revenue received by Seller from selling Buyer's Allocated Percentage to others; and (B) any loss in revenues resulting from such sales minus revenue received by Seller from selling Buyer's Allocated Percentage to others; *provided* that, in the event of such termination, Seller shall use reasonable efforts to mitigate its damages;

(ii) terminate this Agreement and collect the Default Termination Fee; and

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

10. LIMITATIONS OF LIABILITY.

10.1 Subject to the limitations in **Section 10.2** below, the Parties agree to indemnify, defend, and hold the other Party, and its officers, employees, agents, representatives and independent contractors (each an "Indemnified Party") harmless from and against any damages or Losses sought by a third party directly attributable to a material breach of Party's obligations under this Agreement or that are found to be due to the Party's negligence or willful misconduct. If any action or proceeding is brought against an Indemnified Party arising out of any occurrence described in this section, upon notice from the Indemnified Party the Seller shall, at its expense, defend such action or proceeding using legal counsel approved by the Indemnified Party which such approval shall not be unreasonably withheld, conditioned, or delayed, and provided that no such action or proceeding shall be settled without the approval of the Indemnified Party which such approval shall not unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing or anything contained herein to the contrary, Buyer's obligations to indemnify Seller pursuant to this Agreement shall be subject to the limitations of Massachusetts law concerning a municipal entity's authority to indemnify a person or entity for the matters described above.

10.2 Except for the Parties' indemnity obligations under **Section 10.1** above with respect to third party claims, any breach of **Section 12** or in the event of fraud or willful misconduct by an allegedly liable Party, neither Party will be liable to the other Party for special, punitive, exemplary, indirect, incidental, or consequential damages arising from or out of this Agreement. The total liability of Seller to Buyer under this Agreement will in no event exceed the aggregate of all Payments made by Buyer under this Agreement during the preceding twelve (12) months; provided, however, that the foregoing limitation on Seller's maximum liability does not apply with regard to any claims related to property damage or personal injury caused by Seller's fraud or willful misconduct or Seller's breach of **Section 12**. Further, no claim under this Agreement shall be valid unless notice thereof is provided by the claiming Party to the other Party during the Term or by the second anniversary of the last day of the Term.

10.3 In the event of a Seller Default or a Buyer Default, the non-defaulting Party shall take reasonable commercial efforts to minimize losses and damages that it may incur.

11. ASSIGNMENT.

11.1 Assignment by Seller. Seller may assign this Agreement along with all of Seller's rights and obligations to any Affiliate, Lender, or Qualified Third Party without prior notice, for any

purpose, including in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity, or assignment of this Agreement as collateral security in connection with any financing of the System (including pursuant to a tax equity transaction); provided that for assignments to Qualified Third Parties (other than Lenders), Seller shall provide Buyer with information documenting that the assignee has comparable experience in operating and maintaining solar systems comparable to the System. In the event that Seller identifies such secured Lender, then Buyer shall comply with the provisions set forth in **Section 11.2** and **Exhibit A** to this Agreement. Any Lender shall be an intended third-party beneficiary of this Section, Seller shall notify Buyer of any assignment under this Section within thirty (30) days following the date of the assignment.

11.2 Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Lender, then Buyer hereby:

(a) acknowledges and agrees to the collateral assignment by Seller to the Lender, of Seller's right, title and interest in, to and under this Agreement, as consented to under **Section 11.1** of this Agreement;

(b) acknowledges and agrees that the Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Seller's interests in this Agreement;

(c) acknowledges and agrees that, if applicable, it has been advised that Seller has granted or may grant a first priority perfected security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System; and

(d) agrees to execute a consent agreement or estoppel certificate in a form reasonably satisfactory to Buyer within ten (10) days after a request by Seller.

Any Lender shall be an intended third-party beneficiary of this Section.

11.3 Assignment by Buyer.

(a) Buyer shall not assign this Agreement or any interest herein, without the prior written consent of Seller; provided, however, that Seller shall not unreasonably withhold, condition or delay its consent for Buyer to change the Retail Service Address for which the Alternative On-Bill Credits will apply to another eligible Retail Service Address, nor shall Seller unreasonably withhold, condition or delay its consent for Buyer to sell or transfer its interest or a fractional interest in this Agreement to another party with a credit rating that is equivalent or better than Buyer's and who agrees to comply with and assume all provisions under this Agreement (including, for the avoidance of doubt, pricing terms) and meets the requirements under **Section 11.3(b)**. Such transfer shall be treated as a contract novation from the Buyer to the new party to the extent that the new party assumes Buyer's responsibilities under this Agreement. In accordance with this **Section 11.3**, Buyer may transfer any fraction of its interests in this Agreement up to and including the full Buyer's Allocated Percentage which would represent a full assignment.

(b) Buyer's request for Seller's consent to any proposed change or assignment as contemplated in **Section 11.3(a)** shall be in writing and furnished to Seller at least thirty (30) days prior to the proposed effective date of such change or assignment, which request must include: (i) Buyer's name and mailing address; (ii) the current Retail Service Address; (iii) the new Retail Service Address (if applicable); (iv) the name of the individual or entity to whom Buyer is requesting to assign this

Agreement (if applicable) and the consideration (if any) proposed to be provided to Buyer for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity pursuant to this Section, (A) such assignee's Retail Service Address shall be located within the Utility's service territory as the System, (B) such assignee shall be Creditworthy, (C) Buyer shall reimburse Seller for Seller's reasonable, documented transaction costs associated with such assignment, (D) such assignee shall execute a novation agreement of this Agreement which shall specifically include the representations and warranties set forth in **Section 7.2**, and (E) such assignment shall be effective upon the later to occur of (1) the proposed effective date of such assignment and (2) the date upon which the Utility shall have approved such assignment.

(c) Upon any assignment of this Agreement pursuant to this **Section 11.3** Buyer will surrender all right, title and interest in and to the portion of this Agreement that has been assigned. Any purported assignment in contravention of this **Section 11.3** shall be of no force and effect and null and void ab initio. No assignment will extend the Term of this Agreement.

(d) If Buyer terminates its retail electric service with the Utility or moves outside of the Utility' service territory without first transferring Buyer's Allocated Percentage to an eligible transferee, Buyer will forfeit its right to receive Alternative On-Bill Credits, but will continue to be responsible for the Payments for accrued Alternative On- Bill Credits under this Agreement until this Agreement is terminated pursuant to the terms in this Agreement.

12. CONFIDENTIALITY.

12.1 It may become necessary during the course of this Agreement for one Party to disclose to the other Confidential Information. Any Confidential Information of a Party (the "**Disclosing Party**") which is disclosed to or otherwise received or obtained by the other Party (the "**Receiving Party**") incident to this Agreement shall be held in confidence, and, except as otherwise permitted herein or otherwise directed in writing by the Disclosing Party, the Receiving Party shall not copy, reproduce, remanufacture, publish or otherwise disclose any Confidential Information to any Person for any reason or purpose whatsoever, except to those of its Representatives (defined below) that have a *bona fide* need to know such Confidential Information pursuant hereto, or use any Confidential Information for its own purposes or for the benefit of any Person except in connection with the performance of its duties hereunder, without the prior written approval of the Disclosing Party. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Confidential Information, which such Party observes with respect to its own information of the same or similar kind. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party. For purposes of this **Section 12**, "**Representatives**" means the Receiving Party's or any of its Affiliates' respective shareholders, members, directors, managers, officers, employees, financing sources, potential financing sources and attorneys. Notwithstanding the foregoing or anything contained herein to the contrary, Buyer's obligations under this Section 12 shall be subject to Buyer's compliance with all applicable laws, including but not limited to the Massachusetts Public Records law (M.G.L. c. 66) and the Massachusetts Open Meeting Law (M.G.L. c.30A), and Buyer shall be entitled to use its discretion in determining how to comply with such legal requirements.

13. MISCELLANEOUS.

13.1 **Survival.** Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including representations, warranties, remedies and indemnities that, by their nature, should survive such cancellation, expiration, or termination, which obligations shall

survive for the period of the applicable statute(s) of limitation, including **Sections 3.4, 7.5, and 10.**

13.2 **Goodwill and Publicity.** Seller shall have the right to use graphical representations or photography of the System in marketing and promotional materials. Seller agrees not to disclose any Buyer information in connection with Seller's marketing and promotional materials without prior written consent of Buyer. Buyer agrees not to use Seller's name, logo, trademark, trade name, service mark, or other Seller intellectual property in any marketing or promotional materials without the prior written consent of Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Buyer shall submit to Seller for approval any press releases regarding this Agreement and shall not submit for publication any such releases without the prior written approval of Seller.

13.3 **Entire Agreement.** This Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior contracts or agreements with respect to the subject matter hereof. There are no agreements, understandings, representations or warranties between the Parties other than those set forth herein and in this Agreement.

13.4 **Amendments and Modification.** This Agreement may be amended, supplemented or modified only by a written instrument duly executed by each Party. In the event any provision of this Agreement would, in the reasonable judgment of Seller, be reasonably expected to result in Seller's non-compliance with any provision in the Tariff (as the same may be amended or revised from time to time), the Parties shall exercise commercially reasonable efforts to negotiate an amendment to this Agreement to conform the applicable provision(s) of this Agreement to the applicable provisions in the Tariff.

13.5 **Industry Standards.** Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the United States shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

13.6 **No Waiver.** Any provision of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other provision of this Agreement on any future occasion, and, unless otherwise set forth in this Agreement, no failure or delay on the part of any Party in exercising any rights, powers or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy thereunder. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default, irrespective of how long such failure continues, will not constitute a waiver by that Party of its rights with respect to that default. Subject to **Section 10**, all remedies, either under this Agreement or by law or in equity, shall be cumulative and not alternative.

13.7 **Relationship of the Parties.** Nothing contained in this Agreement will be construed as constituting a joint venture or partnership between the Parties. Neither Seller nor Buyer shall have any authority to enter into agreements of any kind on behalf of the other Party and shall not have the power or authority to bind or obligate the other Party in any manner to any third party. Seller and Buyer shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

13.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with

laws of the Commonwealth of Massachusetts, without reference to choice of laws that would require the application of the law of another jurisdiction. All actions or proceedings arising in connection with this Agreement may be tried and litigated in the state or federal courts located in Boston, Massachusetts. Each Party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the courts identified in this Section shall have *in personam* jurisdiction over each of them for the purpose of litigating any such dispute, controversy, or proceeding. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in **Section 13.12**. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

13.9 **Severability.** Subject to **Section 13.4**, if any provision contained herein is invalid, illegal or unenforceable in any respect under any Applicable Law or decision, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way, and the Parties shall so far as practicable execute such additional documents in order to give effect to any provision hereof which is determined to be invalid, illegal or unenforceable.

13.10 **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

13.11 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. Signatures delivered by facsimile or portable document format (pdf) shall be deemed to be original signatures.

13.12 **Notices.** Any notice to be given hereunder shall be in writing and shall be delivered by hand (including by express courier against written receipt) or sent by registered prepaid first class mail, overnight courier or by facsimile copy to the persons or addresses specified below (or such other person or address as a Party may previously have notified the other Party in writing for that purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or, if sent by registered prepaid first-class mail or overnight courier as aforesaid, on the date delivered. In addition, either Party may provide notice or other formal communications under this Agreement by e-mail to the addresses below (and if more than one address is listed for a Party, then notice must be given to all addresses listed for such Party for notice to be effective) with such notice effective one (1) Business Day after written acknowledgment of receipt from the receiving Party (automated responses excluded). The names and addresses for the service of notices referred to herein are:

Buyer:

Attn: Greg Woods, Superintendent
Auburn Water District
75 Church Street
Auburn, MA 01501
gwoods@auburnwater.com

Seller:

[Company Name] [address]
Attn: Email:

Lender:

[To be provided by Seller when known]

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year first above written.

“SELLER”: [_____]

By: _____
Name:
Title:

“BUYER”: Auburn Water District

By: _____
Name:
Title:

EXHIBIT A

Certain Agreements for the Benefit of the Financing Parties

1. **Lender Conditions.** In order to finance the development and operation of the System, Seller may borrow money or otherwise seek investment from a Lender (as defined in this Agreement). Buyer acknowledges that Seller may finance the acquisition, development, installation, operation and maintenance of the System with financing or other accommodations from one or more financial institutions and that Seller's obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first priority security interest in the System (collectively, the "**Security Interest**"). In order to facilitate the necessary financing, Buyer consents to Seller's granting to the Lender the Security Interest.

Buyer acknowledges and agrees that: (i) Buyer and all of Buyer's rights under this Agreement are and will be subject and subordinate to the Security Interest (and as later modified by any and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions, and extensions); and (ii) no amendment or modifications of this Agreement is permitted without the Lender's written consent.

2. **Lender's Default Rights.** If Seller defaults under the financing documents with the Lender, the following provisions apply:
 - A. The Lender, through its Security Interest, will be entitled to exercise any of Seller's rights and remedies under this Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.
 - B. The Lender will have the right, but not the obligation, to pay all sums due from Seller under this Agreement and to perform any other act, duty, or obligation required of Seller, and to cure any default by Seller in the time and manner provided by the terms of this Agreement. Nothing requires the Lender to cure any default by Seller (a "**Seller Default**") under this Agreement, to perform any act, duty or obligation of Seller under this Agreement, unless the Lender has succeeded to Seller's rights under this Agreement, but Buyer hereby gives Lender the option to do so.
 - C. If the Lender exercises its remedies under the Security Interest, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Lender (or its assignee) in lieu of sale, the Lender will give Buyer notice of the transfer or assignment of this Agreement. If Lender exercises these remedies, it will not constitute a default under this Agreement, and will not require Buyer consent.
 - D. Upon any rejection or other termination of this Agreement under any process undertaken with respect to Seller under the United States Bankruptcy Code, Buyer agrees to enter into a new agreement with Lender or its assignee under substantially the same terms as this Agreement if Lender so requests within ninety (90) days of the termination or rejection of this Agreement.

- E. At Seller's request, Buyer agrees to execute and deliver to Lender and Seller such acknowledgment consent as may be required by Lender and in which Buyer acknowledges and confirms that the legal and beneficial ownership of the System remains in Seller, or its affiliate, and that the System is the property of Seller, or its affiliate.
3. Lender's Right to Cure. Regardless of any contrary terms in this Agreement:
- A. Buyer will not terminate or suspend this Agreement unless Buyer has given the Lender prior written notice of Buyer's intent to terminate or suspend this Agreement describing the event giving rise thereto, including any alleged Seller Default, and provide the Lender with the opportunity to cure any such Seller Default within sixty (60) days after such notice or any longer period provided for in this Agreement. If the Seller Default reasonably cannot be cured by the Lender within the period established under this Agreement, and the Lender commences and continuously pursues the cure of such Seller Default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional thirty (30) days. Seller's and Buyer's respective obligations will otherwise remain in effect during the cure period.
 - B. If the Lender or its lawful assignee (including any buyer or transferee) acquires title to or control of Seller's assets and within the applicable time period cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third party, then the Lender or such third party buyer or transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.
 - C. At the request of Lender and/or its assignee, Buyer agrees to execute and deliver any document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue, or terminate the security interest in favor of Lender in all assets of Seller, and to secure the obligations evidences by the Security Interest.

SCHEDULE 1

Description of System

System Site Location: [_____]

System Size: [_____]kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)

Utility: National Grid

Retail Service Address: See table on next page

Buyer's Allocated Percentage: See table below. Total allocation is [_____]%

SCHEDULE 2

Annual Expected Production Output

Contract Year in Term	Annual Expected Performance Output	Contract Year in Term	Annual Expected Performance Output
1		14	
2		15	
3		16	
4		17	
5		18	
6		19	
7		20	
8			
9			
10			
11			
12			
13			