

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Vivint Solar Developer, Docket No. \_\_\_\_\_  
LLC for Declaratory Statement  
Regarding Leasing of Solar Equipment Filed: May 23, 2018  
\_\_\_\_\_ /

**PETITION FOR DECLARATORY STATEMENT  
BY VIVINT SOLAR DEVELOPER, LLC**

Pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, Vivint Solar Developer, LLC. (“Vivint Solar”) petitions the Florida Public Service Commission (“Commission”) for a declaratory statement that: (1) Vivint Solar’s residential solar equipment lease does not constitute a sale of electricity; (2) offering its solar equipment lease to consumers in Florida will not cause Vivint Solar to be deemed a public utility under Florida law; and (3) the residential solar equipment lease described in this petition will not subject Vivint Solar or Vivint Solar’s customer-lessees to regulation by this Commission.

1. Vivint Solar’s proposed residential solar equipment lease, a draft copy of which is attached hereto as Exhibit “A,” comprises a standard equipment lease agreement for the lease of solar generating equipment to residential customer-lessees and includes Vivint Solar’s basic workmanship warranty and service to repair or replace defective equipment. Vivint Solar offers its draft lease for the limited purpose of Commission review to verify the facts as set forth in this Petition. In support of its petition, Vivint Solar states:

2. The name and address of the agency affected by this Petition:

Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, FL 32399-0850

3. The name and address of Petitioner are:

Vivint Solar Developer, LLC  
1800 W. Ashton Blvd.  
Lehi, UT 84043

4. All notices, pleadings, documents and other communications filed in this docket

are to be directed to:

Marsha E. Rule  
Rutledge Ecenia, P.A.  
Fla. Bar No. 0302066  
119 South Monroe Street, Suite 202  
Tallahassee, Florida 32301  
Email: marsha@rutledge-ecenia.com  
Phone: 850.681.6788  
Fax: 850.681.6515

and

Rich Zambo  
Fla. Bar No. 312525  
Richard A. Zambo, P.A.  
2336 S.E. Ocean Boulevard, #309  
Stuart, Florida 34966  
Email: richzambo@aol.com  
Phone: 954.224.5863

With copy to:

Andrew Walton  
Senior Corporate Counsel – Vivint Solar  
1800 W. Ashton Blvd.  
Lehi, UT 84043  
Email: Andrew.walton@vivintsolar.com  
Phone: 385.275.8723

**I. DESCRIPTION OF VIVINT SOLAR AND SUMMARY OF ITS FLORIDA RESIDENTIAL SOLAR EQUIPMENT LEASE OFFERING**

5. Vivint Solar is one of the nation's largest dedicated residential solar, storage, and energy services company, with over 125,000 customers in 21 states and the District of Columbia.

Vivint Solar offers solar equipment cash sales in those 21 states, and also offers a solar equipment lease program to homeowners in a number of states, including: Arizona, California, and South Carolina, with plans to expand to additional states. Vivint Solar now seeks to offer its residential equipment lease program to Florida residential customers. Vivint Solar has over 3,000 employees across the United States and currently has over 65 full-time employees and dealer representatives in Florida.

6. In Florida, Vivint Solar currently sells solar equipment to residential customers but does not offer a lease option.<sup>1</sup> Customers who cannot pay cash for their solar generating equipment have the option to finance the purchase of their solar equipment. Vivint Solar is aware of this Commission's recent decision in Order No. PSC-2018-0251-DS-EQ, issued on May 17, 2018, in Docket No. 20170273-EQ (*Petition by Sunrun Inc. for declaratory statement concerning leasing of solar equipment*) ("*Sunrun*"), and notes that such decision is limited to the specific facts described in Sunrun's petition. Vivint Solar seeks this declaratory statement to remove questions or doubts concerning the applicability of the statutes, rules and orders identified herein to Vivint Solar's particular set of circumstances, including its proposed long-term lease of solar generating equipment to residential customers throughout the State of Florida.

7. Vivint Solar's proposed solar equipment lease will provide another financing option to Florida homeowners who prefer not to, or cannot afford to, purchase and pay upfront for a residential solar system. Vivint Solar's proposed Florida residential solar equipment lease, which complies with Florida law and is consistent with prior Commission precedent, will consist of a 20-year lease of solar equipment intended to provide a homeowner with the means to

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<sup>1</sup> For a detailed description of Vivint Solar's current product offerings in Florida, please go to [www.vivintsolar.com/state/florida](http://www.vivintsolar.com/state/florida).

potentially generate enough solar electricity to provide much of the electricity needed for that residence. Vivint Solar's residential solar equipment lease will include the following non-exhaustive material terms or conditions:

- a. The monthly lease payments over the 20-year lease will be scheduled upfront in each customer-lessee's lease agreement. Vivint Solar structures the customer-lessee's payments based on costs to purchase the solar equipment and install the system, plus a rate of return for Vivint Solar's investment. The customer-lessee's payments under Vivint Solar's contemplated solar equipment lease in Florida will be independent of electricity generated by the solar system, utility prices, maintenance activities, solar irradiance, or any other operating variable of the leased equipment.
- b. Vivint Solar will hold legal title to the leased equipment and receive all Investment Tax Credits, depreciation and any other benefits associated with the investment.
- c. Vivint Solar will have no control over the use of the equipment other than as the beneficiary of representations and covenants from the customer-lessee contained in the lease.
- d. At the lease expiration, the customer-lessee may purchase the solar equipment at fair market value, renew the lease on an annual basis, or request removal of the equipment at no additional cost.
- e. Vivint Solar will provide industry standard workmanship warranties to ensure the highest quality during the installation period and protect the customer-lessee's home from damage during the installation process. The customer-lessee will bear the cost for ongoing system maintenance through the specified monthly lease payments. The system's equipment warranties and maintenance services are triggered by damage to or

malfunction of the system or its components, and are not dependent on electric generation or system production rates.

- f. The customer-lessee will be responsible for the cost of non-warranty maintenance, repair, and replacement, including, for example, alteration of the system and any damage to the system due to windstorm, vandalism, negligence or other events not directly caused by Vivint Solar.
- g. Once the system is installed and interconnected, the costs and expenses of maintaining and insuring the equipment and the operational burden of assuring adequate solar exposure conditions are all borne by the customer-lessee except to the extent assumed by Vivint Solar through the maintenance provisions of the lease.
- h. The customer-lessee will be responsible for all taxes assessed on or arising from installation or operation of the leased equipment.
- i. Lease terms and conditions will be compliant with Florida state law, applicable IRS and accounting standards.

## **II. DECLARATORY STATEMENT REQUESTED**

8. Section 120.565, Florida Statutes, states:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

The declaratory statement procedure can assist persons to plan their future conduct and “avoid costly administrative litigation by selecting the proper course of action in advance.” *Chiles v. Dep’t of State, Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1988); *Adventist Health System/Sunbelt, Inc. v. Agency for Health Care Admin.*, 955 So.2d 1173 (Fla. 1st DCA 2007).

Vivint Solar will offer and market its residential solar equipment lease in Florida contingent upon the Commission granting, in the affirmative, this request for a declaratory statement. Vivint Solar thus is a “substantially affected person” and has standing to bring this petition.

9. Vivint Solar respectfully requests that the Commission make the following affirmative declarations:

- a. Vivint Solar’s proposed residential solar equipment lease, as described herein, will not be deemed to constitute the sale of electricity;
- b. Vivint Solar will not be deemed to be a public utility under Florida law by virtue of leasing the residential solar equipment to residential customer-lessees in Florida; and
- c. Florida customer-lessees who enter into Vivint Solar’s proposed residential solar equipment lease will not be subject to the jurisdiction of, or regulation by, the Commission.

### **III. APPLICABLE STATUTES, RULES AND ORDERS OF THE COMMISSION**

10. The statutory provisions and Commission rules or orders applicable to the narrow jurisdictional question raised in this petition are:

- a. Section 366.02, Florida Statutes.

- b. Order No. 17009, Docket No. 860725-EU (Dec. 22, 1986) (“*Monsanto*”) *Declaratory Statement Order, In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility.*
- c. Order No. PSC-2018-0251-DS-EQ, Docket No. 20170273-EQ (May 17, 2018) (“*Sunrun*”) *Declaratory Statement Order; In re: Petition of Sunrun, Inc. for declaratory statement concerning the leasing of solar equipment.*
- d. Rule 25-6.065, Florida Administrative Code - *Interconnection and Net Metering of Customer-Owned Renewable Generation Definition*
- e. Section 520.20, *et seq.*, Florida Statutes.

#### IV. **ANALYSIS**

##### **A. The Florida Legislature has defined a jurisdictional public utility.**

11. In Section 366.02(1), Florida Statutes, the Legislature defines a Commission-jurisdictional public utility as “every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers *supplying electricity* or gas . . . to or for the public within this state.” (emphasis added) Thus, in order to be deemed a public utility subject to regulation by this Commission, Vivint Solar must *supply electricity* to customer-lessees, and its residential solar equipment lease must constitute a sale of electricity. As discussed below, Vivint Solar does not supply electricity to its customer-lessees, and its lease does not constitute a sale of electricity.

##### **B. The Florida PSC has held that an equipment lease is not a sale of electricity.**

12. In *Monsanto*, the Commission held that no sale of electricity occurred and therefore, Commission jurisdiction did not attach, when the non-utility cogenerator (Monsanto)

entered into a lease financing arrangement for the financing and construction of its electricity-producing cogeneration facility, where Monsanto retained the risks of production associated with the facility. In 2013, this Commission reiterated its holding in *Monsanto* that an equipment lease does not constitute a jurisdictional sale of electricity, stating:

In *Monsanto*, the owner of the electrical generating equipment was not the same as the consumer, Monsanto, who leased the equipment. However, we determined that no sale to an unrelated entity would occur because Monsanto was leasing equipment that produced electricity rather than buying electricity that the equipment generated.

Order No. PSC-13-0652-DS-EQ, Order Denying Petition for Declaratory Statement, *In re: Petition for declaratory statement regarding co-ownership of electrical cogeneration facilities in Hendry County by Southeast Renewable Fuels, LLC*, Docket No. 130235-EQ (Dec. 11, 2013) at p. 6.

13. Vivint Solar's residential solar equipment lease is consistent with the Commission's prior holdings and applicable law. Vivint Solar will not supply electricity to its customer-lessees, and its lease will not constitute a sale of electricity. Vivint Solar's residential customer-lessees will lease residential solar equipment that they will use for its intended and designed purpose - to generate their own electricity for their own residential purposes.

14. Consistent with the lease in *Monsanto*, Vivint Solar's Florida residential solar equipment lease will require monthly scheduled payments, which are not tied to energy production, throughout the 20-year lease term. The amount of the payment is based on a negotiated rate of return on Vivint Solar's investment in the equipment and its installation, and is independent of electric generation, production rates, maintenance activities, or any other operational variable of the equipment. Like the lessor in *Monsanto*, Vivint Solar will hold legal



title to the equipment and receive Investment Tax Credits and depreciation benefits associated with the investment, as well as the benefit of manufacturer's equipment warranties. Vivint Solar will have no contractual control over the customer-lessee's use of the solar equipment, other than as the beneficiary of customer-lessee's contractual obligation to maintain conditions at the home to ensure the equipment is maintained and remains good repair and can perform as intended, and to retain Vivint Solar or its agents as the sole provider of equipment maintenance services.

15. As in *Monsanto*, Vivint Solar's customer-lessee's will be "leasing equipment which produces electricity rather than buying electricity that the equipment generates."

*Monsanto*, Issue 2. This caveat is set forth explicitly in Vivint Solar's lease on page 4: "THIS AGREEMENT IS FOR THE LEASE OF A SOLAR ENERGY SYSTEM BY US TO YOU, AND NOT FOR THE SALE OF ENERGY, THE SYSTEM, THE SYSTEM INTERESTS, OR A SOLAR ENERGY DEVICE." The lease also states on page 4: "WE DO NOT WARRANT OR GUARANTEE . . . THE AMOUNT OF ENERGY PRODUCED BY THE SYSTEM FOR ANY PERIOD...."

**C. The Florida PSC has held that a lease of solar generating equipment is not a sale of electricity.**

16. In *Sunrun*, the Commission held that no sale of electricity will occur, and therefore Commission jurisdiction will not attach, when a residential customer-lessee enters into the long-term lease of residential solar generating equipment with fixed lease payments described in Sunrun's petition for declaratory statement. The order stated "the general proposition that where a customer pays a flat fee to an energy generation equipment supplier for the personal use of generation equipment and that fee is not based on electric production, there is no jurisdictional sale of electricity," and emphasized that "[t]he holding in *Monsanto* is based on

the fixed nature of the lease payments rather than who has the obligation for maintenance.”

*Sunrun* order, pgs. 7, 8 (footnote omitted).

17. The material terms of Vivint Solar’s proposed solar equipment lease are substantially similar to those in the Sunrun lease. Both leases are for a fixed term, with fixed lease payments that are independent of electric generation, production rates, maintenance activities, or any other operational variable of the leased equipment. Both lessors will hold legal title to the equipment, receive tax credits, and receive depreciation benefits. In both cases, at the end of the lease, lessees may purchase the equipment, renew the lease, or have the equipment removed. Both lessors offer workmanship warranties and will maintain the equipment in good repair, and their customer-lessees will be responsible for non-warranty maintenance, repair and replacement. Neither lessor will have control over the customer-lessee’s use of the equipment, and in both cases, customer-lessees bear the operational risk of non-warranty maintenance and assuring adequate solar exposure, and are the owners of all electricity produced by their leased systems.

**D. Vivint Solar’s lease is consistent with Florida law governing solar equipment leases.**

18. Florida’s Legislature recently enacted consumer protection legislation governing contracts for the sale or lease of certain energy generation systems, including residential solar systems. See, Ch. 520, Part II, Florida Statutes (Section 520.20, *et seq.*), entitled Distributed Energy Generation System Sales (the “Act”), effective July 1, 2017.

19. Among other things, the Act clearly expresses the Legislature’s intent to permit leases of distributed energy generation systems and specifies certain information that must be

included in such leases. The Act requires Vivint Solar’s Florida lease to disclose certain performance-related information:

Each agreement governing the sale or lease of a distributed energy generation system shall, at a minimum, include a written statement printed in at least 12-point type that is separate from the agreement, is separately acknowledged by the buyer or lessee, and includes the following information and disclosures, if applicable:

(8) A description of the assumptions used to calculate any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: “It is important to understand that future electric utility rates are estimates only. Your future electric utility rates may vary.”

(13) A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.<sup>2</sup>

(14) A description of any performance or production guarantees.

Sections 520.23(8), (13), (14), Fla. Stat. Vivint Solar’s proposed Florida lease complies with these requirements and includes the standard lease disclosure form published by the Florida Department of Business and Professional Regulation pursuant to Section 520.24, Florida Statutes. See, Vivint Solar’s Florida Disclosures, found on the final pages of Exhibit “A”.

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<sup>2</sup> The term “seller” is defined in Section 520.20(6), Fla. Stat., to include lessors such as Vivint: “‘Seller’ means a person regularly engaged in, and whose business substantially consists of, selling or leasing goods, including distributed energy generation systems, to buyers or lessees.”

20. Although the Act contemplates that vendors may warrant or guarantee a specified level of energy output, Vivint Solar's Florida lease makes no such warranty or guarantee. Vivint Solar will estimate the generation capability of the leased solar equipment during the initial lease term in order to correctly size customer-lessee systems to meet their self-generation needs, but a customer-lessee's lease payments will not vary based on generation.

21. Vivint Solar's lease further complies with the requirements in Section 520.23(18) and (19), Florida Statutes to disclose certain information regarding system maintenance and repairs, including:

(18) A disclosure as to whether maintenance and repairs of the distributed energy generation system are included in the purchase price.

(19) A disclosure as to whether any warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: "Your contract may be assigned, sold, or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests."

22. The Act specifically contemplates that solar equipment lessors may contract with third parties to maintain and repair leased systems. In compliance with paragraph (18) of the Act, Vivint Solar's lease advises that system maintenance costs are included in the fixed monthly lease payments. *See* Exhibit "A", page 3. Vivint Solar will monitor system performance, including measuring the energy produced, to ensure the equipment is operating properly and to detect the need for maintenance. Each customer-lessee's lease payments will remain fixed regardless of output or maintenance activity. Vivint Solar's contractual maintenance obligation is consistent

with the consumer protection requirements of the Act and (as discussed below) Rule 25-6.065, Florida Administrative Code.<sup>3</sup>

**E. Rule 25-6.065, F.A.C. confirms that self-generation using leased equipment does not, by itself, constitute a sale of electricity.**

23. The logic, policies and legal directives embodied in the *Monsanto* and *Sunrun* decisions are directly reflected in the Commission’s Rule 25-6.065, F.A.C., which states:

The term “customer-owned renewable generation” does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

As the Commission confirmed in its *Sunrun* order: “Rule 25-6.065, F.A.C. allows customers to lease solar equipment from a third party and allows for a maintenance agreement so long as the lease payments do not depend on electric generation.”

24. Besides complying with Rule 25-6.065, the above-referenced terms and conditions of Vivint Solar’s residential solar equipment lease are consistent with the lease-financing arrangement in *Monsanto* and solar equipment lease in *Sunrun*, which the Commission determined did not constitute sales of electricity, did not cause the lessors to be deemed a public utility, and did not subject either the lessors or their lessees to the Commission’s regulation.

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<sup>3</sup> Vivint Solar currently offers similar workmanship warranties and maintenance services as an optional service to homeowners who purchase a solar system.

#### **IV. CONCLUSION**

As the Florida Supreme Court noted in *PW Ventures, Inc. v. Nichols*, 533 So.2d 281, 284 (1988), “[t]he legislature determined that the protection of the public interest required only limiting competition in the sale of electric service, not a prohibition against self-generation.” Vivint Solar’s leasing arrangements assist consumers in self-generation, are not a sale of electricity, and are fully consistent with Florida law and policy as discussed above.

For the reasons described above, the terms and conditions of Vivint Solar’s residential solar equipment lease confirms that it is not a retail sale of electricity; rather, it is a lease for an on-site distributed energy generation system from a third-party customer-lessee at a fixed monthly payment, without regard to the amount of electricity generated.

**WHEREFORE**, Vivint Solar respectfully requests that the Commission make the following affirmative declarations:

- a. Vivint Solar’s proposed residential solar equipment lease, as described herein, will not be deemed to constitute the sale of electricity.
- b. Vivint Solar will not be deemed to be a public utility under Florida law by virtue of leasing the residential solar equipment to residential customer-lessees in Florida.
- c. Florida customer-lessees who enter into Vivint Solar’s proposed residential solar equipment lease will not be subject to the jurisdiction of, or regulation by, the Commission.

**Respectfully submitted** this 23<sup>rd</sup> day of May, 2018.

BY:

/s/ Marsha E. Rule  
Marsha E. Rule  
Rutledge Ecenia, P.A.  
Fla. Bar No. 0302066  
119 South Monroe Street, Suite 202  
Tallahassee, Florida 32301  
Email: marsha@rutledge-ecenia.com  
Phone: 850.681.6788  
Fax: 850.681.6515

and

Rich Zambo  
Richard A. Zambo, P.A.  
Fla. Bar No. 312525  
2336 S.E. Ocean Boulevard, #309  
Stuart, Florida 34966  
Email: richzambo@aol.com  
Office: 772.225.5400  
Mobile: 954.224.5863

*Attorneys for Vivint Solar Developer, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on May 23, 2018:

Keith Hetrick  
General Counsel  
Florida Public Service Commission  
Office of the General Counsel  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399  
Email: khetrick@psc.state.fl.us

/s/ Marsha E. Rule  
Marsha E. Rule

# **EXHIBIT “A”**





The Notice of Cancellation may be sent to this address:  
 1800 W Ashton Blvd, Lehi, UT 84043  
 help@vivintsolar.com | www.vivintsolar.com  
 Phone: 877.404.4129 | Fax: 801.765.5758

## RESIDENTIAL SOLAR POWER SYSTEM LEASE AGREEMENT

### Customer Name and Contact Information:

Name(s): [CUSTOMER FULL NAME]  
 [CUSTOMER FULL NAME]  
 E-Mail: [\_\_\_\_\_]@\_\_\_\_\_  
 Primary Phone: [###.###.####]

### Installation Location:

[STREET ADDRESS]  
 [CITY, COUNTY, STATE, ZIP]

### Approx. Installation Start Date and Approx. Completion Date:

[MMMM DD, YYYY]

### Date of Customer Signature:

[MMMM DD, YYYY]

Up-Front Cost:

**\$0**

Monthly Payment:

**See Exhibit A**

Initial Term:

**20 years**

The basics, and where to find more details:

#### Lease Agreement:

- We will design, install, and maintain a solar energy system on your home. (Section 1).
- You will pay us a Monthly Payment to lease the system for 20 years, at a rate that will increase by 2.9% per year. (Sections 2 and 3).
- You must continue service with your utility. (Section 3).
- We will not place a lien on your home, but will file a notice of our ownership of the system. (Section 3).
- You make certain representations and warranties, including that you own the property, your roof is in good condition, and you have had the opportunity to review this agreement before signing. (Section 4).
- If you move before the end of the 20-year term, you can transfer this agreement to the buyer of your home, prepay the agreement, or purchase the system if 6 years have passed. You may also relocate the system under certain circumstances. (Section 4).

#### General Provisions:

- The General Provisions include information about a number of topics, including how to make payment (Section 1), arbitration of disputes (Section 5), and doing business with us electronically (Section 26).
- You may be able to terminate this agreement after your right to cancel expires, under certain circumstances. (Section 9).
- Our work will be free from material defects for 20 years, and the system's solar panels and inverters carry minimum 10 year manufacturers' warranties. (Section 21).
- Please find certain information specific to the state where you live on the last page or pages of this document. (State Disclosures).

You may cancel this Agreement any time prior to commencement of any work at or near your property associated with installation of the System.

Vivint Solar Developer, LLC (EIN: 80-0756438) is a licensed contractor in each state in which we operate, including in [STATE], license numbers [STATE-SPECIFIC LICENSE NUMBERS]. For information about our licenses please visit <http://www.vivintsolar.com/licenses>.

WE MAY HAVE PRESCREENED YOUR CREDIT. PRESCREENING OF CREDIT DOES NOT IMPACT YOUR CREDIT SCORE.

YOU CAN CHOOSE TO STOP RECEIVING "PRESCREENED" OFFERS OF CREDIT FROM US AND OTHER COMPANIES BY CALLING TOLL-FREE 888.567.8688. SEE PRESREEN & OPT-OUT NOTICE BELOW IN SECTION 25 OF THE GENERAL PROVISIONS FOR MORE INFORMATION ABOUT PRESCREENED OFFERS.

# RESIDENTIAL SOLAR POWER SYSTEM LEASE AGREEMENT

This RESIDENTIAL SOLAR POWER SYSTEM LEASE AGREEMENT (this “*Lease*”) which includes the General Provisions included further below (the “*General Provisions*”), along with the Customer Packet (as defined below), Lease Disclosures attached as Exhibit A, any Change Orders, and any amendments or addenda to the Lease and any required disclosures (all of which, together with the Lease, are known as this “*Agreement*”), is entered into as of the Transaction Date (as that term is defined below in Section 2(a)), by and between VIVINT SOLAR DEVELOPER, LLC, a Delaware limited liability company (“*Vivint Solar*”, “*Lessor*”, “*we*”, “*us*”, “*our*”) and the undersigned CUSTOMER(s) (“*Customer*”, “*you*”, “*your*”). Vivint Solar and you are referred to herein as the “*Parties*”, and each, a “*Party*”.

## 1. Description of the Project and of the Significant Materials to be Used and Equipment to be Installed.

(a) Our Work. We will survey your home at the address on the first page above (the “*Property*”) and design a solar energy system (including solar panels, inverters, meters, and other components, the “*System*”). The System may include energy storage, consumption monitoring, and energy management equipment or devices, along with other items. All such ancillary products or services will be part of the definition of “*System*” for purposes of this Agreement, unless designated otherwise. We will provide you a document reflecting the design, layout, and basic attributes of the System for you to review and approve (the “*Customer Packet*”); a document with information about your payment obligations (the “*Lease Disclosures*”) is attached as Exhibit A.

We will design, install, maintain, repair, monitor, and insure the System.

After you sign this Lease and review and approve the Customer Packet, we will (i) obtain all necessary permits for the installation of the System; (ii) install the System using our qualified and licensed employees or subcontractors in material compliance with all local requirements, which installation shall be considered substantial commencement of work; (iii) after installation, work with the applicable local government to inspect the System; (iv) submit all necessary paperwork to your electric utility provider (the “*Utility*”) to receive permission to operate (“*PTO*”); and (v) after receipt of PTO, activate and turn on the System (the “*In-Service Date*”) and cause it to generate energy measured in kilowatt hours (“*Energy*”). If we use subcontractors to install the System, we will provide you with their names and license numbers. Subject to the delays of local government permitting authorities, weather, and other conditions outside our control, installation of the System generally takes one (1) day and is anticipated to start and be complete no later than the date set forth on the first page. We cannot promise or guarantee the date your Utility will provide PTO. YOU ARE NOT ALLOWED TO TURN ON THE SYSTEM UNTIL THE UTILITY HAS GIVEN ITS PERMISSION TO OPERATE. YOU ARE LIABLE FOR ANY COSTS OR DAMAGE RELATING TO YOUR PREMATURE ACTIVATION OF THE SYSTEM.

(b) Extra Work. You and we must agree in writing to any modification or addition to the work covered by this Agreement (“*Extra Work*”). Extra Work related to the System will be governed by a written change order (each, a “*Change Order*”). However, failure to obtain written authorization shall not affect your obligation to pay for our costs associated with the Extra Work. Any Change Order shall (i) list the agreed price and any changes in terms, (ii) be signed by both you and us, and (iii) become part of this Agreement. For any Extra Work performed, you shall pay to us an amount to be determined before the Extra Work is performed, plus ten percent (10%) for our overhead expenses, plus any applicable taxes, unless the Change Order provides differently.

(c) Operations and Maintenance. During the Initial Term (defined below), as long as no Customer Default (defined below) has occurred and is continuing, we will honor the limited warranty set forth in Section 21 of the General Provisions, and will maintain the System: (i) in good condition; and (ii) in material compliance with all applicable laws and permits and the Utility's requirements.

## 2. Term and Renewal.

(a) End-of-Term Options. This Agreement starts on the date we deliver to you this Lease signed by you and us (the "*Transaction Date*"). This Agreement will continue for twenty (20) years after the In-Service Date (the "*Initial Term*"). Prior to the end of the Initial Term, and provided there is no ongoing Customer Default as defined below, we will send to you notice and the applicable forms for three (3) options which you may exercise at the end of the Initial Term (the "*End-of-Term Options*"):

Initial Term:  
**20 years**

### End of Term Options:

1. **Renew** the Agreement for a subsequent term;
2. **Purchase** the System; or
3. **Remove** the System at no additional cost.

(i) Renewal. You may renew the Agreement for five (5) years at a price based on our determination of the fair market value of the System at that time (the "*FMV*", defined below);

(ii) Purchase. You may purchase the System at a price equal to the FMV at that time as determined by PV Value (an independent source, available at: <http://www.pvvalue.com>, with required variables selected by us in our reasonable discretion), or if PV Value is no longer in existence, as determined by reference to the successor to PV Value determined in our reasonable discretion, plus any outstanding balance and applicable taxes (the "*Purchase Option Price*"), after which this Agreement will automatically terminate; or

(iii) Removal. You may request that we remove the System within ninety (90) days at no cost to you, after which this Agreement will automatically terminate.

(b) Automatic Renewal. If you do not elect any of these options, this Agreement will automatically renew on a year-to-year basis with lease payments calculated based on the anticipated performance of the System in year twenty (derived from the warranted performance of the solar panels described in Section 21(c) of the General Provisions), multiplied by a number equivalent to the then-current average rate charged by our Utility, or its successor, at a ten percent (10%) discount from that rate.

(c) Early Purchase Option. In addition to your options at the end of the Initial Term, during a ninety (90) day period after the sixth (6<sup>th</sup>) anniversary of the In-Service Date (the "*Early Purchase Period*"), you have an option to purchase the system at an amount equal to the greater of the Purchase Option Price and an amount equal to the sum of the remaining Monthly Payments for the remainder of the Initial Term, discounted by five percent (5%) per year, plus any applicable taxes (the "*Prepayment Price*"). If you purchase the System, we will transfer the System to you "*As Is, Where Is*" (without any warranties) and we will retain all right and title to the System Interests (as that term is defined below).

### 3. Payment and Lease.

(a) Lease. Starting on the In-Service Date, we hereby lease to you, and you lease from us, the System. You shall pay a fixed monthly lease payment equivalent to the “Monthly Payment” described in the Lease Disclosures attached as Exhibit A (the “*Monthly Payment*”), plus applicable taxes. Each year of the Initial Term, on the anniversary of the In-Service Date, the Monthly Payment shall increase by two and nine-tenths percent (2.9%). (This percentage may not measure the overall cost of financing this Agreement).

The Monthly Payment will increase 2.9% per year

THIS AGREEMENT IS FOR THE LEASE OF A SOLAR ENERGY SYSTEM BY US TO YOU, AND NOT FOR THE SALE OF ENERGY, THE SYSTEM, THE SYSTEM INTERESTS, OR A SOLAR ENERGY DEVICE. An estimate of the System’s annual Energy production will be provided to you in the Customer Packet; *but* we reserve the right to modify the size, production, or location of the System at the time of installation as required by applicable law or in our reasonable discretion. If the System’s annual estimated Energy production is increased by more than five percent (+5%), then we may, in our discretion, provide to you an updated Customer Packet and updated Lease Disclosures for your approval reflecting the modified System. If the System’s annual estimated Energy production is decreased by more than ten percent (-10%), then we will provide to you an updated Customer Packet and updated Lease Disclosures for your approval reflecting the modified System. Any updated Lease Disclosures and the updated Customer Packet will become part of this Agreement.

You must continue service with your Utility

You are required to maintain your Utility interconnection throughout the Initial Term as you will need to purchase electricity from the Utility. We are not a utility or public service company. We are not subject to rate review or other regulations applicable to a public utility.

WE DO NOT WARRANT OR GUARANTEE (1) THE AMOUNT OF ENERGY PRODUCED BY THE SYSTEM FOR ANY PERIOD, (2) ANY COST SAVINGS, (3) THE EXISTENCE OF OR PRICING ASSOCIATED WITH ANY NET METERING PROGRAM, OR UTILITY OR GOVERNMENT INCENTIVE PROGRAM, OR (4) THE AVAILABILITY OR YOUR ELIGIBILITY FOR ANY TAX OR OTHER STATE AND FEDERAL INCENTIVES, WHICH ARE ALSO SUBJECT TO CHANGE. ACTUAL UTILITY RATES AND NET METERING BENEFITS MAY GO UP OR DOWN AND ACTUAL SAVINGS MAY VARY. FOR FURTHER INFORMATION REGARDING RATES, YOU MAY CONTACT YOUR UTILITY.

(b) Payments. Following the In-Service Date, for each month of the Initial Term, we will send you an invoice reflecting the Monthly Payment, plus applicable taxes. All payments are due within ten (10) days of the invoice date. You agree to make payments under this agreement in the manner you have selected in Section 1 of the attached “General Provisions” document.

(c) Ownership of the System and the System Interests. This Agreement is for the lease of the System, not the sale of the System or the System Interests. We own and hold all property rights in (i) the System; and (ii) any credits, rebates, incentives, allowances, tax benefits, or certificates that are attributed, allocated, or related to the System, the Energy, or environmental attributes thereof (collectively, the “*System Interests*”). Other than your leasehold rights in the System, you have no rights to the System or the System Interests, and you hereby disclaim and/or assign to us all right, title and interest in the System and the System Interests. If we request, you agree to execute all documents to allow us to be the exclusive owner of the System and the System Interests. You agree to keep the System and System Interests free from all liens, security interests, and encumbrances of any type. You agree to not take any action or allow any omission that could have the effect of impairing the value

of the System or the System Interests. By entering into this Agreement, you will host a system that generates clean energy, but a third-party, and not you, will own the right to claim the clean energy attributes of the energy.

We will not place a lien on your home, but will file a notice of our ownership of the System.

You and we agree that the System is our sole personal property and is not a “fixture” or any part of the “real property” associated with your home, as those terms may be defined by applicable law. We will not place a lien on your Property; however, you authorize us to make filings and recordings with relevant governmental authorities as may be necessary to provide notice of our ownership of the System and our interest in the System Interests, including (without limitation): notice filings, UCC-1 financing statements, and fixture filings.

You are not allowed to touch, handle, operate, alter, repair, or otherwise modify the System or any component thereof or take any action that could void or impair any warranty relating to the System.

#### 4. Customer Obligations.

(a) Your Representations and Warranties. You represent, warrant, and agree that each of the following is true and correct, and will remain true and correct throughout the Initial Term:

- (i) all information you have provided to us is true, correct, and complete;
- (ii) you own the Property, including the roof, in fee simple (in other words, you have full and exclusive ownership rights to the Property), or if your Property has been placed into a trust, you are the trustee;
- (iii) your roof is in good condition and repair, without defects, sufficient to support the System;
- (iv) you are at least eighteen (18) years of age;
- (v) you have had the opportunity to review and discuss this Agreement with anyone you choose;
- (vi) if there is more than one person signing this Agreement, each of you is responsible for it (joint and severally);
- (vii) you are either a citizen of the United States or not exempt from paying United States federal income taxes;
- (viii) you have customary property and liability insurance covering the Property;
- (ix) you will use the Energy primarily for personal, family, or household purposes, and not to heat a swimming pool;
- (x) you will ensure that the Property remains grid-connected at all times with the Utility;
- (xi) you have access to a functioning internet connection with one (1) wired Ethernet port and standard electrical outlet; and
- (xii) you have or will obtain all approvals necessary for us to install the System, including from your home owners association, your mortgage lender, or your insurer.

(b) Your Property. You are responsible to ensure that your Property (including all electrical systems and the roof) is maintained in good condition and repair and in compliance with all permits, codes, and ordinances. We are not responsible for any existing violations of applicable building regulations or ordinances on your Property. You agree that we are not responsible for any damage or loss to your Property, personal property, fixtures, or other belongings caused by: (i) snow falling from your roof; (ii) animals or other pests under or near the System; (iii) other natural events or acts of god outside our reasonable control; or (iv) your Property not complying with applicable law. You are required to notify us of any easements, restrictions, or home owners association requirements.

At all times, you must keep your roof and home in good condition.

You hereby grant to us the right to access and use your Property to survey your roof and your home's electrical systems, install the System, maintain the System, to enforce our rights under the Agreement, and to take any other action reasonably necessary under this Agreement. The foregoing rights of access to your Property shall constitute a license coupled with an interest and will be irrevocable until ninety (90) days after this Agreement terminates.

(c) Removing/Reinstalling Your System. If you need to repair your roof or other parts of your Property, or you, any government authority, or the Utility requires any change to the System, we will remove, reinstall, and modify, as required, the applicable portions of the System if you give us at least 30 days' notice. You will be required to pay a fee equal to our labor, equipment, and overhead costs to remove and reinstall the System (which pricing will be made available to you upon request), plus any applicable taxes. You will also be required to safely store the System after we remove it. If we are unable to reinstall the System within thirty (30) days after removal for any reason, then we will continue to charge you the Monthly Payment.

(d) Sunlight. You acknowledge and agree that the System's unobstructed access to sunlight is essential to us and is a material inducement to our entering into this Agreement. You agree to take all actions necessary to keep the System's access to sunlight the same as existed on the Transaction Date, including (without limitation): (i) you will not alter or allow your Property to be altered in any way that would obstruct sunlight, (ii) you will trim all trees and foliage; and (iii) you will not allow the emission of particulate matter, smoke, or other airborne impediments to obstruct the System's access to sunlight.

(e) Other Obligations. You shall promptly notify us if: (i) you notice any person or thing interfering with the operation of the System; (ii) your Property has any ordinance or permit violations or encumbrance that may prevent proper System permitting, installation, or operation; (iii) you take any emergency action with respect to the System; or (iv) you receive or otherwise acquire any System Interests, including any incentive payments. Your failure to promptly notify us of such matters shall be a Customer Default (as defined below). In the event of an emergency affecting the System, you shall contact us immediately. If we are unable to timely respond, you may (at your own expense) contract with a licensed and qualified solar installer to remove the System as necessary to make repairs required by the emergency. You shall be responsible for any damage to the System that results from actions taken by you or your contractor.

(f) Taxes. You will pay all taxes assessed on or arising from installation or operation of the System, including without limitation any transaction-based taxes on the lease of the System (including the Monthly Payments) and personal property taxes. If we pay personal property taxes associated with the System, you agree to reimburse us for such taxes, except to the extent you are prohibited from doing so by applicable law. You are responsible for any real property taxes associated with your Property. It is your responsibility to verify that the System is not included as part of any real property tax assessment specific to your Property. Where applicable, you may be eligible for an exemption from any increase to real property taxes on your Property associated with installation of the System.

(g) Sale of Your Property. You agree to notify us thirty (30) days prior to any sale or transfer of your Property. You have following three (3) options upon a transfer of your Property: (i) Assignment: the homebuyer may assume your rights under this Agreement by signing a transfer agreement. You will remain liable under this Agreement until the transferee assumes in writing all of your obligations. (ii) Prepayment. You may prepay the Agreement by the Prepayment Price. After our receipt of an amount equal to the Prepayment Price, the buyer of your property may assume the obligations under the Agreement other than the Monthly Payment obligations

by signing a transfer agreement. (ii) Transfer Purchase: In connection with a transfer of your Property that occurs any time after six (6) years after the In-Service Date, you may purchase the System by paying to us the Purchase Option Price at that time.

### If You Move:

1. You can transfer the Agreement to the buyer of your home, regardless of the buyer's credit rating;
2. You can prepay the Agreement; or
3. After the sixth anniversary, you can purchase the System.
4. We may relocate the System to your new home under certain circumstances.

(h) Relocation. We may remove the System and reinstall it on your new home; *provided* that each of the following requirements are satisfied, in our sole discretion:

- (i) Your new home must: (A) be in a location with sun exposure that is not less than your current Property; (B) be located within our service territory and the service territory of the Utility; (C) have a roof type capable of supporting the System; (D) include roof sections where the System may be installed which are the same or similar in shape and size as the roof sections on the Property.
- (ii) In order to evaluate the feasibility of relocating the System to your new home, you will be required to pay to us an amount equivalent to our costs associated with evaluating the new home ("*Evaluation Fee*").
- (iii) If we determine, in our sole discretion, that relocating the System is feasible, then before we remove the System, you will: (A) pay to us all fees, our estimated labor, equipment, and overhead costs associated with removal, relocating, and reinstalling the System, including an amount equal to any loss of value in or recapture of System Interests (the "*Relocation Fee*"); (B) execute an amendment to this Agreement that identifies the new home and adjusts the Monthly Payment, as applicable, to a rate consistent with the location of the new home; and (C) provide any third party consents or releases required by us in connection with the new home.

## 5. Defaults.

(a) Customer Default. You will be in default (*i.e.*, breach) under this Agreement upon the occurrence of any of the following (each, a "*Customer Default*"):

- (i) you fail to make any payment under this Agreement within ten (10) days of its due date and such failure is not cured within ten (10) days after we give you written notice of such failure;
- (ii) you fail to perform any obligation under this Agreement and such failure is not cured within thirty (30) days after we give you written notice of such failure;
- (iii) you deny us access to your Property or fail to cooperate with us to successfully install or maintain the System;
- (iv) your bankruptcy, insolvency, or admission of your inability to pay your debts as they mature; or
- (v) your Property becomes subject to a foreclosure proceeding or you fail to perform any obligation which is secured by your Property.

(b) Default Remedies. Upon a Customer Default, we may exercise any of the following remedies: (i) terminate this Agreement and demand you pay the Default Payment, as that term is defined in Section 10 of the General Provisions; (ii) leave the System in place on your Property, but deny you use of the Energy it produces, which may

be redirected and sold at our election; (iii) disconnect or take back the System as permitted by applicable law; (iv) engage a collection agency to collect payments from you; (v) report your default to credit reporting agencies; (vi) suspend our performance under the Agreement; and/or (vii) exercise any other remedy available to us in this Agreement or under applicable law. Our remedies set forth in this section are cumulative and not exclusive.

(c) Lessor Default. We will be in default (*i.e.*, breach) under this Agreement if we fail to perform any material obligation under this Agreement and we have not made diligent efforts to cure such default within a reasonable time after you give us written notice of such failure ("**Lessor Default**").

If a Lessor Default occurs and is continuing, you may terminate this Agreement and request removal of the System from your Property. To the fullest extent permitted under applicable law, you have no right to claim damages as a result of the termination of this Agreement, except for the actual costs to remove the System (if we fail to remove the System), and any damages to your Property that we cause in connection removal of the System.

## **RESIDENTIAL SOLAR POWER SYSTEM LEASE AGREEMENT – GENERAL PROVISIONS**

These GENERAL PROVISIONS (the "**General Provisions**"), shall be interpreted with, and incorporated by reference in, the Residential Solar Energy System Lease Agreement (the "**Lease**"). The Lease, the General Provisions, along with the Customer Packet, any Change Orders, any required disclosures, and any amendments or addenda between you and any Vivint Solar entity shall be considered part of one transaction (the "**Agreement**").

1. Payment. You shall make payments to us by (a) automatic payment deduction from your designated checking account, (b) automatic charge to your credit card, or (c) personal check. It is your responsibility to ensure that there are adequate funds in your account or that you have an adequate credit limit to make payment as agreed.

The Monthly Payment and all other payments in this Agreement will include a five dollar (\$5) monthly discount if you allow us to automatically debit your checking account. You will not receive such five dollar (\$5) monthly discount if you choose to pay by any means other than automatic debit from your checking account (*e.g.*, credit card or check). You may update your payment information any time by calling us or by visiting [account.vivintsolar.com](http://account.vivintsolar.com).

**If you are more than fifteen (15) days past due, or if a check from you is returned, we may impose a late charge equal to fifteen dollars (\$15).** If you continue to fail to make any payment within ten (10) days after we give you written notice, then you will be in Customer Default under the Agreement and we may exercise all remedies available to us under the Agreement.

2. Governing Law. This Agreement, and any instrument or agreement required hereunder, shall be governed by, and construed under, the internal laws of the state of Florida.

3. Limitation of Liability. NOTWITHSTANDING ANY BREACH OF THIS AGREEMENT, ANY FAILURE OF THE SYSTEM, OR ANY NEGLIGENT ACT THAT CAUSED ANY INJURY OR LOSS (WHETHER PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH) TO ANYONE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE AND YOU AGREE THAT, UNLESS SUCH INJURY OR LOSS WAS CAUSED BY A PARTY'S GROSS NEGLIGENCE, FRAUD, WILLFUL INJURY, OR VIOLATIONS OF LAW, SUCH PARTY'S LIABILITY ARISING OUT OF OR RELATING TO (1) SYSTEM REPAIRS OR REPLACEMENT UNDER THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE DEFAULT PAYMENT, AND (2) DAMAGE TO PERSONS AND PROPERTY, SHALL IN NO EVENT EXCEED \$2,000,000. YOU AND WE AGREE THAT THIS AMOUNT IS A FAIR REPRESENTATION OF THE DAMAGES THAT YOU OR WE EXPECT TO INCUR IN THE CASE OF ANY INJURY OR LOSS HEREUNDER.



TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR WE MAY BRING A CLAIM AGAINST THE OTHER PARTY OR SUCH PARTY'S AFFILIATES, OWNERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "**RELATED PARTIES**") FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW, OR OTHERWISE), IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH. YOU FURTHER AGREE THAT NO CLAIM, LAWSUIT, OR ANY OTHER LEGAL OR ARBITRATION PROCEEDING IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE INCIDENT GIVING RISE TO SUCH CLAIM, OR AS LIMITED BY APPLICABLE LAW.

4. **Indemnification.** To the fullest extent permitted by applicable law, you agree to indemnify, advance expenses, and hold harmless us and our Related Parties from any and all claims, actions, costs, expenses (including reasonable attorneys' fees and expenses), damages, liabilities, penalties, losses, obligations, injuries, demands, and liens of any kind or nature in connection with, arising out of, or in any way related to your breach of this Agreement, or your negligence or willful misconduct, or your violation of law. Your indemnification obligations under this section shall not apply if the harm or damage that is the basis for such claim occurred while one of our employees or agents was at your Property and such harm or damage was caused by the negligence or willful misconduct of such employee or agent.

5. **Arbitration of Disputes and Class Waiver.** Unless prohibited by applicable law and unless you opt out, you and we agree that any Party may elect to arbitrate or require arbitration of any Dispute (as defined below). You also agree to bring claims against us only in your individual capacity and YOU ARE WAIVING THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.

- **What is arbitration? An alternative to a court case.** In arbitration, a third party arbitrator ("**TPA**") solves "Disputes" in a hearing. It is less formal than a court case.
- **Is it different from court and jury trials? Yes.** The hearing is private. There is no jury. It is usually less formal, faster and less expensive than a lawsuit. Pre-hearing fact finding (called "discovery") is limited. Appeals are limited. The arbitrator's findings are binding, and courts rarely overturn arbitration awards.
- **Who does this cover? You, us, and certain Related Parties (defined above).** Either you or we may, without the other's consent, elect to resolve disputes by mandatory, binding arbitration.
- **What does this cover? All Disputes (except certain Disputes about this clause).** This governs all disputes that would usually be decided in court and are between us (or any Related Party) and you, including without limitation all claims related to this Agreement, the System or our relationship with you ("**Disputes**"). Disputes include claims related to amendments, Lease Disclosures, Change Orders, collections, privacy and Customer Information, and claims related to the validity of this Agreement AND THE ARBITRABILITY OF ANY DISPUTE(S). In short, Disputes has the broadest reasonable meaning.
- **Who handles the arbitration? JAMS.** The arbitration company will be JAMS, 1920 Main Street, Suite 300, Irvine, CA 92614, [www.jamsadr.org](http://www.jamsadr.org).
- **What are the rules of the arbitration? Those in this clause along with the JAMS Rules.** Arbitrations are conducted under this Clause and the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced. This Agreement is also subject to the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses and Minimum Standards of Procedural Fairness, which set forth certain protections to you (including a maximum filing fee). Any other arbitration rules that conflict with this Clause do not apply.

- **Can Disputes be brought in court? Sometimes.** Either party may bring a lawsuit if the other party does not demand arbitration. We will not demand arbitration of any lawsuit you bring as an individual action in small-claims court.
- **Where will the arbitration hearing be held? In your hometown area.** You can find more information in the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness, which is available here - <https://www.jamsadr.com/consumer-minimum-standards>.
- **Are you giving up any rights? Yes.** For Disputes subject to this clause, you give up your right to:
  - o have juries decide Disputes;
  - o have courts, other than small-claims courts, decide Disputes;
  - o serve as a private attorney general or in a representative capacity;
  - o join a Dispute you have with a dispute by other consumers;
  - o bring or be a class member in a class action or class arbitration; and
  - o a jury trial and to have courts decide Disputes you wish to arbitrate.
- **Can you or another consumer start class arbitration? No. JAMS is not allowed to handle any Dispute on a class or representative basis.** All Disputes subject to this clause must be decided in an INDIVIDUAL arbitration or an individual small-claims action. This clause will be void if a court rules that the TPA can decide a Dispute on a class basis and the court's ruling is not reversed on appeal.
- **What law applies? The Federal Arbitration Act ("FAA").** This Agreement involves interstate commerce. *THUS*, the FAA governs this clause. The TPA must apply substantive law consistent with the FAA. The TPA must honor statutes of limitation and privilege rights. Punitive damages are governed by the constitutional standards that apply in judicial proceedings.
- **Will anything I do make this clause ineffective? No.** This clause stays in force even if you: (1) cancel this Agreement; (2) default, renew, prepay or pay the Agreement in full; or (3) go into or through bankruptcy.
- **Will this clause survive termination of this Agreement? Yes.** This clause will remain in effect for Disputes that commence even after the Agreement has terminated.

6. **Force Majeure.** If either you or we are unable to perform any obligation under this Agreement because of a Force Majeure Event, such affected Party will be excused from performance affected by such Force Majeure Event. "***Force Majeure Event***" shall mean any event, condition, or circumstance beyond the control of the affected Party which, by the exercise of due foresight, such Party could not reasonably have been expected to avoid, and is unable to overcome, including, *but not limited to*, action or inaction by a governmental authority or Utility or failure to obtain or maintain a permit, license, consent, or approval (*provided* that such action has been timely requested and diligently pursued), labor dispute, flood, earthquake, volcano, fire, lightning, wind, war, act of god, unavailability of electricity from the Utility, equipment, supplies of products, power surge caused by someone other than the affected Party, or failure of equipment not under the control of the affected Party. In no event shall a Force Majeure Event excuse you from any of your payment obligations under this Agreement.

7. **Amendments and Waivers.** This Agreement (including all exhibits and notices attached hereto) may only be amended or modified by an instrument in writing signed by both you and us.

8. **Entire Agreement.** This Agreement, including without limitation the Lease Disclosures and Customer Packet, constitutes the entire agreement between you and us, and supersedes all prior oral and written communications relating hereto. If you sign a Lease after the Transaction Date relating to the same Property and System before that System has received PTO, the later-signed Lease shall supersede and replace the prior-signed Lease in its entirety.

9. **Termination.** (a) *Your Termination Rights*. You may terminate the Agreement after your right to cancel under the Notice of Cancellation has expired if a Lessor Default has occurred as set forth in Section 5(c) of the

Lease by delivering written notice of termination to us. (b) *Our Termination Rights*. We may terminate this Agreement prior to commencement of installation work or if a Customer Default has occurred as set forth in Section 5(a) of the Lease by delivering written notice of termination to you. (c) *Consequences of Termination*. Unless we transfer the System to you, we will remove the System, if it has been installed, within ninety (90) days after any termination or cancellation of this Agreement. If we elect to terminate this Agreement, we will have no further liability to you.

10. Default Payments. If this Agreement is terminated or cancelled for any reason, other than if this Agreement is cancelled pursuant to the Notice of Cancellation, terminated pursuant to Section 9 of the General Provisions, or terminated due to a Lessor Default or a Force Majeure Event, you agree to pay us an amount equal to the sum of the remaining Monthly Payments due to us during the Term, discounted by five percent (5%) per year, loss of expected benefits from the System and System Interests, amounts you owe us, our reasonable attorney's fees, and our other costs and losses including costs of removal of the System, plus any applicable taxes (collectively, the "*Default Payment*"). After you pay us the Default Payment, we will transfer ownership of the System to you on an "As Is, Where Is" basis; *provided* that we will retain all rights to the System Interests. **YOU AGREE THAT THE DEFAULT PAYMENT FAIRLY REFLECTS THE VALUE OF THE SYSTEM AND IS A FAIR REPRESENTATION OF THE DAMAGES AND LOSSES THAT WE MAY INCUR AS A RESULT OF A CUSTOMER DEFAULT.**

11. Data concerning you, the System, and your Property. We may collect and store: nonpublic personal information about you, the System, your energy usage, your credit report, and other related information; and may install, operate, and maintain an energy consumption monitoring device on your Property that we may use to collect and store information about energy usage at your Property (collectively, "*Data*"). You agree that we may use, store, and disclose the Data to our assignees, affiliates, actual or prospective lenders, financing parties, investors, insurers, and acquirers. You also agree to provide to us directly, or work with us and your Utility to authorize your Utility to provide to us, Data associated with your energy usage throughout the Initial Term.

We use certain physical and technical safeguards that are designed to improve the integrity and security of Data in our possession and control. We cannot, however, ensure or warrant the security of all Data or guarantee that Data may not be accessed or disclosed by breach of our physical or technical safeguards. So long as no Customer Default has occurred or is continuing under the Agreement, we will make certain Data available to you via the Vivint Solar Account Center, *available at*: <https://account.vivintsolar.com>.

You agree that we may share your name, contact information, Property location, and other information we have collected or obtained about you, including the Data ("*Customer Information*") with our affiliates (including Vivint Inc. and its affiliates). You authorize us, our affiliates, and others that may act on our behalf to make calls and send SMS text messages to you for marketing and other business purposes. You may opt-out of receiving marketing communications by calling or emailing our customer service department at [help@vivintsolar.com](mailto:help@vivintsolar.com)

12. Our Transfer. We may assign, sell, or transfer (in whole or in part) this Agreement without your consent and without notice. If an assignee agrees in writing to assume all of our rights and obligations under this Agreement, we will have no further liability or obligation to you upon the effective date of such assignment.

13. Binding Effect. This Agreement shall be binding upon and benefit you and us and our and your respective Related Parties, legal representatives, successors, and permitted assigns. Except as expressly provided in this Agreement, you may not assign this Agreement (or any of your obligations or rights under it) without our prior written and signed consent. Any purported assignment by you without our prior written and signed consent shall be null and void.

14. Survival. After termination or expiration of this Agreement, any provisions which by their nature are intended to survive such termination or cancellation shall survive.

15. Severability. If any provision of this Agreement is held to be invalid, prohibited, voidable, or otherwise unenforceable by an arbitrator or court of competent jurisdiction, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed invalid, prohibited, voidable, or unenforceable, and in all other respects this Agreement shall remain in full force and effect; *provided, however*, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

16. Counterparts. This Agreement may be executed in one or more counterparts, and all such counterparts shall be deemed to constitute one instrument. A facsimile or portable document format (“pdf”) shall constitute an original for purposes hereof.

17. Publicity. You agree and hereby authorize us to use you and your Property’s voice, photograph, video, and likeness in print media, radio, television, e-mail, social media, web materials, and any audio or video recording. We will not disclose your personally identifying information (except as provided in Section 11 of the General Provisions).

18. System Hazards. The System may contain hazardous materials, which could pose dangers related, but not limited, to health hazards, fire hazards, high-voltage hazards, mechanical damage, severe personal injury and even death. Please consult the manufacturer’s user’s manual and warranty materials for handling and operation information, as well as guidance on proper disposal.

19. Autodialed Telephone Calls and Text Messages. You consent to receive autodialed telephone calls and SMS text messages from us, our affiliates, our contractors, or on our behalf at the mobile telephone number provided below. These telephone calls and SMS text messages may include promotional material related to our services or others’ products and services, which may be sent using an automatic telephone dialing system. You understand that you are not required to agree to receive telephone calls or SMS text messages as a condition of entering into this Agreement. Standard call and text message charges may apply from your wireless provider.

20. Credit Authorization. In connection with the execution of this Agreement and at any time during the Term, you agree that we may (a) obtain your credit rating and consumer report from credit reporting agencies; (b) report your payment performance to credit reporting agencies; and (c) disclose this and other information to our assignees, affiliates, actual or prospective lenders, financing parties, investors, insurers, and acquirers.

21. Warranties.

(a) *Our Limited Warranty*. Unless provided otherwise in your state-specific disclosures at the end of this document, we will warranty all of our work associated with installation of the System, as follows:

(i) unless the System is installed on a tar-and-gravel or built-up roof, then the System will be free from material defects that we cause in workmanship, and any rooftop penetrations we make in connection with installation will be watertight, for twenty (20) years after installation is completed;

- (ii) if the System is installed on a tar-and-gravel or built-up roof, then the System will be free from material defects that we cause in workmanship for twenty (20) years after installation, and the roof will be free from damage we cause that results in a roof leak for twelve (12) months after installation.

To make a claim, please contact us at [help@vivintsolar.com](mailto:help@vivintsolar.com) or 877.404.4129. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

- (b) *Warranty Exclusions.* The limited warranties set forth above in Section 21(a) of the General Provisions do not cover problems resulting from: (i) your acts or omissions, including your failure to abide by the terms of this Agreement; (ii) exposure to harmful materials and chemicals; (iii) any Force Majeure Event (as such term is defined above); (iv) vandalism, theft, or tampering with the System by anyone; (v) damage caused by hail or ball strikes; and (vi) any other cause beyond our reasonable control. Our warranty and maintenance obligations may be transferred to a third party.
- (c) *Manufacturer Warranties.* We do not provide any warranty to you with respect to any component of the System. Any manufacturer's warranty is for our benefit as owner of the System and is independent of the limited warranties described above in Section 21(a). The System's solar modules carry a minimum manufacturer's warranty that: (i) during the first ten (10) years of use, the modules' electrical output will not degrade by more than ten percent (10%) from the originally rated output; and (ii) during the first twenty-five (25) years of use, the modules' electrical output will not degrade by more than twenty percent (20%) from the originally rated output. During the Term, we will enforce these warranties as owner of the System.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF. EXCEPT AS SET FORTH IN THIS SECTION 21, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, WE MAKE NO OTHER WARRANTY TO YOU OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED, OR STATUTORY; AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OF THE EQUIPMENT, INSTALLATION, DESIGN, OPERATION, OR MAINTENANCE OF THE SYSTEM; THE PRODUCTION OR DELIVERY OF ENERGY; OR ANY OTHER ASSOCIATED SERVICE OR MATTER HEREUNDER, ALL OF WHICH WE HEREBY EXPRESSLY DISCLAIM. TO THE EXTENT THAT ANY IMPLIED WARRANTY MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, SUCH IMPLIED WARRANTY SHALL BE OF A DURATION NO GREATER THAN THAT OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 21. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, OUR LIABILITY FOR ANY BREACH OF ANY WARRANTY IS LIMITED TO REPAIRING THE SYSTEM OR YOUR PROPERTY TO THE EXTENT REQUIRED UNDER THIS AGREEMENT. YOU ACKNOWLEDGE THAT WE ARE RELYING ON THIS AS A CONDITION AND MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT.

22. Disconnection. There may be circumstances where we are required to turn off or disconnect the System due to requirements of the Utility or government authority or conditions on your Property that may affect the safe operation of the System. Except in the case of a condition caused by our negligence, you agree to pay a sum equal to the Monthly Payments, along with the value to us of System Interests, during the period of disconnection, and applicable taxes.

23. Lenders' Rights. In order to clarify your and our obligations in the event of a foreclosure of the Property, and to ensure compliance of this Agreement with Fannie Mae's Selling Guide Topic B2 3-04 (as published on May 1, 2018) (the "*Fannie Mae Requirements*"), notwithstanding anything to the contrary contained in this Agreement,

you and we agree as follows: (a) *Home Value*. The System should not be included in the appraised value of the Property. (b) *Utility Power*. You are required to maintain access and connection to the Utility at all times throughout the Initial Term. (c) *Damage to the Property*. We will repair any damage to the Property or your belongings that we cause, except as limited elsewhere in this Agreement. Upon removal of the System, we will repair and restore all rooftop penetrations to be free from leaks. (d) *Customer's Property Insurance*. We agree not to be named loss payee or a named insured on your property insurance policy covering your Property. (e) *Foreclosure*. If the Property is transferred to another person or entity by reason of foreclosure, trustee's sale, deed in lieu of foreclosure, or other proceeding for the enforcement of a security instrument on the Property, the transferee (including its successors and assigns, the "*Foreclosure Transferee*") may elect one of the following options: (i) request that we remove the System within ninety (90) days, and, to the extent this Agreement runs with the land, terminate this Agreement; (ii) assume the obligations in writing under this Agreement and become the beneficiary hereunder, without payment of any transfer charge or similar fee; or (iii) enter into a new agreement with us on terms no less favorable than this Agreement. In addition to electing one of the foregoing options, the Foreclosure Transferee shall be required to provide written notice to us concerning the date of the foreclosure and documentation reasonably satisfactory to us that evidences the Foreclosure Transferee's ownership of the Property. (f) *Notice of System Ownership*. You consent to and agree that we will file a notice of ownership in the real property records where the Property is located pursuant to the terms of this Agreement. You and we agree that the notice is not nor should it be construed as a title impediment or an encumbrance on the Property. Other than our ownership rights in the System and the System Interests, and our right to access the Property to install and maintain the System during the Term, we have no property right, security interest, or lien in or on the Property.

#### 24. Our Insurance:

- (a) *Commercial General Liability Insurance (CGL)*. As of the Transaction Date, Vivint Solar Developer, LLC and our affiliates carry commercial general liability insurance written by Axis Specialty Europe (Policy No. 3776500116EN) in the amount of \$1,000,000 per occurrence. For more information, visit [www.vivintsolar.com/insurance](http://www.vivintsolar.com/insurance).
- (b) *Workers' Compensation Insurance*. As of the Transaction Date, Vivint Solar Developer, LLC and our affiliates carry workers' compensation insurance for all employees written by Zurich American Insurance Company (NAIC #: 16535) and American Zurich Insurance Company (NAIC No.: 40142) in the amount of \$1,000,000 per occurrence. For more information, visit [www.vivintsolar.com/insurance](http://www.vivintsolar.com/insurance).
- (c) *Property Insurance*. As of the Transaction Date, Vivint Solar Developer, LLC and their affiliates carry property insurance for all Vivint Solar properties written by GCube and Travelers - Lloyds Shared Program (Policy No. P16GR00830) in the amount of \$1,000,000 for occurrences during installation. For more information, visit [www.vivintsolar.com/insurance](http://www.vivintsolar.com/insurance).
- (d) *Casualty Event*. If the System is damaged or destroyed by fire, storm, flood, earthquake, or other disaster or accident (each, a "*Casualty Event*") fully covered by our insurance, we will repair or replace the damaged portions of the System as we deem necessary. If the System is damaged or destroyed by a Casualty Event not fully covered by our insurance, we may, at our option: repair or replace the damaged portions of the System as we deem necessary, or terminate this Agreement and convey the System in its then-existing condition, "As Is, Where Is", to you for no additional consideration.

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25. PRESCREEN AND OPT-OUT NOTICE. THIS “PRESCREENED” OFFER OF CREDIT IS BASED ON INFORMATION IN YOUR CREDIT REPORT INDICATING THAT YOU MEET CERTAIN CRITERIA. THIS OFFER IS NOT GUARANTEED IF YOU DO NOT MEET OUR CRITERIA. IF YOU DO NOT WANT TO RECEIVE PRESCREENED OFFERS OF CREDIT FROM US AND OTHER COMPANIES, CALL THE CONSUMER REPORTING AGENCIES TOLL-FREE, 888.567.8688; OR WRITE: EXPERIAN OPT OUT, DMA MAIL PREFERENCE SERVICE, PO BOX 643, CARMEL, NY 10512; TRANSUNION OPT OUT REQUEST, P.O. BOX 505 WOODLYN, PA 19094; EQUIFAX INFORMATION SERVICES, LLC, P.O. BOX 740123 ATLANTA, GA 30374-0123, OR VISIT [WWW.OPTOUTPRESCREEN.COM](http://WWW.OPTOUTPRESCREEN.COM)

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26. Electronic Records. You may be entitled by law to receive certain information “in writing.” You agree that all information, documents, disclosures, notices, and agreements between you and us in electronic form (collectively, “*Electronic Records*”) will be deemed to be “in writing.” You further agree that we may use and obtain from you electronic signatures (such as by clicking, checking, or signing using a digital pen) in the processing of Electronic Records. We will provide the Electronic Records to you by emailing them to you at the most recent e-mail address that we have on file and/or by making Electronic Records available to you at [account.vivintsolar.com](mailto:account.vivintsolar.com).

You must notify us of any change in your e-mail address. If we send an Electronic Record to you, but you do not receive it because the most recent e-mail address that we have on file for you is incorrect, out of date, blocked by your service provider, filtered by your service provider as “spam” or “junk mail”, or you are otherwise unable to receive the Electronic Record, we will be deemed to have provided the Electronic Record to you. You must have a computer with an Internet connection, a compatible web browser, Adobe Acrobat Reader version 8.0 and above, and a valid and accessible e-mail account.

You may request a paper copy of any Electronic Record, and we will send your paper copy to you via U.S. mail within ninety (90) days. You may opt-out of receiving Electronic Records by calling or emailing our customer service department at [help@vivintsolar.com](mailto:help@vivintsolar.com).

PLEASE READ THIS SECTION CAREFULLY

- BY CHECKING THIS BOX, YOU AGREE TO RECEIVE DISCLOSURES FROM US ELECTRONICALLY, OTHERWISE AGREE AND ACKNOWLEDGE YOU HAVE REVIEWED THESE GENERAL PROVISIONS AS DESCRIBED IN SECTION 26, AND AGREE THIS CHECKBOX CONSTITUTES YOUR ELECTRONIC SIGNATURE.
  
- BY CHECKING THIS BOX, YOU AGREE THAT WE MAY SHARE CUSTOMER INFORMATION WITH OUR AFFILIATES, AND THAT OUR AFFILIATES MAY CONTACT YOU AS DESCRIBED IN SECTION 11, AND AGREE THIS CHECKBOX CONSTITUTES YOUR ELECTRONIC SIGNATURE.
  
- BY CHECKING THIS BOX, YOU AGREE AND OPT-IN TO RECEIVING TELEPHONE CALLS AND TEXT MESSAGES AT THE FOLLOWING TELEPHONE NUMBER [###-###-####] AS DESCRIBED IN SECTION 19, AND AGREE THIS CHECKBOX CONSTITUTES YOUR ELECTRONIC SIGNATURE.
  
- BY CHECKING THIS BOX, YOU AGREE TO ARBITRATION AND WAIVE THE RIGHT TO A JURY TRIAL AS DESCRIBED IN SECTION 5, AND AGREE THIS CHECKBOX CONSTITUTES YOUR ELECTRONIC SIGNATURE.

[SIGNATURE PAGE FOLLOWS]

## SIGNATURE PAGE AND NOTICE TO CUSTOMERS

- A. **LIST OF DOCUMENTS TO BE INCORPORATED INTO THE CONTRACT.** These documents are incorporated into this Agreement and apply to the relationship between you and us: (1) Residential Solar Energy System Lease Agreement, (2) Customer Packet; and (3) any attachments, disclosures and exhibits, as applicable.
- B. **WE HAVE NOT GUARANTEED, PROMISED OR OTHERWISE REPRESENTED ANY REDUCTION IN ELECTRICITY COSTS IN RELATION TO THE SYSTEM THAT WILL BE INSTALLED ON YOUR PROPERTY.**
- C. IT IS NOT LEGAL FOR US TO ENTER YOUR PREMISES UNLAWFULLY OR COMMIT ANY BREACH OF THE PEACE TO REMOVE GOODS INSTALLED UNDER THIS AGREEMENT.
- D. IF YOU DO NOT ELECT ANY OF THE END-OF-TERM OPTIONS SET FORTH IN SECTION 2(A), THIS AGREEMENT WILL AUTOMATICALLY RENEW ON A YEAR-TO-YEAR BASIS. CONSULT SECTION 2 FOR MORE INFORMATION.
- E. YOU RISK THE LOSS OF ANY PAYMENTS MADE TO A SALES REPRESENTATIVE.
- F. **DO NOT SIGN THIS AGREEMENT IF THIS AGREEMENT CONTAINS ANY BLANK SPACES.** You are entitled to a completely filled in copy of this Agreement, signed by both you and us, before any work may be started.
- G. **YOU, THE CUSTOMER, MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD (3<sup>RD</sup>) BUSINESS DAY AFTER THE TRANSACTION DATE. SEE THE ATTACHED NOTICE OF CANCELLATION FOR AN EXPLANATION OF THIS RIGHT. DO NOT SIGN BELOW UNLESS WE HAVE GIVEN YOU THE “NOTICE OF CANCELLATION”.**

**REPRESENTATIVE:**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Salesperson No.: \_\_\_\_\_  
Date: \_\_\_\_\_

**CUSTOMER(S):**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

<b><u>FOR OFFICE USE ONLY</u></b>
THIS AGREEMENT IS NOT EFFECTIVE NOR BINDING UPON VIVINT SOLAR DEVELOPER, LLC UNTIL SIGNED BY AN AUTHORIZED REPRESENTATIVE.
<b>VIVINT SOLAR DEVELOPER, LLC</b>
Signature: _____
Printed Name: _____
Date: _____



## EXHIBIT A – LEASE DISCLOSURES

We are required by law to deliver to you the following disclosures:

<b>Customer Name(s):</b> [First Name][Middle Name][Last Name]	<b>Service No.:</b> [#####]
<b>Property Address:</b> [Street Address], [City], [County], [State] [ZIP]	<b>System Size (kW):</b> [##.####]
<b>1st Year Est. Performance (kWh):</b> [##.####]	<b>Annual Escalator:</b> 2.9%
<b>Equipment Leased:</b> We will install Tier One solar panels, together with inverter(s), racking, cabling and other components. Tier One solar panels may include one or more of the following: [List of Potential Solar Panels to be installed]	
<b>Payment Dates:</b> As set forth in Section 3(a) of the Lease, the Monthly Payment is due upon your receipt of the invoice.	
<b>Payment Frequency:</b> Monthly	
<b>Number of Payments:</b> 240 during initial Term of the Lease.	
<b>Total Cost of Lease:</b> \$[Estimated Total Payments under Lease Disclosures + Total Tax Obligations] (with no late payments).	
<b>Official Fees and Taxes:</b> We estimate that the total amount you will pay for taxes over the Term of the Lease will be \$[####.##]. Taxes are based on your state and local tax rates and are subject to change.	
<b>Insurance:</b> You are not required to have insurance specifically for the System. You are required to have insurance for the Property on which the System is installed.	
<b>Early Purchase Option:</b> If you elect the Early Purchase Option set forth in Section 2(c) of the Lease, the “ <i>Early Purchase Option Price</i> ” will be an amount equal to the greater of the Purchase Option Price and the Prepayment Price.	

Amount Due at Lease Signing or Delivery:	Monthly Payments:	Other Charges <i>(not part of your Monthly Payment):</i>	Estimated Total of Payments <i>(the amount you will have paid by the end of the Lease):</i>
Nothing.	Your first Monthly Payment is \$[###.##],* followed by 11 monthly payments of \$[###.##]* each (Year 1), followed by 12 monthly payments of \$[###.##]* each (Year 2), followed by 12 monthly payments of \$[###.##]* each (Year 3), followed by 12 monthly payments of \$[###.##]* each (Year 4), followed by 12 monthly payments of \$[###.##]* each (Year 5), followed by 12 monthly payments of \$[###.##]* each (Year 6), followed by 12 monthly payments of \$[###.##]* each (Year 7), followed by 12 monthly payments of \$[###.##]* each (Year 8), followed by 12 monthly payments of \$[###.##]* each (Year 9), followed by 12 monthly payments of \$[###.##]* each (Year 10), followed by 12 monthly payments of \$[###.##]* each (Year 11), followed by 12 monthly payments of \$[###.##]* each (Year 12), followed by 12 monthly payments of \$[###.##]* each (Year 13), followed by 12 monthly payments of \$[###.##]* each (Year 14), followed by 12 monthly payments of \$[###.##]* each (Year 15), followed by 12 monthly payments of \$[###.##]* each (Year 16), followed by 12 monthly payments of \$[###.##]* each (Year 17), followed by 12 monthly payments of \$[###.##]* each (Year 18), followed by 12 monthly payments of \$[###.##]* each (Year 19), followed by 12 monthly payments of \$[###.##]* each (Year 20).	Nothing.	\$[###,###.##]
Your first Monthly Payment is due one month after your In-Service Date, which is estimated to be the 20 <sup>th</sup> of the month, and your further payments are due within ten days of the invoice date thereafter. The total of your monthly payments is \$[###,###.##]*			
*These amounts include estimated taxes and are subject to change. This amount also reflects \$5 monthly discount if you pay by automatic payment deduction from your checking account. Please see below for additional details.			

<b>End of Term Purchase Option:</b>	If you elect the Purchase Option at the end of the Term, the “ <i>Purchase Option Price</i> ” will be the then-current fair market value of the System based on the average value of similarly sized photovoltaic systems in your geographic region as determined by PV Value (an independent source, <i>available at</i> : <a href="http://www.pvvalue.com">http://www.pvvalue.com</a> , with required variables selected by us in our reasonable discretion), or if PV Value is no longer in existence, as determined by reference to the successor to PV Value determined in our reasonable discretion. We will provide the valuation to you in writing and it will be binding.
<b>Other Important Terms:</b>	See the Lease for additional information on early termination and maintenance responsibilities, warranties, default charges, activation fees, insurance, and any security interest, if applicable.

## NOTICE OF CANCELLATION

*(Customer Copy)*

Transaction Date: [MMMM DD, YYYY] Service No.: [XXXXXXXXXX]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE (3) BUSINESS DAYS AFTER THE TRANSACTION DATE OR (IF LATER) UNTIL THE START OF ANY WORK AT OR NEAR YOUR PROPERTY ASSOCIATED WITH INSTALLATION OF THE SYSTEM.

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 (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER 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 REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY (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, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER 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 VIVINT SOLAR DEVELOPER, LLC, AT 1800 W ASHTON BLVD, LEHI, UT 84043, ATTN: PROCESSING DEPARTMENT PRIOR TO **[7 CALENDAR DAYS AFTER TRANSACTION DATE]** OR (IF LATER) UNTIL THE START OF ANY WORK AT OR NEAR YOUR PROPERTY ASSOCIATED WITH INSTALLATION OF THE SYSTEM.

I HEREBY CANCEL THIS TRANSACTION.

Date: \_\_\_\_\_

*Customer's Signature:* \_\_\_\_\_

 BY INITIALING, YOU ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION AS OF THE TRANSACTION DATE, AND AGREE THIS CHECKBOX CONSTITUTES YOUR ELECTRONIC SIGNATURE.

## NOTICE OF CANCELLATION

*(Vivint Solar Copy)*

Transaction Date: [MMMM DD, YYYY] Service No.: [XXXXXXXXXX]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE (3) BUSINESS DAYS AFTER THE TRANSACTION DATE OR (IF LATER) UNTIL THE START OF ANY WORK AT OR NEAR YOUR PROPERTY ASSOCIATED WITH INSTALLATION OF THE SYSTEM.

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 (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER 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 REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY (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, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER 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 VIVINT SOLAR DEVELOPER, LLC, AT 1800 W ASHTON BLVD, LEHI, UT 84043, ATTN: PROCESSING DEPARTMENT PRIOR TO **[7 CALENDAR DAYS AFTER TRANSACTION DATE]** OR (IF LATER) UNTIL THE START OF ANY WORK AT OR NEAR YOUR PROPERTY ASSOCIATED WITH INSTALLATION OF THE SYSTEM.

I HEREBY CANCEL THIS TRANSACTION.

Date: \_\_\_\_\_

Customer's Signature: \_\_\_\_\_

## FLORIDA DISCLOSURES

1. Our Licenses. For information about our contractor licensing requirements in Florida, contact the Florida Construction Industry Licensing Board at 850.487.1395 or <http://www.myfloridalicense.com/dbpr/pro/cilb/>. Vivint Solar Developer, LLC (EIN: 80-0756438) is a licensed contractor in Florida, Contractor License No. EC13006740. For information about our licenses please visit <http://www.vivintsolar.com/licenses>.
2. Florida Homeowners' Construction Recovery Fund. PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS: 850.487.1395 or Department of Business and Professional Regulation; 1940 North Monroe Street; Tallahassee, FL 32399-1027.
3. **BUYER'S RIGHT TO CANCEL**. This is a home solicitation sale, and if you do not want the goods or services, you may cancel this agreement by providing written notice to the seller in person, by telegram, or by mail. This notice must indicate that you do not want the goods or services and must be delivered or postmarked before midnight of the third business day after you sign this agreement. If you cancel this agreement, the seller may not keep all or part of any cash down payment.
4. Distributed Energy Generation System Lease Disclosure Form. We are required by Florida law to provide you with the disclosure form that is attached here as pages 2 – 7.

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## DISTRIBUTED ENERGY GENERATION SYSTEM LEASE DISCLOSURE FORM

Pursuant to Chapter 520, Part II, Florida Statutes, this disclosure is designed to help you understand the terms and costs of your lease of a distributed energy generation system ("System"). It is not a substitute for the lease ("Lease") and other documents associated with this transaction. All information presented below is subject to the terms of your Lease.

**Read all documents carefully so you fully understand the transaction.**

LESSOR	INSTALLER
Name: Vivint Solar Developer, LLC	Name: Vivint Solar Developer, LLC
Address: 1800 West Ashton Blvd, Lehi UT 84043	Address: 1800 West Ashton Blvd, Lehi UT 84043
Phone Number: 877.404.4129	Phone Number: 877.404.4129
Email: help@vivintsolar.com	Email: help@vivintsolar.com
License # (if applicable): HIC Lic. No. EC13006740	State Contractor License #: HIC Lic. No. EC13006740
<b>WARRANTY/MAINTENANCE PROVIDER (If different from Installer) Installer is Provider</b>	
Name:	Address:
Phone Number:	Email:
State Contractor License #:	
LESSEE	
Name:	Address:
Phone Number:	Email:
<p><b>*NOTE: YOU ARE ENTERING INTO AN AGREEMENT TO LEASE A DISTRIBUTED ENERGY GENERATION SYSTEM. YOU WILL LEASE (NOT OWN) THE SYSTEM INSTALLED ON YOUR PROPERTY.</b></p> <p><b>YOU ARE RESPONSIBLE FOR PROPERTY TAXES ON PROPERTY YOU OWN. CONSULT A TAX PROFESSIONAL TO UNDERSTAND ANY TAX LIABILITY OR ELIGIBILITY FOR ANY TAX CREDITS THAT MAY RESULT FROM THE PURCHASE OF YOUR DISTRIBUTED ENERGY SYSTEM.</b></p>	

For additional information, please carefully read Chapter 520, Part II, Florida Statutes.

Total Cost (A)	Amount & Term (B)	Total Estimated Lease Payments (C)
<p>Total cost to be paid, including any interest, installation fees, document preparation fees, service fees or other (_____) fees:  <u>\$ 0.00 (no upfront cost)</u></p> <p>State or federal tax incentive(s) or rebate(s) relied upon by seller in determining the price of the System:  <u>We own the System, and may benefit from the federal solar investment tax credit, which may affect the monthly payment.</u></p> <p>Value of Incentive/Rebates Included: \$ _____</p> <p><b>*NOTE:</b> You may not be eligible for all incentives available in your area. Consult your tax professional or legal professional for further information.</p>	<p>The initial term of Lease:  <u>20 Years</u></p> <p>Your monthly payment during the term of your Lease:  <u>\$ _____ (Year 1)</u>  <u>Your monthly payment will increase by 2.9% per year</u></p> <p>Number of Lease payments:  <u>240</u></p>	<p>Total of all your monthly payments and estimated taxes over the course of Lease:  \$ _____</p> <p>Your estimated total Lease payments over the initial term of the Lease excluding taxes are:  \$ _____</p>

**Other Possible Charges (D)**

Other charges you may have to pay under your Lease:

**Late Charge:**  
 If a payment is more than 15 days late, you will be charged \$15.00.

**Estimated System Removal Fee:** \$0.00 at End-of-Term; see Section 4(c) of Lease for explanation of costs for temporary removal/reinstall.

**Maintenance Fee:** \$0.00

**UCC Notice Removal and Re-filing Fee:**  
If you refinance your mortgage, you may have to pay \$0.00

**Returned Checks:**  
If any check or withdrawal right is returned or refused by your bank, you may be charged \$15.00 (or a lower amount if required by law)

**Non-Connection to Internet:**  
If you do not maintain a high-speed internet connection, you will be charged a monthly fee of \$0.00 and/or your monthly payments may be based upon estimates. Non-connection may affect any guarantee. See Section O.

**Automated Clearing House (ACH) Fee:** \$ 5.00

For additional information, please carefully read Chapter 520, Part II, Florida Statutes.

Payment Schedule (E)	When Payments are Due (F)	Installation Timing (G)
<p>Amount you owe at Lease signing: <u>\$0.00</u></p> <p>Amount you owe at the commencement of installation: <u>\$0.00</u></p> <p>Amount you owe at the completion of installation: <u>\$0.00</u></p> <p>You will make a final payment to Lessor in the amount of \$_____ at the following time: <b>Your Final (240th) Payment</b></p>	<p>The first payment on your Lease is due one month from the In-Service Date, as that term is defined in the Lease.</p> <p>You will receive: Electronic Invoices (sent to your email address above)</p>	<p>Approximate Start Date: _____ (date).</p> <p>Approximate Completion Date: _____ (date).</p>
<b>Interconnection Approval (H)</b>		
<p><b>LESSOR</b> is responsible for submitting a System interconnection application.</p> <p><b>NOTE:</b> It is important to understand the requirements of interconnection rules and/or policies for renewable energy systems which may vary based on location or utility jurisdiction. For further information regarding interconnection standards, please contact your local utility or public service commission.</p>		
<b>Site &amp; Design Assumptions for your Leased System (I)</b>		
<ul style="list-style-type: none"> <li>• Estimated size of the System in kilowatts: _____ (kWdc)</li> <li>• Estimated gross annual electricity production in kilowatt-hours (kWh) from your leased System in the first year of the Lease: _____</li> <li>• Estimated annual System production decrease due to natural aging of the System: <u>0.5</u> %</li> <li>• System location on your property: <a href="#">Described in the Customer Packet</a></li> <li>• System <b>WILL</b> be connected to the electric grid.</li> <li>• At the time of installation, your local utility <input type="checkbox"/> <b>DOES</b> <input type="checkbox"/> <b>DOES NOT</b> credit you for excess energy your System generates. The rules applying to such credit are set by your jurisdiction.</li> <li>• Make <a href="#">Described in Lease Disclosures</a></li> <li>• Model <a href="#">Described in Lease Disclosures</a></li> </ul> <p><b>*NOTE:</b> A lessor who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee</p>		
<b>Security Filings (J)</b>		
<p>Lessor <b>WILL NOT</b> place a lien on your home as part of entering the Lease. Lessor <b>WILL</b> file a fixture filing or a State Of Florida UCC Financing Statement Form (UCC-1) on the System. The UCC-1 is a public filing providing notice that Lessor owns the System, but is not a lien.</p>		

For additional information, please carefully read Chapter 520, Part II, Florida Statutes.



### System Maintenance & Repairs (K)

"System maintenance" refers to the upkeep and services required or recommended to keep your System in proper operation. System maintenance **IS** included for 20 years by Installer.

"System repairs" refers to actions needed to fix your System if it is malfunctioning. System repairs **ARE** provided by the Installer.

Please review your Lease for additional information about any warranties on the System installation and equipment. Certain exclusions may apply. Note that equipment warranties for hardware are not required to include labor/workmanship.

### Roof Warranty (L)

Your roof **IS** warranted against leaks from the System installation for 20 years by Installer **UNLESS** it is a tar-and-gravel or built-up roof, in which case the roof is warranted against leaks for 12 months.

Your roof **IS NOT** warranted against leaks caused by removal of the System. Any portions of your roof impacted by the System  **WILL**  **WILL NOT** be substantially returned to their original condition upon the removal of the System.

(ordinary wear and tear excepted).

### Transferring Your Lease and Selling Your Home (M)

If you sell your home, you **MAY** transfer the Lease to the purchaser(s) of your home. If transfer of ownership is permitted, the transfer will be subject to the following conditions:

- Credit check on the purchaser(s) by the Lessor
- Minimum FICO score requirement: \_\_\_\_\_
- Transfer fee of \$ \_\_\_\_\_
- Assumptions of Agreement by purchaser(s)

If you sell your home, you **ARE** permitted to transfer the System to a new home or property. [See Section 4\(h\) of the Lease for more information.](#)

You may also have the option(s) to purchase the System or prepay some or all of the Lease Balance as part of or prior to a transfer.

You **ARE NOT** permitted to make modification(s) to the System.

### Transfer of Obligations by Lessor (N)

Your Lease may be assigned, sold or transferred by Lessor without your consent to a third-party who will be bound to all the terms of the Lease. If such a transfer occurs, you will be notified if this will change the address or phone number to use for Lease questions, payments, maintenance or repair requests.

For additional information, please carefully read Chapter 520, Part II, Florida Statutes.

**System Guarantee (O)**

In terms of your full System, Lessor is providing you with a:

No System guarantee

You may have additional guarantees or warranties in addition to those that cover the entire System.

*\*Please provide description in the space provided under Section T.*

**Utility and Electricity Usage/Savings Assumptions (P)**

You  **HAVE**  **HAVE NOT** been provided with a savings estimate ("Estimate") based on your Lease.

**If you HAVE been provided with an Estimate, Lessor provides the following:**

Lessor  **IS**  **IS NOT** guaranteeing these savings.

Your Estimate was calculated based on:

- Your estimated prior electricity use
- Your actual prior electricity use
- Your estimated future electricity use

Your Estimate assumes the following:

- Years of electricity production from the System: \_\_\_\_\_
- A current estimated **utility electricity rate** of \_\_\_\_\_ [cost per kilowatt-hour] during the first Lease year with estimated increases of \_\_\_\_\_ percent annually. Lessor based this estimate on the following source(s): \_\_\_\_\_
- Your utility will continue to credit you for excess energy your System generates at
- ESTIMATED FUTURE**  **CURRENT** utility electricity rates

**NOTE:** It is important to understand that future electric utility rates are estimates only. Your future electric utility rates and actual savings may vary. For further information regarding rates, you may contact your local utility or the public regulation commission. Tax and other state and federal incentives are subject to change or termination by executive, legislative or regulatory action, which may impact savings estimates. Please read your Lease carefully for more details.

**Renewable Energy Certificates (RECs) (Q)**

Any renewable energy certificates or credits (RECs) from producing renewable solar energy with the System **WILL** be assigned to the Lessor. If Lessor is assigned the RECs, you will not own the RECs to sell, use or claim them, and Lessor may sell the RECs to a third party.

**Cooling Off Period/Right to Cancel (R)**

You have the right to terminate this Lease without penalty within 3 [no less than three] business days after the agreement is signed by both parties by notifying Lessor in writing at the above address.

**NOTE:** This section does not apply IF agreement is to lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or a solar community in which the developer has incorporated solar technology for purposes of meeting the Florida Building Code in s. 553.73, F.S.

For additional information, please carefully read Chapter 520, Part II, Florida Statutes.

**Insurance Policies and Coverage (S)**

Lessor will insure System for any loss or damage, except under the following circumstances:  
If the System is damaged or destroyed by an event other than a Casualty Event, as that term is described in Section 24(d) of the General Provisions of the Lease.

**NOTE:** Lessee is responsible for obtaining insurance policies or coverage for any loss of or damage to the System not covered under the lessor's obligations as indicated above. Please consult an insurance professional to understand how to protect against the risk of loss or damage to the System.

**Additional Disclosures or Terms (T)**

**Individual Completing this Form:**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Company: \_\_\_\_\_ Date: \_\_\_\_\_

For additional information, please carefully read Chapter 520, Part II, Florida Statutes.

 BY INITIALING, YOU ACKNOWLEDGE RECEIPT OF THESE DISCLOSURES AS OF THE TRANSACTION DATE, AND AGREE THIS CHECKBOX CONSTITUTES YOUR ELECTRONIC SIGNATURE.