



## Solar Power Agreement – Part II

### 1. General.

**(a) Introduction.** This Solar Power Agreement (this “**Agreement**”) is the agreement between each **Property Owner** who signs Page 1 of this Agreement (individually and together referred to in this Agreement as “**you**” and “**your**”) and Kilowatt Systems, LLC (together with its successors and assigns, “**Solar Provider**” or “**we**”, “**us**” or “**our**”), for the sale to you of the electric power produced (“**Power**”) by a solar panel system that we will own (the “**System**”) to be installed at your request at the **Property Address** shown on Page 1 pursuant to an installation agreement between you and a licensed contractor (“**Installer**”). Because of your agreement to purchase Power pursuant to this Agreement, Solar Provider has agreed, at your request, to purchase the System from Installer following installation. This Agreement refers to the location of the installed System as the “**Property**”. Solar Provider agrees to sell to you, and you agree to buy from Solar Provider, all of the Power produced by the System on the terms and conditions described in this Agreement. **By signing this Agreement, you confirm that you are (i) a Property Owner signing on behalf and with the authorization of all Property Owners of the Property or (ii) you are a trustee if the Property is owned by a trust, or (iii) you are an attorney in fact or agent authorized under a written power of attorney to sign on behalf of the Property Owners. Additionally, you confirm that the Property is either a primary or secondary residence occupied by you or your immediate family and that the Property is not closer than 300 yards from the property line of a golf course.**

**(b) In-Service Date.** The **In-Service Date** is the first day after all of the following have been achieved: (i) the System has been installed and is capable of generating Power, (ii) all permits necessary to operate the System have been obtained, (iii) the System has been interconnected with the local utility’s electric grid, (iv) all inspections, back-up documentation, and certificates required under applicable law or by the local utility have been provided to Solar Provider and (v) all conditions listed in Section 9 have been satisfied.

**(c) Initial Term of Agreement.** The term of this Agreement runs for twenty (20) “years” (240 full calendar months) plus, if the In-Service Date is not on the first day of a calendar month, the number of days left in that partial calendar month. We refer to this period as the **Initial Term**. The Initial Term begins on the In-Service Date. If the In-Service Date is any day other than the 1<sup>st</sup> day of a calendar month, the resulting partial month is included with the subsequent 12 full calendar months in the first year of the Initial Term. Each subsequent year of the Initial Term begins on the first day of the calendar month immediately after the anniversary date of the In-Service Date. The Initial Term is subject to possible renewal for up to five (5) one-year renewal terms, as described in Section 8(a) below.

**(d) Time Roof Repair Holiday.** Once during the Initial Term, we will suspend the term of this Agreement for one full calendar month, regardless of how long the System is removed, in order to allow a licensed contractor approved by us in writing, whose approval will not be unreasonably withheld, to remove the System at your expense in connection with the repair or replacement of your roof (a “**Roof Repair Holiday**”). While you will not be billed for the calendar month of the Roof Repair Holiday, using this Roof Repair Holiday option will extend the term of this Agreement by one full calendar month and you will be charged a Monthly Payment for that additional month. If you would like to use the Roof Repair Holiday, please send us written notice pursuant to Section 19 below.

### 2. Purchase and Sale of Power.

**(a) Power Price.** You agree to buy all of the Power the System produces during the Initial Term, even if you do not use all of the Power and even if you cannot sell the extra electricity to the local utility. The initial price per kWh (“**Power Price**”) of that Power is shown on Page 1 as the Year One Power Price. The Power Price is subject to a yearly increase as shown on Page 1 as the Annual Power Price Increase. The Power Price will increase at the start of each new “year” of this Agreement. (See Section 1(c) above).

**(b) Upfront Payment.** You agree to pay the Upfront Payment listed on Page 1 at the time you sign and return this Agreement to us. If paying the Upfront Payment by check, the check should be made to the order of “**Kilowatt Systems LLC**”.

**(c) Monthly Bills.** Solar Provider will, in its discretion, use first class mail or e-mail to send you a monthly bill no later than 20 days after the end of each billing period. We may send your monthly bills via email unless you contact us directly to request that your monthly bills be sent through the U.S. mail. We will use the email or Property Address shown on Page 1 of this Agreement unless and until we receive written notice from you of a change to your billing address.

The first billing period will begin on the In-Service Date (as defined in Section 1(b)). Your monthly bill will reflect charges for Power produced by the System from the previous monthly billing period plus any applicable taxes and fees.

You agree to review each monthly bill promptly for any errors. If you inform us that an error exists on your monthly bill, we will attempt to correct that error prior to your next monthly bill. If you fail to promptly notify us in writing about an error on your monthly bill, we shall bear no liability or responsibility for any losses incurred to the fullest extent permitted by law. Our sole liability to you shall be our obligation to make any appropriate changes after we receive your notification.

**(d) Monthly Payments.** Payment for each monthly bill (each, a “**Monthly Payment**”) is due on the due date specified on the monthly bill but will always be at least 10 days after the date the monthly bill is sent. For example, a monthly bill for Power produced in May will be sent on or before June 20 with a payment due date that is at least 10 days after the date the monthly bill is sent.

We will calculate your monthly bill by multiplying the kWhs of Power produced by the System times the Power Price in effect at the time the Power was produced, plus any applicable taxes and fees. Your Monthly Payments will change based upon changes to the actual Power produced by the System from billing period to billing period, and on yearly changes to your Power Price during the Initial Term. **If paying the Monthly Payment by check, the check should be made to the order of “Kilowatt Systems, LLC”.**

**(e) Additional Power.** If you need more electric energy than is being produced by the System, you will be solely responsible for purchasing that electric energy (“**Additional Power**”) from an additional supplier, such as your local utility provider. During the term of this Agreement, you should expect to purchase Additional Power from your local utility from time to time. Solar Provider will not be in default of this Agreement and will not be responsible for any Additional Power purchased by you to augment the Power produced by the System.

**(f) Estimated Power Production.** Power shall include any kWh that would have likely been produced (“**Estimated Power Production**”) during any day that the System was unable to produce or produced significantly less Power due to your actions. Estimated Power Production will also be included in Power if Solar Provider notifies you that something is shading the System causing a reduction in Power generation and you do not promptly remedy or cause to be remedied such shading. However, you will not be responsible for Estimated Power Production if a grid failure disabled the System or if the reduction in Power generation was due to the direct action of Solar Provider.

We will determine the Estimated Power Production for any monthly billing period as follows: (i) during the first year of the Initial Term, based upon the Power production estimates based upon the System design and as provided to you before the In-Service Date; and (ii) after the first year of the Initial Term, the average actual monthly Power production of the System since the In-Service Date (excluding any months where Power production was impacted as described in this Section 2(f) and excluding months when the performance meter was not working correctly as described in Section 2(g)).

**(g) Metering.** We will install, at no cost to you, a professional grade performance meter to measure the Power output at the interconnection point with the local utility company (“**Point of Delivery**”). We will collect performance meter data remotely or use our personnel to collect the information and will make the data available to you upon request. You agree to allow our personnel access to your Property to collect such information. If the meter breaks or is found to be inaccurate Solar Provider will adjust the bill in the next billing period by applying credit for any overcharges or applying an additional charge for any undercharges and will repair and/or recalibrate the meter at no cost to you. You agree not to tamper with, damage or modify the meter in any way. You will be responsible for any damage or inaccuracies in the meter that are caused by you or any other person unrelated to Solar Provider. We will use Estimated Power Production to determine Power production estimates for periods of time when the meter is not working correctly.

### 3. Solar Provider’s Additional Obligations.

Solar Provider agrees to:

(a) provide you with a web-enabled meter to accurately measure the amount of Power the System delivers to you;

(b) maintain the System in good operating condition at our cost and expense;

(c) insure the System against all damage or loss unless that damage or loss is caused by your gross negligence or willful misconduct (including your intentional damage of the System); and

(d) operate the System in material compliance with all applicable laws and permits and local utility providers' requirements.

#### 4. Your Additional Obligations.

##### (a) System and Property Maintenance. You agree to:

- (i) unless the System includes a cellular metering system (not available for all systems), provide us continuous access to a working broadband connection. If you fail to maintain the required broadband internet or electrical grid connection(s) for a period of time, we may charge you the Power Price for Estimated Power Production as determined under [Section 2\(f\)](#);
- (ii) keep trees, bushes and hedges trimmed so that the System receives as much sunlight as it did when the System was installed;
- (iii) not modify your Property in a way that shades the System;
- (iv) be responsible for any conditions at your Property that affect the installation or maintenance of the System (e.g., blocking access to the roof, or removing a tree or other natural or man-made object(s) that block access to the roof and/or to sunlight) at your sole cost and expense;
- (v) not remove any markings or identification tags on the System;
- (vi) permit Solar Provider, after we give you reasonable notice, to inspect the System for proper operation as we reasonably determine necessary;
- (vii) use the System primarily for personal, family or household purposes, but not to heat a swimming pool; and
- (viii) not do anything, permit or allow to exist any condition or circumstance which would cause the System not to operate as intended at the Property.

##### (b) Fees; Late Charges; Checks; Taxes. In addition to the other amounts you agree to pay in this Agreement, you agree to pay the following:

- (i) **Returned Check Fee:** \$25 (or such lower amount as required by law) for any check or electronic fund transfer or other payment that is returned or refused by your bank;
- (ii) **Late Payment Fee:** If you fail to make any payment when due, we will impose a late fee of \$25 (or such lower amount as required by law) on any payment we do not receive in full within five (5) days after the due date;
- (iii) **Taxes:** If applicable, you agree to pay any taxes on the Monthly Payments and all other amounts due under this Agreement. This Agreement contains a purchase option (see [Section 6](#)) and a prepayment option (see [Section 7](#)). If you exercise any applicable purchase or prepayment option under this Agreement, you also agree to pay any applicable taxes on the purchase or prepayment amount.

(c) **Filings.** You agree that the System will be Solar Provider's personal property under the Uniform Commercial Code. You also agree that the System is not a real property fixture. Solar Provider will not place a lien on your title to the Property in connection with this Agreement. However, you agree that Solar Provider may file UCC-1 financing statements and/or real property fixture filings related to our ownership interest in the System, and any other notices permitted or required by law. Solar Provider may assign such filings and any assignee may also file UCC-1 financing statements and/or real property fixture filings related to the System. You also authorize Solar Provider to make corrections to any utility paperwork to conform to this Agreement or any revisions or amendments to this Agreement that you and we agree upon.

(d) **No Alterations.** You agree that you will not make any modifications, improvements, revisions or additions to the System or take any other action that could void the manufacturer warranty on the System without Solar Provider's prior written consent. If you make any modifications, improvements, revisions or additions to the System after receiving such prior written consent, they will become part of the System and shall be Solar Provider's property.

##### (e) Access to the System.

- (i) Solar Provider shall give you reasonable notice of our need to access the Property whenever commercially reasonable. You grant to Solar Provider and our employees, agents and independent contractors (including without limitation the installer) the right to reasonably access all of the Property as necessary for the purposes of (a) operating, owning, repairing, removing and replacing the System or making any additions to the System or installing complementary technologies on or about the location of the System; (b) enforcing Solar Provider's rights as to this Agreement and the System; or (c) taking any other action reasonably necessary in connection with the operation, maintenance, removal or repair of the System. This access right shall continue for up to ninety (90) days after the expiration of this Agreement in order to provide Solar

Provider with reasonable time to remove the System after the end of this Agreement.

- (ii) During the time that Solar Provider has access rights, you shall ensure that such access rights are preserved and shall not interfere with or permit any third party to interfere with Solar Provider's access rights.

(f) **Indemnity.** To the fullest extent permitted by law, you shall indemnify, defend, protect, save and hold harmless Solar Provider, our employees, officers, directors, agents, successors and assigns 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 arising out of, connected with, relating to or resulting from your negligence or willful misconduct, or the negligence or willful misconduct of your guests, contractors or agents; provided that nothing herein shall require you to indemnify Solar Provider for our own negligence or willful misconduct. **The provisions of this paragraph shall survive termination or expiration of this Agreement.**

(g) **Monthly Payments.** You agree that the obligation to pay all Monthly Payments and all other amounts due under this Agreement shall be absolute and unconditional under all circumstances and shall not be subject to any abatement, defense, counterclaim, setoff, recoupment, refund, or reduction for any reason whatsoever, it being the express intent of the parties that all amounts payable by you hereunder shall be and continue to be payable in all events, including by your heirs and estate, and, except as set forth below in [Sections 9 and 13\(d\)](#), the "NOTICE" on Page 1 of this Agreement, and in the accompanying Notice of Cancellation, you hereby waive all rights you may have to reject or cancel this Agreement, to revoke acceptance of the System, or to grant a security interest in the System.

##### (h) Notices. You agree to:

- (i) Notify Solar Provider immediately upon your discovery of an emergency condition relating to the System, damage to the System or theft of the System;
- (ii) Notify Solar Provider of your intent to sell the Property (see [Section 5](#) below); and
- (iii) Notify Solar Provider before changing your electric power supplier. See [Section 19](#) below for information about sending notices to Solar Provider.

#### 5. Options When Selling Your Property.

(a) If you (or your estate or your heirs, as applicable) sell your Property you must choose one of the following three (3) options:

- (i) **Transfer this Agreement and the Monthly Payments.** If the person(s) buying your Property meets Solar Provider's then-applicable credit requirements, then the person(s) buying your Property can sign a transfer agreement assuming all of your rights and obligations under this Agreement, including the obligation to pay Monthly Payments.

(ii) **Purchase the System Outright.** See [Section 6](#) below.

- (iii) **Prepay and Transfer only the Use of the System.** You (or your estate or your heirs, as applicable) can prepay the remaining Monthly Payments due under this Agreement as described in [Section 7](#) of this Agreement. The person(s) buying your Property will not have to meet any credit requirements and will only need to sign a transfer agreement to assume your rights and obligations (other than the obligation to make Monthly Payments through the Initial Term) under this Agreement. The System stays at your Property; the person(s) buying your Property does not have to make any Monthly Payments through the Initial Term but otherwise will be required to comply with the remainder of this Agreement and Solar Provider's obligations under this Agreement will continue through the remainder of the Initial Term and as described in [Section 8](#).

(b) If you sell your Property, you must notify us, in writing, at least thirty (30) days, but no more than ninety (90) days, prior to the scheduled closing date indicating which of the options in [Section 5\(a\)](#) you have chosen.

(c) If you (or your estate or your heirs, as applicable) sell your Property and do not comply with one of the options in [Section 5\(a\)](#) above, you will be in default under this Agreement. (See [Sections 15](#) and [16](#) below.)

#### 6. Option to Purchase the System.

(a) You have the option to purchase the System at the following times during the Initial Term:

- (i) Upon the fifth (5th) anniversary of the In-Service Date (see [Section 1\(b\)](#) above);

- (ii) At the end of the Initial Term of this Agreement (see [Section 1\(c\)](#) above);
- (iii) If you sell your Property during the Initial Term (see [Section 5](#) above);
- (iv) If Solar Provider (including our successors and assigns) materially fails to perform its obligations under this Agreement and such failure is not corrected within thirty (30) days after written notice from you describing the material failure (subject to [Section 13](#) below); and
- (v) Only with Solar Provider's written consent (which Solar Provider may withhold in Solar Provider's sole discretion) at another time not described above.

(b) To purchase the System pursuant to [Section 6\(a\)](#), you must notify us in writing at least thirty (30) days, but no more than ninety (90) days, prior to the desired purchase date and deliver payment to Solar Provider within thirty (30) days of receiving an invoice from Solar Provider (using e-mail or first class mail, at Solar Provider's option) for the purchase price.

(c) The purchase price you will pay for the System ("**Buyout Price**") shall be the greater of: (a) the System's appraised fair market value ("**FMV**") at such time; and (b) the net present value of the future estimated tax benefits, incentives and Monthly Payments that would have been received by or payable to us under or in connection with this Agreement (assuming Estimated Power Production through the remaining scheduled Initial Term of this Agreement), using a net present value discount rate of 3%. You acknowledge that the FMV shall include the value of any and all environmental attributes, such as solar renewable energy credits, that the System will likely produce after the purchase date (to the extent that Solar Provider has not already transferred such environmental attributes to third parties pursuant to [Section 11](#) below). Solar Provider will hire an independent appraiser to compute the System's FMV at Solar Provider's expense.

(d) If you exercise the option to purchase the System, you will be purchasing the System "AS IS, WHERE IS" and Solar Provider will assign you any product and/or workmanship warranties still in effect for the System. However, Solar Provider will not provide any maintenance or repair services after you purchase the System, unless you enter into a separate agreement with Solar Provider, at your expense, for such services. If you exercise the option to purchase the System, you will also own the Power produced by the System and [Sections 3, 7, 8, 11, 12 and 17](#) of this Agreement will cease to apply.

#### **7. Option to Prepay Agreement.**

(a) At any time during the Initial Term, you can prepay this Agreement in full. Such prepayment will not terminate this Agreement, nor limit any of your rights or obligations (other than your obligation to make Monthly Payments during the Initial Term).

(b) In order to prepay this Agreement, you must notify us in writing at least thirty (30) days, but no more than ninety (90) days, prior to the desired prepayment date.

(c) The payment required to prepay this Agreement ("**Prepayment Price**") shall be equal to the net present value of the future Monthly Payments that would have been payable to us under this Agreement (assuming Estimated Power Production through the remaining scheduled Initial Term of this Agreement), using a net present value discount rate of 3%.

(d) If you exercise the option to pay the Prepayment Price, Solar Provider's obligations under this Agreement will continue through the remainder of the Initial Term and as described in [Section 8](#).

#### **8. Options at the End of Initial Term.**

(a) **Automatic Renewal.** Provided that (a) you are not in default under this Agreement (see [Section 15](#) below) and (b) you have not given us written notice of your intent to purchase the System at the end of the Initial Term (as described in [Section 6\(a\)](#)), this Agreement shall automatically renew at the end of the Initial Term for one or more additional one (1) year renewal term(s) at a Power Price equal to the then fair market value of solar generated electricity (as determined by Solar Provider) for a maximum of five (5) one-year renewal terms, unless and until we receive from you written notice at least thirty (30) but not more than ninety (90) calendar days before the scheduled commencement of a renewal term that you do not wish to renew. Solar Provider will notify you (using e-mail or first class mail, at Solar Provider's option) at least 60 days prior to the end of the Initial Term, and each subsequent one-year renewal term, to (i) remind you of your end of term options and (ii) disclose to you the Power Price for the next scheduled one-year renewal term.

(b) **Purchase the System.** You also have the right to purchase the System at the end of the Initial Term. See [Section 6](#) for a detailed explanation.

(c) If you choose not to renew this Agreement or purchase the System, then there are three (3) possibilities with respect to returning or keeping the System:

- (i) Solar Provider may at our choosing, remove the System from your Property at no cost to you; or
- (ii) If Solar Provider does not tell you that we want to remove the System, and you want to have the System removed from your Property at no cost to you, you must notify us as described in [Section 19](#) below; or
- (iii) If Solar Provider chooses not to remove the System and you do not ask to have the System removed, Solar Provider will convey the System to you, at no cost to you, on an "AS IS, WHERE IS" basis.

(d) If at the end or termination of this Agreement you are in default (see [Section 15](#)), and Solar Provider chooses to remove the System from your Property, then you agree to pay Solar Provider the reasonable expense of removing the System from your Property.

#### **9. Conditions Prior to Installation of the System.**

(a) **Termination of this Agreement Before System Installation.** Solar Provider's obligation to sell you the Power the System produces is conditioned on the following items having been completed to our reasonable satisfaction:

- (i) completion of the engineering site audit (a thorough physical inspection of the Property, including if applicable geotechnical work), and real estate due diligence to confirm the suitability of the Property for the construction, installation and operation of the System;
- (ii) confirmation of availability of rebates, tax credits, renewable energy credits and other incentives in the amount used to calculate the Power Price and Monthly Payment amounts set forth in this Agreement;
- (iii) confirmation that Solar Provider will obtain all applicable benefits referred to in [Section 11](#);
- (iv) receipt of all necessary zoning, land use and building permits; and
- (v) completion of any renovations, improvements or changes reasonably required on the Property, at your sole cost and expense (e.g., removal of a tree or necessary roof repairs to enable us to safely install the System).

Solar Provider may terminate this Agreement without any liability if, in our reasonable judgment, any of the above listed conditions will not be satisfied for reasons beyond our reasonable control. Once Installer starts installation, however, we may not terminate this Agreement for your failure to satisfy the conditions above.

#### **(b) Right to Terminate this Agreement for Significant Changes or Delays.**

- (i) Both parties will have the right to terminate this Agreement, without penalty or fee, if Solar Provider determines after the engineering site audit of your Property that we have misestimated by more than ten percent (10%) the System's annual Power production relative to the estimate provided in the original sales proposal. Such termination right will expire at the earlier of (a) seven (7) calendar days before the scheduled System installation commencement date and (b) thirty (30) calendar days after we inform you in writing (using e-mail or first class mail, at Solar Provider's option) of the revised Power production estimate.
- (ii) Solar Provider may terminate this Agreement if, in our reasonable judgment, the installation of the System will not occur within 120 days of the date of this Agreement being fully executed by all parties for reasons beyond our reasonable control.

#### **10. Assignment.**

(a) **Assignment by Solar Provider.** Solar Provider may assign, sell or transfer the System and this Agreement, or any part of this Agreement (including the Installation Warranty described in [Section 17](#) below), without your consent and without notice. Assignment, sale or transfer generally means that Solar Provider would transfer certain of our rights and/or certain of our obligations under this Agreement to another party. In the event such assignment is a transfer of all of our or a subsequent assignor's rights and obligations, you agree to release us or subsequent assignors from all future obligations. Any assignment of Solar Provider's rights and/or obligations under this Agreement shall not result in any change to your rights and obligations under this Agreement.

(b) **Assignment by You.** Except as set forth in this Agreement, you will not assign, sell, pledge or in any other way transfer your interest in the Power

produced by the System, or in this Agreement, without our prior written consent, which shall not be unreasonably withheld.

**11. Our Ownership of the System; Tax Credits and Rebates.** You understand and agree that this is not a contract to sell or lease the System to you. Solar Provider will own the System for all purposes, including any data generated from the System. You shall at all times keep the System free and clear of all liens, claims, levies and legal processes not created by Solar Provider, and shall at your expense protect and defend Solar Provider against the same.

YOU UNDERSTAND AND AGREE THAT ANY AND ALL TAX CREDITS, INCENTIVES, RENEWABLE ENERGY CREDITS, GREEN TAGS, CARBON OFFSET CREDITS, UTILITY REBATES OR ANY OTHER NON-POWER ATTRIBUTES OF THE SYSTEM ARE THE PROPERTY OF AND FOR THE BENEFIT OF SOLAR PROVIDER, USABLE AT OUR SOLE DISCRETION. SOLAR PROVIDER SHALL HAVE THE EXCLUSIVE RIGHT TO ENJOY, USE AND TRANSFER ALL SUCH BENEFITS, WHETHER SUCH BENEFITS EXIST NOW OR IN THE FUTURE. YOU AGREE TO REFRAIN FROM ENTERING INTO ANY AGREEMENT WITH YOUR UTILITY THAT WOULD ENTITLE YOUR UTILITY TO CLAIM ANY SUCH BENEFITS. YOU AGREE TO REASONABLY COOPERATE WITH SOLAR PROVIDER SO THAT WE MAY CLAIM AND TRANSFER ANY TAX CREDITS, RENEWABLE ENERGY CREDITS, REBATES, CARBON OFFSET CREDITS OR ANY OTHER BENEFITS FROM THE SYSTEM. THIS MAY INCLUDE TO THE EXTENT ALLOWABLE BY LAW, ENTERING INTO NET METERING AGREEMENTS, INTERCONNECTION AGREEMENTS, AND FILING RENEWABLE ENERGY/CARBON OFFSET CREDIT REGISTRATIONS AND/OR APPLICATIONS FOR REBATES FROM THE FEDERAL, STATE OR LOCAL GOVERNMENT OR A LOCAL UTILITY AND GIVING OR ASSIGNING THESE TAX CREDITS, RENEWABLE ENERGY/CARBON CREDITS, REBATES OR OTHER BENEFITS OR THEIR CASH EQUIVALENT TO SOLAR PROVIDER.

**12. Loss or Damage; Insurance.**

(a) **Loss or Damage.** Unless you or your guests, contractors or agents are grossly negligent or intentionally damage the System, Solar Provider will bear all of the risk of loss, damage, theft, destruction or similar occurrence to any part or all of the System.

(b) **Insurance.** Solar Provider will insure the System against all damage or loss unless that damage or loss is caused by your gross negligence or willful misconduct (including your intentional damage of the System). You do not need to add the System to your Property insurance policy.

**13. Force Majeure.**

(a) Neither you nor Solar Provider will be in default under this Agreement because of any delay or failure in the performance under this Agreement (including any obligation to deliver or accept the Power produced by the System) if the delay or failure is due to Force Majeure. Force Majeure includes acts of God such as storms, fires, floods, lightning and earthquakes, sabotage or destruction by a third party of the System, war, riot, acts of a public enemy or other civil disturbance, or a strike, walkout, lockout or other significant labor dispute. Force Majeure does not include economic hardship of either you or Solar Provider, a power grid failure (except if caused directly by a Force Majeure event), a failure or delay in the granting of permits, or insufficiency, unavailability, failure or diminishment of solar resources, except as a result of an event that would otherwise qualify as a Force Majeure.

(b) Force Majeure cannot be due to fault or negligence on the part of the party claiming Force Majeure and must be caused by things beyond that party's reasonable control. Additionally, you or Solar Provider must have taken all reasonable technical and commercial precautions to prevent the Force Majeure event.

(c) In order to claim Force Majeure as a reason for non-performance, you or Solar Provider must give notice to the other party of the Force Majeure within fourteen (14) days of the occurrence of the Force Majeure and estimate how long it will last and what the potential impact is on the Agreement. The party claiming Force Majeure must (1) make reasonable attempts to continue to perform under this Agreement, (2) quickly take action to correct the problem caused by the Force Majeure, (3) make reasonable efforts to limit damage to the other party, and (4) notify the other party when the Force Majeure event ends and performance will resume as contemplated in this Agreement.

(d) If you or Solar Provider is prevented from performing under this Agreement because of Force Majeure for a period of either (i) three hundred sixty-five (365) consecutive days or more, or (ii) five hundred seventy (570) non-consecutive days or more (whether full or partial days), the other party may terminate this Agreement, without liability of either party to the other, upon thirty (30) days written notice at any time during the Force Majeure.

**14. Limitation of Liability.**

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (INCLUDING THE INSTALLATION WARRANTY DESCRIBED IN SECTION 17), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EVEN IF A COURT OR ARBITRATOR DECIDES THAT OUR BREACH OF THIS AGREEMENT OR NEGLIGENCE, FAILURE OF THE SYSTEM, OR A FAILURE OF THE INSTALLATION OR ANY REPAIR PROVIDED BY US CAUSED OR ALLOWED ANY HARM OR DAMAGE (WHETHER PROPERTY DAMAGE, PERSONAL INJURY OR DEATH) TO YOU OR ANYONE IN OR ON YOUR PROPERTY, YOU AGREE THAT OUR LIABILITY SHALL BE LIMITED TO THE AMOUNT YOU HAVE PAID US FOR THE POWER PRODUCED BY THE SYSTEM. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**15. Default.** You will be in default under this Agreement if any one of the following occurs:

- (a) Two or more Monthly Payments are past due at any time;
- (b) you fail to perform any material obligation that you have undertaken in this Agreement (which includes doing something you have agreed not to do, including, but not limited to, making any alterations to the System) and such failure continues and is not corrected for a period of fifteen (15) days after written notice;
- (c) you have provided any false or misleading financial or other information to obtain this Agreement;
- (d) you (or your estate or your heirs, as applicable) assign, transfer, encumber, sublet or sell (or attempt to assign, transfer, encumber, sublet or sell) this Agreement or any part of the System without Solar Provider's prior written consent; or
- (e) you or any guarantor makes an assignment for the benefit of creditors, admits in writing your (or any guarantor's) insolvency, a bankruptcy petition is filed by or against you or any guarantor, or you or any guarantor is adjudicated bankrupt or insolvent or undertakes or experiences any substantially similar activity.

**16. Our Remedies in Case of Default.** If you are in default under this Agreement, we may take any one or more of the following actions at our option and in our discretion. If the law requires us to do so, we will give you notice and wait the stipulated period of time required before taking these actions. We may:

- (a) terminate this Agreement;
- (b) take any reasonable action to correct or cover your default and/or to prevent or reduce our loss (including without limitation costs of repairing damage to the System for which you are responsible); any amount we pay will be added to the amount you owe us and will be immediately due;
- (c) require you, at your expense, to return the System or make it available to us in a reasonable manner;
- (d) proceed, by appropriate court or other action, to enforce performance of this Agreement and/or to recover damages for your default (including without limitation our court costs, attorneys' fees, and other expenses relating to your default, to the fullest extent allowed by law);
- (e) turn off or take back the System by legal process or self-help, but we may not breach the peace or violate the law;
- (f) recover from you (i) a payment equal to the greater of the (A) Prepayment Price (see Section 7) and (B) Buyout Price (see Section 6) plus (ii) all taxes, late charges, penalties, interest and all other sums then accrued or due and owing to Solar Provider. After we receive this amount from you, we will automatically convey the System to you on an "AS IS, WHERE IS" basis; and
- (g) use any other remedy available to us in this Agreement or by law.

By choosing any one or more of the remedies described above, Solar Provider does not give up our right to use another remedy. By deciding not to use any remedy when you are in default, Solar Provider does not give up our right to use that remedy (or any other remedy) in case of a subsequent default.

**17. Installation Warranty.** Solar Provider provides you with an Installation Warranty (the "Installation Warranty") for certain roof damage caused during the installation of the System. We will repair or pay you for roof damage caused during the installation of the System to areas that are within a three (3) foot radius of any part of the System. This Installation Warranty will run for one (1) year following the completion of the System installation.

You must notify us promptly and in writing of any claim under the Installation Warranty as outlined in Section 19 below.

EXCEPT AS SPECIFICALLY DESCRIBED IN THIS AGREEMENT, YOU UNDERSTAND THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, DESIGN, CAPACITY, SUITABILITY OR PERFORMANCE OF THE SYSTEM OR ITS INSTALLATION.

**18. Governing Law; Arbitration; Waiver of Trial By Jury**

(a) **Governing Law.** The laws of the state where your Property is located shall govern this Agreement without giving effect to conflict of law or choice of law principles. However, the Federal Arbitration Act governs our agreement to arbitrate (see [Section 18 \(b\)](#) below).

(b) **Arbitration.** Except as stated in the following paragraph regarding class arbitration, if either party requests, the other party agrees to arbitrate all disputes and claims arising out of or relating to this Agreement, or any alleged or claimed oral or other agreement related to the System. If a party seeks to have a dispute settled by arbitration, that party must first send to the other party, by certified or registered mail, return receipt requested and postage prepaid, a written Notice of Intent to Arbitrate. If the parties do not reach an agreement to resolve the dispute within 30 days after the Notice of Intent to Arbitrate is received, either party may commence an arbitration proceeding with the American Arbitration Association ("AAA"). Solar Provider will promptly reimburse you any arbitration filing fee and, except as provided in the next sentence, Solar Provider will pay all AAA administration and arbitrator fees. If the arbitrator finds that either the substance of the claim raised by you or the relief sought by you is improper or not warranted, as measured by the standards set forth in Federal Rule of Civil Procedure 11(b), then Solar Provider will pay these fees only if required by the AAA Rules. If the arbitrator grants relief to you that is equal to or greater than the value of what you requested in the arbitration, Solar Provider will reimburse you for your reasonable attorneys' fees and expenses incurred for the arbitration.

In addition, each party may bring claims against the other party only in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. Further, the parties agree that the arbitrator may not consolidate proceedings for more than one person's claims, except that the Co-Owner, if any, may bring claims in the same proceeding as the Property Owner. The arbitrator may not otherwise preside over any form of a representative or class proceeding. If any provision in this paragraph is found unenforceable, then both parties agree that neither party shall litigate any claims as a representative or a member of a class or in a private attorney general capacity. Judgment on an arbitrator's award may be entered in any court having jurisdiction. All statutes of limitations that are applicable to any dispute shall apply to any arbitration between us. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than your own. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING, EXCEPT TO THE EXTENT IT IS SUBJECT TO REVIEW IN ACCORDANCE WITH APPLICABLE LAW GOVERNING ARBITRATION AWARDS. OTHER RIGHTS THAT YOU OR WE WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION

(c) **Waiver of Trial By Jury.** You agree that, by entering into this Agreement, you and we are waiving the right to a trial by jury.

(d) The provisions of this [Section 18](#) shall survive termination or expiration of this Agreement.

**19. Notices.** Unless otherwise specifically required or permitted in this Agreement, all notices under this Agreement shall be in writing and shall be by electronic mail or certified or registered mail, return receipt requested and postage prepaid, and deemed received upon acknowledgment of receipt of electronic mail or five (5) calendar days after deposit in the mail. Notices from you must include your name, the Property Address shown on [Page 1](#) of this Agreement, and the Contract ID# printed at the top of each page of this Agreement. Notices you send via electronic mail shall be sent to [notices@kilowattsystems.com](mailto:notices@kilowattsystems.com). Unless otherwise specifically required or permitted in this Agreement, notices you send via certified or registered mail should be sent to: Kilowatt Systems, LLC, 229 Minnetonka Ave S #682, Wayzata, MN 55391. We will send notices to you using the email or Property Address shown on [Page 1](#) of this Agreement unless and until we receive written notice from you of a change to your email or mailing address.

**20. Waiver.** Any delay or failure of a party to enforce any of the provisions of this Agreement, including but not limited to any remedies listed in this Agreement, or to require performance by the other party of any of the provisions of this Agreement, shall not be construed to (i) be a waiver of such

provisions or a party's right to enforce that provision; or (ii) affect the validity of this Agreement.

**21. Entire Agreement; Changes; Joint and Several Liability.** This Agreement contains the parties' entire agreement regarding the sale and purchase of Power generated by the System. There are no other agreements regarding this Agreement, either written or oral. Any change to this Agreement must be in writing and (except to the extent specifically provided to the contrary in this Agreement) signed by both parties.

Captions and headings used in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement. Unless the context specifically requires otherwise, the use of the plural in this Agreement includes the singular, and vice versa.

Except as specifically provided to the contrary in [Section 18\(b\)](#), if any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable.

You agree that if more than one person signs this Agreement as a Property Owner or Co-Owner, each of you is fully responsible, individually and together, for performing all of your obligations under this Agreement, and we may enforce this Agreement against any one (or all) of you, at our option. Your obligations under this Agreement are binding on you, your legal representatives, and your estate, to the fullest extent allowed by law, unless and until we either expressly release you from your obligations in writing, or we transfer ownership of the System to you.

<b>Office Use Only</b>	
<b>Approved by:</b>	
Kilowatt Systems, LLC	
By CPFAM KWF Services, LLC, its agent	
Date:	DocuSigned by: 10/20/2014
Signature:	<i>Lauren Langford</i>
Print Name:	925E37946E6743A... Lauren Langford
Title:	Authorized Signer

Exhibit A

NOTICE OF CANCELLATION

10/11/2014

(Date)

\_\_\_\_\_

(enter date of transaction)

**You may CANCEL this transaction, without any penalty or obligation, within TEN CALENDAR DAYS from the above date.**

**If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN (10) BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.**

**If you cancel, you must make available to the seller 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 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 Kilowatt Systems, LLC, Attention Legal Counsel, 229 Minnetonka Ave S #682, Wayzata, MN 55391 NOT LATER THAN MIDNIGHT OF TEN CALENDAR DAYS AFTER**

10/11/2014

\_\_\_\_\_  
(Date)

**I HEREBY CANCEL THIS TRANSACTION.**

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)