



Message

Fri, Mar 22, 2013 8:32 AM

From:  **John Mangiaratti**

To:  **Tina Landry**

Subject: Fwd: Nexamp contract

Attachments:  NEXAMP_PPA_HUBBARDSTON_FINAL_3-21-2013.pdf / Adobe Acrobat 7.0 Docu... 419K

John S. Mangiaratti
Westford Assistant Town Manager
jmangiaratti@westfordma.gov
978-692-5501

----- Original Message -----

Message Fri, Mar 22, 2013 8:26 AM
From: John Mangiaratti
To: Jodi Ross
Cc: Richard T. Holland John Giorgio
Subject: Nexamp contract
Attachments: NEXAMP_PPA_HUBBARDSTON_FINAL_3-21-2013.pdf Adobe Acrobat 7.0 Document419K

Jodi,

Attached is the final version of the power purchase agreement with Nexamp for the Hubbardston Solar project. There are two additional power purchase agreements that will have identical language except for the exhibits, and also the deadlines for construction and commercial operations (Section 2.3) will be extended by 90 days. We have a conference call on Monday to finalize the two remaining agreements. The attached will be uploaded to the packet and I will forward the other two agreements as soon as they are completed.

thanks
John

John S. Mangiaratti
Westford Assistant Town Manager
jmangiaratti@westfordma.gov
978-692-5501

ENERGY AND NET METERING CREDIT PURCHASE AND SALE AGREEMENT

HUBBARDSTON PROJECT

This Energy and Net Metering Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of [REDACTED], 2013 (the “*Effective Date*”) by and between Nexamp Inc., a Delaware corporation (“*Seller*”), and the Town of Westford, a Massachusetts municipality (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar (PV) electric generation facilities; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, a portion of the Net Metering Credits associated with the Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, and Seller desires to assign and deliver to Buyer, and Buyer desires to receive from Seller, 100% of the Energy generated by the Facility during the Term, subject to the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises, representations, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

ARTICLES I DEFINITIONS

1.1 When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, unless a different meaning is expressed or clearly indicated by the context. Words defined in the Glossary of Terms which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

ARTICLE II TERM; FACILITY CONSTRUCTION AND OPERATION

2.1 Term. The term of this Agreement (the “*Term*”) shall commence on the Effective Date, and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operations Date (the “*Termination Date*”), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. This Agreement may be terminated prior to the Termination Date without penalty (the “*Early Termination Date*”):

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- (a) by Seller at any time prior to the Construction Commencement Date, upon thirty (30) days' notice to Buyer, in the event that Seller, in its sole discretion, determines that it should abandon development of the Facility. In the event Seller elects to terminate under this provision, it shall immediately pay to Buyer the amount of \$10,000, not as a penalty, but as liquidated damages, the Parties acknowledging that it would be difficult otherwise to determine the damages suffered by Buyer on account of a termination under this provision;
- (b) by Buyer pursuant to Section 2.3 (regarding the Outside Construction Commencement Date and Commercial Operations Date);
- (c) by either Party, in accordance with Section 4.1 (relating to net metering), Section 4.3 (relating to termination as a consequence of regulatory change), or Section 8.2 (relating to termination as a consequence of Force Majeure); or
- (d) pursuant to Section 10.3 (regarding financing).

Upon early termination of this Agreement under this Section 2.2, each Party shall discharge by performance all obligations due to the other Party that arose prior to the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

2.3 Commencement of Construction and Commercial Operations. If, subject to Section 8.2 of this Agreement, Seller does not meet the Outside Construction Commencement Date and Commercial Operations Date by the dates set forth below, the following rights of Buyer shall apply:

- (a) If the Outside Construction Commencement Date has not occurred within 180 days of the Effective Date, Seller shall pay to Buyer, as liquidated damages and not a penalty, the amount of Seven Thousand five-hundred dollars (\$7,500) per MW (AC) of Facility capacity associated with Buyer's purchase under this Agreement (1.14 MW), pro-rated for partial MWs, and Buyer may terminate this Agreement by notice to Seller without penalty unless the Parties agree otherwise in writing.
- (b) If the Commercial Operations Date has not occurred within 365 days of the Effective Date, Seller shall pay to Buyer, as liquidated damages and not as a penalty, the amount set forth in Section 2.3(a) and Buyer may also terminate the Agreement as set forth above.

2.4 Notice of Commercial Operation Date. Seller shall notify Buyer in writing of the Commercial Operation Date no later than ten (10) Business Days after the Facility has achieved Commercial Operations.

2.5 Design and Construction. Seller shall, at its sole cost and expense, cause the Facility to be designed, engineered, permitted, installed and constructed pursuant to good and prudent industry practice, Applicable Law, Governmental Approvals and the applicable requirements of any Governmental Authority and LDC, and shall be responsible for all costs and expenses

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associated with and arising from interconnection of the System to the LDC's electricity distribution system.

2.6 Facility Access. Buyer shall have the right, in its capacity as Host Customer, but not the obligation, to access the Facility and Meter upon 2 Business Days advance notice to Seller solely for the purpose of verifying Seller's compliance with Sections 2.4 and 2.5 of this Agreement and with the Interconnection Agreement, and for issues related to Buyer's position as Host Customer, provided that any exercise or failure to exercise such right shall not relieve Seller of its obligations hereunder, nor operate as a waiver of any right, remedy, claim or defense of Buyer under this Agreement or at law or in equity.

2.7 Insurance. Seller shall during the Term of the Agreement and at its sole cost and expense maintain such insurance as may be required by the LDC and the following insurance, all at Seller's cost, all of which coverages shall name Buyer as "Additional Insured", except for the Worker's Compensation insurance:

Minimum Insurance:

- General Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit.
- Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident.
- Workers' Compensation Insurance as required by law.
- Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate.

ARTICLE III TITLE; METER

3.1 Title.

(a) As between Seller and Buyer, Seller shall retain title to the Facility, the Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility, and to the amount of Net Metering Credits produced by the Facility but not sold to Buyer under this Agreement. If Buyer is deemed to be the owner of any of the above, Buyer shall, subject to Applicable Laws, assign the same to Seller. If Buyer receives any payments regarding the above, it shall turn such payments over to Seller, subject to Applicable Laws and, if required, Westford Town Meeting vote of appropriation. This Section 3.1(a) shall survive the termination of this Agreement.

(b) Notwithstanding Section 3.1(a) and subject to Section 5.5(c), as between Seller and Buyer, title to and risk of loss of the Quantity, as defined in Section 5.1(a), will pass from Seller to Buyer upon delivery to the Meter of the Energy associated with the Quantity. As between Seller and Buyer, risk of loss of the *Excess Quantity* that Buyer does not purchase under Section 5.2 shall at all times reside with Seller notwithstanding anything to the contrary in this Agreement, including without limitation this Section 3.1.

- 3.2 Interconnection; Meter. Seller, as the party to the Interconnection Agreement, shall obtain and pay for all costs associated with, and required by, the Interconnection Agreement with the LDC; and Buyer shall be named as “host customer” of record with the LDC. (See Section 4.2(a) regarding Buyer as Host Customer). Buyer and Seller shall reasonably cooperate with each other in obtaining the Interconnection Agreement and related documentation in a timely manner. Seller shall comply with, and pay for all costs associated with, LDC metering requirements on Buyer’s behalf.

**ARTICLE IV
NET METERING; REGULATORY CHANGE**

- 4.1 Net Metering as Condition Precedent. Each Party’s obligations under this Agreement are subject to the Facility’s metered connection to the LDC qualifying for Net Metering as a Public Facility under the Public Cap throughout the Term of this Agreement. If the Facility does not so qualify, either Party may, but shall not be obligated to, terminate this Agreement by delivery notice thereof to the other Party. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the delivery of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice and Section 11.1 (Disputes) shall continue to apply notwithstanding such termination. Seller represents, warrants and agrees that it has, as of the Effective Date, applied to the LDC for interconnection of the Facility and shall promptly obtain all other permits, documents and other information necessary for application to the Massachusetts Department of Public Utilities (the “*DPU*”) for a Cap Allocation for the Facility under the Public Cap of the Net Metering System of Assurance for Net Metering established by the DPU, and Seller shall cooperate with and provide all necessary assistance to Buyer with respect to that application. Seller shall use its best and diligent efforts to obtain and assist and cooperate with Buyer in the obtaining of approval of interconnection and Cap Allocation.

- 4.2 “Host Customer”; Net Metering Approval and Information.

- (a) Buyer and Seller shall, in a timely manner, reasonably cooperate with each other and take all reasonable actions necessary to
- i. Cause Buyer to be designated as the Facility’s “Host Customer” (as that term is defined under the Net Metering Regulations), and
 - ii. Cause Buyer to be designated by the DPU as a Municipality or Other Governmental Entity,

both as required for the Facility to qualify as a Public Facility under the Public Cap. Notwithstanding the foregoing, Seller, on behalf of Buyer, shall prepare at no cost to Buyer and, if permitted by the DPU and with the advance approval of Buyer, file with the DPU and any other Governmental Authority all applications and related information necessary to obtain the aforesaid designations, including, without limitation, the Schedule Z.

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(b) Buyer and Seller shall reasonably cooperate with each other and take all reasonable actions necessary to transfer the Host Customer designation to Seller, or to such person as determined by Seller, upon the earlier of termination of this Agreement or any change in the Net Metering Regulations that would require such transfer in order to preserve the benefit of this Agreement to each Party. Subject to the provisions of this Agreement, Buyer and Seller each agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all contractual approvals necessary for the Facility to be eligible for and to participate in Net Metering as contemplate by this Agreement.

4.3 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon issuance, enactment and/or implementation of a Governmental Authority order, decision, or regulation, or upon the administration or interpretation thereof by the DPU or the LDC, that (i) materially restricts Seller's ability to deliver Energy or Net Metering Credits to Buyer, (ii) materially restricts Buyer's ability to receive or use Energy or Net Metering Credits, excluding an action of Buyer as Governmental Authority that materially restricts Buyer's ability to use Net Metering Credits, (iii) disallows the Facility's qualification as a Public Facility under the Public Cap, or (iv) disallows Buyer's qualification as a Municipality or Other Governmental Entity, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent practicable, and shall use reasonable efforts to conform such amendment to restore the economic benefits to each Party. If the Parties negotiating in good faith cannot agree on such an amendment, then either Party may terminate this Agreement without penalty or liability, except for those obligations that arose prior to termination.

ARTICLE V PURCHASE AND SALE OF NET METERING CREDITS; ASSIGNMENT OF ENERGY; RIGHT OF FIRST REFUSAL

5.1 Sale and Purchase of Net Metering Credits and Assignment of Energy. Commencing on the Commercial Operations Date and continuing throughout the Term,

(a) Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept all of Seller's right, title and interest in and to the Net Metering Credits associated with 1.14 MW (AC) of the Facility's nameplate capacity, as determined by the Meter (the "**Quantity**"), which Energy and Net Metering Credits Seller hereby represents and warrants shall be free and clear of all claims, liens, security interests and encumbrances of any kind, nature and description. Buyer acknowledges and agrees that Seller may sell the balance of the Facility's Net Metering Credits to one or more other Municipalities or Other Governmental Entities ("**Third Party Buyers**"). Seller shall be solely responsible for finding Third Party Buyers. Seller shall, within ten Business Days following execution of any agreement with any Third Party Buyer at any point during the term of this Agreement, provide a copy of each agreement between Seller and each Third Party Buyer. Seller agrees that Buyer shall not be a party to any contract between Seller and any Third Party Buyer.

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- (b) So that the Facility will qualify as a Public Facility, Seller agrees to assign and does hereby assign to Buyer, and Buyer agrees to accept from Seller, 100% of the Energy generated by the Facility, which Energy Seller hereby represents and warrants shall be free and clear of all claims, liens, security interests and encumbrances of any kind, nature and description.
- (c) If, during the Term, Buyer's electricity load is reduced such that it no longer can utilize the Net Metering Credits purchased under this Agreement, or Buyer otherwise elects in its sole discretion to do so, it may, without approval of Seller but with advance written notice to Seller, transfer or sell such excess Net Metering Credits to a Municipality or Other Governmental Entity. Seller shall cooperate with and provide assistance to Buyer in amending the Schedule Z for the transfer of such excess Net Metering Credits.

5.2 Right of First Refusal. Buyer understands that the Excess Quantity is or will be committed to one or more Third Party Buyers. However, Seller agrees that if during the Term any portion of the Excess Quantity becomes available for purchase, Buyer shall hold a right of first refusal for the purchase of such available portion. For avoidance of doubt, Buyer acknowledges that each Third Party Buyer may have the right to assign its agreement with Seller, and that the Net Metering Credits associated with that agreement shall not be deemed to have become available for purchase under this Section 5.2 by virtue of such assignment. The price of the additional Net Metering Credits shall be negotiated by the Parties, but in no event will the price per kWh for such credits be less than the greater of (i) a 20% discount of the Net Metering Credit Value in place at the time of negotiation, or (ii) \$0.075/kWh; all other material terms shall be governed by this Agreement. Accordingly, if a portion of the Excess Quantity becomes available during the Term, Seller shall promptly notify Buyer in writing of the available quantity of additional Net Metering Credits. Buyer must notify Seller of its acceptance of all or a portion of the additional Net Metering Credits within fifteen (15) Business Days, except that the portion purchased by Buyer may not leave a remainder of less than Net Metering Credits associated with 250 kW of electricity. If Seller does not receive a written acceptance from Buyer for any of the additional Net Metering Credits by 5:00 p.m. EST on the 15th Business Day after the date of Seller's notice, Buyer's right of first refusal shall automatically terminate. Upon such termination, Seller may offer the additional Net Metering Credits to any other Municipality or Other Governmental Entity, all with no further obligation to Buyer, except that Seller shall not sell such Net Metering Credits to another buyer at a discount that is greater than 20% of the Net Metering Credit Value or at a price that is less than \$0.075/kWh unless such discount or price had been offered by Seller to Buyer.

5.3 Price. The price that Buyer shall pay to Seller for the Quantity shall be as stated on Exhibit A, attached hereto, except that

- (a) If Seller charges any Third Party Buyer a fixed price for Net Metering Credits generated by the Facility of less than \$0.086/kWh, regardless of any escalator, Seller shall reduce Buyer's Price to match the price/kWh charged by Seller to the Third Party Buyer, or

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- (b) If Seller charges any Third Party Buyer a fixed price equal to \$0.086/kWh with an escalator that is less than 1.75% per year, Seller shall reduce Buyer's escalator to match the escalator charged by Seller to the Third Party Buyer.

The exceptions contained in this Section 5.3 shall not apply to prices charged to Third Party Buyers based on a percentage of the Net Metering Credit Value.

5.4 Delivery. To deliver the Energy and the Net Metering Credits to Buyer, Seller shall deliver 100% of the Facility's Energy to the Meter pursuant to the Interconnection Agreement.

5.5 Allocation of Net Metering Credits; Responsibility and Indemnification.

- (a) Buyer may allocate the Net Metering Credits purchased by Buyer to Buyer's Recipient Account(s) through completion of a "Schedule Z" or such process as may be established by the Tariff. Buyer may not change its allocation of Net Metering Credits (through amending its Schedule Z or through some other process) without Seller's prior, written approval, which shall not be unreasonably withheld, conditioned or delayed, provided that such approval shall not be required for the transfer or sale of Net Metering Credits by Buyer to another Municipality or Other Governmental Entity under Section 5.1(c). Notwithstanding this Section 5.5, Seller shall be responsible for preparing the Schedule Z and any amendments thereto, and for filing them with the LDC, and Buyer shall reasonably cooperate with Seller in connection therewith.
- (b) As between Seller and Buyer, Seller shall be solely responsible to allocate the Net Metering Credits sold to Third Party Buyers to Third Party Buyers' Recipient Accounts by identifying such accounts on the Schedule Z. Buyer acknowledges that Buyer, as Host Customer, must sign the Schedule Z, but in doing so, Seller shall not be relieved of its obligations under this Section 5.5. Seller shall be solely responsible for invoicing for Net Metering Credits allocated to Third Party Buyers, for identifying and correcting any allocation errors and for all other matters related to the sale and allocation of Net Metering Credits to Third Party Buyers, all at Seller's expense. Seller shall not list on any Schedule Z the accounts of any party that is not a Municipality or Other Governmental Entity.
- (c) Buyer understands that the Net Metering Credits delivered to Buyer's Recipient Account(s) in any particular month will be reflected on the Host LDC Account Statement from the LDC as a monetary credit amount and not as a electricity quantity; and that such credit will be reflected on the Host LDC Account Statement according to the LDC's billing cycle, which may be up to approximately one (1) month after the Energy associated with the Net Metering Credits is generated by the Facility. Based on the Schedule Z, the Net Metering Credits will be allocated to and reflected on the Buyer's Recipient Account Statement(s) according to the LDC's billing cycle, which may be up to approximately two (2) months after the Energy associated with the Net Metering Credits is generated by the Facility. However, notwithstanding anything to the contrary in this Agreement, Buyer shall not be

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responsible to pay Seller for any Energy for which Buyer has not received Net Metering Credits by the LDC, as reflected on Buyer's Recipient Accounts Statement.

- (d) Seller will be solely responsible to correct or cause to be corrected, at its sole cost, any LDC allocation error, and Buyer agrees to reasonably cooperate with Seller in that regard in a timely manner. If the LDC will not permit Seller to make such correction on behalf of Buyer as Host Customer, Buyer shall in good faith attempt to do so, and Seller shall pay all reasonable costs incurred by, and fully and timely cooperate with, Buyer in connection therewith.
- (e) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be responsible or liable to Seller (or any other person or entity, including but not limited to the LDC) under any circumstances for any of the following, all of which shall be the sole responsibility of Seller: (1) payment for any Excess Quantity except for any portion of the Excess Quantity purchased by Buyer under Section 5.2; (2) any failure of the LDC to allocate Net Metering Credits to any Third Party Buyer, except if such failure is caused solely by Buyer's gross negligence or willful misconduct; (3) any errors in the Schedule Z made by or resulting from acts or omissions of Seller; (4) any failure of any Third Party Buyer to make payments to Seller; (5) any costs, expenses, charges and Losses incurred by, or imposed by the LDC or Governmental Authority upon, Buyer in its capacity as Host Customer, except if such failure is caused solely by Buyer's gross negligence or willful misconduct; and (6) the design, construction, permitting, interconnection, operation, maintenance, repair, casualty or removal of the Facility. In addition to and not a limitation of any other rights and remedies available to Buyer under this Agreement or Applicable Law, Seller shall indemnify, save harmless and defend Buyer and its officers, employees and agents against all Losses to the extent arising from or out of any of the activities referenced in subparagraphs (1)-(6), above. This indemnification obligation of Seller shall survive termination of this Agreement.

5.6 Governmental Charges.

- (a) As between Buyer and Seller, Seller is responsible for any and all Governmental Charges attributable to or arising out of the property on which the Facility is located, the Facility, the Energy, and the Net Metering Credits corresponding thereto, and the sale of such Energy and Net Metering Credits to Buyer and any Third Party Buyer, irrespective of whether imposed before, upon or after the delivery of Energy and the allocation of Net Metering Credits to Buyer or Third Party Buyer.
- (b) 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 Net Metering Credits and the assignment of Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, upon the other Party's written request therefore, provide the applicable Party with all available documentation to evidence such exemption or exclusion.

5.7 Guaranteed Annual Energy Delivery

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- (a) Seller guarantees that the Net Metering Credits made available for purchase by Buyer each Contract Year will be equal to or more than the Net Metering Credits that correspond to the quantity of Guaranteed Annual Energy Delivery, measured in kWhs, in each Contract Year as set forth in Exhibit C attached hereto.
- (b) If the Net Metering Credits delivered to Buyer in any Contract Year, measured in kWhs as aforesaid, is less than the Guaranteed Annual Energy Delivery for that Contract Year set forth in Exhibit C (a “*Production Shortfall*”), Seller shall notify Buyer in writing of such occurrence and pay to Buyer, all within thirty (30) days of the end of such Contract Year, the difference between the average value of Net Metering Credits per kWh during the period of the Production Shortfall and the Price (Exhibit A), multiplied by the Production Shortfall, except that Seller’s total obligation for the Term under this Section 5.7(b) shall not be greater than Twenty-five Thousand dollars (\$25,000) per MW (AC) Facility capacity associated with Buyer’s purchase under this Agreement (1.14 MW) (the “*Shortfall Cap*”).

ARTICLE VI PAYMENT

6.1 Payment.

- (a) Beginning with the first month that Buyer’s Recipient Account Statements reflect Net Metering Credits, Seller shall provide Buyer with an invoice (the “*Invoice*”) for the Net Metering Credits Quantity that has been credited to Buyer’s Recipient Account(s) by the LDC, according to the monthly Buyer’s Recipient Account Statement(s). At Buyer’s sole election, Seller shall provide Buyer with a separate Invoice for each department of Buyer whose accounts are included on the Schedule Z.
- (b) If Buyer allocates net metering credits to its Recipient Accounts from a source other than this Agreement, the Net Metering Credits purchased by Buyer under this Agreement shall take priority in the reduction of the LDC bill of Buyer’s Recipient Account(s) prior to such other source and shall be due and payable as provided in Section 6.1(c). This Section 6.1(b) is intended solely to give priority to Net Metering Credits purchased under this Agreement over net metering credits purchased from other sources when Buyer’s LDC bill is insufficient to offset all credits available to Buyer for that month’s LDC bill.
- (c) Unless there is a dispute over an Invoice or a portion thereof, in which event such dispute shall be resolved in accordance with Section 6.3, below, Buyer shall remit payment of the full amount of each Invoice to Seller or its designee by check or, if the Parties agree, electronic funds transfer (or other means agreeable to both Parties) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each such Invoice. Any payment not made to Seller within thirty (30) days of the Buyer’s receipt of an Invoice shall bear interest from the date on which such payment was required to have been made, through and including the date such payment is actually received by Seller. Such interest shall accrue at an annual rate equal to the Interest Rate.

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- (d) Prior to the Commercial Operations Date, Buyer shall take all reasonable actions necessary to allow Seller to electronically access, for the Term, the Host LDC Account Statement and the Buyer's Recipient Account Statements but solely for purposes of fulfilling Seller's obligations under this Agreement. Seller shall pay all reasonable costs incurred by Buyer in providing Seller such access.
- (e) The Parties shall resolve any Invoice disputes according to Section 6.3 (Invoice Disputes).

6.2 Records and Audits.

- (a) Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction and to permit verification of the Parties' compliance with this Agreement and verification of the Energy produced by the Facility. 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 such transactions during the other Party's normal business hours.

6.3 Invoice Disputes. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall promptly notify the other Party of the basis for the dispute and pay any undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate per annum at the option of the overpaying Party, subject, as to Buyer, to an appropriation of funds. The Parties shall only be entitled to dispute an amount owed or paid within twelve (12) calendar months from the date of issuance of such Invoice, unless the basis of the dispute was neither known nor reasonably knowable, in which event the dispute may be raised within 12 months from the date such Party knew or should have known of the dispute. If the Parties are unable to resolve a payment dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).

ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS

7.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of Massachusetts.
- (b) The Party has full legal capacity to enter into and perform this Agreement.

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- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall perform its obligations under this Agreement in compliance with the Applicable Law.

7.2 Forward Contract; Section 366, U.S. Bankruptcy Code. Parties acknowledge that this Agreement and the transactions contemplated hereunder are intended to constitute a “forward contract” within the meaning of the United States Bankruptcy Code, and that Seller is intended to be a “forward merchant” within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not a “utility” as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is the debtor-in-bankruptcy.

7.3 Net Metering.

- (a) Buyer acknowledges that, as of the Effective Date and pursuant to M.G.L. c. 164, § 139(f), the maximum amount of generating capacity eligible for Net Metering by a Municipality or Other Governmental Entity that serves as host customer for all the facilities generating such capacity is 10 MWs (alternating current). Buyer represents and warrants to Seller that Buyer does not own or operate, nor is it the assignee (solely or together with other Municipalities or Other Governmental Entities), of the output of Net Metering facilities with an aggregate capacity of more than 10 MWs (alternating current), including the Facility’s output, unless permitted by Applicable Law. The foregoing notwithstanding, if such 10 MW limit is increased by Applicable Law, Buyer may own, operate or be the assignee of the output of Net Metering Facilities with an aggregate capacity up to the increased amount of capacity permitted by Applicable Law.
- (b) Seller represents and warrants to Buyer that it shall exercise best and diligent efforts to construct, operate and maintain the Facility in a manner that will, throughout the term of this Agreement, qualify the Facility as a Public Facility.
- (c) Buyer and Seller acknowledge that the Facility will be a Public Facility and each Party covenants that it shall not take any action inconsistent with the Facility’s status as such except insofar as that action is authorized hereunder or in conformance with the provisions hereof, including allocating Net Metering Credits generated by the Facility to any entity that is not a Municipality or Other Governmental Entity.

**ARTICLE VIII
TERMINATION; DEFAULT**

- 8.1 Events of Default. The following shall each constitute an Event of Default by a Party.
- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed.
 - (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party promptly commences and proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same, not to exceed 180 days.
 - (c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.
 - (d) The Party becomes Bankrupt.
- 8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, promptly after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. Notwithstanding the foregoing, (i) if a *Force Majeure* event as to Seller continues for more than 365 days, Buyer may terminate this Agreement without penalty or liability to Seller upon 30 days' written notice except for obligations that arose prior to the termination, except that Buyer may not terminate the Agreement if Seller agrees in a writing received by Buyer prior to the expiration of said 30-day notice period to pay the Lost Savings to Buyer in accordance with this Section 8.2 for the period of time, measured in calendar days, from the end of the aforesaid 365-day period though and including the date upon which the Force Majeure event terminates and Seller resumes all of its obligations under this Agreement ("the Lost Savings Period"). Seller shall pay the Lost Savings on a monthly basis. Buyer and Seller shall reasonably cooperate in determining the Lost Savings. Buyer shall provide a monthly invoice to Seller for the amount due under this Section 8.2 for the Lost Savings incurred in the preceding month, and Seller shall pay that invoice amount within 30 days of receipt; and (ii) if a *Force Majeure* event as to Buyer continues for 365 days or more, Seller may

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terminate this Agreement upon 30 days' written notice without penalty or liability except for obligations that arose prior to the termination.

8.3 Termination for Default.

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1(b) for Events of Default described in that Section, and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.
- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Net Metering Credits generated subsequent to such termination date.

ARTICLE IX REMEDIES; LIMITATION OF LIABILITY; WAIVER

9.1 Remedies. Subject to the limitations set forth in this Agreement, upon an Event of Default by Buyer, Seller may terminate this Agreement, sell Energy and Net Metering Credits produced by the Facility to persons other than Buyer, and pursue all remedies available at law or in equity. Subject to the limitations set forth in this Agreement, upon the Event of Default of Seller, Buyer may cease purchasing Energy or Net Metering Credits, terminate this Agreement, and pursue all remedies available at law or in equity. Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of the other Party's non-performance under this Agreement.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE, RECKLESSNESS OR WILFULL MISCONDUCT), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO CLAIMS OF INDEMNIFICATION FOR CLAIMS ASSERTED BY THIRD PARTIES BUT ONLY TO THE EXTENT OF THE CLAIMS OF SUCH THIRD PARTIES.

9.3 Waivers.

- (a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or

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such Party's agent. Consent or approval of Seller or Buyer to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of Seller or Buyer to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of Seller or Buyer herein specified or any other right or remedy that Seller or Buyer may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other. Nothing in this Section is intended to waive or release a Party from its obligation at law to mitigate damages.

- (b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that:

- (a) without consent of Buyer, Seller
- (i) may assign its rights and obligations hereunder to an Affiliate of Seller provided that, by making any such assignment, Seller will have thereby represented and warranted to Buyer that as of the date of assignment the Affiliate has the financial ability and experience to perform all obligations under this Agreement,
 - (ii) may sell or collaterally assign this Agreement to a Lender in accordance with Section 10.2, and
 - (iii) may sell all or substantially all of the assets to, or merge with, another person or entity, or effect a change of control of Seller, whether or not Seller is the surviving entity from such action, provided that any such surviving entity assumes all obligations of Seller under this Agreement, and Seller reasonably demonstrates that, as of the date of assignment, the person or entity purchasing Seller's assets, or merging with or assuming

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control of Seller has the financial ability and experience to perform all obligations under this Agreement.

- (b) without consent of Seller, Buyer may sell or transfer Net Metering Credits to any other Municipality or Other Governmental Entity under Section 5.1(c).

10.2 Collateral Assignment; Financing Provisions:

- (a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:

- i. Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.

- ii. Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement, provided it does so in accordance with and subject to the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility, provided such exercise complies with and is subject to the terms of this Agreement;

(B) Opportunity to Cure Default. The Lender 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 thereunder or cause to be cured any default of Seller thereunder where a cure is permitted by the Agreement, provided it does so in accordance with and subject to the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender 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 it the option to do so; and

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

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such exercise shall otherwise be subject to the terms of this Agreement.

- iii. Right to Terminate with Notice to Lender. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender a copy of the written notice of its intent to terminate or suspend this Agreement delivered to Seller, provided that Buyer shall not be required to provide a copy of such notice to more than one Lender at more than one address at any point during the term of this Agreement, and provided further that notice of the identity and address of Lender has been provided to Buyer in accordance with Section 12.1. Seller shall in the same manner provide Lender with a copy of any notice received or delivered to Buyer by Seller.
 - (b) Lender a Third Party Beneficiary. Buyer agrees and acknowledges that Lender is a third party beneficiary of the provisions of this Section 10.2.
 - (c) Entry to Consent to Assignment. Buyer agrees, at Seller's cost, to execute any reasonable consents to assignment or acknowledgements of assignments. Buyer also agrees to provide, in a reasonably timely manner and at Seller's expense, information within Buyer's possession reasonably requested by Seller for Seller's or Lender's counsel to issue opinions of counsel in connection with such financing or sale of the Facility and to cooperate with counsel in providing that information in a timely manner.
- 10.3 Obligation to Negotiate to Modify Agreement Pursuant to Financing Requirements. If a Lender requires this Agreement to be modified as a condition to extending credit to Seller or providing commercially reasonable, market-based financing to Seller for or in connection with the Facility or in connection with a membership interest purchase of Seller, or if Seller, in good faith, requires the Agreement to be modified in order to finance the development, operation, maintenance, repair or removal of the Facility, the Parties shall in good faith and in a reasonably timely manner negotiate an amendment to this Agreement to reasonably conform to such requirements and to the original intent of this Agreement. If the Parties, negotiating in good faith, cannot agree on the amendments within 21 days, Seller may terminate this Agreement. Seller shall give Buyer thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination. Under no circumstances will Buyer be required under this Section 10.3 to amend the Agreement to increase the Price or decrease the Guaranteed Annual Energy Delivery.

ARTICLE XI DISPUTE RESOLUTION

- 11.1 Dispute Resolution. The Parties agree to use reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the chief executive

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- of Seller, and the chief executive of Buyer, who shall use reasonable efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other written notice that identifies with reasonable 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 14-day period is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute agree to 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. The period within which mediation must commence and be completed shall be within sixty (60) days of the expiration of the period for informal negotiations, unless such time period is modified by written agreement of the Parties involved in the dispute. 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. Mediation shall not exceed one single eight-hour day, unless otherwise agreed in writing by the Parties.
- (c) Court. If a dispute is not resolved after mediation, either Party may pursue further recourse in the Massachusetts state court in Middlesex County having subject matter jurisdiction, to whose jurisdiction the Parties hereby assent.
- (d) Survival of Dispute Resolution Provisions. The provisions of this Section 11.1 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.
- (e) Equitable Relief. Notwithstanding anything to the contrary in this Section, either Party may proceed immediately to court to seek equitable relief for perceived irreparable harm.

ARTICLE XII MISCELLANEOUS

- 12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller:	Nexamp Markets, LLC Liberty Square 3 rd Floor Boston, MA 02109 Attn: Net Metering Credit Manager
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With a copy to: Emma Kosciak
Email: ekosciak@nexamp.com

If to Buyer: Westford Town Manager
Westford Town Hall
55 Main Street
Westford, MA 01886

With a copy to: Richard T. Holland, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties' benefits, the matter shall be subject to Section 11 (regarding dispute resolution).

12.3 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

12.4 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

12.5 Press Releases. The Parties shall reasonably cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Energy and Net Metering Credits.

12.6 No Joint Venture. 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.

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- 12.7 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 12.9 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall, at the cost of the requesting Party, execute, acknowledge and deliver such reasonable documents and assurances that are reasonably requested by the other and shall, at the cost of the requesting Party, take any reasonable action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10.
- 12.10 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.
- 12.11 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, other than expressly set forth herein.
- 12.12 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, with the exception of Three Thousand Seven hundred fifty dollars (\$3,750.00) due and payable by Seller to Buyer within ninety (90) calendar days of the Effective Date for expenses associated with consolidated billing. Buyer shall coordinate the consolidation of the billing of the LDC and the competitive suppliers of electricity from whom Buyer purchases electricity.
- 12.13 Additional Terms Regarding Buyer's Obligations. Notwithstanding anything to the contrary in this Agreement, including, but not limited to, Section 12.9 (Further Assurances):
- (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 make a statement of fact of which Buyer does not have actual knowledge.
 - (b) Any requirement that Buyer cooperate or assist Seller shall not require Buyer to

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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 Law.

(d) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.

12.14 M.G.L. c. 62C, § 49A Certification. Seller hereby certifies under penalties of perjury that it has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, all as stated under M.G.L. c. 62C, §49A.

IN WITNESS WHEREOF, the Parties have executed this Energy and Net Metering Credit Purchase and Sale Agreement under seal as of the Effective Date.

BUYER

SELLER

Town of Westford

Nexamp Inc.

By its Board of Selectmen

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____, Counsel

Glossary of Terms

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

“**Applicable Law**” 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, and all approvals, licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Facility, as well as the selling and purchasing of Energy and Net Metering Credits therefrom.

“**Bankrupt**” means the Party is dissolved (other than pursuant to a consolidation, amalgamation or merger); makes a general assignment, arrangement or composition with or for the benefit of its creditors; or (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

“**Billing Period**” shall mean as defined in the Net Metering Regulations.

“**Business Day**” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“**Buyer’s Recipient Account(s)**” means the Recipient Account(s) designated by the Buyer and listed on the Schedule Z.

“**Buyer’s Recipient Account Statement(s)**” or “**LDC Account Statement(s)**” means the LDC statement(s) which accompanies the Buyer’s Recipient Account(s).

“**Commercial Operations**” shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law for the installation and operation of the Facility and the Facility has been interconnected to the LDC’s electricity distribution system, (ii) the Facility is ready and able to generate and supply electricity to the LDC’s electricity distribution system at full or substantially full capacity, (iii) all related facilities and rights, if any, have been completed or obtained to allow regular operation of the Facility, (iv) the Facility qualifies as a Public Facility, and Seller has provided reasonable evidence of that

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qualification to Buyer in writing, and (v) if applicable and to the extent required, the LDC has approved interconnection with the electricity distribution system to allow regular operation of the Facility.

“Commercial Operations Date” means the date on which the Facility achieves Commercial Operations.

“Construction Commencement Date” means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

“Contract Year” means each consecutive 365-day period, with the first such period commencing on the Commercial Operations Date.

“Energy” means the amount of electricity generated over a period of time by the Facility, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“Environmental Attribute” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes, the Net Metering Credits, and any grant of funds or other benefit for which only a governmental entity is eligible under Applicable Law, as determined by Applicable Law.

“Excess Quantity” means the quantity of Net Metering Credits (and the Energy corresponding thereto) in excess of the Quantity.

“Facility” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant facilities required to interconnect the Facility to the LDC’s electric distribution system.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados; weather conditions during the months of January through April that directly cause construction delays; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes not including the employees of Seller; lock-outs or other industrial disturbances not including employees of Seller; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority (including the LDC), acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“Governmental Authority” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, and the LDC.

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“Governmental Charges” means all applicable federal, state and local taxes (including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, 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 Facility, the property on which the Facility is located, the Energy, the Net Metering Credits, or the purchase and/or sale of Energy or Net Metering Credits.

“Guaranteed Annual Energy Delivery” has the meaning set forth in Section 5.7. The Guaranteed Annual Energy Delivery, in kWhs, for each Contract Year is set forth in Exhibit C attached to this Agreement.

“Host LDC Account” means the account established by the LDC for the Facility.

“Host LDC Account Statement” means the LDC statement which accompanies the Host LDC Account.

“Interconnection Agreement” means the interconnection agreement entered into by Seller with the LDC for the Meter, which authorizes the Facility to interconnect with the local electric distribution system.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty five (365) days and the actual number of days for which such interest is due.

“LDC” means the local electric distribution company.

“Lender” means the entity or person(s) providing financing to Seller in connection with the Facility, including any lessor. “Lender” shall not mean Seller’s trade creditors.

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

“Lost Savings” is determined by the following calculation: (Net Metering Credit Value in Contract Year X – Price for Contract Year X) x ([Guaranteed Annual Energy Delivery for Contract Year X/365] x the Lost Savings Period). The Lost Savings is not subject to the Shortfall Cap. **“Lost Savings Period”** has the meaning set forth in Section 8.2.

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“**Meter**” means the meter furnished and installed 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.

“**Municipality(ies) or Other Governmental Entity(ies)**” shall mean an entity or entities so designated by the Massachusetts Department of Public Utilities pursuant to the Net Metering Regulations.

“**Net Metering**” means the process of measuring the difference between the electricity delivered by the LDC to a net metering facility and the electricity generated by a net metering facility and fed back to the LDC, as set forth as of the Effective Date under the Net Metering Regulations.

“**Net Metering Credits**” means the monetary value of the excess electricity generated by a net metering facility, as currently stated as of the Effective Date under “Net Metering Credits” in the Tariff, and is calculated as of the Effective Date by the LDC according to 220 C.M.R. 18:04 and the Tariff §1.06, and excluding, for the avoidance of doubt, any Tax Attributes and Environmental Attributes.

“**Net Metering Credit Value**” shall be the value determined under Net Metering Regulation 220 CMR §18.04(1) for the relevant Billing Period.

“**Net Metering Regulations**” means the Applicable Law as it applies to Net Metering. Specifically, that Applicable Law found as of the Effective Date at M.G.L. c. 164, §§138 – 143 and 220 C.M.R. §18.00, *et seq.*, as they may be amended from time to time, and including all regulatory agency orders pertaining thereto.

“**Outside Construction Commencement Date**” means the date by which site preparation and substantial construction activities must begin at the Facility site, which date shall occur no later than 180 days after the Effective Date.

“**Production Shortfall**” has the meaning set forth in Section 5.7.

“**Public Cap**” means the LDC’s aggregate Net Metering capacity MW limit for all Public Facilities, pursuant to M.G.L. c. 164, §139(f).

“**Public Facility**” means a Class II or III Net Metering Facility: (1) that is owned or operated by a Municipality or Other Governmental Entity; or (2) of which the Municipality or Other Governmental Entity (a) is assigned 100 percent of the output; (b) is the Host Customer; and (c) if allocating Net Metering credits, allocates only to Municipalities or Other Governmental Entities.

“**Quantity**” has the meaning set forth in Section 5.1(a).

“**Recipient Account(s)**” means the LDC accounts designated by Buyer and listed on the Schedule Z.

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“Recipient Account Statement(s)” means the LDC statement(s) which accompanies the Buyer’s Recipient Account(s).

“Renewable Energy Certificate” or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, any Tax Attributes and the Net Metering Credits.

“Shortfall Cap” has the meaning set forth in Section 5.7(b).

“Tariff” means the LDC tariff for interconnection for distributed generation and net metering services, as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

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

“Third Party Buyer” is defined in Section 5.1(a).

EXHIBIT A

PRICE

Commencing on the Commercial Operations Date and continuing thereafter for each year of the Term, the Price shall be \$0.086/kWh escalating at 1.75% per year, subject to adjustment as stated in Section 5.3 (regarding sales to Third Party Buyers).

<u>Delivery Year</u>	<u>Price per kWh (\$/kWh)</u>
1	\$ 0.086
2	\$ 0.088
3	\$ 0.089
4	\$ 0.091
5	\$ 0.092
6	\$ 0.094
7	\$ 0.095
8	\$ 0.097
9	\$ 0.099
10	\$ 0.101
11	\$ 0.102
12	\$ 0.104
13	\$ 0.106
14	\$ 0.108
15	\$ 0.110
16	\$ 0.112
17	\$ 0.114
18	\$ 0.116
19	\$ 0.118
20	\$ 0.120

EXHIBIT B

FACILITY AND PROPERTY DESCRIPTIONS

A 2.8 MW alternating current (AC) solar photovoltaic array located on one privately-owned parcel of land located on the northeasterly side of Pitcherville Road in Hubbardston, MA. The Facility will be a ground mounted system with a design consisting of approximately 11,000 modules on approximately 50 acres and will use inverters to connect direct current (DC) electricity into AC electricity suitable for feeding in the electric grid, through an LDC metering device. The Facility will be installed using a pile-driven mounting system which positions modules at a 20 degree tilt and a 180 degree azimuth. The Facility will include a data acquisition system that contains a revenue grade meter and additional equipment that will measure the temperature and solar insolation.

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EXHIBIT C

GUARANTEED ANNUAL ENERGY DELIVERY TO BUYER*

Contract Year	Estimated Annual Energy Delivery (kWh)	Guaranteed Annual Energy Delivery (kWh)
1	1,722,377	1,464,020
2	1,713,765	1,456,700
3	1,705,196	1,449,417
4	1,696,670	1,442,170
5	1,688,187	1,434,959
6	1,679,746	1,427,784
7	1,671,347	1,420,645
8	1,662,991	1,413,542
9	1,654,676	1,406,474
10	1,646,402	1,399,442
11	1,638,170	1,392,445
12	1,629,979	1,385,482
13	1,621,829	1,378,555
14	1,613,720	1,371,662
15	1,605,652	1,364,804
16	1,597,623	1,357,980
17	1,589,635	1,351,190
18	1,581,687	1,344,434
19	1,573,779	1,337,712
20	1,565,910	1,331,023

*The amounts contained in this Exhibit C represent Buyer’s portion of the Facility output, not the entire Facility output.