

POWER PURCHASE AGREEMENT

- Cover Sheet -

This Power Purchase and Host Agreement (consisting of this Cover Sheet, the Terms and Conditions and all Exhibits referenced herein and attached hereto, this “Agreement”) is made and entered into as of the date set forth and between the parties listed below.

<p>Party A, as System Owner: Vineyard Power Solar IV, LLC, a Delaware limited liability company (“System Owner”)</p>	<p>Party B, as Host: Town of Chilmark, A political subdivision of the Commonwealth of Massachusetts (the “Host”)</p>
<p>Contact: Vineyard Power Solar IV, LLC 322 State Road Vineyard Haven, Massachusetts 02568 Attn: Richard Andre, President Phone: (508) 693-3002 Fax: () []-[]</p>	<p>Contact: Town of Chilmark PO Box 119, 401 Middle Road Chilmark, MA 02535 Attention: Executive Secretary Phone: (508) 645-2101 Facsimile: (508) 645-2110</p>
<p><u>Property Location:</u> Tabor House Road, Chilmark Assessors Map 13, Lot 28 Chilmark, MA</p> <p>(See <u>Exhibit A</u> for more detail.)</p>	<p><u>System Description:</u> System Size: Approximately 99.4kwDC to be installed. (See Exhibit C for more detail.)</p>
<p><u>Pricing:</u> []</p> <p>(See <u>Exhibit B</u> for more detail.)</p>	<p><u>Duration:</u> Date of Agreement: November __, 2013 (“Effective Date”) Commercial Operation Date: TBD in accordance with Section 5.5(c) of the Terms and Conditions Term: Initial Term: 10 years from Commercial Operation Date; plus up to three (3) five (5) year extensions of the Term.</p>

System Owner and Host shall each be referred to in this Agreement individually as a “Party” and, together, as “Parties”.

RECITALS:

WHEREAS, Host owns the land located at Tabor House Road in Chilmark, Massachusetts in Exhibit A attached hereto (the “Property”) and desires to purchase Solar Services for, among other things, delivery of electricity generated by the System to the Delivery Point;

WHEREAS, Host desires that System Owner install the System, to be located at the Property, and System Owner is willing to perform the installation of the System; and

WHEREAS, System Owner desires to sell, and Host desires to purchase, the Solar Services, consisting of the System’s electricity production, the operation and maintenance of the System and other services to be provided in accordance with the terms and conditions set forth herein;

AGREEMENT

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

1. Each of the following documents shall be deemed part of this Agreement and are incorporated herein by this reference as though set forth herein in their entirety:

- Terms and Conditions
- Exhibit A: Description of Property and Leased Area (Including Delivery Point)
- Exhibit B: kWh Rate
- Exhibit C: Description of System

2. This Agreement, together with that certain Lease Agreement entered into as of even date herewith between the System Owner as the Tenant thereunder and the Host as the Landlord thereunder, constitute the entire agreement and understanding between System Owner and Host with respect to the subject matter hereof and supersedes all prior agreements between them relating to the subject matter hereof, which are hereafter of no further force or effect. The Terms and Conditions and the Exhibits referred to herein are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail and such Exhibit shall be corrected accordingly.

3. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Host and System Owner; provided, that the Parties hereby mutually agree that Exhibit C shall be amended to include the Final Drawings, once completed and approved or deemed approved by the Host pursuant to the terms of this Agreement.

4. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts without reference to its principles of conflicts of laws.

5. The relationship between System Owner and Host shall not be that of partners, agents, or joint venturers, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. System Owner and Host, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk. Neither Party has the right to create an obligation for the other Party.

6. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile transmission of executed copies or signature pages for this Agreement shall be legal, valid and binding execution and delivery for all purposes.

[Signatures, Terms and Conditions and Exhibits Follow.]

IN WITNESS WHEREOF, the duly authorized officers of the Parties have executed this Power Purchase Agreement as an instrument under seal as of the Effective Date.

SYSTEM OWNER:

Vineyard Power Solar IV, LLC,
a Delaware limited liability company

By: Vineyard Power Solar, Inc.,
a Massachusetts corporation,
its Manager

By: _____
Name: Richard Andre
Title: President

HOST:

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

By: _____
Name: Warren M. Doty
Title: Chairman, Board of Selectmen

By: _____
Name: William N. Rossi
Title: Member, Board of Selectmen

By: _____
Name: Jonathan E. Mayhew
Title: Member, Board of Selectmen

**POWER PURCHASE AGREEMENT
TERMS AND CONDITIONS**

SECTION 1. DEFINITIONS.

“Affiliate” means any relatives of the members of System Owner, or any Person who, directly or indirectly controls, is under common control with, or is controlled by, another Person, whether directly or indirectly through one or more intermediaries. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

“Agreement” means this Power Purchase Agreement.

“Applicable Law” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, license, permit, tariff, and other governmental consents or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which, with respect to the Host, may at any time be applicable to the Property, including, without limitation, the operation and maintenance of landfill on the Property and which, with respect to the System Owner, may at any time be applicable to the Leased Area or the System, or any part thereof or to any condition or use thereof, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the System on the Property, as well as the selling and purchasing of power therefrom.

“Approval” means any approval, license, permit, inspection, authorization or other consent, from a Governmental Authority, Local Distribution Company, the New England ISO, or NEPOOL which is or may be required for the performance of a Party’s obligations or the exercise of Party’s rights, as specified herein.

“Assign” and “Assignment” have the meanings set forth in Section 15.2.

“Billing Months” (individually, a “Billing Month”) means the periods for which the Local Distribution Company bills the Host for the purchase of electricity; provided, that no period of time shall be considered a Billing Month hereunder unless such period occurs, or concludes, after the Commercial Operation Date.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 9:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Claim” has the meaning set forth in SECTION 18.

“Commercial Operation Date” has the meaning set forth in Section 5.5(c).

“Completion Notice” has the meaning set forth in Section 5.5(b).

“Delivery Point” means the agreed location or locations at the Property where the electricity generated by the System is to be delivered and received under this Agreement, as further set forth in Exhibit A attached hereto.

“Dispute” has the meaning set forth in Section 13.1.

“Early Termination” means a termination of this Agreement pursuant to Section 2.2 or SECTION 12 prior to the expiration of the Term.

“Effective Date” has the meaning set forth in the preamble.

“Environmental Attributes” means any offset, credit, benefit, reduction, rebate, financial incentive, tax credit and other beneficial allowance including, to the extent applicable and without limitation, RECs, SRECs, carbon credits, Green-e products, investment tax credits, production tax credits, forward capacity market credits or other credits earned by or in connection with, or otherwise attributable to, the System, or the electricity produced by the System, under or with respect to the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), any state or federal renewable portfolio standard or renewable energy standard or other portfolio purchase mandate or requirement, including the renewable portfolio standard of the Commonwealth of Massachusetts, the Regional Greenhouse Gas Initiative or any statute or regulation implementing the foregoing, any federal or other applicable act or regulation relating to carbon emissions or a cap or other limitation thereupon or any other state, federal or other Governmental Authority act, law or regulation that provides offsets, credits, benefits, reductions, allowances or incentives of any kind or nature related to electricity generation, generation capacity or emissions (or the lack or avoidance thereof).

“Equipment Leasing Party” means any Person now or hereafter leasing the System or any portion thereof to System Owner as part of a financing transaction entered into by System Owner, including an equipment lease, financial lease, sale-leaseback or other leasing transaction.

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

“Fair Market Value” has the meaning set forth in Section 2.4.

“Final Drawings” means the final stamped engineering drawings for the System, and the installation thereof at the Property, to be prepared by System Owner after the Effective Date, presented to Host and included in Exhibit C.

“Financing Party” or “Financing Parties” means any and all Persons or successors in interest thereof, directly or indirectly, (i) lending money, (ii) extending credit, (iii) investing equity capital or (iv) providing or financing any lease or other arrangement including tax equity investments for or in connection with any of the following: (a) the construction, term or permanent financing of the System; (b) working capital or other ordinary business requirements of the System (including the maintenance, repair, replacement or improvement of the System); (c) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the System; or (d) the purchase of the System and the related rights. For avoidance of doubt, “Financing Party” shall include an Equipment Leasing Party, if any, any Person providing any of the foregoing categories of financing to Equipment Leasing Party with respect to the System.

“Force Majeure Event” means an event, occurrence or circumstance, or combination thereof, beyond the reasonable control of a Party which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, including: (a) acts of God, terrorism, war, blockade, riot, civil disturbance or sabotage; (b) any effect of unusual natural

elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Property, the Leased Area, the System or a Party's obligations hereunder; (d) explosion, accident or epidemic; (e) governmental action or inaction, or (f) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; provided, that neither the lack of money nor changes in market conditions shall constitute a Force Majeure Event.

"Good Solar Industry Practice" means those practices, methods and acts commonly used during the Term and any extensions thereof in the design, engineering, construction, operation and maintenance of solar electric power generation facilities similar to the System, which in the exercise of professional judgment and in light of the facts known at the time the decision was made are considered good, safe, and prudent in connection with the design, engineering, construction, operation and maintenance of solar electric generation facilities similar to the System commensurate with standards of safety, performance, dependability, efficiency and economy, and as are in accordance with generally accepted standards of professional care, skill, diligence, and competence applicable to the design, engineering, construction, operation and maintenance of behind the meter solar electric generating systems in the Commonwealth of Massachusetts. Good Solar Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the Commonwealth of Massachusetts during the Term and any extensions thereof.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Host" has the meaning set forth in the preamble hereof.

"Host Default" has the meaning set forth in Section 12.2(a).

"Host Interconnection Documents" has the meaning set forth in Section 3.2.

"Indemnitee" means, with respect to each Party, a Person indemnified by the other Party pursuant to SECTION 14.

"Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof.

"Interconnection Agreement" has the meaning set forth in Section 3.2.

"Involuntary Bankruptcy Event" means, with respect to a Party, a proceeding or case is commenced against such Party without its application or consent in any court of competent jurisdiction seeking: (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of one hundred twenty (120) or more days.

"kWh Rate" for the relevant Billing Month has the value provided in **Exhibit B**.

“Lease” means the Lease Agreement entered into between Host and System Owner of even date with this Agreement, as further described in SECTION 4.

“Leased Area” has the meaning set forth in the Lease.

“Liens” has the meaning set forth in Section 9.1(d).

“Local Distribution Company” means NSTAR, in its capacity as the local investor-owned electric distribution company that provides electric distribution service to the municipality in which the Host is located.

“M.G.L.” means the Massachusetts General Laws, as amended from time to time.

“Meter” means a set of instruments meeting applicable electric industry standards, including ANSI C12-20 standards for meter accuracy, installed by System Owner to measure and record the volume and other relevant delivery characteristics of electrical energy produced by the System.

“Monthly Production” has the meaning set forth in Section 8.1.

“Mortgagee” means any Person holding a mortgagee’s interest under a mortgage on the Property.

“O&M Work” has the meaning set forth in Section 6.1.

“Persons” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Property” has the meaning set forth in the recitals hereto.

“RECs” means renewable energy credits.

“Resource Monitoring” means testing or other activities performed by System Owner at the relevant locations on the Property to monitor and measure solar radiance at such locations.

“Services Payment” has the meaning set forth in Section 8.1.

“Solar Services” means all of the services provided by System Owner to the Host under this Agreement, including provision of a web-based interface tracking System, generation and delivery of electricity from the System.

“SRECs” means Solar Carve-Out Renewable Generation Attributes as such terms is now or may be hereafter defined pursuant to 225 Code of Massachusetts Regulations §14.00, with each SREC attributable to one (1) MWh of generation.

“System” means one or more integrated solar photovoltaic electricity generating system or systems, up to but not including the Delivery Point, as described in overview form in **Exhibit C** attached hereto, and as will be described more specifically in the Final Drawings.

“System Acceptance Testing” has the meaning set forth in Section 5.5(a).

“System Owner” has the meaning set forth in the preamble (including the Cover Sheet).

“System Owner Default” has the meaning set forth in Section 12.1(a).

“System Requirements” has the meaning set forth in Section 5.5(a).

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

“Transfer of Title” has the meaning set forth in Section 2.3.

“Voluntary Bankruptcy Event” means, with respect to a Party, the occurrence of one or more of the following where such Party: (A) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) 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) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; (G) takes any action for the purpose of effecting any of the foregoing.

SECTION 2. TERM; TERMINATION; SYSTEM PURCHASE OPTION

2.1 Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and, unless terminated earlier pursuant to an Early Termination, continue until the tenth (10th) anniversary of the Commercial Operation Date (the (“Initial Term”) and may be renewed for up to an additional three (3) extensions of the Term of five (5) years each upon the mutual agreement of the Parties ninety (90) days prior to the expiration of the Agreement and on each renewal thereafter (each an “Extension Term”). The end of the Extension Term, if not renewed, and the end of the Initial Term, if not renewed, shall be referred to as the “Expiration Date”.

2.2 System Purchase Option; Termination for Convenience. Provided that no Host Default has then occurred and is continuing beyond any applicable cure period, Host may purchase the System and terminate this Agreement for convenience at any time after the tenth (10th) anniversary of the Commercial Operation Date upon at least sixty (60) days’ prior written notice to System Owner. Upon the payment of the Fair Market Value of the System in accordance with Section 2.4 and execution and delivery by System Owner to Host of a bill of sale for the System, (a) title to the System shall pass to Host, free and clear of any liens and encumbrances, and without warranties of any kind except as to title, (b) the remaining period on all third party warranties for the System, and the remaining term of all third party contracts regarding monitoring, operations and/or maintenance of the System, in each case to the extent transferable, will be transferred to Host, (c) all right title and interest in and to any Environmental Attributes created with respect to generation of electricity from the System on and after the date of such bill of sale shall accrue to and be vested in Host, and (d) this Agreement shall terminate automatically.

2.3 Transfer of Title by Host. If prior to end of the Term, Host sells, assigns or transfers, whether by operation of law or otherwise, all or any portion of its interest in the Property (a “Transfer of Title” to a “Property Transferee”), it shall provide written notice to System Owner at least sixty (60) days prior to the Transfer of Title. Host hereby covenants to System Owner that it will provide notice to System Owner at least sixty (60) days prior to a Transfer of Title, including notice of a Transfer of Title to an Affiliate of Host. Any Transfer of Title to the Property Transferee (except for a transfer by operation of law) shall include a written assumption by the transferee of all of Host’s obligations under this Agreement.

2.4 Purchase Option Upon Expiration. Host may purchase the System on the Expiration Date, if the Agreement is still in effect on such date, at the System’s fair market value on an installed and running, or going-concern basis, as determined pursuant to this Section (the “Fair Market Value”); provided, that no Host Default has occurred and is continuing at such time. Host shall provide written notice to System Owner of Host’s intent to exercise this purchase option, exercisable on the then applicable Expiration Date, not less than ninety (90) days prior to the Expiration Date (or else the option shall automatically expire with respect to such Expiration Date only). Upon Host’s payment of the Fair Market Value to System Owner pursuant to this Section: (a) title to the System shall pass to Host, free and clear of any liens and encumbrances, and without warranties of any kind except as to title, (b) the remaining period on all third party warranties for the System, to the extent transferable, will be transferred to Host, (c) all right title and interest in and to SRECs created with respect to generation of electricity from the System on and after the date of such payment shall accrue to and be vested in Host, and (d) this Agreement shall terminate. If the Fair Market Value has not been paid to System Owner by the Expiration Date, then System Owner shall retain title to the System. If the Fair Market Value has not been determined by the Expiration Date, the Term shall be automatically extended until the date thirty (30) days after such determination has been made, on which date payment of the Fair Market Value to System Owner shall be due or else System Owner shall retain title to the System.

The Fair Market Value shall be determined by the mutual agreement of Host and System Owner within ten (10) days of Host’s provision of notice to System Owner regarding its intent to exercise its purchase option pursuant to this Section or Section 2.2. If Host and System Owner cannot agree upon the Fair Market Value, then System Owner shall select, subject to Host’s reasonable consent, which consent shall not be unreasonably withheld or delayed, a nationally recognized independent appraiser with experience and expertise in the solar electric power industry to value the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. Host may elect, within thirty (30) days of the appraiser’s determination of Fair Market Value, to withdraw its exercise of its purchase option pursuant to Section 2.2 or this Section 2.4. In the case of Host’s withdrawal of its election to purchase the System under Section 2.2, this Agreement will continue in full force and effect for the remainder of the then applicable Term. Subject to Host’s right to withdraw its election to purchase the System as set forth in this Section 2.4, the valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

**SECTION 3. CONDITIONS PRECEDENT TO SYSTEM OWNER OBLIGATIONS;
EARLY TERMINATION.**

System Owner's and Host's obligations under this Agreement are subject to satisfaction of the following conditions:

3.1 Financing. System Owner shall have arranged financing with one or more Financing Parties adequate in its sole discretion for the performance of its obligations under this Agreement.

3.2 Interconnection. As a condition precedent to System Owner's obligations under this Agreement, System Owner and the Local Distribution Company shall have executed an interconnection services agreement (the "**Interconnection Agreement**") with respect to the operation of the System in the form attached as Exhibit F to the Local Distribution Company's Standards for Interconnecting Distributed Generation (the "**Interconnection Standards**"). In addition, Host shall have completed, executed and delivered each of: (a) a Third Party Owner Agreement and/or Customer Interconnection Acknowledgment Agreement in the form attached as Exhibit G to the Interconnection Standards, to be attached as Attachment 6 to the Interconnection Agreement; and (b) Host shall have completed and delivered Schedule Z to the Interconnection Standards ((a) and (b), together the ("**Host Interconnection Documents**"). The System shall have been qualified as a Class I Net Metering Facility as defined under the applicable regulations under 220 CMR 18.00 *et seq.* System Owner and Host shall reasonably cooperate with one another in connection with completing, executing and delivering to the Local Distribution Company the documentation called for under this Section 3.2.

3.3 Approvals. System Owner shall have received from any Governmental Authority having jurisdiction over the Property (including without limitation from the Department of Environmental Protection) approval or evidence of approval of the installation, operation and maintenance of the System at the Property, the use or re-use of the Property and performance of its other obligations under this Agreement, and shall have obtained all necessary approvals of the Local Distribution Company for the installation, interconnection and operation of the System as a Class I Net Metering Facility as defined under the regulations at 220 CMR 18.00.

3.4 SREC Implementation. [Intentionally Omitted]

3.5 Early Termination by Host. Host may terminate this Agreement prior to the achievement of the Commercial Operation Date upon the occurrence of any one of the following:

(a) In the event that System Owner has not prepared for submission to the Distribution Company a complete interconnection application seeking authorization to construct and interconnect the System to the Distribution Company System within 60 days of the Effective Date.

(b) In the event that System Owner has not submitted an application to the Massachusetts Department of Environmental Protection within 60 days of the Effective Date for any necessary post-closure use permit. Host agrees to cooperate in such submission including signing such application and providing required information known to Host.

(c) In the event that the Interconnection Agreement, in form and substance satisfactory to each of System Owner and Host, in its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of System Owner's

submission of the interconnection application, provided, however, Host will extend the deadline for compliance with this subsection (c) in thirty (30) day increments, upon Host's determination, in its reasonable discretion, that System Owner is using commercially reasonable efforts to secure such Interconnection Agreement. Host agrees to cooperate in such submission including signing such interconnection application and providing required information known to Host.

(d) In the event that the System is not substantially complete (DC side-not including Distribution Company work) within eight (8) months of the Effective Date.

(e) In the event that during the permitting phase for the System, environmental mitigation measures are required to be undertaken on the Property by the Department of Environmental Protection ("DEP") pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, §§61-62H), the Massachusetts Endangered Species Act (M.G.L. c.131A), the Wetlands Protection Act (M.G.L. c.131 s.40) or other Applicable Legal Requirements and the Parties are not able to reach agreement within sixty (60) days of Host's receipt of such notice from the DEP or other Governmental Authority on how the costs for such environmental mitigation will be allocated among the Parties.

(f) In the event System Owner has not secured a post-closure use permit from the Massachusetts Department of Environmental Protection for the construction of the System, within six (6) months of the Effective Date, provided, however, that Host will extend the deadline for compliance with this subsection (g) in thirty (30) day increments, upon Host's determination, in its reasonable discretion, that System Owner is using commercially reasonable efforts to secure such post-closure use permit.

3.6 Early Termination by System Owner. System Owner may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(a) There exist site conditions at the Property (including environmental conditions) or construction requirements that were not known and could not reasonably have been known as of the Effective Date and that could reasonably be expected to substantially increase the cost of the construction of the System or substantially adversely affect the electricity production from the System as designed. This right of termination exists for ninety (90) days following the Effective Date and may only be exercised if System Owner first notifies Host of such conditions, requesting an adjustment to the Rent due under the Lease and Host does not agree to such adjustment;

(b) System Owner is unable, despite commercially reasonable efforts, which must be demonstrated to the reasonable satisfaction of Host, to obtain financing for the System on terms and conditions reasonably satisfactory to System Owner within 45 days of the receipt of the last final permit or required approval (including interconnection agreements) required to construct the System;

(c) System Owner has not received documentation from Host reasonably requested by System Owner's Financier, which is reasonably necessary to establish the priority of its security interest in the System and to ensure that System Owner will have access to the Property and Leased Area throughout the Term;

(d) Should the Distribution Company fail to approve the interconnection of the System within one hundred twenty (120) days of submission, System Owner may terminate this Agreement promptly by providing a written termination notice to Host;

(e) In the event that during the permitting phase for the System, environmental mitigation measures are required to be undertaken on the Property by the Department of Environmental Protection (“DEP”) pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, §§61-62H), the Massachusetts Endangered Species Act (M.G.L. c.131A), the Wetlands Protection Act (M.G.L. c.131 s.40) or other Applicable Legal Requirements and the Parties are not able to reach agreement within sixty (60) days of Host’s receipt of such notice from the DEP or other Governmental Authority on how the costs for such environmental mitigation will be allocated among the Parties.

(f) If the terms and provisions of the post-closure use permit for the use of the Property and the Leased Area could reasonably be expected to substantially increase the cost of the construction of the System or substantially adversely affect the electricity production from the System as designed. This right of termination exists for sixty (60) days following the issuance of the post-closure use permit and may only be exercised if System Owner first notifies Host of such conditions, requesting an adjustment to the Rent due under the Lease and Host does not agree to such adjustment.

SECTION 4. LEASE.

Host agrees to lease to System Owner and System Owner agrees to lease from Host that portion of the Property described in the Lease Agreement (the “**Lease**”) as the Leased Area entered into between Host and System Owner as of the Effective Date, pursuant to and in accordance with the terms of the Lease. The Host hereby agrees to reduce the Rent due under Section 3 of the Lease by the amount equal to any property taxes assessed to the System.

SECTION 5. MONITORING, INSTALLATION AND TESTING OF THE SYSTEM.

5.1 Scope of Installation Work.

(a) At its sole cost and expense, System Owner shall furnish all labor, materials and equipment to perform the Installation Work. At its sole cost and expense, System Owner will cause the System to be designed, engineered, installed and constructed in accordance with the Final Drawings, Applicable Law, Local Distribution Company standards, Good Solar Industry Practice and the terms of this Agreement. System Owner shall perform the Installation Work in accordance with a good and workmanlike manner using only new materials. System Owner shall review all engineering evaluations of the impact of the System on the structural integrity and strength of the relevant areas of the Property and to approve all construction plans for the System. Before construction is commenced, System Owner shall schedule an in-person meeting between representatives of Host and System Owner at which System Owner shall present the construction plans for Host to review and approve or request reasonable amendments to such plans. Host shall either approve the construction plans at the meeting or otherwise respond to System Owner not later than fourteen (14) business days after such meeting. Host’s failure to respond shall be deemed to be an approval. In the event subsequent approvals of construction plans are required by Host, System Owner shall schedule an additional in-person meeting between representatives of Host and

System Owner to discuss any additions or modifications to the construction plans. Host shall either approve the additions or modifications to the construction plans at the meeting or otherwise respond to System Owner not later than seven (7) business days after the meeting. Host's failure to respond shall be deemed to be an approval. If Host does not consent to System Owner's request for approval, Host shall describe in reasonable detail the basis upon which it is denying such approval.

(b) System Owner's construction contractor shall supervise and direct the Work using its best ability, skill, attention, and oversight. System Owner's construction contractor, in consultation with Host, shall be responsible for the construction means, methods, techniques, sequences, and procedures. The Host will review all proposed modifications to the building and systems and must approve of them prior to commencement of any work; such approval will not be unreasonably withheld, and to be in conformity with time periods set forth hereunder.

5.2 Performance of Installation Work. System Owner may perform Installation Work at the Property between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday, unless otherwise limited by local ordinance, and shall seek to do so in a manner which limits inconvenience to and interference with Host's use of the Property as is practical. System Owner shall grant Host and its authorized representatives access to and the right, but not the obligation, to observe the Installation Work at all times provided that neither Host nor its authorized representatives shall interfere with the Installation Work or use or move any System Owner equipment or the System without written authorization from System Owner. All employees and contractors must possess all necessary certifications to perform tasks for which certification is required. System Owner will not create (or allow to continue) any condition deemed to endanger health or safety as herein. System Owner shall comply with all Applicable Laws, regulations and codes of federal, state, and local town or city government. All work shall be performed in a professional and competent manner. System Owner shall supply to the Host the telephone number of a responsible person who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work.

5.3 As-Is Acceptance of the Property. System Owner accepts the Property after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and non-uses. System Owner accepts the Property in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Property or any part thereof may be put. Notwithstanding the above, the Parties agree that System Owner shall not be liable for any conditions on the Property arising from or related to previous uses of the Property or Hosts's use or ownership of the Property. The System Owner acknowledges and agrees that Host may have continued operation or maintenance responsibilities of the Landfill operation to be conducted at the sole expense of the Host, and System Owner will use its best efforts to cooperate with Host's prosecution and completion of such work.

5.4 Utility Interconnection. System Owner agrees to manage application for all necessary approvals and permits from any Governmental Authority, the Local Distribution Company, ISO New England, and NEPOOL including the submission of applications for interconnection of the System with the Local Distribution Company; provided, that Host agrees to cooperate with System Owner in preparing such applications and securing such approvals by, among other things, providing, if available, System Owner with required data and electrical drawings concerning the Property necessary for the interconnection application

process. Should the Local Distribution Company fail to approve the interconnection of the System within one hundred twenty (120) days of submission, System Owner may terminate this Agreement promptly by providing a written termination notice to Host.

5.5 System Acceptance Testing.

(a) System Owner shall, at no cost to Host, test the System (“System Acceptance Testing”) to confirm that the System (i) is capable of delivering Solar Services in accordance with the operational requirements that System Owner shall develop and provide to Host (the “System Requirements”) and (ii) meets all requirements established by the Local Distribution Company and any Applicable Law. System Owner shall notify Host not less than three (3) days prior to the conducting of System Acceptance Testing and Host shall have the right, but not the obligation, to be present at and observe the System Acceptance Testing, at no cost to System Owner.

(b) If the results of such System Acceptance Testing indicate that the System is capable of delivering electricity generated by the System to Host and the System has been approved for interconnected operation by the Local Distribution Company, then System Owner shall send a written notice to that effect to Host (a “Completion Notice”), accompanied by a copy of the results of the System Acceptance Testing.

(c) The “Commercial Operation Date” shall be the tenth (10th) day after the date of Host’s receipt of a Completion Notice.

SECTION 6. OPERATION AND MAINTENANCE WORK.

6.1 O&M Work. In connection with its delivery of the Solar Services, System Owner shall, at its sole cost and expense and in accordance with Applicable Law, provide operation, repair, monitoring and maintenance services to the System during the Term, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). System Owner shall perform the O&M Work in a manner intended to limit inconvenience to and interference with Host’s use of the Property to the extent practical. All employees performing such O&M Work shall be qualified for the activity performed and shall respect all rules of Host respecting Property access.

6.2 Maintenance; Repairs. System Owner shall take good care of the Leased Area and the System and conduct all required maintenance and repairs thereto. Host shall have no duty or liability to System Owner with respect to the maintenance, repair or security of the Leased Area or the System. Any damage caused by System Owner or its subcontractors to the Leased Area or other property not belonging to System Owner or its subcontractors shall be repaired at System Owner’s expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

6.3 Utilities. System Owner shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it in connection with this Agreement or the Lease. Except as otherwise set forth herein, Host shall have no duty or liability to System Owner with respect to the maintenance, repair, upgrade, replacement or security of any utilities.

6.4 Malfunctions.

(a) Host and System Owner each shall notify the other within twenty-four (24) hours following its discovery of any material malfunction in the operation of the System (a “Malfuction”), including any interruption in the supply of Solar Services. System Owner and Host each shall notify the other Party upon the discovery of an emergency condition in the System. If an emergency condition exists, System Owner shall promptly dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner. System Owner shall designate personnel and establish procedures such that Host may provide notice of such conditions requiring System Owner’s repair at all times, twenty-four (24) hours per day, including weekends and holidays.

(b) System Owner shall commence repairs to a Malfuction and restore the supply of Solar Services as soon as reasonably possible after any notice received from Host thereof or upon its own discovery of any such Malfuction; provided, that System Owner shall not have the obligation to repair any Malfuction caused by a casualty loss to the Property, including a casualty loss caused by theft or vandalism, unless insurance proceeds available to System Owner for such purpose are sufficient to repair such a Malfuction. Host agrees to cooperate with System Owner in its fulfillment of its obligations under this Section 6.3.

6.5 Metering.

(a) Maintenance and Testing. System Owner shall maintain the calibration and operation of the Meter(s) for the measurement of the electricity generated by the System and delivered to Host and, if applicable, for the calculations necessary to calculate the reduction in demand charges attributable to the System. System Owner shall monitor the Meter(s) and shall periodically test a percentage of the meters as per the protocol approved by Massachusetts DOER for certifying its independent third party data service providers for revenue quality data reporting. Not more often than once per calendar year, System Owner shall certify that to its knowledge, based on reporting from its independent third party monitoring company, the Meter(s) were not in error more than allowable by ANSI C12-20 standards for revenue quality metering during such calendar year. If at any time, System Owner suspects a Meter is in error, System Owner shall so notify the Host and shall take appropriate steps to repair or replace the Meter. Upon Host’s written request, System Owner shall furnish a copy of metering data for the System produced by the Meter(s). Promptly following a written request from Host for a special test and calibration of the Meter(s), System Owner shall cause a mutually acceptable qualified party to test the Meter(s) in the presence of representatives of each Party, a report of which will be given to each Party. If Host requests such a test, Host shall bear the cost of testing, unless the Meter(s) so tested is shown to be in error by more than one percent (1%), in which event System Owner shall bear the cost of testing. If the Meter requires repair or replacement, System Owner shall repair or replace the Meter at its own cost.

(b) Adjustments. If testing of a Meter pursuant to Section 6.3(a) indicates that such Meter is in error by more than one percent (1%), then System Owner shall promptly repair or replace such Meter System Owner shall make a corresponding adjustment to the records of the amount of Solar Services delivered based on such test results for: (i) the actual period of time when such error caused inaccurate Meter recordings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period

from the later of the date of the last previous test confirming accurate metering or the date the relevant Meter(s) was/were placed into service, but not to exceed two (2) years.

6.6 Title to System. Except as otherwise set forth herein, System Owner or one of its Financing Parties, if any, shall continue to hold title to, and be the legal and beneficial owner of, the System and the System shall: (a) remain the personal property of System Owner or System Owner's, successors, assigns, or Financing Parties, if any, (b) notwithstanding any provision of applicable law and to the extent permitted by separate agreement with Host's mortgagees, not attach to or be deemed a part of the real estate or fixture to the Property, (c) at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and (d) be subject to removal by System Owner at the expiration or earlier termination of the Lease unless purchased by Host as provided in Section 2.4 of this Agreement.

SECTION 7. PURCHASE OF SOLAR SERVICES.

7.1 Purchase Requirement. Host agrees to purchase one hundred percent (100%) of the electricity produced by the System during the Term of this Agreement. The payment for Solar Services is calculated to include all of the above services in the kWh Rate. Host agrees that, during the Term, Host will not select an electricity generation supplier under competitive procurement or otherwise, if any other option exists, that requires, as a condition for service, (a) removal or discontinued operation of the System, (b) imposition of additional charges on System Owner or (c) the purchase of all electricity requirements from such provider.

7.2 Title to Net Metering Credits. During the Term of this Agreement, as between Host and System Owner, Host shall be entitled to receive any and all credits from the Local Distribution Company for electricity generated by the System and delivered to the Local Distribution Company.

7.3 Title to Environmental Attributes. As between Host and System Owner, (a) all Environmental Attributes relating to the System or the sale of electricity therefrom will be and remain property of System Owner, (b) System Owner shall have all right, title and interest in and to any and all Environmental Attributes that relate to the electricity generated by the System during the Term, and (c) Host shall have no right, title or interest in or to any such Environmental Attributes.

(a) Host shall not report or otherwise communicate to any Person that any Environmental Attribute relating to the electricity generated by the System belong to any Person other than System Owner.

(b) At System Owner's request and expense, Host shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence System Owner's right, title and interest in and to the Environmental Attributes relating to the electricity generated by the System. If the standards used to qualify the Environmental Attributes to which System Owner is entitled hereunder are changed or modified, Host shall at System Owner's request and expense use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

SECTION 8. PRICE AND PAYMENT.

8.1 Payment Amount. Host shall make a payment to System Owner for the Solar Services provided hereunder (the “Services Payment”) with respect to each Billing Month of the Term; provided, that if the first Billing Month hereunder ends within ten (10) days of the Commercial Operation Date, the Payment for such Month shall be included in the Services Payment for the following Month. The Services Payment for any Billing Month shall equal the product of (a) the total electricity produced by the System in the relevant Billing Month as determined by System Owner on or shortly after the last day of such Billing Month from recordings produced by the Meter for the System (the “Monthly Production”) and (b) the kWh Rate for the relevant Month (as specified in Exhibit B attached hereto). Except as may be provided under Section 12.2(b)(v) or as otherwise expressly provided in this Agreement, no other fees or charges shall be due from Host to System Owner for the Installation Work or any of the Solar Services.

8.2 Timing and Method of Payment. No later than the tenth (10th) day of each Billing Month of the Term after the first full or partial Billing Month: (i) System Owner shall deliver to Host an invoice showing the amount of the Monthly Production for the previous Billing Month and System Owner’s computation of the Services Payment in respect thereof, and (ii) not more than sixty (60) days after receipt of such invoice, Host shall pay to System Owner, by check or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. All payments which are not paid when due shall bear interest accruing from the date initially due until paid in full at a rate equal to the lesser of: (x) one percent (1.0%) per month and (y) the maximum rate allowed under Applicable Law. All payments made to System Owner hereunder shall be non-refundable, shall be made free and clear of any tax, levy, assessment, duties or other charges and shall not be subject to reduction, withholding, set-off, or adjustment of any kind.

8.3 Payment Disputes. If a Dispute arises with respect to any invoice submitted by, or any payment owed to, System Owner hereunder, the Parties shall attempt to resolve such Dispute amicably. If the Parties cannot resolve the Dispute within thirty (30) days, either Party may submit the Dispute to mediation in accordance with SECTION 13; provided, that during the time a bona fide Dispute is pending the disputing Party shall not be deemed in default under this Agreement and the Parties may not suspend the performance of their respective obligations hereunder. Neither party may withhold, deduct or set-off against amounts or credits owed by such party to the other party any undisputed amounts during the time that a Dispute is pending. Notwithstanding the foregoing, in the event of a payment dispute, Host shall pay to System Owner all amounts not in dispute and shall deposit disputed amounts in an escrow account until the dispute is resolved.

SECTION 9. GENERAL COVENANTS.

9.1 System Owner’s Covenants. As a material inducement to Host’s execution and delivery of this Agreement, System Owner covenants and agrees as follows:

(a) Compliance with Applicable Laws. System Owner shall at all times comply with Applicable Laws in connection with its performance of its obligations under this Agreement, including without limitation the design, installation, ownership, operation and maintenance of the System, its use of relevant areas of the Property and including Applicable Laws pertaining to the health and safety of persons and property.

(b) Permits and Approvals. System Owner shall use commercially reasonable efforts to secure and maintain, at System Owner’s cost, all Approvals from

relevant Governmental Authorities and Local Distribution Company, and other agreements and consents necessary to enable System Owner to perform the Installation Work and to provide the Solar Services; provided, that Host shall cooperate with System Owner in the foregoing and provide System Owner with all necessary information and assistance reasonably required (including data concerning the Property). At Host's request, System Owner shall deliver copies of all Approvals obtained in accordance with this Section 9.1(b) to Host.

(c) Health and Safety. In performing its obligations hereunder, System Owner shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and property and System Owner's work. System Owner shall promptly report to Host in writing any death, lost time injury, or property damage to Host's property that occurs on the Property.

(d) Removal of Liens. System Owner shall not cause, create or allow any mortgage, pledge, lien (including mechanics', labor or materialmen's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on the Property or any interest therein, other than those created hereunder, on the System; provided, that the foregoing shall not preclude System Owner, without approval of Host, from encumbering (by security, charge or otherwise) its or a Financing Party's interest in the System on the Property or otherwise; provided, further, that "Lien" shall not include any attachment or similar encumbrance that System Owner might place on the Property in connection with Host's non-payment hereunder. System Owner shall also pay, before a fine or penalty may attach to the Property, any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by System Owner or its agents and subcontractors on the Property. If System Owner breaches its obligations under this Section 9.1(d), it shall immediately notify Host in writing, shall promptly cause such Lien to be discharged and released of record without cost to Host, and shall defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(e) Damage and Destruction to the Leased Area; Renovations. In the event the Property or any part thereof is damaged or destroyed, Host may elect to repair, rebuild, or restore the Property or any part thereof, to substantially the same condition as it was immediately prior to such damage or destruction. If Host so chooses to repair, restore or rebuild the Property, System Owner shall repair, restore or rebuild the System unless insurance proceeds available to System Owner for such purpose are insufficient to cover the costs of such repair, restoration or reconstruction.

(f) Decommissioning Assurance. Upon the issuance of the Completion Notice, System Owner shall establish and maintain thereafter adequate financial assurance, subject to the reasonable approval of Host, to fully cover the cost of decommissioning the System and restoring the Leased Area as specified in this Agreement and the Lease. Appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty, which third party guaranty shall be approved by Host; provided, however, that any form of financial assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of System Owner's failure to comply with its System removal and Leased Area restoration obligations under the Agreement, even if System Owner is Bankrupt.

(g) Purpose of Agreement. System Owner acknowledges and agrees that System Owner's obligations hereunder are in the capacity of providing professional services for the purposes described in the Preamble to this Agreement and in said capacity is expected to provide, engineering, design, monitoring, construction management including general contracting as necessary, and other related services as solicited in the RFP and as may normally be incidental to these types of professional services. System Owner acknowledges and agrees that any other functions including but not limited to manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein or as subcontractor, or ownership in whole or in part or financially affiliated with a contractor which performs such other function shall constitute a conflict of interest which shall constitute a material breach of this Agreement unless 1) fully disclosed in the Response to the RFP, and 2) accepted by the Host under terms which are specified in the Agreement. System Owner acknowledges and agrees that this paragraph applies to all its officers and employees.

9.2 Host's Covenants. As a material inducement to System Owner's execution and delivery of the Agreement, Host covenants and agrees as follows:

(a) Compliance with Applicable Laws. Host shall at all times remain in material compliance with all Applicable Laws in connection with the System, the relevant areas of the Property, and their respective maintenance and operation, including such Laws pertaining to the health and safety of persons and property.

(b) Access to Property and System. Upon prior notice, Host shall make available regular access to the Property, the Leased Area and the System in order to allow System Owner to perform the Installation Work and the O&M Work.

(c) Non-Interference with System. Host shall not disturb, move or otherwise physically interfere with or do anything else on the Property which would interfere with, and shall ensure that no person, including its employees and other agents, contractors, invitees, licensees and guests, disturbs, moves, otherwise physically interferes with or does anything else on the Property which would interfere with, the System in any way without the prior written consent of System Owner.

(d) Notice of Damage. Host shall promptly notify System Owner and its mortgagees of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to affect the System adversely.

(e) Solar Radiation. Host shall not take any action, directly or indirectly, including erecting any buildings or structures that would reduce the amount of solar radiation reaching the System. Host agrees that System Owner shall have the right to cut, trim or prune or relocate any trees or other flora as necessary to avoid such trees and any other flora from reducing solar radiation reaching the System, after notice to and approval of Host, which approval shall not be unreasonably withheld.

(f) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein (other than Liens created by, through or under System Owner). If Host breaches its obligations under this Section, it shall immediately notify System Owner in writing, shall promptly cause such Lien to be discharged and released of record without cost to System Owner, and shall indemnify System Owner against all costs and expenses (including reasonable

attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(g) Consents and Approvals. Host shall secure and maintain, and shall deliver to System Owner copies of, all Approvals relating to the performance of Host's obligations and the rights granted by Host hereunder, and which are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Host is a party or by which Host is bound. Host shall also provide reasonable assistance to System Owner in completing applications for approvals and consents with respect to which System Owner has primary responsibility, including interconnection with the Local Distribution Company.

(h) Actions Regarding Subsidies. Host, at the sole cost and expense of System Owner, shall take whatever actions are reasonably necessary or requested by System Owner, including completing and executing documentation, in order for the System and/or the production thereof to comply with or qualify for any state and federal government subsidies.

(i) Cooperation Regarding Financing Statements. Host shall execute all financing statements, notices and other filings that System Owner reasonably requests to perfect, maintain or otherwise protect System Owner's or its Financing Parties rights in the System.

(j) Establishment of Electric Service at the Property. Host shall cooperate with System Owner so System Owner may cause the Local Distribution Company to install, at System Owner's cost, a meter and to establish and maintain electric service at the Property in the name of the Host to the extent necessary to qualify the System as a Class I Net Metering Facility as defined under the applicable regulations in 220 CMR 18.00.

(k) Host Interconnection Documents. Unless expressly consented to in writing by System Owner, Host shall not amend, terminate or otherwise take any action or inaction that would result in a default or termination under any Host Interconnection Agreements or the cancellation of the Host's account with the Local Distribution Company identified in the Host Interconnection Agreements. If this Agreement is terminated by System Owner in connection with a Host Default, Host shall take such actions with respect to the transfer, assignment, amendment or such other actions with respect to the Host Interconnection Documents as may be reasonably required by System Owner to preserve System Owner's rights under the Interconnection Agreement and the continuation of net metering services with respect to the System whether pursuant to the Host Interconnection Documents or otherwise.

(l) Host Responsiveness. Host agrees to respond to all proposed revisions and related requests on a reasonably timely basis for the expeditious design, implementation and monitoring of the System.

(m) Security. Host and System Owner agree to reasonably cooperate in providing security to prevent unauthorized access to the Property and/or the System, provided, however, that Host shall not be required to install fences or security cameras or otherwise make any increases to current security as a result of installation of the System.

SECTION 10. REPRESENTATIONS AND WARRANTIES.

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

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization and is qualified to do business in the Commonwealth of Massachusetts;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement and the approval of no Person other than the Persons providing the Host Consents is required for such Party's execution, delivery and performance of its obligations under this Agreement and the Lease;
- (c) it has taken all requisite corporate or other action to authorize and approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms;
- (e) to the best of its knowledge, there is no litigation, action, proceeding or investigation pending or threatened on any basis before any court or other Governmental Authority by, against, affecting or involving any of its business or assets (including with respect to Host, the Property or any interest therein) that would affect its ability to carry out the transactions contemplated herein; and
- (f) its execution of, and performance under, this Agreement shall not violate existing Applicable Law or any agreement to which it is a party.

10.2 Requisite Standards. System Owner represents and warrants that it has, or has access to, the requisite expertise and sufficient personnel and resources (including necessary supervision and support services) to deliver the Solar Services. System Owner guarantees and warrants to Host that the Installation Work, O&M Work and the delivery of Solar Services pursuant to this Agreement will comply in all material respects with all Applicable Laws, Good Solar Industry Practice and all Local Distribution Company rules, regulations and requirements as may be amended, updated or otherwise be applicable from time to time during the Term of this Agreement.

SECTION 11. [INTENTIONALLY OMITTED.]

SECTION 12. DEFAULT AND EARLY TERMINATION.

12.1 System Owner Defaults and Host Remedies.

- (a) System Owner Defaults. The following events shall be defaults of System Owner (each, a "System Owner Default"):
 - (i) A Voluntary Bankruptcy Event with respect to System Owner;

(ii) An Involuntary Bankruptcy Event with respect to System Owner; or

(iii) System Owner breaches any material term of this Agreement or the Lease and such breach remains uncured for sixty (60) days after Host's notice to System Owner of such breach, if curable within sixty (60) days, or System Owner fails to commence and pursue diligently a cure to such breach within sixty (60) days of receiving such notice if a longer cure period is needed, and, in any event, fails to cure within ninety (90) days of receiving such notice.

(b) Host's Remedies. Upon the occurrence of any System Owner Default and during its continuation beyond any applicable cure periods, Host may exercise one or more of the following remedies:

(i) terminate this Agreement immediately upon a System Owner Default pursuant to Section 12.1(a)(i) or (ii) and with at least fifteen (15) days' written notice upon a System Owner Default pursuant to Section 12.1(a)(iii);

(ii) cease making Services Payments hereunder other than accrued and unpaid amounts for the period prior to the occurrence of such System Owner Default;

(iii) coincident with its delivery of a notice of termination with respect to a System Owner Default under Section 12.1(a)(iii), elect to purchase the System pursuant to the requirements of Section 2.2 (provided, that the sixty (60) day period referenced in Section 2.2 shall be extended to the ninety (90) day period of the Financing Parties' opportunity to cure such System Owner Default as set forth in the final paragraph of this Section 12.1(b)); and

(iv) exercise any other remedy it may have at law or equity or under this Agreement, subject to the provisions of SECTION 13.

Notwithstanding the foregoing, in the case of an System Owner Default, Host shall provide the Financing Parties (if any) with notice of such System Owner Default in accordance with the provisions of Section 16.3 and the Financing Parties, as applicable, shall have the right (but not the obligation) for ninety (90) days after receipt of such notice or after such Financing Parties have received actual notice of an System Owner Default either to cure the System Owner Default on behalf of System Owner, or, upon payment to Host of amounts due from System Owner but not paid by System Owner or upon performance of obligations of System Owner hereunder but not performed by System Owner, to assume, or cause their designee to assume, all of the rights and obligations of System Owner under this Agreement arising after the date of such assumption. In the event that any Financing Parties, as applicable, or a designee thereof, assumes this Agreement: (i) System Owner shall be released and discharged from any obligations to Host arising or accruing hereunder from and after the date of such assumption; (ii) Host shall continue this Agreement with such Financing Parties, as applicable, or a designee thereof, as the case may be, substituted in the place of System Owner hereunder; and (iii) if the assuming party is the Financing Party such party shall assume all of the rights and obligations of System Owner under this Agreement arising after the date of such assignment. Notwithstanding the foregoing, the failure of Host to notify System Owner's Financing Parties shall not be considered a Default under this Agreement or the Lease and it shall not constitute a waiver of System Owner's Default; provided that any cure period with respect to any such default shall not commence to run until

Host has provided written notice to such Financing Parties as System Owner has identified with appropriate contact information.

12.2 Host Defaults and System Owner's Remedies.

(a) Host Default. The following events shall be defaults of Host (each, a "Host Default"):

(i) A Voluntary Bankruptcy Event with respect to Host;

(ii) An Involuntary Bankruptcy Event with respect to Host;

(iii) Host breaches any material term of this Agreement or the Lease and such breach remains uncured for sixty (60) days after System Owner's notice to Host of such breach, if curable within sixty (60) days, or Host fails to commence and pursue diligently a cure to such breach within sixty (60) days of receiving such notice, if a longer cure period is needed, and, in any event, fails to cure within ninety (90) days of receiving such notice; or

(iv) Host fails to pay System Owner any amount due System Owner hereunder within ninety (90) days from the date due.

(b) System Owner's Remedies. Upon the occurrence of any Host Default and during its continuation, System Owner may exercise one or more of the following remedies:

(i) terminate this Agreement immediately upon a Host Default pursuant to Section 12.2(a)(i) or (ii) and with at least fifteen (15) days' written notice upon a Host Default pursuant to Section 12.1(b)(iii) or (iv);

(ii) suspend the provision of all Solar Services hereunder, including the O&M Work;

(iii) remove the System from the Property in compliance with the conditions of the Lease;

(iv) maintain the System in place pursuant to the Lease and deliver the System's electrical output to the Local Distribution Company or another third party;

(v) exercise any other remedy it may have at law or equity or under this Agreement, subject to the provisions of SECTION 13.

Notwithstanding anything else in this Section 12.2(b), System Owner shall be entitled to exercise one or more of the remedies under Sections 12.2(b)(i) through (iv) in connection with a Host Default under Section 12.2(a)(iv) (a "**Host Payment Default**") only after it has provided written notice to Host of its intent to exercise such remedies and has afforded the Host an aggregate period of one hundred twenty (120) days from the date a payment was due within which to cure such Host Payment Default. Such cure can be made by either Host or a Host lender. Upon Host's failure to cure such Host Default within the extended one hundred twenty

(120) day period, System Owner shall be entitled to exercise its remedies under Sections 12.2(b)(i) through (iv).

12.3 Termination in Consequence of Force Majeure Event.

(a) If a Force Majeure Event shall have occurred that has materially affected System Owner's performance of its obligations to provide the Solar Services hereunder and shall have continued for a period of at least one hundred twenty (120) consecutive days, then either Party shall be entitled to terminate this Agreement upon thirty (30) days' written notice to the other Party. If at the end of such thirty (30) day period such Force Majeure Event shall still be continuing, this Agreement shall automatically terminate. Upon such termination, neither Party shall have any liability to the other, subject to Section 19.5.

(b) Upon the cessation of a Force Majeure Event, the Parties shall continue to perform their respective obligations under this Agreement. Notwithstanding the foregoing, if the System is damaged or destroyed by a Force Majeure Event and System Owner provides written notice to Host that it intends to rebuild the System, then System Owner may rebuild or fix the System and subsequent to replacement and commencement of operation of the replacement System all terms and conditions of this Agreement will remain in effect including the remaining term of this Agreement; provided, that System Owner must have made good faith efforts to order replacement panels and other necessary equipment within ninety (90) days of the completion of the Force Majeure Event.

(c) Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement (other than of a provision that requires payment of money) if and to the extent that any failure or delay in such Parties' performance of one or more of its obligations hereunder is attributable to the occurrence of a Force Majeure Event; provided, that the Party claiming a Force Majeure Event shall (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) promptly exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event; and (d) resume performance of its obligations hereunder as soon as practicable thereafter. Notwithstanding anything in this Agreement to the contrary, if System Owner claims relief pursuant to a "Force Majeure Event," the obligation of Host to make a Solar Services payment to System Owner on any payment date shall be suspended until System Owner notifies Host that it has resumed performance of its obligations under the Agreement; provided, however, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services provided to Host prior to the Force Majeure Event performance interruption.

SECTION 13. DISPUTE RESOLUTION.

13.1 Negotiation and Non-Binding Mediation. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute"). The Parties agree to use their respective best efforts to resolve any Dispute that may arise regarding this Agreement. Any Dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties.

The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a Dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be Dukes County Superior Court, Massachusetts.

13.2 Exceptions to Mediation. The obligation to mediate shall not be binding upon any Party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute or (b) actions to collect payments not subject to a bona fide Dispute or (c) claims permitted hereunder against third parties.

SECTION 14. LIMITATION OF LIABILITY.

NEITHER PARTY NOR ANY OF ITS INDEMNITEES SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL OR ANALOGOUS DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE LEASE, OR THE PERFORMANCE OR NON-PERFORMANCE HEREOF AND THEREOF. EXCEPT IN CONNECTION WITH INJURIES TO PERSONS OR DAMAGE TO PROPERTY, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, SYSTEM OWNER'S MAXIMUM LIABILITY WITH RESPECT TO THE SYSTEM, THE PERFORMANCE OF, OR FAILURE TO PERFORM ANY OF THE SOLAR SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE LEASE SHALL BE LIMITED, IN THE AGGREGATE, TO ONE HUNDRED PERCENT (100%) OF THE SERVICES PAYMENTS MADE AND EXPECTED TO BE MADE FOR THE REMAINDER OF THE TERM (SUCH EXPECTED PAYMENTS SHALL BE CALCULATED BY MULTIPLYING THE KWH RATE BY MONTHLY PRODUCTION BASED ON THE PREDICTED OUTPUT OF THE SYSTEM) BY HOST PURSUANT TO THE AGREEMENT. IN CONNECTION WITH INJURIES TO PERSONS OR DAMAGE TO PROPERTY, SYSTEM OWNER'S MAXIMUM LIABILITY SHALL BE LIMITED TO THE AMOUNT OF THE PROCEEDS OF THE INSURANCE REQUIRED TO BE MAINTAINED BY SYSTEM OWNER IN COMPLIANCE WITH ARTICLE 18 OF THIS AGREEMENT.

SECTION 15. ASSIGNMENT AND SUBCONTRACTING.

15.1 Successors and Assigns; Subcontracting. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns; provided, that System Owner in its discretion may elect to use subcontractors in

performing any of its obligations hereunder and performance of any obligation of System Owner by any such subcontractor shall satisfy such obligation. System Owner may subcontract part of the Work to others provided any subcontractors are identified in System Owner's Response to the RFP. System Owner may, with the written consent of the Host in the form of a revision to the Scope of Work, substitute a subcontractor for one so identified or, if no subcontractor for a certain trade or task has been so identified, engage one. System Owner shall be responsible for the conduct, acts and omissions, whether intentional or unintentional, of its subcontractor, employees, agents, invitees or suppliers. Nothing in this Agreement shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the Host.

15.2 Assignment by Host. Host shall not sell, transfer, assign, pledge or cause to be assumed (together, "Assign"; and any such action, an "Assignment") this Agreement, in whole or in part (whether by contract, operation of law, or as the result of corporate merger, consolidation, divestiture, split up, split off, spin off or similar transaction by which a resulting Person, whether an Affiliate or otherwise, purports to be entitled to the benefits and to performance of the obligations of this Agreement), without the prior written consent of System Owner and its applicable Financing Parties, such consent not to be unreasonably conditioned, delayed or withheld. Host shall be permitted to mortgage or otherwise encumber the property upon which the Property is located provided that Host and such Mortgagee or other lien holder shall have executed and delivered to System Owner a Nondisturbance Agreement; provided, that by executing such Nondisturbance Agreement, such Mortgagee or lien-holder shall not be deemed to have assumed the obligations of the host under this Agreement. In the event that System Owner, or its Financing Source, if any, consent to an assignment by Host, Host's assignee shall sign execute and deliver to System Owner an assignment and assumption agreement pursuant to which Host's assignee shall assume all of Host's obligations under this Agreement arising on and after the date of such assignment and assumption agreement and provided that Host shall remain liable for any obligations arising of any kind under this Agreement or otherwise before such date of assignment. Host shall be permitted to mortgage or otherwise encumber the property upon which the Property is located provided that Host and such Mortgagee or other lien holder shall have executed and delivered to System Owner a Nondisturbance Agreement, provided that by executing same, such mortgagee or lien holder shall not be deemed to have assumed the obligations of the Host under this Agreement.

15.3 Assignment by System Owner. Except as set forth in Section 15.4, System Owner shall not, without the prior written consent of Host, Assign this Agreement, in whole or in part; provided, Host's consent to an Assignment by System Owner of any of its rights (and/or a delegation of any of its obligations) shall not be unreasonably withheld, delayed or conditioned if Host has been provided with reasonable proof that the proposed assignee: (a) has comparable experience in operating and maintaining solar electric generating systems similar to the System; and (b) has the financial capability to maintain the System in the manner required by this Agreement; and provided, further, that without the prior consent of Host, System Owner may (i) Assign this Agreement, together with the Lease, to an Affiliate of System Owner (provided that such Assignment shall not release System Owner from its obligations arising hereunder prior to the date of such Assignment without the consent of Host) or (ii) Assign its interest in any monies due under this Agreement (it being understood, however, that Host will not pay to a third party any monies owed hereunder without the advance written direction of System Owner). In the event that System Owner Assigns this Agreement to an Affiliate of System Owner pursuant to this Section 15.3, Vineyard Power Solar, Inc. shall remain the manager of System Owner for the duration of the Term. Any assignment shall be conditioned upon the assignee explicitly assuming all of System Owner's

obligations under this Agreement and, to the extent assigned therewith, the Lease. System Owner shall deliver to Host written notice of its Assignment of this Agreement, and if applicable, the Lease, not later than thirty (30) days after such assignment.

15.4 Consent to Assignment for Financing or Leasing. System Owner may seek financing for the ownership of all or a portion of the System under this Agreement, whether by leasing all or a portion of the System from an Equipment Leasing Party or entering into other arrangements with a Financing Party in the form of an equipment lease, finance lease, debt, equity, tax equity or other financing arrangement. Any such financing shall not exceed \$1,250,000.00 and the terms of such loan shall provide for it to be fully amortized and paid on or before the tenth (10th) anniversary of the Commercial Operation Date. Notwithstanding any provisions in this Agreement to the contrary, System Owner may collaterally assign, or assign fully in connection with any financing of the System (which may, in connection with such Assignment, permit the Financing Party to further assign collaterally), its rights, and/or obligations hereunder and under the Lease, or the Agreement and/or the Lease, each in its entirety, for purposes of securing such financing or leasing arrangement. Notwithstanding the foregoing, Vineyard Power Solar, Inc. shall remain the manager of System Owner for the duration of the Term. Host hereby consents to any such Assignment, provided that:

(a) such Assignment shall not create any Lien or other encumbrance on the Property other than System Owner's leasehold interest in the Leased Area under the Lease and System Owner's other rights and obligations contemplated in this Agreement and the Lease;

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

(c) the Financing Party, as applicable, shall enforce its interest and protect the Leased Area in a commercially reasonable manner;

(d) Host acknowledges that upon and following an event of default by System Owner under any financing or leasing documents relating to the System, the Financing Parties, if any, may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of System Owner thereafter arising under this Agreement and the Lease; and

(e) If the rights and interests of System Owner in this Agreement and the Lease shall be Assigned, in whole or in part, as herein provided, and the assignee shall agree in writing to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Host arising or accruing hereunder from and after the date of such Assignment (or, in the case of a partial Assignment, to be bound by the portion of this Agreement and/or the Lease so assigned and relevant associated obligations to Host arising or accruing hereunder from and after the date of such Assignment), System Owner shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date (or, in the case of a partial Assignment, of the terms and conditions hereof so assigned and the associated obligations hereunder from and after such date), and Host shall continue this Agreement and the Lease or the relevant portion of this Agreement and the Lease with the assignee as if such person had been named as System Owner under this Agreement and the Lease. Notwithstanding any such Assignment to one or more Financing Parties or a designee thereof, System Owner shall not be released and discharged from and shall remain liable

for any and all obligations to Host arising or accruing hereunder and under the Lease prior to such Assignment (and, in the case of a partial Assignment, for the obligations accruing after the date of such Assignment with respect to obligations accruing under the unassigned portion of the Agreement). System Owner shall not, however, have any liability for any action or omission of the Financing Party hereunder or under the Lease.

Notwithstanding any other provision of this Agreement to the contrary, any sale by System Owner of its rights in this Agreement in any proceedings for the foreclosure of any lien held in System Owner's rights or interests hereunder, or the Assignment of this Agreement or the Lease in lieu of foreclosure of any such lien, shall be deemed to be a permitted Assignment of this Agreement and/or the Lease.

Host agrees to sign, execute and deliver each such instrument or other document as System Owner or its Financing Parties, if any, may reasonably request to satisfy the requirements of any Financing Party with respect to or in connection with any financing or leasing of the System. Host also agrees, to the extent required by a Financing Party, if any, to provide System Owner and/or a Financing Party with such information about Host or the Property as System Owner and/or a Financing Party may reasonably request.

15.5 Rights of Financing Parties.

(a) Unless it assumes the obligations of System Owner under and pursuant to this Agreement, a Financing Party may perform, but shall not be obligated to perform, any of System Owner's obligations hereunder, including holding and conveying title to the System. The rights of System Owner hereunder shall apply, to the extent relevant, *mutatis mutandis* to any Financing Party.

(b) Any Financing Party shall be the beneficiary of any and all representations, warranties and covenants made by Host to System Owner hereunder, including the covenants made in the Lease and SECTION 9, and each Financing Party shall have the benefit of the Lease to the extent that they have assumed the obligations of System Owner under this Agreement.

15.6 Financing Parties as Third Party Beneficiaries. The provisions of this SECTION 15 are for the benefit of any Financing Party as well as the Parties hereto, and shall be enforceable by any Financing Party as express third-party beneficiaries hereof. Host hereby agrees that neither a Financing Party, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of System Owner or shall have any obligation or liability to Host with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this SECTION 15.

SECTION 16. NOTICES.

16.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as set forth on the Cover Sheet or at such other address as may be designated in writing to the other Party.

16.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid,

or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified herein when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next business day if sent at any other time), on the day after being sent when sent by overnight delivery service, or five (5) business days after deposit in the mail when sent by U.S. mail.

16.3 Financing Party Notice. Any notice or other communication which Host shall desire or is required to give to or serve upon a Financing Party in accordance with the terms of this Agreement shall be in writing and shall be served in accordance with the provisions of Section 16.2, addressed to such Financing Party at such party's addresses provided in writing by a Financing Party or by System Owner to Host, and any notice or other communication which the Financing Party shall desire or be required to give to or serve upon Host shall be deemed to have been duly given or served if sent in accordance with the provisions of Section 16.1 or at such other address as shall be designated by Host by notice in writing given to such Financing Party in accordance with the provisions of this SECTION 16.

16.4 Address for Invoices. All invoices under this Agreement shall be sent to the address provided for Host on the Cover Sheet. Invoices shall be sent by regular first class mail postage prepaid or as otherwise agreed by the Parties.

SECTION 17. PUBLICITY.

The Parties shall use reasonable efforts to coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement.

SECTION 18. INSURANCE.

18.1 Generally. System Owner shall maintain the following insurance coverages in full force and effect throughout the Term.

(a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law;

(b) Commercial General Liability Insurance on an occurrence (not claims-made) form, including premises and operations, personal injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with minimum combined single limit liability of four million dollars (\$2,000,000) in the aggregate and two million dollars (\$2,000,000) per occurrence; and

(c) Automobile Liability Insurance (including owned, non-owned and hired) with limits of not less than one million dollars (\$1,000,000) combined single limit and in the aggregate.

(d) All Risk Property Coverage and Boiler and Machinery Coverage, and/or All Risk Builder's Risk Insurance during construction, against damage to the System during the Term and any resulting damage to the Property in an amount not less than the full replacement cost of the System, with commercially reasonable sub-limits and deductibles. Such insurance shall provide for a waiver of the underwriters' right to subrogation against the Host and its Affiliates.

18.2 Casualty Insurance. In addition to the insurance coverages required by Section 18.1, System Owner shall obtain casualty loss property insurance on the System for full replacement value.

18.3 Certificates of Insurance. System Owner shall furnish current certificates evidencing that the insurance required under Sections 18.1 and 18.2 is being maintained. System Owner's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give Host thirty (30) days' written notice before the insurance is cancelled or materially altered.

18.4 Additional Insureds. System Owner's insurance policies shall be written on an occurrence basis and, except for Workers' Compensation Insurance and Automobile Liability Insurance, shall include Host as an additional insured.

18.5 Subcontractors' Insurance. All subcontractors, including, but not limited to South Mountain Company, shall also carry the liability insurance required in Section 18.1 above. The project engineer GHD Inc. shall have professional liability insurance with limits of not less than one million dollars (\$1,000,000). Such policies shall include Host as an additional insured. Certificates of such insurance shall be provided to Host promptly upon request.

SECTION 19. MISCELLANEOUS.

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

19.2 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of System Owner or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

19.3 Limited Effect of Waiver. The failure of either System Owner or Host to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

19.4 Survival. In addition to the other provisions of this Agreement that shall survive any expiration or termination hereof in accordance with the explicit terms thereof, the provisions of SECTION 1 (Definitions), [Section 10 (Representations and Warranties)], SECTION 13 (Dispute Resolution), SECTION 14 (Limitation of Liability), SECTION 15 (Assignment and Subcontracting), SECTION 16 (Notices), SECTION 17 (Publicity), SECTION 18 (Insurance) and SECTION 19 (Miscellaneous) shall survive the expiration or termination of this Agreement for any reason; provided, that the survival of any particular provision or set of provisions shall be limited in duration if and to the extent such survival is explicitly limited herein or otherwise limited by Applicable Law.

19.5 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

19.6 Cover Sheet. For the avoidance of doubt, the Parties acknowledge that the signatures of their duly authorized representatives follow the two-page Cover Sheet at the beginning of this Agreement and that the foregoing Terms and Conditions are incorporated into this Agreement.

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

19.8 Headings and Captions. The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing the Agreement.

19.9 Survival. Termination of the Agreement for any reason shall not relieve System Owner or Host of any obligation accrued or accruing prior to such termination, which shall survive the expiration or termination of the Agreement.

19.10 Counterparts; Scanned Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

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

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

19.13 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host or the

Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Law.

EXHIBIT A

DESCRIPTION OF LEASED AREA INCLUDING DELIVERY POINT

The Leased Area shall mean such portion of the surface and the sub-surface of the Property to a depth to the geo-textile surface estimated between 5” and 8” below the surface of such parcel necessary to construct, maintain, service and deconstruct and remove a solar array, including ingress and egress from the public roads for vehicular and pedestrian access therefor, and rights to place such equipment and lines as may be necessary to interconnect the System to the Delivery Point and the infrastructure of the Local Distribution Company, in each case as shown on the site plan prepared by South Mountain Company attached hereto as the Effective Date, as supplemented or replaced by Tenant, as permitted under this Agreement or the Lease, by delivering an as-built drawing of the System and this Leased Area after the Commercial Operation Date of the System. The Delivery Point shall be located at such place or places indicated on such drawings.

See Lease for more particular description.

EXHIBIT B

KWH RATE

The kWh Rate in dollars per kilowatt hour for electricity generated during each Billing Month during the Term of this Agreement shall be eighty eight percent (88%) of the result of (a) the value in dollars of the net metering credit calculated for the Host's account with the Local Distribution Company kWh *divided by* (b) the amount of electricity in kWh delivered by the System to the Host at the Delivery Point during such Billing Month. Host hereby agrees to provide to the System Owner copies of or electronic access to the Host's account with the Local Distribution Company associated with the Local Distribution Company's meter located at the Delivery Point.

EXHIBIT C

DESCRIPTION OF SYSTEM

Project Name:	Chilmark Landfill
Project Size(kW)	99.4
Module Type	
# of meters	1