ANDERSON
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**MEMORANDUM**

To: Acton-Boxborough Regional School District School Committee

From: Jessica A. Wall
ANDERSON & KREIGER LLP

Re: Solar Contracts for Douglas Gates Elementary New Building at 75 Spruce Street

Date: June 13, 2022

The Acton-Boxborough Regional School District (the "District") has planned for a solar and battery energy storage system (the "Project") to be installed at the new Douglas Gates Elementary Building. Counsel at Anderson & Kreiger ("A&K") has worked with J.D. Head, Director of School Operations, to negotiate contracts for the Project with solar developer Nexamp. The contracts are ready for the School Committee's review. This memorandum summarizes the key contract terms. If the Committee is comfortable with the terms below, the Committee may vote to approve the agreements and authorize the Superintendent to sign them.

The Douglas Gates Elementary Building was designed with the highest standards of energy efficiency in mind, and the solar project is an important part of the school's energy design. The Project will include a solar installation on the building's rooftop, a canopy over the parking area, and a battery energy storage system. It will significantly reduce the building's energy costs over the next several decades by purchasing power at a rate lower than the District's anticipated utility rates. The pricing structure described below will also allow the District to share in revenue that the Project will generate from various energy regulatory programs.

The proposed agreements between the District and Nexamp are set forth in three contract documents: (1) a Solar and Energy Storage Services Agreement ("SESSA"), which governs the production and sale of electricity from Nexamp to the District, as well as sharing of Project revenues, (2) a Lease Option Agreement; and (3) a Lease for Nexamp's use of District property. The significance of each of these documents and important terms are described below.

1) Solar and Energy Storage Services Agreement (SESSA). The SESSA is the primary contract document. Per the terms of the SESSA, Nexamp will own the solar facilities and battery, and sell to the District the electricity that is generated by the system for consumption on site. The District anticipates that the price at which it will purchase electricity under the SESSA will be lower than utility electricity rates over the life of the contract. The District also will receive 30% of the revenue that the Project generates by virtue of its participation in various energy regulatory programs. Taken together, the District believes that the Project will generate almost $500,000 in savings in the first five years of operations, and approximately $2.75 Million over the life of the Project. Pricing information is located in SESSA Exhibit B.

   Nexamp guarantees a set amount of electricity output from the system each year (Section 9.1). The District has an option to purchase the system at years 7, 15, and 20 after operation begins, and again at

the end of the term (Section 12.1). Nexamp may, in its discretion, choose to cease battery use in year 20 if the battery is not performing due to its age, and would at that point remove the battery (Section 2). In the unlikely event that the District were to default on any agreements, it would pay Nexamp per a termination schedule. The purchase option and termination schedule prices are located in SESSA Exhibit D. Access to the properties will be coordinated to minimize disruption to schools according to a set construction schedule, and to protect students and teachers, workers are subject to background checks (Sections 4.4, 4.5, and 4.6). Nexamp anticipates that it can begin construction in mid-2023. The District will also confer with the Town of Acton regarding whether the Project presents any tax issues that need to be resolved.

2) Lease Option Agreement. Because Nexamp anticipates that the rooftop and carport canopy construction will occur at the same time, and the carport canopy area will not be ready for construction until the former school building is demolished, the District and Nexamp have proposed a Lease Option Agreement. The Option will hold open those lease areas until they are ready for construction. At that point Nexamp will exercise the Lease Option and the Lease term will begin. In the meantime, Nexamp is continuing to prepare the Project for construction.

3) Lease. The Lease term is 20 years, with the option for Nexamp to exercise two five-year extensions (Section 4). The Lease identifies the scope of Nexamp's access rights (Section 3) and sets forth Nexamp's maintenance obligations (Section 13). Nexamp may not bring any hazardous materials to the site unless authorized by the District in writing (Section 13(f)) and will indemnify the District for harm caused by its release of any hazardous material (Section 11(b)). At the end of the Lease term, if the District has not exercised its purchase option, then Nexamp will remove the system at its own expense (Section 7). A decommissioning assurance fund beginning in year 11 will guarantee that Nexamp has sufficient funds available to remove the system when appropriate (Section 7).

If the Committee is comfortable with the terms described above, then it may vote to approve the agreements and authorize the Superintendent to sign them. We are happy to discuss the projects and contracts in more detail at the Committee's June 16 meeting.

# SOLAR AND ENERGY STORAGE SERVICES AGREEMENT

This Solar and Energy Storage Services Agreement ("Agreement") is made and entered into as of June __, 2022 ("Effective Date"), by and between **Spruce Street Solar, LLC**, a Delaware limited liability company ("System Owner"), and **Acton-Boxborough Regional School District**, a duly authorized regional school district for the Towns of Acton and Boxborough, Massachusetts ("Customer"). System Owner and Customer may each be referred to as a "Party" and collectively, as the "Parties."

## RECITALS

**WHEREAS,** Customer owns and controls the real property located at 75 Spruce Street, Acton, Massachusetts (the "Property");

**WHEREAS**, Customer desires to cause a solar-powered electric generation and battery energy storage system to be constructed on the Property;

**WHEREAS**, Customer issued a request for proposal regarding developing the System and awarded the project to Nexamp, Inc., a System Owner affiliate;

**WHEREAS**, System Owner is willing to design, install, own, operate and maintain on the Property an integrated solar photovoltaic (PV) electric generating system (in the form of a roof-mount PV system and a ground-mount canopy PV system) (the "PV System") and battery energy storage system (the "BESS" and together with the PV System, the "System") as further described in Exhibit A;

**WHEREAS**, Customer and System Owner are concurrently entering into the "Lease Option Agreement", dated on or about the date hereof, which details the Parties' agreement regarding leasing the Property to System Owner in order for System Owner to develop and operate the System on the Property (the "Lease"); and

**WHEREAS,** the System is intended to satisfy a portion of Customer's electricity requirements at the Property and provide resiliency back-up electricity during grid outages, and System Owner will provide certain energy storage services as further described in Exhibit A-1 (the "Energy Storage Services") to Customer; and

**WHEREAS**, System Owner desires to provide the Services to Customer and Customer desires to receive and pay for the Services based on the amount of electricity generated by the System ("Output", as further defined below) and based on the savings Customer receives.

**NOW, THEREFORE**, in consideration of the agreements and covenants hereinafter set forth, the Parties hereby covenant and agree as follows:

## ARTICLE I
## DEFINITIONS AND INTERPRETATION

1.1 Definitions

1. "Agreement" means this Solar and Energy Storage Services Agreement, as the same may be modified or amended from time to time in accordance with the provisions hereof.

2. "Ancillary Services" means any supplemental services necessary to support the transmission of electric power from a seller to a purchaser and available from the System from time to time, whether existing as of the Effective Date or thereafter, including demand response programs and Clean Peak Standard.

3. "Applicable Law" means any and all constitutional provisions, laws, statutes, rules, regulations (including the SMART Regulations), ordinances, bylaws, tariffs, treaties, orders, decrees, judgments, decisions, holdings, injunctions, licenses, franchises, permits, and governmental approvals, issued by a governmental authority that is applicable to a Party to this Agreement or the transaction described in this Agreement.

4. "BESS" has the meaning set forth in the Recitals and in Exhibit A.

5. "Building" is the building Customer shall construct on the Property, which, once constructed, will be a portion of the Lease Area. The roof-mount portion of the System will be located on the Building roof. "Building" is more fully defined by the Lease.

6. "Canopy Right" is defined by the Lease, and is the right to use a portion of the Property to develop the canopy portion of the Facility.

7. "Capacity" means electrical capacity that is dependent upon the availability and operation of the System, measured in kilowatts.

8. "Commercial Operation Date" means the successful completion of the installation and testing of the System with notice to Customer that the System is ready to deliver Output and provide the Energy Storage Services as set forth in Section 4.9.

9. "Contractors" means the independent contractors engaged by System Owner to perform any of System Owner's obligations hereunder and shall include the independent contractors subcontracted by independent contractors engaged by System Owner as set forth in Sections 4.3 and 4.4.

10. "Customer's Program Obligations" shall have the meaning set forth in Section 9.5.1.

11. "Customer's Share" is defined on Exhibit B.

12. "Customer Option Payment" is defined on Exhibit D.

13. "Decommissioning Period" is defined in Section 2.1.

14. "Default" means the events set forth in Section 15.1.

15. "Defaulting Party" means the Party responsible for an uncured Default.

16. "Delay Liquidated Damages" is defined in Section 4.10.

17. "Delivery Point(s)" means the physical location(s) where the System connects to the Lease Area Electrical System, which locations the System Owner and the Utility will determine in accordance with the "Interconnection Service Agreement" between System Owner and the Utility. System Owner shall provide the location to Customer no later than the Commercial Operation Date.

18. "Development and Construction Period" is defined in Section 2.1.

19. "Dispute" means a dispute as defined in Section 18.1.1.

20. "Disruption of Delivery" means a disruption of delivery when the System Owner is capable of generating and delivering Output to Customer as set forth in Section 11.3.

21. "Distribution Company" means the electric distribution company serving or connected to the Customer.

22. "Due Date" means the date that Customer must pay an invoice for the Services, as set forth in Section 9.2.2.

23. "Effective Date" means the date of execution of this Agreement.

24. "Energy Storage Services" has the meaning set forth in the Recitals to this Agreement and Exhibit A-1.

25. "Environmental Credits" means any and all federal, state or local renewable energy or emissions credits, offsets, or green tags, whether related to any renewable portfolio standard, renewable energy purchase requirement, carbon cap or trade market, or otherwise, including without limitation any Incentive Payment available under the SMART Program, whether existing as of the Effective Date or enacted thereafter and whether available to System Owner as owner of the System or producer of Output or available to Customer as the purchaser or user of Output.

26. “Fair Market Value” is defined in Section 12.1.5.

27. “Financial Incentives and Tax Benefits” means any and all federal, state or local rebates, tax credits, energy production credits, or depreciation incentives related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, including without limitation any compensation for the Value of Energy available under the SMART Program, whether existing as of the Effective Date or enacted thereafter and whether available to System Owner as producer of Output or available to Customer as the purchaser or user of Output.

28. “Financing Party” is defined in Section 17.2.1.

29. “Force Majeure” shall have the meaning set forth in Section 14.1.

30. “Force Majeure Event” means the events of Force Majeure as set forth in Section 14.1.

31. “Guaranteed COD” is defined in Section 4.10.

32. “Hazardous Materials” has the meaning given in the Lease.

33. “Lease” is the “Lease Agreement” between the Parties regarding the Property, to be entered into when System Owner exercises the Option.

34. “Lease Area” means the Lease Area described in the Lease.

35. “Lease Area Electrical System” means Customer’s existing electrical systems on the Property that are owned or leased, operated, maintained and controlled by Customer, and which are interconnected with the Distribution Company, or such systems that are under construction as of the Effective Date or are to be constructed.

36. “Losses” means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all reasonable attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

37. “Net Savings” are defined on Exhibit B.

38. “Non-Defaulting Party” means the Party to whom the Defaulting Party is liable in accordance with the provisions of Article XV.

39. “Non-Payment Default” is defined in Section 15.1.1.

40. “On-bill Savings” is defined on Exhibit B.

41. “Operating Year” means a twelve-month period commencing on an anniversary of the Commercial Operation Date (or with respect to the first Operating Year,

commencing on the Commercial Operation Date) and ending on the date immediately preceding the next anniversary of the Commercial Operation Date.

42. "Operations Period" is defined in Section 2.1.

43. "Output" means, and is limited to, the electricity produced by the PV System, as determined by the PV System Meter, and delivered to the PV System Delivery Point.

44. "Payment Default" is defined in Section 15.1.1.

45. "Person" means any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or agency or any other individual or entity.

46. "Property" means Customer's property described in Lease Exhibit A.

47. "Purchase Date" is one of the dates upon which Customer may exercise its option to purchase the System, as set forth on Exhibit D.

48. "PV System" is the roof-mount PV system and a ground-mount canopy PV system portions of the System, described in more detail in Exhibit A.

49. "PV System Meter" is the meter to be installed by System Owner and used to measure the electricity generated by the PV System.

50. "QF Tariff" means the tariff of the Distribution Company adopted pursuant to 220 CMR 8.00 et seq and related documentation and agreements as entered into by and between the System Owner or Customer, as necessary and the Distribution Company.

51. "Revenues" is defined on Exhibit B.

52. "Rights" are those rights to the Property as defined in the Lease.

53. "Services" means delivering Output and, subject to the terms of Article 2, providing the Energy Storage Services to Customer in accordance with the terms and conditions of this Agreement.

54. "Services Fee" means the price specified in Exhibit B that Customer shall pay to System Owner for the Services.

55. "Shared Savings" are as stated on Exhibit B.

56. "SMART Meter" means the standard instrument(s) and equipment installed at the Lease Area by the Distribution Company to be used to measure and record the Output delivered to the PV System Delivery Point in connection with the SMART Program.

57. "SMART Program" means the solar incentive program implemented in the Commonwealth of Massachusetts under the statutory authority of Section 11 of Chapter 75 of the Acts of 2016 (St. 2016, c. 75 Section 11) and any and all related documentation evidencing the System's and the System Owner's eligibility for the program described in the SMART Regulations and the SMART Tariff.

58. "SMART Regulations" means the regulations adopted by the Massachusetts Department of Energy Resources ("DOER") at 225 CMR 20.00 et seq., including any guidelines of DOER issued in connection therewith.

59. "SMART Tariff" means collectively, the final tariff as approved by the Massachusetts Department of Public Utilities in its Docket 17-140, any tariff adopted by the Distribution Company individually in connection therewith and any subsequent amendment or supplemental tariff related thereto affecting Energy Storage Systems (as defined in the SMART Regulations) and governing the eligibility of the BESS under the SMART Program, if any.

60. "System" means the PV System and, subject to the terms of Article 2, the BESS, and specifically excludes any part of the Lease Area Electrical System.

61. "System Purchase Price" is defined in Section 12.1.1.

62. "Term" means the period of time that this Agreement shall be in effect as set forth in Section 2.1.

1.2 Interpretation. In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

1.3 Service Contract. The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code.

## ARTICLE II
## TERM

2.1 The "Term" of this Agreement begins on the Effective Date, and continues through the "Development and Construction Period", the "Operations Period", and the "Decommissioning

Period". Each Period's term shall begin and end as defined in the Lease, unless terminated earlier in accordance with this Agreement.

2.2 Notwithstanding anything in this Agreement, the Lease, and the Option to the contrary, the "Operations Period" with respect to the BESS and the Energy Storage Services shall not be subject to the extensions of the Operations Period set forth in Section 4(a)(ii) of the Lease. Unless the parties reach an agreement to extend the Operations Period for the BESS and Energy Storage Services pursuant to Section 2.3 below or System Owner separately elects to extend this Agreement as it pertains to the BESS and Storage Services pursuant to Section 2.4 below, the Operations Period for the BESS and Energy Storage Services will terminate at the 20th anniversary of the commencement of the Operations Period and, for the BESS only (if System Owner/Tenant exercises the first extension), the Decommissioning Period will commence.

2.3 At least ninety (90) days prior to the beginning of the initial extension term in the Lease, the parties will agree to review opportunities to continue the Energy Storage Services during any extension terms. System Owner agrees to provide a financial offer and technical proposal for such Energy Storage Services and any agreed upon Energy Storage Services during the extension term(s) would be memorialized in an amendment to this Agreement.

2.4 Notwithstanding Sections 2.2 and 2.3 of this Agreement, if no agreement is made pursuant to Section 2.3 above, at any time within the sixty (60) days prior to the 20th anniversary of the commencement of the Operations Period, System Owner may, in its sole discretion, opt to continue to operate the BESS and provide Energy Storage Services pursuant to this Agreement, and the Term of this Agreement with respect to the BESS will be governed by Section 2.1 of this Agreement.

## ARTICLE III
## CONDITIONS; EARLY TERMINATION

3.1 Pre-Installation Conditions. If System Owner determines in its sole discretion that the conditions stated in this Section 3.1 cannot be met, System Owner may terminate this Agreement by providing a thirty (30) days termination notice to Customer (the thirtieth day after delivery of the notice shall be the termination effective date), including the reason for terminating the Agreement. The termination shall not release either Party from obligations arising before the termination effective date, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the termination effective date. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate upon the date the Lease terminates.

(a) Financing. System Owner shall have received a satisfactory commitment for financing System construction;

(b) Detailed Design. Within thirty (30) days after the earlier of the Effective Date and the date that the item becomes available, Customer shall have provided to System Owner,
- geotechnical reports regarding the solar canopy portion of the Lease Area,
- up-to-date Property, Lease Area, Building, and Lease Area Electrical System

drawings, specifications and other documentation,

- Town of Acton planning board and conservation commission permits,
- site and building design documentation, and
- all utility tariffs and service and power purchase agreements pursuant to which Customer receives or will receive electric service or will purchase electrical services from third-party providers or the Distribution Company,

all as System Owner may reasonably require to develop and complete a detailed System design. For this purpose, Customer shall provide System Owner with access to the Property to verify field conditions, and shall make appropriate staff available to answer questions and provide information required by System Owner to support the detailed design process.

(c) Drawing and Specifications. System Owner shall have determined that the drawings, specifications and other documentation provided to System Owner by Customer pursuant to Section 3.1(b) are correct and complete in all material respects, and that revisions thereto would not materially add to the System cost;

(d) Third-Party Authorizations. Within sixty (60) days after the Effective Date (or such longer period as may be reasonably necessary), Customer shall have obtained or shall obtain on behalf of itself and System Owner, any and all easements, leases, licenses, consents, acknowledgments, approvals and other rights and authorizations from third parties, including entities or persons holding any mortgage or other lien or lease burdening the Property on the Effective Date, necessary for System Owner to install and test the System, to produce and deliver Output, and to own, operate and maintain the System under this Agreement. Customer shall provide the foregoing authorizations and approvals to System Owner as each is received;

(e) Construction and Other Permits. System Owner shall have received, at its sole cost, all construction and other permits from local authorities and the Distribution Company (including but not limited to an interconnection services agreement) necessary to begin to construct the System. Customer shall cooperate with System Owner as necessary in the permitting process and shall apply directly for permits if necessary. Each party shall deliver copies of all permits obtained to the other party upon request;

(f) Building Roof and Lease Area. System Owner shall have determined that the Building roof, the Canopy Right area, and the Lease Area are structurally adequate to support the System and any changes would not materially add to the System cost; and

(g) Lease Area Electrical System. System Owner shall have determined, in its sole discretion, that the Lease Area Electrical System is adequate to accept the Output.

## ARTICLE IV
## SYSTEM INSTALLATION

4.1 System Installation

4.1.1 Installation Schedule

Before System Owner begins to construct the System, System Owner and Customer shall agree to a proposed installation schedule and an estimated Commercial Operation Date, and consult regarding any material changes to the proposed schedule and to the estimated Commercial Operation Date.

4.1.2 Right of Access During the Development and Construction Period

System Owner and its Contractors shall have access to the Property as specified in the Lease.

4.1.3 Installation to Specifications and Standards; Roof Warranties

System Owner shall install and test the System on the Lease Area and Rights areas in material accordance with the technical specifications set forth in Exhibit A. System Owner shall install and operate the System in a good and workmanlike manner and in compliance with all Applicable Laws, including System compliance with the Distribution Company's interconnection tariff. Customer represents that its Building roof warranty will expressly allow for installation of a solar photovoltaic system on the Building roof; System Owner shall design, install, and operate the System in a manner consistent with that roof warranty, and shall provide documentation to Customer demonstrating compliance with that roof warranty.

4.1.4 Output During System Testing

During the Development and Construction Period, System Owner or its Contractors may test the System, and Customer shall accept delivery of any Output and/or Energy Storage Services resulting from that testing. Customer shall pay for the Output and/or Energy Storage Services delivered to Customer from the System during the Development and Construction Period.

4.1.5 Connection of System to Lease Area Electrical System

System Owner shall be responsible for the interconnection of the System to the Lease Area Electrical System and shall be solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement. Customer shall at all times own and be responsible for the operation and maintenance of the Lease Area Electrical System at and from the Delivery Point.

4.2 Licenses, Permits and Inspections During Installation

System Owner shall maintain, and shall ensure that its Contractors maintain, all required licenses and permits during the Term. System Owner and its Contractors shall obtain all inspections required by all authorities having jurisdiction during the Term. Certificates of

inspection or other appropriate documentation by said authorities shall be delivered to Customer upon completion of the installation of the System.

4.3 Contractors

4.3.1 Subcontract Requirements

System Owner may hire Contractors by subcontracting the performance of any part or all of the Services System Owner is obligated to provide hereunder. All Contractors so engaged by System Owner shall be required by contract to have all permits, licenses, insurance and registrations required to perform the Services subcontracted to them.

4.3.2 Identification of Contractors to Customer

System Owner shall provide Customer with (a) the identification of all Contractors to be engaged by System Owner, and (b) evidence that such Contractors have obtained and will maintain insurance as required by Article XVI. All Contractors shall follow Customer's Property access protocols, including sign-in, security and safety orientation, before commencing any work at the Property.

4.3.3 Customer Right to Remove Contractors from Lease Area for Cause

Customer shall have the right to require the removal from the Lease Area of any Contractor or the agents, employees or subcontractors of such Contractor, who, in Customer's reasonable judgment, exhibit unsafe work practices or behavior inappropriate for the workplace.

4.4 Safe Workplace

While at the Lease Area, System Owner and its Contractors will take all reasonable and customary steps to ensure the safety of workers and visitors in accordance with all Applicable Laws.

4.5 CORI and SORI. Upon notice to System Owner, Customer may conduct checks of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Department of Criminal Justice Information Services (DCJIS), and the Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board for any officer or employee of the System Owner or of a subcontractor or any person who will work on the System or the Property. The Customer may refuse to allow any such person to work on the Property if the System Owner, in its sole discretion, determines that such person is not suitable for work on the Property based upon the results of such CORI or SORI. All System Owner employees and subcontractor employees who will work on the Property shall complete forms related to a CORI and SORI and present identification at 15 Charter Road, Acton, MA 01720, which Customer may rely upon to initiate a CORI and SORI search. Such CORI and SORI checks must be updated every three years.

4.6 Prohibition On Interaction With Students And Teachers. Employees and agents of the System Owner and the System Owner's contractors and subcontractors (including installers) shall avoid interaction with students and teachers. To clarify, the parties do not intend that the

immediately preceding provision limit System Owner's (or its contractors' or agents') access to or construction activities on, the Property, or the timing of its work.) In addition, the employees and agents of the System Owner and the System Owner's contractors and subcontractors shall avoid interaction with Customer's employees not directly involved in providing System Owner access to the Property, unless interaction with such employees is authorized in this Agreement or by the Superintendent or School Principal. The Customer shall have the right to require that the System Owner permanently remove from the Property any of its or its contractor's or subcontractor's employees on account of inappropriate interaction with students, including but not limited to the use of vulgar language, sexually suggestive statements and any inappropriate physical contact.

4.7 Prevailing Wage. System Owner hereby certifies and agrees that it is aware of the provisions of Massachusetts General Law, Chapter 149 as they pertain to the System, which refers to the prevailing wage rate minimums as set forth by the Massachusetts Department of Labor and Industries, 100 Cambridge Street, Boston, MA 02202. The appropriate prevailing wage regulations relating to the Systems will be upheld and in force throughout all appropriate times under this Agreement.

4.8 Performance Bonds. Customer acknowledges that System Owner has provided to Customer evidence satisfactory to Customer of System Owner's bonding capacity. Customer acknowledges that this Agreement is not a construction contract and, therefore, System Owner is not able to procure its own payment and performance bonds for construction of the System.

4.9 Notification of Commercial Operation Date. Promptly after System Operator receives the Distribution Company's permission to operate the System, System Owner shall notify Customer of the Commercial Operation Date, in the form set forth in Exhibit C.

4.10 Commercial Operation Deadline; System Owner Delay Payments. If the Commercial Operation Date does not occur by the date that is ten (10) months after the date that System Owner begins to construct the System (the "Guaranteed COD") for a reason solely and entirely within System Owner's control, Customer may, but is not required to, require System Owner to pay to Customer liquidated damages ("Delay Liquidated Damages"). Delay Liquidated Damages shall be One-hundred fifty dollars ($150) for each day the System fails to achieve the Commercial Operation Date after the Guaranteed COD; provided in no event shall aggregate Delay Liquidated Damages exceed Sixty Thousand dollars ($60,000.) To avoid confusion, reasons for delay that are not solely and entirely within System Owner's control include, but are not limited to utility delays, labor shortages, supply chain delays, and DOER approval delays. Delay Liquidated Damages shall be Customer's sole remedy for the Commercial Operation Date occurring after the Guaranteed COD, and may be assessed upon written notice at Customer's reasonable discretion.

## ARTICLE V
## OPERATION AND MAINTENANCE OF THE PROPERTY, SYSTEM, AND LEASE AREA ELECTRICAL SYSTEM

5.1 System Owner Operation, Maintenance and Repair of System

5.1.1 System Owner shall, at its sole cost and expense, maintain the System in good working condition and in accordance with industry standards, excluding ordinary wear and tear, provide operation, repair, monitoring for the System, and shall operate the System in accordance with all Applicable Laws, during the Term.

5.1.2 If the System is damaged due to the negligence or intentional misconduct of Customer, then Customer shall be responsible for such costs incurred by System Owner for the repair or replacement of the System to the extent of its negligence or intentional misconduct.

5.2 Operation, Maintenance and Repair of Property. Each Party shall maintain and repair the Property, Lease Area and Rights areas in accordance with this Agreement and with the Lease.

5.3 Customer Maintenance and Repair of Lease Area Electrical System. Customer shall maintain the Lease Area Electrical System in good working order, and shall perform such other maintenance, repair and upgrades to the Lease Area Electrical System as may be required for Customer to receive Output, including, but not limited to, the work required by the Distribution Company or by Applicable Laws. Customer will coordinate with System Owner prior to making any adjustments, modifications, or upgrades to the Lease Area Electrical System to ensure that the Output is not negatively impacted.

5.4 Disruption. The duration of any Customer maintenance, repair, or upgrade that disrupts Output shall constitute a Disruption of Delivery on the part of the Customer under Section 11.3, unless the need for any such repair or maintenance is caused by the negligence or intentional misconduct of System Owner. Customer and System Owner shall coordinate such activities so as to minimize disruption to the System.

5.5 Notice of System Malfunction and Non-Interference. Customer shall notify System Owner immediately upon learning of (a) any material malfunction of or damage to the System and (b) any material interruption or alteration of the energy supply to the Property. Customer may not adjust, modify, maintain, alter, service or in any way interfere with the System, except as authorized in writing by System Owner, or in the event of an emergency if there is an imminent threat to life or property, in which case Customer shall give System Owner or its designated Contractor immediate notice of such emergency.

## ARTICLE VI
## SYSTEM OWNER'S ACCESS

6.1 Access to the Lease Area and Rights areas for System Owner and its agents, Contractors and assigns shall be as stated in the Lease.

## ARTICLE VII
## ADDITIONAL COVENANTS

7.1 System Owner Owns the System

7.1.1 Customer and System Owner (a) intend that the System shall at all times be the personal property of System Owner severable from the Lease Area and the Property and shall not become a fixture and (b) shall each take such actions as are reasonably required by the other Party to ensure that the System constitutes the personal property of System Owner and shall not become a fixture.

7.1.2 If any person attempts to claim ownership of or other rights to the System by asserting any claim against or through Customer, and such claim is not attributable to any act or omission of System Owner, Customer agrees to protect and defend System Owner's title to the System, at Customer's expense. Customer will at all times keep the System free from any legal process and any lien not attributable to any act or omission of System Owner, and will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Customer where the System may be subject to any lien, attachment or seizure by any Person.

7.2 Changes to the Property

If Customer provides a notice to System Owner that it seeks to make a material modification of the Property or to change the use of the Property in a way that would have a materially adverse impact on the System operations (as determined by Output production), Customer's Output consumption (as determined by Customer's load profile and Customer's electrical consumption at the Property), receipt of Energy Storage Services (as determined by Customer's load profile, load duration curve and other attributes of Customer's electrical consumption at the Property), the Parties shall, before the modification or change, attempt to amend this Agreement so as to preserve to System Owner the economic benefits of this Agreement. If the Parties are unable to reach agreement on an amendment within sixty (60) days of the date Customer notifies System Owner of such change or modification, System Owner shall have the right to treat such change as a Default hereunder and terminate this Agreement. In such event, (a) System Owner shall have the right to remove the System from the Property and (b) Customer shall be liable for damages proportionate to the impact on System operations created by the modification to the Property.

7.3 Customer's On-going Ability to Perform

When requested by System Owner, Customer shall promptly provide a publicly available investment grade credit rating, reasonably acceptable to System Owner.

## ARTICLE VIII
## ENVIRONMENTAL CREDITS AND OTHER SYSTEM ATTRIBUTES; CHANGE IN LAW

8.1 System Attributes

As between the System Owner and Customer, except as otherwise provided for under Applicable Law, or Applicable Solar Program rules, or the applicable tariff of the Local Electric Utility, or as a result of a transfer of title to the Project to Customer as a result of the Customer exercising an Early Purchase Option, System Owner shall at all times own and retain exclusive rights to any and all attributes, products or economic benefits attributable to the System, the production of electricity from the PV System and the charging, discharge or maintenance of state of charge of the BESS, including but not limited to Environmental Credits, Capacity and Ancillary Services. System Owner shall have sole use of Environmental Credits, Capacity and Ancillary Services. and shall be permitted to use those attributes for itself, or to sell, grant, convey, or otherwise dispose of those attributes to any other Person, in System Owner's sole discretion. Customer hereby grants, makes and conveys to System Owner an absolute and irrevocable assignment of any and all right, title and interest Customer may at any time have in or to any Environmental Credits, Capacity and Ancillary Services.

8.2 Documentation

At System Owner's request, Customer will complete any and all documentation required to substantiate the existence, nature, and/or quantity of Environmental Credits produced by the System, or required to validate System Owner's rights to and ownership of the Environmental Credits, Capacity and Ancillary Services.

8.3 Change in Law

8.3.1 In the event that a change in Applicable Law occurs ("Change in Law") which

i. materially restricts the ability of System Owner to deliver Services, or the ability of electricity generated by the System to be delivered to the Distribution Company, or the ability of Customer to receive Energy Storage Services; or

ii. result in a material increase in System Owner's costs of construction and installation, or operation of, the System; or

iii. otherwise materially impacts the ability of either Party to perform its obligations under this Agreement;

then, upon a Party's receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Law. Without limiting the foregoing,

such amendments may include an amendment and restatement of this Agreement in the form as agreed to by the parties.

8.3.2 If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty (120) days, the matter shall be deemed a dispute subject to Section 18.1.2 (regarding mediation).

8.3.3 During the aforesaid one hundred twenty (120) day negotiation period and any mediation period, Customer shall pay the Services Fee only for those Services it receives and for Services for which payment was due before the date of the notice of Change of Law.

8.3.4 No early termination charges shall apply to termination due solely to a Change in Law event.

## ARTICLE IX
## SERVICES FEE; QUANTITY; INVOICING; ELECTRICITY PURCHASES; PROGRAM PARTICIPATION; TAXES

9.1 Services Fee; Quantity

9.1.1 On and after the Commercial Operation Date and through the end of the Operations Period (including any extensions to the Operations Period), System Owner shall provide the Services to Customer and Customer shall accept the Services, including accepting all Output at the Delivery Point, and shall pay the Services Fee to System Owner at the price and the terms and conditions set forth in Exhibit B. During System testing, Customer shall accept all Output and shall pay the Services Fee to System Owner.

9.1.2 System Owner shall deliver, at a minimum, the quantity of Output to Customer during the Operations Period as specified in Exhibit B, Section II. If, by the end of the subject Operating Year, System Owner failed to provide the Output quantity specified in Exhibit B, Section II during that Operating Year, System Owner shall reduce the next invoice (or invoices, as necessary to account for the amount to be set-off) by the amount equal to the production shortfall multiplied by the Services Fee. System Owner's failure to provide the Output quantity for any given Operating Year shall be excused to the extent that such failure was due to the Output Interruptions identified by Article 11.

9.2 Invoice

9.2.1 Following the end of each Distribution Company billing period during the Operations Period, System Owner shall provide an invoice to Customer for the Services provided in that billing period, based on the Services Fee and adjusted according to the Shared Savings methodology in Exhibit B, Section III.C (regarding Customer's Share of Net Savings).

Each invoice shall set forth in reasonable detail the calculation of all amounts owed. Delays in issuing any such invoice shall not constitute a waiver of Customer's obligation to pay the invoice amount to System Owner once Customer received an invoice from System Owner, or System Owner's right to collect any payment under any invoice.

9.2.2 Subject to its contest rights set forth in Section 9.2.4, Customer shall pay the full amount of each invoice on or before the thirtieth ($30^{th}$) day following issuance date of that invoice ("Due Date"). All payments made by Customer under this Agreement shall be by electronic funds transfer or by check payable to System Owner (as determined by System Owner, and unless otherwise directed in writing by System Owner) at the address for notices set forth in Section 18.4, as such instructions or address may be modified by System Owner by notice to Customer in writing.

9.2.3 If Customer fails to make any part of an invoice payment within thirty (30) days following the Due Date, Customer shall pay to System Owner a late fee of one percent (1%) per month (or such lower percentage as and if required by Applicable Law) of the amount of the late payment amount.

9.2.4 Customer shall notify System Owner in writing within ten (10) business days of the invoice date of any portion of the invoiced amount that it has a reasonable basis to dispute in accordance with Section 18.1 and the basis for such Dispute. The contested portion of any invoice shall not relieve Customer of its obligation to pay the uncontested portion of such invoice.

9.3 Other Electricity Purchases

9.3.1 The Parties intend that the Output will reduce Customer's purchase of electricity from the Distribution Company or retail electricity suppliers, and acknowledge that the System is not expected to meet the entirety of Customer's demand for electricity. To the extent that at any time the Output and Energy Storage Services are insufficient to meet all of Customer's electricity demand, Customer will be responsible for purchasing electricity from other sources. Customer acknowledges that its obligation to receive and pay for the Services shall not be reduced by the installation of another power source(s) on the Property.

9.3.2 Customer shall be responsible for maintaining and fulfilling all obligations to any of its other electricity service providers, including but not limited to any competitive electric supplier of generation or transmission services to Customer, and for meeting all requirements imposed by any such electricity service provider and by any federal, state or local government agencies with respect to such services and to receipt of the Services.

9.4 Use of System by System Owner to Provide Services to Third Parties

Customer expressly acknowledges and agrees that System Owner shall be permitted to use the System to provide or deliver Capacity and/or Ancillary Services to Persons other than Customer.

9.5 Customer's Program Obligations

9.5.1. If requested by System Owner, and at System Owner's sole cost, Customer shall execute, deliver, and maintain as necessary, all applications, documents, or agreements, or enter into other arrangements with the Distribution Company, ISO-NE, or other program sponsors, in connection with any of the programs detailed in Section B of Exhibit A-1, Energy Storage Services ("Customer's Program Obligations") necessary for System Owner to install and test the System,

for the Distribution Company to permit the System to interconnect with the Lease Area Electrical System, to allow Output not consumed by the Customer to flow to the Distribution Company and/or for Customer to receive the value of net excess generation from the PV System not used to charge the BESS, if any. Within five (5) business days of System Owner's notice, Customer shall enter into Customer's Program Obligations and shall promptly provide copies of those agreements and arrangements to System Owner when executed and delivered or otherwise completed. System Owner shall timely notify Customer of deadlines required for Customer to perform its Customer's Program Obligations.

9.5.2. Promptly after Customer's request, System Owner shall provide to Customer documentation under System Owner's control detailing the System's participation in the Energy Storage Services Programs stated in Section B, Exhibit A-1, or that the Distribution Company requires under the SMART Tariff and/or QF Tariff to demonstrate that the System complies with those tariffs, as applicable to the System participation in those programs.

9.5.3. If, through no cause attributable to Distribution Company or System Owner, Customer fails to enter into, fails to maintain or otherwise fails to comply with the required Customer's Program Obligations or QF Tariff, and as a result of that failure System Owner cannot deliver Output or provide Energy Storage Services to Customer, or Customer cannot receive Output, then such failure shall constitute a Disruption of Delivery and an Default under Article XV, and Customer shall be liable to System Owner for the economic value to System Owner of the Output produced, or that the System was capable of producing, and that would otherwise have been delivered to Customer as Output.

9.6. Net Excess Output.

If the Distribution Company credits to System Owner credits (in any form) generated by Output not consumed by Customer, System Owner shall convey those credits to Customer.

9.7 Taxes

System Owner is responsible for local, state and federal income taxes attributable to System Owner for income received under this Agreement and for any real or personal property taxes attributable to the System.

## ARTICLE X
## METERING

10.1 Meter Installation, Operation and Maintenance.

10.1.1 System Owner shall, at its own expense, install the PV System Meter and shall own, operate and maintain the meter and provide necessary meter-related services.

10.1.2 System Owner shall cause the Distribution Company to install the SMART Meter. The Distribution Company will own, operate and maintain the SMART Meter during the Operations Period and, as between the System Owner and Customer, the System Owner shall pay

all costs charged by the Distribution Company in connection with such installation, operation and maintenance.

10.2 Meter Reading

System Owner shall cause the PV System Meter to be read at the end of each billing period during the Operations Period and the Output to be recorded and shall use that reading to calculate the amount to be invoiced pursuant to Section 9.2.

10.3 Alternative Measures in Event of Non-Operability

If the PV System Meter is out of service or registers inaccurately, then the measurement of the Output shall be determined by the following alternatives, in the following order: (a) any alternative or back-up meter that System Owner or Distribution Company may have installed, if registering accurately; (b) a mathematical calculation, if upon a calibration test of that meter a percentage error is ascertainable; and (c) estimates of deliveries of Output and/or Energy Storage Services by reference to quantities measured during periods of similar conditions when such meter was registering accurately.

10.4 Calibration

10.4.1 System Owner shall notify Customer of the time it will test and calibrate the PV System Meter and Customer may witness such testing. Customer may request that System Owner to re-test and re-calibrate the PV System Meter, and any such testing shall be at Customer's expense if such tests indicate that the PV System Meter is accurate within plus or minus two percent (2%). Customer may witness any re-tests.

10.4.2 If, upon testing, the PV System Meter is found to be accurate or in error by not more than plus or minus 2 percent (±2%), then previous recordings of the PV System Meter shall be considered accurate in computing deliveries of Output hereunder.

10.4.3 If, upon testing, the PV System Meter shall be found to be inaccurate by an amount exceeding plus or minus 2 percent (±2%), then the PV System Meter shall be promptly replaced, repaired or adjusted to record properly and any previous readings from the PV System Meter used to compute invoices shall be corrected to zero error. If no reliable information exists as to the period over which the PV System Meter registered inaccurately, it shall be assumed for purposes of correcting previous invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which the PV System Meter was tested and found to be accurate.

10.4.4 If upon testing, the PV System Meter shall be found to be inaccurate by an amount exceeding plus or minus two percent (±2%), then the payments for Services made since the previous test of such meter shall be adjusted to reflect the corrected readings as determined in accordance with Section 10.4.3. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number (meter has over-registered Output), that difference will offset amounts owing by Customer to System Owner in subsequent month(s). If the difference is a negative number (Meter has under-registered Output), the difference shall be added to the next month's invoice and paid by Customer to System Owner on the Due Date of such invoice.

## ARTICLE XI
## OUTPUT INTERRUPTIONS

11.1 Intermittent Interruptions Are Expected

Customer acknowledges and understands that the System, as incorporating a solar photovoltaic system, even when coupled with the BESS, will produce Output intermittently, the BESS nameplate capacity and duration of discharge are limited as set forth on Exhibit A and, accordingly, the Services will not provide Customer with an uninterrupted supply of electricity. OTHER THAN AS EXPRESSLY STATED IN SECTION 9.1.2, THIS AGREEMENT PROVIDES NO WARRANTY OR GUARANTEE TO CUSTOMER OF AN UNINTERRUPTED SUPPLY OF ELECTRICITY OR PROVISION OF ELECTRICITY AT ANY SPECIFIC TIME OR FOR ANY PARTICULAR DURATION. System Owner shall not be liable to Customer for any intermittent interruption in Output or delivery of Energy Storage Services, nor shall System Owner be responsible for Customer's cost of, or increased costs for, alternative supplies of electricity during any such interruption. If delivery of Output and Energy Storage Services from the System is interrupted other than as a result of the default, negligent acts or omissions of Customer or as otherwise provided in Section 11.2, System Owner will make commercially reasonable efforts to restore Output and/or Energy Storage Services in a timely manner.

11.2 Interruption of Output

11.2.1 Notwithstanding anything to the contrary herein, System Owner shall have the right to interrupt or reduce Output in order to inspect, maintain, repair, replace, or alter the System, or at the direction of authorized governmental authorities or electric utilities. Other than in the event of an unexpected interruption or in the event of an emergency, System Owner shall give prior notice to Customer of an Output interruption and an estimate of its expected duration.

11.2.2 System Owner shall not be required to supply Services to Customer at any time System Owner reasonably believes the Lease Area, a Right area or the Lease Area Electrical System to be unsafe, but in no event will System Owner have any responsibility to inspect or approve the Lease Area Electrical System. Similarly, Customer, should it deem the System to be unsafe, may direct System Owner to disconnect the System, or, in the case of imminent danger caused by such unsafe condition, Customer may disconnect System from its Lease Area or Lease Area Electrical System without penalty. In such an occurrence, Customer shall notify System Owner of the unsafe condition and of the emergency disconnection without delay, and before the disconnection, if possible.

11.3 Disruption of Delivery

If the System is capable of delivering Output and/or if System Owner is capable of delivering Energy Storage Services to Customer, but Customer fails to accept delivery of such Output or Energy Storage Services (a "Disruption of Delivery"), Customer shall pay to System Owner

(a) the payments that Customer would have made to System Owner for Services that would have been provided during the period of the Disruption of Delivery, as determined by

(i) the PV Meter or

(ii) historic billing data if the meter information is unavailable due to Customer's, its agents or contractors' action or inaction, or the condition of the Property, Lease Area, Right area or Lease Area Electrical System, or,

(iii) as represented by the PVSyst, given the System specifications described on Exhibit A, the System location and the time of year of the Disruption of Delivery; and

(b) revenues from Environmental Credits and Financial Incentives and Tax Benefits, that System Owner would have received with respect to Output that would have been produced or delivered during the period of the Disruption of Delivery, with adjustment for compliance fee payments to governmental authorities resulting from the Disruption of Delivery, if any.

11.4 Cost to Restore Service Following Interruption

System Owner shall bear any costs associated with restoring service following any interruption of Output or provision of Energy Storage Services as a result of System Owner's operation of the System. Customer shall bear the costs associated with restoring the Output and/or Energy Storage Services delivery if an interruption is caused by the actions or inactions of Customer, its agents or contractors, or the condition of the Property, Lease Area, a Right area or Lease Area Electrical System.

## ARTICLE XII
## SYSTEM PURCHASE OPTION; DECOMMISSIONING

12.1 Customer's Purchase Option

12.1.1 Customer may purchase the System from System Owner upon the anniversary of the commencement of the Operations Period in the years set forth in the attached Exhibit D (each a "Purchase Date") according to the process set forth in this Section 12.1. The "System Purchase Price" upon each Purchase Date shall be the greater of the Customer Option Payment, as defined by the attached Exhibit D, and the Fair Market Value determined by an independent appraiser.

12.1.2 To exercise its purchase option, Customer shall deliver a notice to System Owner between nine (9) and six (6) months before the Purchase Date. Promptly after receiving Customer's notice that it elects to exercise the option, System Owner shall prepare and deliver to Customer a set of records of the System operation and maintenance history, and Customer may, upon reasonable notice to System Owner, inspect the System.

12.1.3 Within twenty (20) Business Days after receipt of Customer's notice, Customer and System Owner shall agree upon an independent appraiser. If System Owner and Customer do not agree upon the appointment of an independent appraiser within that time, then two proposed independent appraisers shall, within five (5) Business Days of each Party's notice, select a third independent appraiser (who may be one of the independent appraisers originally designated by the Parties or another independent appraiser) to determine the System's Fair Market Value and provide notice thereof to System Owner and Customer. The selection of the final independent appraiser shall be final and binding on System Owner and Customer absent fraud. The parties shall each pay one-half of the independent appraiser's fee.

12.1.4 If the System Purchase Price is acceptable to the Customer, then the Customer shall pay the System Purchase Price to System Owner within ten (10) Business Days of the parties receiving the independent appraiser's determination of the System's Fair Market Value. Upon paying the System Purchase Price, System Owner shall deliver, or cause to be delivered, to Customer a bill of sale conveying the System to Customer. The bill of sale shall not contain any warranties other than a warranty against any defects in title arising through System Owner. System Owner shall use commercially reasonable efforts to transfer any remaining manufacturer's warranties on the System, or portions thereof, to Customer. Upon transferring the System to Customer, System Owner shall have no further obligation with respect to the performance, installation, operation, maintenance or repair of any part or component of the System, and this Agreement shall terminate. Termination in accordance with this Section 12.1.4 shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

12.1.5.

(a) "Fair Market Value" means the price that would be paid in an arm's length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

(b) Notwithstanding the other provisions in this Section 12.1, if System Owner enters into a financing transaction in connection with the System, the process to determine the System's Fair Market Value shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the System and shall be undertaken consistently with the terms of such transaction so that the process for determining Fair Market Value shall be the same as provided in the agreements for that financing transaction.

12.2 Non-Election and Removal

If Customer does not purchase the System pursuant to Section 12.1, System Owner shall at its sole cost remove the System from the Lease Area during the Decommissioning Period and according to the terms of the Lease.

## ARTICLE XIII
## REPRESENTATIONS

13.1 Customer Representations

Customer makes the following representations and warranties to System Owner as of the Effective Date:

13.1.1 Customer is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder.

13.1.2 Customer has all the rights required to enter into this Agreement and perform its obligations hereunder, and has obtained all necessary consents, if any, from third parties, including any mortgagee.

13.1.3 This Agreement is enforceable against Customer in accordance with its terms And, to the best of Customer's knowledge, does not conflict with or violate the terms of any other agreement to which Customer is a party, including, if applicable, any agreement pursuant to which Customer leases, occupies, or has financed the Property.

13.1.4 Customer has no knowledge of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, including its creditworthiness pursuant to Section 7.3.

13.1.5 To the best of Customer's knowledge, and after due inquiry and investigation, the information provided to System Owner by Customer pursuant to this Agreement or under the Lease as of the Effective Date of each agreement is true and accurate in all material respects, and may be relied on by System Owner, including but not limited to: data concerning energy usage for the Property; and construction drawings for the Property in existence as of the Effective Date.

13.1.6 Customer shall use its best efforts to satisfy all conditions set forth in Section 3.1.

13.2 System Owner Representations

System Owner makes the following representations and warranties to Customer as of the Effective Date:

13.2.1 System Owner is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder.

13.2.2 System Owner has all the rights required to enter into this Agreement and perform its obligations hereunder, and has obtained all necessary consents, if any, from third parties including any mortgagee.

13.2.3 This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of any other agreement to which System Owner is a party.

13.2.4 System Owner has no knowledge of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, including its creditworthiness.

13.2.5 The information provided to System Owner by Customer pursuant to this Agreement as of the Effective Date is true and accurate in all material respects.

13.2.6 System Owner shall use commercially reasonable efforts to satisfy all conditions in Section 3.1.

## ARTICLE XIV
## FORCE MAJEURE

14.1 Force Majeure Events

14.1.1 If performance of this Agreement or of any obligation hereunder (other than an obligation to pay the Services Fee) is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from performance, and the running of affected time periods hereunder shall be suspended, to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance or delay, and shall continue performance hereunder whenever such causes are removed.

14.1.2 "Force Majeure" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement if such act or event is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure may include the following acts or events: (i) Acts of God or acts of providence, including hurricanes, floods, washouts, lightning, earthquakes, storm warnings and any other adverse weather conditions which directly result in a party's inability to perform its obligations, (ii) acts of civil disorder including acts of sabotage, acts of war, lockouts, insurrection, riot, mass protests or demonstrations, threats of any of the foregoing, and police action in connection with or in reaction to any such acts of civil disorder, when any such acts of civil disorder directly results in a party's inability to perform its obligations, (iii) epidemics or pandemics, (iv) failures resulting from fires, washouts, mechanical breakdowns of or necessities for making repairs or alterations to transformers, power lines, switching equipment, inverters, machinery, cables, meters or any of the equipment therein or thereon, (v) strikes or other labor disputes, other than strikes or labor disputes solely by employees

of the Party declaring the Force Majeure Event or as a result of such Party's failure to comply with a collective bargaining agreement, and (vi) supply chain or labor shortages when any such failure results in a Party's inability to perform its obligations. Force Majeure shall not mean ordinary inclement weather affecting construction, start-up, operation, or decommissioning of the System; unavailability of sun; unavailability of equipment, repairs or spare parts for the System, except to the extent due to a qualifying event of Force Majeure; any nonpayment under this Agreement or any third-party agreement; economic hardship of either Party; or breakdown or nonperformance of the System.

14.2 No Default for Force Majeure

Neither System Owner nor Customer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. However, if a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a continuous period of nine (9) months, then the other Party shall be entitled to terminate the Agreement upon ten (10) days' prior written notice. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than System Owners' obligation to remove the System and restore the Premises in accordance with the Lease, and any such liabilities that have accrued or arise from events occurring prior to such termination).

14.3 Notice and Cure

If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, then such Party shall promptly provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable.

## ARTICLE XV
## DEFAULT, REMEDIES AND LIMITATIONS, INDEMNITY, RELEASE AND DISCLAIMER

15.1 Default.

15.1.1. A Default may be either a Payment Default or a Non-Payment Default. A "Payment Default" is failing to make timely payments required herein. A "Non-Payment Default" is any Default other than a Payment Default, and also

i. occurs if a Party makes representations, warranties and other statements that misrepresent a material fact as of the Effective Date or thereafter, and such misrepresentation has a material adverse effect on the other Party that is not cured within ten (10) business days from the earlier of (i) notice from the Party affected by the misrepresentation and (ii) the discovery or

determination by a Party of its misrepresentation; provided, that if the Party that has made the misrepresentation commences an action to cure such misrepresentation within such ten (10) business day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days after the expiration of the initial ten (10) business day period;

ii. occurs if either Party commits a Default under and as defined in the Lease;

iii. occurs if either Party (1) voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition, (2) enters into an assignment of its assets for the benefit of its creditors or (3) otherwise is unable to pay its debts as they become due; or

iv. occurs if either Party obstructs commencement of installation of the System or fails to take any actions necessary for the interconnection of the Project, or if Customer fails to take delivery of Output.

15.1.2. Before a Party exercises any rights or remedies against the other as a result of a Default, the exercising Party shall

i. simultaneously notify the other Party and all Financing Parties who have given advance notice of their interest in this Agreement, of any failure by the other Party to perform any material obligations under this Agreement, and which shall set forth in reasonable detail the facts pertaining to such failure and specify a reasonable method of cure, and

ii. give the other Party and each Financing Party (i) sixty (60) days' notice of and the opportunity to cure any Payment Default, (ii) sixty (60) days' notice of and the opportunity to cure any Non-payment Default, and (iii) a reasonable further opportunity to cure a Non-payment Default not reasonably capable of cure within such 60-day period, in which case the allegedly defaulting Party shall notify the other of the anticipated date for curing of the Non-Payment Default and shall begin to diligently undertake the cure within the 60-day period, weather permitting.

15.1.3. System Owner and any Financing Party may cure any Payment Default by paying all then overdue payments in full together with interest thereon at the rate of one and one-half percent (1 ½%) per month.

15.1.4. If Customer fails to perform any of its obligations hereunder, System Owner may offset against any amounts owing to Customer any amounts paid by System Owner to cure such non-performance by Customer and exercise any other remedies available under this Agreement or Applicable Law.

15.2 Remedies.

15.2.1 If a Customer Default occurs, (a) System Owner shall have the right to terminate this Agreement and the Lease upon thirty (30) days prior written notice to Customer, and promptly following such termination, shall have the right to remove the System from the Property, and (b) Customer shall be liable to System Owner for the damages set forth in Exhibit D. At all times following a Customer Default until the termination of this Agreement, System Owner shall have the right, but not the obligation, to deliver the Output to the Customer, and the Customer shall be obligated to purchase and pay for such Output in accordance with this Agreement.

15.2.2 If a System Owner Default occurs and remains uncured after the allowed cure periods, then Customer shall have the right, subject to Article XV (regarding Financing Party cure rights), to terminate this Agreement and the Lease upon thirty (30) days prior written notice to System Owner and exercise any remedies available under this Agreement or Applicable Law. Following such termination, System Owner must remove the System from the Lease Area according to the Lease.

15.2.3 Customer shall be liable to System Owner for damages, including, but not limited to, lost revenues for the sale of Output under this Agreement, due to a Disruption of Delivery caused by a Customer Default.

15.3 Limitation of Liability

While the Defaulting Party shall be liable to the Non-Defaulting Party for damages caused by a Default, neither Party shall be liable to the other Party for any special or indirect damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty. The limitations of this Section 15.3 shall not apply to liabilities arising out of claims by third parties.

15.4 Reservation of Rights

Neither termination nor the exercise of any other right or remedy by a Non-Defaulting Party hereunder shall eliminate the Non-Defaulting Party's right to pursue any other remedy given under this Agreement now or hereafter existing at law, in equity or otherwise.

15.5 Indemnification

15.5.1 The System Owner shall indemnify, defend, and hold harmless the Customer and all of its officers, employees, boards, commissions, and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind ("Losses") from or to third parties which arise out of the performance of System Owner's work under this Agreement, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent or intentional acts or

omissions of the System Owner, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts System Owner is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Customer, but the System Owner's obligation to pay Losses shall be reduced in proportion to the percentage by which the Customer's or its agents, contractors', materialmens' or invitees' negligent or intentional acts, errors or omissions caused the Losses.

15.5.2 Customer shall be responsible for any damage to the System that is caused by its or its agents, contractors', materialmens' or invitees' negligent or intentional harm to or interference with the System.

15.5.3 This Section 15.5 shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Agreement.

15.6 Release of Liens and Claims

So long as Customer has paid all amounts that become due and owing to System Owner hereunder, System Owner shall hold harmless Customer from all liens and claims filed or asserted by System Owner's independent contractors, second-tier contractors or other third parties against Customer or the Property for services performed or material furnished to System Owner by such parties according to the terms of the Lease.

15.7 Disclaimer of Warranties

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER (INCLUDING ANY SERVICES, GOODS, MATERIALS OR OTHER ITEMS SUPPLIED HEREUNDER), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE.

15.8 No Waiver of Massachusetts Tort Claims Act.

Nothing contained in this Agreement shall constitute a waiver of the limitations on liability of Customer under the Massachusetts Tort Claims Act, General Laws Chapter 258, as from time to time amended.

## ARTICLE XVI
## INSURANCE

16.1 System Owner's Insurance

16.1.1 At all times relevant to this Agreement, System Owner shall maintain (or shall cause its Contractors to maintain), with a company or companies licensed or qualified to do business in

the Commonwealth of Massachusetts and rated A- or above by A.M. Best, the following insurance coverage:

a) Workers' compensation insurance in compliance with appropriate federal and Commonwealth of Massachusetts laws, and employers' liability insurance with limit of not less than $1,000,000 per accident or disease for each employee;
b) Commercial general liability insurance (form CG 00 01 or equivalent)

    i. in a limit of not less than $2,000,000 per occurrence, $2,000,000 per occurrence for personal injury liability, $4,000,000 general aggregate (applied per job), and $2,000,000 products and completed operations aggregate;
    ii. written for a period of three (3) years beyond final payment;
    iii. including broad form property damage liability and broad form contractual liability; and
    iv. be primary and non-contributing with respect to any insurance carried by Customer or System Owner's subcontractor(s);

c) Minimum additional $5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance;

d) Professional Liability Insurance, covering errors and omissions, $2,000,000 each occurrence and $4,000,000 aggregate limit; and

e) Commercial automobile liability with a combined single limit of $1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least $250,000 bodily injury per person, $500,000 bodily injury per accident, and $250,000 property damage per accident with an endorsement that the policy covers business related use with an additional $1,000,000 personal umbrella policy.

16.1.2 System Owner's insurance policy(ies) required under this Agreement

a) shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance;
b) shall name Customer as additional insured with coverage in at least the amounts and types set forth above; and
c) shall be written on an occurrence basis, unless Customer approves in writing coverage on a claims-made basis.

16.1.3 System Owner shall provide to Customer promptly after the Effective Date certificates of insurance reasonably acceptable to Customer, which include insurance coverage's required and specified above.

16.1.4 The certificates and the insurance policies required will contain a provision that coverages afforded under the policies will not be canceled, modified or allowed to expire until at least thirty (30) days' prior written notice has been given to Customer. If any insurance policy providing coverage required by this Agreement will expire during the Term, System Owner will, not less than fifteen (15) days before the policy's expiration date, deliver to Customer certificates of insurance evidencing renewal of those policies.

16.1.5 System Owner's failure to provide and continue in force any insurance required in accordance with this Section 16.1 shall constitute a material breach of the Agreement.

16.2 Customer's Insurance

At all times relevant to this Agreement, Customer shall maintain, with a company or companies licensed or qualified to do business in the Commonwealth of Massachusetts and rated A- or above by A.M. Best, the following insurance coverage:

(a) Workers' compensation insurance in compliance with appropriate federal and Commonwealth of Massachusetts laws, and employers' liability insurance with limit of not less than $1,000,000 per accident or disease for each employee;

(b) Commercial general liability insurance, occurrence form, including, but not limited to, contractual coverage for all of the provisions or this Agreement, with limits of not less than $2,000,000 per occurrence and in the aggregate, $2,000,000 products and completed operations aggregate; and $1,000,000 personal injury and advertising injury per offense; and

(c) Property coverage will be maintained providing replacement cost value for the System pursuant to Section 5.1.2 and for property that is in Customer's care, custody and control, with limits not less than the replacement value of the System. This coverage shall include appropriate riders for specialty equipment as necessary.

16.3 Certificates

Customer shall cause certified copies of all required insurance policies to be endorsed by the insurance providers for the above coverages. Evidence of the above insurance policies shall be provided on a continuous basis and on a standard ACORD form 25-S, providing not less than thirty (30) days' notice of cancellation. All policies listed in Section 16.2.1 shall grant System Owner, its successors, subsidiaries, directors, officers, agents and employees a waiver of subrogation. The commercial general liability policy in Section 16.2.1(b) shall name the System Owner, its directors, officers, and employees as an additional insured. The property coverage policy in Section 16.2.1(c) shall name System Owner, its successors, subsidiaries, directors, officers, agents and employees as a loss payee.

## ARTICLE XVII
## ASSIGNMENT; FINANCING

17.1 Assignment. Neither Party may assign this Agreement or its rights or obligations under this Agreement other than as stated in this Section 17.1, or by mutual written agreement of the parties.

(i) System Owner may assign this Agreement and System Owner's rights hereunder, in System Owner's sole discretion, and with notice to Customer,

A. to any entity in which System Owner, or an affiliate thereof, has a controlling interest or under which it is in common control;

B. to any entity as security for or in connection with a financing or other financial arrangement related to the System, as set forth in Section 17.2; and

(ii) subject to Customer's approval and consent, such consent not to be unreasonably withheld, conditioned or delayed, to any other person or entity, and System Owner acknowledges that it is reasonable for Customer to require that the assignee under this Section 17.1 have demonstrable experience in operating and maintaining solar photovoltaic systems comparable to the System and demonstrate that it can satisfy all obligations of this Agreement, and provided that any such collateral assignment does not alter Customer's rights under this Agreement.

17.1.2 Customer may assign this Agreement and rights hereunder

(i) collaterally to any person or entity, subject to

A. Customer giving prior notice to System Owner,

B. the Notice of Lease being first recorded as require under the Lease,

C. Customer giving the assignee/grantee prior, written notice of the Agreement,

D. Customer being not then in Default; and

(ii) subject to System Owner's approval and consent, such consent not to be unreasonably conditioned, withheld or delayed, to any other person or entity that contemporaneously obtains title to the Property and expressly assuming all Customer obligations under this Agreement and all Tenant obligations under the Lease.

17.1.3 Customer shall contemporaneously assign this Agreement to any person or entity to whom Customer transfers all its right, title and interest in and to the property on which the Lease Area and any Right area are located.

17.1.4 Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the assignee.

17.1.5 Upon any assignment pursuant to this Section 17.1, the assigning Party shall provide to the other Party current information regarding the assigning Party's and all Financing Parties' addresses and the term "System Owner" or "Customer", as appropriate, in this Agreement shall refer to the entity that was assigned the rights and obligations hereunder.

17.2 Financing.

17.2.1 System Owner may encumber its interest in the System by mortgage, lease, sale and leaseback, deed of trust or similar instrument or instruments and by security agreement, fixture filing and financing statements or similar instrument or instruments in favor of any person or persons providing all or a portion of the financing for the Facility or any person or persons providing a refinancing of any such financing or any trustee for such person or persons (each, a "Financing Party").

17.2.2 If System Owner's rights or property are foreclosed upon or seized, or if a Financing Party exercises any other right under a security agreement granted by System Owner to that Financing Party, Customer shall permit such Financing Party to exercise any and all System Owner rights hereunder, so long as there are no existing uncured Defaults, or the Financing Party offers to cure any such Defaults. Customer shall execute any document reasonably requested by any Financing Party to evidence and give effect to the provisions of this Section 17.2.2, subject only to the condition precedent that no System Owner Payment Default exists.

17.2.3 At System Owner's request, Customer shall amend this Agreement to include any provision reasonably be requested by an existing or proposed Financing Party, provided such amendment shall not impair Customer's rights under this Agreement or materially alter the obligations owed to Customer under the terms of this Agreement.

17.2.4 Customer shall, within ten (10) days after System Owner's written request, execute and deliver to System Owner (or to such party or parties as System Owner shall designate, including a Financing Party) the following written statements:

(i) (1) certifying whether this Agreement is in full force and effect (or modified and stating the modification), (2) stating the dates on which amounts due to Customer have been paid, (3) stating that there are no known defaults existing at the time of execution of the statement, or that defaults exist and the nature of such defaults, and (4) stating that, as of the date of such estoppel certificate, there are no Disputes or proceedings under this Agreement between

Customer and System Owner or, if any such Dispute exists, describe the nature of such Disputes or proceedings; and

(ii) recognizing a particular entity as a Financing Party under this Agreement and agreeing to accord to such entity all the rights and privileges of a Financing Party hereunder.

## ARTICLE XVIII
## MISCELLANEOUS

18.1 Disputes

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

18.1.2 Mediation. If, after such negotiation in accordance with Section 18.1.1, the Dispute remains unresolved, a Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the Dispute shall meet for at least three (3) hours with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the AAA to appoint a mediator. The mediator's fee and expenses shall be paid equally by each involved Party.

18.2 Confidentiality

Subject to the provisions of the Massachusetts Public Records Law and Massachusetts Open Meeting Law, and requirements of other Applicable Law, neither Party may disclose the terms of this Agreement to any other person, other than assignees or prospective purchasers of Parties, except that either Party may disclose the terms hereof to any counsel, lender, accountant or advisor engaged by it, and that System Owner may disclose the terms hereof to any contractor or supplier bidding upon construction of all or part of the System, to any person which may seek to provide financing for or to invest in the System, and to any future assignee; provided, that such person to whom terms of this Agreement are disclosed must be under an obligation to the discloser to maintain the confidentiality of the Agreement terms. Further, each Party may disclose any terms hereof to the extent required by law, provided that the disclosing Party, to the extent practicable, gives notice of any request for disclosure to the non-disclosing Party and cooperates with efforts by the non-disclosing Party to minimize the extent of the information disclosed and the persons to whom it is disclosed.

18.3 Publicity

Without the other party's prior, written approval, each party shall not use System Owner's name or any trade name, trademark or service mark or other brand imagery belonging to either party in press releases or in any form of advertising.

18.4 Notices

Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email. Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section. Failure of the Tenant to notify the Landlord of an address change for it or any Financing Party shall excuse the Landlord from complying with any notice obligation herein to such changed addresses, provided however that the Landlord will in no event be excused from providing notices required herein to all addresses that Landlord has notice of. Notices will be deemed given upon receipt or upon the failure to accept delivery.

If to System Owner:

Spruce Street Solar, LLC
c/o Nexamp, Inc.
101 Summer Street, Second Floor
Boston, MA 02110
Attn: General Counsel
legal@nexamp.com

If to Customer:

Acton-Boxborough Regional School District
15 Charter Road
Acton, MA 01720
Attn: JD Head
jdhead@abschools.org

18.5 Applicable Law and Jurisdiction; Waiver

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to the choice of law rules thereof that would result in the application of the laws of any other jurisdiction.

18.6 Entire Agreement

This Agreement and any documents expressly incorporated herein by reference shall constitute the entire Agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations whether oral or written. There are no agreements, understandings, or covenants between the Parties of any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

18.7 Amendments and Modifications

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

18.8 Severability

If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 18 (regarding Dispute resolution).

18.9 Counterpart Execution

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

18.10 Neutral Interpretation

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party.

18.11 Headings

Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

18.12 No Waiver

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

18.13 Survival

Any provisions that are necessary to give effect to the intent of the Parties hereunder after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Solar and Energy Storage Services Agreement as of the Effective Date.

**SYSTEM OWNER**

**Spruce Street Solar, LLC**

By: _____

Name: _____
Title: Authorized Representative

**CUSTOMER**

**Acton-Boxborough Regional School District**
as authorized by its School Committee at a meeting on June __, 2022:
By: _____

Name: Peter Light

Title: Superintendent, Acton-Boxborough Regional School District

## LIST OF EXHIBITS

## EXHIBIT A

### System Description and Specifications

PV System: The PV System is a combination of a rooftop-mounted solar array and a canopy solar array, including modules, inverters, racking systems, a data acquisition system, which collects and reports real time system performance, monitoring, and weather data, and other monitoring and controls hardware. The 477.53 kW DC rooftop array portion of the PV System includes JA Solar 530W (or equivalent) solar modules mounted with a PanelClaw mounting system (or equivalent); and the 964.07 kW DC canopy array portion of the PV System includes a Parasol Carport system (or equivalent). The PV System will utilize SMA Sunny Tripower Core String Inverters (or equivalent) for each of the arrays. The PV System is an intermittent power generation system and exact Output may vary dependent on weather and other factors.

BESS: The Battery Energy Storage System (BESS) consists of a 1,072 kW energy storage system with a 2-hour discharge capacity (2,145 kWh), and a Bidirectional inverter and system controller. The BESS utilizes one (1) Tesla Megapack System (or equivalent). The BESS will draw exclusively from the PV System. Owner will operate the System using monitoring and optimization software. The BESS is a limited duration energy storage resource. Given manufacturer recommended operational requirements and operator driven economic optimization, the BESS may not be charged to full capacity at any given time.

Before the Commercial Operation Date, the Utility may require that the System capacity be reduced from that stated in this Exhibit A.

## EXHIBIT A-1

## Energy Storage Services

To provide the Energy Storage Services, System Owner shall do the following:

A. **Resiliency**: System Owner shall make a good faith effort to provide emergency backup power from the System's energy storage component to Customer during grid outages, but Customer expressly acknowledges that System Owner is not obligated to do so. System Owner's System controls and related software will accommodate off-grid, islanded operation of the System and System Owner will operate the System during these periods to meet the Building's emergency power requirements if reasonably possible, in System Owner's sole discretion, given the System's intermittent performance and the limited duration of the energy storage component of the System. System Owner will notify Customer of any Lease Area Electrical System upgrades required to accommodate emergency power electrical loads, but shall not be responsible for any costs associated with those upgrades.

B. **Programs**: System Owner shall take the actions necessary for the System to participate in the following programs:

1. SMART Program.

   System Owner shall register the System in the Solar Massachusetts Renewable Target (SMART) program, which, as of the Effective Date, requires the storage portion of the System to operate at least 52 cycles per year during peak periods. This baseline requirement is expected to be accomplished through participating in programs 2 and 3, below.

2. Demand Charge Management Programs. The System will provide savings to Customer by reducing Customer's demand charges incurred on its electricity bills related to the Property.

   a) Utility Demand Charges. System Owner shall dispatch the System's storage during predicted load peaks to minimize the peak in Customer's electricity load at the Property.

   b) Installed Capacity Tag (ICAP) Charge Reduction. System Owner shall dispatch the System's storage to reduce Customer's electricity demand at the Property during the ISO-NE annual system peak hour by using predictive forecasts of Customer's load at the Property, compared to predictive forecasts of the ISO-NE annual system peak.

   a) 3. Other Programs. The System will generate revenue by participating in programs operated by the Utility, Independent System Operator New England ("ISO-NE") and the Massachusetts Department of Energy Resources ("DOER") programs. System Owner shall enroll the System in programs or markets of

material financial benefit to both Parties, as determined by System Owner in its commercially reasonable discretion, which may include the programs set forth immediately below. Connected Solutions Demand Response Program. A Utility incentive program designed to reduce the utility's electricity demand during peak load hours. The utility 'calls' a demand reduction event by direct communication with the System. The utility provides compensation based on the System's performance in those event hours.

b) Clean Peak Standard Program. A DOER program which provides incentives to clean energy technologies that reduce demand during seasonal peak demand periods established by DOER. The program will require the System to dispatch during "Seasonal Peak Periods" (established by the DOER), which often coincide with utility peaks and buildings' daily peaks. The System will generate "Clean Peak Energy Certificates" (CPECs), which are sold to utilities and energy suppliers at market rates.

c) ISO-NE Forward Capacity and Frequency Regulations Markets. System Owner will enroll the System with ISO-NE. The System can then accept signals to charge and discharge when necessary.

## Exhibit B

## Services Fee; Quantity; Shared Savings

I. Services Fee.

A. Services Fee. The Services Fee shall be $0.084 dollars (8.4 cents) per kWh of Output generated within a billing period, as determined by the PV System Meter, and will be adjusted according to this Exhibit Section I.B.

B. Adjustments. Subject to this Exhibit Section I.B.iv, regarding the Adjustment Cap, the Services Fee shall be adjusted as follow:

(i) Annual Escalator. Beginning with Operating Year two and continuing with each Operating Year thereafter, the Services Fee shall be increased by an amount determined by multiplying the previous Operating Year's Services Fee by two percent (2%).

(ii) Interconnection. If, before beginning to construct the System, System Owner determines that the interconnection cost (including the interconnection studies, the cost to obtain an interconnection services agreement ("ISA"), the ISA payment and the cost of interconnection upgrades,)

1. is One-hundred twenty thousand dollars ($120,000) or less, the Services Fee shall not be adjusted for interconnection costs; or

2. if the interconnection cost is greater than One-hundred twenty thousand dollars ($120,000), the parties shall confer and the Services Fee shall be increased by the amount necessary to annualize the costs greater than One-hundred twenty thousand dollars ($120,000) over the Operations Period, at a rate of $0.00047 increase per kWh for each $10,000 of additional interconnection costs, but the increase shall not exceed the Adjustment Cap.

(iii) PILOT or Taxes. If, as of the Commercial Operation Date, System Owner is required to enter into a Payment in lieu of Tax ("PILOT") agreement regarding the System or, if System Owner determines that it will become liable for property taxes to be assessed in connection with the System, the parties shall confer and the Services Fee shall be increased by the amount necessary to annualize the PILOT payments or taxes to be assessed over the Operations Period, but shall not exceed the Adjustment Cap.

(iv) Adjustment Cap. If the Services Fee adjustments in this Exhibit Sections B (ii) and (iii), combined, result in a Services Fee greater than the Adjustment Cap, the Parties shall meet to discuss how to address this potential increase in costs. If the Parties do not agree on an allocation of costs above the Adjustment Cap within fifteen (15) business days, either Party may terminate this Agreement, which termination shall not release either Party from any obligations arising prior to the

effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

The "Adjustment Cap" is the amount that would result in a Services Fee greater than $0.094 dollars (9.4 cents) per kWh for Operating Year One if annualized over the Operations Period.

(v) Supporting information. System Owner shall promptly provide supporting information and calculation of each adjustment to Customer.

II. Output Quantity: The minimum guaranteed quantity of Output that System Owner shall deliver to Customer for each Operating Year is eighty percent (80%) of the amounts shown in the chart immediately below, as shall be adjusted proportionately if the System capacity is reduced by equipment changes or by the Utility, as stated on Exhibit A.

| **Operating Year** | **Output to be delivered (kWhs)** |
|---|---|
| 1 | 1583300 |
| 2 | 1575384 |
| 3 | 1567507 |
| 4 | 1559669 |
| 5 | 1551871 |
| 6 | 1544111 |
| 7 | 1536391 |
| 8 | 1528709 |
| 9 | 1521065 |
| 10 | 1513460 |
| 11 | 1505893 |
| 12 | 1498363 |
| 13 | 1490871 |
| 14 | 1483417 |
| 15 | 1476000 |
| 16 | 1468620 |
| 17 | 1461277 |
| 18 | 1453970 |
| 19 | 1446701 |
| 20 | 1439467 |
| 21 | 1432270 |
| 22 | 1425108 |
| 23 | 1417983 |
| 24 | 1410893 |
| 25 | 1403839 |
| 26 | 1396819 |

| | |
|---|---|
| 27 | 1389835 |
| 28 | 1382886 |
| 29 | 1375972 |
| 30 | 1369092 |

III. Shared Savings.

A. "Revenues" are the savings and revenues the System generates by participating in Programs #2 and #3 listed in Exhibit A-1 (but not revenues received through the SMART program, Program #1 listed in Exhibit A-1.) Certain Revenues are reflected on the Utility invoice to Customer ("On-bill Revenues"), and certain Revenues are not reflected on the Utility's invoice to Customer ("Off-bill Revenues").

B. "On-bill Savings" is the amount Customer would have paid to the Utility for a relevant Utility bill period if the On-bill Revenues had not been applied to that Utility invoice, less the Utility's invoiced amount to Customer for that same billing period.

In determining On-bill Savings, the parties shall not consider any difference between the Utility's electricity rate charged to Customer and the Services Fee. On-bill Savings shall be determined based on the On-bill Revenues, the Utility invoice and the PV System Meter's operational data.

C. "Net Savings"

= (Off-bill Revenues + On-Bill Savings)

D. Customer's Share of Net Savings. Customer shall receive thirty percent (30%) of the Net Savings (the "Customer's Share"), determined as follows:

If Customer's Share of Net Savings is greater than the On-Bill Savings in the relevant billing period, System Owner's invoice to Customer shall reflect a credit for that difference.

If Customer's Share of Net Savings is less than the On-Bill Savings in the relevant billing period, System Owner's invoice to Customer will reflect a charge for that difference.

Only in the event the "Operations Period" with respect to the BESS and the Energy Storage Services is not extended beyond the 20th anniversary of the commencement of the Operations Period, for Operating Years 21-30, the Customer's Share of Net Savings will be computed by separate components of Programs #2 and Programs #3.

For Program #2 the Customer's Share of Net Savings will be 100% of the Net Savings less any documented and agreed to costs to participate in the Program #2 programs.

For Program #3 the Customer's Share of Net Savings will be 30% of the Net Savings.

E. System Owner's access. Customer shall provide to System Owner online, real-time access to Customer's Utility account regarding the Property, solely for System Owner's use in determining the Shared Savings. If Customer fails to provide and maintain System Owner's timely online access to Customer's Utility account, Customer shall not be entitled to receive Customer's Share and all Customer's Share shall be received by System Owner for each Utility bill period affected.

F. Customer's access. System Owner shall provide to Customer online, real-time access to the System's Owner's solar production and battery deployment of the System solely for Customer's use in verifying the Shared Savings.

G. SMART Program benefits. Customer shall have no right to, and System Owner shall be entitled to all, compensation and benefit resulting from the SMART program, including the "energy storage adder" (as it's defined in the SMART program regulations), which will not be included in Shared Savings calculations.

**EXHIBIT C**

**Form of**

**Notice of the Commercial Operation Date**

[_____] ("System Owner") hereby notifies _____ ("Customer") that pursuant to the "Solar and Energy Storage Services Agreement" between the Parties dated [_____ ___], 202__, the Commercial Operation Date is _____, 202__.

Invoicing calculations will be based on the following PV System Meter readings recorded on the Commercial Operation Date:

Meter Reading (kWh)

Upon receipt of this Notice of the Commercial Operation Date please sign one of the duplicate originals of this notice and return one fully executed original to the undersigned.

**SYSTEM OWNER:**
**Spruce Street Solar, LLC**

By: _____
Name: _____
Title: _____

**CUSTOMER:**
**Acton-Boxborough Regional School District**

By: _____
Name: _____
Title: _____
Date: _____

## EXHIBIT D

## Customer Option Payment Schedule and Dates and Termination Schedule

| Final Purchase Date & Termination Schedule | | |
|---|---|---|
| **Year** | **Purchase Date Schedule** | **Termination Schedule** |
| 1 | N/A | $8,083,031 |
| 2 | N/A | $8,501,829 |
| 3 | N/A | $8,456,665 |
| 4 | N/A | $8,292,018 |
| 5 | N/A | $8,122,978 |
| 6 | N/A | $6,577,830 |
| 7 | $6,191,296 | $6,360,221 |
| 8 | N/A | $6,145,850 |
| 9 | N/A | $5,973,870 |
| 10 | N/A | $5,791,372 |
| 11 | N/A | $5,594,661 |
| 12 | N/A | $5,350,208 |
| 13 | N/A | $5,119,103 |
| 14 | N/A | $4,887,614 |
| 15 | $4,440,409 | $4,638,331 |
| 16 | N/A | $4,366,326 |
| 17 | N/A | $4,041,666 |
| 18 | N/A | $3,716,250 |
| 19 | N/A | $3,365,204 |
| 20 | $2,770,153 | $2,988,675 |
| 21 | N/A | $2,585,415 |
| 22 | N/A | $2,114,032 |
| 23 | N/A | $1,985,756 |
| 24 | N/A | $1,862,435 |
| 25 | N/A | $1,728,003 |
| 26 | N/A | $1,581,712 |
| 27 | N/A | $1,379,588 |
| 28 | N/A | $1,204,437 |
| 29 | N/A | $1,014,710 |
| 30 | N/A | $804,842 |

# LEASE OPTION AGREEMENT

This LEASE OPTION AGREEMENT (the "Agreement") is entered into as of June ___, 2022 (the "Effective Date") by and between **Acton-Boxborough Regional School District**, a duly authorized regional school district for the Towns of Acton and Boxborough, Massachusetts ("Landlord"), and **Spruce Street Solar, LLC,** a Delaware limited liability company ("Tenant") (each a "Party" and together, the "Parties").

A. WHEREAS, Landlord owns the real property located at 75 Spruce Street, Acton, Massachusetts, (the "Property") as more fully described in Exhibit A;

B. WHEREAS, Landlord intends to construct a building (the "Building") and a parking lot on the Property, among other things;

C. WHEREAS, Landlord desires to cause a solar-powered electric generation and battery energy storage facility (the "Facility") to be constructed on certain portions of the Property, including on the Building and the parking lot;

D. WHEREAS, Landlord issued a request for proposal regarding the Facility and awarded the project to Nexamp, Inc., a Tenant affiliate;

E. WHEREAS, Landlord is willing to lease portions of the ground areas on the Property (the "Property Lease Area") and of the Building (the "Building Lease Area") (together, the "Lease Area") to Tenant and to grant associated "Rights" (all defined by Exhibit B) to Tenant, and Tenant is willing to lease the Lease Area and to obtain the Rights from Landlord, upon which it intends to develop, construct, operate and maintain the Facility and any uses necessary or ancillary thereto; and

F. WHEREAS, Landlord and Tenant are concurrently entering into the "Solar and Energy Storage Services Agreement", dated approximately as of the Effective Date (the "SESSA"), which details the parties' agreement regarding certain services associated with the Facility.

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

**1. Grant of Option.** Landlord hereby grants to Tenant the exclusive right and option (the "Option") to lease, in accordance with the terms and conditions set forth herein, portions of the Property as more specifically described in Exhibit B attached hereto, and to acquire associated Rights described in Exhibit B, to install, operate and maintain the Facility thereon.

**2. Term**. The Option period shall begin on the Effective Date and will terminate on the date that is the later of

(i) 11:59 p.m. on the three-hundred sixty-fifth (365th) day after the Effective Date and

(ii) the twentieth (20th) day after the date that the Lease Area and the Rights are suitable for Tenant to begin constructing the Facility on each of those areas, as determined by Tenant, in its reasonable discretion.

**3. Option Payment**. Tenant shall pay one dollar ($1) to Landlord upon signing this Agreement.

**4. Exercise of Option; Termination; Lease.** Tenant may exercise the Option during the Option Period by providing written notice to Landlord. The day after Tenant exercises the Option will the first day of the Lease Term (the "Lease Effective Date").

Upon exercising the Option, the Parties shall enter into a ground lease, which shall be in substantially the form as attached hereto as Exhibit C (the "Lease").

**5. Transfer of Option; Financing**.

(a) Section 17.1 (Assignment) of the SESSA is incorporated by reference herein. Upon any assignment pursuant to this Section 5, the assigning Party shall provide to the other Party current information regarding the assigning Party's and all Financing Parties' addresses and the term "Tenant" or "Landlord", as appropriate, in this Option shall refer to the entity that was assigned the rights and obligations hereunder.

(b) Section 17.2 (Financing) of the SESSA is incorporated by reference herein, and "Lease" is inserted for "Agreement".

**6. Changes in Property during Option Period**. During the Option Period or any extension thereof, Landlord shall not initiate or consent to any change in the zoning of the Property or impose or consent to any other restriction or modification of the Property that would prevent or limit Tenant from using the Property for the uses intended by Tenant as set forth in this Agreement.

**7. Title; Authority.** Landlord warrants that it has good and marketable title to the Property and has full power and authority to enter into and execute this Agreement and the Lease.

**8. Tenant Inspections.** During the Option Period, Tenant shall perform due diligence to evaluate utility interconnection and viability of developing the Facility on the Property. Landlord shall permit Tenant or Tenant's employees, agents and contractors during the Option Period, and any extension thereof, free ingress and egress to the Property to conduct tests, investigations, and similar activities as Tenant may deem reasonably necessary (collectively, "Inspections"), at Tenant's sole cost and expense. Tenant shall notify Landlord of the sequence and timing of the Inspections and Landlord shall provide specific comments within five (5) business days. If Landlord provides timely, specific comments, the parties shall cooperate to resolve the comments. Tenant and its employees, agents and contractors shall have the right to bring the necessary vehicles and equipment onto the Property to conduct the Inspections. Tenant shall indemnify, defend and hold Landlord harmless against any loss or damage for personal

injury or physical damage to the Property resulting from any such Inspections. Landlord shall cooperate with Tenant during the Inspections, including providing available information about the Property characteristics, taxes, history and encumbrances.

**9. Governmental Approvals**. Tenant's ability to use the Property is contingent upon obtaining all certificates, permits, licenses and other approvals that may be required by any governmental authorities ("Permits") to construct, operate and maintain the Facility. Landlord shall reasonably cooperate with Tenant in its effort to obtain such Permits, including signing such documents required to file applications with the appropriate zoning authority and other governmental authorities for the proper zoning of the Property and for other Permits as Tenant reasonably requires. Tenant shall provide to Landlord applications requiring Landlord's signature and Landlord shall provide its comments or signature on such applications in a timely manner, considering the timeframes necessary to achieve the goal of submitting the application. Tenant will perform all other acts and bear all expenses associated with any zoning action or other procedure necessary to obtain Permits deemed necessary by Tenant.

**10. Confidentiality; Recording.**

(a) Sections 18.2 (Confidentiality) and 18.3 (Publicity) of the SESSA are incorporated by reference herein.

(b) This Agreement shall not be recorded, but the Parties shall, at Tenant's expense, execute and record with the relevant county registry of deeds an appropriate notice of option.

**11. Notices**. Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email for which the sending Party receives a confirmation that the email message has been completely transmitted without error (of which auto-replies are insufficient). Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section 11. Failure of the Tenant to notify Landlord of an address change for it or any entity providing financing to Tenant shall excuse the Landlord from complying with any notice obligation herein to such changed addresses, provided however that Landlord will in no event be excused from providing notices required herein to all addresses of which Landlord has notice. Notices will be deemed given upon receipt or upon the failure to accept delivery.

Every notice, demand, or request hereunder shall be sent to the addresses listed below:

If to Landlord: Acton-Boxborough Regional School District
15 Charter Road
Acton, MA 01720
Attn: JD Head
jdhead@abschools.org

With a copy to:

Jessica A. Wall
Anderson & Kreiger LLP
50 Milk Street, 21st Floor
Boston, MA 02109
jwall@andersonkreiger.com

If to Tenant: Spruce Street Solar, LLC
c/o Nexamp, Inc.
101 Summer Street, Second Floor
Boston, MA 02110
Attn: General Counsel
legal@nexamp.com

**12. Taxes.** Tenant shall have no responsibility for taxes assessed against the Property or due during the Option Period.

**13. Insurance.** Landlord and Tenant shall each maintain appropriate insurance for their respective interests in, and activities on, the Property during the Option Period.

**14. Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of law rules.

(b) This Agreement contains the entire agreement of the Parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement, other than the SESSA and the Lease. This Agreement may be modified or amended only in writing,

(c) This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns of Landlord and Tenant and shall constitute covenants running with the land during the Option Period.

(d) Each Party represents and warrants to the other Party as follows:

(i) Organization and Qualification. It is an entity duly organized and validly existing under the laws of the state of its purported organization, with all power and authority to own or lease and dispose of all of its properties and assets, to conduct its business as presently conducted, and to enter into and carry out this Agreement.

(ii) Authority. It has all requisite power and authority to execute and deliver this Agreement and each of the related documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Its execution and delivery of this Agreement and each of the related

documents to which it is a party, its performance hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action its part and no other proceedings on its part are necessary to authorize this Agreement and each related document to which it is a party, the performance of such obligations or the consummation of such transactions.

(iii) No Violation or Conflict; Consents. To the best of each party's knowledge, neither the execution and delivery of this Agreement or any of the related documents to which it is a party, nor the performance of its obligations hereunder and thereunder, nor the consummation of the transactions contemplated hereby and thereby will, directly or indirectly (with or without notice or lapse of time or both), (1) violate, contravene, conflict with or breach any term or provision of its organizational documents, (2) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, or require any consent under, any contract or other instrument or obligation to which it is a party or by which it or any of its respective properties or assets are bound, (3) violate any laws applicable to it or any of its affiliates or any of their respective properties or assets which apply to this Agreement, or (4) except as specifically provided herein and in any related documents, require any filing with, or the obtaining of any further authorization, permit, or other consent from any governmental authority, or (4) require any further authorization or other consent from any person or body with authority over or within its organization.

(e) The Parties acknowledge that each Party's performance under this Agreement may require the other Party's assistance and cooperation. Each Party therefore agrees, in addition to those provisions in this Agreement specifically requiring one Party to assist the other, that it will at all times during the Option Period reasonably cooperate with the other Party, as required in its reasonable discretion, and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder. From time to time and at any time at and after the Effective Date, each Party shall execute, acknowledge and deliver such documents, and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 14(e).

(f) This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement. Signed email transmissions of this Agreement shall be considered an original of the Agreement and shall have the same effect and force as signed hard-copy originals of the Agreement.

*(Signatures appear on the following page.)*

IN WITNESS WHEREOF, the Parties have agreed to the terms of this Lease Option Agreement as of the Effective Date.

| **TENANT** | **LANDLORD** |
|---|---|
| **Spruce Street Solar, LLC** | **Acton-Boxborough Regional School District** |
| | as authorized by its School Committee at a meeting on June __, 2022: |
| By: _____ | By: _____ |
| Name: _____<br>Title: Authorized Representative | Name: Peter Light<br>Title: Superintendent, Acton-Boxborough Regional School District |

## EXHIBIT A

## PROPERTY DESCRIPTION

The Property is a certain parcel of land with the buildings and improvements thereon located at 75 Spruce Street, Acton, Massachusetts, and shown as Lot 2 on an approval not required plan entitled "Plan of Land in Acton, Massachusetts (Middlesex County) Owned by Town of Acton" prepared by the Town of Acton Engineering Department, dated January 9, 2014, which plan is recorded with said Registry as Plan No. 539 of 2014.

For Landlord's title see Quitclaim Deed from the Town of Acton, acting by and through its Board of Selectmen to Acton-Boxborough Regional School District, a Massachusetts regional school district acting by and through its Regional District School Committee, dated June 27, 2014, and recorded at the Middlesex South Registry of Deeds at Book 63840, Page 119.

The Property is also identified on the Town of Acton Assessor's Map as Parcel E2-247.

## EXHIBIT B

## LEASE AREA AND RIGHTS

**Lease Area:**

The Lease Area is a portion of the Property, and includes the Property Lease Area and the Building Lease Area:

(a) Property Lease Area: The Property Lease Area is a ground portion of the Property shown on the Conceptual Site Plan attached as Exhibit B-1. No later than during the Lease Development and Construction Period, Tenant shall determine the boundaries of the final Property Lease Area by means of a survey, which survey shall then define the Property Lease Area. If the Property Lease Area is defined during the Development and Construction Period (but not when the Option is exercised), it shall be an amendment to the Lease as set forth in the Lease.

(b) Building Lease Area: The Building Lease Area is located on the Building roof and within and on the Building as shown on the Conceptual Site Plan. No later than during the Development and Construction Period, Tenant shall determine the boundaries of the final Building Lease Area by means of a survey or conceptual plan, which survey or plan shall then define the Building Lease Area. If the Building Lease Area is defined during the Development and Construction Period (and not when the Option is exercised), it shall be an amendment to the Lease as set forth in the Lease.

**Rights:**

1. Landlord shall grant the following rights to Tenant, as more particularly set forth in the Lease:

   (a) Access: A non-exclusive right of pedestrian, vehicular and equipment access to the Property across or through Landlord's remaining property at all times, including access to the Building, which is necessary or convenient for ingress and egress to the Facility, the location of which shall be determined according to the Lease;

   (b) Construction Lay-down: A non-exclusive right to use a portion of the Property, to be located at a mutually acceptable location, for temporary (A) storage and staging of tools, materials and equipment, (B) construction laydown, (C) parking of construction crew vehicles and temporary construction trailers, (D) vehicular and pedestrian access and access for Facility construction activities, and (E) other facilities reasonably necessary to construct, erect, install, expand, modify or remove the Facility, the location of which shall be determined according to the Lease;

(c) Canopy: The exclusive right to use of the portion of the Property upon which Tenant will develop the canopy portion of the Facility as shown on the Conceptual Site Plan for the Permitted Use (as defined in the Lease) (the "Canopy Right"). No later than during the Development and Construction Period, Tenant shall determine the boundaries of the final Canopy Right area by means of a survey, which survey shall then define the Canopy Right area. If the Canopy Right area is defined during the Development and Construction Period (and not when the Option is exercised) it shall be an amendment to the Lease as set forth in the Lease. Tenant's exclusive right under this Canopy Right extends solely to the Permitted Use and does not preclude Landlord's use of the Canopy Right area for uses consistent with a parking lot;

(d) Interconnection: A non-exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the Facility to the LDC electrical distribution system at the Delivery Point, the location on the Property which will be determined by the LDC before the Commercial Operation Date subject to Landlord's approval, as appropriate, upon thirty (30) days' prior written notice, such consent not to be unreasonably withheld, conditioned or delayed; and

(e) Insolation: Tenant shall have the exclusive right to receive direct unobstructed sunlight and solar energy to the Facility, pursuant to which Landlord shall not construct buildings or structures, or allow vegetation of any type which now or hereafter in Tenant's reasonable opinion may be a hazard to the Facility, overshadow or otherwise block or interfere with access of sunlight to the Facility, and/or interfere with Tenant's exercise of its rights under the Lease. Landlord shall, at Tenant's request, remove, as appropriate, any buildings, vegetation or structures within Landlord's control which violate these rights, provided that Landlord has obtained appropriate permits to do so.

The Rights shall commence on the Lease Effective Date and continue throughout the Term (including any extensions thereof,) and shall be assignable by Tenant in accordance with the assignment provisions of the Lease and enforceable during the Term against any subsequent owner of the Property or the Building.

2. If required by the LDC, Landlord shall grant to the LDC an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the Facility to the LDC electrical distribution system on and across the Property and other real property owned or controlled by Landlord, the location of which will be agreed upon by the LDC and the Landlord before the Commercial Operation Date, subject to Landlord's approval, as appropriate, upon thirty (30) days' prior written notice, such consent not to be unreasonably withheld, conditioned or delayed. Landlord's grant under Lease Section 3(c) shall commence on its effective date and continue through the Term (including any extensions thereof), unless otherwise required by the LDC.

**EXHIBIT B-1**

**CONCEPTUAL SITE PLAN**
**Identifying the**
**Property Lease Area, the Building Lease Area and the Canopy Right area**

"Conceptual Layout, dated 5/10/22; 75 Spruce Street, Acton MA"

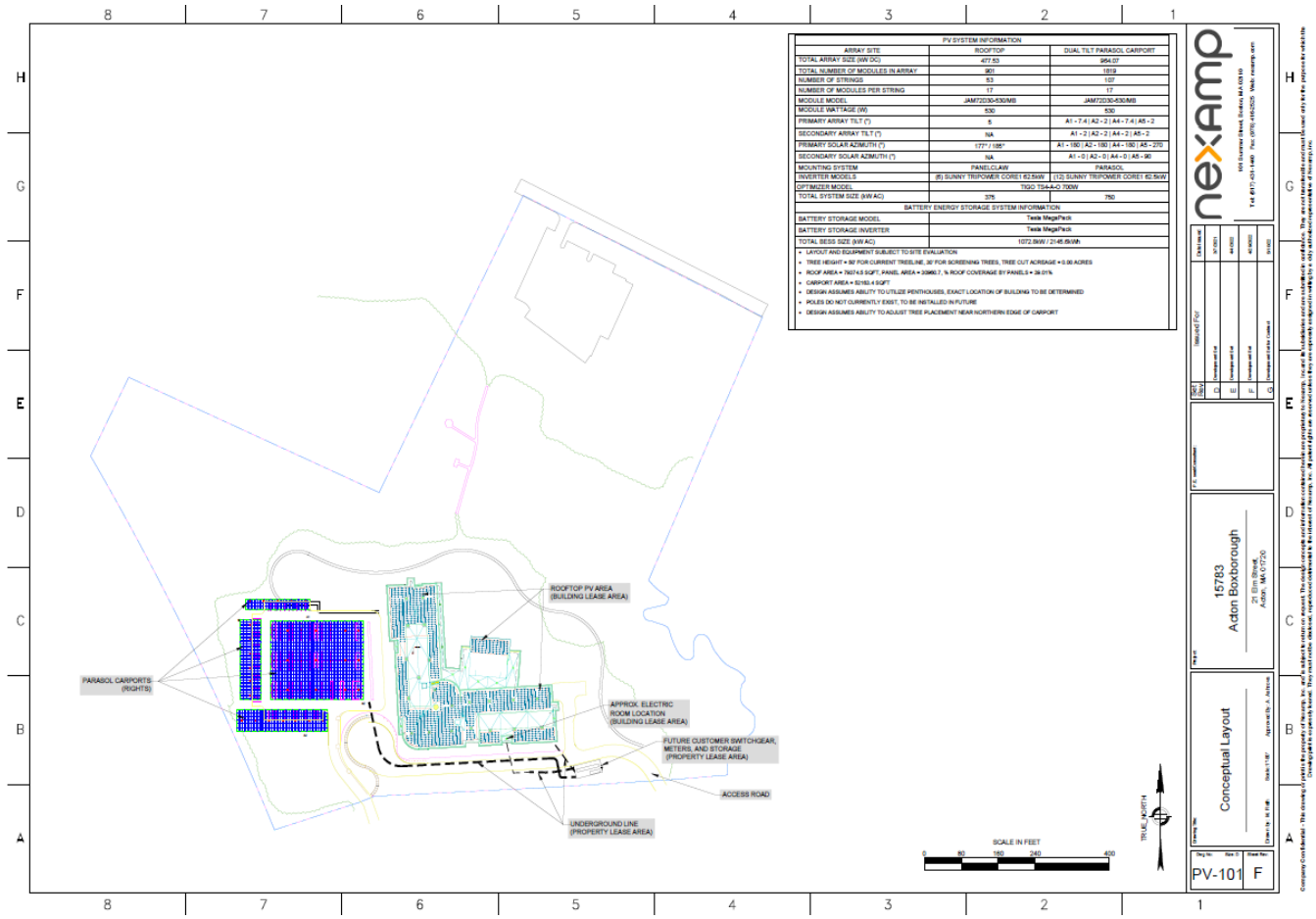


**EXHIBIT C**

**FORM OF LEASE**

[Attached]

# EXHIBIT C TO THE LEASE OPTION AGREEMENT

## LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into as of [_____, 2022] (the "Effective Date") among **Acton-Boxborough Regional School District**, a duly authorized regional school district for the Towns of Acton and Boxborough, Massachusetts ("Landlord"), and **Spruce Street Solar, LLC,** a Delaware limited liability company ("Tenant"). Landlord and Tenant are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

## RECITALS

A. WHEREAS, Landlord owns the real property located at 75 Spruce Street, Acton, Massachusetts, (the "Property") as more fully described in Exhibit A;

B. WHEREAS, on or about June __, 2022, the Parties entered into an Option for Landlord to lease to Tenant a portion of the Property and to grant to Tenant certain rights (the "Option"), which Option Tenant exercised on or about [_____, 20__], and the "Solar and Energy Storage Services Agreement" (the "SESSA"), which details the parties' agreement regarding the Facility and the associated services to be provided to Landlord;

C. WHEREAS, Landlord has constructed or will construct a building (the "Building") and a parking lot on the Property, as described by Exhibit B;

D. WHEREAS, Landlord desires to cause a solar-powered electric generation and battery energy storage facility (the "Facility", as further defined herein) to be constructed on a portion of the Property, including on the Building and on the parking lot;

E. WHEREAS, Landlord issued a request for proposal regarding the Facility and awarded the project to Nexamp, Inc., a Tenant affiliate; and

F. WHEREAS, Landlord is willing to lease portions of the Property (the "Property Lease Area") and of the Building (the "Building Lease Area") (together, the "Lease Area") and to grant associated rights (the "Rights") to Tenant, and Tenant is willing to lease the Lease Area and to obtain the Rights from Landlord, upon which it intends to develop, construct, operate and maintain the Facility, and any uses necessary or ancillary thereto.

NOW THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

**Exhibits**: The following exhibits are incorporated into this Lease:

Glossary of Terms
A: Description of Property

B: Property Lease Area, Building Lease Area, and Rights
B-1: Conceptual Site Plan
C: Existing Encumbrances

**1. Definitions**. Capitalized terms within this Lease shall have the meanings as set forth in the Glossary of Terms and will apply equally to the singular and plural forms, and to the masculine and feminine forms of those terms.

**2. Lease**. Landlord hereby leases the Lease Area to Tenant, and Tenant leases the Lease Area from Landlord for the Permitted Use for the Term. Subject to the rights of Landlord following an Event of Default by Tenant, Tenant shall have quiet and peaceful possession of the Lease Area and any other rights granted by this Lease for the entire Term without hindrance, interruption, suit, trouble or interference of any kind by Landlord or any other person or entity claiming (whether at law or in equity) by, through or under Landlord, except as provided for under Section 13(a)(iv) (regarding repair) and other reasonable restrictions as set forth in this Lease. Landlord shall deliver the Lease Area to Tenant on the Effective Date, clean and free of debris.

**3. Rights.**

(a) Landlord hereby grants the following rights on and across the Building and the Property (collectively, the "Rights") to Tenant for the following purposes:

(i) Canopy: The exclusive right to use of the portion of the Property upon which Tenant will develop the canopy portion of the Facility as shown on the Conceptual Site Plan attached as Exhibit B-1 for the Permitted Use (the "Canopy Right"). No later than before the Development and Construction Period terminates, Tenant shall determine the boundaries of the final Canopy Right area by means of a survey, which survey shall then define the Canopy Right area according to Exhibit B. Tenant's exclusive right under this Canopy Right extends solely to the Permitted Use and does not preclude Landlord's use of the Canopy Right area for uses consistent with a parking lot;

(ii) Access: A non-exclusive right of pedestrian, vehicular and equipment access to the Facility at all times, including access to the Building, which is necessary or convenient for ingress and egress to the Facility;

(iii) Construction Lay-down: A non-exclusive right to use a portion of the Property, to be located at a mutually acceptable location, for temporary (A) storage and staging of tools, materials and equipment, (B) construction laydown, (C) parking of construction crew vehicles and temporary construction trailers, (D) vehicular and pedestrian access and access for Facility construction activities, and (E) other facilities reasonably necessary to construct, erect, install, expand, modify or remove the Facility;

(iv) Interconnection: a non-exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the Facility to the LDC electrical distribution system at the Delivery Point, the location on the Property which will be determined by the LDC before the Commercial

Operation Date subject to Landlord's approval, as appropriate, upon thirty (30) days' prior written notice, such consent not to be unreasonably withheld, conditioned or delayed; and

(v) Insolation: an exclusive right to receive direct, unobstructed sunlight and solar energy to the Facility, pursuant to which Landlord shall not construct buildings or structures or, allow vegetation of any type which now or hereafter in Tenant's reasonable opinion may be a hazard to the Facility, overshadow or otherwise block or interfere with access of sunlight to the Facility, and/or interfere with Tenant's exercise of its rights hereunder. Landlord shall, at Tenant's request, remove, as appropriate, any buildings, vegetation or structures within Landlord's control which violate these rights, provided that, Landlord has obtained appropriate permits to do so.

(b) If required by the LDC, Landlord shall grant to the LDC an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the Facility to the LDC electrical distribution system on and across the Property and other real property owned or controlled by Landlord, the location of which will be agreed upon by the LDC and the Landlord before the Commercial Operation Date, subject to Landlord's approval, as appropriate, upon thirty (30) days' prior written notice, such consent not to be unreasonably withheld, conditioned or delayed. Landlord's grant under this Section 3(b) shall commence on its effective date and continue through the Term (including any extensions thereof), unless otherwise required by the LDC.

(c) Landlord's grant of the Rights shall commence on the Effective Date and continue throughout the Term (including any extensions thereof,) and shall be assignable by Tenant in accordance with the assignment provisions of this Lease and enforceable against any subsequent owner of the Property or of the Building.

**4. Term; Early Termination**.

(a) This Lease will consist of a Development and Construction Period, an Operations Period, and a Decommissioning Period.

(i) Development and Construction Period**.** The Development and Construction Period will begin on the Effective Date and will terminate on the earlier of:

(A) Delivery by Tenant of notice of termination according to Section 4(b);

(B) Eighteen (18) months after the commencement of the Development and Construction Period, in which case this Lease shall terminate by its own terms with no action being required of either Party; and

(C) the day after the Commercial Operation Date;

*except*, the Development and Construction Period shall automatically extend, monthly, for delays by the LDC in completing interconnection studies or work, including administrative work, interconnection upgrades or in interconnecting the Facility. System Owner shall provide updates on development and construction to Customer not less than monthly during the Development and Construction Period, and shall notify Customer promptly of any delays caused by the LDC.

Termination of this Lease in accordance with this Section 4(a)(i) shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

(ii) Operations Period. The Operations Period will commence at 12:01 a.m. on the day after the Commercial Operation Date and will end at 11:59 p.m. on the 20th anniversary of the commencement of the Operations Period. Tenant may extend the Operations Period for two (2) five (5) year terms. At least ninety (90) days prior to the beginning of an extension term, Tenant shall deliver notice to Landlord of Tenant's intent to exercise its extension option, and the Parties, at Tenant's expense, shall prepare and record any amendments to the Notice of Lease and/or any other documents necessary to evidence and give record notice of the extension.

(iii) Decommissioning Period. The Decommissioning Period shall commence on the expiration of the Operations Period and terminate one hundred-eighty (180) days after commencement, subject to extensions of ninety (90) days for weather delays, whereupon this Lease shall expire and shall be of no further force and effect, except that such termination shall not release or modify any of the obligations of the Parties arising prior to such termination.

(b) During the Development and Construction Period, Tenant may terminate this Lease upon thirty (30) days' notice to Landlord (the thirtieth day after delivery of the notice shall be the effective date of the termination) if Tenant determines, in its sole discretion, that:

(i) developing the Facility is not financially feasible;
(ii) the Property, as is, is insufficient to accommodate the Facility;
(iii) there exist site conditions or construction or interconnection requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of installing the Facility or developing the project, or that would adversely affect the electricity production from the Facility as designed;
(iv) there has been a material adverse change in the rights of Landlord to occupy the Property or Tenant to construct the Facility on the Property;
(v) an interconnection agreement with the LDC, in form and substance satisfactory to Tenant, is not executed by Tenant and the LDC within two hundred seventy (270) days after the Effective Date;
(vi) the Facility does not qualify under any program identified by SESSA Exhibit A-1 (Energy Storage Services), Section B (Programs); or

(vii) despite its diligent efforts, Tenant does not obtain all permits and approvals, on terms and conditions satisfactory to Tenant, which are necessary for the construction, operation and maintenance of the Facility.

If Tenant gives Landlord notice of such termination, Tenant shall (i) remove any equipment or materials which Tenant has placed on the Property and shall restore any portions of the Site disturbed by Tenant to its pre-existing condition, and (ii) execute and deliver to Landlord any amendments to the Notice of Lease and/or other documents reasonably necessary to evidence terminating this Lease. Termination in accordance with this Section 4(b) shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

(c) Notwithstanding Sections 4(a) and 4(b), this Lease shall terminate upon the date the SESSA terminates, subject to Tenant's Decommissioning Obligations, if any.

(d) The Parties acknowledge that while Tenant may develop the Building and the Canopy portions of the Facility on different schedules, the two portions of the Facility share an interconnection and that the LDC will require that both portions of the Facility have the same Commercial Operation Date.

**5. Rent**. Tenant shall pay Rent of one dollar ($1.00) to Landlord, the receipt of which Landlord hereby confirms.

**6. Defining the Lease Area and Rights; Constructing the Building and parking lot; Landlord's Essential Equipment**.

(a) If not defined as of the Effective Date, during the Development and Construction Period Tenant shall determine the Facility size and the specific location of the Lease Area, the Canopy Right and the Interconnection Right on the Property by means of a survey, and such survey shall then define those areas and shall be an amendment to this Lease as a revised Exhibit B.

(b) Landlord shall cause the Building and the Canopy Right area to be constructed in a timely manner, acknowledging that the ability to operate the Facility on those areas is a material benefit to Tenant under this Lease and under the SESSA. The Parties acknowledge that Tenant may begin installing the portions of the Facility to be located on the Property Lease Area and on the Canopy Right Area at different times.

(c) Except essential utility equipment servicing the Building or the Canopy Right area ("Essential Equipment"), Landlord shall not use (or allow the use of) any portions of the those areas for any purpose, or grant licenses, or subleases in favor of third persons to install or operate telecommunications equipment, satellite dishes, antennae, Building service equipment or other improvements (collectively, "Other Uses"), other than as allowed under Section 13(a)(ii) (as to the Building) and other than for uses associated with a parking lot (as to the Canopy Right area), without Tenant's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Tenant will not be deemed to be unreasonably

withholding, conditioning or delaying its consent if such Other Uses encroach upon the solar Right granted under Section 3(b)(v) or any other Permitted Use. Landlord shall ensure that any agreements entered into regarding Other Uses or granted rights granted for Other Uses shall expressly provide that the Other Uses are subject and subordinate in all respects to this Lease and to Tenant's rights hereunder. The Parties acknowledge that equitable remedies, while not a presumptively remedy, are appropriate for material noncompliance with this section 6(c) to enjoin any use of, that has a material adverse effect on, or results in a material interference with, Tenant's business, operations, or the Output. The Parties will use best efforts to resolve allegations of material noncompliance with this section 6(c) before pursuing equitable remedies.

(d) Landlord acknowledges and agrees that Tenant shall have the right to participate in determining the location of Essential Equipment and any equipment on the Building roof, such determination to be based solely on the equipment's effect on the Permitted Use.

**7. Tenant's Use of the Property; Decommissioning Obligations and Security**.

(a) Tenant may use the Lease Area and the Canopy Right area for any Permitted Use.

(b) Tenant shall provide Landlord with at least ten (10) days' advance notice of commencing to install the Facility and will provide a copy of the Facility design to Landlord for its operational use. Landlord agrees that the Facility design is, and shall remain, Tenant's property. Tenant will provide a site plan and specification sheets for key equipment which Landlord may share as necessary to inform its School Committee about the Facility.

(c) Decommissioning.

(i) During the Decommissioning Period or promptly following notice of earlier termination of this Lease following a Tenant Default, Tenant shall remove the Facility and restore the Lease Area and Canopy Right area to its original condition, reasonable wear and tear, mounting pads, support structures, insured casualty damage and condemnation excepted; provided, however, in no case shall Tenant's removal of the Facility materially and adversely affect the integrity of the Building roof (the "Decommissioning Obligations"). Landlord shall promptly execute and deliver all permit applications reasonably necessary or desirable to allow Tenant to perform the Decommissioning Obligations. If Tenant has not performed the Decommissioning Obligations according to this Section, title to any portion of the Facility remaining on the Lease Area shall pass to Landlord and Tenant shall execute commercially reasonable documents presented by Landlord to evidence such conveyance.

(ii) Beginning on the eleventh (11th) anniversary of the Commercial Operation Date, Tenant shall provide security in the form of an escrow account or bond to benefit Landlord in the amount of Fifteen Thousand dollars ($15,000) per MW (DC) of Facility capacity. The funds shall be released from the account upon Tenant's performance of the Decommissioning Obligations. If the Town of Acton requires Tenant to provide decommissioning security, Tenant shall not be required to provide the security stated under this Section 7(c)(ii). This Section 7(c)(ii) shall survive Lease termination.

## 8. Taxes

(a) Tenant shall be responsible for all taxes, including real and personal property taxes arising from the lease of the Lease Area or associated with the Facility.

(b) Tenant shall pay all taxes for which Tenant is directly billed on or before the date such amounts are due, subject however to the right of Tenant to contest taxes in accordance with this Lease and Applicable Law. Tenant shall pay Landlord, within 10 business days after Tenant's receipt of the applicable invoice from Landlord, the amount of such taxes for which Tenant is responsible hereunder and which have not been billed directly to Tenant. Landlord will submit copies of tax bills or notices of assessments, appraisals or statements applicable to the Facility to Tenant promptly upon receipt thereof and, to the extent Landlord pays the same directly to the taxing authorities, Landlord will promptly provide evidence of such payment to Tenant.

(c) Each Party may contest in good faith any tax assessments or payments, provided that all payments are made when due and such contest (or appeal, as the case may be) complies with Massachusetts law. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(d) If Tenant fails to pay directly or reimburse Landlord for taxes for which Tenant is responsible hereunder, Landlord may pay the same and in such event shall be entitled to recover such amount from Tenant together with interest thereon at a rate equal to the lesser of (i) one and one-half percent (1 ½ %) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

(e) If Landlord fails to pay any taxes, judgments or liens that become a lien upon Tenant's interest in the Lease Area or improvements thereon for which Landlord is responsible hereunder, Tenant may pay such amounts and in such event shall be entitled to recover such paid amount from Landlord, together with interest thereon at rate equal to the lesser of (i) one and one-half percent (1 ½ %) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

## 9. Title and Liens.

(a) Landlord represents and warrants as of the Effective Date that Landlord has record title to the Property and that to the best of Landlord's knowledge, there are no liens, easements, options or encumbrances on the Property that would interfere with or prevent the development, construction, operation or maintenance of the Facility or any portion thereof other than the Existing Encumbrances.

(b) After the Effective Date, in addition to Existing Encumbrances, and any refinancing of such Existing Encumbrances, Landlord may grant a mortgage on all or part of its interest in the Property if (i) such mortgage is subject to this Lease; and (ii) the mortgagee enters

into an agreement in recordable form, on terms and conditions reasonably acceptable to Tenant, recognizing the priority of Tenant's interest in the Property pursuant to this Lease. Tenant shall be permitted to record any such agreement, whether related to an Existing Encumbrance or a mortgage arising after the Effective Date, in the County land records.

(c) Landlord shall not allow any encumbrances against the Property other than Permitted Encumbrances. Landlord shall promptly pay all obligations secured by encumbrances against the Property (whether or not such encumbrances are Permitted Encumbrances) and shall not allow any uncured default to occur under obligations secured by encumbrances against the Property. In lieu of paying amounts secured by encumbrances which are not Permitted Encumbrances, Landlord may provide a surety bond or other adequate security in accordance with applicable law and Tenant's reasonable requirements.

(d) At Tenant's request, Landlord shall obtain from holders of Permitted Encumbrances such subordinations or non-disturbance agreements as Tenant may reasonably request to protect and secure Tenant's interest in the Property or for or in connection with a financing or other financial arrangement related to the Property and/or the Facility. Such agreements shall include undertakings by the holders of Permitted Encumbrances (i) to notify Tenant of any defaults by Landlord in performing its obligations secured by the Permitted Encumbrances; and (ii) to provide Tenant a reasonable period of time after Tenant's receipt of notice from the holder of the Permitted Encumbrance, not less than 30 days in the event of payment defaults, and 60 days in event of Non-payment Defaults, to cure the default on behalf of Landlord, before the holder of the Permitted Encumbrance can exercise any rights to foreclose upon or otherwise take ownership of the Property. If the default cannot reasonably be cured within a sixty-day period then, provided Tenant has promptly commenced and is diligently performing actions to cure the default, Tenant shall have such period of time as is reasonably necessary to cure the default, but not more than 120 days.

(e) All equipment and structures included within the Facility shall, to the extent permitted by law, be personal property and not real property, and title to the Facility shall be in Tenant or its mortgagees and assigns. Prior to delivering the electricity generated by the Facility to Landlord according to the SESSA, that electricity shall be owned exclusively by Tenant, and neither Landlord nor anyone claiming through Landlord has, or shall have any lien, security interest, or other encumbrance on it. The Environmental Attributes and Tax Attributes related to the Facility and/or any electricity generated by the Facility shall be owned exclusively by Tenant, and neither Landlord nor anyone claiming through Landlord has, or shall have any lien, security interest, or other encumbrance on them, or any other Facility output or benefit. Neither Landlord nor anyone claiming through Landlord may file liens on the Facility or Tenant's interest in the Property, unless Landlord obtains a final judgment against Tenant as a result of a Tenant Default under this Lease. Tenant may remove all or any portion of the Facility at any time and from time to time. Without limiting the generality of the foregoing, to the extent permitted by law, Landlord (i) hereby expressly waives all statutory and common law liens or claims that it might otherwise have in or to the Collateral or any portion thereof and agrees not to distrain or levy upon any Collateral or assert any lien, right of distraint or other claim against the Collateral; and, (ii) shall take no action to impede or interfere with Tenant's Financing Party's remedies under a security interest in the Facility.

(f) Neither Tenant nor anyone claiming through Tenant (including contractors hired by Tenant) shall have the right to file liens on the Property, other than on Tenant's leasehold rights arising under this Lease.

**10. Filings**. Landlord hereby acknowledges Tenant intends to develop, construct and operate the Facility on the Lease Area. Tenant is hereby authorized, in the name of Landlord, Tenant or both, as Tenant may deem to be necessary or appropriate, to file with such federal, state and local authorities as Tenant deems appropriate (i) one or more applications to obtain any zoning relief regarding the Property or portions thereof as may be necessary and/or desirable to develop, construct and operate the Facility on the Lease Area; and (ii) one or more applications to obtain construction, use or occupancy permits for the Facility or any portion thereof; provided that Tenant provides Landlord with a copy of said applications in advance of filing and Landlord, in its reasonable discretion, which shall not be conditioned or delayed, approves such applications in a timely manner. If Landlord does not provide comments to Tenant within ten business (10) days of receiving the applications, they will be deemed approved. Landlord shall cooperate in good faith with Tenant and shall execute any such applications promptly upon Tenant's request, and shall not oppose or interfere with Tenant in such regard, but Landlord is not obligated to incur expense in connection with such efforts.

**11. Insurance and Indemnity; Hazardous Materials**.

(a) Insurance and Indemnity. Each Party shall comply with the insurance provisions contained in SESSA Article XVI (Insurance) and Section 15.5 (Indemnification), which provisions are incorporated in this Lease.

(b) Liability for Hazardous Material.

(i) Landlord Hazardous Material. Tenant shall not be responsible for any liabilities, damages, costs, or expenses related to: (x) any pre-existing Hazardous Material encountered at, released from, or transported from the Property; or (y) any Hazardous Material brought onto the Property or released by Landlord or Landlord's agents, employees, contractors, subcontractors, licensees, or invitees (items (x) and (y) together, "Landlord Hazardous Material"). Tenant does not waive and retains any rights available to it under M.G.L. c. 258 or other applicable law for claims arising out of or related to the Landlord Hazardous Material, except to the extent that such liability, damages, costs or expenses are incurred based on Tenant's negligent or intentional acts or omissions.

(ii) Remediation. Upon encountering any materials that Tenant suspects may constitute Hazardous Materials, Tenant shall immediately notify Landlord and may suspend work in the affected area as reasonably necessary until such materials are properly remediated. Remediation responsibilities and related costs shall proceed as follows:

A. Landlord Hazardous Material. Landlord shall remediate such Landlord Hazardous Material at its own cost and expense. If Landlord Hazardous Material is encountered at the Lease Area and Landlord is required by Applicable

Law to remediate the Landlord Hazardous Material, then Landlord shall notify Tenant in writing of the extent of Landlord's planned remediation. If any Facility or Facility assets must be removed or, if any Permitted Use is hindered in any way by Landlord's performance of such remediation, Landlord shall be responsible for all documented Losses incurred by Tenant to remove, store and reinstall such Facility and Facility assets or any part thereof, and for the Services Fee, as defined in the SESSA, that would have been due to Tenant under the SESSA if the remediation had not occurred, and, if mutually acceptable to the Parties, the Term shall be extended day for day for each day of interruption due to Landlord's remediation to mitigate any lost revenue.

B. Tenant Hazardous Material. If Tenant directly causes a release of Hazardous Material brought onto the Property by Tenant, or negligently or willfully causes a release of, or exacerbates a release of, any preexisting Hazardous Material at a Property, then Tenant, at its sole expense, but only to the extent of Tenant's negligence or willful action, shall perform required remediation. Tenant shall indemnify and hold harmless the Landlord Indemnified Parties from any costs or expenses (including but not limited to attorneys' fees, damages and liabilities) incurred by Landlord due to any such release of Hazardous Material on the Property Lease Area or Rights caused by Tenant or its subcontractors in excess of quantities allowed under Applicable Law.

**12. <u>Representations and Warranties</u>**.

(a) Landlord covenants, represents and warrants, to the best of Landlord's knowledge and belief as of the Effective Date,

(i) the Building structure (including the roof, foundations and exterior walls), the Building common areas, and all Building systems (including the plumbing, electrical, ventilating, air conditioning, heating, and loading docks, if any) shall be in good operating condition, comply with all Applicable Laws, and are free of any Hazardous Materials; or any other substance or matter imposing liability for cleanup costs or expenses on any person or entity under any statutory or common law theory;

(ii) Landlord has provided to Tenant all of Landlord's available records in Landlord's possession regarding the physical and structural condition of the Property which would impact the installation, operation and maintenance of the Facility on the Lease Area and on the Canopy Right area;

(iii) there is no Governmental Authority alleging a violation of applicable building codes, regulations, or ordinances with regard to the Lease Area or the Canopy Right area, or any part thereof;

(iv) there are no covenants, conditions, restrictions or other private restrictions encumbering the Lease Area or the Canopy Right area which in any way limit or otherwise restrict the Permitted Use;

(v) Landlord is solvent and is the sole and exclusive owner of the Property and of the Building;

(vi) Landlord is not in default with respect to any mortgage affecting the Property or the Building;

(vii) Landlord has received no actual or constructive notice of any condemnation or eminent domain proceedings, or negotiations for the purchase of the Property or the Building, or any part thereof in lieu of condemnation; and

(viii) during the six (6) month period preceding the Effective Date, Landlord has not performed and has not caused to be performed any work on the Property that could be reasonably expected to give rise to any mechanic's or materialman's liens.

(b) Each Party covenants, represents and warrants, to the best of its knowledge and belief as of the Effective Date and throughout the Term, that

(i) each Party executing this Lease on its behalf is duly authorized to execute and deliver this Lease, and this Lease is binding upon it;

(ii) it has obtained all third-party consents (including the consent of any partners, shareholders, members, managers, lenders and tenants) necessary to execute and deliver this Lease; and

(iii) it has full authority to enter into, execute, deliver and perform this Lease.

(c) In addition to the representations and warranties in Section 12(b), Tenant hereby represents and warrants to Landlord, as of date hereof, that it shall use commercially reasonable efforts to obtain an executed interconnection agreement and all permits for the Facility in a timely and efficient manner.

**13. <u>Maintenance and Security.</u>**

(a) <u>Maintenance Obligations</u>.

(i) Tenant shall conduct all required maintenance and make all repairs to the Facility as required in its reasonable discretion, based on Applicable Law and prudent industry standards. Landlord shall have no duty or liability to Tenant with respect to the maintenance and repair of the Facility, other than repair for damage caused by Landlord, its employees, agents, contractors or invitees.

(ii) Landlord shall maintain, in good operating condition and repair, the Building's structural elements and all Building systems (including, but not limited to, any repair, maintenance or replacement of the Building roof, foundations, exterior walls, structural condition of interior bearing walls, fire sprinkler and or standpipe and hose or other automatic fire extinguishing system, fire hydrants and utility systems serving the

common areas) and the common areas. Landlord has no obligation to remove snow from the portion of the Facility located on the Building roof.

(iii) Landlord shall maintain the Property Lease Area and Canopy Right area in a manner to facilitate Facility operations, including snow removal from the parking lot. Tenant shall maintain the portion of the Property Lease Area occupied by the inverter pad. Tenant shall not be obligated to make capital repairs to the Lease Area not related to damage caused by the Tenant in installing or operating the Facility.

(iv) If Landlord determines in its reasonable discretion that it must access, repair, replace, or modify any portion of the Property in a manner that interferes with the Facility operations, for any reason, including but not limited to repairing Landlord's equipment, then Landlord shall

1. provide reasonable (but not less than thirty (30) days) prior, written notice to Tenant, except Landlord shall not be required to provide prior notice if an emergency condition requiring repair arises and if Landlord promptly notifies Tenant following the emergency;

2. conduct the repairs or modification to reasonably ensure that the Output is not negatively impacted (Landlord and Tenant shall coordinate their activities to minimize disrupting the Facility);

3. reasonably cooperate with Tenant to facilitate disassembling, storing and reassembling the affected portion of the Facility as required to accommodate the work (including using Landlord's commercially reasonable efforts to provide space suitable for storing the Facility equipment on a different portion of the Property); and

4. complete the maintenance or repairs within thirty (30) days, or such shorter period as may be required by any Governmental Authority having jurisdiction, unless the defect constitutes an emergency, in which case Landlord shall cure the defect as quickly as possible, but not later than five (5) days after notice thereof, provided that if the defect reasonably takes greater than 5 days to repair, Landlord will be afforded additional time to fix and remedy the defect, all subject to Landlord's obligations for Tenant's costs and expenses as stated in Section 13(a)(vii). If Landlord fails to make such repairs within the time periods set forth above, then Tenant may do so, and the cost thereof shall be payable by Landlord to Tenant on demand.

(v) Within a reasonable time after receiving Landlord's notice of repair or replacement, Tenant shall disassemble, store and re-assemble the affected portion of the Facility at a time and in a manner reasonable to accommodate the work. Unless Tenant or Tenant's equipment caused the damage, Landlord shall be responsible for all reasonable and documented costs and expenses for the disassembly, storage and re-assembly, and shall pay to Tenant the amounts stated in Section 13(d) (regarding Interruptions of Electrical Output.)

(vi) In an emergency, Tenant may make repairs at Landlord's expense before giving any written notice, but Tenant shall notify Landlord in writing within three (3) business days following the emergency.

(vii) Landlord shall bear all costs and expenses incurred by Tenant for the temporary or permanent removal of any portion of the Facility or related equipment which may become necessary to enable Landlord to fulfill its obligations under this Lease, provided Landlord has been notified (3) business days in advance of such intended removal.

(b) Landlord's Damage. If Landlord damages the Facility, Landlord shall immediately notify Tenant. Tenant may make all repairs to the Facility or related facilities that are damaged by Landlord at Landlord's sole cost and expense. Landlord shall pay such costs directly to Tenant within thirty (30) days of receipt of an invoice unless the parties agree to a different schedule.

(c) Security. Landlord will provide security for the Facility to the extent of its normal security procedures, practices, and policies that apply to the Property. For the avoidance of doubt, Landlord shall not add, enhance or modify its security protocols, systems or practices on account of the Facility's presence on the Property. Landlord will advise Tenant immediately upon observing any damage to the Facility. Upon request by Tenant, such as Tenant receiving data indicating irregularities or interruptions in the operation of the Facility, Landlord shall, as quickly as reasonably practicable, send a person to observe the condition of the Facility and report back to Tenant on such observations. Notwithstanding anything to the contrary, except in the case of gross negligence or wilful action/inaction on the part of Landlord's security, Tenant shall bring no claim against Landlord based upon performance of Landlord's security practices.

(d) Interruption of Electrical Output. Interrupting the Facility's ability to generate electricity will substantially and negatively impact both parties under the SESSA. Therefore,

(i) Landlord shall use all commercially reasonable efforts to minimize the extent of disruption of the Facility operation; and

(ii) if Landlord's negligent or willful acts or omissions under this Lease of which Landlord was notified and did not correct result in a disruption of Facility operations, Landlord will pay to Tenant (in addition to the disassembly, storage, and re-assembly costs stated in Section 13(a)(vii)) an amount to be determined under the SESSA Section 11.3 (regarding Disruption of Delivery). Determining the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operating Year, on estimated levels of production and, after the first Operating Year, on actual Facility operation during the same period in the previous Operating Year. Landlord shall promptly pay such amount to Tenant upon demand.

"Operating Year' means a twelve-month period commencing on an anniversary of the Commercial Operation Date (or with respect to the first Operating Year, commencing on

the Commercial Operation Date) and ending on the date immediately preceding the next anniversary of the Commercial Operation Date.

(e) Facility Expenses. Tenant is responsible for all costs and expenses in connection with the Facility use, operation, and maintenance.

(f) Transporting Hazardous Material. Tenant shall not use at nor transport to the Property, including the Lease Area, any Hazardous Material, unless authorized by the Landlord in writing.

(g) Installation. The requirements of SESSA Sections 4.1.3 (Installation to Specifications and Standards; Roof Warranties); and Sections 4.3-4.9 are incorporated herein by reference.

**14. Condemnation**.

(a) If, during the Term, any competent authority for any public or quasi-public purpose ("Condemnor") seeks to take or condemn all or any portion of the Lease Area or any Right, Landlord and Tenant may use all reasonable and diligent efforts, each at its own expense, to contest such taking. If either party seeks to contest any such taking the other party agrees to cooperate in any such proceeding provided such party is not obligated to incur any expense in connection with such efforts.

(b) If any Condemnor shall condemn all or substantially all of the Lease Area, any Right, or the Facility, so that the purposes of this Lease are frustrated, then Tenant's interests and obligations under this Lease in or affecting the Lease Area or Right shall cease and terminate upon the earlier of (i) the date that the Condemnor takes possession of the Lease Area, Right or the Facility, (ii) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the Facility on the Lease Area or Right in a commercially viable manner, or (iii) the date title vests in the Condemnor. Tenant shall continue to pay all amounts payable hereunder to Landlord until the earlier of such dates at which time Landlord and Tenant shall be relieved of any and all further obligations and conditions to each other under this Lease, except for indemnity obligations, which shall survive any termination thereunder.

(c) If any Condemnor shall condemn a portion, but not all or substantially all of the Facility, the Lease Area, or an Right, then Tenant's interests and obligations under this Lease as to that portion of the Facility, Lease Area or Right so taken shall cease and terminate upon the earlier of, (i) the date that the Condemnor takes possession of such portion of the Facility, Lease Area, or Right (ii) the date that Tenant, in its sole judgment, is no longer able or permitted to operate the Facility on the Lease Area or Right, or any portion thereof, in a commercially viable manner, or (iii) the date title vests in the Condemnor; and, unless this Lease is terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of the Facility, Lease Area, or Right. If the Lease Area or Right becomes insufficient or unsuitable for Tenant's purposes hereunder, as determined by Tenant in its sole discretion, then Tenant may terminate this Lease in accordance with this Section 14 as to the portion of the Lease Area or Right to which Tenant continues to hold the rights, at which time Landlord and Tenant shall be

relieved of any further obligations and duties to each other under this Lease, except for indemnity obligations (Section 11) and the Decommissioning Obligations (Section 7(c)(i)).

(d) For any taking covered by Sections 14(b) or 14(c), all sums, including damages and interest, awarded shall be paid and distributed to Tenant and Landlord in accordance with their respective interests under this Lease. In determining their respective interests:

(i) Landlord's interest shall be based on the value of Landlord's interest in the Lease Area or Right(s) (but excluding any of Tenant's interest in the Facility or any other of Tenant's improvements on the Lease Area or Rights), taking into account the amounts paid or due to be paid by Tenant hereunder and all other terms and provisions of this Lease; and

(ii) Tenant's interest shall be based on the value of Tenant's interest in the Lease Area or Right(s) (determined at the time of the taking), including the value of the Facility and Tenant's other improvements for the Term, plus any cost or loss that Tenant may sustain in the removal and/or relocation of any Facility; provided, however, that in each case the value of the respective interests of Landlord and Tenant shall be calculated as if no taking covered by Sections 14(b) or 14(c) were to occur.

**15. Assignment**. Section 17.1 (Assignment) of the SESSA is incorporated by reference herein. Upon any assignment pursuant to this Section 15, the assigning Party shall provide to the other Party current information regarding the assigning Party's and all Financing Parties' addresses and the term "Tenant" or "Landlord", as appropriate, in this Lease shall refer to the entity that was assigned the rights and obligations hereunder.

**16. Financing**. Section 17.2 (Financing) of the SESSA is incorporated by reference herein, and "Lease" is inserted for "Agreement".

**17. Recording; Confidentiality**.

(a) This Lease shall not be recorded, but the Parties shall, at Tenant's expense, execute and record with the appropriate Registry of Deeds, an appropriate notice of lease ("Notice of Lease or Memorandum of Lease"). Also, a Financing Party may record Tenant's collateral assignment of this Lease to the Financing Party and may record subordinations and/or non-disturbance agreements obtained from holders of Permitted Encumbrances.

(b) Sections 18.2 (Confidentiality) and 18.3 (Publicity) of the SESSA are incorporated by reference herein.

**18. Default; Remedies; Limitation of Liability**.

(a) SESSA Section 15.1 (regarding Default) is incorporated herein by reference. To avoid doubt, a default under the SESSA is a default under this Lease.

(b) If a Landlord Default occurs and remains uncured after the allowed cure periods, then Tenant shall have the right to terminate this Lease and the SESSA upon thirty (30) days prior written notice to Landlord and exercise any other remedies available under this Lease or

Applicable Law. If a Tenant Default occurs and remains uncured after the allowed cure periods, then Landlord shall have the right, subject to Financing Party cure rights, to terminate this Lease and the SESSA upon thirty (30) days prior written notice to Tenant and exercise any other remedies available under this Lease or Applicable Law.

(c) SESSA Section 15.3 (regarding Limitation of Liability) is incorporated herein by reference.

**19.** **Force Majeure**. Article 14 (Force Majeure) of the SESSA is incorporated by reference herein.

**20.** **Notices.** Notices under this Lease shall be sent to the addresses set forth below:

LANDLORD: Acton-Boxborough Regional School District
15 Charter Road
Acton, MA 01720
Attn: JD Head
jdhead@abschools.org

With a copy to:

Jessica A. Wall
Anderson & Kreiger LLP
50 Milk Street, 21st Floor
Boston, MA 02109
jwall@andersonkreiger.com

TENANT: Spruce Street Solar, LLC
c/o Nexamp, Inc.
101 Summer Street, Second Floor
Boston, MA 02110
Attn: General Counsel
legal@nexamp.com

Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email. Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section. Failure of the Tenant to notify the Landlord of an address change for it or any Financing Party shall excuse the Landlord from complying with any notice obligation herein to such changed addresses, provided however that the Landlord will in no event be excused from providing notices required herein to all addresses that Landlord has notice of. Notices will be deemed given upon receipt or upon the failure to accept delivery.

**21.** **No Partnership**. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

**22.** **Dispute Resolution**. SESSA Section 18.1 (regarding dispute resolution) is incorporated herein by reference.

**23.** **Miscellaneous.**

(a) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of law rules.

(b) Rules of Interpretation. References to sections are, unless the context otherwise requires, references to sections of this Lease. The words "hereto", "hereof" and "hereunder" shall refer to this Lease as a whole and not to any particular provision of this Lease. The word "person" shall include individuals; partnerships; corporate bodies (including to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation".

(c) Entire Agreement/Amendment. This Lease contains the entire agreement of the Parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease, other than the SESSA. This Lease may be modified or amended only in writing, and if the writing is signed by the Parties obligated under the amendment and notice thereof is registered with the County.

(d) Severability. If any non-material part of this Lease is held to be unenforceable, the rest of the Lease will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Lease to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 22 (regarding Dispute resolution) and an arbitrator may reform the Lease as the arbitrator deems just and equitable in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(e) Waiver. The failure of either Party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

(f) Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

(g) No Assurance as to Development. Tenant makes no representations, warranties, commitments or guarantees of any kind as to the likelihood of Tenant successfully developing, financing and/or constructing the Facility on the Lease Area.

(h) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Lease may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Lease specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party, act so as not to hinder the purpose of the transactions contemplated by this Lease, and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder. From time to time and at any time at and after the execution of this Lease, 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 Lease that may be reasonably requested by the other for the purpose of effecting or confirming (but not altering or expanding) any of the transactions contemplated by this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 23(h).

(i) Business Days. Any payment or other obligation which is due to be performed on or before a day which is not a business day in the Commonwealth of Massachusetts may be performed on or before the next business day following the date provided herein.

(j) Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

IN WITNESS WHEREOF, the Parties executed this Lease as of the Effective Date.

| **TENANT** | **LANDLORD** |
|---|---|
| **Spruce Street Solar, LLC** | **Acton-Boxborough Regional School District** |
| | as authorized by its School Committee at a meeting on June __, 2022: |
| By: _____ | By: _____ |
| Name: _____<br>Title: Authorized Representative | Name: Peter Light<br>Title: Superintendent, Acton-Boxborough Regional School District |

## Glossary of Terms

1. "***Applicable Law***" means any and all applicable constitutional provisions, laws, statutes, rules, regulations, ordinances, bylaws, tariffs, treaties, orders, decrees, judgments, decisions, certificates, holdings, injunctions, registrations, licenses, franchises, permits, authorizations, guidelines, governmental approvals, the Net Metering Rules, SMART Program regulations and any and all approvals, consents or requirements of any governmental authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such governmental authority.

2. "***Building***" is the building to be constructed by Landlord on the Property, as identified by Exhibit B.

3. "***Building Lease Area***" is the portion of the Building upon which a portion of the Facility will be located, as identified by Exhibit B.

4. "***Collateral***" means the Facility, all other personal property within the Property owned by Tenant, and the electricity produced by the Facility, including the associated Environmental Attributes and the Tax Attributes, or any part thereof.

5. "***Commercial Operation Date***" means the date on which Tenant notifies Landlord in writing that (a) the Facility construction is complete and successful testing has occurred, and (b) the LDC approved the Facility for interconnected operation.

6. "***County***" means the county in which the Property is located.

7. **"*Decommissioning Obligations*"** is defined in Section 7(c)(i).

8. "***Decommissioning Period***" is defined in Section 4(a)(iii).

9. "***Delivery Point(s)***" means the location(s) at which the Facility interconnects with the LDC's electric distribution system.

10. "***Development and Construction Period***" is defined in Section 4(a)(i).

11. "***Effective Date***" is the date stated in the introductory paragraph.

12. "***Environmental Attributes"*** means any and all federal, state or local renewable energy or emissions credits, offsets, or green tags, whether related to any renewable portfolio standard, renewable energy purchase requirement, carbon cap or trade market, or otherwise, including without limitation any incentive payment available under the SMART Program, whether existing as of the Effective Date or enacted thereafter and whether available to the Facility's owner or producer of Output or available to Tenant as the purchaser or user of Output.

13. "***Essential Equipment***" is defined in Section 6(c).

14. "***Existing Encumbrances***" mean those interests in the Lease Area disclosed by Landlord on Exhibit C attached hereto.

15. "***Facility***" means the solar-powered electric generation and battery energy storage facility and all related equipment and structures, including inverters, transformers and facilities for interconnection with the LDC (as further described in the SESSA), to be installed by Tenant in accordance with this Lease. The Facility includes, as described in the SESSA, a solar canopy, an energy storage facility and a roof-mounted solar facility.

16. "***Financing Party***" is defined in the SESSA.

17. "***Governmental Approvals***" means all certificates, permits, licenses, and other approvals related to the Facility, which Tenant shall obtain at its sole cost and expense.

18. "***Governmental Authorities***" means all federal, state, local or regulatory authorities.

19. "***Hazardous Materials***" means any hazardous or toxic substance, material or waste, the storage, use, or disposition or which is or becomes regulated by any local governmental authority, the Commonwealth of Massachusetts or the United States government, and includes, without limitation, any material or hazardous waste (i) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ii) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6907 et seq. (42 U.S.C. Section 6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 961) or (iv) listed or defined as "hazardous waste" "hazardous substance", or other similar designation by any regulatory scheme of the Commonwealth of Massachusetts or the United States. To be clear, the storage equipment portion of the Facility is not "Hazardous Materials".

20. "***Indemnified Parties***" is defined in Section 11(b)(i).

21. "***Landlord***" is defined in the introductory paragraph.

22. "***Landlord Hazardous Material***" is defined in Section 11(b)(i).

23. "***LDC***" means the local electric distribution company.

24. "***Lease***" is defined in the introductory paragraph.

25. "***Lease Area***" is a portion of the Property and includes the Property Lease Area and the Building Lease Area, all as shown on Exhibit B.

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

27. "***Non-payment Default***" is defined in the SESSA.

28. "***Notice*** of ***Lease***" is defined in Section 17(a).

29. "***Operating Year***" is defined in Section 13(d)(ii).

30. "***Operations Period***" is defined in Section 4(a)(ii).

31. "***Other Uses***" is defined in Section 6(c).

32. "***Output***" has the meaning given in the SESSA.

33. "***Permitted Encumbrances***" mean the Existing Encumbrances and any additional mortgages granted by Landlord in accordance with Section 9.

34. "***Permitted Use***" means the use of the Lease Area and the Rights (i) to develop, install, construct, interconnect, maintain, operate, repair, replace and decommission the Facility and energy storage device(s); (ii) to produce, deliver and sell electricity produced by the Facility and associated Environmental Attributes and Tax Attributes; and (iii) to store such equipment, supplies, tools and replacement parts as reasonably required to accomplish (i) and (ii) above.

35. "***Property***" is defined in Exhibit A.

36. "***Property Lease Area***" is the portion of the Property upon which certain ground-mounted portions of the Facility will be located, as described by Exhibit B.

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

38. "***Rent***" means the amount to be paid pursuant to Section 5.

39. "***Rights***" are rights in the Property, as further defined in Section 3 and by Exhibit B.

40. "***SESSA***" is the "Solar and Energy Storage Services Agreement" entered into by the Parties contemporaneously with the Option.

41. "***SMART Program***" means the solar incentive program implemented in the Commonwealth of Massachusetts under the statutory authority of Section 11 of Chapter 75 of the Acts of 2016 (St. 2016, c. 75 Section 11) and any and all related documentation evidencing the Facility's and the Facility owner's eligibility for the program described in the SMART Regulations and the SMART Tariff.

42. "***SMART Regulations***" means the regulations adopted by the Massachusetts Department of Energy Resources ("DOER") at 225 CMR 20.00 et seq., including any guidelines of DOER issued in connection therewith.

43. "***SMART Tariff***" means collectively, the final tariff as approved by the Massachusetts Department of Public Utilities in its Docket 17-140, any tariff adopted by the Distribution Company individually in connection therewith and any subsequent amendment or supplemental tariff related thereto affecting Energy Storage Systems (as defined in the SMART Regulations) and governing the eligibility of the BESS under the SMART Program, if any.

44. "***Tax Attributes***" means investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and/or operation of the Facility or the Output (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation). Tax Attributes do not include Environmental Attributes.

45. "***Tenant***" is defined in the introductory paragraph.

46. "***Term***" means the Development and Construction Period, Operations Period, Decommissioning Period, and all extensions thereof.

**EXHIBIT A**
**DESCRIPTION OF PROPERTY**

The Property is a certain parcel of land with the buildings and improvements thereon located at 75 Spruce Street, Acton, Massachusetts, and shown as Lot 2 on an approval not required plan entitled "Plan of Land in Acton, Massachusetts (Middlesex County) Owned by Town of Acton" prepared by the Town of Acton Engineering Department, dated January 9, 2014, which plan is recorded with said Registry as Plan No. 539 of 2014.

For Landlord's title see Quitclaim Deed from the Town of Acton, acting by and through its Board of Selectmen to Acton-Boxborough Regional School District, a Massachusetts regional school district acting by and through its Regional District School Committee, dated June 27, 2014, and recorded at the Middlesex South Registry of Deeds at Book 63840, Page 119.

The Property is also identified on the Town of Acton Assessor's Map as Parcel E2-247.

## EXHIBIT B

### The Property Lease Area, Building Lease Area, and Rights

**Property Lease Area**: The Property Lease Area is a portion of the Property. If not defined as of the Effective Date, during the Development and Construction Period, Tenant shall determine the boundaries of the final Property Lease Area by means of a survey, which survey shall then define the Property Lease Area and shall be an amendment to this Lease as a revised Exhibit B.

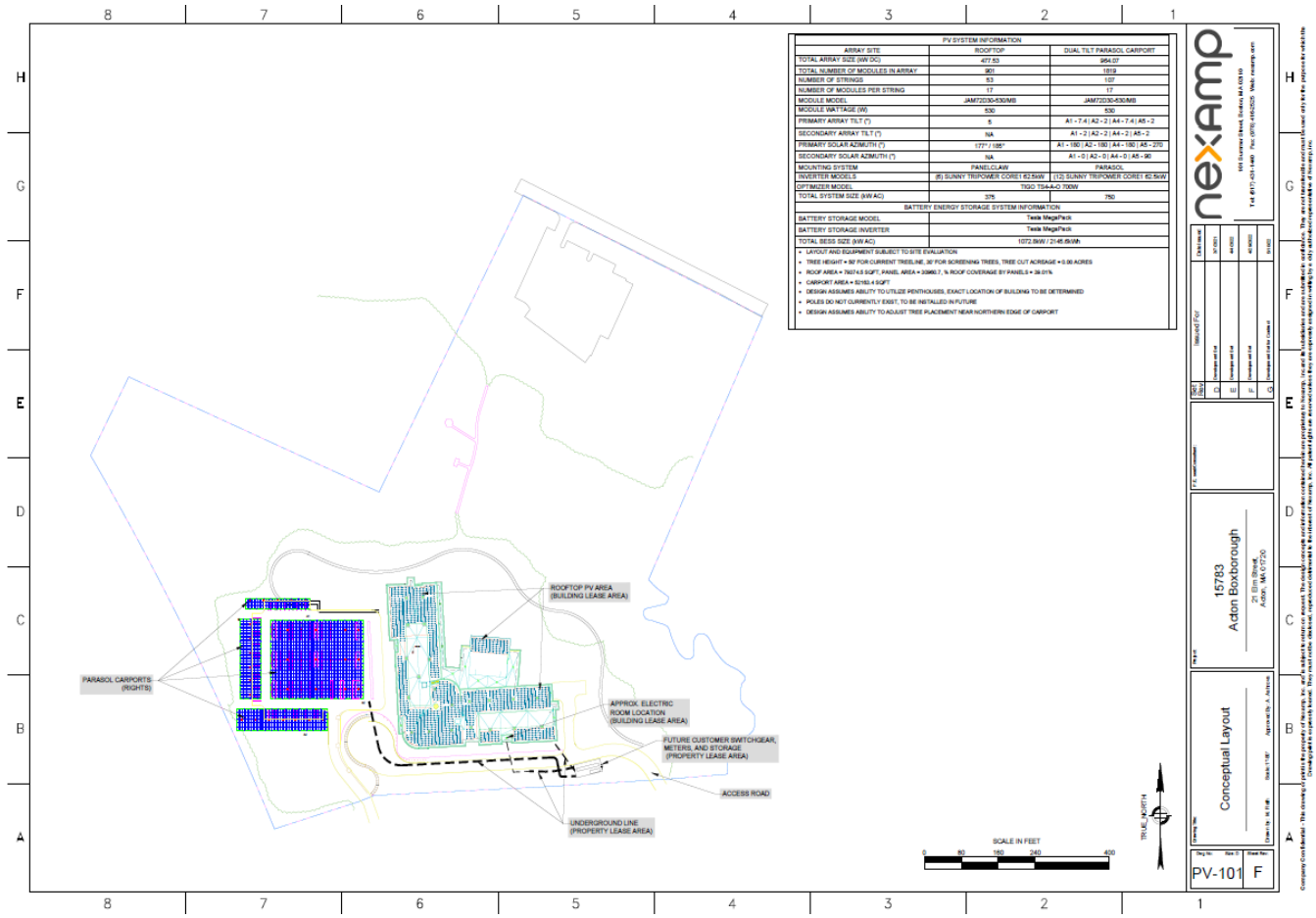
**Building Lease Area:** The Building Lease Area is located on the Building roof and within and on the Building at the locations in which equipment must be installed to operate and maintain the Facility. If not defined as of the Effective Date, during the Development and Construction Period, Tenant shall determine the boundaries of the final Building Lease Area by means of a survey or conceptual plan, which survey or plan shall then define the Building Lease Area and shall be an amendment to this Lease as a revised Exhibit B.

**Rights:** The Rights shall mean those areas of the Property and rights thereon described in Section 3(b). If not defined as of the Effective Date, during the Development and Construction Period Tenant shall determine the boundary of the Canopy Right area (Section 3(b)(i)) and of the interconnection area (Section 3(b)(iv)) by means of a survey, and such survey shall then define those Rights and shall be an amendment to this Lease as a revised Exhibit B.

Exhibit B-1 is a conceptual plan describing the general locations of the Property Lease Area, the Building Lease Area and the Canopy Right area.

**Exhibit B-1**

**Conceptual Plan Identifying the**
**Property Lease Area, the Building Lease Area and the Canopy Right area**




"Conceptual Layout, dated 5/10/22;75 Spruce Street, Acton MA" attached

**EXHIBIT C**
**EXISTING ENCUMBRANCES**

Order of Conditions, issued to Acton-Boxborough Regional School District, dated Sept. 22, 2020 and recorded at the Middlesex South Registry of Deeds at Book 75679, Page 119.