

HPD [AND HDC] SOLAR PROJECT RIDER

THIS HPD SOLAR PROJECT RIDER (this “RIDER”) is attached to that [name of agreement] between [Name of Beneficial Owner (or Owner, if no other owner entities)], a [New York _____] having an address at [_____, its successor and/or assigns [(“Owner”)] and [Name of Solar Services Company], a [New York _____] having an address at [_____, its successors and/or assigns (“Provider” and together with Owner the “Parties” or individually “Party”) executed as of [Date], containing [##] pages including [list of exhibits and schedules], not including this Rider (the “Solar Agreements”).

This RIDER is only effective when attached to the fully executed Solar Agreements between the Owner and the Solar Services Company.

WHEREAS, the Owner owns those properties and projects at [list addresses of properties] (the “Properties”).

WHEREAS, The Owner intends to install a solar PV system (the “Solar PV System” and “Solar PV Systems” if more than one) for a certain time period (the “Term”) in accordance with the standards required by The City of New York, acting by and through its Department of Housing Preservation and Development (“HPD”) [and the New York City Housing Development Corporation (“HDC”)] as further described in the technical requirements linked here [Technical Requirements](#) (“Technical Requirements”). The Solar PV System(s) design must be attached to the Solar Agreements.

WHEREAS, recorded against the Properties are regulatory agreements and/or mortgages and/or funding disbursement agreements and or other documents for the benefit of HPD [and HDC] encumbering the Properties, restricting their use and the rights of the Owner (collectively the “Regulatory Documents”).

WHEREAS, the Owner and Provider represent that the Solar PV System and Solar Agreements meet the Technical Requirements.

Based on the foregoing, and consistent with the objectives of promoting improvements that enhance the use of renewable and efficient use of energy at the Properties, Owner and Provider hereby agree as follows:

1. Approval of Solar Security Documents. With respect to the grant of security interests and liens in the Solar PV System, and to the filing and recordation of any financing statements or other security documents relating to any security interest in the Solar PV System, Provider is hereby authorized to record and/or file a UCC fixture filing (“Solar Security Document”) so long as the terms of this Rider are met, if and only if such security instrument: (i) is required by the Solar Agreements, (ii) is fully subordinate to the Regulatory Documents, and (iii) does not encumber or disturb the rights of tenants at the Properties or use of the Properties by tenants. Notwithstanding anything to the contrary neither the Owner nor the Provider will record a memorandum of lease evidencing the Solar Agreements or the Solar Security Documents.

2. Conditions. Paragraphs 1 and 2 above are subject to the following conditions:

(a) Provider shall give written notice to HPD [and, if applicable, HDC] immediately upon any Party commencing any action to foreclose under the Solar Security Documents or any other action by Provider to take possession of any of any collateral for the Solar Agreements.

(b) This Rider shall not constitute a waiver of or consent to any action or transaction other than as specifically provided herein, including but not limited to the requirement of obtaining HPD's consent to withdraw funds from Properties replacement reserves to cover installation costs associated with roof preparation, including but not limited to roof repair or roof replacement, and shall not constitute a modification of any provisions, terms or conditions of the Regulatory Documents.

(c) Except as specifically provided in this Rider, HPD explicitly reserves all of its rights, powers and privileges under, or in respect of, the Regulatory Documents, together with all of its rights, powers and privileges at law or in equity.

(d) Provider will ensure that Solar PV System meets the [Technical Requirements](#) and is in conformance with the Solar Agreements at all times.

(e) The equipment may not cause any material interference with other equipment then in place on the roof or with standard building services elsewhere at the Properties and Provider will use best efforts to not interfere with the rights of tenants.

3. Removal. The Provider will not remove the Solar PV Systems during the Term of the Solar Agreements except as set forth herein. Unless the Owner elects otherwise, the Provider will remove the Solar PV Systems at the end of the Term. Excluding ordinary wear and tear, the buildings located on the Properties (the "Buildings") shall be returned to its original condition including the removal of Solar PV Systems mounting pads or other support structures. In no case shall Provider's removal of the Solar PV Systems affect the integrity of Owner's roof, which shall be as leak proof as it was prior to removal of the Solar PV Systems and shall be flashed and/or patched to existing roof specifications. If requested by Owner, Provider will coordinate with Owner's roofer to ensure proper compliance with any still existing roof warranty. Provider shall leave the Building in neat and clean order, including, but not limited to the removal of all debris created by the removal of the Solar PV Systems. If Provider fails to remove or commence substantial efforts to remove the Solar PV Systems by the date specified in the Solar Agreements, Owner shall have the right, at its option and in addition to the remedies set forth herein, to remove the Solar PV

Systems and restore the Building to its original condition (other than ordinary wear and tear) at Provider's cost. If available, Owner shall provide sufficient space for the temporary storage and staging of tools, materials and equipment reasonably necessary during Solar PV Systems removal. Provider agrees to indemnify and hold HPD [and HDC] harmless from and against any damages, losses or claims that may arise from such storage and removal; and Provider will pay for all reasonable costs associated with the storage and removal of the Solar PV Systems and any repairs to the Buildings caused by storage and such removal, and will use best efforts to not interfere with the rights of tenants or to cause any material damage to the Buildings.

In the event that the Solar PV systems are removed from the Buildings prior to the end of the Term because of the maintenance required in section 10 of this Rider or any other request or cause of the Owner, the Owner will pay for the reasonable costs of removal and storage. In such event Owner agrees to indemnify and hold HPD [and HDC] harmless from and against any damages, losses or claims that may arise from such removal.

In the event that the Solar PV System(s) is removed prior to the end of the Term, at the request or direction of the Provider, if and only if the Owner has consented, the Solar PV Systems may be removed at the sole cost and expense of the Provider. In such event Provider agrees to indemnify and hold HPD [and HDC] harmless from and against any damages, losses or claims that may arise from such removal

4. Not a Party. HPD [and HDC] is [are] not a party to any Solar Agreements and makes no business judgment as to economic viability or any other terms contained therein, or the sufficiency or quality of any work which may be performed in connection therewith. In addition, HPD [and HDC] assumes no liability for any expenses or costs incurred by Owner or Provider with respect to any Solar Agreement or Solar Security Document.

5. Notice. All notices, demands, requests or other communications (collectively, "Notices") required to be given or which may be given hereunder shall be in writing (notwithstanding anything to the contrary herein) and shall be sent by (a) national overnight delivery service (against a signed receipt), (b) personal delivery (against a signed receipt), addressed as follows, or (c) email, with a confirmation copy by one of the foregoing methods, as follows:

If to HPD:

NYC Department of Housing Preservation and Development
Division of Asset Management
100 Gold Street
New York, New York 10038

Attention: Assistant Commissioner for Asset Management
With a copy to: General Counsel

[If to HDC:
Housing Development Corporation
120 Broadway, 2nd Floor
New York, NY 10271
]

If to Owner:

If to Provider:

Any Notice so sent by national overnight delivery service or personal delivery shall be deemed given on the date of receipt or refusal as indicated on the receipt of the national overnight delivery service or personal delivery service. A Notice may be given either by a Party or by such Party's attorney. A Party may designate, by not less than five (5) business days' notice given to the other Party in accordance with the terms of this Section 6, additional or substituted parties to whom Notices should be sent hereunder.

6. Default.

(a) **Notice; Opportunity to Cure.** After any violation of this Rider, HPD [and HDC] may give notice of the violation to the Provider [with, if HPD or HDC desire in their sole discretion a courtesy copy to Owner]. If HPD [or HDC] gives notice of a violation to Provider, HPD [or HDC] shall provide the Provider with a period of not less than 30 days to cure the violation, unless HPD [or HDC, as applicable] reasonably determines that (i) the violation cannot be cured; (ii) the violation resulted from Provider's gross negligence or willful misconduct; or (iii) exigent circumstances require immediate action to protect the Properties.

(b) **Declaration of Default.** If a violation of this Rider is continuing after notice to Provider and the expiration of any cure period given in accordance with subsection (a) above (or, in the case of a violation that cannot with due diligence be cured by the Provider during a given cure period, if the Provider has failed to proceed promptly to cure the violation to the satisfaction of HPD [or HDC, as applicable,] within such period or is not diligently pursuing the cure), the

HPD [or HDC, as applicable,] may declare a default under this Rider (“**Default**”) by written notice to all parties to this Rider.

7. Remedies. After declaring a Default, HPD [or HDC, as applicable,] may take one or more of the following actions:

(a) **Specific Performance.** Seek a temporary or permanent injunction or an order for specific performance of this Rider. HPD [or HDC, as applicable,] may also seek this remedy if it determines that a violation of this Rider is threatened.

(b) **Cure by HPD [or HDC, as applicable].** Cure the violation and charge the Party responsible for the violation for any fees and other expenses incurred to remedy the violation, plus interest at the Default Rate (as defined hereinbelow) from the date of demand until paid. “**Default Rate**” means an interest rate that is the lower of (a) the highest interest rate permitted by Law, or (b) 16% per annum.

(c) **Provider Default.** If the Provider is in Default, in addition to any other rights at law or equity, HPD [or HDC, as applicable,] may withdraw its consent for the Solar Security Documents for as long as the Default exists.

8. Superiority. In event of discrepancy between the terms of the Solar Agreements and this Rider, the Rider will govern.

9. Damage; Relocation; Repairs. Provider is fully responsible for any damage to the roof (including resulting water damage) caused by its installations or operations. Should there be a need to repair or replace the roof during the Term of the Solar Agreements, the Provider will work with Owner to relocate Solar PV System, if necessary, in order to complete the repairs by Provider in a timely manner. If Owner needs to perform roof maintenance, annually, or for such other period as reasonably required by Owner, the Solar PV System may be inoperative for such amount of time period as is reasonably necessary for Owner to perform roof maintenance.

10. Outages. Buyer shall be permitted to be off line for a total of sixty (60) day light hours (each, a “Scheduled Outage”) per calendar year during the Term, during which days Buyer shall not be obligated to accept or pay for any associated Bill Credits from the System; provided, however, that Buyer must notify Seller in writing of each such Scheduled Outage at least seventy-two (72) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of sixty (60) day light hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of credits that would have been delivered to Buyer during such excess Scheduled Outages or unscheduled outages and shall invoice Buyer for such amount and any associated lost or recaptured Environmental Incentives and lost sales

(and penalties payments associated with the same) of associated Environmental Attributes. For avoidance of doubt, the sixty (60) hour period shall include all Scheduled Outage hours allowed under any of the terms of this Agreement.

11. Insurance. Provider will maintain casualty insurance for the full replacement value of the Solar PV System. The Owner has no responsibility for damage or loss to the Solar PV System or any other Provider property, except for Owner's gross negligence or willful acts. The Provider will also maintain commercial general liability (CGL) insurance in commercially standard amounts naming the Owner as an additional insured.

12. Owner Indemnification of Provider. The Owner will not indemnify the Provider except for Owner's willful acts or gross negligence.

13. Utilities. If a separate, direct electric meter is installed, it must be installed at Provider's expense. The location of electric lines, as well as the point of connection (and manner of connection) to the Building main line must be shown in the Solar Agreements attached hereto.

14. Access. Provider's access to the Solar PV System is limited to normal business hours, except for emergencies, with reasonable advance notice to the Owner.

15. Modification/Assignment or Subletting. This Rider is limited to the Solar Agreements to which it is attached. Any material modification of the Solar Agreement requires a separate consent and Rider.

16. Taxes. If any real estate or similar tax is imposed on Owner, in respect of the Solar PV System or the Solar Agreements, the Provider is responsible for reimbursing Owner for any such taxes paid.

17. Condemnation. Provider may not share in any award received by Owner for condemnation of the Building or Property, however, Provider may apply for a separate award for the taking of its trade fixtures and for its relocation expenses.

18. Easements. Notwithstanding anything to the contrary, nothing in the Solar Agreements shall constitute a grant of an easement from Owner.

19. Local Law 97 Environmental Incentives. The benefit of any credits, reductions or other incentives identified under New York City Local Law 97 shall only be shared with the Provider only if there is no negative economic effect on the Owner's benefit.

20. Provider's Obligations regarding Environmental Credits and Incentives. Provider agrees to cooperate to the greatest extent possible, without additional costs to the Provider to ensure the transfer of net metering credits, credits under New York City

Local Law 97 or any other benefits or credits not assigned to Provider resulting from the Solar PV System to Owner.

21. Successors. All provisions of this Rider are covenants that run with the land, which inure to the benefit of HPD [and HDC], and which bind and are enforceable against, to the fullest extent permitted by law, the Parties to this Rider and each such Party's successors, assigns, heirs, grantees, and lessees. All references in this Rider to a party, entity, or individual include the successors and permitted assigns of such party, entity, or individual. Successors to HPD include any body, city, or instrumentality of the City of New York or the State of New York that succeeds to the powers, duties, or functions of HPD.

22. Severability. If any provision of this Rider is found to be void, voidable, or otherwise unenforceable, the provision will be deemed severed from this Rider and of no further effect, and the remaining provisions of this Rider will continue in effect to accomplish the intent of this Rider to the fullest extent possible.

23. Claims Against Officials. No Party to this Rider shall make any claim whatsoever against any official, agent, or employee of HPD [or HDC] for, or on account of, anything done or omitted to be done in connection with this Rider or any other document related to the Properties.

24. Choice of Law. This Rider and all other documents related to the Properties are deemed to be executed in New York City and New York State, regardless of the domicile of the Owner or Provider, and are governed by and should be construed in accordance with the laws of New York State.

25. Consent to Jurisdiction and Venue. Any claim asserted by or against the HPD [and HDC] and arising under this Rider or related to the Properties or any other document concerning the Properties must be heard and determined either in a federal court located in New York City or in a State court located in New York County. The Parties agree as follows:

(a) If HPD [or HDC, as applicable,] initiates any action against a Party to this Rider in federal court or state court, service of process may be made on the Party either in person, wherever the Party may be found, or by registered mail addressed to the Party at its notice address under this Rider, or to such other address as the Party may provide to the HPD [and HDC] in writing.

(b) With respect to any action between HPD [or HDC, as applicable,] and a Party to this Rider in state court, the Party expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens, (2) to remove to federal court, and (3) to move for a change of venue to a state court outside New York County.

(c) With respect to any action between the HPD [or HDC, as applicable,] and a Party to this Rider in federal court, the Party expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a federal court outside New York City.

(d) If a Party to this Rider commences any action against the HPD [and HDC] in a court located other than in New York City, upon request HPD, [or HDC, as applicable,] the Party shall either consent to a transfer of the action to a court of competent jurisdiction located in New York or, if the court where the action is initially brought will not or cannot transfer the action, the Party shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a federal court located in New York City or in a state court located in New York County.

(e) To the fullest extent permitted by law, the Provider shall absolutely and unconditionally defend, indemnify, and hold harmless the HPD [and HDC] and its officials, employees, and agents from and against any and all claims, losses, damages, costs, or liabilities that arise out of or by reason of this Rider, the Properties, or the Solar Agreements or the Solar Security Documents (including, but not limited to, in any proceeding or action brought or taken by the HPD [and/or HDC] or the Provider or Owner) due to Provider's action, inaction, gross negligence or fraud. The Provider shall pay all reasonable fees and other expenses of the indemnified parties in connection with any such matter, including, but not limited to, the reasonable fees of attorneys and experts. The Provider shall pay any such amount regardless of whether a legal action is finally decided by a court. The Provider shall not be obligated to indemnify an indemnified party under this Section 25 to the extent that a claim, loss, damage, cost, or liability arises from the negligence or intentional tortious act of the indemnified party. This Section 25 applies during and after the Term of the Solar Agreements.

(f) To the fullest extent permitted by Law, the Owner shall absolutely and unconditionally defend, indemnify, and hold harmless the HPD [and HDC] and its officials, employees, and agents from and against any and all claims, losses, damages, costs, or liabilities that arise out of or by reason of this Rider, the Properties, or the Solar Agreements or the Solar Security Documents (including, but not limited to, in any proceeding or action brought or taken by the HPD [and/or HDC] or the Provider or Owner) due to Owner's action, inaction, gross negligence or fraud. The Owner shall pay all reasonable fees and other expenses of the indemnified parties in connection with any such matter, including, but not limited to, the reasonable fees of attorneys and experts. The Provider shall pay any such amount regardless of whether a legal action is finally decided by a court. The Owner shall not be obligated to indemnify an indemnified party under this Section 25 to the extent that a claim, loss, damage,

cost, or liability arises from the negligence or intentional tortious act of the indemnified party. This Section 25 applies during and after the Term of the Solar Agreements.

26. **Provisions Required by Law.** Any provision required by law to be inserted into this Rider is deemed to be incorporated into this Rider. This Rider is to be read and enforced as though each such provision is included in this Rider. If, through mistake, change in law, or otherwise, any such provision is not inserted, or is incorrectly inserted into this Rider, then, upon the written request of any Party or HPD [or HDC] all parties shall deem this Rider to have been amended to make such insertion or correction so as to comply strictly with the law.

27. **Further Assurances.** The Owner and Provider shall, at the Owner's and Provider's expense, promptly execute and deliver any further documents, and take any further action, as may be reasonably requested by the HPD [or HDC, as applicable,] to ensure that the Owner, Provider and the Properties comply with this Rider.

28. **Duplicate Originals.** This Rider may be executed in counterparts, and together the counterparts constitute a single instrument. An executed signature page to one counterpart may be attached to another identical counterpart (excepting the signature pages) without impairing the legal effect of the signatures. Any counterpart containing the signatures of all parties to this Rider is sufficient proof.

29. **Interpretation.**

(a) **Incorporation of Recitals and Exhibits.** The recitals, all exhibits, and all riders annexed to this Rider are made a part of this Rider for all purposes.

(b) **As Amended.** Any reference in this Rider, document, law, regulation, requirement, or similar text means the text as may be amended, supplemented, replaced, or otherwise modified from time to time, unless the context expressly requires otherwise.

(c) **Rider References.** References in this Rider to articles, sections, exhibits, or similar refer to provisions in this Rider unless stated otherwise.

(d) **Headings.** The titles or headings of the articles and sections of this Rider are for reference only and are to be disregarded in construing or interpreting the provisions of this Rider.

30. **No Merger.** Every provision contained in any other document related to the Owner or the Properties survives this Rider and remains in effect, and no such provision is merged with this Rider, even though this Rider may recite any such provision.

31. **Relationship of the Parties.** Nothing in this Rider creates any association, partnership, joint venture, or relationship of principal and agent or master and servant between the HPD [or HDC], on the one hand, and any other parties to this Rider (or any affiliates), on the other hand, or provides any non-HPD party [or non-HDC party] with the express or implied right to create any such duty or obligation on behalf of the HPD [or HDC, as applicable].

[remainder of page intentionally left blank]

The undersigned agrees to the terms set forth above in this Rider as of [Month] [Day],
20__

OWNER

[Beneficial Owner]
[Name of Beneficial Owner]

[By: [Name of Parent Company]]

By: _____

Name:

Title: Authorized Signatory

PROVIDER

[Provider]
[By: [Name of Parent Company]]

By: _____

Name:

Title: Authorized Signatory

EXHIBIT A

Minimum Technical Requirements

SYSTEM DESIGN LIFE

The solar energy systems must be designed to have a 25-year life, at minimum.

EQUIPMENT QUALITY AND DURABILITY

All PV modules, inverters, and electrical components shall be commercial off-the-shelf equipment, and be listed or recognized by an appropriate safety laboratory, e.g. Underwriters Laboratory (UL).

- **PV Modules:** solar electric modules must be certified as meeting all applicable standards of the Institute of Electrical and Electronics Engineers (IEEE) and Underwriter's Laboratory (UL) 1703 and detailed in the California Energy Commission (CEC) eligible list which can be found on the CEC website or NYSERDA's contractor portal.
- **Inverters:** inverters must be certified as meeting all applicable standards of IEEE and UL, comply with New York State's Standardized Interconnection Requirements, and meet the requirements of the local utility company Con Edison or Long Island Power Authority.
- **Solar Production Monitoring Equipment:** the data acquisition system must include ANSI C12.20 revenue grade energy production meters (0.5% accuracy).
- **Solar Racking Equipment:** must be comprised of high-quality outdoor rated equipment and materials.
- **Components:** solar equipment and connection components must be commercially available to allow for any maintenance and/or replacement and all components must be of corrosion resistant material.

WARRANTIES

- **PV Modules:** minimum product warranty of 10 years and a power production warranty which guarantees at least 80% production at year 25.
- **Inverters:** minimum warranty of 10 years, with a preference for extended warranties.
- **Solar Production Monitoring Equipment:** minimum warranty of 5 years on data acquisition hardware, with a preference for extended warranties.
- **Racking System:** minimum product warranty of 25 years.
- **Workmanship Warranty:** minimum warranty of 5 years. In accordance with NYSERDA's NY-SUN program requirements, the contractor must provide the purchaser of the solar electric system with a full five-year transferable warranty covering all components of the generating system against

breakdown or degradation in electrical output of more than 10% from the original rated electrical output. The warranty will cover the full costs, including labor, repair, and replacement of defective components or systems.

INSTALLER QUALIFICATIONS

- Installer must be a NY-SUN Participating Contractor in full compliance with all of NYSERDA's NY-SUN Residential/Small Commercial program rules, and have a satisfactory average quality assurance (QA) inspection score in the NY-SUN program. If eligible, the solar energy system must receive the NY-SUN incentive. Installation will minimize roof penetrations and tenant disturbance.

COMPLY WITH ALL APPLICABLE CODES

The solar energy system design and installation shall comply with all applicable codes and AHJ requirements.

INCENTIVES

All available incentives must be pursued and must be passed to the customer. All HPD projects must follow all program requirements.

MINIMUM FINANCIAL TERMS FOR THIRD-PARTY OWNED SOLAR

The Solar Agreement will contain the following financial terms:

- **Any Escalation Clause in the Solar Agreements must be a maximum of 1.5% per year as compared to the prior year.**
- **A production guarantee of a minimum of 80% of expected output (upon which the Solar Agreements fees were based) must be included in the Solar Agreements.**
- Online monitoring must be set up with regular reports and alerts sent to both the Provider and Owner.
- **A buy-out or termination payment schedule must be included in the contract, with the annual price clearly described.**
- **Provider must perform all routine and emergency maintenance of the System at its sole cost and expense and in a timely manner.**

PREREQUISITES

HPD may require at its discretion, or in the event a roof inspection by roof manufacturer is unavailable, a certification by a facade specialist, licensed engineer or architect

stating that current conditions on the roof are sufficient for the proposed solar installation.

If the building is subject to New York City LL 92 & 94, requiring the roofs of certain buildings to incorporate a sustainable roofing zone equipped with a qualifying solar photovoltaic electricity generating capacity, the building owner shall submit evidence to HPD that the proposed rooftop Solar PV System agreement shall bring the building into compliance with such law, or continue existing compliance, as certified by a licensed architect or engineer.