



**COMMUNITY SOLAR POWER SERVICES
AGREEMENT**

Between

HIGH PEAKS SOLAR, LLC,
A New York Limited Liability Company
("Provider"),

And

Sample Customer
("Customer"),

2/12/2018
(the "Effective Date")

COMMUNITY SOLAR POWER SERVICES AGREEMENT

THIS COMMUNITY SOLAR POWER SERVICES (this "Agreement") is made effective as of 2/12/2018 (the "Effective Date"), between/among HIGH PEAKS SOLAR, LLC, a limited liability company ("Provider"), and Sample Customer ("Customer"). Provider and Customer are sometimes referred to individually as a Party and collectively as the Parties.

BACKGROUND

WHEREAS, Customer desires that Provider finance, install, maintain, own and operate at the Property a solar photovoltaic system (the "**System**") for the purpose of providing a Community Distributed Generation System (as hereafter defined) to Customer, and Provider is willing to undertake and to provide the same;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Production" means for any period, the actual net electrical production, in kWh, of the System.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

"Agreement" means this Contract for Solar Power Services, including the Exhibits attached hereto.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority .

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in New York, New York are required or authorized by Applicable Law to be closed for business.

"Commercial Operation Date" means the date on which the System is ready for commercial operation after required testing.

Community Distributed Generation System or "CDG" means a solar project whose electrical generation is distributed to multiple entities through remote net metering.

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

"Customer Default" has the meaning set forth in **Section 9.2(a)**.

"Delivery Point" means the point of delivery of the Solar Services, which shall be at the Meter.

"Dispute" has the meaning set forth in **Section 10.1**.

"Effective Date" has the meaning set forth in the preamble hereof.

"Environmental Attributes" means all products of the System other than electricity, including but not limited to carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, tax credits, emissions allowances, green tags, tradable renewable credits and Green-e ® products.

"Environmental Law" means all laws of any Governmental Authority having jurisdiction over any Property addressing pollution or protection of the environment and all amendments to such laws and all regulations implementing any of the foregoing.

"Expiration Date" has the meaning set forth in **Section 7.1**.

"Financing Party" means any third-party entity providing debt or equity financing to Provider with respect to a System, including any investor pursuant to a sale/leaseback transaction.

"Force Majeure Event" has the meaning set forth in **Section 9.3**.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government including, without limitation, any governmental or quasi-governmental entity

"Indemnified Party" has the meaning set forth in **Section 1 3.3**.

"Initial Term" has the meaning set forth in **Section 7.1**.

"Insolation" means the amount of kWhs per square meter falling on a particular location, as published by the National Renewable Energy Laboratory.

"Interconnection Point" has the meaning set forth in **Section 6.5**.

"kWh Rate" has the meaning set forth in **Section 3.1**.

"Local Electric Utility" means the local electric distribution system providing interconnection services for a System or electric service to Customer at a specific Property.

"NYSERDA" means New York State Energy Research and Development Authority.

"Party" or "Parties" means Provider or Customer.

"Performance guarantee" means the method of calculating any shortfall in power allocation to the Customer. Please see Exhibit B for details. **Section 13.3.**

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm or other entity, or a Governmental Authority.

"Property" means the premises on which the solar generator is located.

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

"Provider Default" has the meaning set forth in **Section 9. I(a).**

"Rebates" shall mean any and all rebates, incentives, payments, credits or other funding offered for the development of photovoltaic systems by utility, Governmental Authority or other Person.

"Renewal Term" has the meaning set forth in **Section 7.1.**

"Solar Services" means the supply of on-site net electrical output in kWh (AC) from the System to account owned by Customer.

"Solar Services Payment" has the meaning set forth in **Section 3.1.**

"Stated Rate" means a rate per annum equal to the lesser of (a) two percent (2%) or (b) the maximum rate allowed by Applicable Law.

"System" means an integrated ground-mount assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring and interconnections with the Local Electric Utility.

"Tax Attributes" means the investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under the Internal Revenue Code or Applicable Law available as a result of the ownership and operation of the System or the output generated by the System (including, without limitation, tax credits, any grants or payments in lieu thereof and accelerated and/or bonus depreciation.)

"Term" has the meaning set forth in **Section 7.1.**

ARTICLE II. DELIVERY OF SOLAR SERVICES

2.1 **Purchase Requirement.** Customer agrees to purchase approximately 6897 kWh of electricity from the Community Distributed Generation project as defined in Exhibit A during the Term set forth in Exhibit A and at the kWh Rate set forth in Exhibit A whether or not Customer is able to use all such Solar Services. Credits will be valued based on Net Energy Metering. The purchase of Solar Services hereunder does not include Environmental Attributes, Rebates or any other attributes of ownership of the System, title to which shall rest solely with Provider. Credits to customer's bill will offset both supply and delivery portions of bill. Credits will be received through Utility's billing, appearing as credits applied to total usage. Should customer receive more kilowatt hour credits during a given month, customer will bank those credits to offset future months' usage. If more energy is used, Utility will bill customer the difference between credits and actual usage, at Utility's normal retail rate.

ARTICLE III.
PRICE AND PAYMENT.

3.1. **Consideration.** Customer shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services delivered to Customer from each System during each monthly Period. For any such monthly period, the Solar Services Payment shall be equal to **0.102** dollars per kWh for a term of **5 Years** Provider shall invoice Customer on a calendar month basis following each monthly Period. The last invoice shall include production only through the Expiration Date. Customer shall pay any Solar Services Payment invoice within thirty (30) days of receipt thereof.

3.2. **Method of Payment.** Customer shall make all payments under this Agreement by mandatory ACH (using bank account or credit card) payable to the address set forth in Paragraph 5.2 below. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Late payments may also be subject to a \$10.00 late charge if not paid within 30 days of invoice receipt.

3.3. **Payment Disputes.** If Customer objects to all or a portion of an invoice, it shall, on or before the date payment is due, provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Customer does not object prior to the date a payment is due, it shall be obligated to pay the full payment amount without prejudice to its right to subsequently dispute such amount; provided, however, that Customer may not object to any invoice more than twelve (12) months after the date on which such invoice was provided to Customer.

3.4. **Change in Law.** If there is any change in Applicable Law subsequent to the Effective Date that results in a direct and material change in Provider's costs to provide the Solar Services, Provider shall promptly submit to Customer a written notice setting forth (i) the citation of the change in Applicable Law, (ii) the manner in which such change materially increases Provider's costs to provide the Solar Services, and (iii) Provider's proposed adjustment to the kWh Rates to reflect such material changes in Provider's costs. Customer agrees to negotiate a commercially reasonable adjustment in the kWh Rates with Provider, such that the new kWh Rates effectively compensate Provider for the cost increase related to the change of Applicable Law.

3.5. **Down Payments.** All subscribers will be required to make a refundable \$110.00 down payment at the time of contract signing. This down payment is refundable to the customer if they cancel within the specified timeframe as shown in Exhibit 1. The Provider will also refund this down payment in the event the project does not ever reach the Commercial Operation date.

3.6. **Prepayments.** Customers that choose a Track 2 prepayment option will have the rights to 20 years of solar credits at no additional costs. This prepayment amount will be due prior to the Commercial Operation Date of the Project. This amount will total as shown in Exhibit A and be due within thirty days of invoicing. Invoices will be sent during Project construction.

ARTICLE IV. Reserved

ARTICLE V.
CONSTRUCTTON AND OPERATTON.

5.1. **Installation.** Provider shall cause each System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement and Applicable Law.

5.2. **Notices.** Each System shall be owned, operated, maintained and repaired by Provider at its sole cost and expense, and in a manner consistent with Applicable Law and good industry practices. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice to the other. For routine and emergency repairs, the Parties shall contact the persons set forth below:

For Customer:

Sample Customer
180 Main Avenue
Wynantskill, NY 12198
test@gmail.com

For Provider:

Mr. Kevin Bailey
High Peaks Solar, LLC
180 Main Avenue
Wynantskill, New York 12198
kbailey@highpeakssolar.com

5.3. **Outages.** Provider shall be entitled to suspend delivery of Actual Production to the Property for the purpose of testing, maintaining, replacing and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided that Provider shall use commercially reasonable efforts to minimize any interruption in service to Customer. Provider shall not have any obligation to reimburse Customer for costs of purchasing energy that would have been produced by the System but for such suspension.

5.10. **Limits on Obligation to Deliver.** Provider offers a Performance Guarantee as stated in Exhibit B. Other than as stated in Exhibit B, Provider does not warrant or guarantee the amount of electric energy to be produced by the System for any hourly, daily, monthly, annual or other period. Provider is not an electric utility or public service company and does not assume any obligations of an electric utility or public service company to supply Customers' electric requirements. Provider is not subject to rate review by any Governmental Authority.

5.11. **Back-up and Supplemental Electricity.** Customer shall be responsible for obtaining and paying for all of its requirements for back-up energy or supplemental energy in excess of the amounts produced by the System. Provider shall have no obligation to obtain or pay for such back-up or supplemental energy.

5.12. **Net Metering & Utility Credits.** At any time that electric production from the System is greater than Customer's requirements at such time, Customer shall nevertheless pay Provider for all of the electricity produced by the System at the rates and in the manner provided in this Agreement. However, if the agreed upon number of annual kWh credits that the customer received exceeds their annual usage, High Peaks Solar can adjust the subscription amount to lessen the customer's expected annual allotment. Customer may make arrangements so that electricity in excess of Customer's requirements may be delivered to the Local Electric Utility at the Interconnection Point and Customer shall be permitted to retain any credits or payments from the Local Electric Utility that may be available under net metering or similar programs excluding any such credits or payments to which Provider is entitled pursuant to this Agreement. For the avoidance of doubt, Provider is not entitled to any virtual net metering monetary credits under this Agreement. Provider shall reasonably cooperate with Customer to facilitate Customer's receipt of payments or benefits under such net metering or similar programs and if Provider is deemed to be the owner of any such credits or payments under net metering or similar programs, Provider shall assign the same (or the proceeds thereof) to Customer.

5.13. **No Resale of Electricity.** The energy purchased by Customer from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Provider, which approval shall not be unreasonably withheld, and Customer shall not take any action which would cause Customer or Provider to become an electric utility or public service company.

ARTICLE VI. TITLE TO SYSTEMS.

6.1. **Title to System.** Provider shall retain title to and be the legal and beneficial owner of each System at all times. Absent further written election by Provider, each System shall (i) remain the personal property of Provider and shall not attach to or be deemed a part of, or fixture to, the Property, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its title to and rights in the System. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701 (e)(4)(A)(i) of the Internal Revenue Code, as amended, and the terms of this Agreement shall be construed consistently with the intention of the Parties. Notwithstanding the foregoing, Financing Party may hold title to the System pursuant to a sale/leaseback transaction.

6.2. **Ownership of Attributes.** As between the Parties, Provider shall retain the exclusive right to take or sell all System products, including electricity, capacity and all Environmental Attributes and Tax Attributes. Customer shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Environmental Attributes and Tax Attributes, and if is deemed to be the owner of any such Environmental Attributes or Tax Attributes, Customer shall assign the same (or the proceeds thereof) to Provider. Provider shall reimburse Customer for any actual out-of-pocket costs or expenses reasonably incurred in connection with such actions. If Customer receives any payments in respect of such Environmental Attributes or Tax Attributes, it shall promptly pay them over to Provider.

6.3. **Ownership of Rebates: Customer Rebate Assistance.** All Rebates available in connection with the System are owned by Provider. Customer shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Rebates, and if Customer is deemed to be the owner of such Rebates, Customer shall assign the same to Provider. Provider shall reimburse Customer for any actual out-of-pocket costs or expenses reasonably incurred in connection with such actions. If Customer receives any payments in respect of Rebates it shall promptly pay them over to Provider.

6.4. **Capacity & Ancillary Services.** Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the System. Customer shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such payments, and if Customer is deemed to be the owner or provider of such capacity or services, Customer shall assign the same to Provider. Provider shall reimburse Customer for any actual out-of-pocket costs or expenses reasonably incurred in connection with such actions. If Customer receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

6.5. **Risk of Loss; Exclusive Control.** As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Actual Production up to but excluding the point where each System is interconnected to the grid (the "Interconnection Point").

6.6. **Taxes and Assessments.** Provider will pay and be responsible for any sales or use tax imposed with respect to Provider's acquisition and installation of the System. Provider shall not be obligated for any taxes payable by or assessed against Customer based on or related to Customer's income or revenues. Provider shall pay and be responsible for any sales, use, excise, transfer and other similar taxes or assessments levied on the sale or deliveries of the Solar Services hereunder (regardless of whether such taxes or assessments are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such taxes or assessments. Customer shall provide Provider with applicable tax exemption documents and shall cooperate with Provider to minimize the impact of any such taxes and assessments.

6.7. **Provider Safety Shutdown.** In addition to the right of Provider to shut down the System for maintenance or emergency repairs as provided in this Agreement, Provider may shutdown the System if in the exercise of its reasonable judgment, Provider believes Site conditions or activities of persons on the Site which are not under the control of Provider, whether or not under the control of Customer, may interfere with the safe operation of the System. Provider shall give Customer notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities as well as a diagnosis of the issue that caused the shutdown and an action plan to correct the issue. Provider will provide timely and periodic updates on its progress in resolving the issue and any required update to its action plan.

ARTICLE VII. TERM.

7.1. **Term.** In Section 7.1 Term should read as follows: The initial term of this Agreement shall commence on the Commercial Operation Date and shall continue to apply for a period ending on the anniversary of the Commercial Operation Date for the length of the Term. This shall be known as the Expiration Date. The length of this term is specified in Appendix A of this contract. Before the Term is over, the customer will have the option for a renewal term. This renewal term will be subject to new terms and conditions. The maximum length of a renewal term will be another five year term.

7.2. **Early Termination by Customer.** Customer shall have the right to unilaterally terminate this Agreement with respect to the system. Notice must be given to the Provider, in writing, at least 60 days prior to the termination request date. With 60 days notice, the Customer will stop receiving a solar credit allocation and will no longer make payments following two further billing cycles.

ARTICLE VIII.
REPRESENTATIONS AND WARRANTIES.

Each Party represents and warrants to the other as of the Effective Date:

81. **Organization; Existence; Good Standing.** Such Party is duly organized, validly existing and in good standing in the jurisdiction of its organization. Such Party has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, and such Party has taken all requisite corporate, body politic or other action to approve the execution, delivery and performance of this Agreement.

82. **Binding Obligation.** This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to creditors' rights generally.

83. **Execution and Performance.** Such Party's execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational laws or documents, or (iii) any Applicable Laws. To the knowledge of each Party, there are no commitments to third parties that may impair or otherwise adversely affect the performance of such Party under this Agreement, or the construction, installation or function of a System on the Property.

84. **Service Contract.** This Agreement is a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code.

85. Additional Representation of Customer.

(a) **Electric Usage.** Customer has provided to Provider complete and correct records of its electric usage at the Site for the preceding one (1) year.

(b) **Credit Check Authorization.** Customer authorizes Provider to conduct a credit check to evaluate Customer's financial condition and ability to timely pay the financial obligations set forth in this Agreement.

ARTICLE IX.
DEFAULT AND FORCE MAJEURE.

9.1. Provider Defaults.

(a) **Provider Default Defined.** The following events shall be defaults with respect to Provider (each, a "Provider Default"):

(i) If Provider breaches any material term of this Agreement and (a) if such breach can be cured within thirty (30) days after Customer's notice of such breach and Provider fails to so cure, or (b) Provider otherwise fails to commence and diligently pursue and complete said cure within ninety (90) days, or

(ii) (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

(b) **Customer's Remedies.** If a Provider default described in Section 9.1(a) has occurred and is continuing, Customer may terminate this agreement immediately.

9.2. Customer Defaults.

(a) **Customer Default Defined.** The following events shall be defaults with respect to Customer (each, a "Customer Default"):

(i) Customer fails to pay Provider any undisputed amount due Provider under this Agreement within five (5) Business Days from receipt of notice from Provider of such past due amount;

(ii) Customer breaches any material term of this Agreement if (a) such breach can be cured within thirty (30) days after Provider's notice of such breach and Customer fails to so cure, or (b) Customer otherwise fails to commence and diligently pursue and complete said cure within ninety (90) days; or

(iii) (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (F) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (G) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

(b) **Provider's Remedies.** If a Customer Default described in Section 9.02Ca) has occurred and is continuing, then in addition to (and not in lieu of) any other remedy it may have in law or equity, may do any or all of the following: (i) remove Customer from the list of participating Members of the Community Distributed Generation group on file with the Utility and/or (ii) terminate this Agreement immediately.

9.3. **Force Majeure.** A "Force Majeure Event" means any event which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such event, despite the exercise of reasonable diligence, cannot be prevented, avoided or overcome by such Party, (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof: and (iv) such event is not the direct or indirect result of a Party's negligence or the failure of such Party to perform any of its obligations under this Agreement or to comply with Applicable Law. Notwithstanding any other term hereof, no payment obligation of Customer under this Agreement may be excused or delayed as a result of a Force Majeure Event, unless such Force Majeure directly causes Customer to be unable to make payments due under this Agreement.

(a) A Party claiming a Force Majeure Event shall not be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; provided that the Party claiming relief shall immediately notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter.

9.4. **LIMITATION ON LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

ARTICLE X. DISPUTE RESOLUTION.

10.1. **Resolution by Parties.** In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of the Dispute has been delivered to either party, then either Party may pursue all of its remedies available hereunder. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner. In the event a dispute hereunder is resolved pursuant to arbitration or judicial proceedings, the Party, whose petition does not prevail in such proceedings, shall reimburse all of the other Party's third party costs (including reasonable attorney's fees) incurred to prosecute or defend (as the case may be) such proceedings. Customer has the right to contact the New York State Department of Public Service in order to file a complaint.

Website:

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/B40C096675BE10C085257687006F39E7?OpenDocument>

Telephone:

1-800-342-3377

Mailing Address:

Office of Consumer Services
NYS Department of Public Service
3 Empire State Plaza
Albany, NY 12223

ARTICLE XI.
CUSTOMER PRIVACY

11.1 **Data Sharing & Privacy Policy.** Provider's email service, GoDaddy.com, complies with standards set by EU-U.S. Privacy Shield Program (<http://www.privacyshield.gov>). Provider does not share customer data with any third party entity.

ARTICLE XII.
ASSIGNMENT.

12.1. **Generally.** This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Customer and their respective successors and permitted assigns. Any purported assignment in violation of this Article XIT shall be null and void *ab initio*.

12.2. **Assignment by Customer.** Customer shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld.

ARTICLE XIII.
INDEMNIFICATION.

13.1. **Indemnification by Provider.** Subject to **Section 11.01**, Provider shall fully indemnify, save harmless and defend Customer, its contractors, subcontractors, directors, officers, employees, agents and invitees from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control or (b) any work performed by Provider, its agents, servants, subcontractors or employees of the Property or any premises or facilities, or part thereof, owned by Customer or (c) a Provider Default; provided, however, that Provider's obligations pursuant to this **Section 13.1**, shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Customer; provided further, however, that nothing in this Section is intended to modify the limitation of Provider's liability set forth in **Section 9.4**. This agreement to indemnify specifically includes full indemnity in the event of liability imposed against Customer solely by reason of statute, operation of law or otherwise.

13.2. **Notice of Claims.** Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.3. **Survival of Provisions.** The provisions of this **Article 13** shall survive the expiration or termination of this Agreement.

ARTICLE XIV.
MISCELLANEOUS.

14.1. **Additional Documents.** Upon the receipt of a written request from another Party, each Party shall execute such additional documents, instruments, estoppels, consents, confirmations and assurances, and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

14.2. **Integration; Attachments.** This Agreement, together with the Schedules and any Exhibits attached hereto, constitutes the entire agreement and understanding between Provider and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

14.3. **Industry Standards.** Except as otherwise set forth herein, for the purpose of this Agreement accepted standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

14.4. **Industry Standards.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Customer.

14.5. **Industry Standards.** No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The failure of Provider or Customer to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision in any other instance, or of any other provision in any instance. No single or partial exercise of any right under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right; and no waiver of any breach of or default under any provision of this Agreement shall constitute or be construed as a waiver of any subsequent breach of or default under that or any other provision of this Agreement.

14.6. **Survival.** The obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement to the extent necessary to give them full effect.

14.7. **Governing Law: Jurisdiction; Forum.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without reference to any choice of law principles. Any legal action or proceeding with respect to or arising out of this Agreement shall be brought in or removed to the courts of the State of New York and of the United States of America in and for the State of New York. By execution and delivery of this Agreement, Provider and Customer accept, generally and unconditionally, the jurisdiction of the aforesaid courts. Provider and Customer hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis *of forum non-conveniens*.

14.8. **Waiver of Jury Trial** TO THE EXTENT ENFORCEABLE UNDER APPLICABLE LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PROVIDER TO ENTER INTO THIS AGREEMENT.

14.9. **Severability** Any term, covenant or condition in this Agreement that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Agreement to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Agreement, or of such provision in other jurisdictions. The Parties shall use good faith effort to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as possible corresponds to the spirit and purpose of such ineffective provision.

14.10. **Headings** The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

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

14.12. **Injunctive Relief.** The Parties acknowledge and agree that any violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such a violation or breach, and regardless of any other provision contained in this Agreement, such Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

14.13. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

14.14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one 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.

14.15. **No Public Utility.** Neither Party shall assert that Provider is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Provider's obligations or performance under this Agreement. If at any time as a result of any Change in Law, Provider would be subject to regulation as an electric utility or public service company (or its equivalent) by any Governmental Authority by virtue of this Agreement, Customer will use its best efforts to restructure this Agreement so that Provider will not be subject to such regulation (while preserving for both Parties the substantive economic benefits conferred hereunder).

14.16. **No Recourse to Affiliates.** This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

14.17. **Notices.** Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider:

Mr. Kevin Bailey
High Peaks Solar, LLC
180 Main Avenue
Wynantskill, New York 12198
kbailey@highpeakssolar.com

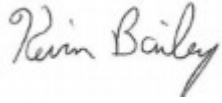
If to Customer:

Sample Customer
180 Main Avenue
Wynantskill, NY 12198
test@gmail.com

or at such other address as may be designated in writing to the other Party. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand-delivered, or sent by (a) registered or certified U.S. Mail, postage prepaid, (b) commercial overnight delivery service, or (c) facsimile or email attachment, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand-delivered, or upon confirmation of sending when sent by facsimile or email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail. Customer shall deliver to any Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Customer under this Agreement, inclusive of a reasonable description of Provider Default, and no such notice shall be effective absent delivery to the Financing Party. Customer shall not mutually agree with Provider to terminate this Agreement without the written consent of the Financing Party.

IN WITNESS WHEREOF intending to be legally bound hereby, the Parties have executed this as of the Effective Date.

PROVIDER: High Peaks Solar, LLC

By: 

Name: **Kevin Bailey**

Title: _____

CUSTOMER:

By: _____

Name: Sample

Customer Title:

Homeowner

Exhibit A
RATES AND TERMS

Term is **5 Years**.

This contract is an obligated price of **0.102** per kWh.

Down Payment:

Both the no money down Pay as You Go model and the prepayment option require a down payment of \$110.00 at the time of contract signing. All of this down payment is refundable if the Provider does not proceed with the construction. Half of this deposit is refundable if the customer chooses to opt out of the project within the specified time frame.

Monthly Payment:

The budget price plan will cost the customer **\$58.62** per month.

Prepayment:

The pre-payment for this project is **\$0**.

System Production:

The expected minimum annual kWh production from this system is 6207.3 kWh.

System Address:

Hope Solar Farm: 566 Brunswick Road, Troy, NY 12180

EXHIBIT B.
100% PERFORMANCE GUARANTEE

High Peaks Solar expects that this system should produce 6897 kWh per year ("Guaranteed kWh"). In the event that the system produces less than 90% of this Guaranteed kWh, High Peaks Solar will reimburse the Customer for 100% of their missing kWh total at the contracted rate per kWh ("Energy Price").

This guarantee does not apply for missing production due to Force Majeure as stated in Section 9.3, including but not limited to, any event, condition or circumstance beyond the control of and not caused by Provider's fault or negligence; a power or voltage surge caused by someone other than Provider including a grid supply voltage outside of the standard range specified by the Utility and theft of the System.

High Peaks Solar will notify the Customer in writing if their projected energy production has fallen short by 90%.

High Peaks Solar guarantees that during the term of this Agreement the System will generate the kilowatt-hours (kWh) of energy set forth above as follows:

A. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh generated by the System is less than the Guaranteed kWh, then Provider will send Customer a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Energy Price per kWh. Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the Actual kWh is greater than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. **Actual kWh** means the AC electricity produced by the System in kilowatt-hours measured and recorded by Provider during each successive sixty (60) month anniversary of the Commercial Operation Date. To measure the Actual kWh we will use the revenue grade meters installed for the project or to the extent such services are not available, Provider will estimate the Actual kWh by reasonable means.

**EXHIBIT 1 (CUSTOMER COPY) NOTICE OF CANCELLATION
STATUTORILY REQUIRED LANGUAGE**

Notice of Cancellation Date of Transaction: The date you signed the Power Purchase Agreement.

You may CANCEL this transaction, without any penalty or obligation, within THIRTY BUSINESS DAYS from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within TEN DAYS following receipt by the seller (High Peaks Solar) of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller (High Peaks Solar) at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller (High Peaks Solar) regarding the return shipment of the goods at the seller's (High Peaks Solar's) expense and risk. If you do make the goods available to the seller (High Peaks Solar) and the seller (High Peaks Solar) does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller (High Peaks Solar), or if you agree to return the goods to the seller (High Peaks Solar) and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to Kevin Bailey High Peaks Solar 180 Main Avenue, Wynantskill, New York 12198 NOT LATER THAN MIDNIGHT of the date that is THIRTY BUSINESS DAYS from the date you signed the Power Purchase Agreement.

I, _____, HEREBY CANCEL THIS TRANSACTION on

_____. Customer's Signature:

_____ Customer's Signature: