

have been produced during the period of the shutdown shall be based on estimated levels of production. If We bill You for the Shutdown Payment because the System is not reporting Energy production to Us, and We subsequently determine that We have either overestimated or underestimated the actual Energy production, then We will adjust the next invoice with a non-refundable credit (for over-billing) or an additional charge (for under-billing). You will not be charged for Shutdown Payment when the System is not producing Energy due to Our fault. If a shutdown pursuant to Section 5(e) or this Section 6(a) continues for one hundred and eighty (180) days or longer, We may, in Our sole discretion, terminate this Agreement and require You to pay the Default Payment.

(b) Events of Default. (i) Customer Default. A "Customer Default" shall mean the occurrence of any of the following: (1) Your failure to make any payment under this Agreement within ten (10) days of when due and such failure is not cured within ten (10) days after We give You written notice of such failure; (2) Your failure 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; (3) You deny Us, Our contractors or agents, governmental authorities, or the Utility access to Your Property and such access is not given within thirty (30) days after We give You written notice of the failure to provide such access; (4) Your bankruptcy, insolvency, or admission of Your inability to pay Your debts as they mature; or (5) Your Property becoming subject to a foreclosure proceeding. (ii) Remedies for Customer Default. If a Customer Default occurs, We may exercise any of the following remedies: (1) terminate this Agreement and demand You pay the Default Payment; (2) 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; (3) disconnect or take back the System as permitted by applicable law; (4) place a lien on Your Property; (5) engage a collection agency to collect payments from You; (6) report Your default to credit reporting agencies; (7) suspend Our performance under the Agreement; and/or (8) exercise any other remedy available to Us in this Agreement or under applicable law. Seller's remedies set forth in this Section 6(b)(ii) are cumulative and not exclusive. (iii) Seller Default. A "Seller Default" shall mean Our failure to perform any of Our material obligations under this Agreement and the effect of

such failure is not cured within thirty (30) days after You give Us written notice of such failure. (iv) Remedies for Seller Default. If a Seller Default occurs and is continuing, You may: (1) terminate this Agreement and request removal of the System from Your Property; and/or (2) except as provided below, exercise any other remedy available to You in this Agreement or under applicable law. Notwithstanding the foregoing, You will have no right to claim damages as a result of the termination of this Agreement, except for (x) the actual costs to remove the System, if We fail to remove the System from Your Property pursuant to Section 6(c); and (y) any damages to Your Property resulting from the removal of the System by Us or Our contractor. (v) Default Payments. If this Agreement is terminated for any reason, other than pursuant to the Notice of Cancellation, Section 6(d), or a Seller Default, You will pay to Us the Default Payment. The "Default Payment" shall be an amount equal to Seven Dollars (\$7) per watt installed, subject to a reduction of five percent (5%) per year (e.g., in year 20, the Default Payment will be \$2.68 per watt installed), plus applicable taxes. You agree that the Default Payment fairly reflects the value of the System, and, in the case of a Customer Default, is a fair representation of the damages and losses that We expect to incur. After You pay to 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 right and title to the System Interests.

(c) Termination. (i) Termination by Seller. We may, in Our sole discretion, terminate this Agreement (1) if prior to the In-Service Date, upon delivery of written notice to You; or (2) upon the occurrence of a Customer Default. Within ninety (90) days after termination of this Agreement, other than under the circumstances in which the System is transferred to You under Section 2(b), Section 5(n), or Section 6(b), We will remove the System and restore all rooftop penetrations to be free from leaks. If We elect to terminate this Agreement, We will have no further liability to You. (ii) Termination by Customer. You may terminate this Agreement (1) pursuant to the terms of the Notice of Cancellation, or (2) upon a Seller Default.

(d) Force Majeure. If You or We are unable to perform any of the obligations under this Agreement because of a Force Majeure Event, such affected Party will be excused from whatever performance is affected by the Force Majeure Event; *provided* that the

suspension of such obligations is of no greater scope and of no longer duration than is required by the 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 which by the exercise of due diligence such Party without fault attributable to it is unable to overcome, including, but not limited to, action by a governmental authority, the failure to act on the part of any governmental authority or the Utility (*provided that such action has been timely requested and diligently pursued*), failure to obtain or maintain a permit, license, consent, or approval (*provided that such Party has made timely and reasonable commercial efforts to obtain and maintain the same*), labor dispute, strike, work-stoppage, slow-down, lock-out, flood, earthquake, volcano, fire, lightning, wind, epidemic, war, terrorism, riot, economic sanction or embargo, civil disturbance, act of god, unavailability of electricity from the Utility, equipment, supplies of products, power or voltage surge caused by someone other than the affected Party, or failure of equipment not utilized by or 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.

(e) **Arbitration of Disputes.** Most customer concerns can be resolved quickly and amicably by calling Our customer service department at 877.404.4129. If Our customer service department is unable to resolve Your concern, You and We agree to resolve any Dispute (as such term is defined below) through binding arbitration or small claims court instead of courts of general jurisdiction. BY SIGNING BELOW, YOU ACKNOWLEDGE AND AGREE THAT (1) YOU ARE HEREBY WAIVING THE RIGHT TO A TRIAL BY JURY; (2) YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; AND (3) THE FEDERAL ARBITRATION ACT (9 U.S.C. § 1 *et seq.*) GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THIS PROVISION. Except for claims brought in small claims court, You and We agree to arbitrate all disputes, claims, and controversies arising out of or relating to (i) any aspect of the relationship between You and Us, whether based in contract, tort, statute, or any other legal theory; (ii) this Agreement or any

other agreement concerning the subject matter hereof; (iii) any breach, default, or termination of this Agreement; and (iv) the interpretation, validity, or enforceability of this Agreement, including the determination of the scope or applicability of this **Section 6(e)** (each, a "**Dispute**"). Prior to commencing arbitration or an action in small claims court, a Party must first send a written "Notice of Dispute" via certified mail to the other Party. If You elect to commence arbitration or file a claim in small claims court, the Notice of Dispute must be sent to VIVINT SOLAR DEVELOPER, LLC, 3301 N Thanksgiving Way, Suite 500, Lehi, UT 84043, Attn: Legal Department. If We elect to initiate arbitration or file a claim in small claims court, We will send the Notice of Dispute to Your billing address. The Notice of Dispute must describe the nature and basis for the Dispute and the relief sought. If You and We are unable to resolve the Dispute within thirty (30) days thereafter, then either Party may commence arbitration. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures and in accordance with JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness (available at: <http://www.jamsadr.com>, the "**JAMS Rules**") and under the rules set forth in this Agreement. Any claim against a state home improvement guarantee fund (including under Maryland Code § 8-405(c)) by You shall be stayed until the completion of any mandatory arbitration proceeding. The arbitrator shall be bound by the terms of this Agreement. No matter the circumstances, the arbitrator shall not award punitive, special, exemplary, indirect, or consequential damages to either Party or any other award inconsistent with the limitations set forth in **Section 7(a)**.

Claims for less than \$10,000. If the relief sought by either Party is for less than \$10,000, the following shall apply. You may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing near Your Property consistent with the JAMS Rules. If You are required to pay a filing fee, after We receive notice that you have commenced arbitration, We will promptly reimburse You for Your payment of any filing fees. If the arbitrator issues You an award that is greater than the value of Our last written settlement offer made before an arbitrator was selected (or if We did not make a settlement offer

before an arbitrator was selected), then We will pay You the lesser of the amount of the award or \$10,000, plus reasonable attorneys' fees incurred by You and awarded by the arbitrator. Except as expressly set forth herein, the payment of all costs, filing fees, and administration and arbitrator fees will be governed by the JAMS Rules.

Claims for \$10,000 or more. If the relief sought by either Party is for \$10,000 or more, all fees and costs (including filing fees, administration and arbitrator fees, all attorneys' fees, travel expenses, and other costs of the arbitration) shall be borne by You and Us in accordance with the JAMS Rules, JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness, and applicable law. The arbitration shall be conducted at a mutually agreeable location near Your Property. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned, written decision sufficient to explain the essential findings and conclusions on which the award is based and judgment on an arbitration award may be entered in any court of competent jurisdiction. Nothing in this Section 6(e) shall preclude You or We from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY BINDING NEUTRAL ARBITRATION AS PROVIDED BY THE FEDERAL ARBITRATION ACT AND OTHER APPLICABLE LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND OTHER APPLICABLE LAW. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. YOU HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

**I/WE AGREE TO ARBITRATION
AND WAIVE THE RIGHT TO A
JURY TRIAL:**

Initials BL
Date 10/02/2015 10/02/2015

(f) Governing Law. This Agreement, and any instrument or agreement required hereunder, shall be governed by, and construed under, the internal laws of the state where the Property is located.

7. Miscellaneous.

(a) Limitation of Liability. You understand that: (i) We are not an insurer of Your Property, personal property, or personal safety of persons in or on Your Property; (ii) You are solely responsible for providing any insurance with respect to Your Property and its contents; (iii) the amount You pay to Us is based only on the value of the Energy produced by the System and not on the value of Your Property or its contents; (iv) the System may not always operate properly for various reasons; (v) it is difficult to determine in advance the value of the components of the System that might be lost or destroyed if the System fails to operate properly; and (vi) it is difficult to determine in advance what portion, if any, of any property loss, personal injury, or death would be proximately caused by Our failure to perform, Our negligence, or a failure of the System, or the System installation. 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, VIOLATIONS OF LAW, OR WILLFUL INJURY, SUCH PARTY'S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED THE DEFAULT PAYMENT. 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, NO CLAIM SHALL BE MADE BY YOU AGAINST US OR ANY OF OUR AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS, OR CONTRACTORS FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFORE 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 HEREBY WAIVE, RELEASE, AND AGREE NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN YOUR FAVOR. 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, COMMENCED OR FILED MORE THAN ONE (1) YEAR AFTER THE INCIDENT GIVING RISE TO SUCH CLAIM. YOU ACKNOWLEDGE THAT WE ARE RELYING ON THIS SECTION 7(a) AS A CONDITION AND MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT.

(b) Indemnification. To the fullest extent permitted by applicable law, You hereby agree to indemnify, advance expenses, and hold harmless Us and Our affiliates, directors, employees, agents, contractors, and Our successors and assigns (each, a "Covered Person") from any and all third party 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 (i) Your breach of this Agreement, or (ii) Your negligence or willful misconduct; *provided* that Your indemnification obligations under this Section 7(b) shall not apply if the harm or damage that is the basis for such third party claim occurred while one of Our employees or agents was at Your Property and such harm or damage was caused by the gross negligence, violation of law, or willful misconduct of such employee or agent.

(c) Subrogation. You agree to release all Covered Persons from any claims of any parties suing through Your authority or in Your name, such as Your insurance company, and You agree to defend Us against any such claim. YOU AGREE TO NOTIFY YOUR INSURANCE COMPANY OF THIS RELEASE.

(d) Amendments and Waivers. This Agreement may only be amended or modified by an instrument in writing signed by both You and Us.

(e) Entire Agreement. This Agreement, the Customer Packet, the Work Order, and any other agreements or documents incorporated herewith,

constitute the entire agreement between You and Us and supersede all prior oral and written negotiations, communications, discussions and correspondence pertaining to the subject matter hereof.

(f) Our Transfer. We may assign, sell, or transfer (in whole or in part) this Agreement, the System, or the System Interests without Your consent and without notice. If such assignee agrees in writing to assume all of Our rights and obligations under this Agreement, We will have no further liability or obligation under this Agreement upon the effectiveness of such assignment.

(g) Binding Effect. This Agreement shall be binding upon and inure to the benefit of You and Us and Our and Your respective heirs, legal representatives, successors, and permitted assigns. Except as otherwise expressly provided in this Agreement, or by operation of law, neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by You without Our prior written consent. Any assignment by You without Our prior written consent shall be void.

(h) Notice. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing delivered to the applicable Party at the address set forth in this Agreement or to such other address as any Party may designate from time to time by written notice to the other Party.

(i) Survival. After termination or expiration of this Agreement, any provisions which by their nature are intended to survive such termination or cancellation shall survive, including (without limitation) Sections 2(b), 3, 4(d), (g), (i), 5, 6, and 7, and Exhibits A and B attached hereto.

(j) Severability. If any provision of this Agreement is held to be invalid, prohibited, 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, 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.