

NET METERING CREDIT PURCHASE AND SALE AGREEMENT

This Net Metering Power Purchase Agreement is made and entered into as of _____ day of _____, 2017 (the "**Effective Date**"), by and between Sunwealth Power LLC, a Delaware limited liability company, for itself and any and all assignees permitted hereunder ("**Seller**") and the City of Somerville, Massachusetts, a municipal corporation and political subdivision of the Commonwealth of Massachusetts ("**Buyer**"). Seller and Buyer may be referred to herein collectively as the "**Parties**", and individually as a "**Party**".

Recitals

A. WHEREAS, Seller plans to construct a solar photovoltaic generation facility (a "**Facility**") with a generating capacity of approximately 300 kW DC at the Windsor at Maxwells Green located at 1 Maxwells Green., Somerville MA, 02144, (the "**Project**") at the Property (as defined in Exhibit A).

B. WHEREAS, the Parties intend that, pursuant to the Net Metering Rules (as defined below), the Project will be a Net Metering Facility (as defined below) and will generate Net Metering Credits (as defined below).

C. WHEREAS, subject to the terms and conditions of this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller on an annual basis, one hundred percent (100%) of all of the electricity generated by the Project during the Term of this Agreement, so that Buyer is awarded and receives Net Metering Credits generated by the Project and is able to allocate such Net Metering Credits for use in offsetting the utility bills associated with other Buyer utility accounts.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

ARTICLE 1 DEFINED TERMS

The following terms, when used in this Agreement and initially capitalized, shall have the following meanings:

"Affiliate" means, with respect to any Person, such Person's general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

"Agreement" means this Net Metering Power Purchase Agreement, including all exhibits and attachments hereto.

"Applicable Legal Requirements" means any Laws which may at any time be applicable to this Agreement, the Property or the Project, or any part thereof or to any condition or use thereof, and all leases, permits, and other governmental consents which are or may be required for the use and occupancy of the Property for the installation, operation, maintenance and removal of any of the Facilities, as well as the selling and purchasing of electricity, and the accrual of associated Net Metering Credits therefrom.

"Bankrupt" means, with respect to a Party: (i) a Party against which a bankruptcy, receivership or other insolvency proceeding is instituted and not dismissed, stayed or vacated within sixty (60) days thereafter; or (ii) a Party that has made a general assignment for the benefit of creditors, become insolvent, or has voluntarily instituted bankruptcy, reorganization, liquidation or receivership proceedings.

"Billing Cycle" means the monthly billing cycle established by the LDC.

"Business Day" means any day except a Saturday, Sunday, and state and federal legal holiday in the Commonwealth of Massachusetts.

"Buyer" has the meaning set forth in the introductory paragraph of this Agreement.

"Class II Net Metering Facility" has the meaning set forth in the Net Metering Rules.

"Commercial Operation" with respect to a Facility, means that (i) the Seller has obtained all necessary licenses, permits and approvals under Applicable Legal Requirements for the installation and operation of the Facility, (ii) the Facility has been installed in accordance with all Applicable Legal Requirements and qualifies as a Class III Net Metering Facility under the Net Metering Rules (iii) is ready and able to generate and supply electricity to the LDC's electricity distribution system at full or substantially full capacity, and (iv) if applicable and to the extent required, the LDC has approved interconnection of the Facility with the electricity distribution system to allow regular, continuous operation of the Facility.

"Commercial Operation Date" means the first day on which the Facility achieves Commercial Operation, as defined herein, meaning that the Facility is ready for Commercial Operation, as certified in writing by Seller to Buyer in a notice of Commercial Operation Date pursuant to Section 3.2.

"Construction Commencement Date" means the date of commencement of actual preparation or construction activities on a Property in connection with the installation of the Project.

"Contract Year" means the twelve (12) month period beginning on the Commercial Operation Date and ending on the first anniversary thereof and each twelve (12) month period thereafter.

"Customer Interconnection Acknowledgement Agreement" shall have the meaning set forth in Section 7.6(b) of this Agreement.

"Delivery Point" for each Facility means the location or locations at the Property where Electricity is to be delivered and received under this Agreement, as identified in Exhibit A, and shall be the LDC Metering Device.

"Designated Third Party" has the meaning set forth in Section 16.2(a).

"DPU" means the Massachusetts Department of Public Utilities or its successors.

"Early Termination Date" has the meaning set forth in Section 2.3.

"Effective Date" is the date first set forth in the introductory paragraph of this Agreement.

"Electricity" means the actual and verifiable amount of electricity generated by a Facility and delivered to Buyer at the corresponding Delivery Point, as metered in whole kilowatt-hours (kWh) at the LDC Metering Device, and that conforms to Applicable Legal Requirements and the applicable LDC

and/or authoritative regulatory body standards. Seller shall be responsible for losses between the Facility and the Delivery Point and such losses shall not be included in the definition of "Electricity".

"Electricity Price" shall mean the amount paid by Buyer to Seller for each kWh of Electricity sold by Seller to Buyer and delivered to the Delivery Points pursuant to this Agreement, as set forth in Exhibit A attached hereto.

"Environmental Attributes" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Project and/or its electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (v) tax credits, incentives or depreciation allowances established under any federal or state law, and (vi) other allowances howsoever named or referred to, with respect to any and all fuel emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Project and/or its electricity generation, and excluding, for the avoidance of doubt, any Net Metering Credits and any credit, allowance, entitlement, certificate, product, valuation or other benefit that inures solely to Buyer only because it is a Municipality or Other Governmental Entity and which cannot be transferred or assigned to, or used for the benefit of Seller.

"Event of Default" has the meaning set forth in Article 10.

"Facilities" and "Facility" have the meanings set forth in the recitals.

"Force Majeure" means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of such Party, and (ii) by the exercise of reasonable due diligence, such Party is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include but is not limited to the following acts or events: natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the affected Party; acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; strikes or labor disputes except strikes and labor disputes involving employees of a Party; and acts, failures to act or orders of any kind of any Governmental Authorities acting in their regulatory or judicial capacity. Under no circumstances shall Force Majeure include (a) any occurrence or event that merely increases the costs or causes an economic hardship to a Party unless such occurrence or event also satisfies the prior two sentences; (b) Seller's ability to sell the Electricity at a price greater than that set out in this Agreement, or (c) Buyer's ability to procure the Electricity at a price lower than that set out in this Agreement. In addition, any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure.

"Governmental Authority" means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department,

commission, board, bureau, or instrumentality of any of them, and any independent electric system operator or LDC.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Property, Net Metering Credits, a Facility, the Project, the Electricity or this Agreement, including, but not limited to, any monthly minimum reliability contributions charged to Buyer by the LDC on Buyer's electricity invoices as contemplated by Chapter 75 of the Acts of 2016.

"Host Customer" shall have the meaning given this term in the Net Metering Rules.

"Host Customer Account" means, with respect to a Facility, the LDC account for the LDC Metering Device behind which the Facility is located to which Net Metering Credits shall be assigned.

"Host Customer Account Statement" means the monthly LDC account statement for a Host Customer Account.

"Interconnection Obligations" shall have the meaning set forth in Section 3.3.

"Interest Rate" means a per annum rate of interest equal to the Prime Rate plus two percentage points (2%). For purposes hereof, **"Prime Rate"** means the rate that may from time to time be published in The Wall Street Journal under "Money Rates" as the same may change from time to time (or if not published on such day on the most recent preceding day on which published), or any other periodical that may be agreed upon by the Parties in writing from time to time.

"Invoice" shall have the meaning set forth in Section 4.4.

"kWh" means kilowatt-hour.

"Laws" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen.

"LDC" means the local electric distribution company providing interconnection and net metering services for the system.

"LDC Metering Device" means, with respect to the Facility, the revenue grade LDC meter furnished, installed or monitored and maintained by the LDC for the purpose of measuring the Electricity delivered by the LDC to the Facility and delivered by the Facility to the LDC.

"LDC System" means the electric distribution system operated and maintained by the

"Net Metering" shall have the meaning set forth in the Net Metering Rules.

"Net Metering Credit" means the applicable monetary value of an excess kilowatt-hour of electricity generated by the Facility, determined in accordance with the Net Metering Rules.

"Net Metering Credit Rate" with respect to a particular Billing Cycle, means the dollar value of a Net Metering Credit accruable to the Host Customer of a Facility for that Billing Cycle.

"Net Metering Facility" and **"Net Metering Facility of a Municipality or Other Governmental Entity"** shall have the meaning set forth in the Net Metering Rules.

"Net Metering Rules" means, collectively and as amended from time to time, the Massachusetts net metering statute, MGL c. 164, §§ 138-140, the Massachusetts net metering regulations, 220 CMR 18, orders issued by DPU relating to Net Metering (including, without limitation, DPU 16-64-D (July 29, 2016) and the appendices thereto) and the associated net metering tariff of the LDC.

"Outside Commercial Operation Date" means 18 months after the Effective Date, provided that such period of time shall be extended by any delays caused in whole or substantial part by the LDC and Seller has obtained a certificate of completion from the local municipality demonstrating the Project is mechanically complete.

"Person" means an individual, general or limited partnership, corporation, Municipal Corporation, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority, limited liability Company, or any other entity of whatever nature.

"Project" shall have the meaning set forth in the recitals.

"Property" shall have the meaning set forth in the recitals.

"Public Cap Allocation" means an assurance from the Administrator of the Massachusetts Net Metering System of Assurance that a Host Customer will receive Net Metering Services (as defined in the Net Metering Rules) within the Public Cap (as defined in the Net Metering Rules) upon the Host Customer's receipt of notice of authorization to interconnect from the LDC.

"Public Entity Net Metering Limit" shall have the meaning set forth in Section 7.2(b) of this Agreement.

"Recipient Account Statement(s)" means the LDC statement(s) which accompanies the Buyer's Recipient Account(s).

"Recipient Accounts" shall have the meaning set forth in Section 7.2(a).

"Representatives" shall mean a Party's Affiliates, and its Affiliates' successors and assigns, and each of their respective owners, members, directors, officers, employees, independent contractors, agents, attorneys, and other representatives, as well as existing or potential debt or equity financing parties.

"Schedule Z" shall have the meaning set forth in Section 7.6(a)(i) of this Agreement.

"Seller" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Seller Metering Device" means, with respect to each Facility, any and all revenue quality meters installed by Seller at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the amount of Electricity generated by the Facility and delivered to the Delivery Point.

"Term" shall have the meaning set forth in Section 2.1.

"Termination Date" means the earlier to occur of (i) the last day of the Term, (ii) the Early Termination Date, (iii) the date of termination of this Agreement as the result of an Event of Default, (iv) the date of termination as the result of Force Majeure pursuant to Section 9.2, and (v) the date of termination for any other reason permitted by this Agreement or Applicable Legal Requirements.

ARTICLE 2
TERM; CONDITIONS PRECEDENT; EARLY TERMINATION

2.1 Term. The term of this Agreement (including any extensions, the "**Term**") shall commence as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date, provided that the Term may be extended at the sole discretion of Buyer upon written notice for up to three additional periods of five (5) years.

2.2 Conditions Precedent. The commencement of the obligation of Seller to sell Electricity to Buyer under the provisions of this Agreement is subject to the fulfillment of each of the following conditions precedent except, as to the conditions stated in subparagraphs (c) and (d) only, to the extent waived by Seller, though such waiver will not affect any right of Buyer to terminate the Agreement under Section 2.3, or any of Seller's obligations under this Agreement, including, but not limited to, the obligations set forth in Section 3.1, below:

- (a) Seller shall have obtained all permits and approvals required for the construction and operation of the Project;
- (b) Seller shall have obtained project financing on terms acceptable to Seller;
- (c) Buyer shall have delivered a copy of the executed Schedule Z and Customer Interconnection Acknowledgment Agreement;
- (d) the Facility or Facilities shall have been interconnected with the LDC in accordance with the requirements of the interconnection service agreement, the Net Metering Rules and Applicable Legal Requirements; and
- (e) the Facility of the Project shall have achieved Commercial Operation.

2.3 Early Termination. This Agreement may be terminated prior to the expiration of the Term (the "**Early Termination Date**"):

- (a) by Seller, at any time prior to the Commercial Operation Date, upon notice to Buyer, in the event that any of the conditions precedent set forth in Section 2.2 has not been satisfied, provided that the lack of satisfaction of any such condition is not the result of Seller's failure to exercise commercially reasonable efforts and diligence;
- (b) by Buyer, upon twenty (20) days' notice to Seller, in the event that the Commercial Operation Date for the Project has not occurred by the Outside Commercial Operation Date, provided that Buyer may not exercise its right to terminate under this Section 2.3(d) after the Commercial Operation Date; or
- (c) by either Party in accordance with Section 9.2.

Upon early termination of this Agreement in accordance with this Section 2.3, each Party shall discharge by performance all obligations due to the other Party that arose up to the Early Termination Date and the Parties shall, upon such discharge, have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

ARTICLE 3 DEVELOPMENT OF PROJECT

3.1 Development of Project by Seller. Seller shall undertake all diligent and commercially reasonable good faith efforts to obtain required permits and financing for, and to construct the Project. Using such efforts, Seller shall arrange for the design and construction of the Project in accordance with Applicable Legal Requirements, applicable manufacturers' warranties and instructions, and in a manner such that each Facility qualifies as a Class III Net Metering Facility.

3.2 Notice of Commercial Operation. Subject to the provisions of this Agreement, Seller shall notify and represent to Buyer in writing when each Facility has achieved Commercial Operation. Seller shall in the notice of Commercial Operation for the final Facility of the Project to achieve Commercial Operation certify to Buyer the Commercial Operation Date.

3.3 Interconnection Requirements. Seller shall be responsible for all costs, fees, charges and obligations of every kind and nature required to connect the Project to the LDC System, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges, the cost to install the LDC Metering Device, and the cost to insure the Project ("**Interconnection Obligations**"). In no event will Buyer be responsible for any Interconnection Obligations, except as set forth in Section 7.6.

3.4 Cooperation Regarding Authorizations. Seller will be responsible for applying for, and securing all permits for the Project. Further, Seller will manage all applications for all approvals, registrations and other related matters with the LDC and any Governmental Authority, including the submission of applications described in this Agreement and, to the extent relevant, Seller will do so on behalf of Buyer (subject to Buyer's approval). Buyer agrees to cooperate with Seller in preparing such applications and securing such permits, approvals and registrations, including, without limitation, timely executing and delivering all documentation required from Buyer relating thereto. Where allowed by law, Buyer shall designate Seller as its agent in obtaining all approvals, registrations and additional authorizations required of Buyer in connection with this Agreement and the transactions contemplated hereby.

3.5 Title. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the Project and all Environmental Attributes shall be and remain with the Seller.

a) Changes in Environmental Incentives. In the event a change in Law occurs that results in additional Environmental Incentives attributable to the System, 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 Legal Requirements. For the avoidance of doubt, the parties acknowledge that the Seller owns the SRECs, owns the Class I RECs and other similar incentives because it is paying for the Solar Facility.

3.6 Operation and Maintenance of Project. Seller, at its sole cost and expense, shall be responsible for operation, repair, insuring, monitoring and maintenance of each Facility and the Project in material compliance with equipment manufacturer requirements and in accordance with generally accepted good industry practice and Applicable Legal Requirements.

3.7 Facility Loss. In the event of loss, theft, damage or destruction of the Project or any portion thereof, or any other occurrence or event that prevents or limits the Project from operating in whole or in part, resulting from or arising out of casualty, condemnation or Force Majeure ("**Facility Loss**"), Seller shall assess the condition of the Project and notify Buyer, within forty (40) days of the Facility Loss of Seller's intention to undertake repair or replacement of the Facility. If Seller determines and notifies Buyer that Seller does not intend to undertake such repair or replacement, this Agreement shall terminate upon receipt of such notice unless, in the event of a partial Facility Loss, Seller's notice states Seller's election to maintain this Agreement in full force and effect, including without limitation the provisions of Section 4.8 (Minimum Output). If this Agreement terminates pursuant to this Section 3.7 in circumstances in which repair or replacement of the Project would have been commercially reasonable, as considered against repair or replacement by a similarly situated solar facility owner, then Buyer shall be entitled to a payment in the amount of the net present value of the Shortfall Values (as defined in Section 4.8) for each remaining Contract Year or portion thereof of the Term (each such Shortfall Value to be calculated assuming delivery of zero kWhs of Electricity at the applicable Delivery Point and assuming an average Net Metering Credit Rate equal to the Net Metering Credit Rate as of the date of termination); provided, that Buyer shall have an obligation to undertake reasonable efforts to enter into a replacement contract and the amount of such payment shall be reduced by the amount of energy savings reasonably expected to be realized by Buyer pursuant to any such replacement contract.

ARTICLE 4

PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

4.1 Purchase and Sale. Commencing on the date the first Facility achieves Commercial Operation and continuing throughout the remainder of the Term, Seller shall make available to and sell to Buyer, and Buyer shall take delivery of and, subject to the other provisions of this Agreement, purchase from Seller, one hundred percent (100%) of all Electricity generated by the Project (which shall include Net Metering Credits with respect to such Electricity).

4.2 Price. The purchase price of each kilowatt-hour of Electricity shall be calculated in accordance with Exhibit B. The Parties agree to seek approval from the LDC for the Facility to receive Time-Of-Use rate classification (currently designated the B-5 rate class) which returns the greatest net metering credit value to the Buyer. Seller shall prepare any such documents, including the LDC's net metering service

application (the "Schedule Z") and Buyer shall reasonably cooperate with Seller's preparation of such documents, including, without limitation, by providing information on Buyer's existing other accounts with the LDC. In the event the rate classification changes, the Seller will seek to have the Facility classified at the LDC rate which returns the greatest net metering credit value to the Buyer.

4.3. Invoicing and Payment. Commencing on the Commercial Operation Date and continuing throughout the Term, during each monthly Billing Cycle, Seller shall provide Buyer with an invoice (the "**Invoice**") for the Electricity delivered to Buyer during the prior Billing Cycle (the "**Delivered Quantity**") and charging the Buyer for payment of an amount equal to the Delivered Quantity multiplied by the Electricity Price. The Delivered Quantity will be determined by Seller by reference to the Host Customer Account information to be obtained pursuant to Section 4.5. Buyer will remit payment of the amount of each invoice to Seller or its designee by check (or other means agreeable to both Parties) within sixty (60) days following Buyer's receipt and approval of each such Invoice. Any amounts not paid by the due date will be deemed late, and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. For avoidance of doubt, and subject to the provisions of Section 7.6, Buyer shall not be liable to Seller (or any other person or entity) for any Electricity or Net Metering Credits, or for payment for the same, that are generated by any Facility during any time at which it does not qualify as a Net Metering Facility. (The Parties acknowledge that both Buyer's electricity consumption and the Project's generation output will vary throughout the year. Accordingly, the dollar value of the Net Metering Credits credited to Buyer's Recipient Account(s) each month may be greater than or less than the amount due on Buyer's Recipient Account Statement(s) for that same monthly Billing Cycle.)

4.4. Invoice Disputes. In the event of a good faith dispute regarding any Invoice, Buyer shall pay the undisputed amount of such Invoice and shall seek to resolve the dispute in accordance with the dispute resolution procedures set forth in Article 14. Upon resolution of the dispute, any required refund or additional payment shall be made within sixty (60) days of such resolution along with interest accrued at the Interest Rate from and including the date of the original payment (with respect to a refund) or original due date (with respect to an additional payment). Any dispute by either Party with respect to an Invoice or an adjustment thereof is waived unless, within twelve (12) months after the invoice is rendered or such adjustment is made, one Party notifies the other of such dispute and states the basis for such dispute. Upon the challenging Party's request with respect to an Invoice, the other Party, within ten (10) days, shall provide the challenging Party with information necessary to permit the challenging Party to replicate the other Party's computation of the invoiced amount.

4.5. Host Customer Obligations and Charges. Buyer shall exercise reasonable efforts to provide Seller with direct electronic access to all Host Customer Account Statements and account information with respect to the Host Customer Account, including, at Seller's request, such cooperation with Seller as may be necessary to arrange with the LDC to enable Seller, through installation of a Seller-owned meter reader or other means, to have direct electronic access to the LDC Metering Device data. In the event that it is not possible to provide such access then Buyer shall provide Seller by email or other means agreeable to both parties with a copy of each Host Customer Account Statement within seven (7) Business Days of receipt. Upon receipt of such Host Customer Account Statement(s), Seller shall cause the next Invoice issued by Seller to Buyer to reflect a credit to Buyer for any fixed monthly customer charge on the Host

Customer Account Statement(s) as well as any charges on the Host Customer Account Statement(s) arising from the facility's use of electricity delivered to the LDC Metering Device by the LDC.

Seller shall be responsible for (1) performing, on behalf of Buyer (to the extent allowed by the LDC), all obligations of a Host Customer and customer of record under the LDC's net metering tariff, (2) all costs and expenses associated with the fulfillment of such obligations, other than those ministerial administrative costs incurred by Buyer as incident to its reasonable cooperation with Seller pursuant to the following sentence; (3) all costs incurred by Buyer under any "retail customer" or similar agreements required by the LDC for the Project, and (4) all costs and expenses associated with the interconnection of The Project with the LDC's electric distribution system. Buyer shall reasonably cooperate with Seller in connection with Seller's efforts to fulfill its obligations set forth in this Section. In addition, Seller shall defend, indemnify and save Buyer harmless from any claims asserted against the Buyer, as Host Customer, by any third party for damages, costs, and expenses, including reasonable attorneys' fees, arising from or related to activities undertaken at the Property by the owner(s) and any lessee(s) of the Property, the Seller, and any of their employees, officers, agents, representatives and licensees, except to the extent such damages, costs and expenses arise from the negligence, willful misconduct or breach of this Agreement of or by Buyer, its employees, officers, agents, representatives or licensees.

4.6 Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Electricity (or associated Net Metering Credits or Net Metering Credit rights) hereunder are to be exempted from or not subject to one or more Governmental Charges, either Party shall, promptly upon the other Party's request therefor, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion. Notwithstanding, the Parties agree that Seller shall be solely liable for payment of any and all Governmental Charges.

4.7 Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Seller to LDC or Buyer at the applicable Delivery Point.

4.8 Minimum Output. As of each anniversary of the Commercial Operation Date, in the event that the Average Annual Output is less than eighty percent (80%) of the Estimated Annual Output for such Contract Year (as set forth in Exhibit D) (the "**Minimum Output**"), Buyer is entitled to compensation in an amount equal to the Shortfall Value for purposes hereof:

(i) "**Average Annual Output**" shall mean the average annual amount of Electricity delivered to the Delivery Point, calculated on a rolling three-year basis based on the amount of Electricity delivered to the Delivery Point for the Contract Year then ended and for the previous two Contract Years (or, prior to the third anniversary of the Commercial Operation Date, the previous Contract Year(s), if any); and

(ii) "**Shortfall Value**" shall mean a dollar amount equal to the product of (A) the positive difference, if any, in dollars per kWh between the average Net Metering Credit value during the Contract Year then ended and the Electricity Price and (B) the positive difference in kWh between the Minimum Output for such Contract Year and the Average Annual Output. For purposes of calculating Shortfall Value, the Minimum Output for such Contract Year shall be

reduced by the number of kWhs of reduced output reasonably identified by Seller (but subject to Section 14.2, Dispute Resolution) as caused by: a LDC System outage or failure; acts or omissions of third parties causing suspension or reduction of generation by the Facilities, delays in repairs to the Project beyond the reasonable control of Seller; or Force Majeure.

4.09 Intentionally reserved.

4.10 Records and Audits. Each Party will keep, for a period of not less than two (2) years after the expiration or termination of this Agreement records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for all transactions hereunder. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions hereunder during such other Party's normal business hours. Before discarding any such records, Seller shall notify Buyer in writing of its intent to do so no later than ninety (90) days before discarding if the records are less than 10 years old, and Buyer may, if it chooses, elect to make copies of any such records at Buyer's cost.

ARTICLE 5

TITLE TO ENVIRONMENTAL ATTRIBUTES AND CAPACITY

Other than the Net Metering Credits that accrue to Buyer's account as Host Customer under the Net Metering Rules, or any credit, allowance, entitlement, certificate, product, valuation or other benefit that inures solely to Buyer only because it is a Municipality or Other Governmental Entity and which cannot be transferred or assigned to, or used for the benefit of, Seller, Environmental Attributes and any rights or credits relating to the generating capacity of the Project shall remain the property of Seller and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Seller in its sole discretion and for its sole benefit. Subject to Applicable Legal Requirements and Laws, Buyer shall, upon Seller's request, take whatever actions are reasonably necessary from time to time in order for the Seller to claim the benefits of all Environmental Attributes and capacity rights or credits other than the Net Metering Credits. In the event such actions will result in Buyer's incurring any costs, Buyer may so notify Seller and, if Seller does not withdraw its request, Seller shall promptly reimburse Buyer for such costs. Without limiting the generality of the foregoing, all public statements made by or on behalf of either Party must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and any related reporting rights.

ARTICLE 6

METERING DEVICES; LDC BILLING ADJUSTMENTS

6.1 Metering Equipment. The Parties acknowledge that Seller shall arrange for the LDC to furnish, install or monitor the LDC Metering Devices. On behalf of Buyer as the LDC's customer of record, Seller shall be responsible for arranging compliance with any LDC customer requirements relating to LDC access to the LDC Metering Devices. In addition, Seller may install, own, operate, and maintain one or more Seller Metering Devices.

6.2 Meter Accuracy. Buyer may at any time, with reasonable advance notice to Seller, exercise its rights as the LDC's customer of record to seek testing of the accuracy of the LDC Metering Devices. In addition, on behalf of Buyer as the LDC's customer of record, Seller may on its own initiative, and shall upon the request of Buyer, exercise Buyer's LDC customer rights to arrange for testing of the accuracy of the LDC Metering Devices.

6.3 Billing Adjustments. In the event of a discrepancy between the data generated by the LDC Metering Device and the quantity of Net Metering Credits reflected on the Host Customer Account Statements, Seller shall, upon its own initiative or upon request of Buyer and at Seller's cost and expense, exercise diligent and commercially reasonable efforts to investigate and remedy the discrepancy in consultation with the LDC. If as a result of any LDC billing adjustment, the quantity of Electricity for any period is decreased, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for that Electricity. If as a result of any LDC billing adjustment, the quantity of Electricity for any period is increased, Buyer shall pay for the additional Electricity. Amounts due as a result of any such billing adjustment and not paid within sixty (60) days of receipt of the Invoice therefor shall be subject to interest at the Interest Rate.

6.4 Confirmation of Net Metering Credits. During the first Contract Year, Seller shall assist Buyer in confirming that 100% of the anticipated Net Metering Credits allocable to Buyer hereunder have been properly credited against Buyer's monthly utility bills at the appropriate Net Metering Credit kWh dollar values. Buyer shall forward to Seller the LDC monthly utility bills for the accounts listed on the Schedule Z. Seller shall review such bills and compare them to Seller's records with regard to production by the System during the period covered by such bills to confirm that the correct amount of Net Metering Credits are appearing on the LDC bills at the appropriate Net Metering Credit kWh dollar value. If Buyer or Seller believes that there is an error in the allocation of Net Metering Credits to the applicable LDC bills, or an error in the Net Metering Credit kWh dollar values applied, Seller shall contact the LDC on Buyer's behalf and attempt to obtain the information necessary to confirm whether the Net Metering Credits have been correctly credited and applied, and shall assist Buyer in obtaining any missing Net Metering Credit total dollar values from the LDC, provided that neither party hereto shall be required to incur any out of pocket costs, including without limitation any legal fees or consultant costs, in order to do so. In addition, within ninety (90) days following the end of each Contract Year, Seller shall prepare a reconciliation of the Net Metering Credits allocable to such Contract Year, based on the System production during such Contract Year, and the amount of Net Metering Credits credited to Buyer's accounts by the LDC, and the Net Metering Credit kWh dollar values during such period. If there is any discrepancy between the amount of Net Metering Credits allocable to the accounts and the actual amount credited to the accounts or the Net Metering Credit kWh dollar values, Seller shall contact the LDC on Buyer's behalf and attempt to obtain the information necessary to determine how such discrepancy occurred, and shall assist Buyer in obtaining any missing Net Metering Credit total dollar value from the LDC, provided that, as aforesaid, neither party hereto shall be required to incur any out of pocket costs, including without limitation any legal fees or consultant costs, in order to do so.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

7.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

- (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Laws;
- (b) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;
- (c) all such persons as are required to be signatories to or otherwise execute this Agreement on its behalf under all applicable Laws have executed and are authorized to execute this Agreement in accordance with such Laws;
- (d) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;
- (e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (f) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

7.2 Additional Representations and Warranties of Buyer.

- (a) Recipient Accounts. With respect to certain of Buyer's existing accounts with the LDC identified in Exhibit C attached hereto (the "**Recipient Accounts**"), Buyer, to the best of its knowledge after reasonable inquiry, has provided to Seller complete and correct records of its electricity usage with respect to such accounts.
- (b) Net Metering Capacity Associated with Buyer. Buyer represents and warrants to Seller that it is not the Host Customer of Net Metering Facilities with an aggregate capacity (inclusive of the Project) of more than 10 megawatts (alternating current) (as amended from time to time by the Net Metering Rules, the "**Public Entity Net Metering Limit**"). Notwithstanding the foregoing, Buyer is free to contract for the purchase and sale of other entities selling Net Metering Credits, so long as the aggregate capacity of the Buyer's purchases do not exceed 10 megawatts (as amended).

7.3 Forward Contract: Bankruptcy Code. The Parties acknowledge and agree that Seller intends that this Agreement and the transactions contemplated hereunder be deemed a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller be deemed a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

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

7.5 No Advice. The Parties acknowledge and agree that Seller is not acting as a consultant or advisor to Buyer for any purpose and that Buyer is making its own decision to enter into this Agreement based solely on its own analysis and the advice of its own advisors.

7.6 Covenants.

(a) Net Metering.

(i) Host Customer. At Seller's reasonable request, and subject to Applicable Legal Requirements, Buyer shall promptly take any action and execute any documents, as required, to designate Buyer as the LDC customer of record for the LDC Metering Devices serving one or more of the Facilities and otherwise establish Buyer as the Host Customer for such Facility or Facilities for purposes of the Net Metering Rules. Such designation shall in no manner whatsoever relieve the Seller of its obligations under this Agreement, including Section 3.3, with respect to Interconnection Obligations. Seller shall prepare any such documents, including the LDC's net metering service application(s) (the "**Schedule Z(s)**"), and Buyer shall reasonably cooperate fully with Seller's preparation of such documents. Further, Seller shall prepare an application with appropriate supporting documents for a Cap Allocation for the Project, and Buyer shall reasonably cooperate fully with Seller's preparation of such documents.

(ii) Allocation of Net Metering Credits. At Seller's reasonable request, Buyer shall promptly take any reasonable action and execute any documents, as required, so that the Net Metering Credits accruing to Buyer as Host Customer of the Facilities are allocated to the Recipient Accounts. Buyer acknowledges and agrees that it shall not allocate or permit to be allocated any Net Metering Credits generated by any other source to the Recipient Accounts if such allocation would affect Buyer's ability to comply with its obligations under this Agreement, provided that, whether or not such effect is anticipated, Buyer shall provide at least thirty (30) days' notice to Seller prior to undertaking or permitting any such allocation.

(iii) Net Metering Facility of a Governmental Entity. Subject to clause (a)(i) above, the Parties Acknowledge their mutual intent that each of the Facilities be classified as a Net Metering Facility of a Municipality or Other Governmental Entity, and, in the event that a facility is so classified, each Party agrees not to take any action inconsistent with such regulatory status of the Project (including, without limitation, terminating the Schedule Z or amending the Schedule Z in a manner inconsistent with such status) except insofar as such action is expressly authorized hereunder. For avoidance of doubt, the Parties acknowledge that, pursuant to the current Net Metering Rules, in order to obtain and preserve such status, no Schedule Z for a Net Metering Facility of a Municipality or Other Governmental Entity may allocate Net Metering Credits to the account of any individual or of any entity that is not a city, City, federal agency or

department, state agency or department, or any entity that is not approved by DPU as an "Other Governmental Entity."

(iv) Net Metering Limit. Buyer acknowledges that, pursuant to the Net Metering Rules, the maximum amount of generating capacity eligible for net metering by a municipality or other governmental entity is the Public Entity Net Metering Limit. Accordingly, Buyer covenants that it shall not serve as the Host Customer of Net Metering Facilities (inclusive of the Project) with an aggregate capacity more than the Public Entity Metering Limit. Without limiting the foregoing, Buyer further covenants that, during the Term, except with the consent of Seller, which shall not be unreasonably withheld, delayed or conditioned, Buyer shall not serve as Host Customer of other Net Metering Facilities if the output from such Net Metering Facilities interferes with or precludes the Buyer from receiving Net Metering Credits generated by the Facilities in accordance with this Agreement.

(v) Cooperation on Assurance of Net Metering Eligibility. Each Party agrees to promptly provide such information and assistance to the other Party as may be necessary to allow the Parties to avail themselves of any system established by DPU and/or the LDC to provide certain assurances that a Facility will be an eligible Net Metering Facility once the Facility commences operation.

(vi) Consolidated Billing of Electricity Charges. In order to ensure Buyer's ability to maximize savings resulting from allocation of Net Metering Credits to the Recipient Accounts, Buyer shall arrange, to the extent possible, for the charges for its electricity purchases from competitive electricity suppliers (if any) to be billed through the Recipient Account Statement(s).

(b) Customer Interconnection Acknowledgement. In order to fulfill the LDC's requirements for interconnecting to the LDC distribution grid an energy generating facility that is owned by one party but is located behind the LDC utility meter of another party, Seller shall be party to the interconnection service agreement for each Facility and Buyer agrees, promptly following Seller's request, to enter into the customer interconnection acknowledgement agreement for each Facility with the LDC in a form substantially similar to the form of customer interconnection acknowledgement agreement attached to the LDC's interconnection tariff (the "***Customer Interconnection Acknowledgement Agreement***").

(c) Data Access; Customer Advocacy. Buyer shall take action and execute any documents, as required, to designate (and, as necessary, re-designate) Seller to LDC as an authorized recipient of the Host Account Statements with respect to the LDC Metering Devices serving the Facilities. In addition, Buyer shall take such reasonable action and execute any documents, as required, and otherwise cooperate with Seller, so as to permit Seller to advocate with the LDC and/or DPU with respect to Buyer's rights as the LDC customer of record and Host Customer, including, without limitation, for the purpose of ensuring timely and accurate recording of Net Metering Credits generated in connection with the Facilities.

(d) Uniform Procurement Act Exemption Filings. Buyer shall comply with the provisions of G.L. c. 30B, § 1(b)(33), which require that, within fifteen (15) days of the signing of a contract for energy or energy related services by a covered public entity, the procuring public entity shall submit to DPU, the Department of Energy Resources, and the Office of the Inspector General a copy of the contract and a report of the process used to execute the contract, and Seller shall assist

Buyer therein as reasonably requested. Buyer shall promptly deliver to Seller a complete copy of such filings.

(e) No Resale of Electricity. The Electricity purchased by Buyer from Seller under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the LDC pursuant to the Net Metering Rules), without prior approval of Seller, which approval shall not be unreasonably withheld. For avoidance of doubt, this Section 7.6(e) shall not prohibit Buyer from exercising its rights as Host Customer under the Net Metering Rules to allocate Net Metering Credits to other parties nor from moving Recipient Accounts from one Schedule Z to another Schedule Z, subject to Buyer's other obligations under this Agreement.

(f) No Right to Enter or Use Property. Buyer shall not have, nor shall it assert, any right under this Agreement to enter upon or use the Property or the Facilities in any manner, provided, however, that Buyer shall, upon reasonable prior notice, be provided access to the Project and (to the extent Seller is permitted to grant such access) the LDC Metering Device for which Buyer is Host Customer, from time to time during normal business hours and subject to reasonable site health and safety requirements, for any reasonable purpose related to Buyer's status as Host Customer.

(g) No Assertion that Seller is a Utility. The Parties acknowledge that it is their intent that Seller not be deemed an electric utility or public service company or similar entity that has a duty to provide service, or is otherwise subject to rate regulation.

ARTICLE 8 (INTENTIONALLY RESERVED)

ARTICLE 9 FORCE MAJEURE

9.1 Performance Excused by Force Majeure. To the extent a Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and Seller gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by Seller), then the affected Party will be excused from, the performance of such obligations under this Agreement (other than the obligation to make payment then due or becoming due with respect to the other Party's performance prior to the Force Majeure). The affected Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations. During the period in which, and to the extent that, obligations of a Party are excused by Force Majeure, the unaffected Party will not be required to perform or resume performance of its obligations to the affected Party corresponding to the obligations of the affected Party excused by Force Majeure.

9.2 Termination Due to Force Majeure. In the event of a Force Majeure that prevents, in whole or in material part, the performance of Seller for a period of one hundred eighty (180) calendar days or longer (provided that such period shall be extended for an additional period of up to one hundred (100) calendar

days if Seller has promptly commenced efforts to resume performance of its obligations and is diligently continuing such efforts), then either Party may, upon thirty (30) days' notice to the other Party, terminate this Agreement, whereupon the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

ARTICLE 10 EVENTS OF DEFAULT; REMEDIES

10.1 Events of Default. An "*Event of Default*" means, with respect to a Party (a "*Defaulting Party*"), the occurrence of any of the following:

- (a) such Party's failure to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) days after receipt of notice of such failure;
- (b) such Party's failure to comply with any material provision of this Agreement if such failure is not remedied within sixty (60) days after notice and demand by the non-defaulting Party to cure the same or such longer period (not to exceed one hundred twenty (120) days) as may be reasonably required to cure, provided that the defaulting Party diligently continues to perform under this Agreement and to work to cure the failure until such failure is fully cured; or
- (c) such Party becomes Bankrupt; or
- (d) any representation or warranty made by such Party in this Agreement is not true and complete in any material respect when made and such breach of representation or warranty has a material adverse effect on the non-defaulting Party unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within sixty (60) calendar days after written notice to such Party specifying the nature of such misrepresentation, and (ii) such cure removes any material adverse effect on the non-defaulting Party of such fact, circumstance or condition being otherwise than as first represented, provided that such cure may be made within such longer period (not to exceed one hundred (100) days) as may be reasonably required to cure, provided that the defaulting Party diligently continues to perform under this agreement and to work to cure the failure until such failure is fully cured; or
- (e) Seller fails to maintain or cause to be maintained insurance for the Project in accordance with Seller's interconnection service agreement with the LDC or Applicable Legal Requirements, including insurance requirements established under regulatory authority of the municipality where the Project is located, and such failure is not cured within ten (10) days after Buyer notifies Seller of such failure. In this case, Buyer shall be the non-Defaulting Party.

10.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or applicable law, but subject to the provisions of Article 16 with respect to a Seller Event of Default, shall have the right to (i) terminate this Agreement, upon thirty (30) days' notice to the Defaulting Party, (ii) withhold any payments due to the Defaulting Party under this Agreement, (iii) suspend performance due to the Defaulting Party under this Agreement, and (iv) exercise

all other rights and remedies available at law or in equity to the non-defaulting Party, including recovery of all reasonably foreseeable damages under applicable law, subject to such limitations on such recovery as required by law, including, but not limited to, the requirement that the non-defaulting Party prove its damages with reasonable certainty, and mitigate its damages in accordance with law, and as set forth herein. For Seller, such damages may include, without limitation, (i) lost revenues in connection with any failure by Buyer to purchase Electricity/Net Metering Credits from Seller hereunder in accordance with the terms hereof, (ii) lost revenues in connection with any inability of Seller to sell Environmental Attributes associated with such Electricity and (iii) accelerated payments, fees, damages and penalties under Seller's financing agreements. In addition and without limiting the foregoing, If Seller is the non-defaulting Party, Seller shall have the right and obligation to exercise all diligent, commercially reasonable efforts to sell electricity, Net Metering Credits and Environmental Attributes produced or generated by the Facilities to persons other than Buyer in order to mitigate any damages suffered as a result of Buyer's default. Each Party agrees that it has a duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party's default under this Agreement. For avoidance of doubt, in the event of a Buyer Event of Default that gives rise to a Seller right to terminate. Seller may, to the extent permitted by Applicable Legal Requirements and Laws, mitigate its damages by arranging for Buyer to continue to serve as Host Customer of the Facilities but amend the Schedule Z(s) to facilitate Seller's sale of the Net Metering Credits to third party recipients as directed by Seller from time to time.

10.3 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity, subject, however, to such limitations on relief or the recovery of damages as are required by law.

10.4 Unpaid Obligations. The non-defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement, unless a priority is required by a Party's obligation to mitigate its damages. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the non-defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE 11

CERTAIN RIGHTS AND OBLIGATIONS FOLLOWING TERMINATION OR EXPIRATION

11.1 General. Following termination of this Agreement by either Party that is not occasioned by the other Party's default, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

11.2 LDC and Regulatory Matters. Upon the termination or expiration of this Agreement for any reason, Seller shall undertake diligent efforts, and Buyer shall promptly take all actions and execute all documents, as may be necessary or reasonably requested by Seller, to designate Seller or its designee as

the LDC customer of record for the LDC Metering Devices at the Delivery Points and otherwise establish Seller or its designee as the Host Customer of the Facilities for purposes of the Net Metering Rules, and to facilitate the amendment of the Schedule Z(s) so as to terminate as soon as practicable Buyer's status as Host Customer and the allocation of Net Metering Credits to the Recipient Accounts. To the extent that the LDC does not permit termination of Buyer's Host Customer status or allocation of Net Metering Credits to the Recipient Accounts (as modified from time to time) as of the effective date of termination or expiration of this Agreement and instead requires termination of such allocation as of a later date, and the Recipient Account actually receive Net Metering Credits, Buyer's purchase and payment obligations hereunder shall survive with respect to any Electricity delivered by Seller to the Delivery Point(s) and corresponding with Net Metering Credits so received by the Recipient Accounts.

ARTICLE 12 INDEMNIFICATION

12.1 Indemnity. Seller shall indemnify, defend (with counsel acceptable to Buyer, which acceptance shall not be unreasonably withheld) and hold harmless the Buyer and its members, managers, officers, officials, employees, agents, representatives and independent contractors, from and against all demands, claims, suits, liabilities, losses, damages, costs or expenses (including judgments, costs, interest, attorney's fees and expert's fees) arising from or in connection with any act or omission relating in any way to the performance of this Agreement by Seller, its officers, agents or employees or others under Seller's control, or its subcontractors or independent contractors, or (ii) an Event of Default of Seller. Seller further agrees, if requested by Buyer, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article. Should Seller defend any such claim against the Buyer, it shall have full control of such defense, in its reasonable discretion. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to claims, demands, lawsuits or actions for liability attributable solely to the negligence, willful misconduct or Event of Default of Buyer, its officers, agents or employees.

12.2 Claim Procedure. If Buyer seeks indemnification pursuant to this Article, it shall notify Seller of the existence of a claim, or potential claim, as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by Seller that it will assume the defense and indemnification of such claim, Seller may assert any defenses which are or would otherwise be available to Buyer.

12.3 Survival of Indemnity Claims. In addition, notwithstanding any provision contained herein, the provisions of this Article shall survive the termination or expiration of this Agreement for a period of three (3) years thereafter, with respect to any claims which occurred or arose (in whole or in part) prior to such termination or expiration.

12.4. In addition, the extent of this indemnification shall not be limited by any obligation or any term or condition of any insurance policy.

ARTICLE 13 LIMITATIONS

13.1 Limitation of Liability.

- (a) No Liability to Third Parties. Buyer and Seller agree that this Agreement is not intended for the benefit of any third party (other than Designated Third Parties) and that Seller shall not be liable to any third party by virtue of this Agreement.
- (b) Limitations on Damages. Except as expressly provided in this Agreement, it is specifically agreed and understood that neither Party will be responsible to the other for any punitive damages whatsoever arising out of this Agreement. This Section 13.1(b) shall apply whether any such damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty or otherwise.
- (c) No Waiver of Massachusetts Tort Claims Act. Nothing contained in this Agreement shall constitute a waiver of any immunities or the limitations on liability of Buyer under the Massachusetts Tort Claims Act. General Laws Chapter 258, as amended from time to time, or any other applicable law.

13.2 Limitation on Warranties. Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose. Without limiting the foregoing, but subject to the provisions of Section 4.8 (Minimum Output), Seller does not warrant or guarantee the amount of Electricity to be generated by the Project.

ARTICLE 14 GOVERNING LAW; DISPUTE RESOLUTION

14.1 Governing Law. This Agreement shall be construed under and governed by the laws and in the courts of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws and any dispute arising under or relating to this Agreement shall be adjudicated by a Court sitting within the Commonwealth of Massachusetts.

14.2 Dispute Resolution.

- (a) The Parties agree to use their respective good faith efforts to resolve any dispute(s) that may arise regarding this Agreement. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties.
- (b) Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Manager of Seller and the Mayor or its designee, as chief executive, of Buyer (or the individuals then serving as chief executives of the

Parties), who shall use their respective good faith efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless such time period is modified by written agreement of the Parties.

(c) In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute may submit the dispute to non-binding mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties may request that the Boston, Massachusetts office of JAMS appoint a mediator. The period for mediation shall commence upon the appointment of the mediator, shall not exceed ninety (90) days from the time the dispute arises, unless such time period is modified by written agreement of the Parties involved in the dispute, and the mediation shall be conducted in accordance with procedures mutually agreed to by the Parties. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute.

(d) In the event that the Parties cannot resolve a dispute by informal negotiations or mediation (if utilized), sole venue for judicial enforcement shall be the in the Superior Courts of Massachusetts. Notwithstanding the foregoing, injunctive or equitable relief from such courts may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Each Party consents to such venue and expressly waives any objections to venue it might otherwise be able to raise.

ARTICLE 15

ASSIGNMENT; BINDING EFFECT

15.1 General Prohibition on Pledge or Assignment. Except as provided in this Agreement, neither Party may pledge or assign its rights hereunder without the prior written consent of the other Party which shall not be unreasonably withheld or delayed.

15.2 Permitted Assignments by Seller. Notwithstanding anything to the contrary herein, Seller may assign all or a portion of its rights and obligations hereunder to (i) an Affiliate of Seller or (ii) to the purchaser of substantially all of the assets of Seller, or to an entity that purchases one or more of the Facilities or, prior to the construction of any of the Facilities, the development rights thereto. In the event of any such assignment, Seller shall provide written notice within 10 Business Days of such Assignment to Buyer of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or, as of the effective date of such assignment, will have assumed) all or a portion of Seller's rights and obligations under this Agreement. In addition, in the event of an assignment under clause (ii) above, promptly following Buyer's request, Seller and/or such assignee shall reasonably demonstrate to Buyer the assignee's ability (itself or through use of the services of qualified third parties) to perform its obligations under this Agreement, which documentation shall contain a representation from the assignee that it has adequate financial ability (taking into account,

among other things, Project revenues) and technical ability (itself or through use of the services of third parties) to perform its obligations under this Agreement, provided that the assignee shall not be required to possess ability that exceeds that of Seller as of the Effective Date. Buyer agrees to promptly execute any document reasonably requested by Seller in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof, provided that Seller and/or such assignee has complied with the applicable provisions of this Section 15.2. Following an assignment permitted under this Section 15.2, except to the extent provided by the terms of such assignment and except to the extent that the assignee has assumed only a portion of Seller's rights and obligations hereunder, Seller shall have no liability arising under this Agreement after the effective date of such assignment for avoidance of doubt, Buyer acknowledges that for financing or other reasons, it may be necessary or desirable for Seller to arrange for construction and/or ownership of separate facilities by separate project entities and that allocation of Seller's rights and obligations with respect to such project entities may be accomplished through exercise of Seller's assignment rights hereunder and, in the event of such assignment, upon Seller's or the assignee's request, Buyer agrees to execute such documents as are reasonably required to accomplish such purposes.

15.3 Permitted Assignments by Buyer. In the event of a material change in Buyer's circumstances, including Buyer's inability to timely use all Net Metering Credits received by Buyer hereunder, Buyer may assign its rights and obligations under this Agreement to a third party provided that (i) Seller and any Lender determine, in their sole, reasonable discretion, that the proposed assignee is creditworthy and capable of performing all of Buyer's obligations under this Agreement for the remainder of the Term, (ii) the assignee agrees in writing to assume all of Buyer's obligations under this Agreement and (iii) the assignee is capable of performing said obligations of Buyer. Without limiting the foregoing, Buyer may assign to one or more third parties a portion of its obligations hereunder such that Buyer, together with the partial assignee(s), shall collectively be obligated to purchase all of the Electricity/Net Metering Credits generated by the Project. Prior to notifying Seller of any such proposed assignment, Buyer shall undertake reasonable efforts to identify and implement alternative solutions to remedy any inability of Buyer to timely use all Net Metering Credits accruing to Buyer under this Agreement. Seller agrees to reasonably cooperate with, and undertake commercially reasonable efforts to assist Buyer in identifying and implementing such solutions and any assignment permitted hereunder.

15.4 Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to and inure to the benefit of, the Parties and their permitted heirs, successors and assigns.

ARTICLE 16

FINANCING AND RELATED MATTERS

16.1 Special Seller Assignment Rights. Notwithstanding any contrary provisions contained in this Agreement, including, without limitation, Article 15, Buyer specifically agrees, without any further request for prior consent, but with advance written notice to Buyer, to permit Seller to assign, transfer or pledge its rights under this Agreement as collateral for the purpose of obtaining financing or refinancing

in connection with the Project, and to sign any agreements reasonably requested of Seller or its lenders to acknowledge and evidence such agreement, provided that any such assignment, transfer, or pledge shall not relieve Seller of its liabilities and obligations under this Agreement.

16.2 Designated Third Party Rights.

(a) Notice to Designated Third Party. Buyer agrees to give copies of any notice provided to Seller by Buyer to any assignee or transferee permitted pursuant to Section 16.1 of which it has written notice (each, a "***Designated Third Party***") of any event or occurrence which, if uncured, would result in a Seller Event of Default, provided that, at any given point during the Term, Buyer shall not be required to provide notice to more than one Designated Third Party.

(b) Exercise of Seller Rights. Any Designated Third Party, as collateral assignee and if allowed pursuant to its contractual arrangements with Seller, shall have the right in the place of Seller, any and all rights and remedies of Seller under this Agreement. Such Designated Third Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement, but subject to the terms of the Agreement.

(c) Performance of Seller Obligations. A Designated Third Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Designated Third Party to cure any default of Seller under this Agreement (unless such party has succeeded to Seller's interests under this Agreement) or (unless such party has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives such party the option to do so, provided any such cure, act, duty or obligation is performed in accordance with the terms of this Agreement.

(d) Exercise of Remedies. Upon the exercise of secured party remedies, including any sale of one or more of the Facilities by a Designated Third Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Designated Third Party (or any assignee of the Designated Third Party) in lieu thereof, the Designated Third Party shall give written notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement, unless the act of exercising such remedy itself constitutes an Event of Default under Article 10 of this Agreement, provided, however, that the exercise of such remedies shall not itself serve as a cure of any default of Seller.

(e) Third Party Beneficiary. Buyer agrees and acknowledges that each Designated Third Party is a third party beneficiary of the provisions of this Article.

16.3 Cooperation Regarding Financing. Buyer agrees that it shall reasonably cooperate with Seller and its financing parties in connection with any financing or refinancing of all or a portion of the Project. In furtherance of the foregoing, as Seller or its financing parties request from time to time, Buyer agrees to (i) reasonably execute any consents to assignment or acknowledgements (including, without limitation, an acknowledgment for the benefit of one or more particular Designated Third Parties or prospective Designated Third Parties of the accommodations set forth in this Article 16), (ii) deliver such estoppel

certificates as an existing or prospective Designated Third Party may reasonably require, (iii) furnish such information as Seller and its financing parties may reasonably request and (iv) at Seller's expense, provide such opinions of counsel as may be reasonably requested by Seller and/or an existing or prospective Designated Third Party in connection with a financing, refinancing or sale of one or more of the Facilities. Any cooperation herein shall be in a form and manner acceptable to the Buyer.

16.4 Right to Cure.

(a) Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Designated Third Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Designated Third Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Designated Third Party within such period and such part) commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional thirty (30) calendar days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) If, while this Agreement is in effect and pursuant to an exercise of remedies by a Designated Third Party, such party or its assignee (including any purchaser or transferee) shall acquire control of a Facility or the Facilities and this Agreement and shall, within the time periods described in the preceding subsection, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

16.5 Reimbursement of Certain Costs. In the event that Buyer is required to incur legal or administrative costs in order to comply with its obligations to provide, review and/or execute certain documents pursuant to this Article 16, Buyer may provide advance notice to that effect to Seller together with a good faith estimate of such excess legal costs. In such case, Buyer shall not be required to provide, review or execute the document at issue unless Seller agrees to reimburse Buyer for such excess costs, up to the amount of such good faith estimate. Upon receipt of such notice, Seller may elect to agree to such reimbursement or to withdraw the relevant request.

ARTICLE 17 CHANGE IN LAW

In the event that a change in Law occurs, including without limitation, a change in the Net Metering Rules, or the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the LDC (a ***“Change in Law”***), which materially restricts the ability of Seller to deliver Electricity generated by one or all of the three Facilities covered under this Agreement to Buyer, or the ability of Buyer as Host Customer or LDC customer of record to deliver Electricity generated by the

Facilities to the LDC or the ability of Buyer to receive Net Metering Credits, or the qualifications of a Facility as a Net Metering Facility of a Municipality or Other Government Entity, as the status of the Facility then may be, then, upon a Party's receipt of notice of such a 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. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement in the form of a net metering credit purchase agreement. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty (120) days, and the non-affected Party has not elected to absorb all additional costs directly attributable to the Change in Law, either Party may terminate this Agreement without liability for such termination, provided, however, that Buyer shall not be required to pay for any Electricity with respect to which it has not received Net Metering Credits from the LDC. In the event that a Change in Law occurs that would provide economic or other benefits to either or both parties that are not available under current law, the Parties shall promptly and in good faith endeavor to negotiate such amendments and restatements to or restatements of this Agreement as may be necessary to allow the affected party or parties to receive such benefits, while maintaining the allocation of economic benefits and burdens originally intended by the parties.

ARTICLE 18 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and via mail or email to the following:

If to Sellers to: Sunwealth Power LLC
Attn: Asset Management
28 Dane Street
Somerville, MA 02143
Email: jon@sunwealth.com

If to Buyer to: City of Somerville
Attn: Office of the Mayor
City Hall
93 Highland Ave
Somerville, MA 02143

AND

Oliver Seller Garcia
City of Somerville
City Hall
93 Highland Ave, Second Floor
Somerville, MA 02189

with a copy to: City Solicitor for the City of Somerville, City Hall, 93 Highland Ave

Somerville, MA 02143

if to a Designated Third Party, to the address and contact person of which Buyer has been given notice pursuant to this Article 18.

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement, or (iii) if by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any Party may change its address and contact person for the purposes of this Article 18 by giving notice thereof in the manner required herein.

ARTICLE 19 MISCELLANEOUS

19.1 Survival. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of Article 5, Section 6.3, and Articles 10, 11, 12, 13, 14, 16, 18, and 19 shall survive the termination or expiration of this Agreement.

19.2 Entire Agreement: Amendments. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

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

19.4 Relationship of Parties. Seller will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.

19.5 Waiver. No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the

provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

19.6 Cooperation. Each Party acknowledges that this Agreement may require approval or review by third parties and agrees that it shall use commercially reasonable efforts to cooperate in seeking to secure such approval or review. The Parties further acknowledge that the performance of each Party's obligations under this Agreement may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term reasonably cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

19.7 Insurance. From and after the Commercial Operation Date, Seller shall obtain and maintain insurance in accordance with Seller's interconnection service agreement with the LDC and Applicable Legal Requirements. On all insurance policies maintained by Seller hereunder, except for workers' compensation, Buyer shall be listed as an additional insured. Seller shall also maintain insurance in amounts sufficient to cover Seller's obligations under this Agreement and to cover any reasonably foreseeable losses that could be incurred by Buyer. The Seller shall deliver to the Buyer new certificates of insurance at least ten (10) calendar days prior to expiration of the prior insurance and shall furnish the Buyer with the name, business address and telephone number of the insurance agent. Seller certifies compliance with applicable state and federal employment laws or regulations including but not limited to G.L. c. 152 (Workers' Compensation), as applicable, and Seller shall provide City with acceptable evidence of compliance with the insurance requirements of this chapter. At the time of execution of this Agreement, Seller shall provide certificates of insurance evidencing compliance with this paragraph.

19.8 Severability. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

19.9 Joint Work Product. This Contract shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof.

19.10 Headings. The headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

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

19.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures and deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement.

19.13 Additional Matters. Notwithstanding anything to the contrary in this Agreement:

- (a) Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement which will materially or unreasonably increase Buyer's risk or obligations under the Agreement, or result in the waiver of any of Buyer's rights or remedies under the Agreement or at law or in equity, or require Buyer to give an opinion, or require Buyer to make a statement of fact of which Buyer does not have actual knowledge (except that Seller may reasonably request that Buyer make a statement of fact to the best of its actual knowledge).
- (b) Any requirement that Buyer reasonably cooperate or assist Seller shall not require Buyer to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.
- (c) The Agreement shall be subject to Applicable Legal Requirements and shall be valid only to the extent permitted by and consistent with all requirements of law.
- (d) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under Laws, including G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.
- (e) The Parties acknowledge that nothing in this Agreement shall limit or otherwise affect the ability of the Buyer to carry out any regulatory mandate or exercise its regulatory powers in accordance with Applicable Legal Requirements and Laws.

Remainder of Page Intentionally Left Blank

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of date first above written.

SELLER:

Sunwealth Power LLC

By: Jonathan Abe

Its: CEO

BUYER:

City of Somerville, Massachusetts

By: _____

Its: _____

Exhibit A

PROPERTY: DELIVERY POINT

Property

The “**Property**” shall be the real property and rooftop located at 1 Maxwells Green., Somerville MA, 02144. The Facility, together with all appurtenant facilities to interconnect the Facility to the LDC electric distribution system, shall be a solar photovoltaic array capable of producing approximately 340,000 kilowatt hours of electricity per year. The Facility’s aggregate nameplate capacity shall be approximately 300 kW DC. One hundred percent (100%) of the Facility’s annual output will be allocated to the City of Somerville.

Delivery Points

The location at the Property where Electricity is to be delivered from a Facility and received under this Agreement shall be the LDC Metering Devices on the Property behind which the respective Facility is located.

Exhibit B

ELECTRICITY PRICE

For each Billing Cycle in which Electricity is delivered to the Delivery Point, the purchase price of each kilowatt-hour of Electricity shall be an amount equal to greater of a) 9.5 cents per Net Metering Credit or b) eighty-two point five percent (82.5%) of the dollar value of the Net Metering Credit accruing to the Target Buyer Accounts during that Billing Cycle.

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Exhibit C

RECIPIENT ACCOUNT INFORMATION

Recipient Accounts:

[To be provided]

Upon Seller's request, Buyer shall promptly provide Seller with the following information regarding each such account:

- LDC customer name
- Account billing address
- Account service address
- LDC account number
- Annual LDC electricity charges, inclusive of supply, delivery and customer/meter charges
- Annual kWh usage
- Percentage of Net Metering Credits to be allocated to such account

Exhibit D

ESTIMATED OUTPUT

Contract Year	Expected Output (kWh)	Minimum Output (kWh)
Yr1	340,000	255,000
Yr2	338,300	253,725
Yr3	336,609	252,456
Yr4	334,925	251,194
Yr5	333,251	249,938
Yr6	331,585	248,688
Yr7	329,927	247,445
Yr8	328,277	246,208
Yr9	326,636	244,977
Yr10	325,002	243,752
Yr11	323,377	242,533
Yr12	321,761	241,320
Yr13	320,152	240,114
Yr14	318,551	238,913
Yr15	316,958	237,719
Yr16	315,373	236,530
Yr17	313,797	235,347
Yr18	312,228	234,171
Yr19	310,666	233,000
Yr20	309,113	231,835