

POWER PURCHASE AGREEMENT

For

City of Marlborough High School

Dated as of

between

City of Marlborough
140 Main Street
Marlborough, Massachusetts 01752

And

Solect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“**Agreement**”) is entered into as of _____, _____, by and between City of Marlborough (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host is a member of the PowerOptions Consortium, an energy-buying group purchasing program authorized to administer such program on behalf of Massachusetts Clean Energy Center (“MassCEC”), organized by PowerOptions, Inc. (“**PowerOptions**”), a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts and the Internal Revenue Code that assists its members with procuring energy products and energy-related services for facilities they own and/or operate pursuant to M.G.L. c.164, § 137;

WHEREAS, Provider and PowerOptions have entered into an agreement dated September 1, 2015 which has been extended to June 30, 2020 governing the terms and conditions of Provider’s participation in the PowerOptions Small Solar Program;

WHEREAS, Host is the owner of the properties located and described in Exhibit C and desires to make a portion of such properties available to Provider for the construction, operation and maintenance of a solar powered electric generating Project, and to purchase from Provider the electric energy produced by the Project; and

WHEREAS, Provider desires to develop, design, construct, own and operate the Project located at and described in Exhibit C, and sell to Host the electric energy produced by the Project.

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

1. DEFINITIONS. Certain capitalized terms used in this Agreement have the meanings set forth in the attached GLOSSARY OF TERMS.

2. TERM.

(a) Term. This Agreement shall consist of an Initial Period and an Operations Period. As used herein, “Term” shall mean all of the Initial Period and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement, but any such termination shall not terminate any provisions hereof that expressly survive such termination

(b) Initial Period. The Initial Period will begin on the date set forth above (date of signed Agreement) and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Section 4(b) or 4(d).

(c) Operations Period. The Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs, or such earlier date when this Agreement is terminated.

(d) Extensions. Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

(e) Early Termination by Host. If Host terminates the Agreement prior to the Expiration Date, Host shall pay, as liquidated damages, the Early Termination Amount set forth on Exhibit B (except as otherwise provided in this Section or Sections 9, 17, or 19, and Provider shall cause the Project to be disconnected and removed from the Premises. Upon Host's payment to Provider of the Early Termination Amount, the Agreement shall terminate automatically, provided that the Provider shall continue to have a duty to relocate the Project and restore the Premises. Notwithstanding the foregoing, Host may (i) terminate this Agreement with no liability whatsoever if Provider fails to commence construction of the Project by the Construction Start Date or (ii) if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$15/kW, plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Host to return its Premises to its condition prior to commencement of the Installation Work if Provider fails to do so within a reasonable time. Further, Host may terminate this Agreement with no liability whatsoever if Provider fails to commence Commercial Operations by the date that is 60 days after the Guaranteed Commercial Operation Date. The Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if, notwithstanding Provider's commercially reasonable efforts, interconnection approval is not obtained within 60 days after the Effective Date.

3. ACCESS RIGHTS.

(a) Access Specifications. Host hereby grants Provider and its designees (including Installer) access to the Premises, for the Term and for so long as needed (but not more than 100 calendar days) after termination to remove the Project pursuant to the applicable provisions herein, at reasonable times and upon reasonable notice (except in situations where there is imminent risk of damage to persons or property), for the purposes of designing, installing, inspecting, operating, maintaining, repairing, and removing the Project, and any other purpose

set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access Rights with respect to the Site include without limitation:

(i) Vehicular & Pedestrian Access. Reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing, and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(ii) Utilities & Communication Cables. The right to locate distribution utility and/or electrical lines and communications cables across the Site as designated on Exhibit D. The location of any such electrical lines and communications cables outside the areas designated on Exhibit D shall be subject to Host's approval and shall be at locations that minimize any disruption to Host's activities occurring on the Site. Access will also be provided for Telephone and internet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

(iii) Provider (including Installer) acknowledges that the Premises are the site of the Host's School, and its Access Rights may be limited as necessary to avoid disruption or interference with educational programming and professional workday. Access rights shall conform to the Host's access rules and a construction plan agreed to by the Parties prior to the Construction Start Date. Provider shall comply with all applicable city ordinances and regulations.

(b) Remote Monitoring. Host will provide an internet portal or equivalent access by means of which Provider will communicate data from the revenue grade performance monitoring system. Provider will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Provider and Host to remotely monitor the Project.

(c) Access to Premises. For the Term of this Agreement, Host hereby grants to Provider all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance, repair, and removal of the Project pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the Project with the Premises' electrical wiring. Host hereby covenants that (i) Provider shall have access to the Premises and Project during the Term of this Agreement and for so long as needed after termination (but only up to 100 calendar days) to remove the Project pursuant to the applicable provisions herein, and (ii) Host shall not interfere or handle any Provider equipment or the Project without written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work or Project removal.

(d) No Interference. Host agrees not to conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage or impairment to, or otherwise adversely affecting, the Project. Host shall take all reasonable steps to limit access to the Project to Provider, Installer, its employees, contractors or subcontractors. Host shall implement and maintain reasonable and appropriate security measures at the Premises to prevent Host's

employees, invitees, agents, contractors, subcontractors and other third parties from having access to the Project and to prevent theft, vandalism or other actions from occurring that have a reasonable likelihood of causing damage, impairment, or other adverse effect on the Project. Notwithstanding anything to the contrary provided above, Provider agrees that Host may conduct inspection, maintenance, and repairs of the Site roof and any HVAC or other building equipment thereon as reasonably necessary to comply with all warranties and ensure the proper functioning thereof, and that such activities shall not be deemed interference.

(e) Temporary storage space during installation or removal. Host shall provide sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, Operations Period or Project removal, and access for rigging and material handling. Provider shall be responsible for providing shelter and security for stored items during construction and installation. Host reserves the right to require Provider to change the location of the stored items to improve security if in the Host's reasonable discretion, such items pose a hazard to persons or property. Upon completion of the Installation Work, Provider shall remove all equipment, tools, materials and debris and restore the temporary storage Space to its previous condition.

(f) Recording Provider's Lease. Provider may record (at its expense) a Notice of Lease in the land records regarding its Access Rights under this Agreement

4. PLANNING, INSTALLATION AND OPERATION OF PROJECT.

(a) Site Assessment and Planning. During the Initial Period, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project. The Provider, at its own cost shall perform and determine a structural analysis of the Host's site by a licensed professional structural engineer to determine feasibility, safety, and to ensure the proper install, maintenance, and operation of the solar system. Provider shall provide a copy of structural engineering analysis to Host prior to commencement of Construction.

(b) Termination of Development Activities by Provider. At any time during the Initial Period, Provider shall have the right to cease development of the Project on the Premises if: (i) Provider determines that the Premises, as is, is insufficient to accommodate the Project; (ii) there exist site conditions or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or

would adversely affect the electricity production from the Project as designed; or (iii) there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the Project on the Premises. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(c) Commencement of Construction, Modification of Design. At a time coordinated with the Host during the Initial Period, upon at least ten (10) Business Days notice to Host, Provider shall have the right to commence installing the Project on the Premises.

(i) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.

(ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its sole discretion, may determine, provided, however, that such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, without Host's approval.

(d) Construction Commencement Deadline. If Provider has not commenced the installation of the Project on the Premises before the Construction Start Date (not including any days in which a Force Majeure Event existed, or were delayed by the local electric delivery company, AHJ, or state regulators), Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate twenty-one (21) days after Provider's receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other with respect to the Facility, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(e) Contractors. Provider shall use licensed and insured contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, in Provider's sole discretion. Provider shall advise Host of the Installer prior to commencement of the work

on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit G.

(f) Status Reports, Project Testing, Commercial Operation. Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Testing shall be conducted in accordance with guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Host shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of and has been approved for interconnection by the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis for at least four (4) continuous hours, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host.

(g) Standard of Operation. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Host and Host's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(h) Hazardous Materials. Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the

Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical. Provider shall not introduce to the Site any Hazardous Materials and, in the event that it does so, shall be solely responsible and liable for remediation in accordance with Applicable Law, and pursuant to the direction of the Host and any Governmental Authority with jurisdiction over the Site.

(i) Site Security. Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Project. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations. Notwithstanding anything to the contrary, except in the case of gross negligence or willful action/inaction on the part of Host's security, Provider shall bring no claim against Host based upon performance of Host's security personnel.

(j) Provider System Shut Down. Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown unless the performance guarantee in Section 5(c) is not met. Provider and Host will agree upon a reasonable shut down duration. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

(k) Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the Project and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(i) Installation. Provider shall maintain and test the meter in accordance with but not limited to Applicable Law and as provided herein. Provider shall ensure that the meter is installed and calibrated correctly to manufacturer and/or utility specifications during commissioning of the Project.

(ii) Measurements. Readings of the meter shall be conclusive as to the amount of electric energy delivered to Host; provided that if the meter is out of service, is discovered to be inaccurate pursuant to Section 4(l)(iii) below, or registers inaccurately, measurement of energy shall be determined by estimating by

reference to quantities measured during periods of similar conditions when meter was registering accurately.

(iii) Testing and Correction.

A. Host's Right to Conduct Tests. Each Party shall have the right to witness each test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the meter. Provider shall provide at least twenty (20) days prior written notice to Host of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall provide Host with copies of such written report and the underlying supporting documentation not later than thirty (30) days after completion of such test. Provider shall bear the cost of the annual testing of the meter and the preparation of the meter test reports.

B. Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:

(1) If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.

(2) Provider shall, within thirty (30) days after receiving such notice from Host, or Host shall, within such time after having received such notice from Provider, advise the other Party in writing as to its position concerning the accuracy of such meter and state reasons for taking such position.

(3) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the meter to be tested by an agreed upon and disinterested third party.

(4) If the meter is found to be inaccurate by not more than two percent (2%), any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter shall bear the cost of inspection and testing of the meter.

(5) If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any meter found to be inaccurate to be: replaced or adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 4(l)(ii) or (iii), and (3) Provider shall bear the cost of inspection and testing of the meter and reimburse or credit Host if Host was the disputing Party. If as a result of such adjustment the quantity of energy for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Provider shall reimburse or credit Host for the

amount paid by Host in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the meter. If as a result of such adjustment the quantity of energy for any period is increased (such quantity, the "Electricity Surplus Quantity"), Host shall pay for the Electricity Surplus Quantity at the price applicable during the applicable period.

(iv) No Duty on Host. Notwithstanding the foregoing, the Parties acknowledge and agree that the Host is under no responsibility or duty to ascertain, to inspect or to otherwise determine whether the meter or any other part of the Project is out of service, is discovered to be inaccurate or registers inaccurate readings; is malfunctioning or is otherwise defective, it being agreed that at all times such responsibility or duty shall remain with the Provider.

(v) Operations Manual: Training of Host Facilities Staff.

Within 60 days of Commercial Operation Date, and prior to Host's acquisition of the Project if Host chooses to exercise the Purchase Option as provided in Section 9 hereof, Provider shall deliver to Host a current operation, maintenance and parts manual for the Project including as-builts stamped by a Massachusetts registered professional engineer. In addition, in either case, Provider will train Host's representative(s) on operations and monitoring (for informational purposes only) and emergency preparedness and response, it being acknowledged by Host that Host shall not operate the Project, except in the case of an emergency where immediate action on the part of the Host is reasonably necessary for the protection of persons or property. In the event of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons, Host may, but is not obligated to, shut down or disconnect the Project and provide notice to Provider as soon as reasonably possible, and in any event within twenty-four (24) hours following such emergency, but otherwise Host shall not be permitted to perform any maintenance or repair on the Project.

(vi) Prevailing Wages. Provider shall pay, and require the Installer and all subcontractors to pay, prevailing wages for the Installation Work on the Project, and comply with all Applicable Law related thereto.

(vii) No Voiding Of Existing Roof Warranties. Provider shall ensure that the Project is designed and constructed so that no existing roof warranty is voided on account of the installation of the Project. Developer shall consult, as may be necessary, with any company that has provided such roof warranty to the Host. Upon request, Host shall provide to Provider a copy of any applicable warranty.

(viii) Display of Production Monitoring Data. Provider shall share with Host a website that displays Solar Project production data, upon the Commercial Operation Date.

5. SALE OF ELECTRIC ENERGY.

(a) Sale of Electricity. Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all

electric energy produced by the Project, whether or not Host is able to use all such electric energy. The Point of Delivery of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery. Provider shall own the Capacity Value of the Project. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host. The interconnection point of Project with the Local Electric Utility shall be indicated in Exhibit E.

(b) Performance Guarantee. Beginning on the Commercial Operation Date and as of each anniversary thereof, if the Project produces less than eighty-five percent (85%) of the applicable Estimated Annual Production specified in Exhibit F, unless, and then only to the extent that, the failure to meet the Estimated Annual Production is due to (a) failure, damage or downtime attributable to third parties or Host, (b) equipment failure or delayed repair of equipment due to the claims process with the equipment manufacturer which are beyond the reasonable control of Provider, (c) a Force Majeure Event, (d) variability due to weather as documented by software used in calculating the Estimated Annual Production, (e) acts or omissions of Host of any of its obligations hereunder, or (f) any Host Requested Shutdown, Provider Safety Shutdown or Project Relocation under Section 10(a), (b), or (c); in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average applicable tariff rate per kWh that Host would have paid for full requirements, delivered electric service from its Local Electric Utility during such period minus the applicable kWh Rate specified in Exhibit A, multiplied by (ii) the difference between the actual Project Output during such 12-month period and eighty-five percent (85%) of the Estimated Annual Production for such period.

6. PAYMENT AND BILLING.

(a) Rates. Host shall pay Provider for electricity produced by the Project at the rates set forth in Exhibit A attached hereto.

(b) Billing. Host shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

(c) Invoice Delivery. Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email, addressed as follows:

To Host: City of Marlborough
c/o Dept. of Public Works
Attn: Facilities Division
135 Neil Street
Marlborough, Massachusetts 01752

(d) **Payment.** Host shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed by applicable law.

(e) **Disputed Invoices.** If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Host may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreement.

7. SUPPLEMENTAL POWER

(a) **Back-up and Supplemental Electricity.** Except as otherwise provided herein, throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

(b) **Interconnection and Interconnection Fees.** Provider shall be responsible for arranging the interconnection of the Project with Host's Local Electric Utility in a manner which includes bi-directional or "net metering". Provider shall be responsible for all costs, fees, charges and obligations required to connect the Project to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Host be responsible for any Project Interconnection Obligations.

(i) **Net Metering.** The Parties will work cooperatively and in good faith to meet all Net Metering requirements under Applicable Law, the Applicable Solar Program and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., Massachusetts tariff Schedule Z). In the event that the Project produces a production excess,

then the Parties agree that (a) Host shall be entitled to the associated Net Metering Credits, (b) Provider shall transmit such Production Excess into the Local Electric Utility system on behalf of and for the account of Host, and (c) Host (or its designee) shall be entitled to any and all Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

(c) Applicable Solar Program Incentives. Provider shall receive all payments available under any Applicable Solar Program. Host shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Host receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this Section 7(c) is limited to any payments actually received by Host.

(d) Ownership of Tax Attributes. Provider (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the ownership and operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

(e) Environmental Attributes. Except as otherwise provided for under Applicable Law, or Applicable Solar Program rules, or the applicable tariff of the Local Electric Utility, Provider (and/or Financing Party) shall be the owner of any Environmental Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person. If the local electric company is entitled to the Environmental Attributes, Provider shall be entitled to incentive or compensation provided by the Applicable Solar Program in exchange for the Environmental Attributes. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider.

(f) Capacity & Ancillary Services. Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Project. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

(g) Neither Party is a Utility. Neither Party shall assert that the other Party is an electric utility or public service company or similar entity that has a duty to provide service, is

subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Provider's and Host's obligations or performance under this Agreement.

8. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES

(a) Permits. Provider shall pay for and obtain all approvals from governmental entities and/or electric utility companies necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval.

(b) Project Ownership. Except as provided in Section 9, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

(c) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens") and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

(d) Non Disturbance Agreements. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host shall promptly upon request of Provider, provide an acknowledgement and consent

from such lienholder, in form and substance reasonably acceptable to Provider (and/or Financing Party), stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's (and/or Financing Party's) rights in the Project and the Access Rights.

9. PURCHASE OPTIONS; REMOVAL AT END OF TERM.

(a) Early Purchase Option. Host shall have the option to purchase the Project at intervals listed in Exhibit B, consistent with the greater of either (i) the applicable value identified in Exhibit B or (ii) the Fair Market Value of the System as determined by mutual agreement of Host and Provider; provided, however, if Host and Provider cannot agree to a Fair Market Value within twenty (20) days after Host has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project. If Host desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Provider of its election to exercise the option, and on or before such anniversary date shall pay the purchase price to Provider.

(b) End of Term Purchase Option. Host shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project at the end of the Term. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, the Parties will engage and share the costs equally of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project consistent with the terms of the transaction. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project and shall be undertaken consistently with the terms of such

transaction so that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

(c) Transfer of Ownership. Upon Host's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, and any applicable Environmental Attributes if legally able, or portions thereof, to Host.

(d) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(e) No Survival of Purchase Option. The options for Host to purchase the Project under Sections 9(a) and 9(b) shall not survive the termination of this Agreement.

(f) Removal of Project at Expiration. Subject to Host's exercise of its purchase option under Section 9(a) or 9(b), upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the Project from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the Project is to be located on a roof, then in no case shall Provider's removal of the Project affect the integrity of Host's roof, which shall be as leak proof as it was prior to installation of Project (other than ordinary wear and tear). For purposes of Provider's removal of the Project, Host's covenants pursuant to Section 16 shall remain in effect until the date of actual removal of the Project. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the Project by such agreed upon date, Host shall have the right, at its option, to remove the Project to a public warehouse or storage facility within a reasonable distance from the Site, if Provider has identified same and entered into an agreement to pay any and all costs for System storage, and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost. If the Provider fails to remove the Project within one hundred (100) days, Host shall have the right, upon written notice to the Provider, to draw on the financial assurance to reimburse Host for reasonable costs it incurs in removing the Project and restoring the Premises.

(g) Decommissioning Assurance. No later than the beginning of the nineteenth (19th) year of the Operations Period, Provider shall establish the Decommissioning Assurance, and shall select the form and amount of such Decommissioning Assurance, subject to the approval of Host, not to be unreasonably withheld, conditioned or delayed. Failure to timely establish and/or fund in accordance with this paragraph such Decommissioning Assurance shall constitute

a Provider Event of Default, for which the Host shall be entitled to exercise any of the remedies for default afforded under Section 19

(g) Provider shall post City's Notice of Non-Responsibility on the Premises as required by the City.

10. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE.

(a) Host Requested Shutdown. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days or a predetermined date mutually agreed upon by both the Host and Provider, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology. For the purpose of this clause, the Parties agree that during years 4 through 20 (but not years 1 through 3) of the Term of the Agreement, Host shall be afforded a total of fifteen (15) days which may be used consecutively or in periods of at least twenty-four hours each ("Allowed Disruption Time") during which the Project shall be rendered non-operational by Provider. Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes and Tax Attributes.

(b) Provider Safety Shutdown. In addition to the right of Provider to shut down the Project for maintenance as provided in Section 4(j), Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(c) Project Relocation. Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider and Financing Party in each of their sole discretion but not to be unreasonably withheld provided the alternate location is structurally sufficient and capable of substantially equivalent electric generation. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, during the Relocation Event, Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following the Relocation Event; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

(d) Premises Shutdown; Interconnection Deactivated. In the event Premises are closed as a result of an event that is (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall be excused for the period of deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider such that the Project is no longer able to produce electricity or transfer electricity to its respective Premises or to the Local Electric Utility, Host will be excused for the period of Interconnect deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery

(e) Sale of Site. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Host may be released from further obligations under this Agreement.

11. TAXES.

(a) Income Taxes. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Host shall be responsible for all applicable taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it by any Governmental Authority. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and Host shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(c) Property Taxes. Provider shall be responsible for ad valorem personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host for such tax. Provider and Host intend to enter into a Payment In Lieu Of Taxes agreement.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice from the Party who paid the taxes.

12. INSURANCE.

(a) Coverage. Host and Provider shall each maintain the insurance coverage set forth in Exhibit G in full force and effect throughout the Term. Host and Provider shall also provide any additional insurance which may be required from time to time by any legal or regulatory authority affecting the Premises or operation of the Project.

(b) Insurance Certificates. Each Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party written notice before the insurance is cancelled or materially altered.

(c) Certain Insurance Provisions. Each Party's insurance policy shall be written on an occurrence basis, and Provider shall include the Host as an additional insured as its interest may appear. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

(d) Insurance Providers. All insurance maintained hereunder shall be maintained with companies approved to do business in Massachusetts, and rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

13. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS.

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Host to Not Restrict Solar Access. Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

(c) Adjoining Properties. If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Host for electric energy from the Project shall be increased by an amount sufficient for Provider to fully amortize such costs, over a period equal to the lesser of (i) ten years or (ii) the remaining term of this Agreement without regard to Host's option to purchase the Project.

14. PRESS RELEASES

(a) Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other

Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at its sole discretion, take photographs of the installation process of the Project and/or the completed Project, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state. Only Provider has the exclusive right to claim that (i) electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement.

15. INDEMNIFICATION.

(a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, students, volunteers, and invitees ("Host's Indemnified Parties"), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of negligence or willful misconduct of Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (ii) violation of Applicable Law by Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utility or Applicable Law; or (iv) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or Installer or any of their employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Host's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

(b) Host Indemnification. The Parties agree that Host does not provide in this Agreement any express or implied indemnifications to Provider. Provider does not waive and retains any rights available to it under M. G. L. c. 258 or other Applicable Law for (i) any claim for or arising out of any injury to or death of any person or loss or damage to property to the extent arising out of Host's negligence or willful misconduct; (ii) Host's violation of Applicable Law; or (iii) the existence of or failure to properly handle or dispose of any Hazardous Materials on the Site other than

Hazardous Materials brought on to the Site by Provider or any of Provider's employees, agents, contractors, volunteers or visitors.

(c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the “Notice of Claim”). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(d) Defense of Claims. The Indemnifying Party has the right, but not the obligation to assume the defense of the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by the Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

(e) Payments. At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.

(f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

16. REPRESENTATIONS AND WARRANTIES.

(a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

(i) Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(iv) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) Host Representations. In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of date hereof, that:

(i) Condition of Premises. Host has provided to Provider Host's records of the physical condition of the Premises, for informational purposes only, without certifying accuracy or completeness. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project are to be installed, are materially different from the records presented by Host and from conditions reasonably visible to Provider during site visits prior to executing this Agreement, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.

17. FORCE MAJEURE.

(a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall 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 Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Excepting a Force Majeure Event which impacts business or banking transactions nationally or globally, in which case such obligations shall be suspended but not excused, obligations to make payments for services provided prior to the Force Majeure Event shall not be excused by a Force Majeure Event.

(c) Restoration. In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(d) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Section 9(f) (unless there has been a casualty event, in which case the provisions of clause (c) above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

18. CHANGE IN LAW.

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will submit to Host and PowerOptions within 60 days a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then

applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future prices such that the new prices compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider; provided, however any such increase shall be no greater than ten percent (10%) of the prices set forth in Exhibit A for the Term of this Agreement.

19. PROVIDER DEFAULT AND HOST REMEDIES.

(a) Provider Events of Default. Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Provider under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(ii) Abandonment During Installation. After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project.

(iii) Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of governmental authority or local electric distribution company, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(iv) Obligation Failure. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(v) Insolvency. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally

unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Financing Party Opportunity to Cure; Host Remedies. Upon a Provider Event of Default, provided that Provider or Financing Party does not cure such Event of Default by Provider, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue any and all other remedies available at law or equity.

20. HOST DEFAULT AND PROVIDER REMEDIES.

(a) Host Events of Default. Host shall be in default of this Agreement if any of the following ("Host Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Host under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(ii) Obstruction. Host unreasonably obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within fifteen (15) days after receiving written notice from Provider with respect to such act or omission.

(iii) Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.

(iv) Obligation Failure. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the

benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Default Damages. Upon a Host Event of Default, Provider may terminate this Agreement and require Host to pay to Provider the Early Termination Amount; or continue to operate the Project and sell electricity produced by the Project to persons other than Host, and recover from Host any documented loss in revenues resulting from such sales versus the amount of revenues to be earned under this Agreement; and/or pursue other remedies available at law or in equity. If necessary to sell electricity to persons other than Host, Host shall allow Provider to add a new meter dedicated to the solar Project, change the point of interconnection, and/or will support Provider with necessary approvals to change the Schedule Z. After Provider's receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

(c) Survival of Access Rights and Lease. Upon a Host Event of Default, unless Host pays the Early Termination Amount to Provider in full thus terminating this PPA, Provider may, in its exercise of remedies pursuant to Section 20(b), make continued use of, and Host may not terminate: (i) the access rights granted in Section 3 for access to and use of the Site in connection with Provider's use of the Premises; and (ii) the Lease referenced in Section 3(f), and Provider's use of such rights and interests shall continue until the twentieth (20th) anniversary of the Commercial Operation Date as shall the duties of Provider to decommission the facility in accordance with Section 9(f). Provider shall not be obligated to pay any rent or other consideration for the use of such rights or interests.

21. COLLATERAL ASSIGNMENT, FINANCING PROVISIONS.

(a) Financing Arrangements. Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host, which shall not be unreasonably withheld, conditioned or delayed, provided, however that Provider may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Project. Further, Host acknowledges that Provider may obtain construction financing for the Project from a third party and that Provider may either obtain term financing secured by the Project or sell or assign the Project to a Financing Party or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Host acknowledges that in connection with such transactions Provider may secure Provider's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Project. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Host agrees as follows:

(i) Consent to Collateral Assignment. Host hereby consents to both the sale of the Project to a Financing Party and the collateral assignment to the Financing Party of the Provider's right, title and interest in and to this Agreement.

(ii) Rights of Financing Party. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Financing Party, as owner of the Project, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Project;

(B) Opportunity to Cure Default. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Project by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the

right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Financing Party a Third Party Beneficiary. Host agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 21.

(c) Entry to Consent to Assignment. Host agrees to (i) reasonably execute any consents to assignment or acknowledgements, provided any such assignment does not impair Host's rights under this Agreement and (ii) provide such opinions of counsel as may be reasonably requested by Provider and/or Financing Party in connection with such financing or sale of the Project.

22. LIMITATIONS ON DAMAGES.

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (including, without limitation, in Sections 10, 19(b) and 20(b)), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

23. DISPUTE RESOLUTION.

(a) Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.

(b) Jurisdiction, Venue, and Jury Trials. If despite the efforts, if any, to negotiate, the Parties do not resolve the Dispute within the negotiation period described above, then each Party irrevocably consents to the exclusive jurisdiction of the state and federal courts sitting in Massachusetts, in connection with any action related to the Dispute. Each Party agrees that process may be served upon it in any manner authorized by law and that it waives all objections which it might otherwise have to such jurisdiction and process. Further, each Party irrevocably waives all of its rights to a trial by jury with respect to any such action.

(c) Survival of Dispute Provisions. The provisions of this Section 23 and Section 25 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

24. NOTICES.

Delivery of Notices. All notices or other communications which may be or are required to be given by any Party to any other Party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Host:

City of Marlborough
140 Main Street
Marlborough, MA 01752
Attention: Mayor's Office

With a copy to: legal@marlborough-ma.gov

If to Provider:

Sollect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748
Attention: Legal Notices

Email: _____

Facsimile: _____

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

25. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23, and the court will modify the unenforceable provision in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Except as provided in Section 21(a), neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement in accordance with Section 21. For purposes of this Section 25(e), transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is

the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement.

(f) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

(h) Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

(i) CORI. With respect to Projects to be installed at Massachusetts public schools, the Host shall have the right to conduct a check of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Board, and the Massachusetts Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board, for any officer or employee of the Provider or Installer, or of a subcontractor of the Provider or Installer, who will work at the Premises. Provider shall provide to Host the names and identification of all such persons. Notwithstanding any other provision of the Agreement, the Host may refuse to allow any such employee to work on the project if the Host, in its sole discretion, determines that such employee is not suitable for work on the project based on the results of such CORI or SORI. The Host shall keep such information in a confidential file. With respect to Projects to be installed at public schools in other states, similar criminal offender and sex offender information maintained by the state shall apply, and Host shall have discretion regarding employment of such registered offenders.

(j) Notwithstanding anything in this Agreement to the contrary, Host shall have no obligation to assign to Provider any right or interest which gives the Provider greater rights or interests in the Premises or any other property owned or controlled by the Host than the rights and interests contemplated in this Agreement.

(rest of page left blank intentionally – signatures appear on next page)

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

Solect Energy Development, LLC a Massachusetts Limited Liability Corporation

By: _____

Name (printed): _____

Title: _____

HOST, City of Marlborough

**FOR THE CITY OF MARLBOROUGH
BY:**

By: Arthur G. Vigeant

Title: Mayor

Date: _____

DEPARTMENT HEAD:

By: John L. Ghiloni

Title: Commissioner of Public Works

ACKNOWLEDGMENT OF LEASE:

By: Diane Smith

Title: City Auditor

By: Brian Doheny

Title: Comptroller/Treasurer

**CERTIFICATION AS TO
PROCUREMENT LAW:**

By: Beverly J. Sleeper, MCPPO

Title: Chief Procurement Officer

Procurement Law: **M.G.L. c. 164, § 134**

**APPROVED AS TO FORM BY LEGAL
COUNSEL:**

Jason D. Grossfield

Title: City Solicitor

OR

Jason M. Piques

Title: Assistant City Solicitor

GLOSSARY OF TERMS

“Access Rights” means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Agreement” means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

“Applicable Solar Program” means the state laws, rules, and regulations that govern the solar incentives, rights and obligations (e.g., SRECs), as may be amended from time to time, by the authorities having legal jurisdiction where the Project will be installed and where the benefits will be realized.

“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

“Capacity Value” means such capacity value as determined by market rules established by ISO-NE. Provider is the owner of the capacity value of the Project and shall have the right to participate in ISO-NE’s Forward Capacity market at their discretion through an aggregator or as an ISO-NE Market Participant. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host.

“Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

“Commercial Operation Date” means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully

completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

“Construction Start Date” means day within 180 days from the date of this Agreement.

“Decommissioning Assurance” means financial security in the form of an escrow account, letter of credit, bond or other form of security reasonably acceptable to the Parties, in a sufficient amount to cover removal of the Project from the Premises and restoring the Premises to substantially its pre-construction condition existing on the Commencement Date, ordinary wear and tear excepted, as certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts..

“Delay Liquidated Damages” means the daily payment of (i) \$0.250/day/kW if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Dispute” means a controversy or claim arising out of or relating to this Agreement.

“Early Termination Amount” means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes.

“Electric Service Provider” means any person, including the Local Electric Utility, authorized by the State of Massachusetts to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

“Estimated Annual Production” means the annual estimate of electricity generated by the Project for any given year. The Estimated Annual Production for each year of the Term is set forth in Exhibit F.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and

performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

“Financing Party” means a Project Lessor or Lender.

“Force Majeure Event” means any act or event that prevents the affected Party 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 the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Guaranteed Commercial Operation Date” means 180 days from the Construction Start Date, which shall be extended day-by-day for Force Majeure Events and for other events outside of Provider’s reasonable control.

“Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

“Host” means and all successors and assigns.

“Indemnified Person” means the person who asserts a right to indemnification under Section 15.

Indemnifying Party” means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

“Initial Period” has the meaning provided in Section 2.

“Installation Work” means the construction and installation of the Project and the start-up, testing and acceptance (but not the operations and maintenance) thereof, all performed by or for Provider at the Premises.

“Installer” means Solect Energy Development, LLC, the person designated by Provider to install the Project on the Premises.

“Land Registry” means the office where real estate records for the Site are customarily filed.

“Lender” means persons providing construction or permanent financing to Provider in connection with installation of the Project.

“Liens” has the meaning provided in Section 8(c).

“Local Electric Utility” means the entity authorized and required under Applicable Law to provide electric distribution service to Host at the Site.

“Losses” means any and 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 attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

“Net Metering” means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in Applicable Law.

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by a Project, and credited to the Host by the Local Electric Utility, as set forth in Applicable Law.

“Operations Period” has the meaning provided in Section 2.

“Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

“Party” means either Host or Provider, as the context shall indicate, and “Parties” means both Host and Provider.

“Point of Delivery” has the meaning set forth in Section 5(a) and Exhibit E.

“Premises” means the portions of the Site described on Exhibit D.

“Project” means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.

“Project Lessor” means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.

“Provider” means Solect Energy Development, LLC.

“Relocation Event” means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy Project.

“Site” means the real property described on Exhibit C attached hereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

“Term” shall have the meaning provided in Section 2 hereof.

EXHIBIT A

ENERGY PURCHASE PRICES

As set forth below, the \$/kWh rate will be established upon receipt of the SMART Statement of Qualification from the SMART Solar Program Administrator, on behalf of the Massachusetts Department of Energy Resources. Upon receipt, Provider shall forward a copy to Host, confirming the applicable SMART Block and PPA Rate.

SMART Block 9	SMART Block 10
.105	.108

Notes:

The price/kWh reflects an annual Payment In Lieu of Taxes (PILOT) amount in the amounts shown on Exhibit B. In the event that the contracted annual PILOT amount differs from the amount in Exhibit B, the Parties agree to adjust the price/kWh in Exhibit A, "Energy Purchase Prices", to reflect the difference in tax payments from the amount assumed in Exhibit B.

The price/kWh reflects 2020 Installation and the corresponding Federal Investment Tax Credit value.

EXHIBIT A-1
PILOT Payment Schedule and Amounts

Fiscal Tax Year July 1-June 30	August 1 Payment	November 1 Payment	February 1 Payment	May 1 Payment
Year 1	898	898	898	898
Year 2	876	876	876	876
Year 3	854	854	854	854
Year 4	832	832	832	832
Year 5	812	812	812	812
Year 6	791	791	791	791
Year 7	771	771	771	771
Year 8	752	752	752	752
Year 9	733	733	733	733
Year 10	715	715	715	715
Year 11	697	697	697	697
Year 12	680	680	680	680
Year 13	663	663	663	663
Year 14	646	646	646	646
Year 15	630	630	630	630
Year 16	614	614	614	614
Year 17	599	599	599	599
Year 18	584	584	584	584
Year 19	569	569	569	569
Year 20	555	555	555	555

EXHIBIT B

EARLY TERMINATION AMOUNTS

Year of System Term	Early Termination	Early Purchase
1	\$1,252,578	N/A
2	\$1,200,409	N/A
3	\$939,615	N/A
4	\$912,597	N/A
5	\$844,112	N/A
6	\$774,221	N/A
7	\$702,838	\$617,067
8	\$670,014	N/A
9	\$635,511	N/A
10	\$599,225	\$505,500
11	\$561,045	N/A
12	\$520,855	N/A
13	\$480,214	N/A
14	\$437,406	N/A
15	\$392,293	\$283,641
16	\$344,733	N/A
17	\$297,295	N/A
18	\$257,888	N/A
19	\$216,870	N/A
20	\$174,175	\$48,217

EXHIBIT C

DESCRIPTION OF SITE

Marlborough High School
431 Bolton Street, Marlborough
Map 30/Block 12

Five parcels of land situated in Marlborough, County of Middlesex, Commonwealth of Massachusetts, Parcel 1, containing 2.69 acres more or less, Parcel 2 containing .41 acres more or less, Parcel 3 containing 36.29 acres more or less, Parcel 4 containing 18.13 acres more or less, and Parcel 5 containing 4.52 acres more or less, all being shown on a plan of land entitled:

“Plan of Land in Marlborough, Mass., scale 1” = 60’, Date: August 22, 1972,” Paul A. Sharon Comm. of D.P.W., Surveyed by Highland Land Surveyors, Inc., 24 Maple Street, Marlboro, Mass. John D. Costedio, (Reg. Land Surveyor) recorded with the Middlesex South Registry of Deeds as Plan 1033 of 1973.

For The City of Marlborough’s title, see Order of Taking recorded with the South Middlesex Registry of Deeds in Book 12507, Page 396.

EXHIBIT D

DESCRIPTION OF PREMISES

The Premises and the Access Areas shall mean the Site. Locations where solar equipment will be installed and accessed including the roofs, exterior and interior walls, through to the main electric room, and exterior areas of the Site depicted in Site Plan below. The Project will be combined and connected to Host's existing main electric equipment, interconnected to the utility network behind the existing utility meter.

Site Plan – SED – Marlborough High School – 4125 – 298.62 kW DC – 200 kW AC 431 Bolton St, Marlborough, MA 01752

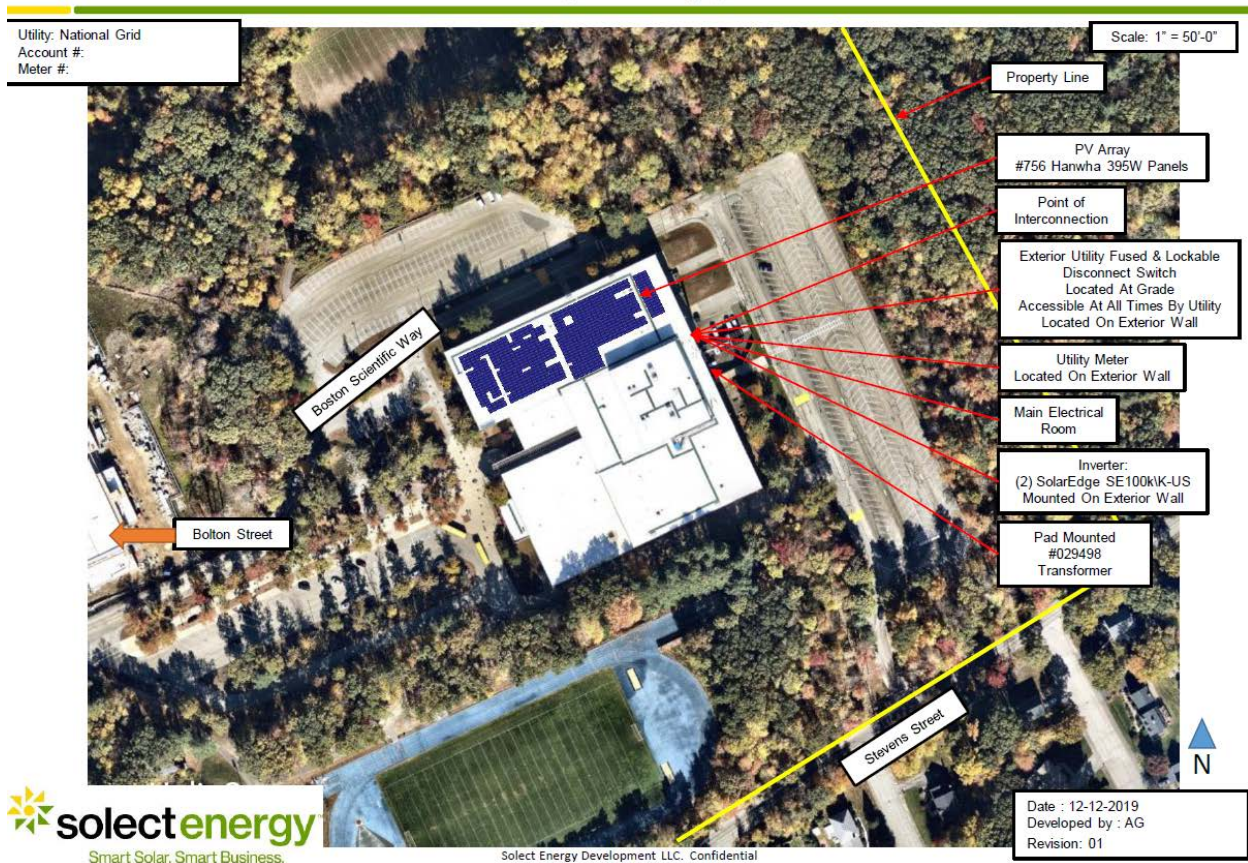


EXHIBIT E

DESCRIPTION OF PROJECT

The Project will be comprised of a series of solar photovoltaic equipment and parts integrated to the main electric service at the building, behind the utility meter, and interconnected to the local utilities distribution system. Main equipment components of the Project include:

Roughly 756 x 395W Tier 1 Solar modules or equivalent

Roughly 2 x SolarEdge solar inverters or equivalent

Ecolibrium or equivalent solar racking equipment

Rapid shutdown system

Solar kWh meter and monitoring system, connected to Host-provided internet service

Combiners, Disconnects, Switches, Pipe and Wire and Balance of System materials integrated to

Equipment quantities, brands, specifications and ratings may change during course of the project

EXHIBIT F

ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	346,290	11	327,709
2	344,386	12	325,906
3	342,491	13	324,114
4	340,608	14	322,331
5	338,734	15	320,558
6	336,871	16	318,795
7	335,019	17	317,042
8	333,176	18	315,298
9	331,343	19	313,564
10	329,521	20	311,839

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

EXHIBIT G

INSURANCE REQUIREMENTS

1. General Liability

(a) Both Host and Provider will have a minimum level of commercial general liability insurance for the term of the Power Purchase Agreement of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. Provider shall maintain an umbrella policy in the minimum amount of (\$5,000,000) five million dollars. Provider's insurance shall be primary and non-contributory.

(b) The Provider's general liability insurance coverage shall include broad form property damage liability, products/completed operations liability and broad form contractual liability. The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion.

2. Workers' Compensation

Host will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

3. Property Loss

Provider shall carry adequate property loss insurance on the Project which need not be covered by the Host's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion, but not less than \$1,000,000/\$2,000,000.

4. Professional Liability Insurance

Provider or its subcontractors shall carry Professional Liability insurance covering errors and omissions, not less than \$1,000,000 each occurrence and \$1,000,000 aggregate limit.

5. Additional Insurance Provisions

Host shall furnish Provider with certificates of insurance and endorsements of all required insurance as currently maintained by Host, as may be reasonably requested, including for

purposes of compliance with any Applicable Law or Local Electric Utility affecting the Premises or operation of the Project. Insurance required by the Local Electric Utility shall not be canceled except after (30) days prior written notice has been given to the Local Electric Utility.

5. Additional Installation Contractor Requirements

Installation contractors will have valid commercial general liability, workers compensation, and business auto insurance as follows:

- Commercial general liability insurance will be in the following amounts: \$1,000,000 for each occurrence and \$2,000,000 aggregate.
- Workers compensation insurance or self-insurance indicating compliance with any applicable labor codes, laws or statutes, state or federal, where Installer performs work.
- Auto coverage not less than 1 million dollars (\$1,000,000) each accident for bodily injury and property damage, and 1 million dollars (\$1,000,000) in the aggregate.
- Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance for Commercial General Liability, Auto Liability and Employers' Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and one million dollars (\$1,000,000) in the aggregate. The amounts of insurance required for Commercial General Liability, Auto Liability, Employers' Liability and Excess Liability may be satisfied by Installer purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.
- Installer's insurance shall include the City of Marlborough as an additional insured and shall be primary and non-contributory.

EXHIBIT H
FORM OF LEASE

This Lease (the “Lease” or the “Agreement”) is made and entered into as of _____, _____, by and between _____ (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host and Provider have entered into a Power Purchase Agreement dated as of _____, _____, (the “**PPA**”) and pursuant to such agreement Host has agreed to provide Provider with rights to access and use certain portions of Host’s property located at _____. All terms used herein which are not otherwise defined shall have the meanings set forth in the PPA.

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

1. Premises and Related Rights. Effective _____, _____, Host hereby leases to Provider, in accordance with the terms and conditions set forth in the Power Purchase Agreement dated on or about the date hereof between Host and Provider (“PPA” or “Agreement”), the Premises. Host hereby also grants to Provider, for a period co-terminus with the Lease, a non-exclusive right-of-way to access the Premises across or through any surrounding or nearby properties owned or leased by Host, passage through which is necessary or convenient to install or gain access to the Project or the Premises provided same does not interfere with Host or any of Host’s contractors, employees, students, invitees or public officials. Provider shall be responsible to determine, as part of its due diligence following the Effective Date, the availability and suitability of such access. Notwithstanding the foregoing, access to the Premises for the installation of the Project shall be in accordance with a schedule to be agreed upon by the Parties, and access to the Project after installation shall be permitted only upon advance notice to Host, except in the event of an emergency posing a threat to the public health and safety.

2. Project Construction, Installation and Operation.

(a) Host hereby consents to the construction of the Project by Provider on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. The Project shall be designed, engineered, and constructed in accordance with the standards, terms and conditions set forth in the Agreement.

(b) Provider shall also have the right from time to time during the term hereof with reasonable care and subject to the standards, terms and conditions of the Agreement:

- (i) to install and operate the Project on the Premises;
 - (ii) to maintain, clean, repair, replace and dispose of part or all of any Project (in the case of replacement and disposal, with Host's written consent);
 - (iii) to add or remove any parts of the Project (with Host's written consent);
- and
- (iv) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Provider, to carry out the activities set forth in this Section 2.

(c) Host acknowledges that the installation of all or a portion of the Project will require installation and physically mounting and adhering parts of the Project to the building, structure and fixtures appurtenant to the Premises and consents to such mounting or adhering, as applicable, provided the same is done in accordance with and subject to the terms of the Agreement, including adherence to roof warranty requirements. Should the installation, operation or removal of the Project cause damages to the Premises, Provider shall be responsible to repair the Premises according to the terms of the Agreement to the condition the same were in on the date hereof, normal wear and tear excepted.

3. Project and Output Ownership.

(a) Host acknowledges and agrees that Provider or one of its affiliates is the exclusive owner and operator of the Project, and that all equipment comprising the Project shall remain the personal property of Provider and shall not become fixtures.

(b) Host acknowledges that Provider is the exclusive owner of electric energy generated by the Project and owner of all environmental attributes and tax attributes attributable to the Project.

4. Representations and Warranties, Covenants of Host.

(a) Host's Title to Premises. Host represents that Host has lawful title to (or a valid leasehold interest in) the Premises and that, so long as Provider is not in breach of the Agreement and subject to such conditions as are contained therein, Provider shall have quiet and peaceful possession of the Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Provider's quiet enjoyment thereof, throughout the term of this Lease.

(b) No Interference With and Protection of Project. Other than the activities that Host presently conducts at and about the Premises, and subject to requirements of Applicable Laws and according to the terms of the Agreement, Host will not conduct discretionary activities

on, in or about the Premises, the Building or the Premises that have a reasonable likelihood of causing material damage, impairment or otherwise materially and adversely affecting the Project.

(c) Utilities. Provider shall be responsible for paying for Station Power during the term of this Lease. For purposes of this Lease “Station Power” shall mean electric energy consumed in the start-up and operation of the Project, which is distinct from the alternating current output of the Project.

(d) Insolation. Subject to the requirements of Applicable Law, Host shall not construct or permit to be constructed any structure on the Premises that could materially and adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation other than those that may be emitted from the normal operation of the buildings presently located on or about the Premises or from vehicular traffic.

(e) Notice. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the Project or interruption in the supply of electricity from the Project. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Host shall have no duty or obligation to monitor, observe or check upon the Project or its operation; Host shall have the right, but not the obligation, to address any emergency condition arising from the Project that Host in good faith believes presents or will likely present a threat to public health and safety; and any good faith failure of Host to provide the notification required in this paragraph shall not constitute a default or breach of the Agreement by Host.

5. Representations and Warranties, Covenants of Provider.

(a) Hazardous Materials. In addition to the other terms and conditions of the Agreement concerning Hazardous Materials, Provider shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Provider becomes aware of any such hazardous, toxic or dangerous materials, Provider shall promptly notify Host of the type and location of such materials in writing. Provider agrees to assume full responsibility for (and protect, indemnify and defend Host against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Building or the Premises that are attributable to the willfully negligent actions of Provider.

(b) Regulatory Status. Provider represents and warrants that it is not a public service company, electric company, or electric distribution company as defined under the laws of the commonwealth of Massachusetts.

6. Term and Termination. The term of this Lease shall be coterminous with the PPA (the “Term”), including any extensions thereof, but in no case more than thirty (30) years from the date of execution of this Agreement by both parties. Upon expiration or earlier

termination of the Agreement, unless the Agreement is extended by agreement of the Parties in accordance with any terms allowing for the same in the PPA, Provider shall remove the Project and any part thereof, at Provider's expense, and shall repair any damage caused by the Project or its removal except for normal wear and tear and Host shall allow Provider access to the Premises for such purposes. Should the Parties agree to transfer Project ownership through a Purchase Agreement, Provider will not remove the Project from the Premises.

7. **Taxes.** Provider and Host intend to enter in to a Payment In Lieu of Taxes agreement.

8. **Casualty or Condemnation.** As provided in Section 17(c) of the PPA, in the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Host and Provider, Host shall determine whether to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, subject to the availability of insurance proceeds dedicated to such purpose, and shall so notify Provider upon such determination. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

9. **Architectural, Engineering, Construction or Attorney's Fees.** If Host determines that Provider is in material breach of this Lease, Host shall treat such breach as a Provider Event of Default and may proceed in accordance with the provisions of Section 19(a)(iv), subject to any Financing Party's rights in Section 21(a)(ii) and (iii). If Host or any Financing Party, as the case may be, fails to cure such material breach of this Lease and Host makes any expenditures, including but not limited to architectural, engineering, construction or attorney's fees or incurs any obligations for the payment of money in connection with any Provider material breach of this Lease,, such costs shall be reimbursed to Host by Provider upon ten (10) days advanced written notice, in addition to any other damages incurred by Provider on account of such material breach.

10. **Recording.** This Lease shall not be recorded, but Host and Provider shall execute a recordable form Notice of Lease complying with Massachusetts law and satisfactory to Provider, to be recorded at Provider's sole expense.

In WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

GRANTOR:

By: _____

Name: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____

ATTACHMENT A
SITE and PREMISES DESCRIPTION

ATTACHMENT B
EXISTING ENCUMBRANCES

POWER PURCHASE AGREEMENT

For

City of Marlborough Sgt. Charles J. Jaworek Elementary School

Dated as of

between

City of Marlborough
140 Main Street
Marlborough, Massachusetts 01752

And

Solect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748

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<u>EXHIBIT G</u>	–	INSURANCE REQUIREMENTS
<u>EXHIBIT H</u>	–	FORM OF LEASE

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“**Agreement**”) is entered into as of _____, _____, by and between City of Marlborough (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host is a member of the PowerOptions Consortium, an energy-buying group purchasing program authorized to administer such program on behalf of Massachusetts Clean Energy Center (“MassCEC”), organized by PowerOptions, Inc. (“**PowerOptions**”), a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts and the Internal Revenue Code that assists its members with procuring energy products and energy-related services for facilities they own and/or operate pursuant to M.G.L. c.164, § 137;

WHEREAS, Provider and PowerOptions have entered into an agreement dated September 1, 2015 which has been extended to June 30, 2020 governing the terms and conditions of Provider’s participation in the PowerOptions Small Solar Program;

WHEREAS, Host is the owner of the properties located and described in Exhibit C and desires to make a portion of such properties available to Provider for the construction, operation and maintenance of a solar powered electric generating Project, and to purchase from Provider the electric energy produced by the Project; and

WHEREAS, Provider desires to develop, design, construct, own and operate the Project located at and described in Exhibit C, and sell to Host the electric energy produced by the Project.

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

1. DEFINITIONS. Certain capitalized terms used in this Agreement have the meanings set forth in the attached GLOSSARY OF TERMS.

2. TERM.

(a) Term. This Agreement shall consist of an Initial Period and an Operations Period. As used herein, “Term” shall mean all of the Initial Period and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement, but any such termination shall not terminate any provisions hereof that expressly survive such termination

(b) Initial Period. The Initial Period will begin on the date set forth above (date of signed Agreement) and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Section 4(b) or 4(d).

(c) Operations Period. The Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs, or such earlier date when this Agreement is terminated.

(d) Extensions. Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

(e) Early Termination by Host. If Host terminates the Agreement prior to the Expiration Date, Host shall pay, as liquidated damages, the Early Termination Amount set forth on Exhibit B (except as otherwise provided in this Section or Sections 9, 17, or 19, and Provider shall cause the Project to be disconnected and removed from the Premises. Upon Host's payment to Provider of the Early Termination Amount, the Agreement shall terminate automatically, provided that the Provider shall continue to have a duty to relocate the Project and restore the Premises. Notwithstanding the foregoing, Host may (i) terminate this Agreement with no liability whatsoever if Provider fails to commence construction of the Project by the Construction Start Date or (ii) if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$15/kW, plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Host to return its Premises to its condition prior to commencement of the Installation Work if Provider fails to do so within a reasonable time. Further, Host may terminate this Agreement with no liability whatsoever if Provider fails to commence Commercial Operations by the date that is 60 days after the Guaranteed Commercial Operation Date. The Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if, notwithstanding Provider's commercially reasonable efforts, interconnection approval is not obtained within 60 days after the Effective Date.

3. ACCESS RIGHTS.

(a) Access Specifications. Host hereby grants Provider and its designees (including Installer) access to the Premises, for the Term and for so long as needed (but not more than 100 calendar days) after termination to remove the Project pursuant to the applicable provisions herein, at reasonable times and upon reasonable notice (except in situations where there is imminent risk of damage to persons or property), for the purposes of designing, installing, inspecting, operating, maintaining, repairing, and removing the Project, and any other purpose

set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access Rights with respect to the Site include without limitation:

(i) Vehicular & Pedestrian Access. Reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing, and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(ii) Utilities & Communication Cables. The right to locate distribution utility and/or electrical lines and communications cables across the Site as designated on Exhibit D. The location of any such electrical lines and communications cables outside the areas designated on Exhibit D shall be subject to Host's approval and shall be at locations that minimize any disruption to Host's activities occurring on the Site. Access will also be provided for Telephone and internet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

(iii) Provider (including Installer) acknowledges that the Premises are the site of the Host's School, and its Access Rights may be limited as necessary to avoid disruption or interference with educational programming and professional workday. Access rights shall conform to the Host's access rules and a construction plan agreed to by the Parties prior to the Construction Start Date. Provider shall comply with all applicable city ordinances and regulations.

(b) Remote Monitoring. Host will provide an internet portal or equivalent access by means of which Provider will communicate data from the revenue grade performance monitoring system. Provider will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Provider and Host to remotely monitor the Project.

(c) Access to Premises. For the Term of this Agreement, Host hereby grants to Provider all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance, repair, and removal of the Project pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the Project with the Premises' electrical wiring. Host hereby covenants that (i) Provider shall have access to the Premises and Project during the Term of this Agreement and for so long as needed after termination (but only up to 100 calendar days) to remove the Project pursuant to the applicable provisions herein, and (ii) Host shall not interfere or handle any Provider equipment or the Project without written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work or Project removal.

(d) No Interference. Host agrees not to conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage or impairment to, or otherwise adversely affecting, the Project. Host shall take all reasonable steps to limit access to the Project to Provider, Installer, its employees, contractors or subcontractors. Host shall implement and maintain reasonable and appropriate security measures at the Premises to prevent Host's

employees, invitees, agents, contractors, subcontractors and other third parties from having access to the Project and to prevent theft, vandalism or other actions from occurring that have a reasonable likelihood of causing damage, impairment, or other adverse effect on the Project. Notwithstanding anything to the contrary provided above, Provider agrees that Host may conduct inspection, maintenance, and repairs of the Site roof and any HVAC or other building equipment thereon as reasonably necessary to comply with all warranties and ensure the proper functioning thereof, and that such activities shall not be deemed interference.

(e) Temporary storage space during installation or removal. Host shall provide sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, Operations Period or Project removal, and access for rigging and material handling. Provider shall be responsible for providing shelter and security for stored items during construction and installation. Host reserves the right to require Provider to change the location of the stored items to improve security if in the Host's reasonable discretion, such items pose a hazard to persons or property. Upon completion of the Installation Work, Provider shall remove all equipment, tools, materials and debris and restore the temporary storage Space to its previous condition.

(f) Recording Provider's Lease. Provider may record (at its expense) a Notice of Lease in the land records regarding its Access Rights under this Agreement

4. PLANNING, INSTALLATION AND OPERATION OF PROJECT.

(a) Site Assessment and Planning. During the Initial Period, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project. The Provider, at its own cost shall perform and determine a structural analysis of the Host's site by a licensed professional structural engineer to determine feasibility, safety, and to ensure the proper install, maintenance, and operation of the solar system. Provider shall provide a copy of structural engineering analysis to Host prior to commencement of Construction.

(b) Termination of Development Activities by Provider. At any time during the Initial Period, Provider shall have the right to cease development of the Project on the Premises if: (i) Provider determines that the Premises, as is, is insufficient to accommodate the Project; (ii) there exist site conditions or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or

would adversely affect the electricity production from the Project as designed; or (iii) there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the Project on the Premises. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(c) Commencement of Construction, Modification of Design. At a time coordinated with the Host during the Initial Period, upon at least ten (10) Business Days notice to Host, Provider shall have the right to commence installing the Project on the Premises.

(i) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.

(ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its sole discretion, may determine, provided, however, that such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, without Host's approval.

(d) Construction Commencement Deadline. If Provider has not commenced the installation of the Project on the Premises before the Construction Start Date (not including any days in which a Force Majeure Event existed, or were delayed by the local electric delivery company, AHJ, or state regulators), Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate twenty-one (21) days after Provider's receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other with respect to the Facility, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(e) Contractors. Provider shall use licensed and insured contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, in Provider's sole discretion. Provider shall advise Host of the Installer prior to commencement of the work

on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit G.

(f) Status Reports, Project Testing, Commercial Operation. Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Testing shall be conducted in accordance with guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Host shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of and has been approved for interconnection by the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis for at least four (4) continuous hours, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host.

(g) Standard of Operation. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Host and Host's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(h) Hazardous Materials. Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the

Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical. Provider shall not introduce to the Site any Hazardous Materials and, in the event that it does so, shall be solely responsible and liable for remediation in accordance with Applicable Law, and pursuant to the direction of the Host and any Governmental Authority with jurisdiction over the Site.

(i) Site Security. Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Project. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations. Notwithstanding anything to the contrary, except in the case of gross negligence or willful action/inaction on the part of Host's security, Provider shall bring no claim against Host based upon performance of Host's security personnel.

(j) Provider System Shut Down. Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown unless the performance guarantee in Section 5(c) is not met. Provider and Host will agree upon a reasonable shut down duration. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

(k) Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the Project and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(i) Installation. Provider shall maintain and test the meter in accordance with but not limited to Applicable Law and as provided herein. Provider shall ensure that the meter is installed and calibrated correctly to manufacturer and/or utility specifications during commissioning of the Project.

(ii) Measurements. Readings of the meter shall be conclusive as to the amount of electric energy delivered to Host; provided that if the meter is out of service, is discovered to be inaccurate pursuant to Section 4(l)(iii) below, or registers inaccurately, measurement of energy shall be determined by estimating by

reference to quantities measured during periods of similar conditions when meter was registering accurately.

(iii) Testing and Correction.

A. Host's Right to Conduct Tests. Each Party shall have the right to witness each test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the meter. Provider shall provide at least twenty (20) days prior written notice to Host of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall provide Host with copies of such written report and the underlying supporting documentation not later than thirty (30) days after completion of such test. Provider shall bear the cost of the annual testing of the meter and the preparation of the meter test reports.

B. Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:

(1) If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.

(2) Provider shall, within thirty (30) days after receiving such notice from Host, or Host shall, within such time after having received such notice from Provider, advise the other Party in writing as to its position concerning the accuracy of such meter and state reasons for taking such position.

(3) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the meter to be tested by an agreed upon and disinterested third party.

(4) If the meter is found to be inaccurate by not more than two percent (2%), any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter shall bear the cost of inspection and testing of the meter.

(5) If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any meter found to be inaccurate to be: replaced or adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 4(l)(ii) or (iii), and (3) Provider shall bear the cost of inspection and testing of the meter and reimburse or credit Host if Host was the disputing Party. If as a result of such adjustment the quantity of energy for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Provider shall reimburse or credit Host for the

amount paid by Host in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the meter. If as a result of such adjustment the quantity of energy for any period is increased (such quantity, the "Electricity Surplus Quantity"), Host shall pay for the Electricity Surplus Quantity at the price applicable during the applicable period.

(iv) No Duty on Host. Notwithstanding the foregoing, the Parties acknowledge and agree that the Host is under no responsibility or duty to ascertain, to inspect or to otherwise determine whether the meter or any other part of the Project is out of service, is discovered to be inaccurate or registers inaccurate readings; is malfunctioning or is otherwise defective, it being agreed that at all times such responsibility or duty shall remain with the Provider.

(v) Operations Manual: Training of Host Facilities Staff.

Within 60 days of Commercial Operation Date, and prior to Host's acquisition of the Project if Host chooses to exercise the Purchase Option as provided in Section 9 hereof, Provider shall deliver to Host a current operation, maintenance and parts manual for the Project including as-builts stamped by a Massachusetts registered professional engineer. In addition, in either case, Provider will train Host's representative(s) on operations and monitoring (for informational purposes only) and emergency preparedness and response, it being acknowledged by Host that Host shall not operate the Project, except in the case of an emergency where immediate action on the part of the Host is reasonably necessary for the protection of persons or property. In the event of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons, Host may, but is not obligated to, shut down or disconnect the Project and provide notice to Provider as soon as reasonably possible, and in any event within twenty-four (24) hours following such emergency, but otherwise Host shall not be permitted to perform any maintenance or repair on the Project.

(vi) Prevailing Wages. Provider shall pay, and require the Installer and all subcontractors to pay, prevailing wages for the Installation Work on the Project, and comply with all Applicable Law related thereto.

(vii) No Voiding Of Existing Roof Warranties. Provider shall ensure that the Project is designed and constructed so that no existing roof warranty is voided on account of the installation of the Project. Developer shall consult, as may be necessary, with any company that has provided such roof warranty to the Host. Upon request, Host shall provide to Provider a copy of any applicable warranty.

(viii) Display of Production Monitoring Data. Provider shall share with Host a website that displays Solar Project production data, upon the Commercial Operation Date.

5. SALE OF ELECTRIC ENERGY.

(a) Sale of Electricity. Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all

electric energy produced by the Project, whether or not Host is able to use all such electric energy. The Point of Delivery of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery. Provider shall own the Capacity Value of the Project. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host. The interconnection point of Project with the Local Electric Utility shall be indicated in Exhibit E.

(b) Performance Guarantee. Beginning on the Commercial Operation Date and as of each anniversary thereof, if the Project produces less than eighty-five percent (85%) of the applicable Estimated Annual Production specified in Exhibit F, unless, and then only to the extent that, the failure to meet the Estimated Annual Production is due to (a) failure, damage or downtime attributable to third parties or Host, (b) equipment failure or delayed repair of equipment due to the claims process with the equipment manufacturer which are beyond the reasonable control of Provider, (c) a Force Majeure Event, (d) variability due to weather as documented by software used in calculating the Estimated Annual Production, (e) acts or omissions of Host of any of its obligations hereunder, or (f) any Host Requested Shutdown, Provider Safety Shutdown or Project Relocation under Section 10(a), (b), or (c); in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average applicable tariff rate per kWh that Host would have paid for full requirements, delivered electric service from its Local Electric Utility during such period minus the applicable kWh Rate specified in Exhibit A, multiplied by (ii) the difference between the actual Project Output during such 12-month period and eighty-five percent (85%) of the Estimated Annual Production for such period.

6. PAYMENT AND BILLING.

(a) Rates. Host shall pay Provider for electricity produced by the Project at the rates set forth in Exhibit A attached hereto.

(b) Billing. Host shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

(c) Invoice Delivery. Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email, addressed as follows:

To Host: City of Marlborough
c/o Dept. of Public Works
Attn: Facilities Division
135 Neil Street
Marlborough, Massachusetts 01752

(d) **Payment.** Host shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed by applicable law.

(e) **Disputed Invoices.** If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Host may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreement.

7. SUPPLEMENTAL POWER

(a) **Back-up and Supplemental Electricity.** Except as otherwise provided herein, throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

(b) **Interconnection and Interconnection Fees.** Provider shall be responsible for arranging the interconnection of the Project with Host's Local Electric Utility in a manner which includes bi-directional or "net metering". Provider shall be responsible for all costs, fees, charges and obligations required to connect the Project to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Host be responsible for any Project Interconnection Obligations.

(i) **Net Metering.** The Parties will work cooperatively and in good faith to meet all Net Metering requirements under Applicable Law, the Applicable Solar Program and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., Massachusetts tariff Schedule Z). In the event that the Project produces a production excess,

then the Parties agree that (a) Host shall be entitled to the associated Net Metering Credits, (b) Provider shall transmit such Production Excess into the Local Electric Utility system on behalf of and for the account of Host, and (c) Host (or its designee) shall be entitled to any and all Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

(c) Applicable Solar Program Incentives. Provider shall receive all payments available under any Applicable Solar Program. Host shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Host receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this Section 7(c) is limited to any payments actually received by Host.

(d) Ownership of Tax Attributes. Provider (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the ownership and operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

(e) Environmental Attributes. Except as otherwise provided for under Applicable Law, or Applicable Solar Program rules, or the applicable tariff of the Local Electric Utility, Provider (and/or Financing Party) shall be the owner of any Environmental Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person. If the local electric company is entitled to the Environmental Attributes, Provider shall be entitled to incentive or compensation provided by the Applicable Solar Program in exchange for the Environmental Attributes. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider.

(f) Capacity & Ancillary Services. Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Project. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

(g) Neither Party is a Utility. Neither Party shall assert that the other Party is an electric utility or public service company or similar entity that has a duty to provide service, is

subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Provider's and Host's obligations or performance under this Agreement.

8. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES

(a) Permits. Provider shall pay for and obtain all approvals from governmental entities and/or electric utility companies necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval.

(b) Project Ownership. Except as provided in Section 9, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

(c) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens") and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

(d) Non Disturbance Agreements. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host shall promptly upon request of Provider, provide an acknowledgement and consent

from such lienholder, in form and substance reasonably acceptable to Provider (and/or Financing Party), stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's (and/or Financing Party's) rights in the Project and the Access Rights.

9. PURCHASE OPTIONS; REMOVAL AT END OF TERM.

(a) Early Purchase Option. Host shall have the option to purchase the Project at intervals listed in Exhibit B, consistent with the greater of either (i) the applicable value identified in Exhibit B or (ii) the Fair Market Value of the System as determined by mutual agreement of Host and Provider; provided, however, if Host and Provider cannot agree to a Fair Market Value within twenty (20) days after Host has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project. If Host desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Provider of its election to exercise the option, and on or before such anniversary date shall pay the purchase price to Provider.

(b) End of Term Purchase Option. Host shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project at the end of the Term. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, the Parties will engage and share the costs equally of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project consistent with the terms of the transaction. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project and shall be undertaken consistently with the terms of such

transaction so that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

(c) Transfer of Ownership. Upon Host's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, and any applicable Environmental Attributes if legally able, or portions thereof, to Host.

(d) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(e) No Survival of Purchase Option. The options for Host to purchase the Project under Sections 9(a) and 9(b) shall not survive the termination of this Agreement.

(f) Removal of Project at Expiration. Subject to Host's exercise of its purchase option under Section 9(a) or 9(b), upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the Project from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the Project is to be located on a roof, then in no case shall Provider's removal of the Project affect the integrity of Host's roof, which shall be as leak proof as it was prior to installation of Project (other than ordinary wear and tear). For purposes of Provider's removal of the Project, Host's covenants pursuant to Section 16 shall remain in effect until the date of actual removal of the Project. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the Project by such agreed upon date, Host shall have the right, at its option, to remove the Project to a public warehouse or storage facility within a reasonable distance from the Site, if Provider has identified same and entered into an agreement to pay any and all costs for System storage, and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost. If the Provider fails to remove the Project within one hundred (100) days, Host shall have the right, upon written notice to the Provider, to draw on the financial assurance to reimburse Host for reasonable costs it incurs in removing the Project and restoring the Premises.

(g) Decommissioning Assurance. No later than the beginning of the nineteenth (19th) year of the Operations Period, Provider shall establish the Decommissioning Assurance, and shall select the form and amount of such Decommissioning Assurance, subject to the approval of Host, not to be unreasonably withheld, conditioned or delayed. Failure to timely establish and/or fund in accordance with this paragraph such Decommissioning Assurance shall constitute

a Provider Event of Default, for which the Host shall be entitled to exercise any of the remedies for default afforded under Section 19

(g) Provider shall post City's Notice of Non-Responsibility on the Premises as required by the City.

10. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE.

(a) Host Requested Shutdown. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days or a predetermined date mutually agreed upon by both the Host and Provider, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology. For the purpose of this clause, the Parties agree that during years 4 through 20 (but not years 1 through 3) of the Term of the Agreement, Host shall be afforded a total of fifteen (15) days which may be used consecutively or in periods of at least twenty-four hours each ("Allowed Disruption Time") during which the Project shall be rendered non-operational by Provider. Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes and Tax Attributes.

(b) Provider Safety Shutdown. In addition to the right of Provider to shut down the Project for maintenance as provided in Section 4(j), Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(c) Project Relocation. Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider and Financing Party in each of their sole discretion but not to be unreasonably withheld provided the alternate location is structurally sufficient and capable of substantially equivalent electric generation. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, during the Relocation Event, Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following the Relocation Event; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

(d) Premises Shutdown; Interconnection Deactivated. In the event Premises are closed as a result of an event that is (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall be excused for the period of deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider such that the Project is no longer able to produce electricity or transfer electricity to its respective Premises or to the Local Electric Utility, Host will be excused for the period of Interconnect deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery

(e) Sale of Site. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Host may be released from further obligations under this Agreement.

11. TAXES.

(a) Income Taxes. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Host shall be responsible for all applicable taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it by any Governmental Authority. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and Host shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(c) Property Taxes. Provider shall be responsible for ad valorem personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host for such tax. Provider and Host intend to enter into a Payment In Lieu Of Taxes agreement.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice from the Party who paid the taxes.

12. INSURANCE.

(a) Coverage. Host and Provider shall each maintain the insurance coverage set forth in Exhibit G in full force and effect throughout the Term. Host and Provider shall also provide any additional insurance which may be required from time to time by any legal or regulatory authority affecting the Premises or operation of the Project.

(b) Insurance Certificates. Each Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party written notice before the insurance is cancelled or materially altered.

(c) Certain Insurance Provisions. Each Party's insurance policy shall be written on an occurrence basis, and Provider shall include the Host as an additional insured as its interest may appear. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

(d) Insurance Providers. All insurance maintained hereunder shall be maintained with companies approved to do business in Massachusetts, and rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

13. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS.

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Host to Not Restrict Solar Access. Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

(c) Adjoining Properties. If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Host for electric energy from the Project shall be increased by an amount sufficient for Provider to fully amortize such costs, over a period equal to the lesser of (i) ten years or (ii) the remaining term of this Agreement without regard to Host's option to purchase the Project.

14. PRESS RELEASES

(a) Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other

Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at its sole discretion, take photographs of the installation process of the Project and/or the completed Project, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state. Only Provider has the exclusive right to claim that (i) electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement.

15. INDEMNIFICATION.

(a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, students, volunteers, and invitees ("Host's Indemnified Parties"), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of negligence or willful misconduct of Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (ii) violation of Applicable Law by Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utility or Applicable Law; or (iv) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or Installer or any of their employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Host's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

(b) Host Indemnification. The Parties agree that Host does not provide in this Agreement any express or implied indemnifications to Provider. Provider does not waive and retains any rights available to it under M. G. L. c. 258 or other Applicable Law for (i) any claim for or arising out of any injury to or death of any person or loss or damage to property to the extent arising out of Host's negligence or willful misconduct; (ii) Host's violation of Applicable Law; or (iii) the existence of or failure to properly handle or dispose of any Hazardous Materials on the Site other than

Hazardous Materials brought on to the Site by Provider or any of Provider's employees, agents, contractors, volunteers or visitors.

(c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the “Notice of Claim”). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(d) Defense of Claims. The Indemnifying Party has the right, but not the obligation to assume the defense of the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by the Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

(e) Payments. At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.

(f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

16. REPRESENTATIONS AND WARRANTIES.

(a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

(i) Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(iv) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) Host Representations. In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of date hereof, that:

(i) Condition of Premises. Host has provided to Provider Host's records of the physical condition of the Premises, for informational purposes only, without certifying accuracy or completeness. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project are to be installed, are materially different from the records presented by Host and from conditions reasonably visible to Provider during site visits prior to executing this Agreement, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.

17. FORCE MAJEURE.

(a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall 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 Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Excepting a Force Majeure Event which impacts business or banking transactions nationally or globally, in which case such obligations shall be suspended but not excused, obligations to make payments for services provided prior to the Force Majeure Event shall not be excused by a Force Majeure Event.

(c) Restoration. In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(d) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Section 9(f) (unless there has been a casualty event, in which case the provisions of clause (c) above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

18. CHANGE IN LAW.

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will submit to Host and PowerOptions within 60 days a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then

applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future prices such that the new prices compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider; provided, however any such increase shall be no greater than ten percent (10%) of the prices set forth in Exhibit A for the Term of this Agreement.

19. PROVIDER DEFAULT AND HOST REMEDIES.

(a) Provider Events of Default. Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Provider under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(ii) Abandonment During Installation. After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project.

(iii) Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of governmental authority or local electric distribution company, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(iv) Obligation Failure. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(v) Insolvency. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally

unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Financing Party Opportunity to Cure; Host Remedies. Upon a Provider Event of Default, provided that Provider or Financing Party does not cure such Event of Default by Provider, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue any and all other remedies available at law or equity.

20. HOST DEFAULT AND PROVIDER REMEDIES.

(a) Host Events of Default. Host shall be in default of this Agreement if any of the following ("Host Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Host under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(ii) Obstruction. Host unreasonably obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within fifteen (15) days after receiving written notice from Provider with respect to such act or omission.

(iii) Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.

(iv) Obligation Failure. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the

benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Default Damages. Upon a Host Event of Default, Provider may terminate this Agreement and require Host to pay to Provider the Early Termination Amount; or continue to operate the Project and sell electricity produced by the Project to persons other than Host, and recover from Host any documented loss in revenues resulting from such sales versus the amount of revenues to be earned under this Agreement; and/or pursue other remedies available at law or in equity. If necessary to sell electricity to persons other than Host, Host shall allow Provider to add a new meter dedicated to the solar Project, change the point of interconnection, and/or will support Provider with necessary approvals to change the Schedule Z. After Provider's receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

(c) Survival of Access Rights and Lease. Upon a Host Event of Default, unless Host pays the Early Termination Amount to Provider in full thus terminating this PPA, Provider may, in its exercise of remedies pursuant to Section 20(b), make continued use of, and Host may not terminate: (i) the access rights granted in Section 3 for access to and use of the Site in connection with Provider's use of the Premises; and (ii) the Lease referenced in Section 3(f), and Provider's use of such rights and interests shall continue until the twentieth (20th) anniversary of the Commercial Operation Date as shall the duties of Provider to decommission the facility in accordance with Section 9(f). Provider shall not be obligated to pay any rent or other consideration for the use of such rights or interests.

21. COLLATERAL ASSIGNMENT, FINANCING PROVISIONS.

(a) Financing Arrangements. Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host, which shall not be unreasonably withheld, conditioned or delayed, provided, however that Provider may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Project. Further, Host acknowledges that Provider may obtain construction financing for the Project from a third party and that Provider may either obtain term financing secured by the Project or sell or assign the Project to a Financing Party or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Host acknowledges that in connection with such transactions Provider may secure Provider's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Project. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Host agrees as follows:

(i) Consent to Collateral Assignment. Host hereby consents to both the sale of the Project to a Financing Party and the collateral assignment to the Financing Party of the Provider's right, title and interest in and to this Agreement.

(ii) Rights of Financing Party. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Financing Party, as owner of the Project, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Project;

(B) Opportunity to Cure Default. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Project by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the

right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Financing Party a Third Party Beneficiary. Host agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 21.

(c) Entry to Consent to Assignment. Host agrees to (i) reasonably execute any consents to assignment or acknowledgements, provided any such assignment does not impair Host's rights under this Agreement and (ii) provide such opinions of counsel as may be reasonably requested by Provider and/or Financing Party in connection with such financing or sale of the Project.

22. LIMITATIONS ON DAMAGES.

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (including, without limitation, in Sections 10, 19(b) and 20(b)), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

23. DISPUTE RESOLUTION.

(a) Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.

(b) Jurisdiction, Venue, and Jury Trials. If despite the efforts, if any, to negotiate, the Parties do not resolve the Dispute within the negotiation period described above, then each Party irrevocably consents to the exclusive jurisdiction of the state and federal courts sitting in Massachusetts, in connection with any action related to the Dispute. Each Party agrees that process may be served upon it in any manner authorized by law and that it waives all objections which it might otherwise have to such jurisdiction and process. Further, each Party irrevocably waives all of its rights to a trial by jury with respect to any such action.

(c) Survival of Dispute Provisions. The provisions of this Section 23 and Section 25 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

24. NOTICES.

Delivery of Notices. All notices or other communications which may be or are required to be given by any Party to any other Party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Host:

City of Marlborough
140 Main Street
Marlborough, MA 01752
Attention: Mayor's Office

With a copy to: legal@marlborough-ma.gov

If to Provider:

Sollect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748
Attention: Legal Notices
Email: _____
Facsimile: _____

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

25. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23, and the court will modify the unenforceable provision in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Except as provided in Section 21(a), neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement in accordance with Section 21. For purposes of this Section 25(e), transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is

the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement.

(f) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

(h) Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

(i) CORI. With respect to Projects to be installed at Massachusetts public schools, the Host shall have the right to conduct a check of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Board, and the Massachusetts Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board, for any officer or employee of the Provider or Installer, or of a subcontractor of the Provider or Installer, who will work at the Premises. Provider shall provide to Host the names and identification of all such persons. Notwithstanding any other provision of the Agreement, the Host may refuse to allow any such employee to work on the project if the Host, in its sole discretion, determines that such employee is not suitable for work on the project based on the results of such CORI or SORI. The Host shall keep such information in a confidential file. With respect to Projects to be installed at public schools in other states, similar criminal offender and sex offender information maintained by the state shall apply, and Host shall have discretion regarding employment of such registered offenders.

(j) Notwithstanding anything in this Agreement to the contrary, Host shall have no obligation to assign to Provider any right or interest which gives the Provider greater rights or interests in the Premises or any other property owned or controlled by the Host than the rights and interests contemplated in this Agreement.

(rest of page left blank intentionally – signatures appear on next page)

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

Solect Energy Development, LLC a Massachusetts Limited Liability Corporation

By: _____

Name (printed): _____

Title: _____

HOST, City of Marlborough

**FOR THE CITY OF MARLBOROUGH
BY:**

By: Arthur G. Vigeant

Title: Mayor

Date: _____

DEPARTMENT HEAD:

By: John L. Ghiloni

Title: Commissioner of Public Works

ACKNOWLEDGMENT OF LEASE:

By: Diane Smith

Title: City Auditor

By: Brian Doheny

Title: Comptroller/Treasurer

**CERTIFICATION AS TO
PROCUREMENT LAW:**

By: Beverly J. Sleeper, MCPPO

Title: Chief Procurement Officer

Procurement Law: **M.G.L. c. 164, § 134**

**APPROVED AS TO FORM BY LEGAL
COUNSEL:**

Jason D. Grossfield

Title: City Solicitor

OR

Jason M. Piques

Title: Assistant City Solicitor

GLOSSARY OF TERMS

“Access Rights” means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Agreement” means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

“Applicable Solar Program” means the state laws, rules, and regulations that govern the solar incentives, rights and obligations (e.g., SRECs), as may be amended from time to time, by the authorities having legal jurisdiction where the Project will be installed and where the benefits will be realized.

“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

“Capacity Value” means such capacity value as determined by market rules established by ISO-NE. Provider is the owner of the capacity value of the Project and shall have the right to participate in ISO-NE’s Forward Capacity market at their discretion through an aggregator or as an ISO-NE Market Participant. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host.

“Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

“Commercial Operation Date” means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully

completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

“Construction Start Date” means day within 180 days from the date of this Agreement.

“Decommissioning Assurance” means financial security in the form of an escrow account, letter of credit, bond or other form of security reasonably acceptable to the Parties, in a sufficient amount to cover removal of the Project from the Premises and restoring the Premises to substantially its pre-construction condition existing on the Commencement Date, ordinary wear and tear excepted, as certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts..

“Delay Liquidated Damages” means the daily payment of (i) \$0.250/day/kW if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Dispute” means a controversy or claim arising out of or relating to this Agreement.

“Early Termination Amount” means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes.

“Electric Service Provider” means any person, including the Local Electric Utility, authorized by the State of Massachusetts to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

“Estimated Annual Production” means the annual estimate of electricity generated by the Project for any given year. The Estimated Annual Production for each year of the Term is set forth in Exhibit F.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment

shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

“Financing Party” means a Project Lessor or Lender.

“Force Majeure Event” means any act or event that prevents the affected Party 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 the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Guaranteed Commercial Operation Date” means 180 days from the Construction Start Date, which shall be extended day-by-day for Force Majeure Events and for other events outside of Provider’s reasonable control.

“Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

“Host” means and all successors and assigns.

“Indemnified Person” means the person who asserts a right to indemnification under Section 15.

“Indemnifying Party” means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

“Initial Period” has the meaning provided in Section 2.

“Installation Work” means the construction and installation of the Project and the start-up, testing and acceptance (but not the operations and maintenance) thereof, all performed by or for Provider at the Premises.

“Installer” means Solect Energy Development, LLC, the person designated by Provider to install the Project on the Premises.

“Land Registry” means the office where real estate records for the Site are customarily filed.

“Lender” means persons providing construction or permanent financing to Provider in connection with installation of the Project.

“Liens” has the meaning provided in Section 8(c).

“Local Electric Utility” means the entity authorized and required under Applicable Law to provide electric distribution service to Host at the Site.

“Losses” means any and 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 attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

“Net Metering” means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in Applicable Law.

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by a Project, and credited to the Host by the Local Electric Utility, as set forth in Applicable Law.

“Operations Period” has the meaning provided in Section 2.

“Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

“Party” means either Host or Provider, as the context shall indicate, and “Parties” means both Host and Provider.

“Point of Delivery” has the meaning set forth in Section 5(a) and Exhibit E.

“Premises” means the portions of the Site described on Exhibit D.

“Project” means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.

“Project Lessor” means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.

“Provider” means Solect Energy Development, LLC.

“Relocation Event” means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy Project.

“Site” means the real property described on Exhibit C attached hereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

“Term” shall have the meaning provided in Section 2 hereof.

EXHIBIT A

ENERGY PURCHASE PRICES

As set forth below, the \$/kWh rate will be established upon receipt of the SMART Statement of Qualification from the SMART Solar Program Administrator, on behalf of the Massachusetts Department of Energy Resources. Upon receipt, Provider shall forward a copy to Host, confirming the applicable SMART Block and PPA Rate.

SMART Block 9	SMART Block 10
.115	.118

Notes:

The price/kWh reflects an annual Payment In Lieu of Taxes (PILOT) amount in the amounts shown on Exhibit B. In the event that the contracted annual PILOT amount differs from the amount in Exhibit B, the Parties agree to adjust the price/kWh in Exhibit A, "Energy Purchase Prices", to reflect the difference in tax payments from the amount assumed in Exhibit A-1.

The price/kWh reflects 2020 Installation and the corresponding Federal Investment Tax Credit value.

EXHIBIT A-1

PILOT Payment Schedule and Amounts

Fiscal Tax Year July 1-June 30	August 1 Payment	November 1 Payment	February 1 Payment	May 1 Payment
Year 1	625	625	625	625
Year 2	609	609	609	609
Year 3	594	594	594	594
Year 4	579	579	579	579
Year 5	564	564	564	564
Year 6	550	550	550	550
Year 7	536	536	536	536
Year 8	523	523	523	523
Year 9	510	510	510	510
Year 10	497	497	497	497
Year 11	485	485	485	485
Year 12	473	473	473	473
Year 13	461	461	461	461
Year 14	449	449	449	449
Year 15	438	438	438	438
Year 16	427	427	427	427
Year 17	416	416	416	416
Year 18	406	406	406	406
Year 19	396	396	396	396
Year 20	386	386	386	386

EXHIBIT B

EARLY TERMINATION AMOUNTS

Year of System Term	Early Termination	Early Purchase
1	\$905,137	N/A
2	\$709,734	N/A
3	\$661,411	N/A
4	\$642,706	N/A
5	\$592,644	N/A
6	\$541,632	N/A
7	\$489,611	\$428,938
8	\$466,979	N/A
9	\$443,210	N/A
10	\$418,231	\$351,932
11	\$391,969	N/A
12	\$365,809	N/A
13	\$338,287	N/A
14	\$309,316	N/A
15	\$278,806	\$201,947
16	\$246,658	N/A
17	\$211,300	N/A
18	\$178,926	N/A
19	\$150,937	N/A
20	\$121,898	\$32,798

EXHIBIT C

DESCRIPTION OF SITE

Marlborough Jaworek School
444 Hosmer Street, Marlborough
Map 19/Block 229A

A certain parcel of land in Marlborough, Middlesex County, Massachusetts, with the improvements thereon, depicted on a plan of land titled “Plan of Land in Marlborough, Mass. to be taken by City of Marlborough for School Purposes in Deed Book 10224 Page 56, owned by Curtis Orchards Inc., Scale 1” = 40’, August 1962” by Granger, Thompson & Liston, Inc. and recorded with the Middlesex South Registry of Deeds as Plan 1458 of 1962.

The Premises and the Access Areas shall mean the Site. Locations where solar equipment will be installed and accessed including the roofs, exterior and interior walls, through to the main electric room, and exterior areas of the Site depicted in Site Plan below. The Project will be combined and connected to Host’s existing main electric equipment, interconnected to the utility network behind the existing utility meter.

EXHIBIT D

DESCRIPTION OF PREMISES

The Premises and the Access Areas shall mean the Site. Locations where solar equipment will be installed and accessed including the roofs, exterior and interior walls, through to the main electric room, and exterior areas of the Site depicted in Site Plan below. The Project will be combined and connected to Host's existing main electric equipment, interconnected to the utility network behind the existing utility meter.

Site Plan – SED – Jaworek Elementary School – 211.72 kW DC – 166.6 kW AC 444 Hosmer St, Marlborough, MA 01752

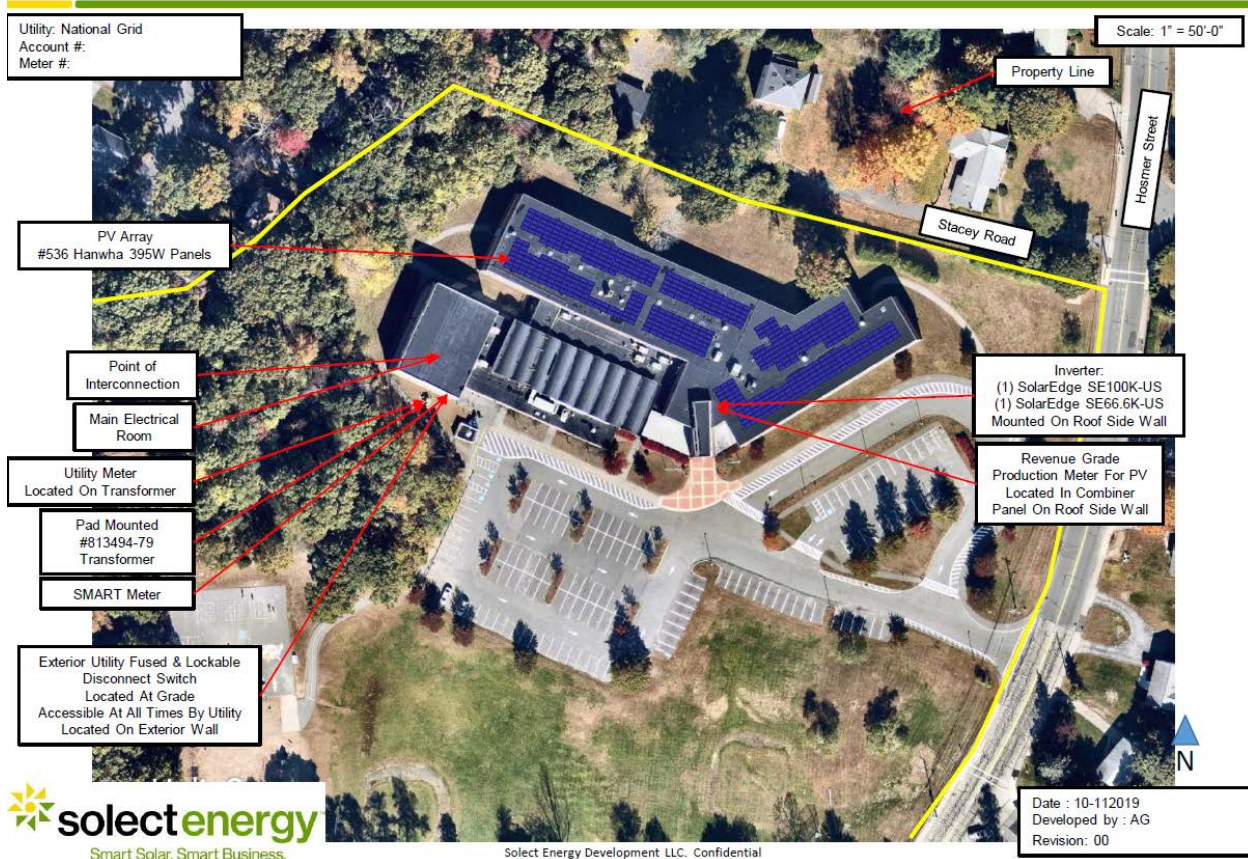


EXHIBIT E

DESCRIPTION OF PROJECT

The Project will be comprised of a series of solar photovoltaic equipment and parts integrated to the main electric service at the building, behind the utility meter, and interconnected to the local utilities distribution system. Main equipment components of the Project include:

Roughly 536 x 395W Tier 1 Solar modules or equivalent

Roughly 2 x SolarEdge solar inverters or equivalent

Ecolibrium or equivalent solar racking equipment

Rapid shutdown system

Solar kWh meter and monitoring system, connected to Host-provided internet service

Combiners, Disconnects, Switches, Pipe and Wire and Balance of System materials integrated to

Equipment quantities, brands, specifications and ratings may change during course of the project

EXHIBIT F

ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	243,478	11	230,413
2	242,139	12	229,146
3	240,807	13	227,886
4	239,483	14	226,632
5	238,166	15	225,386
6	236,856	16	224,146
7	235,553	17	222,913
8	234,257	18	221,687
9	232,969	19	220,468
10	231,688	20	219,256

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

EXHIBIT G

INSURANCE REQUIREMENTS

1. General Liability

(a) Both Host and Provider will have a minimum level of commercial general liability insurance for the term of the Power Purchase Agreement of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. Provider shall maintain an umbrella policy in the minimum amount of (\$5,000,000) five million dollars. Provider's insurance shall be primary and non-contributory.

(b) The Provider's general liability insurance coverage shall include broad form property damage liability, products/completed operations liability and broad form contractual liability. The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion.

2. Workers' Compensation

Host will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

3. Property Loss

Provider shall carry adequate property loss insurance on the Project which need not be covered by the Host's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion, but not less than \$1,000,000/\$2,000,000.

4. Professional Liability Insurance

Provider or its subcontractors shall carry Professional Liability insurance covering errors and omissions, not less than \$1,000,000 each occurrence and \$1,000,000 aggregate limit.

5. Additional Insurance Provisions

Host shall furnish Provider with certificates of insurance and endorsements of all required insurance as currently maintained by Host, as may be reasonably requested, including for

purposes of compliance with any Applicable Law or Local Electric Utility affecting the Premises or operation of the Project. Insurance required by the Local Electric Utility shall not be canceled except after (30) days prior written notice has been given to the Local Electric Utility.

5. Additional Installation Contractor Requirements

Installation contractors will have valid commercial general liability, workers compensation, and business auto insurance as follows:

- Commercial general liability insurance will be in the following amounts: \$1,000,000 for each occurrence and \$2,000,000 aggregate.
- Workers compensation insurance or self-insurance indicating compliance with any applicable labor codes, laws or statutes, state or federal, where Installer performs work.
- Auto coverage not less than 1 million dollars (\$1,000,000) each accident for bodily injury and property damage, and 1 million dollars (\$1,000,000) in the aggregate.
- Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance for Commercial General Liability, Auto Liability and Employers' Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and one million dollars (\$1,000,000) in the aggregate. The amounts of insurance required for Commercial General Liability, Auto Liability, Employers' Liability and Excess Liability may be satisfied by Installer purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.
- Installer's insurance shall include the City of Marlborough as an additional insured and shall be primary and non-contributory.

EXHIBIT H
FORM OF LEASE

This Lease (the "Lease" or the "Agreement") is made and entered into as of _____, _____, by and between _____ ("**Host**"), and Solect Energy Development, LLC, ("**Solect**" or "**Provider**") a Limited Liability Company located in Hopkinton, Massachusetts (together, the "**Parties**").

WHEREAS, Host and Provider have entered into a Power Purchase Agreement dated as of _____, _____, (the "**PPA**") and pursuant to such agreement Host has agreed to provide Provider with rights to access and use certain portions of Host's property located at _____. All terms used herein which are not otherwise defined shall have the meanings set forth in the PPA.

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

1. Premises and Related Rights. Effective _____, _____, Host hereby leases to Provider, in accordance with the terms and conditions set forth in the Power Purchase Agreement dated on or about the date hereof between Host and Provider ("PPA" or "Agreement"), the Premises. Host hereby also grants to Provider, for a period co-terminus with the Lease, a non-exclusive right-of-way to access the Premises across or through any surrounding or nearby properties owned or leased by Host, passage through which is necessary or convenient to install or gain access to the Project or the Premises provided same does not interfere with Host or any of Host's contractors, employees, students, invitees or public officials. Provider shall be responsible to determine, as part of its due diligence following the Effective Date, the availability and suitability of such access. Notwithstanding the foregoing, access to the Premises for the installation of the Project shall be in accordance with a schedule to be agreed upon by the Parties, and access to the Project after installation shall be permitted only upon advance notice to Host, except in the event of an emergency posing a threat to the public health and safety.

2. Project Construction, Installation and Operation.

(a) Host hereby consents to the construction of the Project by Provider on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. The Project shall be designed, engineered, and constructed in accordance with the standards, terms and conditions set forth in the Agreement.

(b) Provider shall also have the right from time to time during the term hereof with reasonable care and subject to the standards, terms and conditions of the Agreement:

- (i) to install and operate the Project on the Premises;
 - (ii) to maintain, clean, repair, replace and dispose of part or all of any Project (in the case of replacement and disposal, with Host's written consent);
 - (iii) to add or remove any parts of the Project (with Host's written consent);
- and
- (iv) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Provider, to carry out the activities set forth in this Section 2.

(c) Host acknowledges that the installation of all or a portion of the Project will require installation and physically mounting and adhering parts of the Project to the building, structure and fixtures appurtenant to the Premises and consents to such mounting or adhering, as applicable, provided the same is done in accordance with and subject to the terms of the Agreement, including adherence to roof warranty requirements. Should the installation, operation or removal of the Project cause damages to the Premises, Provider shall be responsible to repair the Premises according to the terms of the Agreement to the condition the same were in on the date hereof, normal wear and tear excepted.

3. Project and Output Ownership.

(a) Host acknowledges and agrees that Provider or one of its affiliates is the exclusive owner and operator of the Project, and that all equipment comprising the Project shall remain the personal property of Provider and shall not become fixtures.

(b) Host acknowledges that Provider is the exclusive owner of electric energy generated by the Project and owner of all environmental attributes and tax attributes attributable to the Project.

4. Representations and Warranties, Covenants of Host.

(a) Host's Title to Premises. Host represents that Host has lawful title to (or a valid leasehold interest in) the Premises and that, so long as Provider is not in breach of the Agreement and subject to such conditions as are contained therein, Provider shall have quiet and peaceful possession of the Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Provider's quiet enjoyment thereof, throughout the term of this Lease.

(b) No Interference With and Protection of Project. Other than the activities that Host presently conducts at and about the Premises, and subject to requirements of Applicable Laws and according to the terms of the Agreement, Host will not conduct discretionary activities

on, in or about the Premises, the Building or the Premises that have a reasonable likelihood of causing material damage, impairment or otherwise materially and adversely affecting the Project.

(c) Utilities. Provider shall be responsible for paying for Station Power during the term of this Lease. For purposes of this Lease “Station Power” shall mean electric energy consumed in the start-up and operation of the Project, which is distinct from the alternating current output of the Project.

(d) Insolation. Subject to the requirements of Applicable Law, Host shall not construct or permit to be constructed any structure on the Premises that could materially and adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation other than those that may be emitted from the normal operation of the buildings presently located on or about the Premises or from vehicular traffic.

(e) Notice. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the Project or interruption in the supply of electricity from the Project. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Host shall have no duty or obligation to monitor, observe or check upon the Project or its operation; Host shall have the right, but not the obligation, to address any emergency condition arising from the Project that Host in good faith believes presents or will likely present a threat to public health and safety; and any good faith failure of Host to provide the notification required in this paragraph shall not constitute a default or breach of the Agreement by Host.

5. Representations and Warranties, Covenants of Provider.

(a) Hazardous Materials. In addition to the other terms and conditions of the Agreement concerning Hazardous Materials, Provider shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Provider becomes aware of any such hazardous, toxic or dangerous materials, Provider shall promptly notify Host of the type and location of such materials in writing. Provider agrees to assume full responsibility for (and protect, indemnify and defend Host against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Building or the Premises that are attributable to the willfully negligent actions of Provider.

(b) Regulatory Status. Provider represents and warrants that it is not a public service company, electric company, or electric distribution company as defined under the laws of the commonwealth of Massachusetts.

6. Term and Termination. The term of this Lease shall be coterminous with the PPA (the “Term”), including any extensions thereof, but in no case more than thirty (30) years from the date of execution of this Agreement by both parties. Upon expiration or earlier

termination of the Agreement, unless the Agreement is extended by agreement of the Parties in accordance with any terms allowing for the same in the PPA, Provider shall remove the Project and any part thereof, at Provider's expense, and shall repair any damage caused by the Project or its removal except for normal wear and tear and Host shall allow Provider access to the Premises for such purposes. Should the Parties agree to transfer Project ownership through a Purchase Agreement, Provider will not remove the Project from the Premises.

7. **Taxes.** Provider and Host intend to enter in to a Payment In Lieu of Taxes agreement.

8. **Casualty or Condemnation.** As provided in Section 17(c) of the PPA, in the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Host and Provider, Host shall determine whether to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, subject to the availability of insurance proceeds dedicated to such purpose, and shall so notify Provider upon such determination. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

9. **Architectural, Engineering, Construction or Attorney's Fees.** If Host determines that Provider is in material breach of this Lease, Host shall treat such breach as a Provider Event of Default and may proceed in accordance with the provisions of Section 19(a)(iv), subject to any Financing Party's rights in Section 21(a)(ii) and (iii). If Host or any Financing Party, as the case may be, fails to cure such material breach of this Lease and Host makes any expenditures, including but not limited to architectural, engineering, construction or attorney's fees or incurs any obligations for the payment of money in connection with any Provider material breach of this Lease,, such costs shall be reimbursed to Host by Provider upon ten (10) days advanced written notice, in addition to any other damages incurred by Provider on account of such material breach.

10. **Recording.** This Lease shall not be recorded, but Host and Provider shall execute a recordable form Notice of Lease complying with Massachusetts law and satisfactory to Provider, to be recorded at Provider's sole expense.

In WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

GRANTOR:

By: _____

Name: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____

SITE and PREMISES DESCRIPTION

ATTACHMENT B

EXISTING ENCUMBRANCES

POWER PURCHASE AGREEMENT

For

City of Marlborough Francis J. Kane Elementary School

Dated as of

between

City of Marlborough
140 Main Street
Marlborough, Massachusetts 01752

And

Solect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“**Agreement**”) is entered into as of _____, _____, by and between City of Marlborough (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host is a member of the PowerOptions Consortium, an energy-buying group purchasing program authorized to administer such program on behalf of Massachusetts Clean Energy Center (“MassCEC”), organized by PowerOptions, Inc. (“**PowerOptions**”), a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts and the Internal Revenue Code that assists its members with procuring energy products and energy-related services for facilities they own and/or operate pursuant to M.G.L. c.164, § 137;

WHEREAS, Provider and PowerOptions have entered into an agreement dated September 1, 2015 which has been extended to June 30, 2020 governing the terms and conditions of Provider’s participation in the PowerOptions Small Solar Program;

WHEREAS, Host is the owner of the properties located and described in Exhibit C and desires to make a portion of such properties available to Provider for the construction, operation and maintenance of a solar powered electric generating Project, and to purchase from Provider the electric energy produced by the Project; and

WHEREAS, Provider desires to develop, design, construct, own and operate the Project located at and described in Exhibit C, and sell to Host the electric energy produced by the Project.

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

1. DEFINITIONS. Certain capitalized terms used in this Agreement have the meanings set forth in the attached GLOSSARY OF TERMS.

2. TERM.

(a) Term. This Agreement shall consist of an Initial Period and an Operations Period. As used herein, “Term” shall mean all of the Initial Period and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement, but any such termination shall not terminate any provisions hereof that expressly survive such termination

(b) Initial Period. The Initial Period will begin on the date set forth above (date of signed Agreement) and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Section 4(b) or 4(d).

(c) Operations Period. The Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs, or such earlier date when this Agreement is terminated.

(d) Extensions. Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

(e) Early Termination by Host. If Host terminates the Agreement prior to the Expiration Date, Host shall pay, as liquidated damages, the Early Termination Amount set forth on Exhibit B (except as otherwise provided in this Section or Sections 9, 17, or 19, and Provider shall cause the Project to be disconnected and removed from the Premises. Upon Host's payment to Provider of the Early Termination Amount, the Agreement shall terminate automatically, provided that the Provider shall continue to have a duty to relocate the Project and restore the Premises. Notwithstanding the foregoing, Host may (i) terminate this Agreement with no liability whatsoever if Provider fails to commence construction of the Project by the Construction Start Date or (ii) if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$15/kW, plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Host to return its Premises to its condition prior to commencement of the Installation Work if Provider fails to do so within a reasonable time. Further, Host may terminate this Agreement with no liability whatsoever if Provider fails to commence Commercial Operations by the date that is 60 days after the Guaranteed Commercial Operation Date. The Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if, notwithstanding Provider's commercially reasonable efforts, interconnection approval is not obtained within 60 days after the Effective Date.

3. ACCESS RIGHTS.

(a) Access Specifications. Host hereby grants Provider and its designees (including Installer) access to the Premises, for the Term and for so long as needed (but not more than 100 calendar days) after termination to remove the Project pursuant to the applicable provisions herein, at reasonable times and upon reasonable notice (except in situations where there is imminent risk of damage to persons or property), for the purposes of designing, installing, inspecting, operating, maintaining, repairing, and removing the Project, and any other purpose

set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access Rights with respect to the Site include without limitation:

(i) Vehicular & Pedestrian Access. Reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing, and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(ii) Utilities & Communication Cables. The right to locate distribution utility and/or electrical lines and communications cables across the Site as designated on Exhibit D. The location of any such electrical lines and communications cables outside the areas designated on Exhibit D shall be subject to Host's approval and shall be at locations that minimize any disruption to Host's activities occurring on the Site. Access will also be provided for Telephone and internet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

(iii) Provider (including Installer) acknowledges that the Premises are the site of the Host's School, and its Access Rights may be limited as necessary to avoid disruption or interference with educational programming and professional workday. Access rights shall conform to the Host's access rules and a construction plan agreed to by the Parties prior to the Construction Start Date. Provider shall comply with all applicable city ordinances and regulations.

(b) Remote Monitoring. Host will provide an internet portal or equivalent access by means of which Provider will communicate data from the revenue grade performance monitoring system. Provider will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Provider and Host to remotely monitor the Project.

(c) Access to Premises. For the Term of this Agreement, Host hereby grants to Provider all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance, repair, and removal of the Project pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the Project with the Premises' electrical wiring. Host hereby covenants that (i) Provider shall have access to the Premises and Project during the Term of this Agreement and for so long as needed after termination (but only up to 100 calendar days) to remove the Project pursuant to the applicable provisions herein, and (ii) Host shall not interfere or handle any Provider equipment or the Project without written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work or Project removal.

(d) No Interference. Host agrees not to conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage or impairment to, or otherwise adversely affecting, the Project. Host shall take all reasonable steps to limit access to the Project to Provider, Installer, its employees, contractors or subcontractors. Host shall implement and maintain reasonable and appropriate security measures at the Premises to prevent Host's

employees, invitees, agents, contractors, subcontractors and other third parties from having access to the Project and to prevent theft, vandalism or other actions from occurring that have a reasonable likelihood of causing damage, impairment, or other adverse effect on the Project. Notwithstanding anything to the contrary provided above, Provider agrees that Host may conduct inspection, maintenance, and repairs of the Site roof and any HVAC or other building equipment thereon as reasonably necessary to comply with all warranties and ensure the proper functioning thereof, and that such activities shall not be deemed interference.

(e) Temporary storage space during installation or removal. Host shall provide sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, Operations Period or Project removal, and access for rigging and material handling. Provider shall be responsible for providing shelter and security for stored items during construction and installation. Host reserves the right to require Provider to change the location of the stored items to improve security if in the Host's reasonable discretion, such items pose a hazard to persons or property. Upon completion of the Installation Work, Provider shall remove all equipment, tools, materials and debris and restore the temporary storage Space to its previous condition.

(f) Recording Provider's Lease. Provider may record (at its expense) a Notice of Lease in the land records regarding its Access Rights under this Agreement

4. PLANNING, INSTALLATION AND OPERATION OF PROJECT.

(a) Site Assessment and Planning. During the Initial Period, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project. The Provider, at its own cost shall perform and determine a structural analysis of the Host's site by a licensed professional structural engineer to determine feasibility, safety, and to ensure the proper install, maintenance, and operation of the solar system. Provider shall provide a copy of structural engineering analysis to Host prior to commencement of Construction.

(b) Termination of Development Activities by Provider. At any time during the Initial Period, Provider shall have the right to cease development of the Project on the Premises if: (i) Provider determines that the Premises, as is, is insufficient to accommodate the Project; (ii) there exist site conditions or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or

would adversely affect the electricity production from the Project as designed; or (iii) there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the Project on the Premises. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(c) Commencement of Construction, Modification of Design. At a time coordinated with the Host during the Initial Period, upon at least ten (10) Business Days notice to Host, Provider shall have the right to commence installing the Project on the Premises.

(i) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.

(ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its sole discretion, may determine, provided, however, that such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, without Host's approval.

(d) Construction Commencement Deadline. If Provider has not commenced the installation of the Project on the Premises before the Construction Start Date (not including any days in which a Force Majeure Event existed, or were delayed by the local electric delivery company, AHJ, or state regulators), Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate twenty-one (21) days after Provider's receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other with respect to the Facility, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(e) Contractors. Provider shall use licensed and insured contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, in Provider's sole discretion. Provider shall advise Host of the Installer prior to commencement of the work

on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit G.

(f) Status Reports, Project Testing, Commercial Operation. Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Testing shall be conducted in accordance with guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Host shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of and has been approved for interconnection by the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis for at least four (4) continuous hours, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host.

(g) Standard of Operation. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Host and Host's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(h) Hazardous Materials. Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the

Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical. Provider shall not introduce to the Site any Hazardous Materials and, in the event that it does so, shall be solely responsible and liable for remediation in accordance with Applicable Law, and pursuant to the direction of the Host and any Governmental Authority with jurisdiction over the Site.

(i) Site Security. Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Project. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations. Notwithstanding anything to the contrary, except in the case of gross negligence or willful action/inaction on the part of Host's security, Provider shall bring no claim against Host based upon performance of Host's security personnel.

(j) Provider System Shut Down. Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown unless the performance guarantee in Section 5(c) is not met. Provider and Host will agree upon a reasonable shut down duration. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

(k) Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the Project and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(i) Installation. Provider shall maintain and test the meter in accordance with but not limited to Applicable Law and as provided herein. Provider shall ensure that the meter is installed and calibrated correctly to manufacturer and/or utility specifications during commissioning of the Project.

(ii) Measurements. Readings of the meter shall be conclusive as to the amount of electric energy delivered to Host; provided that if the meter is out of service, is discovered to be inaccurate pursuant to Section 4(l)(iii) below, or registers inaccurately, measurement of energy shall be determined by estimating by

reference to quantities measured during periods of similar conditions when meter was registering accurately.

(iii) Testing and Correction.

A. Host's Right to Conduct Tests. Each Party shall have the right to witness each test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the meter. Provider shall provide at least twenty (20) days prior written notice to Host of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall provide Host with copies of such written report and the underlying supporting documentation not later than thirty (30) days after completion of such test. Provider shall bear the cost of the annual testing of the meter and the preparation of the meter test reports.

B. Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:

(1) If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.

(2) Provider shall, within thirty (30) days after receiving such notice from Host, or Host shall, within such time after having received such notice from Provider, advise the other Party in writing as to its position concerning the accuracy of such meter and state reasons for taking such position.

(3) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the meter to be tested by an agreed upon and disinterested third party.

(4) If the meter is found to be inaccurate by not more than two percent (2%), any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter shall bear the cost of inspection and testing of the meter.

(5) If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any meter found to be inaccurate to be: replaced or adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 4(l)(ii) or (iii), and (3) Provider shall bear the cost of inspection and testing of the meter and reimburse or credit Host if Host was the disputing Party. If as a result of such adjustment the quantity of energy for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Provider shall reimburse or credit Host for the

amount paid by Host in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the meter. If as a result of such adjustment the quantity of energy for any period is increased (such quantity, the "Electricity Surplus Quantity"), Host shall pay for the Electricity Surplus Quantity at the price applicable during the applicable period.

(iv) No Duty on Host. Notwithstanding the foregoing, the Parties acknowledge and agree that the Host is under no responsibility or duty to ascertain, to inspect or to otherwise determine whether the meter or any other part of the Project is out of service, is discovered to be inaccurate or registers inaccurate readings; is malfunctioning or is otherwise defective, it being agreed that at all times such responsibility or duty shall remain with the Provider.

(v) Operations Manual: Training of Host Facilities Staff.

Within 60 days of Commercial Operation Date, and prior to Host's acquisition of the Project if Host chooses to exercise the Purchase Option as provided in Section 9 hereof, Provider shall deliver to Host a current operation, maintenance and parts manual for the Project including as-builts stamped by a Massachusetts registered professional engineer. In addition, in either case, Provider will train Host's representative(s) on operations and monitoring (for informational purposes only) and emergency preparedness and response, it being acknowledged by Host that Host shall not operate the Project, except in the case of an emergency where immediate action on the part of the Host is reasonably necessary for the protection of persons or property. In the event of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons, Host may, but is not obligated to, shut down or disconnect the Project and provide notice to Provider as soon as reasonably possible, and in any event within twenty-four (24) hours following such emergency, but otherwise Host shall not be permitted to perform any maintenance or repair on the Project.

(vi) Prevailing Wages. Provider shall pay, and require the Installer and all subcontractors to pay, prevailing wages for the Installation Work on the Project, and comply with all Applicable Law related thereto.

(vii) No Voiding Of Existing Roof Warranties. Provider shall ensure that the Project is designed and constructed so that no existing roof warranty is voided on account of the installation of the Project. Developer shall consult, as may be necessary, with any company that has provided such roof warranty to the Host. Upon request, Host shall provide to Provider a copy of any applicable warranty.

(viii) Display of Production Monitoring Data. Provider shall share with Host a website that displays Solar Project production data, upon the Commercial Operation Date.

5. SALE OF ELECTRIC ENERGY.

(a) Sale of Electricity. Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all

electric energy produced by the Project, whether or not Host is able to use all such electric energy. The Point of Delivery of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery. Provider shall own the Capacity Value of the Project. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host. The interconnection point of Project with the Local Electric Utility shall be indicated in Exhibit E.

(b) Performance Guarantee. Beginning on the Commercial Operation Date and as of each anniversary thereof, if the Project produces less than eighty-five percent (85%) of the applicable Estimated Annual Production specified in Exhibit F, unless, and then only to the extent that, the failure to meet the Estimated Annual Production is due to (a) failure, damage or downtime attributable to third parties or Host, (b) equipment failure or delayed repair of equipment due to the claims process with the equipment manufacturer which are beyond the reasonable control of Provider, (c) a Force Majeure Event, (d) variability due to weather as documented by software used in calculating the Estimated Annual Production, (e) acts or omissions of Host of any of its obligations hereunder, or (f) any Host Requested Shutdown, Provider Safety Shutdown or Project Relocation under Section 10(a), (b), or (c); in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average applicable tariff rate per kWh that Host would have paid for full requirements, delivered electric service from its Local Electric Utility during such period minus the applicable kWh Rate specified in Exhibit A, multiplied by (ii) the difference between the actual Project Output during such 12-month period and eighty-five percent (85%) of the Estimated Annual Production for such period.

6. PAYMENT AND BILLING.

(a) Rates. Host shall pay Provider for electricity produced by the Project at the rates set forth in Exhibit A attached hereto.

(b) Billing. Host shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

(c) Invoice Delivery. Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email, addressed as follows:

To Host: City of Marlborough
c/o Dept. of Public Works
Attn: Facilities Division
135 Neil Street
Marlborough, Massachusetts 01752

(d) **Payment.** Host shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed by applicable law.

(e) **Disputed Invoices.** If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Host may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreement.

7. SUPPLEMENTAL POWER

(a) **Back-up and Supplemental Electricity.** Except as otherwise provided herein, throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

(b) **Interconnection and Interconnection Fees.** Provider shall be responsible for arranging the interconnection of the Project with Host's Local Electric Utility in a manner which includes bi-directional or "net metering". Provider shall be responsible for all costs, fees, charges and obligations required to connect the Project to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Host be responsible for any Project Interconnection Obligations.

(i) **Net Metering.** The Parties will work cooperatively and in good faith to meet all Net Metering requirements under Applicable Law, the Applicable Solar Program and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., Massachusetts tariff Schedule Z). In the event that the Project produces a production excess,

then the Parties agree that (a) Host shall be entitled to the associated Net Metering Credits, (b) Provider shall transmit such Production Excess into the Local Electric Utility system on behalf of and for the account of Host, and (c) Host (or its designee) shall be entitled to any and all Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

(c) Applicable Solar Program Incentives. Provider shall receive all payments available under any Applicable Solar Program. Host shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Host receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this Section 7(c) is limited to any payments actually received by Host.

(d) Ownership of Tax Attributes. Provider (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the ownership and operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

(e) Environmental Attributes. Except as otherwise provided for under Applicable Law, or Applicable Solar Program rules, or the applicable tariff of the Local Electric Utility, Provider (and/or Financing Party) shall be the owner of any Environmental Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person. If the local electric company is entitled to the Environmental Attributes, Provider shall be entitled to incentive or compensation provided by the Applicable Solar Program in exchange for the Environmental Attributes. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider.

(f) Capacity & Ancillary Services. Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Project. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

(g) Neither Party is a Utility. Neither Party shall assert that the other Party is an electric utility or public service company or similar entity that has a duty to provide service, is

subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Provider's and Host's obligations or performance under this Agreement.

8. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES

(a) Permits. Provider shall pay for and obtain all approvals from governmental entities and/or electric utility companies necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval.

(b) Project Ownership. Except as provided in Section 9, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

(c) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens") and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

(d) Non Disturbance Agreements. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host shall promptly upon request of Provider, provide an acknowledgement and consent

from such lienholder, in form and substance reasonably acceptable to Provider (and/or Financing Party), stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's (and/or Financing Party's) rights in the Project and the Access Rights.

9. PURCHASE OPTIONS; REMOVAL AT END OF TERM.

(a) Early Purchase Option. Host shall have the option to purchase the Project at intervals listed in Exhibit B, consistent with the greater of either (i) the applicable value identified in Exhibit B or (ii) the Fair Market Value of the System as determined by mutual agreement of Host and Provider; provided, however, if Host and Provider cannot agree to a Fair Market Value within twenty (20) days after Host has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project. If Host desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Provider of its election to exercise the option, and on or before such anniversary date shall pay the purchase price to Provider.

(b) End of Term Purchase Option. Host shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project at the end of the Term. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, the Parties will engage and share the costs equally of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project consistent with the terms of the transaction. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project and shall be undertaken consistently with the terms of such

transaction so that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

(c) Transfer of Ownership. Upon Host's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, and any applicable Environmental Attributes if legally able, or portions thereof, to Host.

(d) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(e) No Survival of Purchase Option. The options for Host to purchase the Project under Sections 9(a) and 9(b) shall not survive the termination of this Agreement.

(f) Removal of Project at Expiration. Subject to Host's exercise of its purchase option under Section 9(a) or 9(b), upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the Project from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the Project is to be located on a roof, then in no case shall Provider's removal of the Project affect the integrity of Host's roof, which shall be as leak proof as it was prior to installation of Project (other than ordinary wear and tear). For purposes of Provider's removal of the Project, Host's covenants pursuant to Section 16 shall remain in effect until the date of actual removal of the Project. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the Project by such agreed upon date, Host shall have the right, at its option, to remove the Project to a public warehouse or storage facility within a reasonable distance from the Site, if Provider has identified same and entered into an agreement to pay any and all costs for System storage, and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost. If the Provider fails to remove the Project within one hundred (100) days, Host shall have the right, upon written notice to the Provider, to draw on the financial assurance to reimburse Host for reasonable costs it incurs in removing the Project and restoring the Premises.

(g) Decommissioning Assurance. No later than the beginning of the nineteenth (19th) year of the Operations Period, Provider shall establish the Decommissioning Assurance, and shall select the form and amount of such Decommissioning Assurance, subject to the approval of Host, not to be unreasonably withheld, conditioned or delayed. Failure to timely establish and/or fund in accordance with this paragraph such Decommissioning Assurance shall constitute

a Provider Event of Default, for which the Host shall be entitled to exercise any of the remedies for default afforded under Section 19

(g) Provider shall post City's Notice of Non-Responsibility on the Premises as required by the City.

10. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE.

(a) Host Requested Shutdown. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days or a predetermined date mutually agreed upon by both the Host and Provider, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology. For the purpose of this clause, the Parties agree that during years 4 through 20 (but not years 1 through 3) of the Term of the Agreement, Host shall be afforded a total of fifteen (15) days which may be used consecutively or in periods of at least twenty-four hours each ("Allowed Disruption Time") during which the Project shall be rendered non-operational by Provider. Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes and Tax Attributes.

(b) Provider Safety Shutdown. In addition to the right of Provider to shut down the Project for maintenance as provided in Section 4(j), Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(c) Project Relocation. Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider and Financing Party in each of their sole discretion but not to be unreasonably withheld provided the alternate location is structurally sufficient and capable of substantially equivalent electric generation. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, during the Relocation Event, Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following the Relocation Event; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

(d) Premises Shutdown; Interconnection Deactivated. In the event Premises are closed as a result of an event that is (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall be excused for the period of deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider such that the Project is no longer able to produce electricity or transfer electricity to its respective Premises or to the Local Electric Utility, Host will be excused for the period of Interconnect deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery

(e) Sale of Site. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Host may be released from further obligations under this Agreement.

11. TAXES.

(a) Income Taxes. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Host shall be responsible for all applicable taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it by any Governmental Authority. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and Host shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(c) Property Taxes. Provider shall be responsible for ad valorem personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host for such tax. Provider and Host intend to enter into a Payment In Lieu Of Taxes agreement.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice from the Party who paid the taxes.

12. INSURANCE.

(a) Coverage. Host and Provider shall each maintain the insurance coverage set forth in Exhibit G in full force and effect throughout the Term. Host and Provider shall also provide any additional insurance which may be required from time to time by any legal or regulatory authority affecting the Premises or operation of the Project.

(b) Insurance Certificates. Each Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party written notice before the insurance is cancelled or materially altered.

(c) Certain Insurance Provisions. Each Party's insurance policy shall be written on an occurrence basis, and Provider shall include the Host as an additional insured as its interest may appear. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

(d) Insurance Providers. All insurance maintained hereunder shall be maintained with companies approved to do business in Massachusetts, and rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

13. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS.

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Host to Not Restrict Solar Access. Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

(c) Adjoining Properties. If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Host for electric energy from the Project shall be increased by an amount sufficient for Provider to fully amortize such costs, over a period equal to the lesser of (i) ten years or (ii) the remaining term of this Agreement without regard to Host's option to purchase the Project.

14. PRESS RELEASES

(a) Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other

Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at its sole discretion, take photographs of the installation process of the Project and/or the completed Project, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state. Only Provider has the exclusive right to claim that (i) electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement.

15. INDEMNIFICATION.

(a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, students, volunteers, and invitees ("Host's Indemnified Parties"), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of negligence or willful misconduct of Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (ii) violation of Applicable Law by Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utility or Applicable Law; or (iv) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or Installer or any of their employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Host's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

(b) Host Indemnification. The Parties agree that Host does not provide in this Agreement any express or implied indemnifications to Provider. Provider does not waive and retains any rights available to it under M. G. L. c. 258 or other Applicable Law for (i) any claim for or arising out of any injury to or death of any person or loss or damage to property to the extent arising out of Host's negligence or willful misconduct; (ii) Host's violation of Applicable Law; or (iii) the existence of or failure to properly handle or dispose of any Hazardous Materials on the Site other than

Hazardous Materials brought on to the Site by Provider or any of Provider's employees, agents, contractors, volunteers or visitors.

(c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the “Notice of Claim”). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(d) Defense of Claims. The Indemnifying Party has the right, but not the obligation to assume the defense of the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by the Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

(e) Payments. At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.

(f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

16. REPRESENTATIONS AND WARRANTIES.

(a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

(i) Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(iv) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) Host Representations. In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of date hereof, that:

(i) Condition of Premises. Host has provided to Provider Host's records of the physical condition of the Premises, for informational purposes only, without certifying accuracy or completeness. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project are to be installed, are materially different from the records presented by Host and from conditions reasonably visible to Provider during site visits prior to executing this Agreement, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.

17. FORCE MAJEURE.

(a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall 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 Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Excepting a Force Majeure Event which impacts business or banking transactions nationally or globally, in which case such obligations shall be suspended but not excused, obligations to make payments for services provided prior to the Force Majeure Event shall not be excused by a Force Majeure Event.

(c) Restoration. In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(d) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Section 9(f) (unless there has been a casualty event, in which case the provisions of clause (c) above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

18. CHANGE IN LAW.

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will submit to Host and PowerOptions within 60 days a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then

applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future prices such that the new prices compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider; provided, however any such increase shall be no greater than ten percent (10%) of the prices set forth in Exhibit A for the Term of this Agreement.

19. PROVIDER DEFAULT AND HOST REMEDIES.

(a) Provider Events of Default. Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Provider under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(ii) Abandonment During Installation. After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project.

(iii) Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of governmental authority or local electric distribution company, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(iv) Obligation Failure. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(v) Insolvency. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally

unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Financing Party Opportunity to Cure; Host Remedies. Upon a Provider Event of Default, provided that Provider or Financing Party does not cure such Event of Default by Provider, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue any and all other remedies available at law or equity.

20. HOST DEFAULT AND PROVIDER REMEDIES.

(a) Host Events of Default. Host shall be in default of this Agreement if any of the following (“Host Events of Default”) shall occur:

(i) Misrepresentation. Any representation or warranty by Host under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(ii) Obstruction. Host unreasonably obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within fifteen (15) days after receiving written notice from Provider with respect to such act or omission.

(iii) Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.

(iv) Obligation Failure. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the

benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Default Damages. Upon a Host Event of Default, Provider may terminate this Agreement and require Host to pay to Provider the Early Termination Amount; or continue to operate the Project and sell electricity produced by the Project to persons other than Host, and recover from Host any documented loss in revenues resulting from such sales versus the amount of revenues to be earned under this Agreement; and/or pursue other remedies available at law or in equity. If necessary to sell electricity to persons other than Host, Host shall allow Provider to add a new meter dedicated to the solar Project, change the point of interconnection, and/or will support Provider with necessary approvals to change the Schedule Z. After Provider's receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

(c) Survival of Access Rights and Lease. Upon a Host Event of Default, unless Host pays the Early Termination Amount to Provider in full thus terminating this PPA, Provider may, in its exercise of remedies pursuant to Section 20(b), make continued use of, and Host may not terminate: (i) the access rights granted in Section 3 for access to and use of the Site in connection with Provider's use of the Premises; and (ii) the Lease referenced in Section 3(f), and Provider's use of such rights and interests shall continue until the twentieth (20th) anniversary of the Commercial Operation Date as shall the duties of Provider to decommission the facility in accordance with Section 9(f). Provider shall not be obligated to pay any rent or other consideration for the use of such rights or interests.

21. COLLATERAL ASSIGNMENT, FINANCING PROVISIONS.

(a) Financing Arrangements. Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host, which shall not be unreasonably withheld, conditioned or delayed, provided, however that Provider may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Project. Further, Host acknowledges that Provider may obtain construction financing for the Project from a third party and that Provider may either obtain term financing secured by the Project or sell or assign the Project to a Financing Party or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Host acknowledges that in connection with such transactions Provider may secure Provider's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Project. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Host agrees as follows:

(i) Consent to Collateral Assignment. Host hereby consents to both the sale of the Project to a Financing Party and the collateral assignment to the Financing Party of the Provider's right, title and interest in and to this Agreement.

(ii) Rights of Financing Party. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Financing Party, as owner of the Project, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Project;

(B) Opportunity to Cure Default. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Project by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the

right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Financing Party a Third Party Beneficiary. Host agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 21.

(c) Entry to Consent to Assignment. Host agrees to (i) reasonably execute any consents to assignment or acknowledgements, provided any such assignment does not impair Host's rights under this Agreement and (ii) provide such opinions of counsel as may be reasonably requested by Provider and/or Financing Party in connection with such financing or sale of the Project.

22. LIMITATIONS ON DAMAGES.

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (including, without limitation, in Sections 10, 19(b) and 20(b)), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

23. DISPUTE RESOLUTION.

(a) Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.

(b) Jurisdiction, Venue, and Jury Trials. If despite the efforts, if any, to negotiate, the Parties do not resolve the Dispute within the negotiation period described above, then each Party irrevocably consents to the exclusive jurisdiction of the state and federal courts sitting in Massachusetts, in connection with any action related to the Dispute. Each Party agrees that process may be served upon it in any manner authorized by law and that it waives all objections which it might otherwise have to such jurisdiction and process. Further, each Party irrevocably waives all of its rights to a trial by jury with respect to any such action.

(c) Survival of Dispute Provisions. The provisions of this Section 23 and Section 25 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

24. NOTICES.

Delivery of Notices. All notices or other communications which may be or are required to be given by any Party to any other Party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Host:

City of Marlborough
140 Main Street
Marlborough, MA 01752
Attention: Mayor's Office

With a copy to: legal@marlborough-ma.gov

If to Provider:

Sollect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748
Attention: Legal Notices
Email: _____
Facsimile: _____

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

25. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23, and the court will modify the unenforceable provision in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Except as provided in Section 21(a), neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement in accordance with Section 21. For purposes of this Section 25(e), transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is

the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement.

(f) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

(h) Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

(i) CORI. With respect to Projects to be installed at Massachusetts public schools, the Host shall have the right to conduct a check of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Board, and the Massachusetts Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board, for any officer or employee of the Provider or Installer, or of a subcontractor of the Provider or Installer, who will work at the Premises. Provider shall provide to Host the names and identification of all such persons. Notwithstanding any other provision of the Agreement, the Host may refuse to allow any such employee to work on the project if the Host, in its sole discretion, determines that such employee is not suitable for work on the project based on the results of such CORI or SORI. The Host shall keep such information in a confidential file. With respect to Projects to be installed at public schools in other states, similar criminal offender and sex offender information maintained by the state shall apply, and Host shall have discretion regarding employment of such registered offenders.

(j) Notwithstanding anything in this Agreement to the contrary, Host shall have no obligation to assign to Provider any right or interest which gives the Provider greater rights or interests in the Premises or any other property owned or controlled by the Host than the rights and interests contemplated in this Agreement.

(rest of page left blank intentionally – signatures appear on next page)

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

Solect Energy Development, LLC a Massachusetts Limited Liability Corporation

By: _____

Name (printed): _____

Title: _____

HOST, City of Marlborough

**FOR THE CITY OF MARLBOROUGH
BY:**

By: Arthur G. Vigeant

Title: Mayor

Date: _____

DEPARTMENT HEAD:

By: John L. Ghiloni

Title: Commissioner of Public Works

ACKNOWLEDGMENT OF LEASE:

By: Diane Smith

Title: City Auditor

By: Brian Doheny

Title: Comptroller/Treasurer

**CERTIFICATION AS TO
PROCUREMENT LAW:**

By: Beverly J. Sleeper, MCPPO

Title: Chief Procurement Officer

Procurement Law: **M.G.L. c. 164, § 134**

**APPROVED AS TO FORM BY LEGAL
COUNSEL:**

Jason D. Grossfield

Title: City Solicitor

OR

Jason M. Piques

Title: Assistant City Solicitor

GLOSSARY OF TERMS

“Access Rights” means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Agreement” means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

“Applicable Solar Program” means the state laws, rules, and regulations that govern the solar incentives, rights and obligations (e.g., SRECs), as may be amended from time to time, by the authorities having legal jurisdiction where the Project will be installed and where the benefits will be realized.

“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

“Capacity Value” means such capacity value as determined by market rules established by ISO-NE. Provider is the owner of the capacity value of the Project and shall have the right to participate in ISO-NE’s Forward Capacity market at their discretion through an aggregator or as an ISO-NE Market Participant. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host.

“Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

“Commercial Operation Date” means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully

completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

“Construction Start Date” means day within 180 days from the date of this Agreement.

“Decommissioning Assurance” means financial security in the form of an escrow account, letter of credit, bond or other form of security reasonably acceptable to the Parties, in a sufficient amount to cover removal of the Project from the Premises and restoring the Premises to substantially its pre-construction condition existing on the Commencement Date, ordinary wear and tear excepted, as certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts..

“Delay Liquidated Damages” means the daily payment of (i) \$0.250/day/kW if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Dispute” means a controversy or claim arising out of or relating to this Agreement.

“Early Termination Amount” means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes.

“Electric Service Provider” means any person, including the Local Electric Utility, authorized by the State of Massachusetts to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

“Estimated Annual Production” means the annual estimate of electricity generated by the Project for any given year. The Estimated Annual Production for each year of the Term is set forth in Exhibit F.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment

shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

“Financing Party” means a Project Lessor or Lender.

“Force Majeure Event” means any act or event that prevents the affected Party 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 the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Guaranteed Commercial Operation Date” means 180 days from the Construction Start Date, which shall be extended day-by-day for Force Majeure Events and for other events outside of Provider’s reasonable control.

“Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

“Host” means and all successors and assigns.

“Indemnified Person” means the person who asserts a right to indemnification under Section 15.

“Indemnifying Party” means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

“Initial Period” has the meaning provided in Section 2.

“Installation Work” means the construction and installation of the Project and the start-up, testing and acceptance (but not the operations and maintenance) thereof, all performed by or for Provider at the Premises.

“Installer” means Solect Energy Development, LLC, the person designated by Provider to install the Project on the Premises.

“Land Registry” means the office where real estate records for the Site are customarily filed.

“Lender” means persons providing construction or permanent financing to Provider in connection with installation of the Project.

“Liens” has the meaning provided in Section 8(c).

“Local Electric Utility” means the entity authorized and required under Applicable Law to provide electric distribution service to Host at the Site.

“Losses” means any and 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 attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

“Net Metering” means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in Applicable Law.

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by a Project, and credited to the Host by the Local Electric Utility, as set forth in Applicable Law.

“Operations Period” has the meaning provided in Section 2.

“Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

“Party” means either Host or Provider, as the context shall indicate, and “Parties” means both Host and Provider.

“Point of Delivery” has the meaning set forth in Section 5(a) and Exhibit E.

“Premises” means the portions of the Site described on Exhibit D.

“Project” means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.

“Project Lessor” means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.

“Provider” means Solect Energy Development, LLC.

“Relocation Event” means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy Project.

“Site” means the real property described on Exhibit C attached hereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

“Term” shall have the meaning provided in Section 2 hereof.

EXHIBIT A

ENERGY PURCHASE PRICES

As set forth below, the \$/kWh rate will be established upon receipt of the SMART Statement of Qualification from the SMART Solar Program Administrator, on behalf of the Massachusetts Department of Energy Resources. Upon receipt, Provider shall forward a copy to Host, confirming the applicable SMART Block and PPA Rate.

SMART Block 9	SMART Block 10
.1125	.116

Notes:

The price/kWh reflects an annual Payment In Lieu of Taxes (PILOT) amount in the amounts shown on Exhibit B. In the event that the contracted annual PILOT amount differs from the amount in Exhibit B, the Parties agree to adjust the price/kWh in Exhibit A, "Energy Purchase Prices", to reflect the difference in tax payments from the amount assumed in Exhibit B.

The price/kWh reflects 2020 Installation and the corresponding Federal Investment Tax Credit value.

EXHIBIT A-1
Payment Schedule and Amounts

Fiscal Tax Year July 1-June 30	August 1 Payment	November 1 Payment	February 1 Payment	May 1 Payment
Year 1	539	539	539	539
Year 2	525	525	525	525
Year 3	512	512	512	512
Year 4	499	499	499	499
Year 5	487	487	487	487
Year 6	475	475	475	475
Year 7	463	463	463	463
Year 8	451	451	451	451
Year 9	440	440	440	440
Year 10	429	429	429	429
Year 11	418	418	418	418
Year 12	408	408	408	408
Year 13	398	398	398	398
Year 14	388	388	388	388
Year 15	378	378	378	378
Year 16	369	369	369	369
Year 17	359	359	359	359
Year 18	350	350	350	350
Year 19	342	342	342	342
Year 20	333	333	333	333

EXHIBIT B

EARLY TERMINATION AMOUNTS

Year of System Term	Early Termination	Early Purchase
1	\$769,251	N/A
2	\$604,957	N/A
3	\$563,845	N/A
4	\$547,458	N/A
5	\$504,836	N/A
6	\$461,390	N/A
7	\$417,067	\$365,676
8	\$397,273	N/A
9	\$376,492	N/A
10	\$354,663	\$298,506
11	\$331,720	N/A
12	\$309,062	N/A
13	\$285,235	N/A
14	\$260,167	N/A
15	\$233,777	\$168,676
16	\$205,984	N/A
17	\$175,831	N/A
18	\$152,648	N/A
19	\$128,591	N/A
20	\$103,630	\$28,161

EXHIBIT C

DESCRIPTION OF SITE

Marlborough Kane School
520 Farm Road, Marlborough
Map 84/Block 106

Certain parcels of land in Marlborough, Middlesex County, Massachusetts, with the improvements thereon, depicted as Parcel "A" and Parcel "B" on a plan of land titled "Plan of Land in Marlborough Massachusetts owned by Jospeh J. Arcisz (A) & Rudolph H. & Caroline Keyes (B), Scale 1" = 40', June, 1966" and recorded with the Middlesex South Registry of Deeds as Plan 993 of 1966.

EXHIBIT D

DESCRIPTION OF PREMISES

The Premises and the Access Areas shall mean the Site. Locations where solar equipment will be installed and accessed including the roofs, exterior and interior walls, through to the main electric room, and exterior areas of the Site depicted in Site Plan below. The Project will be combined and connected to Host's existing main electric equipment, interconnected to the utility network behind the existing utility meter.

Site Plan – SED – Marlborough Kane Elementary School - 4126 – 179.33 kW DC – 166.6 kW AC 520 Farm Rd, Marlborough, MA 01752

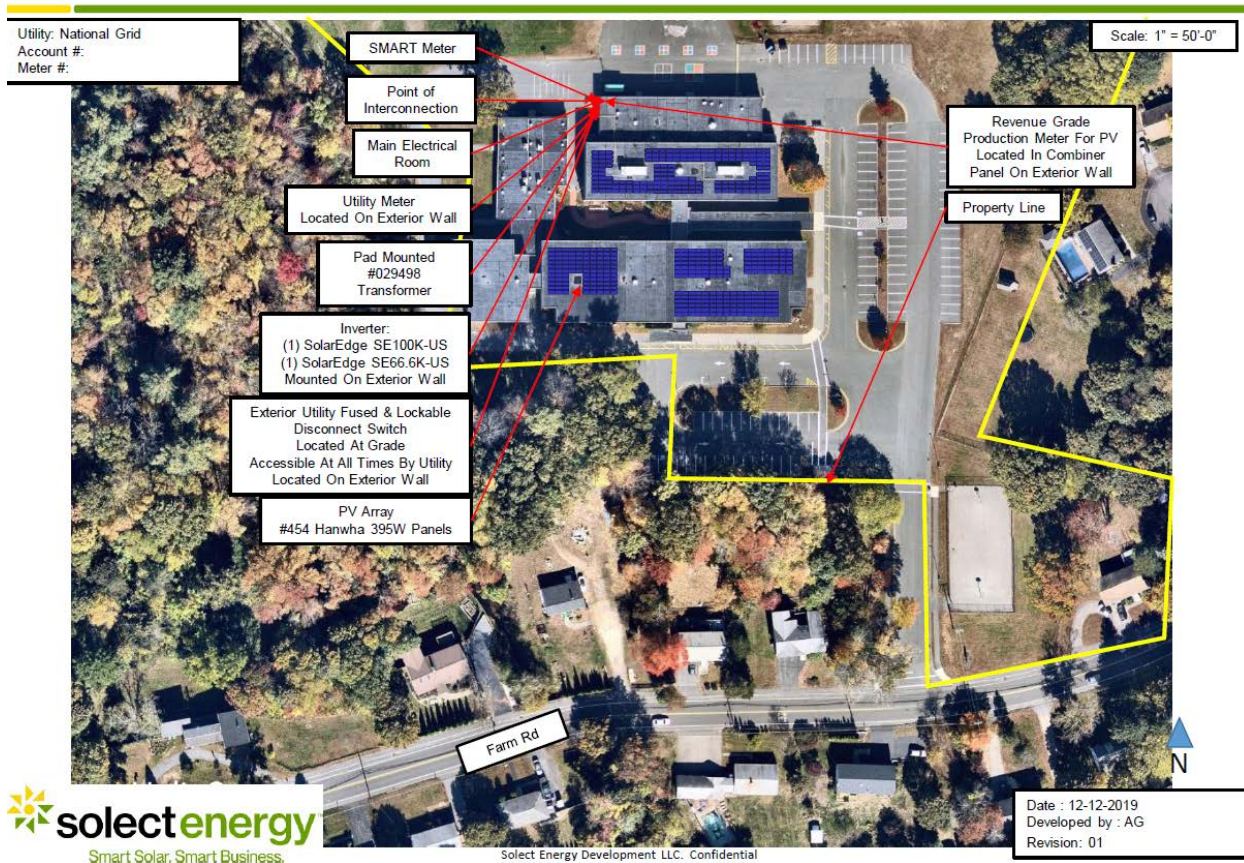


EXHIBIT E

DESCRIPTION OF PROJECT

The Project will be comprised of a series of solar photovoltaic equipment and parts integrated to the main electric service at the building, behind the utility meter, and interconnected to the local utilities distribution system. Main equipment components of the Project include:

Roughly 454 x 395W Tier 1 Solar modules or equivalent

Roughly 2 x SolarEdge solar inverters or equivalent

Ecolibrium or equivalent solar racking equipment

Rapid shutdown system

Solar kWh meter and monitoring system, connected to Host-provided internet service

Combiners, Disconnects, Switches, Pipe and Wire and Balance of System materials integrated to

Equipment quantities, brands, specifications and ratings may change during course of the project

EXHIBIT F

ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	208,023	11	196,861
2	206,879	12	195,778
3	205,741	13	194,701
4	204,609	14	193,630
5	203,484	15	192,565
6	202,365	16	191,506
7	201,252	17	190,453
8	200,145	18	189,405
9	199,044	19	188,364
10	197,949	20	187,328

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

EXHIBIT G

INSURANCE REQUIREMENTS

1. General Liability

(a) Both Host and Provider will have a minimum level of commercial general liability insurance for the term of the Power Purchase Agreement of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. Provider shall maintain an umbrella policy in the minimum amount of (\$5,000,000) five million dollars. Provider's insurance shall be primary and non-contributory.

(b) The Provider's general liability insurance coverage shall include broad form property damage liability, products/completed operations liability and broad form contractual liability. The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion.

2. Workers' Compensation

Host will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

3. Property Loss

Provider shall carry adequate property loss insurance on the Project which need not be covered by the Host's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion, but not less than \$1,000,000/\$2,000,000.

4. Professional Liability Insurance

Provider or its subcontractors shall carry Professional Liability insurance covering errors and omissions, not less than \$1,000,000 each occurrence and \$1,000,000 aggregate limit.

5. Additional Insurance Provisions

Host shall furnish Provider with certificates of insurance and endorsements of all required insurance as currently maintained by Host, as may be reasonably requested, including for

purposes of compliance with any Applicable Law or Local Electric Utility affecting the Premises or operation of the Project. Insurance required by the Local Electric Utility shall not be canceled except after (30) days prior written notice has been given to the Local Electric Utility.

5. Additional Installation Contractor Requirements

Installation contractors will have valid commercial general liability, workers compensation, and business auto insurance as follows:

- Commercial general liability insurance will be in the following amounts: \$1,000,000 for each occurrence and \$2,000,000 aggregate.
- Workers compensation insurance or self-insurance indicating compliance with any applicable labor codes, laws or statutes, state or federal, where Installer performs work.
- Auto coverage not less than 1 million dollars (\$1,000,000) each accident for bodily injury and property damage, and 1 million dollars (\$1,000,000) in the aggregate.
- Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance for Commercial General Liability, Auto Liability and Employers' Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and one million dollars (\$1,000,000) in the aggregate. The amounts of insurance required for Commercial General Liability, Auto Liability, Employers' Liability and Excess Liability may be satisfied by Installer purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.
- Installer's insurance shall include the City of Marlborough as an additional insured and shall be primary and non-contributory.

EXHIBIT H
FORM OF LEASE

This Lease (the “Lease” or the “Agreement”) is made and entered into as of _____, _____, by and between _____ (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host and Provider have entered into a Power Purchase Agreement dated as of _____, _____, (the “**PPA**”) and pursuant to such agreement Host has agreed to provide Provider with rights to access and use certain portions of Host’s property located at _____. All terms used herein which are not otherwise defined shall have the meanings set forth in the PPA.

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

1. Premises and Related Rights. Effective _____, _____, Host hereby leases to Provider, in accordance with the terms and conditions set forth in the Power Purchase Agreement dated on or about the date hereof between Host and Provider (“PPA” or “Agreement”), the Premises. Host hereby also grants to Provider, for a period co-terminus with the Lease, a non-exclusive right-of-way to access the Premises across or through any surrounding or nearby properties owned or leased by Host, passage through which is necessary or convenient to install or gain access to the Project or the Premises provided same does not interfere with Host or any of Host’s contractors, employees, students, invitees or public officials. Provider shall be responsible to determine, as part of its due diligence following the Effective Date, the availability and suitability of such access. Notwithstanding the foregoing, access to the Premises for the installation of the Project shall be in accordance with a schedule to be agreed upon by the Parties, and access to the Project after installation shall be permitted only upon advance notice to Host, except in the event of an emergency posing a threat to the public health and safety.

2. Project Construction, Installation and Operation.

(a) Host hereby consents to the construction of the Project by Provider on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. The Project shall be designed, engineered, and constructed in accordance with the standards, terms and conditions set forth in the Agreement.

(b) Provider shall also have the right from time to time during the term hereof with reasonable care and subject to the standards, terms and conditions of the Agreement:

- (i) to install and operate the Project on the Premises;
 - (ii) to maintain, clean, repair, replace and dispose of part or all of any Project (in the case of replacement and disposal, with Host's written consent);
 - (iii) to add or remove any parts of the Project (with Host's written consent);
- and
- (iv) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Provider, to carry out the activities set forth in this Section 2.

(c) Host acknowledges that the installation of all or a portion of the Project will require installation and physically mounting and adhering parts of the Project to the building, structure and fixtures appurtenant to the Premises and consents to such mounting or adhering, as applicable, provided the same is done in accordance with and subject to the terms of the Agreement, including adherence to roof warranty requirements. Should the installation, operation or removal of the Project cause damages to the Premises, Provider shall be responsible to repair the Premises according to the terms of the Agreement to the condition the same were in on the date hereof, normal wear and tear excepted.

3. Project and Output Ownership.

(a) Host acknowledges and agrees that Provider or one of its affiliates is the exclusive owner and operator of the Project, and that all equipment comprising the Project shall remain the personal property of Provider and shall not become fixtures.

(b) Host acknowledges that Provider is the exclusive owner of electric energy generated by the Project and owner of all environmental attributes and tax attributes attributable to the Project.

4. Representations and Warranties, Covenants of Host.

(a) Host's Title to Premises. Host represents that Host has lawful title to (or a valid leasehold interest in) the Premises and that, so long as Provider is not in breach of the Agreement and subject to such conditions as are contained therein, Provider shall have quiet and peaceful possession of the Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Provider's quiet enjoyment thereof, throughout the term of this Lease.

(b) No Interference With and Protection of Project. Other than the activities that Host presently conducts at and about the Premises, and subject to requirements of Applicable Laws and according to the terms of the Agreement, Host will not conduct discretionary activities

on, in or about the Premises, the Building or the Premises that have a reasonable likelihood of causing material damage, impairment or otherwise materially and adversely affecting the Project.

(c) Utilities. Provider shall be responsible for paying for Station Power during the term of this Lease. For purposes of this Lease “Station Power” shall mean electric energy consumed in the start-up and operation of the Project, which is distinct from the alternating current output of the Project.

(d) Insolation. Subject to the requirements of Applicable Law, Host shall not construct or permit to be constructed any structure on the Premises that could materially and adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation other than those that may be emitted from the normal operation of the buildings presently located on or about the Premises or from vehicular traffic.

(e) Notice. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the Project or interruption in the supply of electricity from the Project. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Host shall have no duty or obligation to monitor, observe or check upon the Project or its operation; Host shall have the right, but not the obligation, to address any emergency condition arising from the Project that Host in good faith believes presents or will likely present a threat to public health and safety; and any good faith failure of Host to provide the notification required in this paragraph shall not constitute a default or breach of the Agreement by Host.

5. Representations and Warranties, Covenants of Provider.

(a) Hazardous Materials. In addition to the other terms and conditions of the Agreement concerning Hazardous Materials, Provider shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Provider becomes aware of any such hazardous, toxic or dangerous materials, Provider shall promptly notify Host of the type and location of such materials in writing. Provider agrees to assume full responsibility for (and protect, indemnify and defend Host against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Building or the Premises that are attributable to the willfully negligent actions of Provider.

(b) Regulatory Status. Provider represents and warrants that it is not a public service company, electric company, or electric distribution company as defined under the laws of the commonwealth of Massachusetts.

6. Term and Termination. The term of this Lease shall be coterminous with the PPA (the “Term”), including any extensions thereof, but in no case more than thirty (30) years from the date of execution of this Agreement by both parties. Upon expiration or earlier

termination of the Agreement, unless the Agreement is extended by agreement of the Parties in accordance with any terms allowing for the same in the PPA, Provider shall remove the Project and any part thereof, at Provider's expense, and shall repair any damage caused by the Project or its removal except for normal wear and tear and Host shall allow Provider access to the Premises for such purposes. Should the Parties agree to transfer Project ownership through a Purchase Agreement, Provider will not remove the Project from the Premises.

7. **Taxes.** Provider and Host intend to enter in to a Payment In Lieu of Taxes agreement.

8. **Casualty or Condemnation.** As provided in Section 17(c) of the PPA, in the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Host and Provider, Host shall determine whether to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, subject to the availability of insurance proceeds dedicated to such purpose, and shall so notify Provider upon such determination. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

9. **Architectural, Engineering, Construction or Attorney's Fees.** If Host determines that Provider is in material breach of this Lease, Host shall treat such breach as a Provider Event of Default and may proceed in accordance with the provisions of Section 19(a)(iv), subject to any Financing Party's rights in Section 21(a)(ii) and (iii). If Host or any Financing Party, as the case may be, fails to cure such material breach of this Lease and Host makes any expenditures, including but not limited to architectural, engineering, construction or attorney's fees or incurs any obligations for the payment of money in connection with any Provider material breach of this Lease,, such costs shall be reimbursed to Host by Provider upon ten (10) days advanced written notice, in addition to any other damages incurred by Provider on account of such material breach.

10. **Recording.** This Lease shall not be recorded, but Host and Provider shall execute a recordable form Notice of Lease complying with Massachusetts law and satisfactory to Provider, to be recorded at Provider's sole expense.

In WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

GRANTOR:

By: _____

Name: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____

ATTACHMENT A
SITE and PREMISES DESCRIPTION

ATTACHMENT B
EXISTING ENCUMBRANCES

POWER PURCHASE AGREEMENT

For

City of Marlborough New Elementary School

Dated as of

between

City of Marlborough
140 Main Street
Marlborough, Massachusetts 01752

And

Solect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748

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<u>EXHIBIT F</u>	-	ESTIMATED ANNUAL PRODUCTION
<u>EXHIBIT G</u>	-	INSURANCE REQUIREMENTS
<u>EXHIBIT H</u>	-	FORM OF LEASE

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“**Agreement**”) is entered into as of _____, _____, by and between City of Marlborough (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host is a member of the PowerOptions Consortium, an energy-buying group purchasing program authorized to administer such program on behalf of Massachusetts Clean Energy Center (“MassCEC”), organized by PowerOptions, Inc. (“**PowerOptions**”), a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts and the Internal Revenue Code that assists its members with procuring energy products and energy-related services for facilities they own and/or operate pursuant to M.G.L. c.164, § 137;

WHEREAS, Provider and PowerOptions have entered into an agreement dated September 1, 2015 which has been extended to June 30, 2020 governing the terms and conditions of Provider’s participation in the PowerOptions Small Solar Program;

WHEREAS, Host is the owner of the properties located and described in Exhibit C and desires to make a portion of such properties available to Provider for the construction, operation and maintenance of a solar powered electric generating Project, and to purchase from Provider the electric energy produced by the Project; and

WHEREAS, Provider desires to develop, design, construct, own and operate the Project located at and described in Exhibit C, and sell to Host the electric energy produced by the Project.

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

1. DEFINITIONS. Certain capitalized terms used in this Agreement have the meanings set forth in the attached GLOSSARY OF TERMS.

2. TERM.

(a) Term. This Agreement shall consist of an Initial Period and an Operations Period. As used herein, “Term” shall mean all of the Initial Period and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement, but any such termination shall not terminate any provisions hereof that expressly survive such termination

(b) Initial Period. The Initial Period will begin on the date set forth above (date of signed Agreement) and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Section 4(b) or 4(d).

(c) Operations Period. The Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs, or such earlier date when this Agreement is terminated.

(d) Extensions. Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

(e) Early Termination by Host. If Host terminates the Agreement prior to the Expiration Date, Host shall pay, as liquidated damages, the Early Termination Amount set forth on Exhibit B (except as otherwise provided in this Section or Sections 9, 17, or 19, and Provider shall cause the Project to be disconnected and removed from the Premises. Upon Host's payment to Provider of the Early Termination Amount, the Agreement shall terminate automatically, provided that the Provider shall continue to have a duty to relocate the Project and restore the Premises. Notwithstanding the foregoing, Host may (i) terminate this Agreement with no liability whatsoever if Provider fails to commence construction of the Project by the Construction Start Date or (ii) if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$15/kW, plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Host to return its Premises to its condition prior to commencement of the Installation Work if Provider fails to do so within a reasonable time. Further, Host may terminate this Agreement with no liability whatsoever if Provider fails to commence Commercial Operations by the date that is 60 days after the Guaranteed Commercial Operation Date. The Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if, notwithstanding Provider's commercially reasonable efforts, interconnection approval is not obtained within 60 days after the Effective Date.

3. ACCESS RIGHTS.

(a) Access Specifications. Host hereby grants Provider and its designees (including Installer) access to the Premises, for the Term and for so long as needed (but not more than 100 calendar days) after termination to remove the Project pursuant to the applicable provisions herein, at reasonable times and upon reasonable notice (except in situations where there is imminent risk of damage to persons or property), for the purposes of designing, installing, inspecting, operating, maintaining, repairing, and removing the Project, and any other purpose

set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access Rights with respect to the Site include without limitation:

(i) Vehicular & Pedestrian Access. Reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing, and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(ii) Utilities & Communication Cables. The right to locate distribution utility and/or electrical lines and communications cables across the Site as designated on Exhibit D. The location of any such electrical lines and communications cables outside the areas designated on Exhibit D shall be subject to Host's approval and shall be at locations that minimize any disruption to Host's activities occurring on the Site. Access will also be provided for Telephone and internet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

(iii) Provider (including Installer) acknowledges that the Premises are the site of the Host's School, and its Access Rights may be limited as necessary to avoid disruption or interference with educational programming and professional workday. Access rights shall conform to the Host's access rules and a construction plan agreed to by the Parties prior to the Construction Start Date. Provider shall comply with all applicable city ordinances and regulations.

(b) Remote Monitoring. Host will provide an internet portal or equivalent access by means of which Provider will communicate data from the revenue grade performance monitoring system. Provider will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Provider and Host to remotely monitor the Project.

(c) Access to Premises. For the Term of this Agreement, Host hereby grants to Provider all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance, repair, and removal of the Project pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the Project with the Premises' electrical wiring. Host hereby covenants that (i) Provider shall have access to the Premises and Project during the Term of this Agreement and for so long as needed after termination (but only up to 100 calendar days) to remove the Project pursuant to the applicable provisions herein, and (ii) Host shall not interfere or handle any Provider equipment or the Project without written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work or Project removal.

(d) No Interference. Host agrees not to conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage or impairment to, or otherwise adversely affecting, the Project. Host shall take all reasonable steps to limit access to the Project to Provider, Installer, its employees, contractors or subcontractors. Host shall implement and maintain reasonable and appropriate security measures at the Premises to prevent Host's

employees, invitees, agents, contractors, subcontractors and other third parties from having access to the Project and to prevent theft, vandalism or other actions from occurring that have a reasonable likelihood of causing damage, impairment, or other adverse effect on the Project. Notwithstanding anything to the contrary provided above, Provider agrees that Host may conduct inspection, maintenance, and repairs of the Site roof and any HVAC or other building equipment thereon as reasonably necessary to comply with all warranties and ensure the proper functioning thereof, and that such activities shall not be deemed interference.

(e) Temporary storage space during installation or removal. Host shall provide sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, Operations Period or Project removal, and access for rigging and material handling. Provider shall be responsible for providing shelter and security for stored items during construction and installation. Host reserves the right to require Provider to change the location of the stored items to improve security if in the Host's reasonable discretion, such items pose a hazard to persons or property. Upon completion of the Installation Work, Provider shall remove all equipment, tools, materials and debris and restore the temporary storage Space to its previous condition.

(f) Recording Provider's Lease. Provider may record (at its expense) a Notice of Lease in the land records regarding its Access Rights under this Agreement

4. PLANNING, INSTALLATION AND OPERATION OF PROJECT.

(a) Site Assessment and Planning. During the Initial Period, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project. The Provider, at its own cost shall perform and determine a structural analysis of the Host's site by a licensed professional structural engineer to determine feasibility, safety, and to ensure the proper install, maintenance, and operation of the solar system. Provider shall provide a copy of structural engineering analysis to Host prior to commencement of Construction.

(b) Termination of Development Activities by Provider. At any time during the Initial Period, Provider shall have the right to cease development of the Project on the Premises if: (i) Provider determines that the Premises, as is, is insufficient to accommodate the Project; (ii) there exist site conditions or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or

would adversely affect the electricity production from the Project as designed; or (iii) there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the Project on the Premises. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(c) Commencement of Construction, Modification of Design. At a time coordinated with the Host during the Initial Period, upon at least ten (10) Business Days notice to Host, Provider shall have the right to commence installing the Project on the Premises.

(i) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.

(ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its sole discretion, may determine, provided, however, that such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, without Host's approval.

(d) Construction Commencement Deadline. If Provider has not commenced the installation of the Project on the Premises before the Construction Start Date (not including any days in which a Force Majeure Event existed, or were delayed by the local electric delivery company, AHJ, or state regulators), Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate twenty-one (21) days after Provider's receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other with respect to the Facility, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(e) Contractors. Provider shall use licensed and insured contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, in Provider's sole discretion. Provider shall advise Host of the Installer prior to commencement of the work

on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit G.

(f) Status Reports, Project Testing, Commercial Operation. Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Testing shall be conducted in accordance with guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Host shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of and has been approved for interconnection by the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis for at least four (4) continuous hours, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host.

(g) Standard of Operation. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Host and Host's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(h) Hazardous Materials. Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the

Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical. Provider shall not introduce to the Site any Hazardous Materials and, in the event that it does so, shall be solely responsible and liable for remediation in accordance with Applicable Law, and pursuant to the direction of the Host and any Governmental Authority with jurisdiction over the Site.

(i) Site Security. Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Project. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations. Notwithstanding anything to the contrary, except in the case of gross negligence or willful action/inaction on the part of Host's security, Provider shall bring no claim against Host based upon performance of Host's security personnel.

(j) Provider System Shut Down. Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown unless the performance guarantee in Section 5(c) is not met. Provider and Host will agree upon a reasonable shut down duration. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

(k) Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the Project and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(i) Installation. Provider shall maintain and test the meter in accordance with but not limited to Applicable Law and as provided herein. Provider shall ensure that the meter is installed and calibrated correctly to manufacturer and/or utility specifications during commissioning of the Project.

(ii) Measurements. Readings of the meter shall be conclusive as to the amount of electric energy delivered to Host; provided that if the meter is out of service, is discovered to be inaccurate pursuant to Section 4(l)(iii) below, or registers inaccurately, measurement of energy shall be determined by estimating by

reference to quantities measured during periods of similar conditions when meter was registering accurately.

(iii) Testing and Correction.

A. Host's Right to Conduct Tests. Each Party shall have the right to witness each test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the meter. Provider shall provide at least twenty (20) days prior written notice to Host of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall provide Host with copies of such written report and the underlying supporting documentation not later than thirty (30) days after completion of such test. Provider shall bear the cost of the annual testing of the meter and the preparation of the meter test reports.

B. Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:

(1) If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.

(2) Provider shall, within thirty (30) days after receiving such notice from Host, or Host shall, within such time after having received such notice from Provider, advise the other Party in writing as to its position concerning the accuracy of such meter and state reasons for taking such position.

(3) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the meter to be tested by an agreed upon and disinterested third party.

(4) If the meter is found to be inaccurate by not more than two percent (2%), any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter shall bear the cost of inspection and testing of the meter.

(5) If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any meter found to be inaccurate to be: replaced or adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 4(l)(ii) or (iii), and (3) Provider shall bear the cost of inspection and testing of the meter and reimburse or credit Host if Host was the disputing Party. If as a result of such adjustment the quantity of energy for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Provider shall reimburse or credit Host for the

amount paid by Host in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the meter. If as a result of such adjustment the quantity of energy for any period is increased (such quantity, the "Electricity Surplus Quantity"), Host shall pay for the Electricity Surplus Quantity at the price applicable during the applicable period.

(iv) No Duty on Host. Notwithstanding the foregoing, the Parties acknowledge and agree that the Host is under no responsibility or duty to ascertain, to inspect or to otherwise determine whether the meter or any other part of the Project is out of service, is discovered to be inaccurate or registers inaccurate readings; is malfunctioning or is otherwise defective, it being agreed that at all times such responsibility or duty shall remain with the Provider.

(v) Operations Manual: Training of Host Facilities Staff.

Within 60 days of Commercial Operation Date, and prior to Host's acquisition of the Project if Host chooses to exercise the Purchase Option as provided in Section 9 hereof, Provider shall deliver to Host a current operation, maintenance and parts manual for the Project including as-builts stamped by a Massachusetts registered professional engineer. In addition, in either case, Provider will train Host's representative(s) on operations and monitoring (for informational purposes only) and emergency preparedness and response, it being acknowledged by Host that Host shall not operate the Project, except in the case of an emergency where immediate action on the part of the Host is reasonably necessary for the protection of persons or property. In the event of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons, Host may, but is not obligated to, shut down or disconnect the Project and provide notice to Provider as soon as reasonably possible, and in any event within twenty-four (24) hours following such emergency, but otherwise Host shall not be permitted to perform any maintenance or repair on the Project.

(vi) Prevailing Wages. Provider shall pay, and require the Installer and all subcontractors to pay, prevailing wages for the Installation Work on the Project, and comply with all Applicable Law related thereto.

(vii) No Voiding Of Existing Roof Warranties. Provider shall ensure that the Project is designed and constructed so that no existing roof warranty is voided on account of the installation of the Project. Developer shall consult, as may be necessary, with any company that has provided such roof warranty to the Host. Upon request, Host shall provide to Provider a copy of any applicable warranty.

(viii) Display of Production Monitoring Data. Provider shall share with Host a website that displays Solar Project production data, upon the Commercial Operation Date.

5. SALE OF ELECTRIC ENERGY.

(a) Sale of Electricity. Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all

electric energy produced by the Project, whether or not Host is able to use all such electric energy. The Point of Delivery of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery. Provider shall own the Capacity Value of the Project. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host. The interconnection point of Project with the Local Electric Utility shall be indicated in Exhibit E.

(b) Performance Guarantee. Beginning on the Commercial Operation Date and as of each anniversary thereof, if the Project produces less than eighty-five percent (85%) of the applicable Estimated Annual Production specified in Exhibit F, unless, and then only to the extent that, the failure to meet the Estimated Annual Production is due to (a) failure, damage or downtime attributable to third parties or Host, (b) equipment failure or delayed repair of equipment due to the claims process with the equipment manufacturer which are beyond the reasonable control of Provider, (c) a Force Majeure Event, (d) variability due to weather as documented by software used in calculating the Estimated Annual Production, (e) acts or omissions of Host of any of its obligations hereunder, or (f) any Host Requested Shutdown, Provider Safety Shutdown or Project Relocation under Section 10(a), (b), or (c); in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average applicable tariff rate per kWh that Host would have paid for full requirements, delivered electric service from its Local Electric Utility during such period minus the applicable kWh Rate specified in Exhibit A, multiplied by (ii) the difference between the actual Project Output during such 12-month period and eighty-five percent (85%) of the Estimated Annual Production for such period.

6. PAYMENT AND BILLING.

(a) Rates. Host shall pay Provider for electricity produced by the Project at the rates set forth in Exhibit A attached hereto.

(b) Billing. Host shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

(c) Invoice Delivery. Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email, addressed as follows:

To Host: City of Marlborough
c/o Dept. of Public Works
Attn: Facilities Division
135 Neil Street
Marlborough, Massachusetts 01752

(d) **Payment.** Host shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed by applicable law.

(e) **Disputed Invoices.** If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Host may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreement.

7. SUPPLEMENTAL POWER

(a) **Back-up and Supplemental Electricity.** Except as otherwise provided herein, throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

(b) **Interconnection and Interconnection Fees.** Provider shall be responsible for arranging the interconnection of the Project with Host's Local Electric Utility in a manner which includes bi-directional or "net metering". Provider shall be responsible for all costs, fees, charges and obligations required to connect the Project to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Host be responsible for any Project Interconnection Obligations.

(i) **Net Metering.** The Parties will work cooperatively and in good faith to meet all Net Metering requirements under Applicable Law, the Applicable Solar Program and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., Massachusetts tariff Schedule Z). In the event that the Project produces a production excess,

then the Parties agree that (a) Host shall be entitled to the associated Net Metering Credits, (b) Provider shall transmit such Production Excess into the Local Electric Utility system on behalf of and for the account of Host, and (c) Host (or its designee) shall be entitled to any and all Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

(c) Applicable Solar Program Incentives. Provider shall receive all payments available under any Applicable Solar Program. Host shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Host receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this Section 7(c) is limited to any payments actually received by Host.

(d) Ownership of Tax Attributes. Provider (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the ownership and operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

(e) Environmental Attributes. Except as otherwise provided for under Applicable Law, or Applicable Solar Program rules, or the applicable tariff of the Local Electric Utility, Provider (and/or Financing Party) shall be the owner of any Environmental Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person. If the local electric company is entitled to the Environmental Attributes, Provider shall be entitled to incentive or compensation provided by the Applicable Solar Program in exchange for the Environmental Attributes. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider.

(f) Capacity & Ancillary Services. Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Project. Host shall provide reasonable assistance to Provider in completing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

(g) Neither Party is a Utility. Neither Party shall assert that the other Party is an electric utility or public service company or similar entity that has a duty to provide service, is

subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Provider's and Host's obligations or performance under this Agreement.

8. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES

(a) Permits. Provider shall pay for and obtain all approvals from governmental entities and/or electric utility companies necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval.

(b) Project Ownership. Except as provided in Section 9, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

(c) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens") and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

(d) Non Disturbance Agreements. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host shall promptly upon request of Provider, provide an acknowledgement and consent

from such lienholder, in form and substance reasonably acceptable to Provider (and/or Financing Party), stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's (and/or Financing Party's) rights in the Project and the Access Rights.

9. PURCHASE OPTIONS; REMOVAL AT END OF TERM.

(a) Early Purchase Option. Host shall have the option to purchase the Project at intervals listed in Exhibit B, consistent with the greater of either (i) the applicable value identified in Exhibit B or (ii) the Fair Market Value of the System as determined by mutual agreement of Host and Provider; provided, however, if Host and Provider cannot agree to a Fair Market Value within twenty (20) days after Host has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project. If Host desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Provider of its election to exercise the option, and on or before such anniversary date shall pay the purchase price to Provider.

(b) End of Term Purchase Option. Host shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project at the end of the Term. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, the Parties will engage and share the costs equally of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project consistent with the terms of the transaction. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project and shall be undertaken consistently with the terms of such

transaction so that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

(c) Transfer of Ownership. Upon Host's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, and any applicable Environmental Attributes if legally able, or portions thereof, to Host.

(d) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(e) No Survival of Purchase Option. The options for Host to purchase the Project under Sections 9(a) and 9(b) shall not survive the termination of this Agreement.

(f) Removal of Project at Expiration. Subject to Host's exercise of its purchase option under Section 9(a) or 9(b), upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the Project from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the Project is to be located on a roof, then in no case shall Provider's removal of the Project affect the integrity of Host's roof, which shall be as leak proof as it was prior to installation of Project (other than ordinary wear and tear). For purposes of Provider's removal of the Project, Host's covenants pursuant to Section 16 shall remain in effect until the date of actual removal of the Project. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the Project by such agreed upon date, Host shall have the right, at its option, to remove the Project to a public warehouse or storage facility within a reasonable distance from the Site, if Provider has identified same and entered into an agreement to pay any and all costs for System storage, and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost. If the Provider fails to remove the Project within one hundred (100) days, Host shall have the right, upon written notice to the Provider, to draw on the financial assurance to reimburse Host for reasonable costs it incurs in removing the Project and restoring the Premises.

(g) Decommissioning Assurance. No later than the beginning of the nineteenth (19th) year of the Operations Period, Provider shall establish the Decommissioning Assurance, and shall select the form and amount of such Decommissioning Assurance, subject to the approval of Host, not to be unreasonably withheld, conditioned or delayed. Failure to timely establish and/or fund in accordance with this paragraph such Decommissioning Assurance shall constitute

a Provider Event of Default, for which the Host shall be entitled to exercise any of the remedies for default afforded under Section 19

(g) Provider shall post City's Notice of Non-Responsibility on the Premises as required by the City.

10. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE.

(a) Host Requested Shutdown. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days or a predetermined date mutually agreed upon by both the Host and Provider, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology. For the purpose of this clause, the Parties agree that during years 4 through 20 (but not years 1 through 3) of the Term of the Agreement, Host shall be afforded a total of fifteen (15) days which may be used consecutively or in periods of at least twenty-four hours each ("Allowed Disruption Time") during which the Project shall be rendered non-operational by Provider. Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes and Tax Attributes.

(b) Provider Safety Shutdown. In addition to the right of Provider to shut down the Project for maintenance as provided in Section 4(j), Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(c) Project Relocation. Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider and Financing Party in each of their sole discretion but not to be unreasonably withheld provided the alternate location is structurally sufficient and capable of substantially equivalent electric generation. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, during the Relocation Event, Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following the Relocation Event; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

(d) Premises Shutdown; Interconnection Deactivated. In the event Premises are closed as a result of an event that is (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall be excused for the period of deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider such that the Project is no longer able to produce electricity or transfer electricity to its respective Premises or to the Local Electric Utility, Host will be excused for the period of Interconnect deactivation from paying Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery

(e) Sale of Site. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Host may be released from further obligations under this Agreement.

11. TAXES.

(a) Income Taxes. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Host shall be responsible for all applicable taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it by any Governmental Authority. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and Host shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(c) Property Taxes. Provider shall be responsible for ad valorem personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host for such tax. Provider and Host intend to enter into a Payment In Lieu Of Taxes agreement.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice from the Party who paid the taxes.

12. INSURANCE.

(a) Coverage. Host and Provider shall each maintain the insurance coverage set forth in Exhibit G in full force and effect throughout the Term. Host and Provider shall also provide any additional insurance which may be required from time to time by any legal or regulatory authority affecting the Premises or operation of the Project.

(b) Insurance Certificates. Each Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party written notice before the insurance is cancelled or materially altered.

(c) Certain Insurance Provisions. Each Party's insurance policy shall be written on an occurrence basis, and Provider shall include the Host as an additional insured as its interest may appear. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

(d) Insurance Providers. All insurance maintained hereunder shall be maintained with companies approved to do business in Massachusetts, and rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

13. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS.

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Host to Not Restrict Solar Access. Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

(c) Adjoining Properties. If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Host for electric energy from the Project shall be increased by an amount sufficient for Provider to fully amortize such costs, over a period equal to the lesser of (i) ten years or (ii) the remaining term of this Agreement without regard to Host's option to purchase the Project.

14. PRESS RELEASES

(a) Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other

Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at its sole discretion, take photographs of the installation process of the Project and/or the completed Project, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state. Only Provider has the exclusive right to claim that (i) electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement.

15. INDEMNIFICATION.

(a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, students, volunteers, and invitees ("Host's Indemnified Parties"), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of negligence or willful misconduct of Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (ii) violation of Applicable Law by Provider or Installer (including any of their contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party); (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utility or Applicable Law; or (iv) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or Installer or any of their employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Host's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

(b) Host Indemnification. The Parties agree that Host does not provide in this Agreement any express or implied indemnifications to Provider. Provider does not waive and retains any rights available to it under M. G. L. c. 258 or other Applicable Law for (i) any claim for or arising out of any injury to or death of any person or loss or damage to property to the extent arising out of Host's negligence or willful misconduct; (ii) Host's violation of Applicable Law; or (iii) the existence of or failure to properly handle or dispose of any Hazardous Materials on the Site other than

Hazardous Materials brought on to the Site by Provider or any of Provider's employees, agents, contractors, volunteers or visitors.

(c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the “Notice of Claim”). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(d) Defense of Claims. The Indemnifying Party has the right, but not the obligation to assume the defense of the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by the Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

(e) Payments. At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.

(f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

16. REPRESENTATIONS AND WARRANTIES.

(a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

(i) Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(iv) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) Host Representations. In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of date hereof, that:

(i) Condition of Premises. Host has provided to Provider Host's records of the physical condition of the Premises, for informational purposes only, without certifying accuracy or completeness. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project are to be installed, are materially different from the records presented by Host and from conditions reasonably visible to Provider during site visits prior to executing this Agreement, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.

17. FORCE MAJEURE.

(a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall 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 Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Excepting a Force Majeure Event which impacts business or banking transactions nationally or globally, in which case such obligations shall be suspended but not excused, obligations to make payments for services provided prior to the Force Majeure Event shall not be excused by a Force Majeure Event.

(c) Restoration. In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15, and the dispute resolution provisions of Section 23 shall continue to apply notwithstanding the termination of this Agreement.

(d) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Section 9(f) (unless there has been a casualty event, in which case the provisions of clause (c) above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

18. CHANGE IN LAW.

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will submit to Host and PowerOptions within 60 days a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then

applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future prices such that the new prices compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider; provided, however any such increase shall be no greater than ten percent (10%) of the prices set forth in Exhibit A for the Term of this Agreement.

19. PROVIDER DEFAULT AND HOST REMEDIES.

(a) Provider Events of Default. Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Provider under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(ii) Abandonment During Installation. After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project.

(iii) Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of governmental authority or local electric distribution company, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(iv) Obligation Failure. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(v) Insolvency. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally

unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Financing Party Opportunity to Cure; Host Remedies. Upon a Provider Event of Default, provided that Provider or Financing Party does not cure such Event of Default by Provider, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue any and all other remedies available at law or equity.

20. HOST DEFAULT AND PROVIDER REMEDIES.

(a) Host Events of Default. Host shall be in default of this Agreement if any of the following ("Host Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Host under Section 16, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(ii) Obstruction. Host unreasonably obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within fifteen (15) days after receiving written notice from Provider with respect to such act or omission.

(iii) Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.

(iv) Obligation Failure. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the

benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Default Damages. Upon a Host Event of Default, Provider may terminate this Agreement and require Host to pay to Provider the Early Termination Amount; or continue to operate the Project and sell electricity produced by the Project to persons other than Host, and recover from Host any documented loss in revenues resulting from such sales versus the amount of revenues to be earned under this Agreement; and/or pursue other remedies available at law or in equity. If necessary to sell electricity to persons other than Host, Host shall allow Provider to add a new meter dedicated to the solar Project, change the point of interconnection, and/or will support Provider with necessary approvals to change the Schedule Z. After Provider's receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

(c) Survival of Access Rights and Lease. Upon a Host Event of Default, unless Host pays the Early Termination Amount to Provider in full thus terminating this PPA, Provider may, in its exercise of remedies pursuant to Section 20(b), make continued use of, and Host may not terminate: (i) the access rights granted in Section 3 for access to and use of the Site in connection with Provider's use of the Premises; and (ii) the Lease referenced in Section 3(f), and Provider's use of such rights and interests shall continue until the twentieth (20th) anniversary of the Commercial Operation Date as shall the duties of Provider to decommission the facility in accordance with Section 9(f). Provider shall not be obligated to pay any rent or other consideration for the use of such rights or interests.

21. COLLATERAL ASSIGNMENT, FINANCING PROVISIONS.

(a) Financing Arrangements. Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host, which shall not be unreasonably withheld, conditioned or delayed, provided, however that Provider may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Project. Further, Host acknowledges that Provider may obtain construction financing for the Project from a third party and that Provider may either obtain term financing secured by the Project or sell or assign the Project to a Financing Party or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Host acknowledges that in connection with such transactions Provider may secure Provider's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Project. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Host agrees as follows:

(i) Consent to Collateral Assignment. Host hereby consents to both the sale of the Project to a Financing Party and the collateral assignment to the Financing Party of the Provider's right, title and interest in and to this Agreement.

(ii) Rights of Financing Party. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Financing Party, as owner of the Project, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Project;

(B) Opportunity to Cure Default. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Project by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the

right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Financing Party a Third Party Beneficiary. Host agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 21.

(c) Entry to Consent to Assignment. Host agrees to (i) reasonably execute any consents to assignment or acknowledgements, provided any such assignment does not impair Host's rights under this Agreement and (ii) provide such opinions of counsel as may be reasonably requested by Provider and/or Financing Party in connection with such financing or sale of the Project.

22. LIMITATIONS ON DAMAGES.

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (including, without limitation, in Sections 10, 19(b) and 20(b)), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

23. DISPUTE RESOLUTION.

(a) Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.

(b) Jurisdiction, Venue, and Jury Trials. If despite the efforts, if any, to negotiate, the Parties do not resolve the Dispute within the negotiation period described above, then each Party irrevocably consents to the exclusive jurisdiction of the state and federal courts sitting in Massachusetts, in connection with any action related to the Dispute. Each Party agrees that process may be served upon it in any manner authorized by law and that it waives all objections which it might otherwise have to such jurisdiction and process. Further, each Party irrevocably waives all of its rights to a trial by jury with respect to any such action.

(c) Survival of Dispute Provisions. The provisions of this Section 23 and Section 25 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

24. NOTICES.

Delivery of Notices. All notices or other communications which may be or are required to be given by any Party to any other Party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Host:

City of Marlborough
140 Main Street
Marlborough, MA 01752
Attention: Mayor's Office

With a copy to: legal@marlborough-ma.gov

If to Provider:

Sollect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748
Attention: Legal Notices
Email: _____
Facsimile: _____

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

25. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23, and the court will modify the unenforceable provision in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Except as provided in Section 21(a), neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement in accordance with Section 21. For purposes of this Section 25(e), transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is

the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement.

(f) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

(h) Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

(i) CORI. With respect to Projects to be installed at Massachusetts public schools, the Host shall have the right to conduct a check of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Board, and the Massachusetts Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board, for any officer or employee of the Provider or Installer, or of a subcontractor of the Provider or Installer, who will work at the Premises. Provider shall provide to Host the names and identification of all such persons. Notwithstanding any other provision of the Agreement, the Host may refuse to allow any such employee to work on the project if the Host, in its sole discretion, determines that such employee is not suitable for work on the project based on the results of such CORI or SORI. The Host shall keep such information in a confidential file. With respect to Projects to be installed at public schools in other states, similar criminal offender and sex offender information maintained by the state shall apply, and Host shall have discretion regarding employment of such registered offenders.

(j) Notwithstanding anything in this Agreement to the contrary, Host shall have no obligation to assign to Provider any right or interest which gives the Provider greater rights or interests in the Premises or any other property owned or controlled by the Host than the rights and interests contemplated in this Agreement.

(rest of page left blank intentionally – signatures appear on next page)

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

Solect Energy Development, LLC a Massachusetts Limited Liability Corporation

By: _____

Name (printed): _____

Title: _____

HOST, City of Marlborough

**FOR THE CITY OF MARLBOROUGH
BY:**

By: Arthur G. Vigeant

Title: Mayor

Date: _____

DEPARTMENT HEAD:

By: John L. Ghiloni

Title: Commissioner of Public Works

ACKNOWLEDGMENT OF LEASE:

By: Diane Smith

Title: City Auditor

By: Brian Doheny

Title: Comptroller/Treasurer

**CERTIFICATION AS TO
PROCUREMENT LAW:**

By: Beverly J. Sleeper, MCPPO

Title: Chief Procurement Officer

Procurement Law: **M.G.L. c. 164, § 134**

**APPROVED AS TO FORM BY LEGAL
COUNSEL:**

Jason D. Grossfield

Title: City Solicitor

OR

Jason M. Piques

Title: Assistant City Solicitor

GLOSSARY OF TERMS

“Access Rights” means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Agreement” means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

“Applicable Solar Program” means the state laws, rules, and regulations that govern the solar incentives, rights and obligations (e.g., SRECs), as may be amended from time to time, by the authorities having legal jurisdiction where the Project will be installed and where the benefits will be realized.

“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

“Capacity Value” means such capacity value as determined by market rules established by ISO-NE. Provider is the owner of the capacity value of the Project and shall have the right to participate in ISO-NE’s Forward Capacity market at their discretion through an aggregator or as an ISO-NE Market Participant. The Provider shall sell the capacity of the Project into the Forward Capacity Market (FCM) by the later of twelve (12) months from the Commercial Operation Date or the first date available to participate in the Forward Capacity Auction (FCA); if not, the Provider relinquishes ownership of the Capacity Value of the Project to the Host.

“Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

“Commercial Operation Date” means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully

completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

“Construction Start Date” means day within 180 days from the date of this Agreement.

“Decommissioning Assurance” means financial security in the form of an escrow account, letter of credit, bond or other form of security reasonably acceptable to the Parties, in a sufficient amount to cover removal of the Project from the Premises and restoring the Premises to substantially its pre-construction condition existing on the Commencement Date, ordinary wear and tear excepted, as certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts..

“Delay Liquidated Damages” means the daily payment of (i) \$0.250/day/kW if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Dispute” means a controversy or claim arising out of or relating to this Agreement.

“Early Termination Amount” means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes.

“Electric Service Provider” means any person, including the Local Electric Utility, authorized by the State of Massachusetts to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

“Estimated Annual Production” means the annual estimate of electricity generated by the Project for any given year. The Estimated Annual Production for each year of the Term is set forth in Exhibit F.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment

shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

“Financing Party” means a Project Lessor or Lender.

“Force Majeure Event” means any act or event that prevents the affected Party 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 the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Guaranteed Commercial Operation Date” means 180 days from the Construction Start Date, which shall be extended day-by-day for Force Majeure Events and for other events outside of Provider’s reasonable control.

“Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

“Host” means and all successors and assigns.

“Indemnified Person” means the person who asserts a right to indemnification under Section 15.

“Indemnifying Party” means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

“Initial Period” has the meaning provided in Section 2.

“Installation Work” means the construction and installation of the Project and the start-up, testing and acceptance (but not the operations and maintenance) thereof, all performed by or for Provider at the Premises.

“Installer” means Solect Energy Development, LLC, the person designated by Provider to install the Project on the Premises.

“Land Registry” means the office where real estate records for the Site are customarily filed.

“Lender” means persons providing construction or permanent financing to Provider in connection with installation of the Project.

“Liens” has the meaning provided in Section 8(c).

“Local Electric Utility” means the entity authorized and required under Applicable Law to provide electric distribution service to Host at the Site.

“Losses” means any and 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 attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

“Net Metering” means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in Applicable Law.

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by a Project, and credited to the Host by the Local Electric Utility, as set forth in Applicable Law.

“Operations Period” has the meaning provided in Section 2.

“Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

“Party” means either Host or Provider, as the context shall indicate, and “Parties” means both Host and Provider.

“Point of Delivery” has the meaning set forth in Section 5(a) and Exhibit E.

“Premises” means the portions of the Site described on Exhibit D.

“Project” means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.

“Project Lessor” means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.

“Provider” means Solect Energy Development, LLC.

“Relocation Event” means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy Project.

“Site” means the real property described on Exhibit C attached hereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

“Term” shall have the meaning provided in Section 2 hereof.

EXHIBIT A

ENERGY PURCHASE PRICES

As set forth below, the \$/kWh rate will be established upon receipt of the SMART Statement of Qualification from the SMART Solar Program Administrator, on behalf of the Massachusetts Department of Energy Resources. Upon receipt, Provider shall forward a copy to Host, confirming the applicable SMART Block and PPA Rate.

SMART Block 9	SMART Block 10
.11	.114

Notes:

The price/kWh reflects an annual Payment In Lieu of Taxes (PILOT) amount in the amounts shown on Exhibit B. In the event that the contracted annual PILOT amount differs from the amount in Exhibit B, the Parties agree to adjust the price/kWh in Exhibit A, "Energy Purchase Prices", to reflect the difference in tax payments from the amount assumed in Exhibit B.

The price/kWh reflects 2020 Installation and the corresponding Federal Investment Tax Credit value.

EXHIBIT A-1

PILOT Payment Schedule and Amounts

Fiscal Tax Year July 1-June 30	August 1 Payment	November 1 Payment	February 1 Payment	May 1 Payment
Year 1	898	898	898	898
Year 2	876	876	876	876
Year 3	854	854	854	854
Year 4	832	832	832	832
Year 5	812	812	812	812
Year 6	791	791	791	791
Year 7	771	771	771	771
Year 8	752	752	752	752
Year 9	733	733	733	733
Year 10	715	715	715	715
Year 11	697	697	697	697
Year 12	680	680	680	680
Year 13	663	663	663	663
Year 14	646	646	646	646
Year 15	630	630	630	630
Year 16	614	614	614	614
Year 17	599	599	599	599
Year 18	584	584	584	584
Year 19	569	569	569	569
Year 20	555	555	555	555

EXHIBIT B

EARLY TERMINATION AMOUNTS

Year of System Term	Early Termination	Early Purchase
1	\$1,271,924	N/A
2	\$998,630	N/A
3	\$930,931	N/A
4	\$904,690	N/A
5	\$834,529	N/A
6	\$763,022	N/A
7	\$690,087	\$604,510
8	\$658,286	N/A
9	\$624,874	N/A
10	\$589,749	\$496,237
11	\$552,804	N/A
12	\$515,611	N/A
13	\$476,462	N/A
14	\$435,236	N/A
15	\$391,801	\$283,395
16	\$346,015	N/A
17	\$296,046	N/A
18	\$252,402	N/A
19	\$212,931	N/A
20	\$171,962	\$46,290

EXHIBIT C

DESCRIPTION OF SITE

Marlborough New Elementary School 441 Bolton Street Marlborough, Massachusetts

Five parcels of land situated in Marlborough, County of Middlesex, Commonwealth of Massachusetts, Parcel 1, containing 2.69 acres more or less, Parcel 2 containing .41 acres more or less, Parcel 3 containing 36.29 acres more or less, Parcel 4 containing 18.13 acres more or less, and Parcel 5 containing 4.52 acres more or less, all being shown on a plan of land entitled:

“Plan of Land in Marlborough, Mass., scale 1” = 60’, Date: August 22, 1972,” Paul A. Sharon Comm. of D.P.W., Surveyed by Highland Land Surveyors, Inc., 24 Maple Street, Marlboro, Mass. John D. Costedio, (Reg. Land Surveyor) recorded with the Middlesex South Registry of Deeds as Plan 1033 of 1973.

For The City of Marlborough’s title, see Order of Taking recorded with the South Middlesex Registry of Deeds in Book 12507, Page 396

EXHIBIT D

DESCRIPTION OF PREMISES

The Premises and the Access Areas shall mean the Site. Locations where solar equipment will be installed and accessed including the roofs, exterior and interior walls, through to the main electric room, and exterior areas of the Site depicted in Site Plan below. The Project will be combined and connected to Host's existing main electric equipment, interconnected to the utility network behind the existing utility meter.

Site Plan – SED - Marlborough New Elementary School – 4284 – 298.62 kW DC – 200 kW AC 441 Bolton Street, Marlborough, MA 01752

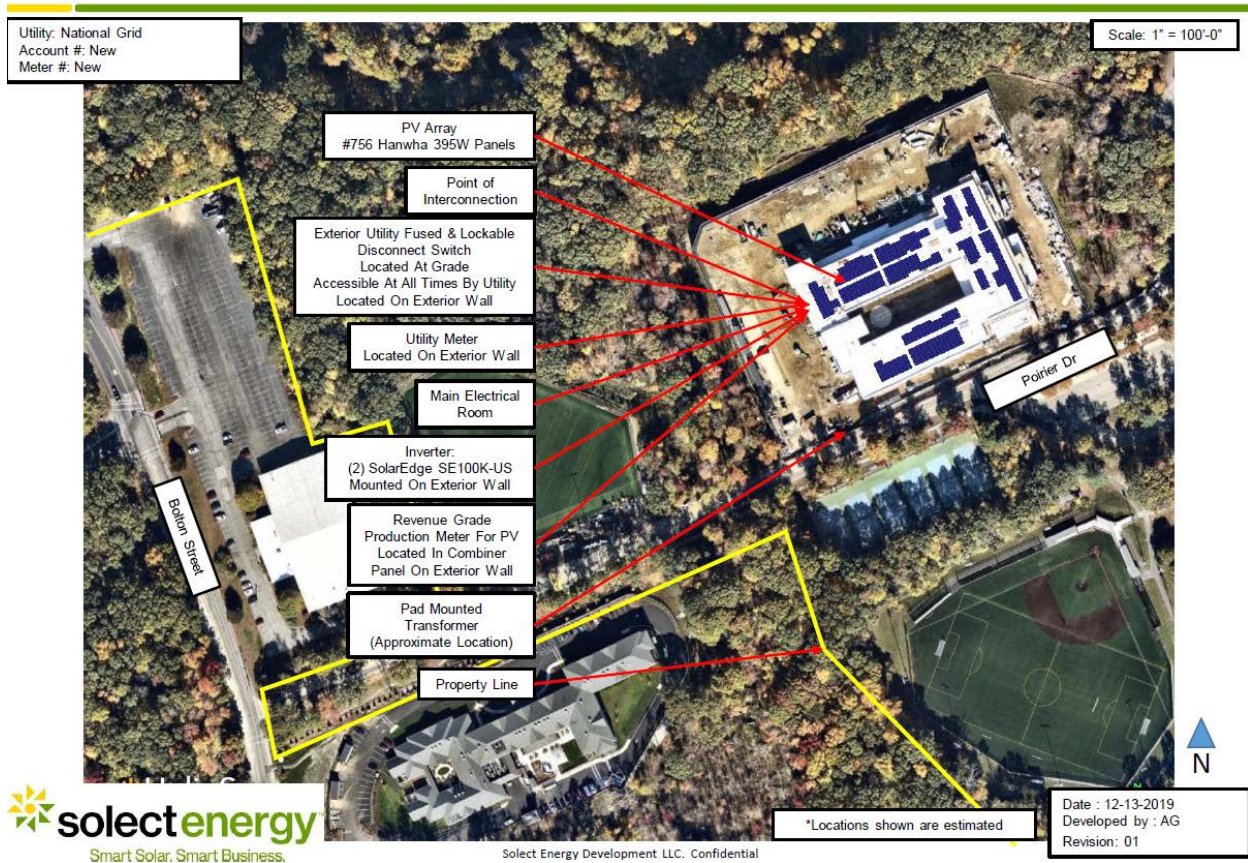


EXHIBIT E

DESCRIPTION OF PROJECT

The Project will be comprised of a series of solar photovoltaic equipment and parts integrated to the main electric service at the building, behind the utility meter, and interconnected to the local utilities distribution system. Main equipment components of the Project include:

Roughly 756 x 395W Tier 1 Solar modules or equivalent

Roughly 2 x SolarEdge solar inverters or equivalent

Ecolibrium or equivalent solar racking equipment

Rapid shutdown system

Solar kWh meter and monitoring system, connected to Host-provided internet service

Combiners, Disconnects, Switches, Pipe and Wire and Balance of System materials integrated to

Equipment quantities, brands, specifications and ratings may change during course of the project

EXHIBIT F

ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	341,024	11	322,725
2	339,148	12	320,950
3	337,283	13	319,185
4	335,428	14	317,429
5	333,583	15	315,684
6	331,748	16	313,947
7	329,924	17	312,221
8	328,109	18	310,503
9	326,305	19	308,796
10	324,510	20	307,097

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

EXHIBIT G

INSURANCE REQUIREMENTS

1. General Liability

(a) Both Host and Provider will have a minimum level of commercial general liability insurance for the term of the Power Purchase Agreement of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. Provider shall maintain an umbrella policy in the minimum amount of (\$5,000,000) five million dollars. Provider's insurance shall be primary and non-contributory.

(b) The Provider's general liability insurance coverage shall include broad form property damage liability, products/completed operations liability and broad form contractual liability. The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion.

2. Workers' Compensation

Host will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

3. Property Loss

Provider shall carry adequate property loss insurance on the Project which need not be covered by the Host's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion, but not less than \$1,000,000/\$2,000,000.

4. Professional Liability Insurance

Provider or its subcontractors shall carry Professional Liability insurance covering errors and omissions, not less than \$1,000,000 each occurrence and \$1,000,000 aggregate limit.

5. Additional Insurance Provisions

Host shall furnish Provider with certificates of insurance and endorsements of all required insurance as currently maintained by Host, as may be reasonably requested, including for

purposes of compliance with any Applicable Law or Local Electric Utility affecting the Premises or operation of the Project. Insurance required by the Local Electric Utility shall not be canceled except after (30) days prior written notice has been given to the Local Electric Utility.

5. Additional Installation Contractor Requirements

Installation contractors will have valid commercial general liability, workers compensation, and business auto insurance as follows:

- Commercial general liability insurance will be in the following amounts: \$1,000,000 for each occurrence and \$2,000,000 aggregate.
- Workers compensation insurance or self-insurance indicating compliance with any applicable labor codes, laws or statutes, state or federal, where Installer performs work.
- Auto coverage not less than 1 million dollars (\$1,000,000) each accident for bodily injury and property damage, and 1 million dollars (\$1,000,000) in the aggregate.
- Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance for Commercial General Liability, Auto Liability and Employers' Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and one million dollars (\$1,000,000) in the aggregate. The amounts of insurance required for Commercial General Liability, Auto Liability, Employers' Liability and Excess Liability may be satisfied by Installer purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.
- Installer's insurance shall include the City of Marlborough as an additional insured and shall be primary and non-contributory.

EXHIBIT H
FORM OF LEASE

This Lease (the “Lease” or the “Agreement”) is made and entered into as of _____, _____, by and between _____ (“**Host**”), and Solect Energy Development, LLC, (“**Solect**” or “**Provider**”) a Limited Liability Company located in Hopkinton, Massachusetts (together, the “**Parties**”).

WHEREAS, Host and Provider have entered into a Power Purchase Agreement dated as of _____, _____, (the “**PPA**”) and pursuant to such agreement Host has agreed to provide Provider with rights to access and use certain portions of Host’s property located at _____. All terms used herein which are not otherwise defined shall have the meanings set forth in the PPA.

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

1. Premises and Related Rights. Effective _____, _____, Host hereby leases to Provider, in accordance with the terms and conditions set forth in the Power Purchase Agreement dated on or about the date hereof between Host and Provider (“PPA” or “Agreement”), the Premises. Host hereby also grants to Provider, for a period co-terminus with the Lease, a non-exclusive right-of-way to access the Premises across or through any surrounding or nearby properties owned or leased by Host, passage through which is necessary or convenient to install or gain access to the Project or the Premises provided same does not interfere with Host or any of Host’s contractors, employees, students, invitees or public officials. Provider shall be responsible to determine, as part of its due diligence following the Effective Date, the availability and suitability of such access. Notwithstanding the foregoing, access to the Premises for the installation of the Project shall be in accordance with a schedule to be agreed upon by the Parties, and access to the Project after installation shall be permitted only upon advance notice to Host, except in the event of an emergency posing a threat to the public health and safety.

2. Project Construction, Installation and Operation.

(a) Host hereby consents to the construction of the Project by Provider on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. The Project shall be designed, engineered, and constructed in accordance with the standards, terms and conditions set forth in the Agreement.

(b) Provider shall also have the right from time to time during the term hereof with reasonable care and subject to the standards, terms and conditions of the Agreement:

- (i) to install and operate the Project on the Premises;
 - (ii) to maintain, clean, repair, replace and dispose of part or all of any Project (in the case of replacement and disposal, with Host's written consent);
 - (iii) to add or remove any parts of the Project (with Host's written consent);
- and
- (iv) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Provider, to carry out the activities set forth in this Section 2.

(c) Host acknowledges that the installation of all or a portion of the Project will require installation and physically mounting and adhering parts of the Project to the building, structure and fixtures appurtenant to the Premises and consents to such mounting or adhering, as applicable, provided the same is done in accordance with and subject to the terms of the Agreement, including adherence to roof warranty requirements. Should the installation, operation or removal of the Project cause damages to the Premises, Provider shall be responsible to repair the Premises according to the terms of the Agreement to the condition the same were in on the date hereof, normal wear and tear excepted.

3. Project and Output Ownership.

(a) Host acknowledges and agrees that Provider or one of its affiliates is the exclusive owner and operator of the Project, and that all equipment comprising the Project shall remain the personal property of Provider and shall not become fixtures.

(b) Host acknowledges that Provider is the exclusive owner of electric energy generated by the Project and owner of all environmental attributes and tax attributes attributable to the Project.

4. Representations and Warranties, Covenants of Host.

(a) Host's Title to Premises. Host represents that Host has lawful title to (or a valid leasehold interest in) the Premises and that, so long as Provider is not in breach of the Agreement and subject to such conditions as are contained therein, Provider shall have quiet and peaceful possession of the Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Provider's quiet enjoyment thereof, throughout the term of this Lease.

(b) No Interference With and Protection of Project. Other than the activities that Host presently conducts at and about the Premises, and subject to requirements of Applicable Laws and according to the terms of the Agreement, Host will not conduct discretionary activities

on, in or about the Premises, the Building or the Premises that have a reasonable likelihood of causing material damage, impairment or otherwise materially and adversely affecting the Project.

(c) Utilities. Provider shall be responsible for paying for Station Power during the term of this Lease. For purposes of this Lease “Station Power” shall mean electric energy consumed in the start-up and operation of the Project, which is distinct from the alternating current output of the Project.

(d) Insolation. Subject to the requirements of Applicable Law, Host shall not construct or permit to be constructed any structure on the Premises that could materially and adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation other than those that may be emitted from the normal operation of the buildings presently located on or about the Premises or from vehicular traffic.

(e) Notice. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the Project or interruption in the supply of electricity from the Project. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Host shall have no duty or obligation to monitor, observe or check upon the Project or its operation; Host shall have the right, but not the obligation, to address any emergency condition arising from the Project that Host in good faith believes presents or will likely present a threat to public health and safety; and any good faith failure of Host to provide the notification required in this paragraph shall not constitute a default or breach of the Agreement by Host.

5. Representations and Warranties, Covenants of Provider.

(a) Hazardous Materials. In addition to the other terms and conditions of the Agreement concerning Hazardous Materials, Provider shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Provider becomes aware of any such hazardous, toxic or dangerous materials, Provider shall promptly notify Host of the type and location of such materials in writing. Provider agrees to assume full responsibility for (and protect, indemnify and defend Host against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Building or the Premises that are attributable to the willfully negligent actions of Provider.

(b) Regulatory Status. Provider represents and warrants that it is not a public service company, electric company, or electric distribution company as defined under the laws of the commonwealth of Massachusetts.

6. Term and Termination. The term of this Lease shall be coterminous with the PPA (the “Term”), including any extensions thereof, but in no case more than thirty (30) years from the date of execution of this Agreement by both parties. Upon expiration or earlier

termination of the Agreement, unless the Agreement is extended by agreement of the Parties in accordance with any terms allowing for the same in the PPA, Provider shall remove the Project and any part thereof, at Provider's expense, and shall repair any damage caused by the Project or its removal except for normal wear and tear and Host shall allow Provider access to the Premises for such purposes. Should the Parties agree to transfer Project ownership through a Purchase Agreement, Provider will not remove the Project from the Premises.

7. **Taxes.** Provider and Host intend to enter in to a Payment In Lieu of Taxes agreement.

8. **Casualty or Condemnation.** As provided in Section 17(c) of the PPA, in the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Host and Provider, Host shall determine whether to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, subject to the availability of insurance proceeds dedicated to such purpose, and shall so notify Provider upon such determination. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

9. **Architectural, Engineering, Construction or Attorney's Fees.** If Host determines that Provider is in material breach of this Lease, Host shall treat such breach as a Provider Event of Default and may proceed in accordance with the provisions of Section 19(a)(iv), subject to any Financing Party's rights in Section 21(a)(ii) and (iii). If Host or any Financing Party, as the case may be, fails to cure such material breach of this Lease and Host makes any expenditures, including but not limited to architectural, engineering, construction or attorney's fees or incurs any obligations for the payment of money in connection with any Provider material breach of this Lease,, such costs shall be reimbursed to Host by Provider upon ten (10) days advanced written notice, in addition to any other damages incurred by Provider on account of such material breach.

10. **Recording.** This Lease shall not be recorded, but Host and Provider shall execute a recordable form Notice of Lease complying with Massachusetts law and satisfactory to Provider, to be recorded at Provider's sole expense.

In WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

GRANTOR:

By: _____

Name: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____

ATTACHMENT A
SITE and PREMISES DESCRIPTION

ATTACHMENT B
EXISTING ENCUMBRANCES